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# The Pennsylvania Psychologist

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## You Are Starting Your Own Private Practice! Now What?

Harry M. Baturin, JD, LLM, and Rachael L. Baturin, MPH, JD

### Considerations for Psychologists Establishing a Private Practice

Psychologists are faced with many considerations when establishing a private practice. Two of the primary considerations that psychologists face when proceeding to organize their private practice are a) what business structure to utilize for their private practice, and b) what are the state guidelines and requirements for their private practice. Administrative costs, legal costs, legal requirements and liability factors, management costs, as well as the tax consequences of the various business structures must be considered. This article will build upon previous articles and notes addressing this topic and concisely summarize the benefits and detriments of the various business structure options in an effort to help guide psychologists who are establishing a private practice.

Several business structures are available to professional psychologists who are establishing a private practice. These include, but are not limited to: sole proprietorships, limited partnerships, general partnerships, registered limited liability partnerships, limited liability



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companies, and corporations. The decision as to which business structure to choose should come after a careful review and analysis of the business and tax characteristics of each, keeping in mind what will best work for the specific psychologist(s) practice needs and their unique attributes.

The most common business structure, as well as the simplest business structure from both a tax and non-tax perspective, is the sole proprietorship. Sole proprietorships are defined by the fact that one individual (the sole proprietor) is the only owner, operator,

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# Does It Pay to Be Ethical?

Samuel Knapp, EdD, ABPP, Director of Professional Affairs<sup>1</sup>



Dr. Samuel Knapp

Does it pay for psychologists to be ethical? In the business world, for example, ethics is sometimes promoted as a way to increase profits.

Some corporations have initiated “ethics initiatives” to reduce employee theft or misconduct, promote good will among their customers, or to improve their reputation or “brand name” among the public (Paine, 2003).<sup>2</sup>

On the surface it appears that it pays for psychologists to be ethical. Ethical psychologists strive to develop their professional skills, treat their patients courteously, and act responsibly toward all of their professional contacts. Such behaviors, even though inherently ethical, would also generate good will and respect among patients and the community at large, resulting in more referrals. Also, ethical psychologists have less to worry about concerning licensing board complaints or malpractice suits, which can be taxing or devastating both emotionally and financially. In that sense, being ethical is a prudent strategy, somewhat akin to flossing one’s teeth or purchasing life insurance.

However, does it always pay to be ethical? One psychologist in

independent practice was asked by a wealthy self-pay patient to sign a form stating that she needs to take her companion dog with her on flights because of extreme anxiety while flying. The psychologist could not justify this request clinically and refused to sign the form. The patient dropped out of treatment and maligned the psychologist to her friends. The psychologist believed that her decision had cost her several self-pay referrals. Nevertheless, the psychologist believed that honesty in this situation trumped any possible personal gain.

*Ethical psychologists strive to develop their professional skills, treat their patients courteously, and act responsibly toward all of their professional contacts.*

Another psychologist had a very pleasant self-pay patient with extreme dependency needs. The psychologist continually pushed the patient to be more independent and quickly addressed any apparent dependency needs that arose in therapy. Yet the psychologist knew that she could have been less conscientious about promoting the patient’s sense of self-direction and independence and have kept this patient in therapy for many years. However the psychologist could not have, in good conscience, done anything that would have thwarted the growth of her patient.

Finally, another psychologist worked several hours a week at a

low-paying clinic for abused women because she believed she had a responsibility to share her skills with those who cannot otherwise afford quality services. She estimated that she could have earned \$6,000 more a year if she had seen more patients in her independent practice instead of working at the shelter.<sup>3</sup> Nonetheless, the psychologist believed that living up to her ideals of serving the public was of paramount importance on how she lived her life.

So being ethical does not always pay, at least in dollars. But it does pay in terms of the self-respect and pride that comes with living according to one’s convictions. “Ethical commitments have standing in their own right” (Paine, 2003, p. 141). Psychologists entered into this field to promote the well-being of others by adhering to the overarching ethical principles. They do not view ethics as a means to make more money; they view making money as a way to support themselves while practicing in an ethical profession. According to Dr. Bruce Mapes, “knowing that I helped some people get through a crisis or improve the quality of their lives is often more rewarding than any financial gain.”

