Dental Corporations – What You Need To Know

This article presents key factors a dentist should consider before forming a corporation, whether as a sole shareholder or with multiple shareholders. These considerations are categorized as:

- Differences with sole proprietorship.
- Legal requirements (e.g., shareholders, fictitious name).
- Contracting with a dental plan.

Be aware that California law does not permit limited liability companies to perform professional services (California Corporations Code §17375). “Limited liability partnerships” are essentially general partnerships that elect to be treated as LLPs by registering with the Secretary of State. Only accountants, architects, and attorneys are allowed to operate their practices as LLPs (Corporations Code §16101).

To avoid making changes to contracts and other documents, it is best for a dentist to decide before owning a practice whether to incorporate.

The other business entity a dentist can form is a general partnership or group practice. For information on forming and operating a general partnership or group practice, refer to the CDA Legal Reference Guide for California Dentists, available on the CDA Practice Support website.

**Differences with sole proprietorship**

- A California corporation is required to file with the Secretary of State articles of incorporation and other documents.
- A corporation usually pays higher taxes than a sole proprietorship but may qualify for certain tax benefits. Sometimes after creating a corporation, a dentist may want to carefully consider and consult with a tax advisor and attorney whether converting to an S corporation would be beneficial. Generally, an S corporation is the preferred entity from a tax perspective as a C corporation entails two separate levels of taxation both at the corporate and individual stockholder levels.
- A corporation bears liability for debts, claims, demands and judgments made on the business – for example, when an individual makes a slip-and-fall claim for an incident that occurred on business premises or when an employee files a wage claim. In order to obtain the protection of the corporate liability shield, however, the corporation must observe certain legal formalities, which include adopting bylaws, electing directors and officers, issuing stock and keeping written minutes of corporate board meetings. A corporation generally protects the personal assets of individual shareholders from liabilities of the corporation with few exceptions. However, a shareholder may be held personally liable for malpractice claims and for fraud.
- A corporation can continue to conduct business even if one or more shareholders die or leave the business.
- A corporation may have an unlimited number of shareholders, although licensed dentists must hold the majority of shares in a dental corporation and the number of non-dentist shareholders should not exceed the number of dentist shareholders.

It is important for a dentist to get expert information prior to deciding on an appropriate business entity. Speak with both an attorney and an accountant before deciding if establishing a dental corporation is right for you.
Legal Requirements

• A California dental corporation may only operate as a professional corporation. Only professional corporations are permitted to perform professional services such as dentistry.

• Nothing in the laws or rules relating to dental corporations alters the dentist’s duties and responsibilities to and professional relationships with his or her patients. Nor do such laws or rules affect the Dental Board’s disciplinary powers over its licentiates or affect any other law or rule pertaining to the standards of professional conduct of dentists.

• The name of a dental corporation must include and be restricted to the name or the last name of one or more of the present, prospective or former shareholders and shall include the words “dental corporation” or wording or abbreviations denoting corporate existence.

• If a dentist chooses to develop articles of incorporation for a dental corporation, instead of using the form provided on the Secretary of State’s website, the articles must contain a specific statement as its purpose statement:

  The purpose of the corporation is to engage in the profession of dentistry and any other lawful activities (other than the banking or trust company business) not prohibited to a corporation engaging in such profession by applicable laws and regulations. This corporation is a professional corporation within the meaning of California Corporations Code section 13400 et seq.

The articles also must include the name of the corporation, business address, name of agent for service and number of shares the corporation is authorized to issue.

• A corporation must file its first Statement of Information within the first 90 days after registering with the Secretary of State. Subsequent Statements of Information must be filed annually within the applicable filing schedule even if the corporation has done no business during the prior year. The Statement of Information includes information on the corporation’s officers, directors, agent for service of process and the corporation’s general business activity.

• If a different business name is desired, an application for a fictitious name permit can be made with the Dental Board after creation of the dental corporation. A fictitious name permit is address-specific. All dentists with ownership interest in the practice operating at the address must be listed on the permit application. Upon the Dental Board’s approval of the name, the corporation may register the fictitious name with the county clerk’s office.

• Separate registration of the corporation with the Dental Board is not required.

• A dental corporation that wants to operate more than one place of practice must obtain one or more additional office permits from the Dental Board.

• A dental corporation with only one shareholder need have only one director (the shareholder) who shall also serve as the president and treasurer of the corporation. The other officers of the corporation in such situation need not be licensed. A dental corporation with only two shareholders need have only two directors (the shareholders). The two shareholders between them shall fill the offices of president, vice president, secretary and treasurer.

• The following categories of individuals may be shareholders in a dental corporation as long as the total shares held by these individuals does not exceed 49 percent of the total shares of the corporation and the number of nondentist shareholders does not exceed the number of dentist shareholders:
  ○ Licensed physicians and surgeons
  ○ Dental assistants
  ○ Registered dental assistants
Registered dental assistants in extended functions

Registered dental hygienists

Registered dental hygienists in extended functions

Registered dental hygienists in alternative practice

- **Share certificates** of a dental corporation shall contain an appropriate legend setting forth the restrictions described in California Code of Regulations Title 16 Section 1060.

- California law requires that **shareholder meetings** be held on an annual basis for the election of directors for the coming year and for any other business that may be of interest to the shareholders. A meeting of the Board of Directors is held usually immediately after the annual shareholder meeting to elect officers of the organization for the next year and to approve any matters that have been presented to the board. Minutes should be kept of all director and shareholder meetings. The minutes should include the issues brought before the group and should be kept in the organization’s minute book. A copy of these minutes, certified by the secretary, is evidence the meeting took place and that issues stated in the minutes took place. California law requires that the minutes of the meetings be open for inspection by any shareholder or director.

