

# **YOUR PROFESSIONAL** **PRACTICE**

What you need to know!

Organization . . .

Maintenance . . .

Employees . . .

Informal Board of Advisors . . .

Planning for the Future . . .

Buying ~ Selling . . .

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## Organization . . .

**SOLE PROPRIETORSHIPS.** This is the most basic and most common form of professional practice organization. An individual holds title to all assets of the professional practice which are owned and the individual is also responsible for all the debts and obligations of the practice.

*ADVANTAGES: 1. Costs and formalities in creating and maintaining practice format are minimal. 2. Management and control of practice is completely in the hands of the individual owner. 3. Free transferability of ownership of the practice.*

*DISADVANTAGES: 1. Individual is personally liable for all debts and obligations of the professional practice. 2. No continuity of ownership since when the owner ceases to exist so does professional practice.*

**PROFESSIONAL SERVICE CORPORATIONS.** These corporations are unique to dentists, engineers, architects, accountants, physicians, veterinarians, lawyers, and other licensed professionals. The key is that the professional remains liable for individual acts of negligence. In Wisconsin the letters "S.C." are added to the name of the corporation and they refer to Service Corporation. Only the licensed individuals may own stock, but, if there is only one shareholder, then a non-licensed individual may also be an Officer.

**CORPORATIONS.** This is an 'artificial person' created under the laws of a state.

*ADVANTAGES: 1. Liability of shareholders is limited to their investment. 2. Can exist in perpetuity. 3. Absent restrictions on the shares of stock, ownership is freely transferable. Placing restrictions on the transfer of shares can also act as an advantage in small closely-held corporations where continuity of ownership is important.*

*DISADVANTAGES: 1. Possible "Double Taxation" if a C Corporation, but not if an "S" Corporation [which are taxed as partnerships]. 2. Corporations require initial formation fees. When incorporating consider the filing fees, annual fees, drafting of Articles of Incorporation, Annual Reports, By-Laws, Shareholder Agreements [as necessary], and Stock Certificates.*

**STATUTORY CLOSE CORPORATIONS.** The close corporation law simplifies the legal requirements of Wisconsin's corporation law.

*The shareholders have a statutory legal restriction on the right to transfer stock. A statutory close corporation need not have a Board of Directors. The shareholders may also enter agreements regarding management. A statutory close corporation is the only corporate form in Wisconsin which allows only one corporate officer. Arbitration may be elected by the corporation in its Articles as a remedy instead of court.*

**LIMITED LIABILITY COMPANIES [LLC's].** Limited liability companies require that Articles of Organization be filed with the Wisconsin Department of Financial Institutions. As with Service Corporations, professionals remain liable for errors or omissions performed by them as licensed professionals.

*The Wisconsin statutes provide limited liability for the LLC's members and managers. Operation of the limited liability company is usually controlled by a formal "Operating Agreement. LLC's may provide for various classes of members with differing rights and duties. Limited liability companies are taxed in the same manner as a partnership allowing members to take losses on their personal tax filings – like an 'S' corporation.*

## Maintenance . . .

**LLC'S AND CORPORATIONS SHOULD HAVE ANNUAL MINUTES AND SPECIAL RESOLUTIONS IN ORDER TO MAINTAIN THEIR INDEPENDENT STATUS.**

For my Clients, my services include:

- Notification of Annual Meeting
- Update of Persons Interested Records
- Preparation of Annual Stockholder Minutes with Waiver of Notice, Election of Directors, Resolutions, and Ratification of the Acts of the Directors
- Preparation of Annual Board of Directors' Minutes with Waiver of Notice, Election of Officers, Resolutions, and Ratification of the Acts of the Officers
- Draft of Special Minutes for Pension or Profit Sharing Minutes, Stock Ownership Changes, Name Changes, Leases, major corporate changes, major resolutions, and other specific legal problems
- Index of Documents into the Corporate Record Book with copy to Client
- Review or preparation of the Department of Financial Institutions Annual Report [when supplied by Client], and inclusion into Client's Corporate Record Book

## Employees . . .

Representing you in the area of Employment Law includes:

- Employment at Will / Employment Contracts / Personnel Records
- Defamation / Privacy / Libel and Slander
- Drug Testing / Honesty Testing / HIV Laws
- Unions - National Labor Relations Board / Plant Closing Laws
- Employment Torts
- Wisconsin Fair Employment Laws / Federal Civil Rights Act
- Equal Pay Act / Discrimination in Employment Act
- Americans with Disability Act [Impairment / Reasonable Accommodation]
- Occupational Safety and Health Act
- Federal and Wisconsin Family and Medical Leave Act
- Unemployment Law / Worker's Compensation Law
- Wisconsin Trade Secrets Law

## Informal Board of Advisors . . .

As a professional practice owner you deserve success. Yet, operating a professional practice in this economy is too complex for one person. And the staggering statistics of the failure of new enterprises confirms this! Professional practice owners must recognize that their strengths are in their professional practice field and they must continue to grow in both the knowledge required to remain an experts in their field – and to work to promote their practice.

