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## The Minnesota Professional Firms Act: A Primer

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The limited liability protections afforded by some business types have always had an uneasy coexistence with the notion of professional malpractice, and states have long grappled with striking the right balance between allowing professionals the ability to create a legal shield and allowing for consequences—legal and otherwise—when there is a lack of professional accountability.

Minnesota is no different in this regard. The Minnesota Professional Firms Act (Minnesota Statutes Chapter 319B) is at least the third iteration by the Minnesota legislature in attempting to create a legal and regulatory framework for professional liability. By statute, “professionals” are defined by Chapter 319(B) to include persons who practice in the following areas: medicine and surgery, physician assistant, chiropractic, registered nursing, psychology, social work, marriage and family therapy, dentistry and dental hygiene, pediatric medicine, veterinary medicine, architecture, geoscience, certified interior design, accountancy, or law.

The Minnesota Legislature enacted Chapter 319B in 1997 in part to include limited liability companies (LLCs) and limited liability partnerships (LLPs) within the definition of what constitutes a “professional firm.” Prior to the enactment of the original Minnesota Professional Corporations Act, many types of professionals could not practice their professions through any liability limiting entity (such as a corporation). Chapter 319 allowed these professionals to establish a corporation so long as they complied with the various provisions and restrictions of the statute.

The current Chapter 319B, however, is an “opt-in” overlay to an otherwise validly formed entity. In other words, if a group of professionals intends to form a corporation, limited liability company, or limited liability partnership through which to operate their business, they must follow the requirements of

the basic organizational statute for the entity, and they can elect to be further governed by the Minnesota Professional Firms Act.

Some professional licensing boards, however, require a 319B election. For example, the Lawyer's Board of Professional Responsibility requires a law firm to file under Chapter 319B as a professional firm, and a firm that fails to do so is considered to be engaged in the unauthorized practice of law. Veterinarians and chiropractors are also required to make the election. In contrast, the licensing statutes for accountants require a simple majority of those holding voting rights to be licensed but do not require a Chapter 319B election.

The "opt-in" nature of Chapter 319B results in a professional firm being governed by two organizational statutes. If the professional firm is a corporation, it is governed by Chapter 302A (the Minnesota Business Corporations Act) and the Minnesota Professional Firms Act. If the professional firm is a limited liability company, it is governed by Chapter 322B (the Minnesota Limited Liability Company Act) and the Minnesota Professional Firms Act.

### **Election**

The election is made in one of two ways:

If the election is made upon the initial formation of the entity, the organizational document (i.e., articles of incorporation for a corporation, articles of organization for an LLC, or statement of qualification for an LLP) will reference both governing statutes.

If the election is made at a later date, the organizational document is amended to reference both governing statutes.

An election to be governed by Chapter 319B has implications for ownership, governance, and regulatory compliance. Ownership interests in a professional firm may not be owned or held, either directly or indirectly, except by professionals who are licensed and not disqualified, general partnerships other than LLPs authorized to furnish at least one category of professional services, or other professional firms authorized to furnish at least one category of professional services. No other persons or entities may own ownership interests in the professional firm and any transfer (including transfers by will) are void. If an owners dies, Section 319B.08 requires the professional firm to acquire the owner's interest in the professional firm using the mechanisms provided for therein.

### **Governance**

With regard to governance, Section 319B.09 provides that no decision entailing the exercise of professional judgment may be delegated or assigned to anyone who is not a professional licensed to practice the professional services in the decision. Furthermore, any professional whose license is

revoked or suspended may not exercise governance authority. The purpose of these restrictions is to preserve professional independence and safeguard professional judgment.

## **Compliance**

With regard to regulatory compliance, Section 319B.11 requires the filing of a professional firm's organizational document, an initial report of owners and their addresses, the positions within the professional firm which exercise governance authority, and the names and addresses of the persons in those positions with the relevant licensing board. Professional firms are further required to file annual reports with such licensing board updating this information. A professional firm's failure to file these reports can result in a loss of its status as a professional firm.

Chapter 319B permits the merger of a professional firm with another entity, even if the other entity is not a professional firm. If the surviving entity is not in compliance with Chapter 319B, however, the Chapter 319B election is automatically rescinded and that entity must make an election to be governed by Chapter 319B.

The Minnesota Professional Firms Act provides a useful mechanism for professionals to operate within a liability limiting entity while at the same time restricting non-professionals from interfering with the exercise of professional judgment.