

TITLE 7. PROFESSIONAL ENTITIES

CHAPTER 301. PROVISIONS RELATING TO PROFESSIONAL ENTITIES

Revised Law:

Sec. 301.001. APPLICABILITY OF TITLE. (a) This title applies only to a professional entity or foreign professional entity.

(b) This title does not affect:

(1) the professional or confidential relationship between a person who provides a professional service and the recipient of that service; or

(2) a person's legal remedies against another person who commits an error, omission, negligent or incompetent act, or malfeasance while providing a professional service.

(c) This title does not apply to partnerships or limited liability partnerships.

Source Law:

TPCA 16 (first two sentences)

Sec. 16. The provisions of this Act shall not be construed to alter or affect the professional relationship between a person rendering professional service and a person receiving such service, and all such confidential relationships enjoyed under this state shall remain unchanged. Nothing in this Act shall remove or diminish any rights at law that a person receiving professional service shall have against a person rendering professional service for errors, omissions, negligence, incompetence or malfeasance.

TPAA 7

Sec. 7. This Act does not alter any law applicable to the relationship between a person furnishing professional service and a person receiving such professional service including liability arising out of such professional service.

TLLCA 11.05.A (first two sentences)

Art. 11.05. A. Notwithstanding anything contained in Article 4.03 of this Act to the contrary, this Act does not alter or affect the professional relationship between a person rendering professional service and a person receiving the service, and a confidential relationship enjoyed in this state between those persons remains unchanged. This Act does not remove or diminish any rights at law that a person receiving professional service has against a person rendering the service for an error, an omission, negligence, incompetence, or malfeasance.

Revisor's Note:

No substantive change is intended. New Subsection (a) of the revised law clarifies the scope of Title 7. The extension of the rule provided by subsection (b)(2) to professional

associations clarifies a slight ambiguity in TPAA Section 7 and conforms these rules for all types of professional entities.

Subsection (c) clarifies that nothing in Title 7 is intended to prevent a partnership or limited liability partnership from providing professional services. This is so because the defined term "professional entity" does not include partnerships or limited liability partnerships.

Revised Law:

Sec. 301.002. CONFLICTS OF LAW. This title prevails over a conflicting provision of Title 1, 2, or 3.

Source Law:

TPCA 5

. . . This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law.

TPAA 25

. . . This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law.

Revisor's Note:

No substantive change is intended. Title 1 will apply to professional entities. Sections 302.001, 303.001 and 304.001 make portions or all of Titles 2 or 3 applicable to separate types of professional entities. These provisions are intended to provide that, for purposes of the Code, professional corporations and professional associations are treated like for-profit corporations except to the extent modified or qualified by Title 7, and likewise, professional limited liability companies are treated like limited liability companies except to the extent modified or qualified by Title 7. While the supersedence of the TPCA and TPAA over the TBCA is explicit in those Acts, it is only implicit in Part Eleven of the TLLCA, which governs professional limited liability companies, with respect to the remainder of the TLLCA.

Revised Law:

Sec. 301.003. DEFINITIONS. In this title:

(1) "Licensed mental health professional" means a person, other than a physician, who is licensed by the state to engage in the practice of psychology or psychiatric nursing or to provide professional therapy or counseling services.

(2) "Professional association" means an association, as distinguished from either a partnership or a corporation, that is:

(A) formed for the purpose of providing the professional service rendered by a doctor of medicine, doctor of osteopathy, doctor of podiatry, dentist, chiropractor, optometrist, therapeutic optometrist, chiropractor or licensed mental health professional; and

(B) governed as a professional entity under this title.

(3) "Professional corporation" means a corporation that is:

(A) formed for the purpose of providing a professional service that by law a corporation governed by Title 2 is prohibited from rendering; and

(B) governed as a professional entity under this title.

(4) "Professional entity" means a professional association, professional corporation, or professional limited liability company.

(5) "Professional individual," with respect to a professional entity, means an individual who is licensed to provide in this state or another jurisdiction the same professional service as rendered by that professional entity.

(6) "Professional limited liability company" means a limited liability company formed for the purpose of providing a professional service and governed as a professional entity under this title.

(7) "Professional organization," with respect to a professional corporation or a professional limited liability company, means a person other than an individual, whether nonprofit, for-profit, domestic, or foreign and including a nonprofit corporation or nonprofit association, that renders the same professional service as the professional corporation or professional limited liability company only through owners, members, managerial officials, employees, or agents, each of whom is a professional individual or professional organization.

(8) "Professional service" means any type of service that requires, as a condition precedent to the rendering of the service, the obtaining of a license in this state, including the personal service rendered by an architect, attorney, certified public accountant, dentist, physician, public accountant, or veterinarian.

Source Law:

TLLCA 11.01.A(3)

(3) Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may organize a professional limited liability company that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When doctors of medicine, osteopathy, and podiatry organize a professional limited liability company that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the

respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The Texas State Board of Medical Examiners and the Texas State Board of Podiatric Medical Examiners continue to exercise regulatory authority over their respective licenses.

TLLCA 11.01.B(1), (2), (3) and (4)

(1) "Professional service" means any type of personal service that requires as a condition precedent to the rendering of the service the obtaining of a license, permit, certificate of registration, or other legal authorization, including the personal service rendered by an architect, attorney-at-law, certified public accountant, dentist, doctor, physician, public accountant, surgeon, or veterinarian.

(2) "Professional limited liability company" means a limited liability company that is organized under this Act for the sole and specific purpose of rendering professional service and that has as its members only professional individuals or professional entities.

(3) "Professional individual," with respect to any professional limited liability company, means an individual who is licensed or otherwise authorized to render the same professional service as such professional limited liability company, either within this state or in any other jurisdiction.

(4) "Professional entity," with respect to any professional limited liability company, means a person (other than an individual), whether organized for profit or not, including corporations organized under the Texas Non-Profit Corporation Act (Article 1396-1.01, Vernon's Texas Civil Statutes), and unincorporated associations governed by the Texas Uniform Unincorporated Nonprofit Association Act (Article 1396-70.01, Vernon's Texas Civil Statutes), that renders the same professional service as such professional limited liability company only through partners, members, shareholders, managers, directors, associates, officers, employees, or agents who are professional individuals or professional entities.

