

## Death of a Veterinarian: Implications of the Veterinary Practice

Death of a loved one is a tenuous and trying time for those left behind. In addition to coping with one's emotions, those left behind are also tasked with sorting out the affairs of the decedent. These tasks may include collection of the estate assets and distribution, either through a will or pursuant to the laws of intestacy. Picking up the pieces and moving forward can be a particularly confusing and frustrating time when the loved one was a veterinarian who owned and operated a veterinarian practice. Without doubt there will be questions to consider, such as: 1. What happens to the veterinarian practice?; 2. Can I keep it and continue to operate it?; 3. What is the value of the veterinarian practice?; and 4. Are there special rules and regulations governing the operation of the veterinarian practice after death of the owner?

Knowledge can provide great comfort and make navigation of this seemingly complicated process much more manageable. It is imperative that the first question asked be: What is the corporate form of the veterinary practice? There are several forms of ownership that a professional practice such as a veterinary medicine practice can take. These forms include: 1. Sole Proprietorship; 2. Partnership and Limited Liability Partnerships; 3. Professional Corporations; and 4. Professional Limited Liability Companies. Each ownership structure is replete with its own set of governing laws. The corporate form, or lack thereof, will dictate not only the timing for distribution and valuation of any assets, but the viability and control of the veterinary practice moving forward. Below is a brief description of each ownership form and the specialized rules that accompany it.

Unsure of the form of ownership of the veterinary practice? A useful starting point is the New York State Department of State, Division of Corporations, State Records & UCC Corporate & Business Entity Database [the "DOS Entity Database"]. Here, (1) you can search by name to locate information on the veterinarian practice. However, the DOS Entity Database does not maintain records for sole proprietorships. As with any corporate form, the property of the business and the ownership rights of the business are assets of the estate of the decedent.

### A. Sole Proprietorship

A sole proprietorship is a business operated in the name of the veterinarian, or under an assumed name, with no separate legal ownership framework. Accordingly, the existence of the sole proprietorship terminates upon the death of the sole proprietor veterinarian. Therefore, there is no continued veterinary practice to operate. Since the assets of the sole proprietorship were in the name of the individual veterinarian, all assets of the practice pass to the estate.

The estate may not continue to operate the veterinary practice, as only a licensed professional may practice veterinary medicine. However, the estate is free to sell the assets of the decedent.

### B. Partnership and Limited Liability Partnerships

A Partnership, including a limited liability partnership, is an association of two or more persons who carry on as co-owners of a business for profit, and who share profits and losses. (2) New York Partnership Law § 62(4), provides, that absent a partnership agreement to the contrary, death of a partner automatically triggers dissolution of the partnership and distribution of the assets. "While the partnership is not terminated on dissolution, it continues merely for the purpose of winding up the partnership affairs and the process of winding up is an exclusive obligation and right of the surviving partner . . . . The executors of the dead partner have no right to participate in or interfere with the winding up processes by the surviving partner . . . . The only right of the executors of a deceased partner is to demand an accounting from the surviving partner upon completion of the winding up of its affairs." (3) As with all forms of ownership, any assets of the decedent become assets of the estate.

(1) [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html)

(2) New York Partnership Law § 10. Partnership Law § 90 further defines a limited partnership as having one or more general partners and one or more limited partners, with the limited partners not bound by the obligations of the partnership.

(3) *Niagara Mohawk Power Corp. v. Silbergeld*, 58 Misc.2d 285, 286 (Sup. Ct. Niagara Cnty. 1968).

However, it is important to consult the written partnership agreement, which may override this provision of law and allow the partnership to continue in certain circumstances after death of a partner and may also define what assets are to be disbursed to the decedent's estate.

### **C. Professional Corporations**

A professional corporation is a business entity created upon the filing of a certificate of incorporation, by one or more professionals who are licensed to provide the same professional service, which will bear the designation P.C. New York Business Corporation Law ("BCL") § 1510 specifically provides that upon the death of a shareholder, a professional service corporation shall purchase or redeem the shares of a shareholder within six months after appointment of the executor or other legal representative of the estate of the deceased shareholder. Section 1510 provides that the shares shall be purchased at the book value, as of the end of the month immediately preceding the death. Section 1510 also provides for attorneys' fees and costs to be awarded should an action need to be commenced to compel redemption of the shares. Significantly, the shares of the professional corporation may only be transferred or sold to someone eligible to have such shares (under BCL § 1503 only a duly licensed professional can be a shareholder in a professional corporation).

