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CHAPTER 11 OF THE ACTS OF 1995-96

An Act to Permit Physicians to Incorporate for the Purpose of Carrying on the Practice of Medicine

Short title

1 This Act may be cited as the *Medical Professional Corporations Act*, 1995-96, c. 11, s. 1.

Interpretation

2 In this Act,

- (a) "Council" means the Council of the College of Physicians and Surgeons of Nova Scotia constituted by the *Medical Act*;
- (b) "Minister" means the Minister of Health;
- (c) "permit" means a permit issued to a professional corporation pursuant to this Act;
- (d) "physician" means a medical practitioner as defined by the *Medical Act*;

(e) "practice of medicine" means the practice of medicine, surgery, obstetrics, pathology, radiology and specialties thereof by a physician;

(f) "professional corporation" means a company incorporated pursuant to the *Companies Act* for the purpose of carrying on the practice of medicine;

(g) "Registrar" means the Registrar under the *Medical Act*;

(h) "spouse" means a person married to another person and includes either of a man and woman who, not being married to each other, live together as husband and wife and have so lived for at least one year. 1995-96, c. 11, s. 2.

Professional corporation

3 Subject to this Act and the regulations, a professional corporation may engage in the practice of medicine and physicians may be employed by a professional corporation for the purpose of engaging in the practice of medicine. 1995-96, c. 11, s. 3.

Ownership of majority of shares

4 (1) A majority of the issued shares of a professional corporation shall be legally and beneficially owned by one or more physicians.

Ownership of majority of voting shares

(2) A majority of the issued voting shares of a professional corporation shall be legally and beneficially owned by one or more physicians.

Right to own shares

(3) Subject to subsections (1) and (2), any person may own, beneficially or legally, shares of a professional corporation.

Right to hold shares as trustee

(4) Notwithstanding subsections (1) and (2), a person resident in Canada may hold legal title to issued shares of a professional corporation solely as trustee for the exclusive benefit of a physician, or the spouse or child of a physician, or a group of such individuals pursuant to a trust settlement governed by the laws of the Province, but no one other than a physician, or the spouse or child of a physician, shall act as such a trustee without the written consent of the Registrar. 1995-96, c. 11, s. 4.

Qualifications of directors

5 All of the directors of a professional corporation that is engaged in the practice of medicine shall be physicians. 1995-96, c. 11, s. 5.

Restriction on right to practise

6 A professional corporation shall not engage in the practice of medicine unless the corporation holds a permit pursuant to this Act and the corporation is in compliance with this Act and the regulations. 1995-96, c. 11, s. 6.

Right to practise under corporate name

7 (1) Notwithstanding any other provision of this Act, a professional corporation to which a permit is issued pursuant to this Section may practise medicine in its own name.

Prohibition of registration of corporation

(2) Notwithstanding subsection (1), no professional corporation shall be registered as a physician pursuant to the *Medical Act*.

Permit

(3) The Registrar shall issue a permit to any professional corporation that

(a) files all required applications in the form prescribed by the regulations;

(b) pays all fees prescribed by the regulations;

(c) satisfies the Registrar that it is a company limited by shares in good standing with the Registrar of Joint Stock Companies under the *Companies Act* and the *Corporations Registration Act* and that it is a private company as defined by the *Securities Act*;

(d) satisfies the Registrar that the name of the corporation is in accordance with the regulations;

(e) satisfies the Registrar that the legal and beneficial ownership of all of the issued shares of the corporation satisfies the requirements of Section 4;

(f) satisfies the Registrar that all of the directors of the corporation are physicians;

(g) satisfies the Registrar that the corporation holds such liability insurance as may be prescribed by the regulations; and

(h) satisfies the Registrar that the persons who will carry on the practice of medicine for or on behalf of the corporation are physicians.

Life of permit

(4) A permit issued pursuant to subsection (3), or any renewal thereof pursuant to subsection (5), expires on December 31st of the year for which it was issued or renewed.

Renewal

(5) The Registrar may renew a permit upon such application and payment of such fee as may be prescribed by the regulations where the Registrar determines that the requirements of subsection (3) are satisfied by the professional corporation.