TPCA 3(a) and (b)

(a) "Professional Service" means any type of personal service which requires as a condition precedent to the rendering of such service, the obtaining of a license, permit, certificate of registration or other legal authorization, and which prior to the passage of this Act and by reason of law, could not be performed by a corporation, including by way of example and not in limitation of the generality of the foregoing provisions of this definition, the personal services rendered by architects, attorneys-at-law, certified public accountants, dentists, public accountants, and veterinarians; provided, however, that physicians, surgeons and other doctors of medicine are specifically excluded from the operations of this Act, since

there are established precedents allowing them to associate for the practice of medicine in joint stock companies.

(b) "Professional Corporation" means a corporation organized under this Act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise duly authorized within this state to render the same professional service as the corporation.

TPCA 4(b)

(b) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional corporation under this Act to perform professional services that fall within the scope of practice of those practitioners. When professionals engaged in related mental health fields form a corporation under this Act, the authority of each of the practitioners is limited by the scope of practice of the respective practitioner, and none can exercise control over the others' clinical authority granted by their respective licenses, whether through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by a practitioner. The state agencies exercising regulatory control over professions to which this subsection applies continue to exercise regulatory authority over the respective licenses of the professionals.

TPCA 12 (first sentence)

A professional corporation may issue shares representing ownership of the capital of the professional corporation only to individuals, and in the case of a professional legal corporation, individuals, professional legal corporations and foreign professional legal corporations, which are duly licensed or otherwise legally authorized to render the same type of professional service as that for which the corporation was organized.

TPCA 15

Sec. 15. A professional corporation may render professional service in this state only through its officers, employees and individual agents who are duly licensed to render such professional service in this state or through agents of the professional corporation that are themselves professional corporations that render such professional service only through officers and employees of the agent who are so licensed, and a professional legal corporation may render professional legal service in this state only through its officers, employees and individual agents who are duly licensed to render professional legal service in this state or through agents of the professional legal corporation that are themselves professional legal corporations or foreign professional legal corporations that render professional legal service in this state only through officers, employees and agents who are duly licensed to render professional legal service in this state; provided, however, that this provision shall not be interpreted to

include within such prohibition employees such as clerks, secretaries, bookkeepers, technicians, nurses, assistants and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required; and further provided, that no person shall, under the guise of employment, practice a profession in this state unless duly licensed or otherwise legally authorized to practice that profession under the laws of this state.

TPAA 2

Sec. 2. (A) Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry, or optometry or therapeutic optometry, or chiropractic, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

(B) Licenses. (1) Except as provided by this subsection, all members of the association shall be licensed to perform the type of professional service for which the association is formed.

(2) Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may form an association that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners.

(3) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form an association that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

(4) When doctors of medicine, osteopathy, and podiatry or mental health professionals form an association that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The state agencies exercising regulatory control over professions to which this subdivision applies continue to exercise regulatory authority over their respective licenses.

TPAA 3

Sec. 3. As used in this Act, the term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license, and which service by law cannot be

performed by a corporation. The term "license" includes a license, certificate of registration or any other evidence of the satisfaction of state requirements.

Revisor's Note:

No substantive change is intended. Although the language in the definition of "professional association" in Section 301.003 differs from the present language of the TPAA regarding formation of professional associations, the change is consistent with interpretations of existing law. The definition makes clear that the formation of a professional association is limited to persons licensed to practice certain types of professional services specifically described in Section 2 of the TPAA. The section, in part, codifies the decision rendered in Forrest N. Welmaker, Jr. v. The Honorable Henry Cuellar, Secretary of State, 37 SW 3d 550 (Tex. Civ. App.—Austin 2001, pet. denied), as well as interpretations of the provisions of the TPAA by the Texas Attorney General [Op. Tex. Att'y Gen. No. M-551 (1970)]. The expansion of permitted professional services by the Texas Legislature in 1999 and 2001 are carried over into this provision.

Currently, the provisions of the TPAA, TPCA, and TLLCA only provide examples of those professionals who would be considered a "licensed mental health professional." For purposes of clarification, a definition of the term "licensed mental health professional" is included in Section 301.003. The new definition is consistent with the current provisions of the TPAA, TPCA, and TLLCA. The definition is similar to the definition of "mental health professional" found in Section 164.003 of the Health & Safety Code.

Revised Law:

Sec. 301.004. AUTHORIZED PERSON. For purposes of this title, a person is an authorized person with respect to:

- (1) a professional association if the person is a professional individual; and
- (2) a professional corporation or a professional limited liability company if the person is a professional individual or professional organization.

Source Law:

TPCA 12 (first and second sentences)

A professional corporation may issue shares representing ownership of the capital of the professional corporation only to individuals, and in the case of a professional legal corporation, individuals, professional legal corporations and foreign professional legal corporations, which are duly licensed or otherwise legally authorized to render the same type of professional service as that for which the corporation was organized. Except to the extent provided in the Articles of Incorporation, the bylaws or any applicable stock purchase

or redemption agreement, shares representing ownership of professional corporation capital shall be freely transferable by any shareholder to any other shareholder, or to the professional corporation which issued such shares or to any person, and in the case of a professional legal corporation, to any professional legal corporation or foreign professional legal corporation, who or which is not a shareholder, provided such person is duly licensed or qualified under the laws of this state, or in the case of a professional legal corporation, such person, professional legal corporation or foreign professional legal corporation is duly licensed or otherwise duly authorized to render professional legal service, and such transferee shall thereupon become a shareholder and be entitled to participate in the management, affairs, and profits of the professional corporation.

TPCA 15

Sec. 15. A professional corporation may render professional service in this state only through its officers, employees and individual agents who are duly licensed to render such professional service in this state or through agents of the professional corporation that are themselves professional corporations that render such professional service only through officers and employees of the agent who are so licensed, and a professional legal corporation may render professional legal service in this state only through its officers, employees and individual agents who are duly licensed to render professional legal service in this state or through agents of the professional legal corporation that are themselves professional legal corporations or foreign professional legal corporations that render professional legal service in this state only through officers, employees and agents who are duly licensed to render professional legal service in this state; provided, however, that this provision shall not be interpreted to include within such prohibition employees such as clerks, secretaries, bookkeepers, technicians, nurses, assistants and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required; and further provided, that no person shall, under the guise of employment, practice a profession in this state unless duly licensed or otherwise legally authorized to practice that profession under the laws of this state.

