

Legal Issues Doctors May Face in Their First Years of Practice

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Opening Remarks

- Thank you for tuning in!
- 3 speakers, each of which will present for 10-15 minutes
- Disclaimer: This presentation is intended to provide basic legal information only. This is not legal advice, and we are unable to provide legal advice to you today (but would be happy to schedule an appointment).



Corporate/Commercial

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FACTS

- You have already received tax advice from your accountant, and it was recommended that you incorporate.
- You are going to practise family medicine, in a private clinic.

What is a corporation?

- An incorporated company (a corporation) has a legal personality separate from the people who own shares in it.
- A corporation has the capacity and the rights, powers and privileges of a natural person.
- A corporation can: enter into contracts, open a bank account, own assets, incur debts...

PROS AND CONS

Pros:

- Limited liability
- Tax planning
- Succession planning

Con:

- Cost to incorporate, and cost to maintain the corporation

What's involved?

- Many physicians choose to operate their practice through a professional corporation.
- Regulated by the Ontario Business Corporations Act **and** the Regulated Health Professions Act.
- College of Physicians and Surgeons of Ontario
- Examples:
 1. NAME Medicine Professional Corporation
 2. Objects and activities
 3. Certificate of Authorization required – and must be renewed annually

How do you incorporate your medical professional corporation?

- Gather information:
 - Bank account
 - Accountants
 - Minute book
 - Directors/Officers
 - Shareholders
- Prepare forms, obtain signatures.
- Incorporate.

Owning a medical professional corporation

SHARES!

- Who can own shares?
 - Voting shares: Physician(s) who is a(are) member(s) of the CPSO
 - Non-voting shares: certain family members of the physician
- Directors: Physician(s) who is a(are) member(s) of the CPSO
- Money to and from...
 - OHIP
 - Salary, dividends...

Once you have your medical professional corporation...

- Rolling assets into the corporation
- Certificate of Authorization must be renewed annually
- Annual minutes
- Contracts with the MPC
 - Need for a personal guarantee, at times



Employment Law

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So you are hiring your first employees?

- Workplaces are subject to provincial or federal legislation for employment law.
- In Ontario, most employers are governed by the *Employment Standards Act, 2000*, which sets out requirements for:
 - *Minimum wage*
 - *Protected leaves (i.e. pregnancy and parental leave)*
 - *Vacation time and vacation pay*
 - *Overtime*
 - *Limits on hours of work*
 - *Breaks/eating periods*

What is an employment contract?

- Verbal or written
- Must have: Offer, acceptance, consideration (quid pro quo)
- Signed letter of hire may be sufficient for front line employee, but:
 - What is the employee entitled to upon termination of employment?
 - Is an employee handbook or personnel policy part of the employment contract?

Do you want a written contract?

- Provide clear expectations/entitlements (theoretically)
- Set out clear pay structures, vacation entitlements
- Can limit the employment to a definite term (i.e. 1 year contract)
- Set out the right to discipline, layoff, terminate (and potentially the basis for same)
- Limit exposure and set expectations on termination (hopefully)
- Create confidentiality obligations

Possible Problems

- Possible violations of ESA, which will not be enforceable
 - In the last several years, courts have tended to hold employers to strict interpretations of contract language against legislative requirements.
 - Higher degree of scrutiny of legislative compliance in the interpretations of employment contracts
 - Especially true in termination clauses and for entitlements which may not be clearly limited by such clauses (i.e. bonuses)
- Unintentional “rigidizing” of an employment relationship (“that’s not in my job description”)

Bottom Line

- Use employment contracts to set out your relationship with your employees
- Consider language to limit exposure in the event of termination, permit you to temporarily layoff the employee for shortages of work, establish clear expectations for confidentiality, etc.
- Establish your discretion as the employer
- Avoid fixed-term contracts of long durations
- An employment contract is the cheapest insurance policy against a significant wrongful dismissal award

Typical Contents of a Written Contract

- Responsibilities and duties
- Standard hours of work
- Probationary period
- Term of contract (definite or indefinite)
- Benefits entitlements (if any)
- (discretionary) bonus
- Vacation time
- Confidentiality clause
- Layoff/termination language

Think About Workplace Safety

- Workplaces are subject to provincial or federal legislation for occupational health and safety
- Provincially-regulated employers are governed by the *Occupational Health & Safety Act*
- Creates an “internal responsibility system”, making health and safety the responsibility of workers, supervisors, managers, as applicable
- Workers have a right to know about potential hazards, and an ability to refuse unsafe work
- Right to be free from violence and harassment in the workplace

Occupational Health & Safety Act

- 32.0.1 (1) An employer shall,
 - (a) prepare a policy with respect to workplace violence;
 - (b) prepare a policy with respect to workplace harassment; and
 - (c) review the policies as often as is necessary, but at least annually.
- (2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace.
- (3) Subsection (2) does not apply if the number of workers regularly employed at the workplace is five or fewer, unless an inspector orders otherwise.

Workplace Violence/Harassment Policies

- A policy against workplace violence and harassment also requires a program to implement the policy
- Often, these are contained in the same document
- Contents will include, among other things:
 - Methods to report issues when they arise
 - Who to report to
 - What information to report
 - Investigation process and actions
 - No reprisal
 - Confidentiality and record maintenance

What other policies might you want?

- Dress code
- Workplace Expenses & Handling of Money/Petty Cash
- Confidentiality & File Management
- IT Computer Use/Security

Will your employees work from home?

- Some/all work could be performed from home.
 - Pro – opportunity to provide job flexibility and reduced office costs
 - Con – management and supervision of employees is more difficult, confidentiality challenges, reduced customer service capacity.
- Not every job can be done from home
- Can your employee(s) work from home and maintain confidentiality?
- Are they handling physical documents? Are they secure and accounted for?
- Can you supervise them effectively?
- Does your office remain functional? Is it fair to other employees?

Working from Home Considerations

- Working hours/Breaks
- Workspace requirements (& safety)
- Supervision: Meetings and monitoring
- Timesheets/work reports
- Consequences of breach
- Confidentiality & use of personal electronics
- Maintenance of work hardware



Family Law

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Conclusions

- Lots of new things to think about in starting/building/transitioning your practice.
- Lots of opportunities for successful protection from unintended consequences, favourable tax arrangements, and liability protection
- We are here to help!

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