



## Overview

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The basic principles pertaining to professional incorporation, as set out in **The Medical Profession Act, 1981** are the following:

1. A physician cannot practise medicine through a professional corporation unless that professional corporation is registered with the College of Physicians and Surgeons of Saskatchewan.
2. The corporation must be incorporated under **The Business Corporations Act** of Saskatchewan.
3. The corporate name must indicate that the corporation is engaged in the practice of medicine, and must contain the words “Professional Corporation” or one of the approved abbreviations.
4. The incorporating documents cannot restrict any aspect of the corporation’s practice of medicine.
5. Physicians remain liable for medical negligence, whether they practise medicine in their personal capacity, or through a corporation.
6. Physicians remain accountable to the College of Physicians and Surgeons for their conduct, whether they practise medicine in their personal capacity or through a professional corporation.
7. Physicians have the same legal and ethical responsibilities to their patients, whether they practise medicine in their personal capacity or through a professional corporation.
8. All directors of the corporation must be members of the College (physicians holding a regular licence, a special licence, ministerial licence, or a provisional licence).
9. All holders of voting shares must be members of the College (physicians holding a regular licence, a special licence, ministerial licence, or a provisional licence).
10. All physicians who practise medicine through the corporation must be registered under **The Medical Profession Act, 1981**. This permits professional corporations to employ or contract with persons holding temporary or educational licences. However, persons holding temporary or educational licences cannot be shareholders of the professional corporation or directors of the professional corporation.
11. No person can have a right to exercise voting control over voting shares, other than a member of the College.
12. Non-voting shares can only be owned by:
  - a. a member of the College (physicians holding a regular licence, a special licence, ministerial licence, or a provisional licence). or,
  - b. that member’s spouse; or
  - c. that member’s children; or
  - d. that member’s parents; or
  - e. a corporation that meets the requirements of the Act; or
  - f. a trust that meets the requirements of the Act.
13. All physicians who practise medicine through the corporation must have liability coverage that meets the requirements of the College’s bylaws. (A copy of those bylaws is appended to this document).



## The Bylaws of the CPSS relating to Professional Incorporation

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### 36.1 Professional Corporations

- (a) An applicant for registration by a Professional Corporation, or an applicant for renewal of a permit by a Professional Corporation shall file with the College Form “A” to these bylaws that:
  - (i) is legible;
  - (ii) contains all of the information required by the form;
  - (iii) attaches all documents that are required by the form; and
  - (iv) is signed by all persons required to sign the form.
- (b) The Registrar may refuse registration, or refuse to renew a permit where the form is not completed in accordance with paragraph (a).
- (c) The Registrar may request additional information relating to an application for registration or an application for renewal of a permit by a professional corporation, and may refuse registration or renewal of a permit until that information is provided.
- (d) All advertising by Professional Corporations shall comply with the provisions of these bylaws pertaining to advertising by members.
- (e) Each member who practises medicine by, through or in the name of a Professional Corporation is responsible to ensure that all advertising by the Professional Corporation complies with the bylaws.

### Bylaw 33.1 – the bylaw of the College of Physicians and Surgeons relating to professional liability coverage

#### 33.1 Maintenance of Insurance

- (a) In order to be granted a licence, or renew a licence, to practise as a regular member – active, as a provisional member – active, as a special member, a senior life member – active or in order to be granted a *locum tenens* permit a physician shall:
  - (i) provide a written authorization to the College of Physicians and Surgeons in which the physician authorizes the Canadian Medical Protective Association, or any insurer with whom the physician maintains professional liability insurance, to release to the College of Physicians and Surgeons any information respecting the status of that physician’s membership or insurance coverage that may be required by the College of Physicians and Surgeons;
  - (ii) if the physician has been registered with the College immediately prior to the application for a licence or permit, or, although not registered with the College, has membership in the Canadian Medical Protective Association or is insured under a contract of malpractice insurance, provide proof that the physician either:
    1. is registered with the Canadian Medical Protective Association as a member of that organization; or

2. is insured under a contract of malpractice insurance with an insurance company registered to do business in Saskatchewan that provides a minimum coverage of two million dollars for each occurrence. (iii) if the physician has not been registered with the College of Physicians and Surgeons of Saskatchewan immediately prior to the application for a licence or permit, or has been registered under an inactive licence, enter into an undertaking with the College of Physicians and Surgeons that:

1. the physician will obtain membership with the Canadian Medical Protective Association or maintain malpractice insurance with an insurance company registered to do business in Saskatchewan that provides a minimum coverage of two million dollars for each occurrence before beginning medical practice; and
2. the physician will provide proof of membership or insurance to the College of Physicians and Surgeons within a period of 30 days.