TPAA 10

Sec. 10. Shares or units of ownership in a professional association shall be transferable to persons licensed to perform the same type of professional service as that for which the professional association was formed.

TLLCA 11.01.B(2) and (3)

(2) "Professional limited liability company" means a limited liability company that is organized under this Act for the sole and specific purpose of rendering professional service and that has as its members only professional individuals or professional entities.

(3) "Professional individual," with respect to any professional limited liability company, means an individual who is licensed or otherwise authorized to render the same professional service as such professional limited liability company, either within this state or in any other jurisdiction.

Revisor's Note:

The revised law intends no substantive change to the ownership provisions relative to professional associations, which remains limited to professional individuals. However, the inclusion of professional corporations in Section 301.004(2) has the effect of changing the ownership provisions relative to professional corporations found in Section 12 of the TPCA, which limits ownership in a professional corporation, other than a professional legal corporation, to professional individuals.

Revised Law:

Sec. 301.005. APPLICATION FOR REGISTRATION OF FOREIGN PROFESSIONAL ENTITY. (a) When required by Chapter 9, a foreign professional entity must file an application for registration to transact business in this state.

(b) The secretary of state may accept an application filed under Subsection (a) only if:

(1) the name and purpose of the foreign professional entity stated in the application comply with this title and Chapters 2 and 5; and

(2) the application states that the jurisdiction of formation of the foreign professional entity permits reciprocal admission of an entity formed under this code.

Source Law:

TPCA 19A

Sec. 19A. (a) A foreign professional legal corporation may apply for a certificate of authority to perform professional legal service in this state by filing an application in accordance with the Texas Business Corporation Act. The Secretary of State may not issue the certificate unless the name of the corporation or the name the corporation elects in this state meets the requirements of Section 8 of this Act. . . .

(b) A certificate may not be issued to a corporation under this section unless the application for such certificate of authority includes a statement that the jurisdiction in which the corporation is incorporated would permit reciprocal admission of such corporation if it were incorporated in this state.

TLLCA 11.07.A

Art. 11.07. A. A foreign professional limited liability company may apply for a certificate of authority to perform professional service in this state by filing an application in accordance with Part Seven of this Act. The Secretary of State

may not issue the certificate unless the name of the foreign professional limited liability company or the name it elects in this state meets the requirements of Article 11.02 of this Act. . . .

Revisor's Note:

Under existing law, a foreign professional association and a foreign professional corporation, other than a professional legal corporation, cannot obtain a certificate of authority from the Secretary of State to transact business in Texas. In contrast, the provisions of the TLLCA provided a qualification process for a foreign professional limited liability company. Section 301.005 makes Chapter 9 (relating to the registration of foreign entities) applicable to foreign professional entities, thus providing a qualification process otherwise unavailable under existing law to foreign professional corporations and professional associations, so long as reciprocal rights are granted to domestic professional entities by the state where the foreign professional entity is formed.

Revised Law:

Sec. 301.006. LICENSE REQUIRED TO PROVIDE PROFESSIONAL SERVICE. (a) A professional association or foreign professional association may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom:

(1) is a professional individual; and

(2) is licensed in this state to provide the same professional service provided by the entity.

(b) A professional entity, other than a professional association, may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom is an authorized person.

(c) An individual may not, under the guise of employment, provide a professional service in this state unless the individual is licensed to provide the professional service under the laws of this state.

(d) This section may not be construed to prohibit a professional entity or foreign professional entity from employing individuals who do not, according to general custom and practice, ordinarily provide a professional service, including clerks, secretaries, bookkeepers, technicians, nurses, or assistants.

Source Law:

TPCA 15

Sec. 15. A professional corporation may render professional service in this state only through its officers, employees and individual agents who are duly licensed to render such professional service in this state or through agents of the professional corporation that are themselves professional corporations that render such professional service only through

officers and employees of the agent who are so licensed, and a professional legal corporation may render professional legal service in this state only through its officers, employees and individual agents who are duly licensed to render professional legal service in this state or through agents of the professional legal corporation that are themselves professional legal corporations or foreign professional legal corporations that render professional legal service in this state only through officers, employees and agents who are duly licensed to render professional legal service in this state; provided, however, that this provision shall not be interpreted to include within such prohibition employees such as clerks, secretaries, bookkeepers, technicians, nurses, assistants and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required; and further provided, that no person shall, under the guise of employment, practice a profession in this state unless duly licensed or otherwise legally authorized to practice that profession under the laws of this state.

TPCA 19.A(a)

Sec. 19A. (a) . . . A shareholder, director, officer, employee, or agent of the corporation who renders professional legal service in this state on behalf of the corporation must be licensed or otherwise authorized to render professional legal service in this state.

TPAA 2(B)(1)

(B) Licenses. (1) Except as provided by this subsection, all members of the association shall be licensed to perform the type of professional service for which the association is formed.

TLLCA 11.04

Art. 11.04. A. A professional limited liability company may render professional service in this state only through a member, manager, officer, employee, or agent who is:

(1) a professional individual licensed or otherwise authorized to render the professional service in this state; or

(2) a professional entity that renders the professional service in this state only through partners, members, shareholders, managers, directors, associates, officers, employees, or agents who are professional individuals or professional entities licensed or otherwise authorized to render the professional service in this state.

B. This Article does not prohibit employment by a professional limited liability company of clerks, secretaries, bookkeepers, technicians, nurses, assistants, and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required. A person may not, under the guise of employment, practice a profession in this state unless

licensed or otherwise legally authorized to practice that profession under the laws of this state.