Suspension or revocation

(6) A permit issued pursuant to subsection (3), or renewed pursuant to subsection (5), may be suspended or revoked at any time by the Registrar where a professional corporation fails to satisfy any of the requirements of subsection (3).

Review of decision

(7) The Council may, in its discretion, review a decision of the Registrar to suspend or revoke a permit pursuant to subsection (6).

Interpretation of practice of medicine

(8) For the purpose of this Act, the practice of medicine is not carried on, and shall not be deemed to be carried on, by clerks, secretaries, nurses and other persons employed by a professional corporation to perform services that are not usually and ordinarily considered by law, custom and practice to be services that may be performed only by a physician. 1995-96, c. 11, s. 7.

"physician owner" defined

8 (1) In this Section, "physician owner" means a physician who is the legal and beneficial owner of issued voting shares of a professional corporation.

Deemed revocation of permit

(2) Where a professional corporation practises medicine only through the services of a physician owner and no other physician, and that physician owner dies, becomes incompetent or is no longer registered pursuant to the *Medical Act*, or is suspended

pursuant to that Act, the permit of the corporation is deemed to be revoked and the corporation shall cease to practise medicine.

Consequences of failure to comply

(3) Where a professional corporation practises medicine through the services of at least one physician other than the physician owner and the corporation ceases to fulfil any requirement of subsection 7(3) by reason of

- (a) the death of the physician owner;
- (b) the incompetency of the physician owner;
- (c) the physician owner ceasing to be a physician as defined by this Act; or
- (d) the suspension of the physician owner pursuant to the *Medical Act*,

the corporation shall forthwith notify the Registrar and shall fulfil the requirements in question within one hundred and twenty days from the date of death, incompetency, ceasing to be a physician or the suspension, as the case may be, of the physician owner, failing which the permit is revoked and the corporation shall cease to practise medicine effective upon the expiration of the one hundred and twenty day period.

Further consequences

(4) Where a majority of the issued voting shares of a professional corporation are legally and beneficially owned by two or more physician owners and the corporation ceases to fulfil any requirement referred to in subsection 7(3) by reason of

- (a) the death of a physician owner;
- (b) the physician owner ceasing to be a physician as defined by this Act; or
- (c) the suspension of a physician owner pursuant to the *Medical Act*,

the corporation shall forthwith notify the Registrar and shall fulfil the requirements in question within one hundred and twenty days from the date of death, ceasing to be a physician or the suspension, as the case may be, of the physician owner, failing which the permit is revoked and the corporation shall cease to practise medicine upon the expiration of the one hundred and twenty day period.

Application for reinstatement

(5) Where the permit of a professional corporation is revoked pursuant to this Section and thereafter the corporation is able to demonstrate that it is in compliance with subsection 7(3), the corporation may apply to the Registrar to have its permit reinstated and the

Registrar may, in the discretion of the Registrar, reinstate the permit subject to such conditions as the Registrar may determine. 1995-96, c. 11, s. 8.

Notice of certain changes

9 Where the shares of a professional corporation engaged in the practice of medicine are transferred or where there is a change in the shareholders, directors or officers of such corporation, or any change in the location where such corporation carries on business, the corporation shall, within fifteen days, notify the Registrar of such transfer or change. 1995-96, c. 11, s. 9.

Application of Medical Act unaffected

10 The relationship of a physician to a professional corporation, whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application of the *Medical Act* and the regulations made pursuant to that Act to the physician. 1995-96, c. 11, s. 10.

Liability unaffected

11 (1) All persons who carry on the practice of medicine by, through or on behalf of a professional corporation are liable in respect of acts or omissions done or omitted to be done by them in the course of the practice of medicine to the same extent and in the same manner as if such practice were carried on by them as an individual or a partnership, as the case may be, carrying on the practice of medicine.

Restriction on voting rights

(2) No owner of voting shares of a professional corporation shall pledge, hypothecate, enter into a voting trust, proxy or any other type of agreement vesting in any other person who is not a physician the authority to exercise the voting rights attached to any or all of the owner's shares. 1995-96, c. 11, s. 11.