**Successful Professional Practices.** One key reason for professional success, based upon my experience in working with professionals since 1973, is that when professionals work closely with their advisors. Your advisory group ideally should consist of an accountant, insurance agents, banker, and [dare I say it?] your lawyer. Each member of your informal board should possess knowledge and experience vital to you. These are some ways that each board member may be able to assist you:

**ACCOUNTANT.** Bookkeepers or CPA's render advice on the financial operational systems, and taxation.

**INSURANCE AGENTS: PROFESSIONAL PRACTICE, BUSINESS, AND LIABILITY.** Assist in funding for estate and professional practice succession. Provide protection in the event of liability issues [fire, theft, casualty, vehicle, bonding, product liability [yes, for professionals frequently are involved in products], and errors and omissions coverage].

**BANKER.** You and your banker should review your cash flow needs and identify your credit needs well in advance of problems.

**LAWYER.** As your legal consultant and advisor, I offer professional practice options and the legal and practical effects of your decisions.

*Some legal considerations: How do I best handle this employee problem? Can I fire this person? Should I have this contract reviewed? Is incorporation, or an LLC, or an LLP a solution? How can I best word this agreement to forestall expensive and time-consuming litigation? Does this lease protect me personally? Have I considered alternate dispute resolution procedures in the event I and my professional practice partners have disagreements? How have I considered planning in my practice in the event of an untimely death of myself or a key staff member? Is this the right policy for this professional entity?*

**Disagreements within your Advisory Board.** At times members of your Board will seemingly disagree with each other – yet no one will be wrong. Their dissents are the result of each director viewing a peculiar problem from his or her specialized discipline.

After receiving various options, and then weighing the risks and benefits, you can make an Informed Decision.

**Your Professional Practice Plan.** Your Professional practice Plan is your key to success. It is also a good self-test. Its value, because of the information you have gathered and examined, is to provide a basis for working with your Advisors to hone your plan – all in order to achieve your objectives – a profitable practice. And, as you desire to improve your practice, your well thought out Plan will serve as excellent evidence of your Resolve.

**Index.** Based upon the disciplines of your informal board of advisors, the index and tabs of your Plan For Your Professional Practice should be [and not in any order]:

Vision and Mission Statement  
 Practice Owners and Key Employees  
 Accounting  
 Marketing  
 Advertising  
 Insurance  
 Banking  
 Law

Your Plan should therefore include:

- A complete description of your proposed or existing practice and your objectives.
- A working resume of each professional, director, key employee describing not only what jobs and positions are held but what responsibilities each person has, and the results achieved by, and expected of, each person.  
 This segment may also include key investors and support staff, as well as the training undertaken by each person.
- Marketing objectives and feasibility studies in each area of your professional practice.
- The capital requirements of your professional practice.
- An Income Expense Analysis with a two year cash flow projection. This can be set forth in three scenarios: The Normal Expectation, If Everything Goes Better Than Expected, and The Worst Possible Scenario.
- A statement of your legal organization and compliance.
- A listing of your insurance policies and how insurance is protecting your professional practice.
- Each area should include the CV of each of your informal board of directors by discipline.

Formulation of your Professional Practice Plan requires personal discipline because you have to analyze your objectives and outline the means to those objectives. Critical examination is crucial. The results will be worth it.

***Success is not equivalent to luck.***

Professional practices may appear to grow haphazardly. Successful professionals

- plan carefully;
- understand and accept the complexity of their practice;
- surround themselves with good professional and practice information sources;
- accept advice from a variety of sources.

This is the foundation for their success!

Review your Plan annually and test it with your "Board of Directors". Be prepared to modify it because your Plan must be a dynamic tool for you and your practice.

**Options.** When you approach a problem it is important to learn all of the available options. This is the only way to facilitate appropriate decision making. Since profit is the goal of all professional practices, it is critical that you know, measure, and decide upon the appropriate options.

Your consultations with your board members should give you meaningful professional practice counsel allowing you to:

- [1] Clarify your practice objectives;
- [2] Grow in your particular expertise and contacts;
- [3] Expand your total knowledge of various disciplines, allowing you to focus on your professional practice; and
- [4] Start and stay in the successful one-fourth of professional practices!