TLLCA 11.07.A

Art. 11.07. A. A foreign professional limited liability company may apply for a certificate of authority to perform professional service in this state by filing an application in accordance with Part Seven of this Act. The Secretary of State may not issue the certificate unless the name of the foreign professional limited liability company or the name it elects in this state meets the requirements of Article 11.02 of this Act. A foreign professional limited liability company may render professional service in this state only through a member, manager, officer, employee, or agent described in Section A of Article 11.04 of this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 301.007. CERTAIN REQUIREMENTS TO BE OWNER, GOVERNING PERSON, OR OFFICER. (a) A person may be an owner of a professional entity or a governing person of a professional limited liability company only if the person is an authorized person.

(b) An individual may be an officer of a professional entity or a governing person of a professional association or professional corporation only if the individual is a professional individual.

Source Law:

TPCA 9

Sec. 9. No person not duly licensed or otherwise duly authorized to render the professional service of the corporation shall be a member of the Board of Directors.

TPCA 10

Sec. 10. No person not duly licensed or otherwise duly authorized to render the professional service of the professional corporation may hold an office.

TPCA 12

Sec. 12. A professional corporation may issue shares representing ownership of the capital of the professional corporation only to individuals, and in the case of a professional legal corporation, individuals, professional legal corporations and foreign professional legal corporations, which are duly licensed or otherwise legally authorized to render the same type of professional service as that for which the corporation was organized. Except to the extent provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement, shares representing ownership of professional corporation capital shall be freely transferable by any shareholder to any other shareholder, or to the professional corporation which issued such shares or to any

person, and in the case of a professional legal corporation, to any professional legal corporation or foreign professional legal corporation, who or which is not a shareholder, provided such person is duly licensed or qualified under the laws of this state, or in the case of a professional legal corporation, such person, professional legal corporation or foreign professional legal corporation is duly licensed or otherwise duly authorized to render professional legal service, and such transferee shall thereupon become a shareholder and be entitled to participate in the management, affairs, and profits of the professional corporation. Any restriction on the transfer of shares imposed by the Articles of Incorporation, the bylaws or any stock purchase or redemption agreement shall be written or printed on all certificates representing shares issued to shareholders, unless such restrictions are incorporated by reference pursuant to the provisions of the Texas Business Corporation Act.

TPAA 2(B)(1)

(B) Licenses. (1) Except as provided by this subsection, all members of the association shall be licensed to perform the type of professional service for which the association is formed.

TPAA 9(C)

(C) Qualification of officers and board or committee members. Officers and members of the Board of Directors or Executive Committee shall be members of the professional association. Officers need not be members of the Board of Directors or Executive Committee except that the President shall be a member of the Board of Directors or Executive Committee.

TPAA 10

Sec. 10. Shares or units of ownership in a professional association shall be transferable to persons licensed to perform the same type of professional service as that for which the professional association was formed.

TLLCA 11.03.A (first sentence)

A person who is not a professional individual or professional entity may not be a member, manager, or officer of the professional limited liability company.

Revisor's Note:

The revised law effects a change in the ownership provisions relative to professional corporations, other than professional legal corporations. Presently, a professional legal corporation may be owned by professional individuals and by professional legal corporations. Ownership in a professional corporation, other than a professional legal corporation, is limited to professional individuals. In contrast, the provisions relating to professional limited liability companies permit ownership by professional entities, as well as professional individuals. Section 301.007, and the definition of "authorized person" found in Section 301.004, in effect open up ownership of professional corporations to professional

organizations. Ownership in professional associations, however, remains limited to professional individuals.

Revised Law:

Sec. 301.008. DUTIES AND POWERS OF OWNER OR MANAGERIAL OFFICIAL WHO CEASES TO BE LICENSED; PURCHASE OF OWNERSHIP INTEREST. (a) A managerial official of a professional entity who ceases to satisfy the requirements of Section 301.007 shall promptly resign the person's position and employment with the entity.

(b) An owner of a professional entity who ceases to be an authorized person as required by Section 301.007 shall promptly relinquish the person's ownership interest in the entity.

(c) A person who succeeds to the ownership interest of an owner shall promptly relinquish the person's financial interest in the entity if the person is not an authorized person as required by Section 301.007.

(d) A professional entity shall purchase or cause to be purchased the ownership interest in the entity of a person who is required to relinquish the person's financial interest in the entity under this section. The price and terms of a purchase of an ownership interest required under this subsection may be provided by the governing documents of the entity or an applicable agreement.

(e) A person who owns all of the outstanding ownership interests in a professional entity but is required under this section to relinquish the person's financial interest in the entity may act as a managerial official or owner of the entity only for the purpose of winding up the affairs of the entity, including selling the outstanding ownership interests and other assets of the entity.

Source Law:

TPCA 14

Sec. 14. If any shareholder, officer or director of a professional corporation, or any agent or employee thereof who has been rendering professional service for or with it of the same type which such professional corporation was organized to render, becomes legally disqualified to render such professional service, he shall sever all employment with such professional corporation and shall terminate all financial interest therein forthwith; and such corporation shall thereupon purchase or cause to be purchased from him all shares owned by him in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement; provided, however, that if he was the sole shareholder of the professional corporation, he may continue to act as officer, director and shareholder for the purposes of winding up the affairs of the corporation and effecting its dissolution, selling the assets of the corporation, or selling the outstanding shares of the corporation, but not for rendering any professional service. Likewise, if any person who is not licensed or duly authorized to render the professional service which a professional

corporation was organized to render should succeed to the interest of any shareholder of such professional corporation, the person holding such interest shall terminate all financial interest in such professional corporation forthwith; and such corporation shall thereupon purchase or cause to be purchased from such person all shares owned by such person in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement; provided, however, that if such person has succeeded to all of the shares of the professional corporation, such person may act as officer, director and shareholder for the purposes of winding up the affairs of the corporation and effecting its dissolution, selling the assets of the corporation, or selling the outstanding shares of the corporation, but not for rendering any professional service.

TLLCA 11.03.B and C

B. If a member, manager, or officer of a professional limited liability company ceases to be a professional individual or professional entity, the person shall sever all employment with the professional limited liability company and immediately terminate all financial interest in the company. The professional limited liability company shall purchase or cause to be purchased from the person all membership interests owned by the person in the professional limited liability company, at a price and on terms as may be provided in the articles of organization, the regulations, or any applicable agreement among the members and the professional limited liability company. If the person is the sole member of the professional limited liability company, the person may continue to act as member, manager, or officer only for the purposes of winding up the affairs of the professional limited liability company and effecting its dissolution, including selling the assets of or outstanding membership interests in the professional limited liability company, but not including rendering professional service.

