

## CHAPTER 319A

### PROFESSIONAL CORPORATIONS

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#### 319A.01 PROFESSIONAL CORPORATIONS ACT; CITATION.

Sections 319A.01 to 319A.22 may be cited as "The Minnesota professional corporations act."

**History:** 1973 c 40 s 1

#### 319A.02 DEFINITIONS.

Subdivision 1. For the purposes of sections 319A.01 to 319A.22 the terms defined in this section have the meanings given them.

Subd. 2. "Professional service" means personal service rendered by a professional pursuant to a license or certificate issued by the state of Minnesota to practice medicine and surgery pursuant to sections 147.01 to 147.22, chiropractic pursuant to sections 148.01 to 148.105, registered nursing pursuant to sections 148.171 to 148.285, optometry pursuant to sections 148.52 to 148.62, psychology pursuant to sections 148.88 to 148.98, dentistry pursuant to sections 150A.01 to 150A.12, pharmacy pursuant to sections 151.01 to 151.40, podiatric medicine pursuant to Laws 1987, chapter 108, sections 1 to 16, veterinary medicine pursuant to sections 156.001 to 156.14, architecture, engineering, surveying, landscape architecture, and certified interior design pursuant to sections 326.02 to 326.15, accountancy pursuant to sections 326.17 to 326.229, or law pursuant to sections 481.01 to 481.17, or pursuant to a license or certificate issued by another state pursuant to similar laws.

Subd. 3. "Professional" means a natural person who is licensed by the laws of the state of Minnesota or similar laws of another state to render professional service.

Subd. 4. "Professional corporation" means a corporation organized under sections 319A.01 to 319A.22 for the purpose of rendering professional service.

Subd. 5. "Foreign professional corporation" means a corporation, limited liability company, or limited liability partnership organized under laws other than the laws of this state for a purpose for which a professional corporation may be organized hereunder.

Subd. 6. "Board" means an agency of the state of Minnesota which has jurisdiction to grant a license to render professional service of a type which a professional corporation is authorized to render. In the case of a professional corporation formed to practice law, "board" means the board of professional responsibility.

Subd. 7. "Corporation" as used in this chapter includes a limited liability company organized under chapter 322B and a limited liability partnership. With respect to a limited liability company, references in this chapter to articles of incorporation, bylaws, directors, officers, shareholders and shares of stock shall refer to articles of organization, operating agreement, governors, managers, members and membership interests, respectively. With respect to a limited liability partnership, references in this chapter to articles of incorporation and bylaws refer to partnership agreement; refer-

ences to directors, officers, and shareholders refer to partners; and references to shares of stock refer to partnership interests.

**History:** 1973 c 40 s 2; 1974 c 504 s 1; 1977 c 256 s 3; 1978 c 549 s 1; 1978 c 674 s 34; 1979 c 21 s 1; 1986 c 444; 1987 c 108 s 16; 1987 c 345 s 12; 1989 c 194 s 21; 1991 c 199 art 2 s 1; 1992 c 507 s 2; 1992 c 517 art 1 s 21,22; 1992 c 542 s 4; 1993 c 137 s 17; 1994 c 539 s 1,2

### 319A.03 FORMATION.

One or more natural professional persons may form a corporation pursuant to chapter 302A, or 317A and one or more natural professional persons may organize a limited liability company pursuant to chapter 322B for the purposes hereinafter set forth.

**History:** 1973 c 40 s 3; 1981 c 270 s 132; 1987 c 384 art 2 s 78; 1989 c 304 s 137; 1992 c 517 art 1 s 23

### 319A.04 PURPOSE FOR WHICH INCORPORATED.

A professional corporation may be organized pursuant to sections 319A.01 to 319A.22 for the purpose of rendering one specific kind of professional service and services ancillary thereto, or two or more kinds of professional services which are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or a partnership of licensed individuals and services ancillary thereto; provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering professional service and may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

**History:** 1973 c 40 s 4

### 319A.05 APPLICABILITY OF ACTS.

A corporation incorporating, a limited liability company organizing, or a limited liability partnership registering, under sections 319A.01 to 319A.22 and chapter 302A, 317A, 322B, or 323 shall proceed in the manner specified in chapter 302A, 317A, 322B, or 323. After incorporation, organization, or registration, a professional corporation, limited liability company, or limited liability partnership shall enjoy the powers and privileges and shall be subject to the duties and liabilities of other corporations, limited liability companies, or limited liability partnerships, respectively organized under chapter 302A, 317A, 322B, or 323, except insofar as the same may be limited or enlarged by sections 319A.01 to 319A.22. If any provision of sections 319A.01 to 319A.22 conflicts with the provisions of chapter 302A, 317A, 322B, or 323, sections 319A.01 to 319A.22 take precedence.

