

REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION FOR PROFESSIONAL SERVICE CORPORATIONS

Act 192, P.A. 1962; MCLA 450.221; MSA 21.315(1)

Act 192, P.A. 1962 provides for the formation of professional service corporations, corporations which require the provider of a personal service to obtain a license before providing the service. Section 13 of that Act states Act 284, P.A. 1972 is applicable to professional service corporations except in those instances where the Acts are in conflict with each other.

Act 192 does not include all of the information to be included in documents filed for professional service corporations. Consequently, Act 284, P.A. 1972 must be consulted for this information.

Section 202, Act 284, P.A. 1972 lists information required in the articles of incorporation. In order to incorporate as a professional service corporation, Articles I through V of form C&S 501 MUST be completed to reflect this information.

Act 284 also contains many additional provisions which may be contained in the articles. These provisions should appear as additional Articles beginning with Article VI. Two such provisions which are commonly added to the Articles of Incorporation are included in form C&S 501 as Articles VI and VII. They may be deleted if the incorporators do not wish them included.

The document must be reviewed to determine that it substantially complies with the act. For example, provisions must conform to law and be consistent with attorney general opinions, guidelines and policies; the name must be available for use; the incorporators must sign; fees must be paid; etc.

Following are specific items to be considered in determining whether or not the Articles of Incorporation can be filed.

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
Except for the corporate name, the document must be drafted in the English language. The corporate name need not be in English words but must be written in English letters or Arabic or Roman numerals.	BCA 132(1)
<u>ARTICLE I</u>	
The name must be checked for availability. The following must be considered in doing so:	
1. The corporate name must contain the words Professional Corporation or the abbreviation P.C.	PSCA 11
2. The corporate name may not indicate or imply that the corporation is engaged in an activity other than that provided in the purposes.	BCA 212(1)(a) PSCA 13
3. The corporate name must be distinguishable from any active name of a corporation, limited partnership, or limited liability company, including:	BCA 212(1)(b) PSCA 13 Guideline adopted 1-28-83
a) a corporate name	
b) a limited partnership name	
c) a limited liability company name	
d) an assumed name for a corporation, limited partnership or limited liability company	Policy Statement C-40
e) a reserved name	
f) a name registered by a foreign corporation	

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

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<p>4. The corporate name shall not contain a word or phrase or the abbreviation or derivative of a word or phrase, which is prohibited or restricted by any other state statute unless the restriction is complied with.</p> <p>5. Various state and federal statutes prohibit or restrict the use of certain words or abbreviations in names of corporations. The NAMES program in the computer system searches for any of these words which have been identified when inquiry regarding name availability is made and displays a message that the proposed name contains a word or abbreviation which may be prohibited or restricted from use.</p> <p>6. BIDCO (Business and Industrial Development Corporation)</p> <p>7. The word "medicare" could be misleading in a corporate name.</p> <p>8. The words "Emergency Medical Services" may be used in the name of a corporation without requiring the corporation to be a professional service corporation provided the articles clearly state the purpose of the corporation is to carry out purposes of U.S. Public Law 93-154, Sections 1203 and 1204 (the Emergency Medical Services Act of 1973) or PA 368 of 1978, being MCLA 333.20701-333.20773 (the Emergency Medical Services Act).</p>	<p>BCA 212(1)(c) PSCA 13</p> <p>See RESTRICTED WORD list.</p> <p>Policy Statement C-48</p> <p>Policy Statement C-15 See separate BIDCO section.</p> <p>Special Opinion 184 42 USC 1320b-10</p> <p>G. Ann Baker memo to document examiners dated 10-30-89</p>
<u>ARTICLE II</u>	
<p>1. Must specify the professional service for which the corporation is incorporated. An all purpose clause may not be used.</p> <p>2. More than one profession may be specified.</p> <p>3. Dentist may not practice acupuncture.</p> <p>4. Chiropractors may not practice acupuncture but osteopathic doctors can.</p> <p>5. Agents authorized by the Secretary of Treasury to practice before the Internal Revenue Service (enrolled agents) may incorporate pursuant to the Professional Service Corporation Act.</p> <p>6. A corporation organized to provide osteopathic services may not be formed solely under the Business Corporation Act.</p>	<p>PSCA 7</p> <p>PSCA 2(b) 4(2) 7</p> <p>AG Opinion dated 10-25-74 (Our No. 239)</p> <p>AG Opinion 4832 dated 2-13-75 (Our No. 240)</p> <p>AG Opinion 5483 dated 4-20-79 (Our No. 245)</p> <p>AG Opinion 5676 dated 4-8-80 (Our No. 250)</p>