C. If a person who is not a professional individual or a professional entity succeeds to the interest of a member of the professional limited liability company, the person holding the interest shall immediately terminate all financial interest in the professional limited liability company, and the professional limited liability company shall purchase or cause to be purchased from the person all membership interests owned by the person in the professional limited liability company, at a price and on terms as may be provided in the articles of organization, the regulations, or any applicable agreement among the members and the professional limited liability company. If the person succeeded to all of the membership interests in the professional limited liability company, the person may continue to act as member, manager, or officer only for the purposes of winding up the affairs of the professional limited liability company and effecting its dissolution, including selling the assets of or the outstanding membership interests in the professional limited liability company, but not including rendering professional service.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 301.009. TRANSFER OF OWNERSHIP INTEREST. Except as limited by the governing documents of the professional entity or an applicable agreement, an ownership interest in a professional entity may be transferred only to:

- (1) an owner of the entity;
- (2) the entity itself; or
- (3) an authorized person.

Source Law:

TPCA 12 (second sentence)

Except to the extent provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement, shares representing ownership of professional corporation capital shall be freely transferable by any shareholder to any other shareholder, or to the professional corporation which issued such shares or to any person, and in the case of a professional legal corporation, to any professional legal corporation or foreign professional legal corporation, who or which is not a shareholder, provided such person is duly licensed or qualified under the laws of this state, or in the case of a professional legal corporation, such person, professional legal corporation or foreign professional legal corporation is duly licensed or otherwise duly authorized to render professional legal service, and such transferee shall thereupon become a shareholder and be entitled to participate in the management, affairs, and profits of the professional corporation.

TPAA 10

Sec. 10. Shares or units of ownership in a professional association shall be transferable to persons licensed to perform the same type of professional service as that for which the professional association was formed.

TLLCA 11.03.A (second sentence)

A membership interest in the professional limited liability company may not be transferred to a person who is not a professional individual or professional entity.

Revisor's Note:

No substantive change is intended. Use of the terminology of the Code makes the provision clearer and more easily understood.

Revised Law:

Sec. 301.010. LIABILITY. (a) A professional entity is jointly and severally liable for an error, omission, negligent or incompetent act, or malfeasance committed by a person who:

(1) is an owner, managerial official, employee, or agent of the entity; and

(2) while providing a professional service for the entity during the course of the person's employment, commits the error, omission, negligent or incompetent act, or malfeasance.

(b) An owner, managerial official, employee, or agent of a professional entity other than an owner, managerial official, employee, or agent liable under Subsection (a) is not subject to the same liability imposed on the professional entity under this section.

(c) If a person described by Subsection (a) is a professional organization, the professional organization and the professional entity are jointly and severally liable for the error, omission, negligent or incompetent act, or malfeasance committed by the person, or the person's owner, member, managerial official, employee, or agent, while providing a professional service for the professional entity.

Source Law:

TPCA 16 (last sentence)

The corporation (but not the individual shareholders, officers or directors) shall be jointly and severally liable with the officer, employee or agent rendering professional service for such professional errors, omissions, negligence, incompetence or malfeasance on the part of such officer, employee or agent when such officer, employee or agent is in the course of his employment for the corporation.

TPAA 24 (last sentence)

The association (but not the individual members, officers or directors) shall be jointly and severally liable with the officer or employee furnishing professional services for such professional errors, omissions, negligence, incompetence or malfeasance on the part of such officer or employee when such officer or employee is in the course of his employment for the association.

TLLCA 11.05.A (last two sentences)

A professional limited liability company, but not the other members, managers, officers, employees, or agents of such professional limited liability company (or their respective members, managers, officers, employees, or agents), is jointly and severally liable with a member, manager, officer, employee, or agent rendering professional service for an error, omission, negligence, incompetence, or malfeasance on the part of the member, manager, officer, employee, or agent when the member, manager, officer, employee, or agent is rendering professional service in the course of employment for the professional limited liability company. If the member, manager, officer,

employee, or agent rendering such professional service in such circumstances is itself a professional entity, then the professional limited liability company and such professional entity are jointly and severally liable with the partner, member, shareholder, manager, director, associate, officer, employee, or agent of such professional entity through which such professional entity renders such professional service for an error, omission, negligence, incompetence, or malfeasance on the part of such partner, member, shareholder, manager, director, associate, officer, employee, or agent of such professional entity.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 301.011. EXEMPTION FROM SECURITIES LAWS. (a) A sale, issuance, or offer for sale of an ownership interest in a professional entity to a person authorized under this title to own an ownership interest in the professional entity is exempt from any state law, other than this code, that regulates the sale, issuance, or offer for sale of securities.

(b) A transaction described by Subsection (a) does not require the approval of or other action by a state official or regulatory agency authorized to regulate the sale, issuance, or offer for sale of securities.

Source Law:

TPCA 19

Sec. 19. The sale, issuance or offering of any capital stock of a professional corporation to persons permitted by the provisions of this Act to own such capital stock are hereby exempted from all provisions of the laws of this state, other than this Act, which provide for supervision, registration or regulation in connection with the sale, issuance or offering of securities; and the sale, issuance or offering of any such capital stock to such persons shall be legal without any action or approval whatsoever on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance or offering of securities.

TLLCA 11.06.A

Art. 11.06. A. The sale, issuance, or offering of membership interests of a professional limited liability company to persons permitted by this Part to own the membership interests is exempt from all laws of this state, other than this Act, that provide for supervision, registration, or regulation in connection with the sale, issuance, or offering of securities. The sale, issuance, or offering of membership interests to those persons is legal without any action or approval on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 301.012. JOINT PRACTICE BY CERTAIN PROFESSIONALS. (a) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas State Board of Medical Examiners and persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners may jointly form and own a professional association or a professional limited liability company to perform professional services that fall within the scope of practice of those practitioners.

