

PLLCs and PCs: ***What Do You Mean I Can't Just Put a "P" In The Front and Be Compliant?***

Michelle J. Stevens, JD, MA, LPC, NCC and Robert A. Lees, JD

Does this whole PLLC vs. PC have you pulling your hair out? Do you feel like you are getting different information about it every time you talk to someone? Do you just want to stop thinking about it and provide therapy already? You are not alone. We hear these concerns daily and we understand the frustration. This article is meant to answer some of the more frequent questions we hear and to help you understand what this PLLC and PC stuff is all about.

Do I need to form a company or a corporation to run a mental health practice? The short answer is, no, you can legally and ethically operate as a sole proprietor but then you have no liability protection.

What does "incorporating" mean and why should I do it? Incorporating is simply forming a business entity that represents and protects your practice. The primary reason someone would form a company or a corporation is to protect his or her personal assets from creditors and lawsuits. by clearly spelling out which assets are included under the business and which are not and by clearly separating the business from the personal. Imagine you own a private practice, "ABC Counseling", and you also personally own a car and a home. Imagine you now get sued for malpractice (this is different than a grievance) or for any other reason. If your business is set up and run within the necessary legal requirements, your personal assets will stay separate from your business. However, without a separate business entity to protect you; your home and your car are now at risk and can be used to pay a legal settlement.

What is the difference between a PLLC and a PC? The Professional Limited Liability Company (PLLC) and the Professional Corporation (PC) are business entities, often (but not always) in the form partnerships, which provides you with corporate protection. Corporate protection means that any lawsuits filed against your business are settled from your business assets and insurance only. Some of the primary differences between the two are structural, financial and level of legal protection. First, PLLCs have managers and members while PCs have officers, directors and shareholders. When it comes to finances, with a PLLC withdrawals can be taken from your bank account whenever you wish; with taxes paid either at the time you take the money, quarterly or yearly. In contrast, a PC issues shares of stock and dividends with taxes withheld each time there is a disbursement of funds made to the owners. Finally, a PC provides greater liability protection than a PLLC. To determine which is more appropriate for you, you should consult both an accountant and an attorney.

Can I do the incorporating myself and save some money? You can, but we don't recommend it. Forming a legally compliant PLLC or a PC requires more than simply filing the three page form on the Secretary of State website. *Yes, this step does register you as a legal entity but it does not give you the full protection you need.* In order to benefit from the protection of a company or a corporation, you have to act like one. This requires functioning as a company and performing all of the legal requirements necessary so that your business is seen as separate and distinct from you personally. Without taking these steps, Courts do something called "piercing the corporate veil". Which is a fancy way of saying they ignore the fact that you are incorporated because you are really acting like a sole proprietor and now all of your personal assets are vulnerable. Imagine you are holding a balloon in front of you. This balloon represents your business. If you are acting like a business: filing the proper reports, holding yearly meetings, keeping separate bank accounts, etc.; that balloon will stay intact. If, however, you are not doing those things, that balloon will POP and you will be left financially exposed.

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Can my CPA set up a business for me? Yes, but they shouldn't. The challenge is that many CPAs are unaware of the requirements of C.R.S. §12-43-211.

What are all of these legal requirements you are talking about? The Secretary of State told me all I had to do was put a "P" in front of my LLC and I was in compliance. The Secretary of State is wrong. Yes, you need the letter "P" for the word "professional" in front of your LLC or your corporation but that is a minor part of the process. A PLLC requires Articles of Organization, an Operating Agreement, yearly meetings, yearly minutes and annual periodic reports. A PC requires all of these except instead of Articles of Organization, it requires Articles of Incorporation. These documents also require specific language as defined by the Colorado Mental Health Statute.

Tell me the truth. Do I really need a PLLC or a PC? It just sounds like a way for attorneys to make more money. As was discussed above, if you choose to incorporate you must meet all of the legal requirements in order to have your business effectively protect you. Colorado requires an extra step to be fully compliant with those requirements. Under C.R.S. §12-43-211, if you choose to incorporate it must be as a Professional Limited Liability Company or a Professional Company. The statute also requires specific language and standards that must be met for these types of companies. The challenge for many people is that this language is found in the Mental Health Practices Act and not the Corporations Act. Although the Corporations Act still defines the overall requirements for companies and corporations, C.R.S. §12-43-211, adds an extra layer of protection and standards with which you must comply.

What is the difference between a PLLC and an LLC? For purposes of the IRS, there is no difference. The PLLC and PC requirements are Colorado-specific. They do not change your tax status at all.

We understand that this is all a little confusing but it does not have to be overwhelming. Choosing the right business structure is not something you are expected to be an expert at doing. It is, however, something that is critical to the protection of your business. The right foundation can set you on the path toward financial success and liability protection; the wrong steps can set you up for unnecessary financial loss. The key things you need to remember are:

1. You need to "act" a.k.a. function like a company or corporation in order to have the protection of the PLLC or PC. This means you need to comply with all legal requirements when you incorporate and every year you are in business.
2. The State of Colorado requires that if you are a mental health professional and you choose to incorporate, you must do so as a PLLC or a PC.
3. Trying to do this yourself so you can save a little money up front may actually set you up for financial disaster down the line. You've invested in your career, now set yourself up for success on all levels.

You do not have to do this alone. Work with an accountant and an attorney who are knowledgeable about corporations AND mental health law to set up a business that is not only legally compliant but that allows you to plan for your future.