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

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<p align="center"><u>ARTICLE IV</u></p> <p>1. The address of the registered office must be completed. This address is a physical location and must include number, street, city and zip code. The route, suite, or apartment number must also be included if applicable. Except for the exceptions cited in Policy Statement C-32, this address must be in Michigan and cannot be a post office box.</p> <p>2. It is permissible to have a mailing address of the registered office that differs from the street address. Except for the exceptions cited in Policy Statement C-32, the mailing address must be a Michigan address. A P.O. box is permitted.</p> <p>3. The name of the resident agent must be completed. Each domestic corporation must name and continuously maintain a resident agent, who must be one of the following:</p> <p>a) An individual resident of Michigan whose business office or residence is identical with the registered office.</p> <p>b) A domestic corporation having a business office identical with the registered office.</p> <p>c) A foreign corporation authorized to transact business in Michigan having a business office identical with the registered office.</p> <p>4. The following are not acceptable as resident agents:</p> <p>a) Dissolved or withdrawn corporations.</p> <p>b) Limited partnerships</p> <p>c) Partnerships generally</p> <p>d) Limited liability companies</p> <p>e) Limited liability partnerships</p>	<p>BCA 202(f) 241(a) Policy Statement C-32</p> <p>BCA 202(f) Policy Statement C-32</p> <p>BCA 202(f) 241(b)</p>
<p align="center"><u>ARTICLE V</u></p> <p>1. The names and addresses of the incorporators must be reflected. One incorporator is sufficient.</p> <p>2. The incorporator may be an individual and must be licensed to perform at least one of the professional services for which the corporation is formed.</p> <p>An incorporator may also be a corporation so long as it is incorporated to perform the same professional service for which the corporation is being formed.</p>	<p>PSCA 4(1) BCA 201 202(g) Policy Statement C-16</p> <p>PSCA 4(1) Policy Statements C-2 and C-16</p> <p>PSCA 7</p>

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
<p>3. Minors may not act as incorporators, officers or directors of corporations.</p>	AG Opinion 5893 dated 5-8-81 (Our No. 254)
<p>4. Incorporators select the first board of directors and may adopt bylaws.</p>	BCA 223
<p><u>ARTICLE VI</u></p>	
<p>This is an optional provision. If the incorporators do not wish it in the articles of incorporation, it may be deleted.</p>	BCA 204
<p><u>ARTICLE VII</u></p>	
<p>The articles of incorporation must contain this provision if the shareholders are to have the ability to take action by written consent of at least a majority of the outstanding shares without a meeting. If this provision is omitted in the articles, the shareholders are limited to taking action at a meeting or by written consent of all of the outstanding shares. The provision may be deleted if the incorporators do not wish it in the articles of incorporation.</p>	BCA 407(1) 407(2)
<p><u>ARTICLE VIII</u></p>	
<p>The articles of incorporation must contain this provision or one with the same meaning.</p>	Policy Statement C-2
<p><u>ADDITIONAL ARTICLES</u></p>	
<p>This space may be used to continue previous Articles or to reflect additional provisions permitted or required to be part of the articles of incorporation. Examples of such provisions are:</p>	
<p>1. Corporate term, if other than perpetual.</p> <p>If the term is reflected as a specific number of years, compute the term expiration date from the date of filing the articles or, if there is an effective date, from the effective date.</p>	BCA 202(h) Special Opinion 291
<p>2. Exemption from personal liability for directors. The provision may not provide for exemption from liability beyond that provided for in the Act nor may it provide for limiting liability on a date earlier than the effective date of the document which originally contained the provision.</p>	BCA 209(c)
<p>3. Bylaws</p>	BCA 231
<p>4. Powers</p>	BCA 261
<p>5. SHARES / SHAREHOLDERS</p>	
<p>a) Redemption of shares</p>	BCA 304a
<p>b) Powers granted to the board of directors may be reserved to the shareholders</p>	BCA 314(1)