(b) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional entity that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

(c) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas State Board of Medical Examiners and persons licensed as optometrists or therapeutic optometrists by the Texas Optometry Board may, subject to the provisions regulating those professionals, jointly form and own a professional association or a professional limited liability company to perform professional services that fall within the scope of practice of those practitioners.

(d) Only a physician, optometrist, or therapeutic optometrist may have an ownership interest in a professional association or professional limited liability company formed under Subsection (c).

(e) An entity formed under Subsection (c) is not prohibited from making one or more payments to an owner's estate following the owner's death under an agreement with the owner or as otherwise authorized or required by law.

(f) When doctors of medicine, osteopathy, and podiatry, or doctors of medicine, osteopathy, and optometry or therapeutic optometry, or mental health professionals form a professional entity as provided by Subsections (a), (b) and (c), the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner.

(g) The state agencies exercising regulatory control over professions to which this section applies continue to exercise regulatory authority over their respective licenses.

Source Law:

TPCA 4(b)

(b) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and

family therapy may form a professional corporation under this Act to perform professional services that fall within the scope of practice of those practitioners. When professionals engaged in related mental health fields form a corporation under this Act, the authority of each of the practitioners is limited by the scope of practice of the respective practitioner, and none can exercise control over the others' clinical authority granted by their respective licenses, whether through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by a practitioner. The state agencies exercising regulatory control over professions to which this subsection applies continue to exercise regulatory authority over the respective licenses of the professionals.

TPAA 2(B)

(B) Licenses. (1) Except as provided by this subsection, all members of the association shall be licensed to perform the type of professional service for which the association is formed.

(2) Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may form an association that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners.

(3) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form an association that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

(4) When doctors of medicine, osteopathy, and podiatry or mental health professionals form an association that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The state agencies exercising regulatory control over professions to which this subdivision applies continue to exercise regulatory authority over their respective licenses.

TLLCA 11.01.A(3) and (4)

(3) Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may organize a professional limited liability company that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When doctors of medicine, osteopathy, and podiatry organize a professional limited liability company that

is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The Texas State Board of Medical Examiners and the Texas State Board of Podiatric Medical Examiners continue to exercise regulatory authority over their respective licenses.

(4) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional limited liability company that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When mental health professionals organize a professional limited liability company that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioner, and none can exercise control over the others' clinical authority granted by their respective licenses, whether through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by a practitioner. The state agencies exercising regulatory control over professions to which this subdivision applies continue to exercise regulatory authority over their respective licenses.

Revisor's Note:

Section 2.004 of the Code permits a professional entity to render more than one type of professional service if expressly authorized under state law regulating the professional services. With limited exceptions, present law limits the purpose of a professional corporation and a professional limited liability company to providing one specific professional service. Various exceptions allowing joint ownership of professional entities by certain kinds of professionals previously scattered throughout the TPCA, TPAA and Chapter 11 of the TLLCA are now combined in Section 301.012. This combination simplifies and makes the law easier to locate and comprehend.

The revised law gives effect to Art. 4495b, sec. 5.12 (Texas Medical Practices Act) and Art. 4552-5.22 (Texas Optometry Act), which permit doctors of medicine or osteopathy and optometrists or therapeutic optometrists to organize, jointly own, and manage a legal entity, including a professional limited liability company or professional association, for the delivery of health care services. The current provisions of the TPAA and the TLLCA do not expressly recognize that an optometrist or therapeutic optometrist may jointly form or own a professional association or professional limited liability company with any other professional as permitted by Subsections (c) and (d) of Section 301.012.

CHAPTER 302. PROVISIONS RELATING TO PROFESSIONAL ASSOCIATIONS

Revised Law:

Sec. 302.001. APPLICABILITY OF CERTAIN PROVISIONS GOVERNING FOR-PROFIT CORPORATIONS. The provisions of Chapters 20 and 21 governing a for-profit corporation apply to a professional association, unless there is a conflict with this title.

Source Law:

TPAA 25

Sec. 25. The Texas Business Corporation Act shall be applicable to professional associations, except to the extent that the provisions of the Texas Business Corporation Act conflict with the provisions of this Act; and professional associations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of business corporations except insofar as the same may be limited or enlarged by this Act. This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law.

Revisor's Note:

No substantive change is intended. See Revisor's Note to Section 301.002.

Revised Law:

Sec. 302.002. DURATION OF PROFESSIONAL ASSOCIATION. A professional association continues:

(1) for all purposes as a separate entity independent of the association's members until:

(A) the expiration of the period of duration stated in the certificate of formation; or

(B) the association is wound up and terminated in the manner provided by the certificate of formation or, if the certificate of formation does not provide a manner for winding up and termination, by a two-thirds vote of the association's members; and

(2) in existence notwithstanding:

(A) the death, insanity, incompetency, felony conviction, resignation, withdrawal, transfer of ownership interest, or expulsion of a member other than the last surviving member of the association;

(B) the admission of a new member or the transfer of ownership interest to a new or existing member; or

(C) the occurrence of an event that would require the winding up of a partnership under state law or similar circumstances.

Source Law:

TPAA 8(B)

(B) Continuity. Articles of association may provide that a professional association

(1) shall continue as a separate entity independent of its members, for all purposes, for such period of time as provided in the articles, or until dissolved by a vote of two-thirds of the members, and

(2) shall continue notwithstanding the death, insanity, incompetency, conviction for felony, resignation, withdrawal, transfer of membership, retirement, or expulsion of any one or more of the members (except the last surviving member), the admission of or transfer of membership to any new member or members, or the happening of any other event, which under the law of this state and under like circumstances, would work a dissolution of a partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 302.003. AMENDMENT OF CERTIFICATE OF FORMATION. (a) A professional association may amend the association's certificate of formation as provided by:

(1) Chapter 3;

(2) the procedure for amendment stated in the certificate of formation; or

(3) if the certificate of formation does not provide a procedure for amending the certificate, two-thirds vote of the association's members.

(b) A professional association is not required to amend the association's certificate of formation to reflect a change in membership or a transfer of ownership interests in the association.

Source Law:

TPAA 14

Sec. 14. (A) Authority to amend. A professional association may amend its articles of association, from time to time, in accordance with the procedure for amendment stated therein or if none is stated therein, by two-thirds vote of its members.

