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**CORPORATIONS: Professional Service Corporation Act**
**Dentists may incorporate.**

**Section 15 of Act 122, P.A. 1939, as amended, prohibiting practice of dentistry by corporations, may not be construed to prohibit licensed dentists from incorporating in accordance with professional service corporation act.**

No. 4623 April 29, 1968.

Department of Licensing and Regulation
Michigan State Board of Dentistry
200 Lafayette Building
Detroit, Michigan

Attention: Dr. John R. Champagne, Secretary

You have requested the opinion of this office with respect to the professional service corporation act, being Act 192, P.A. 1962, as amended by Act 153, P.A. 1963, being M.S.A. 1963 Rev. Vol. and 1968 Cum. Supp. § 21.315(1), et seq., as it affects Section 15 of Act 122, P.A. 1939, as amended, being M.S.A. 1965 Rev. Vol. § 14.629(15), et seq. (C.L. 1948 § 338.215).

Section 15 of Act 122, P.A. 1939, provides in part:

> "No corporation shall practice or continue to practice, offer or undertake to practice or hold itself out or continue to hold itself out, as practicing dentistry. * * *."[1]

Section 2 of Act 192, P.A. 1962, supra, defines "professional service" and "professional corporation" as follows:

> "(a) 'Professional service' means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization. By way of example and without limiting generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified or other public accountants, chiropractors, *dentists,* optometrists, veterinarians, osteopaths, physicians and surgeons, doctors of medicine, *doctors of dentistry,* podiatrists, chiropodists, architects, professional engineers, land surveyors and attorneys at law.
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> "(b) 'Professional corporation' means a corporation which is organized under this act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation, or the personal representatives of the estates of such individuals as provided in section 10." (emphasis supplied)

[1] Section 15a of Act 122, P.A. 1939, was added by Act 46, P.A. 1965, to authorize the establishment of dental clinics as non-profit corporations by trustees of health and welfare funds subject to certain conditions.

It is significant that Section 14 of Act 192, P.A. 1962, as amended by Act 153, P.A. 1963, provides that, in the event of conflict between the provisions of this act and any other act regulating corporations, the provisions of this act shall control. Section 14 reads:

> "The provisions of this act shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to corporations, sales of securities or regulating the several professions enumerated in this act except insofar as such laws conflict with the provisions of this act." (M.S.A. 1968 Cum. Supp. § 21.315(14)).

The effect of a similar professional service corporation act was considered by the Supreme Court of Florida in *In the Matter of the Florida Bar*, 133 So. 2d 554 (1961). The court stated:

> "Traditionally, the so-called learned professions have not been permitted to practice as corporate entities. 13 Am. Jur., Corporations, section 837, page 838; 5 Am. Jur., Attorneys at Law, section 25, page 276. The principal reason for this change in attitude regarding these professional groups appears to arise out of the provisions of the Internal Revenue Code of 1954, U.S.C.A. Title 26, § 1 et seq., which permit an employer to establish a pension fund for the benefit of his employees. Payments by the employer into the fund are income tax deductible. Payments to the employee do not subject him to income tax until he actually receives the pension later in life. Stockholders of corporations can be employees thereof even though they own the corporate entity. Corporate stockholders can thus take advantage of these benefits. The Internal Revenue Code, supra, has been interpreted so that the owners of an unincorporated business or professional partnership cannot obtain similar benefits. The American Bar Association has strongly supported federal legislation aimed at permitting self-employed persons to receive the same tax privileges in regard to tax deferred pension plans as have been accorded to those employed by corporations and others for a number of years. See 'Tax Equity for Self-Employed' by Eugene J. Keogh, American Bar Association Journal, July 1961, Volume 47, No. 7, page 665; American Bar News, August 15, 1961, Volume 6, No. 9." (p. 555).

