ILLINOIS ACADEMY OF FAMILY PHYSICIANS
Devoted to Advocacy, Education & Action

ILLINOIS FAMILY PHYSICIAN

VOLUME 64, ISSUE 2
March/April 2013

Published by the Illinois Academy of Family Physicians
Editor – Ginnie Flynn | gflynn@iafp.com | 630-427-8004
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Get to them early!
Yasmeen Ansari, MD inspires high school students

Addison Trails High School senior Nathan Biewer takes notes as Yasmeen Ansari, MD examines a boy who had been bitten by a dog while vacationing out of the country. Learn more about his day with Dr. Ansari and the experience offered to students via the Addison Trails High School Medical Careers Curriculum.

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Avoiding Personal Liability – Running the Medical Practice to Protect its Owners

By Markus May

"Hey Horace!" Francesca called out walking briskly down the hall with a big smile on her face. "I finally incorporated my medical practice with the state. So now I'll finally have that limited liability you've always been talking about getting for my business." "Good for you," Horace beamed at his fellow building tenant. Francesca had just started her practice last year and Horace had encouraged her to incorporate the practice to help limit her potential liability. "Remember, you will always be responsible for your own negligence, but if you run the business properly, you shouldn't have personal liability for the actions of your employees and contractors or for debts that are solely in the practice's name."

What does it mean to run your business properly?

In addition to issuing the stock, drafting bylaws, and minutes and the other stuff lawyers do, the practice owner should always sign contracts with the correct title after the name: for example "Horace Highwater, President." A company is supposed to be run as a separate entity from its owners. For example, if you own IBM stock, you wouldn't expect to be liable for IBM debts would you? The same principle applies to smaller companies like a family medicine practice. But there are certain situations where, if the company is run as the "alter ego" of the owner and it appears the company and the owner are essentially one and the same entity, courts will "pierce the corporate veil" and go after your personal assets. What factors would a court look at in deciding to pierce the corporate veil? Legal experts suggest that every year when you do annual minutes for the company, be sure to also give the company a "check-up" and make sure you adhere to the following guidelines.

Piercing the Corporate Veil Factors

a) **Maintain arm's-length relationships among related entities.** Do not give preferential treatment to individuals or related entities. For example, charge a fair market rent for leased real estate and a fair market interest rate on loans. The "corporate veil" can even be pierced to non-owners such as spouses so avoid paying spouses unless they actually perform services for the company.
b) **Commingling of funds.** Keep separate bank accounts. Avoid using company funds to pay personal expenses and do not transfer money to an individual account without proper documentation.
c) **Observe corporate formalities.** Always sign your corporate title after your name when signing contracts. Maintain annual corporate minutes appointing directors and officers plus minutes documenting other major transactions including loans and payments from or to owners. Hold annual meetings and other meetings of the shareholders and board of directors as necessary to approve corporate actions. Keep the company registered with the Secretary of State by filling out the paperwork and paying the annual fee. Keep a corporate book that holds all the corporate documents in one place. Though this doesn't technically apply to limited liability companies, you should do this as a good practice, to help provide protection, and to help sell the business in the future.

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d) **Absence of corporate records.** Document everything – especially the flow of money. Use promissory notes to document loans and specify terms in detail.

e) **Inadequate capitalization.** The amount of initial capitalization should be sufficient to meet the anticipated needs of the business. The courts frown on flimsy organizations set up solely to escape personal liability.

f) **Nonpayment of dividends.** Show how money flows from the company to its owners. It is usually via salary, bonus, dividend, owner distribution, or repayment of a shareholder loan. Avoid just transferring money into an account without a corporate resolution stating what the transfer is for.

g) **Diversion of assets from the company to the owner or another other person to the detriment of creditors.** If the company is doing poorly, do not make preferential payments to shareholders.

h) **Failure to issue ownership interests.** Make sure stock or the LLC ownership interest is issued and recorded in your corporate record book.

i) **Nonfunctioning officers or directors.** Only appoint officers and directors who have actual duties.

j) **Insolvency of the debtor company.** If the company is doing poorly, be extra careful where the money goes and document all transactions.

k) **Whether, in fact, the company is a mere facade for the operation of the dominant stockholders.** Ultimately, look at all the facts and decide if the company is more than just the alter ego of the owner or another entity.

Markus May is a Chicagoland business attorney with May Law Firm Ltd. who helps people start, operate, buy, and sell businesses, including medical practices. He can be reached at mmay@illinois-business-lawyer.com or 630-864-1004.

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