**History:** 1973 c 40 s 5; 1981 c 270 s 133; 1987 c 384 art 2 s 79; 1989 c 304 s 137; 1992 c 517 art 1 s 24; 1994 c 539 s 3

### 319A.06 RENDERING OF PROFESSIONAL SERVICES.

Subdivision 1. A professional corporation may provide professional service in another state if it complies with all applicable laws of that state regulating the rendering of professional service therein.

Subd. 2. A foreign professional corporation may provide professional service in this state only upon compliance with sections 303.01 to 303.24, or 322B.90 to 322B.955, regulating foreign corporations, foreign limited liability companies, and foreign limited liability partnerships, respectively. The secretary of state shall promulgate forms for such purpose. The provisions of sections 319A.01 to 319A.22 relating to the rendering of professional service by a professional corporation apply to a foreign professional corporation. Sections 319A.01 to 319A.22 shall not be construed to prohibit the rendering of professional service in this state by a person who is a shareholder, director, officer, employee, or agent of a foreign professional corporation, if the person

could lawfully render professional service in this state in the absence of any relationship to the foreign professional corporation, irrespective of whether the foreign professional corporation is authorized to provide professional service in this state.

**History:** 1973 c 40 s 6; 1992 c 517 art 1 s 25; 1994 c 539 s 4

### 319A.07 CORPORATE NAME.

The corporate name of any corporation organized under sections 319A.01 to 319A.22 shall not be used to imply superiority and, in the case of a corporation, other than a limited liability company, shall end with the word "Chartered," or the word "Limited," or the abbreviation "Ltd.," or the words "Professional Association," or the abbreviation "P.A." The name of any limited liability company organized under sections 319A.01 to 319A.22 and chapter 322B shall end with the words "Professional Limited Liability Company," or the abbreviation "P.L.C." The name of any limited liability partnership organized under sections 319A.01 to 319A.22 and chapter 323 must end with the words "Professional Limited Liability Partnership," or the abbreviation "P.L.L.P."

**History:** 1973 c 40 s 7; 1992 c 517 art 1 s 26; 1994 c 539 s 5

### 319A.08 PROFESSIONAL REGULATION.

No professional corporation or foreign professional corporation shall begin to render professional service in the state of Minnesota until it has filed with each board having jurisdiction of professional service of a type which the corporation is authorized to render a copy of its articles of incorporation. Except as provided in this section, nothing in sections 319A.01 to 319A.22 shall restrict or limit in any manner the authority or duty of a board with respect to persons rendering professional service within the jurisdiction of the board, even if the person is a shareholder, director, officer, employee or agent of a professional corporation or foreign professional corporation and renders professional service through such corporation.

**History:** 1973 c 40 s 8

### 319A.09 HOW SERVICES RENDERED.

A professional corporation or foreign professional corporation may render professional service only through natural persons who are licensed or otherwise authorized by the state of Minnesota to render professional service of a kind which the corporation is authorized to render and may so render professional service notwithstanding any provision of law to the contrary. Such persons need not be shareholders of the corporation but may be employed by the corporation to render professional service.

**History:** 1973 c 40 s 9

### 319A.10 RELATIONSHIP TO PERSON SERVED.

Sections 319A.01 to 319A.22 do not alter any law applicable to the relationship between a person furnishing professional service and a person receiving the professional service, including liability arising out of the professional service and the confidential relationship and privilege of communications between the person rendering professional service and the person receiving the professional service; provided, however, that no person is personally liable in tort for any act not personally participated in. No director, officer, or employee of a professional corporation or foreign professional corporation is personally liable in contract for any contract executed on behalf of the corporation within the limits of the executor's actual authority.

**History:** 1973 c 40 s 10; 1986 c 444

### 319A.11 TO WHOM SHARES MAY BE ISSUED.

Subdivision 1. **Generally.** (a) A professional corporation may issue its stock only to and admit as a member only natural persons licensed to render a kind of professional

service which the corporation is authorized to render or partnerships or professional corporations rendering the same kind of professional service. A person, partnership or professional corporation who becomes a shareholder or member of any such corporation may transfer its shares of stock or its membership only to a natural person, partnership or professional corporation to whom the corporation could have issued the shares of stock or membership. No proxy to vote any share in a professional corporation or membership may be given to a person who is not so licensed, nor may any voting trust be established with respect to the shares of the professional corporation unless all the voting trustees are natural persons so licensed.