## Planning for the Future . . .

The goal of your continuity plan is to minimize disruption to your practice upon your disability, or death, or retirement. It also includes what happens if there is a fire, tornado, or flood. Because you want to protect your family and yourself, the benefit of planning both for the future, and for catastrophe is essential.

**Questions to Ask Yourself.** In working with professional Clients I ask these questions:

- Who are the key successors to your professional practice?  
Are they family members?  
What is the training and experience of these key successors?  
Can they be relied upon to take over when the time comes for succession?

- If there are no successors in the practice, how saleable is it?
- If the practice cannot be easily sold, can the assets be sold at profit?
- What type of Buy/Sell Agreements should be entered into?

What type of funding [insurance or otherwise] should be employed for the Buy/Sell Agreement?

Should the stock be placed into two classes?

Should the non-involved family members have a place on the Board of Directors?

- If the stock is sold, what are the best methods to do so?

And you may find that your examination of asset ownership, asset valuation, and debt may produce current cash savings!

**Integration of Your Estate Plan with Your Professional Practice.** As your Attorney I can work with you in drafting your Will and, if you wish, your Trust, to coordinate your estate plan with your professional practice continuity plan. I can also work with you to draft a Professional Practice Power of Attorney and other documentation in disaster and continuity planning.

## Buying ~ Selling . . .

There is no "usual" sale; each professional practice sale is unique.

There is an exchange of relevant information whether you are considering purchasing or selling a professional practice. Basic information must be divulged before the parties sign a Letter of Intent or an Offer to Purchase. Buyers often want additional information and Sellers are unsure as to what information should be divulged to the prospective Buyer. A major fear of Sellers is that prospective Buyers are front people for a competitor exploring what the competition is doing. Sellers are reluctant to show their customer lists which can be stolen.

Buyers should ask the type of information the Seller would divulge to a student intern who had spent a one month internship at the practice. If the patient or client list would not be divulged to the intern, then a prospective Buyer should not be shown it either.

When, and should the Seller disclose tax records, profit/loss statements, and balance sheets? The answer may revolve on how the Seller perceives a particular prospective Buyer. The Seller may wish to have either an Offer or an Intent to Purchase in hand before releasing certain information. The Seller may wish to reveal only the most recent of these reports simply to show the prospective Buyer that the time and expense in drafting and presenting an Offer to Purchase is justified and that the asking price is reasonable.

**Confidentiality Agreements.** Any Seller thinking of giving information to a Buyer should require a Confidentiality Agreement. Without that agreement the possessor of the information may do whatever he or she wishes. Even though there will be expense in

seeking court protection if there is a Confidentiality Agreement breach, there is, at least, the opportunity to seek judicial relief.

**Intents to Purchase.** The danger to both parties is that a 'simple' Intent to Purchase will lock either of the parties out of key provisions in a later anticipated Offer to Purchase – and lead to litigation to enforce the Intent to Purchase. Therefore many Buyers and Sellers prefer to embark upon the transaction with an Offer to Purchase. With the Offer to Purchase all of the provisions deemed necessary are set out in detail which either eliminates or minimizes disputes between the Buyer and the Seller.

**What Should Be Disclosed Before a Sale.** Minimally and typical of the items requested to be disclosed before a sale are:

- A. An inventory of all furniture, fixtures and equipment included in this transaction.
- B. Copies of all Leases affecting equipment, real estate or signs; and all copies of other Leases pertaining to the practice.
- C. Estimated principal balance of accounts receivable.
- D. Estimated principal balance of accounts payable.
- E. Copy of profit and loss statements, balance sheets, practice books and records, and income tax returns for the prior years, which Buyer may have examined by Buyer's agents or Attorneys.
- F. Copies of latest real estate and personal property tax bills.
- G. Copies of important agreements, if any.
- H. Copy of Corporate Minutes approving or authorizing the sale, if Seller is a corporation or an LLC.
- I. Copies of all licenses used in operating the professional practice.
- J. An agreement regarding a restriction on Seller competing with Buyer after the closing of this transaction.

**Critical Trade Secrets.** Often there are, even in the sale of professional practices, trade secrets. Disclosure of any Trade Secrets should be reserved until near or at the time of closing when the Buyer produces the certified checks and places them on the table or in the hands of an escrow agent. If a prospective Buyer wishes to review trade secrets earlier, then some creative use can be made of escrow agents, and innovative liquidated damage clauses for breaches of trade secrets. Sellers may also feel comfortable in allowing some information short of "Trade Secrets" to be presented to the prospective Buyer after financing contingencies have been removed. By this time the Sellers have certain indication that the prospective Buyer has done their 'due diligence' and shown good faith and is "ready, willing and able" to purchase the professional practice.