(iv) enter into an undertaking with the College of Physicians and Surgeons that the physician will continuously maintain membership with the Canadian Medical Protective Association or maintain malpractice insurance with an insurance company registered to do business in Saskatchewan that provides a minimum coverage of two million dollars for each occurrence while the physician remains licenced or authorized to practise under a permit.

(b) A physician who:

(i) does not provide medical care to patients in Saskatchewan; or

(ii) practises exclusively with the Armed Forces of Canada; or

(iii) practises exclusively as an employee of an employer who maintains insurance coverage that includes insurance coverage that insures the physician against professional malpractice with an insurance company registered to do business in Saskatchewan that provides a minimum of two million dollars for each occurrence; or

(iv) provides information to the Registrar that satisfies the Registrar that the Saskatchewan public would not be placed unduly at risk if the physician were not required to maintain insurance coverage or membership in the Canadian Medical Protective Association;

may apply to the College of Physicians and Surgeons for exemption from the requirement that the physician be a member of the Canadian Medical Protective Association or be covered by a policy of insurance. The application for an exemption shall be accompanied by an undertaking that the physician will immediately obtain membership with the Canadian Medical Protective Association or obtain malpractice insurance with an insurance company registered to do business in Saskatchewan that provides a minimum coverage of two million dollars for each occurrence if the physician should cease to meet the conditions of paragraph (i), (ii) or (iii), or if any of the information provided in an application under paragraph (iv) should cease to be accurate.

(c) It is unbecoming, improper, unprofessional, or discreditable conduct for a physician to breach an undertaking provided to the College pursuant to this paragraph.

# The provisions of The Medical Profession Act, 1981 relating to professional incorporation

## PART III. 1 Professional Corporations

### Professional corporation

37.1(1) One or more members may incorporate a corporation pursuant to The Business Corporations Act for the purpose of carrying on the practice in the name of the corporation.

(2) The words 'Professional Corporation' or the abbreviation 'Prof. Corp.' or 'P.C.' must be part of the name of a professional corporation and the name must appropriately depict, in accordance with the bylaws, that the professional corporation is engaged in the practice.

(3) No owner of voting shares of a professional corporation shall pledge or enter into a voting trust agreement or proxy or any other type of agreement that vests in a person who is not a member the authority to exercise the voting rights attached to any or all of the owner's shares.

### Restrictions on practising in name of corporation

37.2 (1) No person shall carry on, purport to carry on or advertise the carrying on of the practice by, through or in the name of a professional corporation unless:

(a) the professional corporation is registered and holds a valid permit pursuant to section 37.4;

(b) subject to subsection (2), all of the issued voting shares of the professional corporation are legally and beneficially owned by one or more members;

(c) subject to subsection (2), all of the issued non-voting shares of the professional corporation are legally and beneficially owned by:

(i) members;

(ii) spouses, children or parents of members who own voting shares;

(iii) a corporation incorporated pursuant to *The Business Corporations Act*, all of the shares of which are owned by individuals mentioned in subclause (i) or (ii); or

(iv) a trust, all of the beneficiaries of which are individuals mentioned in subclause (i) or (ii);

(d) all of the directors of the professional corporation are members; and

(e) all persons who carry on practice by, through or in the name of the professional corporation are registered under this Act.

(2) The voting and non-voting shares of a professional corporation may be vested in:

(a) an executor or administrator of the estate of a shareholder, for the limited purpose of permitting the executor or administrator to discharge his or her duties in relation to the administration of the estate; or

(b) a trustee in bankruptcy, for the limited purpose of permitting the trustee to discharge his or her duties as trustee in bankruptcy of the estate of a shareholder or the professional corporation.

### Corporate register

37.3(1) The registrar shall keep a register to be called the corporate register.

(2) The registrar shall enter in the corporate register the name and address of each professional corporation that is registered by the council pursuant to section 37.4 and the name and address of each director of each professional corporation that is registered.

(3) The corporate register is to be kept at the head office of the college and is to be open for inspection by all persons, without fee, during normal office hours of the college.

### **Registration, permit**

37.4(l) The council may register and issue a permit to a professional corporation that:

- (a) applies in the form prescribed by the council;
- (b) pays the fees prescribed for the purpose by the council; and
- (c) satisfies the council that:
  - (i) the professional corporation:
    - (A) is a corporation in good standing pursuant to The Business Corporations Act;
    - (B) meets the requirements of this Part; and
    - (C) meets the requirements of the bylaws;
  - (ii) each person who carries on practice by, through or in the name of the professional corporation holds liability insurance that meets the requirements of the bylaws; and
  - (iii) the articles of the professional corporation do not prevent it from carrying on all business and activities associated with practice.

(2) A professional corporation shall not be registered pursuant to any other provision of this Act.

(3) A permit issued pursuant to subsection (1) may contain any terms and conditions that the council considers appropriate.

