

Forming a Corporation for the CRNA in CA

Details and references to accompany the PowerPoint Presentation with the same title

CANA Practice Division

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This is not to provide legal advice or tax advice but an opportunity for provide information as your professional organization. The info presented as been reviewed and discussed with our CANA legal counsel to give you some confidence for what I'm presenting.

This is just an introduction, to start with specifics of CA then you can decide what suits you best

I have no financial disclosures regarding the info I'm going to present

No conflict of interest in CRNAs forming corporations but I do have a genuine interest for CRNAs to be independent practitioners which includes being able to choose if they want to be an employee of their own business



Business Entities:

[\(https://www.quicksprout.com/beginners-guide-to-corporate-entities/\)](https://www.quicksprout.com/beginners-guide-to-corporate-entities/)

[\(https://www.sos.ca.gov/business-programs/business-entities/starting-business/types\)](https://www.sos.ca.gov/business-programs/business-entities/starting-business/types)

Sole proprietorship

- business owned and run by one person
- For legal purposes, there is no distinction between the business and the sole proprietor
- No filing of forms (unless a sole proprietorship is formed with a name other than the individual's name, a Fictitious Business Name Statement must be filed with the county where the principal place of business is located.)
- Profits all go to the indiv and Taxes are filed once by the indiv
- Personal liability, the business and CRNA are one and the same but we have malpractice insurance
- But you aren't really an employee (for the purpose that this presentation came to be after the passing of AB2257)

General partnership

- an association of two or more individuals (or entities like corporations) to conduct a business as co-owners
- every partner in a general partnership assumes unlimited liability for the partnership's debts and liabilities
- Profits are taxed as personal income for the partners.
- At least for tax purposes, the IRS has ruled that an individual cannot be both an employee and partner. So decision has to be made if you are a partner or an employee
- Have to register with the state

Limited partnership

- Unlike a general partnership, however, it has two kinds of partners: general and limited. A general partner's liability is unlimited, and a limited partner's liability is limited to the amount of his or her investment in the business.
- In CA, An Limited liability Partnership is a partnership that engages in the practice of public accountancy, the practice of law, the practice of architecture, the practice of engineering or the practice of land surveying, or provides services or facilities to a California registered LLP that practices public accountancy or law, or to a foreign LLP. An LLP is required to maintain certain levels of insurance as required by law.

C corporation

- A California corporation generally is a legal entity which exists separately from its owners. While normally limiting the owners from personal liability, taxes are levied on the corporation as well as on the shareholders
- formalities under state law, including the filing of a certificate of incorporation, the adoption of bylaws, the election of a Board of Directors, annual meetings of the Board of Directors and shareholders, the maintenance of separate books, records and bank accounts, quarterly federal and state taxes
- The failure to adhere to such formalities could result in a court "piercing the corporate veil" and holding the corporation's shareholders personally liable.

S corporation

- Still a corporation, still have the same formalities but you then elect the S tax designation so the main difference between a C-sorp and S-corp is in how you are taxed.

Limited Liability Company

- hybrid between a C corporation and a general partnership: we can't provide professional anesthesia services through a LLC (I'll show you why) so I'll stop there



In CA, there are 29 codes of law and one of them is the California Corporations Code

Part 4 addresses Professional Corporations and is known as the Moscone-Knox Professional Corporations Act

Sections 13400 & 13401 defines professional services and as you can see, Professional services are defined as any type of service which may be lawfully rendered with a license, certification, or registration authorized by the California Business and Professions Code. The BRN is found within the B&P code.



Another part of the CA corp code addresses LLCs and here under 17701.04 (e), a California LLC may not render "professional services," as defined in Sections 13401(a). Which was the section from the previous slide

Different than other states, "professionals" such as physicians, registered nurses, dentists, lawyers, accountants, real estate brokers, are precluded from conducting business through an LLC in California.

In order to provide professional services in California under our own corporate business entities, CRNAs as professional registered nurses must form a "professional corporation." This can either be a C-Corporation or an S-Corporation. There are also stipulations in the Business and Professions Code regarding the name that is given to a nursing corporate entity.



According to BRN Regulations and Business & Professions Code 2778, "The name of a nursing corporation and any name or names under which it may render professional services shall contain the words "nursing" or "registered nursing," and wording or abbreviations denoting corporate existence."

Many CRNAs in California use the phrase "A Professional Nursing Corporation" after their business name to comply with this statute. For example, "Adeline Curtis CRNA Inc., A Professional Nursing Corporation" – can be abbreviated as APNC.

There are colleagues in the state who have not conformed to the corporate rules for naming nursing corporations; although we have never known a CRNA to suffer any negative

consequences for doing so, it seems the Secretary of State has caught on and have refused some CRNA corporation names that do not include this component. Some colleagues are also using the terms "anesthesia nursing or "nursing anesthesia," so these are also possibilities as well.

Make sure and search before filing to make sure the corp name is cleared. The name availability site is: <http://www.sos.ca.gov/business-programs/business-entities/name-availability/>

Also, note that there is much discussion regarding forming a corporation in a state outside of California (Delaware, Nevada, etc.) where there is lower, or even no income tax. Be aware that if you are providing professional services within the state of California, you are subject to California income tax regardless which state your corporation was established.



Soooo...how much time do you have?

You can go to the **CA Sec of State website** and read the instructions, complete the forms and incorporate

It is definitely worthwhile to visit the California Secretary of State Business Programs website (<http://www.sos.ca.gov/business/be/>) to find out how much separate filings cost and how much time they will take.

