

PARTNERSHIPS AND CORPORATIONS

What organizational forms are available for a physician's practice?

Generally, a physician's practice may be organized as:

- A sole proprietorship.
- A professional service corporation of the physician alone or with other physicians and certain other healthcare professionals.
- A partnership with other physicians.
- A limited liability partnership with other physicians and certain other healthcare professionals.
- A limited liability company of the physician alone or with other physicians and certain other healthcare professionals.

What is a partnership?

A partnership is an association of two or more persons to carry on a business for profit as co-owners.¹ A partnership is an entity distinct from its partners.²

What is the liability of the partnership as a distinct entity for conduct of the partners?

A partnership is liable for any loss or injury to a person, or for any penalty which may be incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner who is acting in the normal course of business of the partnership.³ A partnership is also responsible for any loss which result if a partner acting in the normal course of partnership business, or with the authority of the partnership, misapplies money or property the partner has received, or received on behalf of the partnership.⁴

What is the liability of one partner for the acts of the partnership or another partner?

Generally, a partner's liability is as follows:

- Partners are liable for their own acts and omissions, except that a person admitted into a partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.⁵

¹ RCW 25.05.005.

² RCW 25.05.050(1).

³ RCW 25.05.120(1).

⁴ RCW 25.05.120(2).

⁵ RCW 25.05.125(2).

- Partners are jointly and severally liable for all obligations of the partnership unless otherwise agreed upon or provided for in law.⁶

What is a Limited Liability Partnership (LLP)?

An LLP is a partnership, with statutory limitations on the partners' liabilities. The name of a limited liability partnership must contain the words "limited liability partnership" or the abbreviation "L.L.P" or "LLP" as the last words or letters of its name.⁷

What is the liability of one partner in an LLP for the acts of the partnership or another partner?

Generally, in an LLP, a partner's liability is as follows:

- Partners are liable for their own acts and omissions.
- Partners are liable for the acts and omissions of those they supervise.
- Partners are not personally liable for the acts and omissions of other partners or of employees they do not supervise.⁸
- The LLP is liable for the acts and omissions of its partners and employees.⁹

Are there special considerations for LLPs whose partners are physicians?

Yes. Licensed individuals, such as physicians, may organize and become members of a LLP for the purpose of rendering professional services.¹⁰ In the case of an LLP of licensed professionals, if the partnership fails to maintain professional liability insurance or some other equivalent type of financial responsibility of at least one million dollars, the partners are personally liable for any amounts that would have been covered had the professional liability insurance been maintained.¹¹

What is a Professional Service Corporation (PS or PC)?

A professional service corporation is a corporation organized for the purpose of providing professional services and comprised of individuals or groups of individuals licensed to render the

⁶ RCW 25.05.125.

⁷ RCW 25.05.505.

⁸ RCW 25.05.125(3).

⁹ *Id.*

¹⁰ RCW 25.05.510(1).

¹¹ 25.05.125(4).

same professional services.¹² Its existence is legally independent from any individual shareholder. It has the capacity to act as a distinct legal entity and be held liable for its actions.¹³

What is the liability of PS or PC shareholders?

Generally, PS or PC shareholders' liability is as follows:¹⁴

- Shareholders are liable for their own acts and omissions.
- Shareholders are liable for the acts and omissions of those they supervise.
- Shareholders are not personally liable for the acts and omissions of other shareholders or employees they do not supervise.
- The corporation is liable for the acts and omissions of shareholders and employees.
- The corporation is liable for its contracts, including debt, and other liabilities.

What is a Professional Limited Liability Company (PLLC)?

A PLLC is a limited liability company organized for the purpose of rendering professional services, comprised of individuals or groups of individuals¹⁵ who are licensed to render the same professional services,¹⁶ and subject to the same laws which govern professional service corporations, but which have statutory limitations on the members' liabilities.¹⁷ A PLLC must contain either the words "Professional Limited Liability Company," or the words "Professional Limited Liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC."¹⁸

Typically, a PLLC combines features of both a partnership and a corporation. A PLLC may function similarly to a partnership in terms of taxation, admission of members, voting and classes of membership, and in other ways provided for in the limited liability company agreement among its members.

What is the liability of members of a PLLC?

Generally, the liability of members of a PLLC is as follows:¹⁹

- Members are liable for their own acts and omissions.

¹² RCW 18.100.060(1).

¹³ RCW 23B.03.020(2).

¹⁴ RCW 18.100.070.

¹⁵ RCW 25.15.045(1).

¹⁶ RCW 18.100.050(1).

¹⁷ RCW 25.15.040.

¹⁸ RCW 25.15.045(4).

¹⁹ RCW 25.15.045(1), RCW 18.100.070.

- Members are liable for the acts and omissions of those they supervise.
- Members are not personally liable for the acts and omissions of other members or employees they do not supervise.
- The PLLC is liable for the acts and omissions of members and employees.
- The PLLC is liable for its contracts, including debt, and other liabilities.
- If the PLLC fails to maintain professional liability insurance or some other equivalent form of financial responsibility of at least \$1 million, the members of the PLLC are personally liable for any amounts that would have been covered had professional liability insurance been maintained.²⁰

May physicians combine with any other health care professionals to form, and render their professional services through, a professional service corporation, a professional limited liability partnership, or a professional limited liability company?

In certain circumstances, yes. Under Washington law provides for licensed individuals to incorporate (or form a PLLC) to render the same professional service.²¹ Physicians may combine with any of the following licensed health care professionals to form, and render their professional services, through a professional service corporation, a professional limited liability partnership, or a professional limited liability company:²²

- East Asian Medicine Practitioners.
- Mental health counselors, marriage and family therapists, and social workers.
- Podiatrists.
- Chiropractors.
- Dental hygienists.
- Dispensing opticians.
- Audiologists and speech language pathologists.
- Naturopaths.

²⁰ RCW 25.15.045(2).

²¹ RCW 18.100.010; *Columbia Physical Therapy v. Benton Franklin Orthopedic Associates*, 168 Wn. 2d 421 (2010).

²² RCW 18.100.050(5); *Columbia Physical Therapy*, *supra*.

- Midwives
- Optometrists.
- Ocularists.
- Osteopathic physicians.
- Osteopathic physician assistants.
- Pharmacists.
- Physicians.
- Physician assistants.
- Nurses.
- Psychologists.
- Respiratory care practitioners.
- Massage practitioners.
- Dietitians and nutritionists.

Are combinations of partnerships and corporations possible?

Yes. The law allows any number of combinations of corporate and individual partners and/or corporations.

What are some of the factors to consider in choosing the organizational form for a physician?

Choosing the best organizational form largely depends upon the physician or physicians' personal preferences and consideration of such factors as:

- Taxation issues.
- The impact of the securities laws.
- The time and money required to maintain the business form.
- Entity governance.

- Scope of limitation on personal liability.
- Type of qualified retirement plan desired.
- Requirements of managed health care contracts.

Proper formation and maintenance of whatever business entity is chosen for physician practices requires detailed compliance with specific laws and regulations. Thus, physicians are well-advised to seek legal advice before choosing or changing a practice's organizational form.