(4) Subject to section 37.5, a permit expires on **December 31** of the year for which it is issued.

(5) The council may renew a permit issued to a professional corporation that applies in the form prescribed by the council and pays the prescribed fees, if the council is satisfied that the professional corporation continues to meet the requirements set out in clause (1)(c).

(6) Where an application for renewal of a permit is refused, the registrar shall send notice of that fact to the professional corporation and to the minister.

### **Revocation of permit**

37.5(l) The council may revoke a permit issued to a professional corporation where the professional corporation:

- (a) does not meet one or more of the requirements set out in clause 37.4(l)(c);
- (b) fails to comply with a term or condition set out in the permit; or
- (c) is convicted of an offence described in section 55.

(2) The council shall revoke a permit issued to a professional corporation where only one member carries on practice in the name of the professional corporation, and:

- (a) the member dies or becomes incompetent; or
- (b) the member's licence is suspended or revoked pursuant to this Act.

(3) Where a permit is revoked, the registrar shall send notice of that fact to the professional corporation and to the minister.

(4) Where a permit issued to a professional corporation is revoked, the registrar shall strike the name of the professional corporation from the corporate register.

### **Discipline**

37.6(l) If the subject of a complaint, investigation or inquiry is the conduct of a person registered under this Act through whom a professional corporation was carrying on practice when the conduct occurred:

(a) any power of inspection, investigation or inquiry that may be exercised with respect to the person or the person's records may be exercised with respect to the professional corporation or the professional corporation's records; and

(b) the professional corporation and its shareholders are jointly and severally liable for all fines and costs that the person is ordered to pay.

(2) The shareholders, directors, officers and employees of a professional corporation are compellable to give evidence in any proceeding pursuant to Part V.

### **Appeal**

37.7(l) A professional corporation may, in accordance with this section, appeal a decision of the council to the court where:

(a) the application of the professional corporation for registration, for a permit or for renewal of a permit is rejected;

(b) the permit of the professional corporation is issued subject to terms and conditions; or

(c) the permit of the professional corporation is revoked.

(2) An appeal pursuant to subsection (1) must be commenced within 60 days after the date of the decision by a notice of appeal setting out the grounds of the appeal, a copy of which is to be served on the registrar.

(3) On hearing an appeal pursuant to subsection (1), the court may:

(a) confirm or vary the decision of the council or substitute its own decision for that of the council; and,

(b) make any order as to costs that it considers appropriate.

### **Application of Act**

37.8(l) The relationship of a person registered under this Act to a professional corporation does not affect the application of this Act or the bylaws to the person.

(2) The liability of a person registered under this Act to a patient who receives services from the person is not affected by the fact that services were provided to the patient by the person as an employee of, or on behalf of, a professional corporation.

### **Patient relations**

37.9(l) Nothing in this Part affects any law applicable to the confidential, ethical or fiduciary relationships between a person registered under this Act and a patient who receives services from the person.



## Some Considerations in Deciding Whether to Incorporate

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**The following are factors that may influence a physician to decide to incorporate, or practise as an individual.**

1. Cost - There will be additional costs. The physician must pay the College's annual fee for physician registration. The professional corporation will also be required to pay the College's initial fee for registration of the professional corporation and the annual fee for a permit for the professional corporation. There will be additional legal costs associated with forming the corporation and preparing agreements relating to the incorporation. There may be additional accounting expenses associated with the formation of the corporation, preparing financial statements for the corporation, and preparing tax returns for both the corporation and the individual physician. The College encourages physicians to obtain an estimate of those additional costs from their lawyers and accountants to fully understand the cost implications associated with incorporation before deciding whether to incorporate.
2. Temporarily registered physicians (those holding locum tenens permits) cannot become members of a professional corporation or practise medicine through a professional corporation. The Act limits the ability to incorporate to "members". The word "member" as defined in the Act does not include physicians on the temporary register. Therefore temporarily registered physicians cannot be shareholders of a professional corporation;

If a professional corporation ignores this, the professional corporation's registration could be revoked. This would mean that the professional corporation could no longer practise medicine or bill the Medical Services Plan. All physicians associated with the professional corporation would have to bill for medical services using their own personal billing number. This could have very significant, adverse, tax consequences for all involved.

3. Physicians will have to be very careful to ensure that all documents required by the College are filed on a timely basis. If a permit expires due to the failure to renew by November 30, the paying agencies will be notified that the permit is invalid. If the necessary documents, and all information necessary to support the application, are not filed by November 30, there will be a cost for re-registration of the professional corporation. This may also result in all accounts to the Medical Services Plan for professional services and the date the corporation is restored being billed utilizing the individual billing numbers of the physicians. This could have significant, adverse, tax consequences for all involved. This could also add to the accounting fees that will be incurred.
4. If the professional corporation has more than one member as a shareholder, the physicians should be aware of the potential liability of each physician if one of the physicians is disciplined. All physician shareholders, and the corporation, are jointly and severally liable for any costs or fines imposed by the College.
5. All physicians involved with a professional incorporation should carefully read the provisions of the Act, the bylaws relating to professional incorporation, and the bylaws relating to liability coverage (attached to the end of this document) before deciding to incorporate. One of the requirements for incorporation is that all physicians certify that they have read and understand the Act and the bylaws.