You can retain a corporate attorney

- should specialize in medical or nursing corporations in CA
- draft the documents needed (articles of incorp, bylaws, resolutions)
- expect to pay a few thousand dollars

You can **use an online service** that gives you the docs and you do it yourself, more organized, more checklists, probably about \$100

An excellent and extremely reliable source of information are the do-it-yourself Nolo legal books, whose wonderful motto is "Law for All": <http://www.nolo.com/>

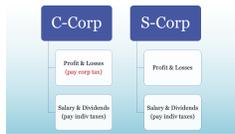
Research company reviews on the Better Business Bureau website, Yelp, etc. for online services.

Maybe you have a friend who will share their corporate structure (bylaws and resolutions)- pretty standard and you can model yours from there.

Tax laws can change from year to year and can set you up for major long term financial liability with the IRS, not to mention legal penalty. Retaining a competent **CPA** who is familiar with CRNA businesses is recommended (our only advice) and will steer you in the right direction in accordance with California tax laws.

Try asking CRNA colleagues who work in your area if they can provide a good CPA referral, as it may be helpful to use the services of a professional who is easily accessible from your geographic location.

I tried to reach out to the Ca CPA professional assoc to develop a relationship without success, but they do have a search function on their website.



Basic Differences between C-Corporations and S-Corporations

Both C-Corporations and S-Corporations provide exactly the same liability protection as long as state corporation rules are followed.

For a **C-corp**, first, the corporation has profits & losses and is taxed on the profits it makes.

When those profits are distributed to the Shareholders as a dividend, the Shareholders report the dividend as income on their individual tax returns. Essentially you are paying taxes twice on the same money your corporation makes, thus the double taxation.

The **S-Corporation** is a tax designation that C-Corporations can elect in order to eliminate the corporate level tax. This allows earnings to pass through the corporation to Shareholders. Taxes are only paid once on earnings in S-Corps.

Corporations must qualify in order to elect to be taxed as a Sub S. The essential requirements are:

1. The corporation cannot have more than 100 shareholders.
2. All shareholders must be either U.S. citizens or permanent residents. (some corps in other industries are looking for capital venture investments)
3. The corporation cannot have more than 25% of its income derived from passive activities (i.e. money from rents, property ownership or investments).
4. The corporation can only have one class of stock (i.e. no "preferred" stock, but you may have voting and non-voting common stock). Profit sharing/ distribution allocation has to be the same between owners

Most CRNAs in California elect to form the S Corporate entity because the taxes are simpler and because of the corporate tax pass through. Maybe your corporation has enough deductions

with healthcare costs and donations to the AANA Foundation and CANA Foundation that you don't have any profits and don't need the tax benefits. (tax savings vs costs to be an S-corp)

A competent CPA can help with the decision between the two.

Even though "income tax" is not paid on an S-Corporation, an annual CA State Minimum Annual Franchise Tax at 1.5% or a minimum of \$800.

To become a professional corporation in California and to achieve S Corp election, the documents required are:

1- Articles of Incorporation of a Professional Corporation (**Form ARTS-PC**)

- [name], A Professional Nursing Corporation or A Professional Nursing Anesthesia Corporation both meet Corporation Code requirements. You can always abbreviate the last part as APNC or APNAC when you write checks, etc. Also, that comma is important-- always include it and/or any other punctuation in your corporate name on official signatures.
- For the address (part 2) and Individual agent (part 3), we definitely recommend using a different entity to make the "corporate veil" a little more impenetrable. The name and address of the agent of record are made public and are considered "public knowledge."
- A California registered agent is simply an individual or an entity that accepts service of process — legal notice of a lawsuit — and other official documents on behalf of a business. A California registered agent is also known as a California corporate agent, a California agent for service of process, or a California statutory agent.
- Basically, if your business gets sued, the State of California wants to make sure the court can reliably contact you. The law requires that the owners of a business are properly notified.
- For share holders (part 4), you can't enter "zero," and you need to enter at least "1" on the application (meaning you are the only shareholder). If you are not distributing shares to other stockholders, the numbers ultimately do not matter.
- The name of authorized profession (part 5) is "Registered nursing." Plain and simple. Don't use "CRNA" or "nurse anesthesia" or they will get hopelessly confused and tell you this "is not authorized" . The purpose is also, "Registered nursing."

2- S-Corp election (Form 2553) to the IRS within 75 days of incorporating if you want it to count for the first year. Has to be mailed in, not electronic

3- CA Statement of Information -- this must be filed within 90 days of filing your Articles of Incorporation.

On the Sec of State website, there is a chart comparing processing times for hand delivering these forms (would confirm before arriving related to C19), electronic submission or mail. Using mail, good to get certified mail with tracking.



From the front lines:

- S-corp from another state, have to register as a foreign business entity with Sec of State. This confirms you are in good standing in your state.
- Moving to CA but want to set up your corp first, use a registered agent to meet the requirement for a CA address
 - A California registered agent is simply an individual or an entity that accepts service of process — when you get served/ legal notice of a lawsuit — and other official documents on behalf of a business.
 - Basically, if your business gets sued, the State of California wants to make sure the court can reliably contact you. The law requires that the owners of a business are properly notified.
 - Also known as a California corporate agent, a California agent for service of process, or a California statutory agent.
 - About \$50
- You and another CRNA want to be business partners, should you have one corp or each have your own? Advantages Disadvantages of each scenario. Good discussion for a CPA
- City Business License...Home Occupation Permit...County Business Permit. You will need to check with the city and county your business is located and comply with their requirements. This is for public safety and of course to increase revenue for where your business is located.