- When a dental corporation obtains **insurance** for claims against it by its patients, the security shall consist of a policy or policies insuring either the corporation or all the employed licensed persons rendering such dental services against liability imposed by law for damages arising out of the rendering of or failure to render dental services by the corporation in an amount for each claim of at least $50,000 multiplied by the number of employed licensed persons rendering such dental services and an aggregate maximum limit of liability per policy year of at least $150,000 multiplied by the number of such employees, provided that the maximum coverage shall not be required to exceed $150,000 for each claim and $450,000 for all claims during the policy year and provided further that the deductible portion of such insurance shall not exceed $5,000 multiplied by the number of such employees. All corporation shareholders shall be jointly and severally liable for all claims established against the corporation by its patients arising out of the rendering of or failure to render dental services up to the minimum amounts specified for insurance except during periods of time when either the corporation or all the employed licensed persons rendering dental services provide and maintain insurance for claims by its patients arising out of the rendering of or failure to render dental services. The insurance when provided shall meet the minimum standards established above.

- If a shareholder who is a licensed **dentist dies or becomes incapacitated** and the dentist was the majority shareholder, his or her legal representative may employ licensed dentists and other licensed staff and charge for their professional services for a period not to exceed 12 months from the date of death or incapacity. The legal representative must notify the Dental Board and patients of such arrangements. The dentist’s shares also may be purchased by another licensed dentist or dental corporation or by the corporation itself and then distributed to other shareholders as long as total shares of the nondentist shareholders does not exceed 49 percent. Such sale or transfer shall not be later than six months after the dentist’s death.

- When a shareholder is no longer licensed or otherwise qualified to render professional services, the corporation, another shareholder or a licensed dentist must acquire the shares of that shareholder within 90 days of the date of the shareholder’s loss of license. Not doing so places the corporation’s registration at risk and the corporation may no longer be allowed to perform professional services. Additionally, the corporation’s income from dental services rendered while a shareholder is not a licensed dentist shall not benefit that shareholder.

- **Grounds for suspending or revoking a certificate of registration of a professional corporation** are listed in Corporations Code section 13408.
Refer to the pertinent sections of the Corporations Code, Business & Professions Code and California Code of Regulations for more information on the laws. Internet links are listed at the end of this article.

Once a dentist decides to incorporate, it is important for the dentist to undertake all actions under the corporate name and to maintain the separate identity of the corporation. In order for a professional corporation to shield a dentist from personal liability, the dentist must maintain the professional corporation as a complete separate entity. If a plaintiff can demonstrate that the professional corporation was not maintained as a separate entity distinct from the dentist personally, then a court may allow piercing of the corporate veil, also known as “alter ego liability,” whereby the dentist would be personally liable for the liabilities and debts of the corporation. The corporate veil can be pierced, for example, if personal funds and assets are not held separately from the corporation funds and assets, if the dentist personally hires its employees, for failure to keep corporate records and have required meetings, for paying personal debts with corporate funds and vice versa, to name just a few.

Occasionally, a dental corporation will be asked by a lender or government agency to provide a Certificate of Good Standing. The Secretary of State’s office can provide a Certificate of Status upon completion of a Business Entities Records Order Form available online.

If converting from a sole proprietorship to a dental corporation, a dentist will have to obtain a new tax ID number, a new Type 2 NPI number and change business registration with local and state agencies that require registration, for example, the Department of Public Health for X-ray machine registration, Employment Development Department for payroll taxes and Board of Equalization for sales and use taxes.

**Contracting with a dental plan**

Before a dental practice owner initiates the process of contracting with a dental plan, the following items should be in place:

1. Business name and type of entity.
2. Tax ID linked with the above business name and entity. Only use a Social Security number as a tax ID if the business will have no employees. Otherwise, obtain an Employer Identification Number (EIN) from the IRS to use as the business tax ID.
3. Business address. Some dental plans may allow more than one address to be included in a contract if a practice owner operates more than one practice.
4. Type 2 National Provider Identifier (NPI) number (not Type 1, which is used only to identify an individual provider).

Any change to the business name or business type typically requires a change to the tax ID number and to the NPI. Both numbers, once assigned to a business, are permanent and cannot be reused.

**Common questions and answers**

*If I convert from a sole proprietorship to a corporation with myself as the sole shareholder, will I have to sign a new contract with a dental plan? What is the impact to a dental plan contract if I sell shares in my corporation to another dentist?*

Plans have different contract policies and procedures. It is important that a practice reach out to any currently contracted plans prior to making a change to their business structure to find out if they will be required to sign a contract.

If the plan does require recontracting, find out if it is just involves paperwork or if it will result in different fee reimbursement and/or if they require contracting into additional networks. In some cases, this could result in a major reduction in fee reimbursement from a plan.
Why are Western Dental or Pacific Dental Services not fictitious names for their respective clinics in California?

Neither business is set up or operates as a professional corporation. Western Dental is registered and licensed with the Department of Management Health Care as a dental plan. Pacific Dental Services is registered as a corporation whose purpose is “to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession.”

References
California Secretary of State, Business Entities
http://www.sos.ca.gov/business-programs/business-entities/

Dental Board of California, Fictitious Name Permits
http://www.dbc.ca.gov/licensees/dds/permits_fn.shtml

Corporation Code, Professional Corporations
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CORP&division=3.&title=1.&part=4.&chapter=&article=

Business & Professions Code, Dental Corporations

Business & Professions Code section 1625.3, Death/incapacity
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC&sectionNum=1625.3.

California Code of Regulations, Title 16, Article 8, Dental Corporations

For more information and resources to assist in running a corporate meeting, please contact Lee Bentz, practice management analyst with CDA practice support.