(B) Acts not requiring amendment. Changes in membership or transfer of shares or units of ownership shall not require amendment.

Revisor's Note:

No substantive change is intended. A cross-reference is added to Chapter 3, which provides more detailed procedural provisions regarding amendment of the certificate of formation.

Revised Law:

Sec. 302.004. ADOPTION OF BYLAWS; DELEGATION OF AUTHORITY. (a) The members of a professional association may adopt bylaws for the association.

(b) The authority to adopt bylaws of a professional association granted under Subsection (a) may be delegated under the certificate of formation to the governing authority of the association.

Source Law:

TPAA 9(D)

(D) Bylaws. The members may adopt such bylaws as they may deem proper, or the power to promulgate bylaws of the association may be delegated by the articles of association to the Board of Directors or Executive Committee, as the members may decide.

Revisor's Note:

No substantive change is intended. The new term "governing authority" is substituted for "Board of Directors or Executive Committee" without intent to make a substantive change.

Revised Law:

Sec. 302.005. GOVERNING AUTHORITY. (a) A professional association shall be governed by:

- (1) a board of directors; or
- (2) an executive committee.

(b) The governing authority of a professional association shall be elected by the members of the association.

Source Law:

TPAA 9(A)

Sec. 9. (A) Board or committee. A professional association organized pursuant to the provisions of this Act shall be governed by, and the business and affairs of a professional association shall be managed under the direction of, a Board of Directors or an Executive Committee elected by the members, and represented by officers elected by the Board of Directors or Executive Committee, so that centralization of management will be assured.

Revisor's Note:

No substantive change is intended. The new term "governing authority" is substituted for "Board of Directors or Executive Committee" without intent to make a substantive change.

Revised Law:

Sec. 302.006. MEMBERS' VOTING RIGHTS. A member of a professional association is entitled to cast a vote at a meeting of the members as provided by the certificate of formation of the association.

Source Law:

TPAA 9(E)

(E) Members' voting rights. Each member shall have power to cast such vote or votes at the meeting of the members as the articles of association shall provide.

Revisor's Note:

No substantive change is intended. The new term "certificate of formation" is substituted for "articles of association" without intent to make a substantive change.

Revised Law:

Sec. 302.007. ELECTION OF OFFICERS. The governing authority of a professional association shall elect officers of the association.

Source Law:

TPAA 9(A)

Sec. 9. (A) Board or committee. A professional association organized pursuant to the provisions of this Act shall be governed by, and the business and affairs of a professional association shall be managed under the direction of, a Board of Directors or an Executive Committee elected by the members, and represented by officers elected by the Board of Directors or Executive Committee, so that centralization of management will be assured.

Revisor's Note:

No substantive change is intended. The new term "governing authority" is substituted for "Board of Directors or Executive Committee" without intent to make a substantive change.

Revised Law:

Sec. 302.008. OFFICER AND GOVERNING AUTHORITY ELIGIBILITY REQUIREMENTS. (a) Only a member of the professional association is eligible to serve as an officer or governing person of a professional association.

(b) Except as provided by Subsection (c), a person is not required to be a governing person of a professional association to serve as an officer of the association.

(c) Only a governing person of a professional association is eligible to serve as the president of the professional association.

Source Law:

TPAA 9(C)

(C) Qualification of officers and board or committee members. Officers and members of the Board of Directors or Executive Committee shall be members of the professional association. Officers need not be members of the Board of Directors or Executive Committee except that the President shall be a member of the Board of Directors or Executive Committee.

Revisor's Note:

No substantive change is intended. The Code provision uses the new terminology of the Code, substituting "governing person" for "member of the Board of Directors or Executive Committee" without intent to make a substantive change.

Revised Law:

Sec. 302.009. EMPLOYMENT OF AGENTS AND EMPLOYEES. The officers of a professional association may employ agents or employees for the association as the officers consider advisable.

Source Law:

TPAA 9(F)

(F) Agents and employees. The officers of the professional association may employ such agents or employees of the association as they may deem advisable.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 302.010. LIMITATION ON MEMBER'S POWER TO BIND ASSOCIATION. A member of a professional association is not entitled to bind the association within the scope of the association's business or profession merely by virtue of being a member of the professional association.

Source Law:

TPAA 9(B)

(B) Member's power to bind. No member shall have the power to bind the association within the scope of the association's business or profession merely by virtue of his being a member of the association.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 302.011. DIVISION OF PROFITS. The members of a professional association shall divide the profits derived from the association in the manner provided by the governing documents of the association.

Source Law:

TPAA 2(A)

Sec. 2. (A) Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry, or optometry or therapeutic optometry, or chiropractic, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

Revisor's Note:

No substantive change is intended. The new term "governing documents" is substituted for "articles of association or bylaws" without intent to make a substantive change.

Revised Law:

Sec. 302.012. ANNUAL STATEMENT REQUIRED. (a) In June of each year, a professional association shall file with the secretary of state a statement that:

(1) lists:

(A) the name and address of each member of the association; and

(B) the name of each officer and governing person of the association; and

(2) states that each member of the association is licensed to provide the same type of professional service provided by the association.

(b) The statement required by this section must be executed by an officer of the association on behalf of the association.

Source Law:

TPAA 21

Sec. 21. A professional association shall in June of each year file with the Secretary of State a statement showing the name and address of the association; the names and addresses of all members of the association, and all officers and all members of the Board of Directors or Executive Committee; and shall state that all members are licensed to perform the type of professional service for which the association is formed. The statement shall be on such form as the Secretary of State shall

prescribe and furnish. It shall be executed on behalf of the association by an officer.

Revisor's Note:

No substantive change is intended. The terminology "governing person" is substituted for "member of the Board of Directors or Executive Committee."

Revised Law:

Sec. 302.013. WINDING UP AND TERMINATION; CERTIFICATE OF TERMINATION. (a) A professional association may wind up and terminate the association's business as provided by:

(1) the association's certificate of formation; or

(2) if the certificate of formation does not provide for the winding up and termination of the association, two-thirds vote of the association's members.

(b) Except as provided by Subsection (c), a certificate of termination filed in accordance with Chapter 11 must be executed by an officer of the professional association on behalf of the association.

