



ADVISORY NO. LLP – 2

[Please file in your ACO Practitioner Manual in the “Advisories” Section. Replaces Advisory No. LLP-1]

Date: January 1, 2008

Subject: LIMITED LIABILITY PARTNERSHIPS

Section 102.1 of the Health Professions Act allows optometrists to provide professional services in a limited liability partnership (LLP). Because the LLP is also a business entity, it is governed by the Alberta Partnership Act and, as such, is allowed a multitude of options with regard to declaration, amendment, dissolution, etc.

Although Part 3, Section 82(1) of the Partnership Act of Alberta specifically allows for individuals of different professions to be partners in the same LLP, many professional organizations have made By-laws prohibiting or limiting this option. For example, the Law Society of Alberta requires that all partners in a Law LLP must be able to carry on the practice of law. The College of Physicians and Surgeons of Alberta totally prohibits its members from being a partner in a LLP. The Alberta College of Optometrists (ACO) has decided that LLPs should be made available to our members. However, it should be noted that all partners in an ACO LLP must be regulated members.

Once registered in Alberta, a partner in a LLP will not be individually liable (directly or indirectly) for debts, obligations or liabilities of the partnership or of another partner arising from negligence, wrongful acts or omissions, or malpractice and/or misconduct of other partners or of an employee of the LLP in the ordinary course of carrying on the practice of optometry. A partner, however, continues to be at risk for his/her share in the partnership assets. As a result, LLPs will be required to carry adequate liability insurance to satisfy the claims against the offending partner. A partner will also continue to incur full personal liability when negligent or when engaging in wrongful acts or misconduct. Any partner who knew of the negligence, etc. and failed to take remedial action would also incur full personal liability.

It is interesting to note that upon registration of an LLP, a partnership shall forthwith send to all of its existing clients a notice advising of the registration, with an explanation in general terms of potential changes in the liability of the partners as a result of registration. As always, there is some debate as to the meaning of “existing clients” and how broad this notice obligation has to be complied with.

The following summarizes requirements for these various transactions under the Partnership Act, The Health Professions Act (HPA), the Optometrists Profession Regulation and the Alberta College of Optometrists (ACO) By-laws. Attached to this advisory please find copies of the various forms required by the ACO and/or the Government of Alberta. You may access the ACO forms by contacting the ACO office or downloading the material from the ACO website. The Government of Alberta forms may be downloaded from the Alberta Government website.

[a] General Rules Governing Alberta Optometric LLPs

1. All partners must be regulated members of the Alberta College of Optometrists.
2. All partners must provide evidence that they carry at least the minimum liability insurance as set out in the ACO By-laws.
3. The LLP must provide evidence that it carries at least the minimum liability insurance as set out in the ACO By-laws.
4. The LLP must file an annual return with the Government of Alberta and provide the ACO with a copy of these documents.
5. The ACO must be notified of all amendments, declarations, dissolutions, etc. of the LLP within 15 days of the change.
6. The LLP must apply for a yearly permit, pay the required LLP Permit Fee, and complete the yearly ACO LLP Permit Renewal Form.
7. The registered office of the Alberta LLP must be located in Alberta.

[b] General Rules Governing Extra-Provincial Optometric LLPs

1. All partners must be regulated members of the Alberta College of Optometrists.
2. The partnership must have the status of a limited liability partnership under the laws of the jurisdictions outside Alberta and in Alberta.
3. All partners must carry the minimum liability insurance as set out in the ACO By-laws.
4. The Extra-Provincial LLP must carry the minimum liability insurance as set out in the ACO By-laws.
5. The Extra-Provincial LLP must file an annual return with the Government of Alberta and provide the ACO with a copy of these documents.
6. The ACO must be notified of all amendments, declarations, dissolutions, etc. of the LLP within 15 days of the change.
7. The Extra-Provincial LLP must apply for a yearly permit, pay the required LLP Permit Fee, and complete the yearly ACO LLP Permit Renewal Form.
8. The registered office of the Extra-Provincial LLP must be located in Alberta.

[c] Steps Necessary to Register a New Alberta LLP

1. Conduct a name search at Alberta Corporate Registry to determine whether anyone else is using the same or a similar name.
2. Submit the ACO LLP Application Form and the prescribed LLP Permit Fee (\$100.00 per partner) to the ACO Registrar for endorsement.
3. Once the LLP is registered with the Government of Alberta please forward to the ACO a copy of:
 - [a] The Declaration of Partnership; and
 - [b] The Declaration of Trade Name.

Upon receipt of the above application and accompanying fee the ACO Registrar will review the documents and provide the applicant with a letter of certification if all is in order. The applicant must then apply to the Alberta Registrar or Corporations to register the LLP under the Alberta Partnership Act.

[d] Steps Necessary to Register a New Extra-Provincial LLP

1. Conduct a name search in all applicable jurisdictions to determine whether anyone else is using the name or a similar name.
2. Submit the ACO Extra-Provincial LLP Application Form and the prescribed LLP Permit Fee (\$100.00 per partner) to the ACO Registrar for endorsement.
3. Once the LLP is registered with the Government of Alberta please forward to the ACO a copy of:
 - [a] The Declaration of Partnership; and
 - [b] The Declaration of Trade Name.

Upon receipt of the above application and accompanying fee the ACO Registrar will review the documents and provide the applicant with a letter of certification if all is in order. The applicant must then apply to the Alberta Registrar of Corporations to register the Extra-Provincial LLP under the Alberta Partnership Act.

[e] Change in Particulars

A registered Alberta LLP or Extra-Provincial LLP must notify the ACO in writing of any change in the particulars specified in the original Application or the Renewal Application within 15 days of the change. A faxed copy of the Alberta Government form is considered adequate notification. The ACO will levy a fee of \$100.00 per new partner fee if the change involves the addition of a new partner. The new LLP and must still comply with the registration requirements as noted in [c] above. Deletion of a partner or any other changes in particulars will not require the payment of an administration fee.

[f] Renewal of an Alberta LLP or an Extra-Provincial LLP

All LLP permits expire on December 31st of the calendar year in which they were issued. The ACO office will mail out a notice of renewal to each registered LLP at the same time as all other fee notices are sent, usually in mid-October each year. The completed LLP Renewal Form and the prescribed renewal fee must be received by the ACO on or before December 1st each year. Upon approval, the ACO Registrar will endorse the renewal application and an ACO Certificate of LLP Registration Renewal will be forwarded to the AAP office address, or a certificate to each member of the LLP for display along with the member's Annual Practice Permit and/or P.C. Permit.

[g] Non-Compliance

The ACO is required to provide notification to the Registrar of Corporations in accordance with the Alberta Partnership Act if it becomes aware of the failure of an Alberta or Extra-Provincial LLP or one of its partners to maintain compliance with the requirements imposed by the ACO.