(b) Notwithstanding paragraph (a), a professional corporation may issue its stock under this section to an employee stock ownership plan, as defined in section 4975(e)(7) of the Internal Revenue Code of 1986, as amended, if

(1) the voting trustees of the plan are natural persons licensed to render a kind of professional service which the corporation is authorized to render, and

(2) the shares are not directly issued to a person or entity not licensed to render a kind of advice which the corporation is authorized to render.

**Subd. 2. Nonapplication of securities regulation provisions.** Chapter 80A shall not be applicable to nor govern any transaction relating to any shares of a professional corporation.

**History:** 1973 c 40 s 11; 1976 c 239 s 91; 1981 c 296 s 1; 1993 c 375 art 17 s 12

### 319A.12 CHANGES IN CORPORATE STATUS.

**Subdivision 1.** A professional corporation or foreign professional corporation shall report to the board having jurisdiction of the professional service which the corporation is authorized to render the death of any of its shareholders or members within 30 days of such death. Within 90 days following the date of death of a shareholder of a professional corporation or the loss of a license to render professional service, all of the shares of stock owned by such shareholder or the member's membership shall be transferred to and acquired by the professional corporation or persons qualified to own such shares of stock or membership. If the articles of incorporation, bylaws, or a written agreement of the shareholders of a professional corporation fail to state a price or a method of determining a price at which the corporation or its shareholders may purchase the shares of stock or membership of a deceased shareholder or a shareholder no longer qualified to own shares of stock in the corporation or membership, then the price for the shares of stock or membership shall be the fair market value as determined by the board of directors, or in the case of a limited liability partnership, the partners, unless the partnership agreement delegates the determination to one or more managing partners, but not less than the book value as of the end of the month immediately preceding the death or disqualification of the shareholder or member. Book value shall be determined from the books and records of the corporation in accordance with its regular method of accounting. This subdivision does not change the effect of sections 323.28 and 323.30, under which the dissociation of any partner from a limited liability partnership causes the dissolution of that partnership.

**Subd. 1a.** A professional corporation may at any time by amendment to its articles of incorporation relinquish the powers and privileges conferred upon it by this chapter and elect to be governed thereafter solely by the provisions of chapter 302A, 317A, 322B, or 323, as the case may be. Notwithstanding any provision of this chapter, the representative of a deceased or incompetent shareholder of a professional corporation shall have authority to vote the deceased or incompetent shareholder's shares on the question of adopting such an amendment.

**Subd. 2.** If within 90 days following the date of death of a shareholder or member of a professional corporation or the loss of a license to render professional service all of the shares or membership owned by the deceased or disqualified shareholder or member have not been transferred to and acquired by the corporation or persons qualified to own the shares or membership, the corporation shall thereafter be governed

solely by the provisions of chapter 302A, 317A, 322B, or 323, as the case may be and shall not enjoy any of the powers and privileges conferred by sections 319A.01 to 319A.22. When the corporation ceases to be authorized to render professional service, its corporate name must be changed to comply with the corporate name provision of chapter 302A, 317A, 322B, or 323, as the case may be, and any words, phrases or abbreviations contained therein to comply with the provisions of sections 319A.01 to 319A.22 shall be eliminated.

Subd. 3. A professional corporation may purchase its shares of stock without regard to any restrictions provided by law upon the repurchase of its stock if after each repurchase at least one share of stock remains outstanding.

**History:** 1973 c 40 s 12; 1979 c 21 s 2; 1981 c 270 s 134,135; 1986 c 444; 1987 c 384 art 2 s 80,81; 1989 c 304 s 137; 1992 c 517 art 1 s 27,28; 1994 c 539 s 6-8

### 319A.13 TRANSFER OF SHARES.

No share of stock of a professional corporation, nor any beneficial interest therein, nor any membership, may be transferred to any person to whom the share or membership could not have been issued by the professional corporation. The articles of incorporation or bylaws or a written agreement of the shareholders may contain provisions restricting the transfer of shares or memberships.

**History:** 1973 c 40 s 13

### 319A.14 CONVERTIBLE SECURITIES; STOCK RIGHTS AND OPTIONS.

No professional corporation shall create or issue any securities convertible into shares of the professional corporation. The provisions of sections 319A.01 to 319A.22 with respect to the issuance and transfer of shares apply to the creation, issuance, and transfer of any rights or options entitling the holder to purchase from a professional corporation any shares of the corporation. Rights or options shall not be transferable, whether voluntarily, involuntarily, by operation of law, or in any other manner. Upon the death of the holder, or whenever the holder ceases to be licensed to render professional service which the corporation is authorized to render, the rights or options shall expire.