The Supreme Court of Florida further observed that authority of attorneys to incorporate under a professional service corporation act was not intended to authorize a circumvention of the rules and canons of professional ethics, the court stating:

> "* * * Traditionally, prohibition against the practice of a profession through the corporate entity has been grounded on the essentially personal relationship existing between the lawyer and his client, or the doctor and his patient. This necessary personal relationship imposes upon the lawyer a standard of duty and responsibility which does not apply in the ordinary commercial relationship. The non-corporate status of the lawyer was deemed necessary in order to preserve to the client the benefits of a highly confidential relationship, based upon personal confidence, ability, and integrity. If a means can be devised which preserves to the client and the public generally, all of

the traditional obligations and responsibilities of the lawyer and at the same time enables the legal profession to obtain a benefit not otherwise available to it, we can find no objection to the proposal.

"As we read Chapter 61-64, supra, implemented by the rules which we hereafter announce, the highly personal obligation of the lawyer to his client is in no way adversely affected. The individual practitioner, whether a stockholder in a corporation or otherwise, will continue to be expected to abide by all of the Rules and Canons of professional ethics heretofore or hereafter required of him. The corporate entity as a method of doing business will not be permitted to protect the unfaithful or the unethical. As a matter of fact, the corporate entity itself will automatically come within the ambit of our jurisdiction in regard to discipline. In addition to the individual liability and responsibility of the stockholder, the corporate entity will be liable for the misprisions of its members to the extent of the corporate assets." (p. 556)

In *State Board of Accountancy v. Eber,* 149 So (2d) 81 (1963), certiorari denied by Florida Supreme Court, 155 So (2d) 55 (1963), the Florida District Court of Appeals determined that a rule of the state board of accountancy precluding certified public accountants or public accountants from being officers, directors, stockholders, representatives or agents of any corporations engaged in the practice of public accounting, could not be construed to forbid accountants to incorporate in accordance with the professional service corporation act. The court observed:

"Borrowing and paraphrasing the language used by the Supreme Court in the opinion in *In re The Florida Bar,* 133 So 2d 554 (1961), we point out that the highly personal obligation of the accountant to his client is in no way adversely affected when an accountant takes advantage of the provisions of the Professional Service Corporation Act. The individual accountant, whether a stockholder in a corporation or otherwise, will continue to be expected to abide by all of the rules and regulations of professional conduct applicable to his profession. When the accountant incorporates under the said act, there is no diminution in his obligations to meet the requirements of those rules and regulations. On the contrary, because of the privilege that is being made available to the accountants of this state, there will be increased responsibilities commensurate with the privilege.

"We hold that Rule 16 of the State Board of Accountancy cannot be construed as forbidding an accountant of this state to incorporate in accordance with the provisions of the Professional Service Corporation Act, for such incorporation has thus been sanctioned by the legislative body which gave to the Board its power to promulgate rules and regulations concerning professional conduct." (p. 83).

It is further significant that Section 5 of Act 192, P.A. 1962, supra, forbids any corporation from rendering professional services except through its duly licensed officers, employees and agents, and Section 6 of Act 192, supra, evidences a legislative intention to impose individual liability upon

corporate shareholders as well as liability upon the corporate entity to the extent of its corporate assets. Section 6 of Act 192, supra, provides:

> "Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct. Any officer, shareholder, agent or employee of a corporation organized under this act shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control while rendering professional service on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional services."

To the extent that Section 15 of Act 122, P.A. 1939, supra, conflicts with the provisions of the professional service corporation act, it is necessary to construe such statutes, if reasonably possible, in such a way as to avoid apparent conflict.

The professional service corporation act was enacted with a legislative intention to enable licensed professional persons within this state to gain the benefits allowed to corporations under the federal income tax law. The act authorizes licensed professionals to incorporate, provided they meet the statutory requirements enumerated in Section 2 of Act 192, P.A. 1962, as amended, supra. Measured by this test, it is our conclusion: 1) that the statute in question can be reasonably interpreted as not including within the terms of Section 15 of Act 122, P.A. 1939, authority of any corporation, except a professional service corporation composed of individuals duly licensed, to engage in the practice of dentistry; and 2) that the restrictions against corporate practice of dentistry imposed under Section 15 of Act 122, P.A. 1939, as amended, may not be construed to preclude the incorporation by duly licensed dentists in accordance with the provisions of Act 192, P.A. 1962.

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