

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

950 CMR 105.00: PROFESSIONAL CORPORATIONS

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105.01: Purpose

The regulations in 950 CMR 105.00 implement the responsibilities of the Secretary of the Commonwealth pursuant to M.G.L. c. 156A, concerning professional corporations.

105.02: Definitions

Foreign professional corporation means a corporation organized for the purpose of rendering professional service under a law other than the law of the commonwealth.

Professional corporation means a corporation organized under M.G.L. c. 156A for the purpose of rendering one or more professional services. It may also include a foreign professional corporation if the provisions of M.G.L. c. 156A require or allow such inclusion.

Professional service means the service performed by registered physicians and surgeons, chiropractors, podiatrists, engineers, electrologists, physical therapists, psychologists, certified public accountants, dentists, veterinarians, optometrists and acupuncturists licensed or registered under the provisions of M.G.L. c. 112; and by attorneys-at-law admitted to practice in the courts of the commonwealth under M.G.L. c. 221; and any other type of service which may be rendered only pursuant to a license pursuant to the laws of the commonwealth, if the applicable regulating boards permit the person to incorporate his profession under M.G.L. c. 156A or if such incorporation is not prohibited by law or by regulations of the applicable regulating board.

Regulating board means a board or governing authority which is charged with licensing and regulating the profession of any person performing a professional service.

105.03: Who May Organize

One or more individuals each of whom is licensed to perform a professional service may organize a professional corporation. The corporation may be organized for the purpose of rendering professional services within two or more professions except to the extent expressly prohibited by the licensing laws of the commonwealth applicable to such professions or the regulations of any of the applicable regulating boards; provided that there must be an incorporator licensed in each profession authorized by the articles of organization.

105.04: Articles of Organization

One or more individuals each of whom is licensed to perform a professional service may organize a professional corporation by filing Articles of Organization with the Division. The clerks of the Division in their examination of the Articles of Organization have been directed to ascertain that the requirements of M.G.L. c. 156B (See 950 CMR 105.03) are met and also that the Articles contain the following

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additional information:

105.04: continued

- (a) The name of every professional corporation shall end with the word or words "Professional Corporation," "Corporation," or "Incorporated," or the abbreviation "P.C.," "Corp.," or "Inc.;" provided that a regulating board may adopt further requirements;
- (b) The professional service to be rendered;
- (c) The names and residence addresses of all of the original shareholders, directors, and officers of the corporation; and
- (d) A certificate by the appropriate regulating board that each of the incorporators, the president and any vice presidents, a majority of the directors and each shareholder is duly licensed to render a professional service permitted by the Articles of Organization.

105.05: Applicability of M.G.L. c. 156B

The provisions of M.G.L. c. 156B shall be applicable to professional corporations and they shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations, except where inconsistent with the letter and purpose of the provisions of M.G.L. c. 156A. In the event of any conflict between the provisions of M.G.L. c. 156A and M.G.L. c. 156B, the provisions of M.G.L. c. 156A shall take precedence.

105.06: Officers; Status of Clerk, Resident Agent

A majority of the directors, and all of its officers, except the treasurer, clerk, secretary and assistant treasurer, assistant clerk, or assistant secretary shall be licensed in the Commonwealth to render a professional service permitted by the Articles of Organization. Also the resident agent, if any, need not be a licensed professional.

105.07: Shareholder Reports

Effective July 1, 1986 professional corporations are not required to file shareholders reports with the division. Previously shareholder reports were due on the first day of each fiscal year. A professional corporation will be deemed to be in good standing if it files all shareholder reports owed from January 1, 1980 through June 30, 1986.

105.08: Annual Reports

Every professional corporation must file an annual report with the division as required by M.G.L. c. 156B, § 109. In addition to the information required by M.G.L. c. 156, § 109, the report must list the names and residence addresses of all shareholders and shall contain a certification that all shareholders, or all of the partners of a shareholder which is a general partnership, are duly licensed to render one or more professional services for which the corporation was organized, or are professional corporations authorized to render such professional services.

