

THE PRACTICE-OWNING ENTITY

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Anyone who follows my articles and lectures knows that I am a believer in having professional practices organized formally. Unfortunately, for many years veterinary practices have been operated as sole proprietorships and general partnerships. These business structures may be reflective of a simpler time when we as practitioners had less to fear from legal threats and the complications of professional interpersonal relationships.

In more recent times, veterinary school practice management classes have helped to alert many new practitioners to the need to look further, into more practical though somewhat more complex ways to conduct business. There are several good reasons for this change, which becomes clear when the available business entities are scrutinized:

PROPRIETORSHIPS involve the operation of a professional practice as a simple personal business undertaking by the owner/veterinarian. In this form of doing business, the practice is an extension of the person. Consequently, any legal entanglement or liability which befalls the practice befalls the owner on a personal basis. For example, if a client is injured or property is damaged during the carrying out of the veterinary business, the ultimately responsible party is the veterinarian. Hence, if insurance fails to cover the legal liability or the policy limits are inadequate, the next pocket to be looked to is that of the practice owner. Simply speaking, one good client bite can make the difference between the doctor paying for her child's education and making him pay for it all himself.

GENERAL PARTNERSHIPS are business structures in which two or more individuals simply decide to do business together, as co-owners. In this method of conducting business, the liability picture is even more dangerous than in sole proprietorships. In a general partnership, every owner can get whacked financially in the event that a serious legal claim is made against the business. In legal terms, each general partner is *jointly and severally liable* for the debts and legal obligations of the partnership. Therefore, all parties can get hit when someone sues or a large unexpected cost of some other type occurs. Further, when one vet decides he can't live without a second new laser surgery unit, the final obligation to pay for it also falls on the partner who never wanted the thing in the first place and *never authorized its purchase*.

There are better ways to protect ourselves from legal liability in the conduct of our veterinary practice. At the same time, other business entities open up numerous creative techniques for obtaining financing, structuring ownership rights and providing owner exit strategies for the time when one or more practitioner is ready to slow down or retire. Also, more sophisticated business structure planning can be extremely helpful when an owner or partner becomes disabled or dies unexpectedly.

PROFESSIONAL CORPORATIONS offer a reasonable alternative to the sole proprietorship or general partnership for the veterinary practitioner. It is wise to look at this and all other potential business entities at the *start* of the new practice, not months or years after it has begun business. It can be expensive in terms of legal fees and taxes to wait until a veterinary practice has been operating for some time as one type of entity to switch to some other form.

Professional Corporations are legal entities, just as are individuals, trusts and non-profit organizations. They exist and have their own legal rights and rules. However, unlike individual persons, the professional corporation operates according to identifiable rules (bylaws and shareholder agreements) and they own their own property. Therefore, when a business operates in the corporate form, the business corporate entity itself answers legally for legal problems and liabilities. The shareholder/owners' financial and other assets are not at risk. (Remember, however, that no business entity is available to protect against liability for the commission of malpractice; that is what insurance is for.)

PROFESSIONAL LIMITED LIABILITY COMPANIES also offer a number of advantages over the proprietorship or partnership. While similar to professional corporations, the "PLLC" offers even more potential flexibility than the corporate form. For example, federal law limits the types of stock which can be issued in a professional corporation if it elects to operate under Subchapter "S" of the Internal Revenue Code (often a very desirable tax election for professionals). Therefore, you may be able to issue only voting shares in a PC. A PLLC, on the other hand, allows extensive flexibility for estate and retirement planning. For example, a veterinarian may be able to issue voting membership in a PLLC to himself (allowing him to control the books) while offering a new employee membership units which permit her to participate in profit increases achieved by the business.

Professional "Subchapter S" Corporations and PLLCs provide some very interesting options for transferring ownership of a practice over time to younger doctors who have come into the business. Additionally, the use of well-drafted shareholder agreements and operating agreements can provide pre-planned arrangements for disposal of a practice interest in the event of the death or disability of the practice's original owner or of any of the new participants in the practice should such occur unexpectedly. These arrangements can be changed, easily, with fairly simple alterations in the documents governing corporate or PLLC operations.

The long-term benefits of looking carefully at which practice-owning entity is most suitable cannot be overstated. Keep in mind that the practice building and practice equipment *do not* necessarily have to be owned by the same entity which owns the practice.