Confidentiality and ethics

12 (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between a physician and the physician's patient.

Relationship with patients unaffected

(2) The relationship between a professional corporation and a patient of the corporation is subject to all applicable law relating to the confidential and ethical relationships between a physician and the physician's patient.

Other rights and obligations unaffected

(3) All rights and obligations pertaining to communications made to or information received by a physician apply to the shareholders, directors, officers and employees of a professional corporation. 1995-96, c. 11, s. 12.

Compellable witnesses

13 All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings pursuant to this Act or the *Medical Act*. 1995-96, c. 11, s. 13.

Certificate as evidence

14 A certificate purporting to be signed by the Registrar stating that a named professional corporation was or was not, on a specified day or during a specified period, a professional corporation entitled to practise medicine according to the records of the Registrar, shall be admitted in evidence as *prima facie* proof of the facts stated therein without proof of the Registrar's appointment or signature. 1995-96, c. 11, s. 14.

Consequences of commission of offence

15 Where a professional corporation commits an offence contrary to this Act or the regulations, every person who, at the time of the commission of the offence, was a director or officer of the corporation is guilty of the same offence and subject to the same penalties unless the act or omission constituting the offence took place without the person's knowledge or consent or the person exercised all due diligence to prevent the commission of the offence. 1995-96, c. 11, s. 15.

Offence and fine

16 (1) Every person who contravenes this Act or the regulations is guilty of an offence and liable, on summary conviction, for a first offence to a fine not exceeding five hundred dollars and for a second or any subsequent offence to a fine not exceeding one thousand dollars.

Automatic suspension of permit

(2) Where a professional corporation is convicted of an offence contrary to this Act or the regulations, the permit of the corporation is suspended in default of paying any fine ordered to be paid until such time as the fine is paid.

Revocation of permit

(3) Where a professional corporation is convicted of a second or subsequent offence, the permit of the corporation may be revoked. 1995-96, c. 11, s. 16.

Regulations

17 (1) Subject to subsections (2) and (3), the Council may make regulations

(a) prescribing the manner of proof as to matters required to be proven by applicants for permits;

(b) fixing reasonable fees payable for the issuance and renewal of permits;

(c) providing that the permit of a professional corporation is suspended without notice or investigation upon contravention of any regulation that requires the corporation to pay a fee or assessment, file a document or do any other act by a specified or ascertainable date, and providing for the reinstatement of a permit so suspended;

(d) prescribing the grounds upon which the Council may review a decision of the Registrar pursuant to subsection 7(7) and the procedures to be followed in reviewing any such decision;

(e) providing for the reinstatement or re-issuance of any permit suspended or revoked pursuant to this Act and prescribing the terms and conditions upon which reinstatement or re-issuance of a permit may be granted;

(f) providing for the creation and maintenance of a register of professional corporations;

(g) providing for the filing of periodic returns by professional corporations;

(h) providing for the annual renewal of permits and prescribing the terms and conditions upon which renewals may be granted;

(i) prescribing the types of names and business names by which

(i) a professional corporation,

(ii) a partnership of two or more professional corporations, or

(iii) a partnership of one or more professional corporations and one or more individual physicians,

may be known;

(j) prescribing the advertising that may be undertaken by a professional corporation;

(k) prescribing access to the minute book records of a professional corporation by the Registrar;

(l) prescribing any other matters necessary for the proper administration of this Act.

Obligation to consult

(2) Prior to making any regulation pursuant to this Act, the Council shall consult and seek the advice of the Medical Society of Nova Scotia with respect to the proposed regulation.

Approval of Governor in Council

(3) No regulation has effect until it is approved by the Governor in Council.

Regulations Act

(4) The exercise of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 1995-96, c. 11, s. 17.

Proclamation

18 This Act comes into force on such day as the Governor in Council orders by proclamation.

1995-96, c. 11, s. 18

Proclaimed: April 16, 1996

In force: April 16, 1996