

# Legal Q/A

**Q:** *What will happen to a medical practice if the sole shareholder of a professional corporation dies, or if a partner in a two-person partnership dies? Does the practice still exist as a viable legal entity?*

**A:** This reminds me of that ancient philosophical debate – if a tree falls in the woods and no one is around to hear it, does it make a sound? But seriously, the answer to the question is different for a professional corporation than for the partnership.

A professional corporation is a legal entity that has perpetual existence – it continues beyond the death of its owner until it is dissolved. Therefore, after the death of the sole shareholder, the corporation may continue to transact business, incur debts, have employees, participate in litigation (as either a plaintiff or defendant), enter into contracts, etc. But who actually owns the corporation if the physician dies since only a licensed physician may own shares in a professional corporation that is authorized to practice medicine?

The authors of the professional corporation law in New York anticipated this problem. The statute provides a window of six months in which the corporation can find a new owner. Usually that is accomplished through a sale of the stock by the estate of the deceased shareholder to another physician. If another physician does not purchase the shares within the six month period, the corporation *must* buy them back. And if that doesn't happen, the state will dissolve the corporation.

With a partnership, life – and death – are somewhat more complicated. A

partnership is a legal entity comprised of two or more partners (plural). You cannot be a partner with yourself. So, technically the death of a partner in a two-person partnership is considered an event of dissolution (a technical term of art which simply means a change in the constituency of the partnership) and upon dissolution, unless the business of the partnership is continued by the remaining partners (e.g., two or more persons), the partnership must wind up its business by liquidating its assets and paying off its creditors.

This can obviously create a bit of a problem for two-person medical practices that are organized as limited liability partnerships (LLPs), especially in those instances where there isn't another physician ready, willing and able to quickly assume partnership status in the practice upon the death of the partner. The remaining partner may find it necessary to form a new entity, such as a professional corporation or professional LLC (limited liability company), which doesn't require multiple owners, and unfortunately that may require a lot of legal and administrative housekeeping – new tax ID number, recredentialing with third-party payers, transferring assets, assigning offices leases and changing retirement plans.

Many LLPs were created through the simple expedient of filing a registration statement with the Department of State converting an existing general partnership into a limited liability partnership. Because of the complications that arise from the death of a partner in a two-person partnership, newly formed practices that do not expect to have more than two partners might be better off opting for a professional corporation or professional services LLC as their form of medical practice entity.