

Episode 36 – Board 101: Setting up medical corporations in North Carolina

Intro music: 0:00

Podcast introduction: 0:10

You are no doubt familiar with the veritable alphabet soup of characters that follow every licensed medical professional's name. MD, DO, PA, PhD. And so on. But what about the letters that sometimes follow the name of a medical practice, such as PC or PLLC? This is Jean Fisher Brinkley, Communications Director for the North Carolina Medical Board, and this is MedBoard Matters. On this episode we are talking all about medical corporations and NCMB's role in helping to register them in accordance with state law. To help shed some light on this relatively obscure aspect of the Medical Board's work, I have asked Corporations Coordinator Malinda Sink to spend some time with me.

Interview with Malinda Sink: 1:02

JFB: Malinda, thank you so much for taking the time to talk corporations with me.

MS: You're welcome. I'm excited to be here.

JFB: Great! Well, I'm excited to have you. And it's one of those things, corporations is one of those topics where, despite my having been with the Board for going on 16 years, it's one of those things that I haven't had a lot of direct contact with, so I don't know that much about it, so I am looking forward to learning along with our listeners. Let's start at the beginning just with what is a PC or a PLLC and why do we have them in the State of North Carolina?

MS: In North Carolina, the legislature passed a law that became a general statute in 1964 that says in a nutshell, if you have a professional license from a professional licensing Board and you open a business to offer those professional services that your licensed for that business has to be a professional corporation, PC or a professional limited liability company, PLLC. So, the laws around PCs and PLLCs not only govern our licenses, our physicians, and PAs, they also govern lawyers, architects, engineers, dentists, chiropractors, nurse practitioners, a whole list of professional licensees in North Carolina.

JFB: Gotcha, anyone who holds a professional license.

MS: Yes, that's correct.

JFB: So, we're going to be talking today about corporations that are established by our licensees, which are, of course, physicians and physician assistants. Can you tell me what the Medical Board's role is with respect to setting up corporations or regulating corporations in the state?

MS: So, the statute says that when a professional corporation is established, the licensing Board has to first approve it before any corporation documents can be sent to the North Carolina Secretary of State. So, all of our licensees begin with the Medical Board when they decide that they want to open a practice, that they want to form a PC or PLLC. And so, the very first step is to utilize the North Carolina Medical Board website and start with our corporation information page there. All of the corporation

required documents are sent to the Board for approval. Once approved, then the licensee files with the Secretary of State.

JFB: Right. Okay. And the Secretary of State kind of finishes off the process.

MS: Yes, that's the last step in that process.

JFB: Okay. Now, I want to just make the point that in North Carolina, we've got currently more than 57,000 licenses. There are not nearly that many professional corporations or professional limited liability companies. So not every licensee has to have a business of this nature. Can you address why someone might want or need to be organized as a PC or a PLLC?

MS: Sure. So, you're correct. Not every doctor in North Carolina has a PC or PLLC, and many will never have one. If they are employed at a hospital situation, they probably don't need one. So, physicians who decide to go out on their own and establish their own practice, either by themselves or with another group of physicians, will form a PC or PLLC. And generally, that is done for tax protection and for liability protection. So, there are significant tax advantages to having a PC or a PLLC versus the doctor simply renting office space and hanging out a shingle is what it used to be called. And doctors can certainly still do that, but they then are foregoing tax protection and liability protection that they would have if they formed a PC or PLLC.

JFB: I want to talk in more detail about when you say liability protection. What I think it means and you can tell me if I'm right, is that if somebody is sued and we all know medicine is a pretty litigious profession, people get sued. If you are organized as a PC or a PLLC, if you're sued, that offers you some protection from financial loss. Is that right?

MS: Yes, that's correct. Yes, that is so that's a great way to put it.

JFB: Okay. So, if someone sues a doctor and the doctor or PA is organized as a corporation, the corporation can absorb that liability as opposed to an individual who would be individually liable. And it could potentially be financially devastating if it was a big enough lawsuit. So that's a I would think, a pretty significant advantage for somebody who might be considering going this route with their medical practice. That said, does the Medical Board advise people on whether or not they should do this?