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

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c) Nonassessability of shares	BCA 314(4)
d) Personal liability of shareholders for acts or debts of the corporation	BCA 317(4)
e) Dividends	BCA 341a 345
f) Pre-emptive rights	BCA 343
g) Acquisition of a corporation's own shares	BCA 344
h) Treasury shares	BCA 344(4)
i) Cancellation of shares	BCA 344
j) Rights conferred on bondholders	BCA 391
k) Participating in meeting by conference telephone or similar communication equipment.	BCA 405
l) Taking corporate action without a meeting	BCA 407
m) Quorum at meeting	BCA 415
n) Voting	
1) determining shareholders eligible to vote	BCA 412 444 445 446 447a 448
2) each share entitled to 1 vote (The articles can provide, in the case of 2 or more classes or series, that a class or series shall not have voting rights. They cannot provide that all shares are non-voting.)	BCA 441(1)
3) voting as a class	BCA 442
4) number of votes required for passage	BCA 441(2) 442(1) & (2)
5) cumulative voting (for directors only)	BCA 451
6) supermajority vote by shareholders (vote of more than a majority of issued shares required)	BCA 455
7) proxies	BCA 421 422 423

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

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o) Management by shareholders instead of directors	BCA 463
p) Transfer of shares	BCA 471 472 473 PSCA 10
r) Shareholder dissent to corporate action	BCA 762
6. DIRECTORS	
a) Management by shareholders instead of directors	BCA 463 501
b) Qualifications for directors	BCA 501
c) Minors may not act as incorporators, officers, or directors of corporations	AG Opinion 5893 dated 5-8-81 (Our No. 254) Special Opinion 105
d) Fixing number	BCA 505(1)
e) Term of office	BCA 505(2) 506
f) Election or appointment	BCA 505(2) 505(3)
g) Division into classes	BCA 506
h) Removal	BCA 511 514
i) Filling vacancies	BCA 515a
j) Participation in meeting of board by conference telephone or similar communication equipment	BCA 521(3)
k) Quorum at meeting	BCA 523
l) Action without a meeting	BCA 525
m) Committees	BCA 527 528
n) Indemnification (Cannot exceed statutory limits as to who, the types of actions, etc. which can be covered)	BCA 561-567

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

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<p>7. OFFICERS</p> <p>a) Election or appointment</p> <p>b) Minors may not act as incorporators, officers, or directors of corporations.</p> <p>c) Indemnification (cannot exceed statutory limits as to who, the types of action, etc. which can be covered)</p>	<p>BCA 531</p> <p>AG Opinion 5893 dated 5-8-81 (Our No. 254)</p> <p>BCA 561-567</p>
<p>8. Exemptions regarding business combinations</p>	<p>BCA 783 784</p>
<p>9. Control share acquisitions</p> <p>a) Exemption</p> <p>b) Redemption</p>	<p>BCA 794</p> <p>BCA 799</p> <p>BCA 805</p>
<p>10. Dissolution</p> <p align="center"><u>EFFECTIVE DATE</u></p> <p>An effective date, not more than 90 days after the date of receipt, is permitted. The desired effective date must be reflected in the body of the document. Inserting it in the "Bureau Use Only" area is not sufficient.</p> <p align="center"><u>SIGNATURE</u></p> <p>Must be signed in ink by at least one of the incorporators named in Article V.</p> <p>The person signing on behalf of a corporation acting as an incorporator must be that of the president or a vice-president of the corporation, chairperson or vice-chairperson of the board of directors.</p> <p>A person may sign on behalf of an individual if he has a specific power of attorney to do so. An indication that the signature is that of an attorney-in-fact is not required.</p> <p align="center"><u>FEES</u></p> <p>Nonrefundable filing fee - \$10.00</p> <p>Organization fee - \$50.00 if the number of shares is 60,000 or fewer. For shares in excess of 60,000 but less than 10,000,001, this fee is \$50.00 plus \$30.00 for each 20,000 shares or portion thereof in excess of 60,000 up to a maximum of \$5,000. For shares in excess of 10,000,000, this fee is \$5,000 plus \$30.00 for each 20,000 shares or portion thereof in excess of 10,000,000 up to a maximum of \$200,000 total.</p>	<p>BCA 131(3) Policy Statement C-19</p> <p>BCA 201 Policy Statement C-16</p> <p>BCA 132(2)</p> <p>Procedure re: Signatures</p> <p>BCA 1060(1)(a) & 1060(2) Policy Statement C-9 Policy Statement C-5 Policy Statement C-33</p> <p>BCA 1062(1) Policy Statement C-9 Policy Statement C-5</p>