**Pre-Qualifying Buyers.** Sellers may wish to pre-qualify a Buyer, especially if the Buyer is a new professional. Sellers are well within their rights to exercise the good financial practice of seeking qualification information from the Buyer. Sellers may desire a Letter of Credit to prove that the Buyer has the necessary financial backing to consummate the transaction.

## How I Can Help You . . .

A Profitable Foundation for Your Professional practice. As a Professional Attorney my goal is to assist you in building a profitable foundation for your practice. I can assist you in the following legal areas:

- Limited Liability Companies
- Limited Liability Partnerships
- Corporate Transfers
  - Draft of Offer to Purchase
  - Purchase of Professional practice
  - Sale of Professional practice
- Contracts [Agreements]
  - General
  - Employment
  - Covenants Not To Compete
  - Stockholder
- Incorporation
  - Statutory Close
  - Regular
  - Non-Profit
  - Professional
  - Service Corporations
- Partnerships
- Administrative Hearings
- Corporate Book Maintenance
  - Annual Stockholder and
  - Director Minutes
  - Special Meeting Minutes
- Employer/Employee Issues
  - Discharge Assistance
  - Termination Litigation
  - Employee Handbooks
  - Unemployment
  - Compensation Law
  - Employee Issues
- Buy-Sell Agreements
  - Redemptive
  - Cross-Purchase
- Collections
- Estate Planning
  - Wills and Trusts
  - Testamentary
  - Revocable
  - Integration with Professional practice Plan
- Professional Practice Dissolution
- Real Estate-Review or Draft
  - Commercial Leases
  - Commercial Purchases
- Arbitration & Mediation
- Negotiation

Alternate Dispute Resolution [ADR] Includes Arbitration and Mediation. Often there are other methods of solving a problem other than in litigation. I have experience in professional practice arbitration as both professional practice arbitrator and as counsel. I will use this experience on your behalf.

## Our Mission . . .

I want to share our Mission Statement with you:

*Our standard of operation and service is excellence. We believe in substantial ongoing professional education. We believe that proactive law can protect the majority of Clients, and that education of Clients by presenting and explaining options are part of well representing Clients. We believe that no Client should ever have a question or a concern as to how his or her matter is being handled. We believe that Clients should remain in control of the solution to their matter. We treat and care for a Client's problems as if they were our own and will loyally, honestly, and confidentially carry out our professional services.*

**Our Relationship.** Our professional relationship is based upon trust which includes the willingness to discuss all relevant issues and, perhaps, painful in presenting the truth of a matter.

When you retain us to advise and represent you, you and your practice receive:

- [1] care and concern about each of your matters;
- [2] ethical standards affecting our relationship;
- [3] professional competence;
- [4] fair professional legal fees;
- [5] an efficient staff;
- [6] negotiating skills;
- [7] ability to anticipate additional causes of action; and
- [8] quality services.

**Prior to our Conference.** Prior to our initial conference you may wish to:

- Prepare a list of all persons involved in your matter including the full legal name, complete address, [and, if necessary, Social Security Numbers, dates of birth], e-mail address, and telephone numbers of each person or organization, LLC, or corporation involved, and their EIN numbers;
- Organize all your letters, documents, and papers in date order;
- Prepare a brief statement of the facts; and
- Bring all other relevant information regarding your matter.

**How I can help you.** I look forward to discussing your matters with you toward the goal of helping you operate your professional practice profitably. Because the principle of excellence has endured at our firm, we hope you will be well served by our relationship.

But – a professional should also have success in life beyond profit. A practice which is properly operated gives emotional comfort which translates to greater happiness in all other areas of life: family, hobbies, leisure time, as well as club, church, and other organizations.

**Other Booklets which may be helpful to you.** I have a number of other Booklets which may be of interest to you. They cover estate planning, businesses, non-profit organizations, real estate, and more. Feel free to contact my office for further information.

**Affiliated with Schober Schober & Mitchell, S.C. to better serve you.** I am an Of Counsel member with the law firm of Schober Schober & Mitchell, S.C. This association benefits you in many ways, because I continue to work and serve you, and all of the resources of Schober Schober & Mitchell, S.C. are available to you and to me. The Professional practice Journal has ranked Schober Schober & Mitchell, S.C. in the top 30 Milwaukee-area law firms.

Sincerely,

Barry W. Szymanski

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This booklet has been prepared to give a general overview of the legal issues in this area and is not intended to provide the type of legal advice that is given when an Attorney confers with a Client and is able to discover exactly the needs and requirements of the Client's matter and thereafter provide specific professional advice for the Client's benefit.

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