MS: We do not. We certainly are here to help a doctor or a PA who's decided to form a corporation and walk them through that process. But whether or not the licensee decides that they want to form a corporation is up to them. And if they contact the Board and ask, 'Should I do this?', our advice is always to tell them that they need to retain outside counsel and get advice from either their attorney or their CPA.

JFB: Gotcha. Okay. So, let's say somebody has gotten that advice and they decide, yes, I want to organize my business as either a PC or a PLLC. Where do they go and how do they get started with that?

MS: The first thing that they're going to need to do is to come to the North Carolina Medical Board website. On our home page of our website, on the bottom left-hand side, we have an easy to find link that says, 'create or manage PC or PLLC'. So that's where I always direct our licensees to start, or if they already have a corporation and they have a question, that's where they can go to manage their existing corporation and that will take them to the corporation/PLLC landing page. And on that screen, they have the ability to renew an existing corporation, to start a new professional corporation or PLLC, or even create or start an application for what is called a foreign PC or PLLC. And that's an entity that the Physician or PA started in another state.

JFB: Okay, great. Thank you for defining that.

MS: Yes, they want to bring it into North Carolina, and it already exists in another state.

JFB: Right. Now, that is a term that I'm familiar with. And I have to admit, it's because when I was relatively new working for NCMB, I heard the term and I thought, what the heck is a foreign corporation? I learned that it meant an out-of-state corporation that was wanting to establish in the State of North Carolina. So, let's say that you've decided that you want to organize your business as either a professional corporation or PLLC. What are the steps?

MS: Sure. So, the very first thing that you'll need to do is to go to the Medical Board website and right on the home page, bottom right-hand side is a link that says create or manage PC or PLLC. So that's where you're going to start to create your PC or PLLC. You will utilize the website to log in to your gateway page, complete an online corporation application, and on the instruction page of that application are easy to use the links for the documents that you will need to complete as part of the application process. So, you will do the online application, complete the required forms, and email those into the Board. And once those come into the Board, the approval process begins on our end.

JFB: Okay. What if people have questions? What if they're looking at this...they or their attorney or their representative are go into the process and they have a question? How...what's the best way for them to reach out to you for guidance?

MS: The easiest way is going to be to utilize our corporation's email address. And that email address is corporations, plural at NC Med Board dot org and that inbox is monitored all the time.

JFB: Okay, great. So, email rather than phone is probably more efficient.

MS: That is going to be the fastest way to get a response. They are also always welcome to call our general number and ask for corporations and our receptionist will be happy to connect them.

JFB: Okay, great. What are some of the common missteps or questions that you get specific to the application process to start a new corporation?

MS: One of the most common questions that I get after a licensee has completed the online application is, 'when is it going to be approved?' And when the online application is completed and submitted, the licensee should receive an automatic email from us, letting them know that the approval window begins when the required forms have been emailed into the Board. There is a 10 to 14 business day review period when those documents are reviewed to make sure everything is correct. And so, the approval should take place within 10 to 14 business days.

JFB: Okay. Now, knowing how long it takes for an individual physician license or PA license to be processed, I'd say 10 to 14 days is pretty darn quick. But, we live in such an instant society, I'd imagine for some people they want to do it faster than that. Is there any way is there an expedited process or any way to do it faster?

MS: Great question. Unfortunately, there is not. And one of the main reasons is because our corporation application fee, our annual renewal corporation fee, and if you're late with that, a late fee, which is paid online, when the online application is completed, those fees are all set by statute by the North Carolina legislature. We can't change them and there is no fee or process set out by the legislature to expedite corporation applications. So, we are not able to do that. One of the other reasons is simply the sheer volume of applications that come in annually, and the only way to work through those is simply to approve them in the order they come in.

JFB: Okay. Now, what happens if somebody, you mentioned that there are specific forms for PCs versus PLLCs, what if somebody accidentally gets the wrong form or they fill something out incorrectly? How will they know?

MS: They will know when their corporation application comes up for review in the queue and if their documents are reviewed, and there are mistakes that can't be edited by the Medical Board staff, (we can help out and change real simple things if we need to) but if they are the wrong form or completely filled out incorrectly, then the licensee will receive a rejection email with all of the corrections that need to be made laid out in the email. And we will ask the licensee to please go back and make those corrections and resubmit their documentation.