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

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<p align="center"><u>MISCELLANEOUS</u></p> <p>1. All shareholders must be licensed in at least one of the professions for which the corporation is formed except those included in the public health code. If the corporation is performing a service included in the public health code, all shareholders must be licensed in the profession.</p> <p>2. All shareholders engaged in a profession licensed under the Public Health Code must be licensed in Michigan.</p> <p>Generally, shareholders of corporations engaged in professions not licensed under the Public Health Code may be licensed in Michigan or in any other state or country, except when otherwise required.</p> <p>3. An individual who is licensed in a jurisdiction other than Michigan may become an officer, director, shareholder, employee or agent of the corporation in Michigan but could not practice the profession until the individual is licensed or otherwise legally authorized to practice the profession in Michigan, except when otherwise prohibited.</p> <p>4. Whether or not a person is "legally authorized" to practice the profession may be contained in statute, rules of ethics of the professional, etc.</p> <p>Example: The rules of ethics for the legal profession prohibit an attorney from using his/her status as an attorney to solicit customers for another business, and an advertisement by an attorney intended to aid in such solicitation is improper.</p> <p>Example: It would be unethical for an attorney to form an association with non-lawyers to provide services, including medical and legal evaluation of claims, under one corporation.</p> <p>5. Form C&S 500 is acceptable in place of C&S 501 provided the following modifications are made to the form:</p> <p>a) Change the act number in the preamble from 284, P.A. 1972 to 192, P.A. 1962.</p> <p>b) Delete the all purpose clause in Article II and replace with a statement identifying the specific professional service for which the corporation is formed.</p> <p>c) Add the statement contained in Article VIII of form C&S 501. If this statement, or a statement with the same meaning, is already contained elsewhere in the document, this step may be omitted.</p> <p>d) Change form number from C&S 500 to C&S 501.</p>	<p>PSCA 4(2) Policy Statement C-2 Release 94-1a-C</p> <p>PSCA 4(3)</p> <p>PSCA 4(2)</p> <p>PSCA 4(4)</p> <p>Policy Statement C-1</p>

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

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6. Members of the board of directors are not required to be licensed.	PSCA 4(4), 5
7. The incorporation of the learned professions is permissible only under the Professional Service Corporation Act. The professions constituting the "learned" professions are medicine, law and divinity. Since divinity is a nonprofit activity, it would not fall within the scope of the Professional Service Corporation Act.	AG Opinion 5676 dated 4-8-80 (Our No. 250) Special Opinion 251
8. A list of the professions required to be licensed under the public health code are:	
a) OCCUPATIONS / PROFESSIONS	
	<u>MCL</u>
Ambulance Attendants	333.20707
Chiropractic	333.16411
Dentistry	333.16611
Dry Cleaners, Class IV	333.13305
Emergency Medical Technician	333.20707
Emergency Medical Technician, Advanced	333.20707
Emergency Medical Technician Specialist	333.20707
EMT Instructor / Coordinator	333.20707
Food Service Establishments	333.12904
Health Maintenance Organizations	333.21011
Home for the Aged	333.21311
Hospice	333.21411
Hospital	333.21501
Medicine and Surgery	333.17011
	333.17511
	<u>MCL</u>
Nursing	333.17211
Nursing Homes	333.21702
Optometry	333.17411
Osteopathy	333.17512
Pharmacy	333.17711
Physical Therapy	333.17820
Physician Assistant	333.17011
	333.17511
Podiatric Medicine and Surgery	333.18011
Psychology	333.18211
Radioactive Material	333.13505
Veterinary	333.18811
Waste Generator/Processor/Collector	333.13271a
	<u>MSA</u>
	14.15(20707)
	14.15(16411)
	14.15(16611)
	14.15(13305)
	14.15(20707)
	14.15(20707)
	14.15(20707)
	14.15(20707)
	14.15(20707)
	14.15(12904)
	14.15(21011)
	14.15(21311)
	14.15(21411)
	14.15(21501)
	14.15(17011)
	14.15(17511)
	14.15(17211)
	14.15(21702)
	14.15(17411)
	14.15(17512)
	14.15(17711)
	14.15(17820)
	14.15(17011)
	14.15(17511)
	14.15(18011)
	14.15(18211)
	14.15(13505)
	14.15(18811)
	14.15(13721a)
LIMITED LICENSES	
Chiropractic	333.16412
Medicine, postgraduate study	333.17012
Osteopathy, postgraduate study	333.17512
Pharmacist intern	333.17737
Podiatrist, postgraduate study	333.18012
Psychology; postdoctoral training	333.18212