(c) If a professional association does not have any living officer, the certificate of termination must be executed by the legal representative of the last surviving officer of the association.

Source Law:

TPAA 8(B)(1)

(B) Continuity. Articles of association may provide that a professional association

(1) shall continue as a separate entity independent of its members, for all purposes, for such period of time as provided in the articles, or until dissolved by a vote of two-thirds of the members, and

TPAA 18

Sec. 18. The articles of dissolution shall be executed on behalf of the association by an officer. If there are no living officers of the association, the articles shall be executed by the legal representative of the last surviving officer. . . .

Revisor's Note:

No substantive change is intended. The new term "certificate of termination" is substituted for "articles of dissolution" without intent to make a substantive change. A cross-reference is made to Chapter 11, which provides the requirements for the certificate of termination currently set forth in Section 18 of the TPAA.

CHAPTER 303. PROVISIONS RELATING TO PROFESSIONAL CORPORATIONS

Revised Law:

Sec. 303.001. APPLICABILITY OF CERTAIN PROVISIONS GOVERNING FOR-PROFIT CORPORATIONS. The provisions of Chapters 20 and 21 governing a for-profit corporation apply to a professional corporation, unless there is a conflict with this title.

Source Law:

TPCA 5 (first sentence)

The Texas Business Corporation Act shall be applicable to professional corporations, except to the extent that the provisions of the Texas Business Corporation Act conflict with the provisions of this Act; and professional corporations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other business corporations except insofar as the same may be limited or enlarged by this Act.

Revisor's Note:

No substantive change is intended. See Revisor's Note to Section 301.002.

Revised Law:

Sec. 303.002. AUTHORITY AND LIABILITY OF SHAREHOLDER. (a) A shareholder of a professional corporation is not required to supervise the performance of duties by an officer or employee of the corporation.

(b) A shareholder of a professional corporation is subject to no greater liability than a shareholder of a for-profit corporation.

Source Law:

TPCA 5 (second and third sentence)

A shareholder of a professional corporation, as such, shall have no duty to supervise the manner or means whereby the officers or employees of the corporation perform their respective duties. ... Shareholders of a professional corporation, as such, shall have no greater liability than do shareholders, as such, of other business corporations.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 303.003. NOTICE OF RESTRICTION ON TRANSFER OF SHARES. Any restriction on the transfer of shares in a professional corporation that is imposed by the governing documents of the corporation or an applicable agreement must be:

- (1) noted on each certificate representing the shares; or

(2) incorporated by reference in the manner provided by Chapter 21.

Source Law:

TPCA 12 (last sentence)

Any restriction on the transfer of shares imposed by the Articles of Incorporation, the bylaws or any stock purchase or redemption agreement shall be written or printed on all certificates representing shares issued to shareholders, unless such restrictions are incorporated by reference pursuant to the provisions of the Texas Business Corporation Act.

Revisor's Note:

No substantive change is intended. The new term "governing documents" is substituted for the terms "Articles of Incorporation" and "bylaws" without intent to make a substantive change. Cross-reference is made to the Code chapter containing the provisions relative to for-profit corporations.

Revised Law:

Sec. 303.004. REDEMPTION OF SHARES; PRICE AND TERMS. (a) A professional corporation may redeem shares of a shareholder, including a deceased shareholder.

(b) The price and other terms of a redemption of shares may be:

(1) agreed to between the board of directors of the professional corporation and the shareholder or the shareholder's personal representative; or

(2) specified in the governing documents of the professional corporation or an applicable agreement.

Source Law:

TPCA 13

Sec. 13. A professional corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws, or any applicable stock purchase or redemption agreement.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 303.005. EXISTENCE OF PROFESSIONAL CORPORATION BEFORE WINDING UP AND TERMINATION. A professional corporation continues to exist until the

winding up and termination of the corporation as provided by Chapter 11 without regard to:

- (1) the death, incompetency, bankruptcy, resignation, withdrawal, retirement, or expulsion of any shareholder of the corporation;
- (2) the transfer of shares to a new shareholder; or
- (3) the occurrence of an event requiring the winding up of a partnership.

Source Law:

TPCA 17 (first and second sentence)

Sec. 17. . . . Unless the Articles of Incorporation expressly provide otherwise, a professional corporation shall continue as a separate entity for all purposes and for such period of time as is provided in the Articles of Incorporation until dissolved by a vote of its shareholders. A professional corporation shall continue to exist regardless of the death, incompetency, bankruptcy, resignation, withdrawal, retirement or expulsion of any one or more of its shareholders or the transfer of any of its shares to any new holder or the happening of any other event which under the laws of this state and under like circumstances would cause a dissolution of a partnership, it being the intent of this Section that such professional corporation shall have continuity of life independent of the life or status of its shareholders.

Revisor's Note:

The revised law varies from the first sentence of the source law in that the revised law presumes that domestic entities exist perpetually unless otherwise provided in the governing documents of the entity. See Section 3.003 of the Code and the Revisor's Note thereto. Under the Code, a "certificate of formation" (i.e., the articles of incorporation under present statutory language) need only state a period of duration if the entity is not formed to exist perpetually.

Revised Law:

Sec. 303.006. WINDING UP AND TERMINATION OF PROFESSIONAL CORPORATION. A shareholder of a professional corporation may not wind up the affairs of and terminate the corporation independently of other shareholders of the corporation.

Source Law:

TPCA 17 (last sentence)

No shareholder shall have power to dissolve the professional corporation by his independent act of any kind.

Revisor's Note:

No substantive change is intended.

CHAPTER 304. PROVISIONS RELATING TO PROFESSIONAL LIMITED
LIABILITY COMPANIES

Revised Law:

Sec. 304.001. APPLICABILITY OF CERTAIN PROVISIONS GOVERNING LIMITED LIABILITY COMPANIES. Title 3 applies to a professional limited liability company, unless there is a conflict with this title.

Source Law:

TLLCA 11.01(B)(2)

(2) "Professional limited liability company" means a limited liability company that is organized under this Act for the sole and specific purpose of rendering professional service and that has as its members only professional individuals or professional entities.

Revisor's Note:

No substantive change is intended. See Revisor's Note to Section 301.002.