JFB: So, sounds like it's pretty important to be monitoring your email to see if there's anything happening that needs correction with your application. Okay, great. And then what happens, let's say, somebody submits their application, everything looks good. You approve it. What happens then?

MS: Once it's approved, the licensee receives an approval email. That email will have two PDFs attached. One of them is called Documents to File with the Secretary of State, and all of their approval documents that they need are bundled together so the licensee doesn't have to try to guess what to send on to the Secretary of State. The other .pdf is called Documents to Retain for Your Records and it is copies of everything that they can keep for their own filing system. And that approval email also has instructions for the licensee to be able to go to the Secretary of State website and upload their approval packet and file electronically with the Secretary of State. They have four months to do so.

JFB: Okay. So, once they get the approval and those documents from you or from the Board, they've got four months to get things up with Secretary of State.

MS: Yes. That's correct.

JFB: Okay. Now, I know you have a deadline coming up for people who are establishing new corporations. Could you talk about that?

MS: Sure. For a variety of reasons, most of which are tax implications, we see a large number of corporation applications at the end of the year. Everyone is scrambling to form their corporation. So, because of the high volume, we have always had a cutoff in December when any corporation applications that come in after that date are not processed until the following January. The new...at the beginning of the new year. So, this year, our cutoff is December 8th. So, anyone who wants to form a corporation and have it established in 2023 will need to get their paperwork in before December 8th.

JFB: Right. So pretty soon from now. So, hopefully people are aware. I imagine every year you get a few calls from people who are not too happy to know that they've missed the deadline.

MS: I do. And we will...we do our best to work with any emergency situations. We can't make any promises, but we are here throughout December and do our best to process all that have come in by December 8th. And if we need to address any emergencies, we do. But that cutoff, it's a pretty hard deadline.

JFB: Right? And that's simply because of the volume and the things that you need to check and process in order to make sure that everything is in order. Okay, great.

MS: Right. And we also want to give our licensees a chance not only to get our approval back, but then to be able to file with the Secretary of State because they, too, are going to be inundated with not only professional applications, but business entity applications to be filed by the end of the year. And just because we get it approved in middle of December doesn't necessarily mean that it's going to go through the filing process by the end of the year with the Secretary of State. So, I want to get them done for our licensees so that they have a chance to get that filing absolutely completed before December 31st.

JFB: Absolutely. Great. So, this is my last question about the application process. Once your corporation is approved by the Medical Board, do they have anything else that they need to do with NCMB?

MS: Yes. Related to the business. So professional PCs and PLLCs in North Carolina do not file annual reports with the Secretary of State like a business entity does. Instead, they are required to renew annually with their licensing Board. So, all PCs and PLLCs in North Carolina are required to renew by December 31st of every year. So, on an ongoing basis, the corporation will need to be renewed annually. We open up our renewal window on October 1st, and every one of the corporations registered with the

Board will receive that initial corporation renewal email notification. Everything is done via email. We do not send out paper renewal notices.

JFB: Okay. So again, really important to have an email that you or somebody who is actively involved in managing your corporation needs to be monitoring it on the lookout for those notices.

MS: Yes. And the email that we use is whatever email was entered for the corporation when the online application was initially completed. That is easy to update on an ongoing basis on your licensure gateway page. So, I really encourage our licensees to make sure that that email address is up to date, active and monitored.

JFB: Yes, we always like to emphasize to our licensees, you can log in and manage, update, correct, change your information 24/7. So, we encourage you to do that. Make sure that we can reach you. You can reach us. Great. So, renewal deadline then is also coming up a little bit longer there. You've got until the end of the year, December 31st. What if a corporation misses that deadline and fails to renew?

MS: If they fail to renew by December 31st, they do have a little bit of a cushion. They will receive another email on January 1st saying you still have not renewed and now we're into the following year. So, between January 1st and March 1st, they can still renew. There is at that point no late fee assessed. But on March 1st, all corporations that have not been renewed for that registration year will automatically be suspended in our system.

JFB: Okay. I have a couple of questions, but suspension sounds like something that you don't want to have happen if you have a medical business. Can you talk about that? What does that mean exactly, to be suspended?