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
HEALTH PROFESSION SUBFIELDS	
Licensed Practical Nurse	333.17211
Physician's Assistant	333.17011
	333.17511
Sanitarian, Registered	333.18411
Veterinary Technician	333.18811
<p>9. A list of professions which can be incorporated only under the Professional Service Corporation Act are:</p> <p>Attorneys - (Learned Profession Doctrine) Certified Public Accountants - (MCL 339.705) Dentists - (MCL 338.215) Ophthalmologists - (Learned Profession Doctrine) Physicians - (Learned Profession Doctrine) Psychologists - (Special Opinion 351) Psychiatrists - (Learned Profession Doctrine)</p> <p>The "learned profession doctrine" is explained in AG Opinion 5676 (our no. 250) and in a special opinion received from the Office of Attorney General in 1980 (our no. 351). In summary, the learned profession doctrine holds that learned professions are not permitted to be practiced as corporate entities due to a four-point rationale which states:</p> <ol style="list-style-type: none"> 1) That the limited liability of the corporate form is not appropriate where the client must place a high degree of trust and confidence in the person rendering the services; 2) That it is impossible for a corporation to perform the licensing and ethical requirements of certain professions; 3) That confidential and professional relationships could be destroyed by nonprofessional shareholders who are only interested in profit; 4) That nonprofessionals should not be permitted to render professional services in any way, such as you might be able to do in the corporate form. <p>Those professionals that have long been recognized by court decisions to constitute learned professions are those constituting the practice of law, medicine, or divinity. As the latter is a nonprofit activity, it would not fall within the scope of the Professional Service Corporation Act.</p>	<p>14.15(17211) 14.15(17011) 14.15(17511) 14.15(18411) 14.15(18811)</p>

**REVIEW PROCEDURES FOR C&S 501 - ARTICLES OF INCORPORATION
FOR PROFESSIONAL SERVICE CORPORATIONS**

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<p>10. A list of professions that can be incorporated under either the Professional Service Corporation Act or the Business Corporation Act are (this list is not all-inclusive):</p> <ul style="list-style-type: none"> Anesthesiologists Architects Barbers Chiropractors Community Planners Cosmetologists Electrologists Enrolled Agents (with Treasury Department) Funeral Homes Hearing Aid Dealers Insurance Agents Landscape Architects Land Surveyors Marriage Counselors Nurses Optometrists Pharmacists Physical Therapy Physician Assistants Private Employment Agencies Professional Engineers Social Workers Veterinarians 	<p>AG OPINION dated 3-9-38</p> <p>AG OPINION 5483 dated 4-18-79 (Our No. 245)</p>
<p>11. Artfully drafted provisions which relate to the operation of a corporation but not its formation will be permitted when accompanied by letter from legal counsel which clearly states an opinion that the provision is permissible under the act.</p>	<p>Policy Statement C-1</p>
<p>12. The phrase "except as otherwise provided in the articles of incorporation" or "unless otherwise provided in the articles" is interpreted to mean the provision is not mandatory and the articles may state the provision does not apply.</p>	<p>Special Opinion 274</p>