The certificate of incorporation, the by-laws of the corporation, or an agreement among the corporation and all shareholders may shorten the length of time permissible for redemption as well as modify the means for calculating the value of the purchase price of the shares.

Importantly, death of a shareholder of the professional corporation does not end the corporate form, unless the corporate governance documents provide otherwise. In other words, the corporate form of the veterinary practice continues to exist and may continue to operate after the death of the shareholder.

In the case of a sole shareholder professional corporation, the six month window for redemption or purchase of the shares is particularly important. "The continued existence and operation of the corporation is not restricted during that period, and the corporation may properly carry out its practice through the employment of authorized professionals." (In re Ols-son, 180 A.D.2d 739, 740 [2nd Dept. 1992]). However, an executor is not to be given carte blanche to practice unlicensed in the State. "A non-professional executor of an estate may not act within the professional capacity of a deceased sole shareholder in a professional corporation. In such situations the executor's role is limited solely to those administrative functions directed at preserving the value of the shares for the estate's heirs." (Community Burn & Wound Treatment Services., P.C. v. Staten Island University Hospital, 899 N.Y.S.2d 58, 58 [Sup. Ct. Richmond Cnty 2009]). In essence, the executor is relegated to provide administrative services and must be careful not to engage in improper fee splitting. The purpose of the authority granted by BCL § 1510 is to "facilitate the transmission of the value in the shares in a professional corporation to the heirs of the deceased owner . . . [Accordingly, a] person not authorized by law to practice in the profession in which the professional corporation is authorized to practice, may not be a director or officer of the professional corporation."

The six month period afforded by BCL § 1510 provides the opportunity to find a new eligible owner for the corporation, before it is dissolved. In other words, an unlicensed executor's role is limited to the liquidation and/or sale of the business.

### **D. Professional Service Limited Liability Companies**

New York Law defines a limited liability company as an unincorporated organization of one or more persons having limited liability for the contractual obligations and other liabilities of the business . . . other than a partnership or trust." (4) New York Limited Liability Company Law ("LLCL") § 1210 specifically provides, upon the death of a member, a professional limited liability company shall purchase or redeem the shares of a shareholder within six months after death or appointment of the executor or other legal representative of the estate of the deceased shareholder. (5) Section 1210 further provides that the membership interest shall be purchased at the book value, as of the end of the month immediately preceding the death. Section 1210 also provides for attorneys' fees and costs to be awarded should an action need to be commenced to compel redemption of the membership interest. The membership interest can also be sold or transferred to another professional in lieu of being redeemed. However, only an individual professionally licensed may purchase the decedent's membership interests. Accordingly, the estate may not become a member of the professional limited liability company, as an estate is not an entity entitled to be licensed as a veterinarian under the Education Law.

(4) LLCL § 102(m).

(5) This is in contrast to LLCL § 701, governing non-professional service limited liability companies, which states that death does not trigger an automatic dissolution and that the LLC shall continue to operate unless the majority of the members vote affirmatively to dissolve the LLC.

The operating agreement of the professional limited liability company may shorten the length of time permissible for redemption as well as modify the means for calculating membership interest value. It is also important to consult the operating agreement regarding the name of the professional limited liability company going forward, as LLCL § 1212 provides that a decedent's name may remain in the company's name.

As set forth above, agreements governing the operation of the veterinary practice may often modify the default laws in place concerning the disposition and value of the veterinary practice upon the death of the veterinarian. Accordingly, it is important to ensure that copies of any agreements are obtained and carefully followed to facilitate a smooth transition of the practice and its assets.

#### **E. Recordkeeping and Liability**

Death of the veterinarian does not cease New York State's recordkeeping requirements. New York State Law requires animal medical records must be maintained for a minimum of three years, from the date the animal was last seen by the veterinarian. (6) The law does not specify that this obligation ceases upon the death of the veterinarian. Additionally, the malpractice statute of limitations for veterinarians' in New York State is three years. (7) Accordingly, to assist in the protection of the estate from any future liability, it should be ensured that copies of the animal medical records are kept for a minimum of three years from the last treatment of the animal.

The estate and the decedent's loved ones need to pay special attention to the preservation and disposal of animal medical records where the decedent was a sole proprietor, a sole shareholder in a professional corporation, or a sole member in a professional limited liability company. In instances of multi-member professional limited liability companies and professional corporations, the animal medical records will remain the property of the respective business entities.

(6) *Rules of the New York Board of Regents ("Regents Rules"), Part 29.6(a)(3).*

(7) *New York Civil Practice Law and Rules §214(6).*