105.09: Change of Status From Professional to Business Corporation

A professional corporation which has ceased to render any professional service or which is permitted to render professional services as a business corporation may change its status by merging or consolidating with a business corporation pursuant to M.G.L. c. 156B, § 78 and 950 CMR 104.12 or by filing articles of amendment to change its name, where necessary, and purposes to those of a business corporation. The articles of amendment shall be authorized pursuant to M.G.L. c. 156B, § 71 and executed and filed in accordance with M.G.L. c. 156B, § 72 and 950 CMR 104.09.

105.10: Merger or Consolidation With Another Professional Corporation

Except where a professional corporation has ceased to render professional services as provided in M.G.L. c. 156A, § 14 and 950 CMR 105.09, a professional corporation may merge only with another corporation, domestic or foreign, if every shareholder of the surviving or resulting corporation is an individual licensed to render a professional service permitted by the articles of organization, a general partnership in which all of the partners

105.10: continued

are so licensed, or a professional corporation authorized to render a professional service permitted by the articles.

The provisions of M.G.L. c. 156A and the regulations contained herein will apply to all corporations which will render professional services in the Commonwealth.

105.11: Dissolution

- (1) A professional corporation may be involuntarily dissolved by the state secretary if:
 - (a) a redemption transfer of shares, or a merger of a professional corporation is required by M.G.L. c. 156A, §§ 12 or 13 and such action is not completed timely;
 - (b) the corporation fails to comply with any provisions of M.G.L. c. 156A; or
 - (C) the corporation is subject to dissolution pursuant to the provisions of M.G.L. c. 156B, § 101.

(2) In those instances the state secretary will give the corporation at least 90 days notice of the proposed dissolution. The notice will be sent by mail to the principal office as listed in the state secretary's records. The notice will state the reasons for the proposed dissolution, and that the corporation may within 60 days of the date of the notice, request a hearing to show cause why it should not be dissolved.

If a corporation does not request a hearing, it shall be dissolved as of the date stated in the notice, unless the state secretary determines before the effective date that the dissolution would not be in the public interest or unless the reports which gave rise to the notice have been filed at least ten days prior to the effective date of the dissolution, or the tax returns or tax payments that gave rise to the notice have been paid or provided for at least ten days before the effective date of dissolution and the state secretary has received a certificate of good standing relative to the corporation issued by the commissioner of revenue.

The state secretary may also involuntarily dissolve a professional corporation upon receipt of a certificate from any regulating board with jurisdiction stating the corporation has failed to comply with the requirements of the board so as to give cause for its dissolution, and stating facts sufficient to support that position. A copy of the certificate must be given to the corporation at least 60 days prior to the dissolution.

105.12: Foreign Professional Corporation Registration

A foreign professional corporations must register pursuant to M.G.L. c. 156A, § 17 if it will maintain an office in the Commonwealth, or if any of its shareholders, officers, or directors conduct activity on behalf of the corporation in the commonwealth as to require licensing under the provisions of M.G.L. c. 112 or M.G.L. c. 221.

A foreign professional corporation shall register to practice in the Commonwealth by filing a foreign corporation certificate; a certificate of legal existence issued by the state of incorporation dated within 60 days; and an exhibit to the foreign corporation certificate. The exhibit shall contain a description of the professional services to be rendered in the Commonwealth, the names and residential addresses of all directors, officers and shareholders, designations of which of them will render professional services in the Commonwealth, and a statement that a majority of the directors and all of the officers, (except the treasurer, clerk, secretary and any assistant treasurer, assistant clerk and assistant secretary) are natural persons who are licensed in a state or territory of the United States or the District of Columbia to render a professional service authorized by the corporation's articles of organization, and that all of the shareholders are such persons, or professional corporations authorized to render professional services. The certificate of qualification shall be accompanied by a certificate of the appropriate regulating body that all of the persons who will render professional services in the Commonwealth are licensed to do so.

105.13: Revocation of A Foreign Professional Corporation Certificate of Registration

The state secretary may revoke the certificate of registration of a foreign professional corporation if it fails to comply with any provisions of M.G.L. c. 156A or if the state secretary receives notice from any appropriate regulating board that the corporation has failed to comply with its requirements so as to give due cause for revocation of the registration, and the notice states the facts sufficient to support the revocation.

The certificate of registration will be revoked if the state secretary has given the corporation at least 60 days notice of the revocation and the reasons therefore, and the corporation has failed to correct such noncompliance.

REGULATORY AUTHORITY

950 CMR 105.000: M.G.L. c. 156A.