

Professional Corporations Demystified

Physicians often provide their professional services through a professional corporation of which they are the sole shareholder and director. I am frequently asked by physicians what becomes of their Professional Corporation upon their death. This is of great concern to them because they are aware that only registered practitioners are allowed to hold shares in a professional corporation. Quite often, physicians own investments through their professional corporations. These can have substantial value. Understandably, what becomes of these investments is cause for concern.

There is common assumption that following the death of the physician, the professional corporation must be wound up and its assets distributed. There is justifiable concern that doing so could cause adverse tax consequences. The question is frequently asked whether it is necessary for the professional corporation to be wound up.

Here are some facts:

- The **Medical Profession Act** allows professional corporations to practise medicine, provided the corporation has a permit issued under that Act
- Corporations that practice medicine must include in their names the words “Professional Corporation”
- Only registered practitioners (ie. medical doctors) are allowed to be shareholders in professional corporations
- Only persons who are registered practitioners (ie. medical doctors) are allowed to carry on the practice of medicine on behalf of the corporation

Professional corporations are incorporated, like many other corporations in Alberta, under the **Business Corporations Act** (Alberta). A corporation does not cease to exist upon the death of its sole shareholder. The shares in that corporation are transmitted to the deceased person’s personal representative and form part of the deceased person’s estate. Whether a decision is then made—either by the personal representative or by the ultimate beneficiaries if and when the shares have been transferred to them—to wind up the corporation is entirely up to them. This is a decision that should only be made in consultation with expert tax and financial planning advisors.

So if the professional corporation does not cease to exist upon the death of the shareholder who, by law, must be a registered practitioner, what becomes of it? How does it comply with the requirement that only registered practitioners may hold shares in a professional corporation? The **Medical Profession Act** provides that following the death of a registered practitioner, the professional corporation will lose its permit to practice medicine unless another registered practitioner can be found to hold the shares within 90 days of the date of death. So, if there is no doctor to act as shareholder, the corporation will lose its permit

to practice medicine—*but the corporation will not cease to exist*. In cases where a professional corporation has lost its permit, the ***Business Corporations Act*** allows the Registrar of Corporations may change the name of the corporation to exclude the words, “Professional Corporation”. In all other respects, the corporation remains the same: it continues to exist as the same corporate entity (albeit with a new name), owning the same assets and owing the same debts.

Once the name has been changed to a name that complies with the ***Business Corporations Act***, the corporation can continue to exist indefinitely and its shares can be freely exchanged among persons who are not registered practitioners.

It may be desirable for tax purposes to continue a corporation’s corporate existence beyond the death of the physician shareholder. This will depend on the nature of the assets owned by the corporation at the time of the physician shareholder’s death and the individual circumstances of the beneficiaries of the estate. As noted above, the decision to continue or wind-up a corporation should be made in consultation with tax and financial planning experts. For present purposes, it should please physicians and their intended beneficiaries to know that upon the death of the physician shareholder, there are options some available.