**History:** 1973 c 40 s 14

### 319A.15 MERGER; CONSOLIDATION.

No professional corporation shall merge or consolidate with any other corporation unless the surviving or new corporation is a professional corporation or a foreign professional corporation which complies with all requirements of sections 319A.01 to 319A.22.

**History:** 1973 c 40 s 15; 1979 c 21 s 3

### 319A.16 OFFICERS; DIRECTORS.

Except as otherwise provided by this section, every director and every officer of a professional corporation shall be a professional licensed to render professional service of a type the corporation is authorized to render. If the articles of incorporation or the bylaws so provide, the secretary, the treasurer, and any assistants to either of them, need not be professionals. If the professional corporation organizes pursuant to chapter 317A, a majority of its board of directors need not be professionals.

**History:** 1973 c 40 s 16; 1979 c 21 s 4; 1989 c 304 s 137

### 319A.17 EXAMINATION BY BOARD.

Any board, or any employee designated by such board, shall have the right at all reasonable times of free access to all books and records of any professional corporation and any foreign professional corporation holding a certificate of authority to do business in this state and may summon and examine under oath the officers, directors, and

employees of any such corporation in all matters concerning the operations of any such corporation which are governed by sections 319A.01 to 319A.22 or the corporation laws of Minnesota or the rules of such board provided, however, that nothing contained in this section shall authorize anyone to have access to, or to compel anyone to testify with respect to, books, records, or information of any type subject to a privilege recognized by law. Any information obtained by the board as a result of any proceeding authorized by this section shall be confidential except that on request a copy thereof shall be made available to a duly authorized representative of the professional corporation or foreign professional corporation involved, and shall be immune from subpoena and inadmissible as evidence at a trial, hearing or proceeding before any court, board or commissioner except a proceeding to cancel the corporate charter or to revoke the certificate of authority to render professional service in this state.

**History:** 1973 c 40 s 17; 1985 c 248 s 70

### **319A.18 RULES.**

Each board may make such rules as are necessary to carry out the provisions of sections 319A.01 to 319A.22.

**History:** 1973 c 40 s 18; 1985 c 248 s 70

### **319A.19 SAVINGS CLAUSE.**

Nothing contained herein is intended to alter the right of natural persons licensed to provide professional service, to organize as a partnership, an unincorporated association, a business trust, or any other form recognized under laws of this state.

**History:** 1973 c 40 s 19

### **319A.20 SUSPENSION OR REVOCATION.**

The corporate charter of a professional corporation or the certificate of authority of a foreign professional corporation may be suspended or revoked pursuant to section 302A.757, 322B.843, or 317A.751 for the reasons enumerated therein or for failure to comply with the provisions of sections 319A.01 to 319A.22 or the rules of any board. A board through the attorney general may institute such suspension or revocation proceedings.

**History:** 1973 c 40 s 20; 1981 c 270 s 136; 1985 c 248 s 70; 1989 c 304 s 134; 1990 c 426 art 2 s 10; 1992 c 517 art 1 s 29

### **319A.21 ANNUAL REPORT.**

Every professional corporation and foreign professional corporation holding a certificate of authority to do business in this state shall file annually on or before January 1, with the board or boards having jurisdiction over the kind of professional service the corporation is authorized to render a report containing the following: (a) the name and address of each shareholder and each officer and director; (b) a statement under oath whether or not all shareholders, directors, officers, employees, and agents rendering professional service in this state on behalf of the corporation are licensed by this state or otherwise authorized to render such professional service; and (c) such additional information as the board may by rule prescribe as appropriate to assist in determining whether a professional corporation or a foreign professional corporation is complying with the provisions of sections 319A.01 to 319A.22. For filing the first of such reports the professional corporation or foreign professional corporation shall pay to each board with which such report is filed a fee of \$100 which shall be for the use of such board, and for filing each successive report the fee shall be \$25 which shall be for the use of the board.

**History:** 1973 c 40 s 21; 1985 c 248 s 70

## 319A.22 RETROACTIVE EFFECT.

A professional corporation heretofore organized pursuant to authority granted by any provision of law applicable to an individual profession is hereby recognized, validated and continued and the provisions of sections 319A.01 to 319A.22 apply retroactively to any such professional corporation so that any such professional corporation is deemed to have been organized pursuant to the authority granted by sections 319A.01 to 319A.22. Any such corporation that fails to comply with the provisions of sections 319A.01 to 319A.22 within one year of March 23, 1973 shall forfeit its corporate charter in the manner prescribed by law.

**History:** 1973 c 40 s 22