(2) The relationship between a professional corporation and a patient who receives services from the professional corporation is subject to all applicable laws relating to the confidential, ethical and fiduciary relationships between the person registered under this Act who provides the services in the name of the professional corporation and the patient.

(3) All rights and obligations pertaining to communications made to, or information received by, a person registered under this Act apply to the shareholders, directors, officers and employees of a professional corporation.

#### **Section 76 amended**

76(1) A certificate purporting to be signed by the registrar setting out one or more of the facts described in subsection (1.1) constitutes proof, in the absence of evidence to the contrary, of those facts without proof that the person signing it is the registrar or proof of the registrar's signature.

(1.1) Subsection (1) applies to a certificate stating that, on a specified day or during a specified period:

(a) a person named in the certificate was or was not a member and, in the case of a member, stating the category of membership of the member; or

(b) a corporation named in the certificate: was or was not registered as a professional corporation; or was or was not the holder of a valid permit".

#### **Penalty for unlawfully practicing**

80(2) Every director, officer or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in an act or omission of the corporation that would constitute an offence by the corporation is guilty of that offence, and is liable on summary conviction:

(a) for a first offence, to a fine of not more than \$5,000;

(b) for a second offence, to a fine of not more than \$12,000; and

(c) for a third or subsequent offence, to a fine of not more than \$20,000".





## Applying for Registration

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**In order for a corporation to apply for registration with the College, the corporation is required to:**

1. Complete the form(s) required for registration with the College. The form used for initial registration is the College website.
2. Have that form signed by a member (only registered physicians are “members”) who holds voting shares in the corporation.
3. Submit a copy of the incorporating documents that are registered with the Corporations Branch of the Province of Saskatchewan. This will include the Articles of Incorporation with attached schedules and the Articles of Amendment, (if Articles of Amendment have been filed). The form “A” as well as the Certificate of Incorporation, Articles of Incorporation with Schedules attached can be sent with the payment of \$500 to the e-mail address of [cpsreg-corp@cps.sk.ca](mailto:cpsreg-corp@cps.sk.ca).
4. Submit a copy of the filed Annual Return, if the corporation has been in existence for more than one year.
5. In certain limited circumstances, other documents may have to be filed with the College. That should only be required in certain limited circumstances if there is a complex corporate structure or a complex trust structure associated with the professional corporation.
6. A corporation will have to pay the registration fee of \$350.00 and the annual fee of \$150.00. The total fee payable in the first year of registration will therefore be \$500.00 and the fee for each year thereafter will be \$150.00 or such other fee as may be set by the Council.

Please note that if you are applying to incorporate in mid-September, you should contact the College to find out what payment is due as we may request the following year’s permit fee included as well so no renewal documents are required for the current year. Renewal for corporations is normally sent out by the first week in October.



## Annual Renewal of a Permit

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Corporation online renewal, fees, and changes to the corporation should be completed by **no later than November 1** of each renewal year. This will ensure that we have enough time to contact you in case there are any errors or omissions on your submitted information.

**IMPORTANT:** Ensure that we have the correct contact information/ mailing address for you and your corporation. Please see our step-by-step renewal handout for more details.

1. All permits must be renewed by November 30 in the year for which the permit was issued;
2. In order to apply for renewal of a permit, the corporation will have to provide the following **to reach the College by November 30:**
  - a. the renewal fee, which is currently \$150.00;
  - b. the online renewal declared by **one** physician who is a **voting** shareholder;
  - c. a **filed** copy of the corporation's Annual Return, if the corporation has been in existence for more than one year. The copy should contain the stamp from the Corporations Branch of the Province of Saskatchewan;
3. If the necessary correct and complete renewal and fees do not reach the College of Physicians on or before November 30, the following will happen:
  - a. the permit of the corporation will be revoked effective December 31;
  - b. physicians associated with the corporation will be prohibited from using the corporation to carry on the practice of medicine;
  - c. after the permit is revoked, the paying agencies will be notified by the College of Physicians and Surgeons that the corporation is no longer registered;
  - d. the permit of the corporation to practise medicine will not be renewed or restored until a restoration fee of \$350.00 is paid to the College, in addition to the annual renewal fee; and,
  - e. the professional corporation may be unable to bill for professional services until the permit of the professional corporation to practise medicine is restored. This might have significant tax consequences for the physician involved.