MS: Sure. So, we are required again by general statute to suspend corporations that do not renew by March 1st. Once the corporation is suspended, it is supposed to cease all business function. That does not mean the doctor can no longer see patients. Doctors' licenses are intact, and they can still provide patient care. But the corporation is really supposed to not function anymore as a corporation once it's suspended.

JFB: Okay. And just to walk that back a little bit, make sure I'm understanding it and everyone else is too. So, if you continue in your thing as a medical practice and something goes wrong, somebody sues you. If I'm understanding this correctly, that means you don't have the protections that your corporation is supposed to offer you. Is that correct?

MS: That is correct. And we do have a very thorough and easy to use handbook on managing professional corporations and in the handbook that is available on our website, it does say that a professional medical corporation suspended by the Medical Board no longer qualifies to provide professional services.

JFB: Okay. Obviously, that sounds like at the very minimum, a headache. Much, much easier if you just go ahead and renew your...your corporation. Can you talk a little bit about what's involved? I know, for example, on the individual physician and PA renewal side, there's a fairly extensive questionnaire that those licensees have to complete in order to renew their professional license. What is involved in renewing a PC or a PLLC?

MS: Renewing your corporation is very quick and very easy and can be done in two or three minutes. Once you receive your renewal email notification, we have a link in the email that you can click on. Takes you right to your licensee portal login page and you'll log into your gateway. Your corporation is displayed with the red renewal banner on top of it and the renewal button right there and you go in and essentially with your corporation renewal, you're simply confirming the information that we have on file. So, it's about four screens listing the name, listing the address, including the email address. It's a great place to check that and update if necessary. We list the shareholders, and you pay, and you're finished. So, it's pretty quick and easy.

JFB: Okay, great. Well, it certainly sounds that way. Let's just say, though, someone forgets and doesn't do it. What can they do? Let's say they're having a good time enjoying the holidays and the new year, and then they realize, no, I forgot to renew my corporation with the Medical Board. What do they do once they remember that? Can they fix it? And how?

MS: Sure. They cannot fix it themselves without contacting the Board. So, the best thing for the licensee to do at that point is to call the Board and ask for corporations or email that corporations at NC Med Board dot org email address and say, 'Oh my gosh, I forgot to renew my corporation and its June. What do I do?' We have to reactivate the corporation in our system. So, I will go in, I will set up the reinstatement, I will reactivate the shareholders, and then when the licensee goes to their licensure gateway page, they will then see the corporation display once again. Once its suspended and the physician or PA logs on to their gateway page, they won't see that corporation anymore. It's gone. Once it's suspended, it's inactive. So, in order for them to see it and be able to renew it, I have to turn it back on. So, licensees do have to contact us to make that happen.

JFB: Okay. What if you remember before the March 1st cutoff date?

MS: Then it's still available. It's right there and you can do it until March 1st.

JFB: Okay. So, you can just go ahead and go to the website, renew it. And count yourself lucky.

MS: Yes. And you're good. We give a little time buffer after the deadline, just like we do for our licensees' individual professional licenses.

JFB: Okay. Now, we talked about the fact that if your corporation did get to the point where it was actually lapsed after that March 1st deadline or cutoff, we talked about losing the protections that the corporation affords. Are there any other consequences that people should be aware of? Just to underscore how important it is to keep your corporation registered and current?

MS: There certainly can be, because of statutory requirements when Medical Board corporations are suspended, that suspension was just sent to the North Carolina Secretary of State and they suspend all those corporation as well. And so, the corporation then is inactive with the Medical Board and inactive with the State of North Carolina. What happens fairly frequently is the licensee will not be aware, will have forgotten that they needed to renew, and their corporation is suspended. And then down the road they need to secure financing. It could be for their house, to buy or lease a car, to buy an expensive piece of office equipment, whatever it may be. And if they try to secure financing the financial institution during their due diligence process, they're going to do a Secretary of State search and they're going to find out that that licensee has a suspended corporation and the lending institution at that point can't lend money. I get phone calls on a fairly regular basis from our licensees who are in that situation saying, 'Oh my gosh, help. I'm trying to borrow for X, Y or Z, and I forgot and I didn't realize that my corporation has been suspended. So, we will, of course, immediately set up the reinstatement. The physician can complete the renewal that day and then I have to send a notification to the Secretary of State and ask them to lift the suspension as well. And the Secretary of State works very closely with the Medical Board, and they typically do it the same day for me. I can't make any promises for the Secretary of State, but they do react quickly to my request for reinstatement.

JFB: Okay. Well, that's good to know. You've got me wondering now, though, and I think it's probably as good a time as any to talk about the number of corporations that we have in North Carolina. But the question that popped in my head when you were speaking just now is how common a problem is this? How many suspensions do you have to issue in a given year?

MS: The average is probably somewhere between 3(00) and 400.

JFB: Wow! Okay. So, it's not a small number.

MS: No, it's not. Unfortunately, it's not.

JFB: Okay. Well, this is a very timely topic then. You know, to let those folks know, it is really, really important that you renew and it sounds like it's easy. So that's a bonus. Just did that in context. Can we talk about the total number of corporations?

MS: Sure.

JFB: PCs...PLLCs. What's the total grand total number that we have?

MS: Yes. At the end of last year, we had certifications for 5,282 PCs and PLLCs. We had. Yeah. More...a few more PLLCs than PCs in that number.

JFB: Okay, let's talk about trends. I mean, I have to admit I don't really know, you know, the difference between a PC and a PLLC and why one would choose one form over the other. But what has the trend been as far as the type of business?

MS: Sure. When I started at the Board in 2016, most of our corporation applications were definitely for professional corporations, probably as many as seven or eight out of every ten were PCs. Now that has flipped the other way and the large majority of the applications are for PLLCs and I am not a CPA and I am not an attorney, but my understanding is that that flip in the trend is all due to tax laws and changes in tax rate regulations. That our licensees are getting the advice from their attorneys or their CPAs that the PLLC structure is more the way that they want to go to have the most tax benefit from their corporation.

JFB: Okay. Interesting. And again, check with your attorney about what's best for your business, right?

MS: Yes. I mean, you know, and the Medical Board, I mean, we certainly don't care which corporation structure that you use, that is totally up to you. And so that's why we do encourage you to get advice from your CPA or your attorney.

JFB: Gotcha. Malinda, that is really the last of my questions about corporations and renewing corporations. Did you have anything else that you wanted to add before we conclude our discussion?

MS: The only other thing that I would say, and this kind of wraps up our discussion on renewals is every year I have a fairly large number of our licensees who will contact the Board and say, 'I got my renewal notice. I'm not going to renew because I'm closing my practice and I'm just going to let it lapse'. And you really can't just let it lapse as a method to close it. So, your corporation, you went through steps when you formed it to open it, you need to go through some precise steps to close it. And it's as easy as filing one form with the North Carolina Secretary of State. And that is a form that's called Articles of Dissolution. So, to close your practice, when you're finished with it for whatever reason, you will need to dissolve it and you will file that form with the Secretary of State and the Medical Board corporations are linked with the Secretary of State website. So, when those articles of dissolution are filed, I will get an automatic email from the Secretary of State letting me know that it's been dissolved and then your corporation will be formally closed in the North Carolina Medical Board database. So, you do not need to do anything directly with the Medical Board when you are dissolving your practice, but it does need to be dissolved.

JFB: Okay. Well, thank you very much for mentioning that. And thank you again for your time today. I hope this is helpful to licensees.

MS: You are so welcome. It's been a pleasure.

Episode closing: 29:26

Well, that brings us to the end of this information-packed episode of MedBoard Matters. I hope you learned everything you never knew you needed to understand about medical corporations. If you would like to access any of the online resources Malinda mentioned, please visit our podcast show page at www.ncmedboard.org/podcast. And, as always, you can reach us with your comments, questions, and suggestions by sending an email to podcast@ncmedboard.org. Finally, I wanted to take a moment to wish all of our listeners a peaceful holiday season and a happy and productive new year. MedBoard

Matters will be taking a winter hiatus in December and January. I hope you can find a way to take a little time to rest and restore as well. This is your host Jean Fisher Brinkley, signing off for 2023. Thank you for listening. I hope you will join us again in the new year.