Ethics may not necessarily pay, but it always *matters*. 📌

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<sup>3</sup>This example illustrates one problem in identifying altruism. Although this psychologist was acting out of altruism, she can never tell when an apparently selfless act results in an unexpected or unanticipated benefit. For example, some members of the community, if they learned of her actions, may view her as a trustworthy person and become more likely to refer patients to her as a consequence.

<sup>1</sup>Appreciation goes to members of the PPA Ethics Committee who commented on an earlier version of this article.

<sup>2</sup>Recently, some corporations, who once considered themselves amoral money-making enterprises, have committed themselves to multiple “bottom lines” and have incorporated values and social responsibility into their mission statements (Paine, 2003).



# Morality in Psychotherapy

John D. Gavazzi, PsyD, ABPP, and Samuel Knapp, EdD, ABPP

Individuals rarely, if ever, enter psychotherapy with the explicit goals of understanding the origins of their morality or their moral reasoning skills, or matching their expressed moral ideals with their everyday behavior. Nonetheless, clients and psychologists always bring their moral values into the psychotherapy session. Although morality and moral values may not be an overt part of the therapeutic dialogue, many psychotherapy sessions are rife with moral issues, value-laden comments, ethical conflicts, and moral reasoning.

If morality is seldom overtly addressed in psychotherapy, what makes morality so important to the practicing psychologist? One reason for this lack of emphasis stems from the idea that morality simply refers to “immoral,” “bad,” or other inappropriate forms of behavior, without considering the breadth and depth of morality within the psychotherapeutic relationship. This emphasis on the harmful aspects of morality parallels the level of negativity and anxiety related to the word “ethics” in psychotherapy. From our perspective, psychotherapy is a moral enterprise, meaning that moral values run through the average, everyday interactions and discussions within the psychotherapy session.

This article is the first in a four-part series highlighting moral issues as a component of psychotherapy. While these articles are not calling for a novel or radical means of conducting psychotherapy, we hope that psychologists providing psychotherapy will have a more refined lens to view what happens between them and their patients. This article will focus on some general issues related to morality and psychotherapy.

## Psychologists as Moral Agents With Moral Responsibilities

The Pennsylvania Professional Psychologists Practice Act (Act 52) requires applicant psychologists to submit proof that they are “of acceptable moral character.” Although Act 52 does not define “acceptable moral character,” the general interpretation is the applicant demonstrates the basic capacity to understand right from wrong in order to practice psychology competently.

Although the State Board of Psychology may be able to screen out applicants with serious character flaws, the optimal practice of psychology requires careful consideration of moral issues. It is easy for practicing psychologists, with busy lives and demanding practices, to forget the amount of moral responsibility they have when treating a patient



Dr. John D. Gavazzi



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*Although the State Board of Psychology may be able to screen out applicants with serious character flaws, the optimal practice of psychology requires careful consideration of moral issues.*

in psychotherapy. Psychotherapy is founded on a fiduciary moral and ethical framework between the psychologist (who is learned, skilled, and experienced in emotional suffering) and the patient (who ordinarily knows little or nothing about psychological distress and treatment). Based on this power imbalance, a psychologist’s moral beliefs can influence the course of psychotherapy as well as the trajectory of a patient’s life. Therefore, psychologists have an obligation to be aware of their moral values so that these do not unnecessarily interfere with a patient’s autonomy. Along with respect for patient autonomy, moral values in psychotherapy can be found broadly in the ethical principles of beneficence, nonmaleficence, fidelity, and justice.

## Psychotherapy as a Moral Enterprise

At its most basic level, psychotherapy can be considered a moral activity because it alleviates human suffering and promotes human welfare. However, the moral dynamics in psychotherapy move beyond the psychologist engaging in immoral or irresponsible behavior with patients. Because of the power imbalance inherent in the psychotherapy relationship, psychologists remain responsible to evaluate their

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## MORALITY IN PSYCHOTHERAPY

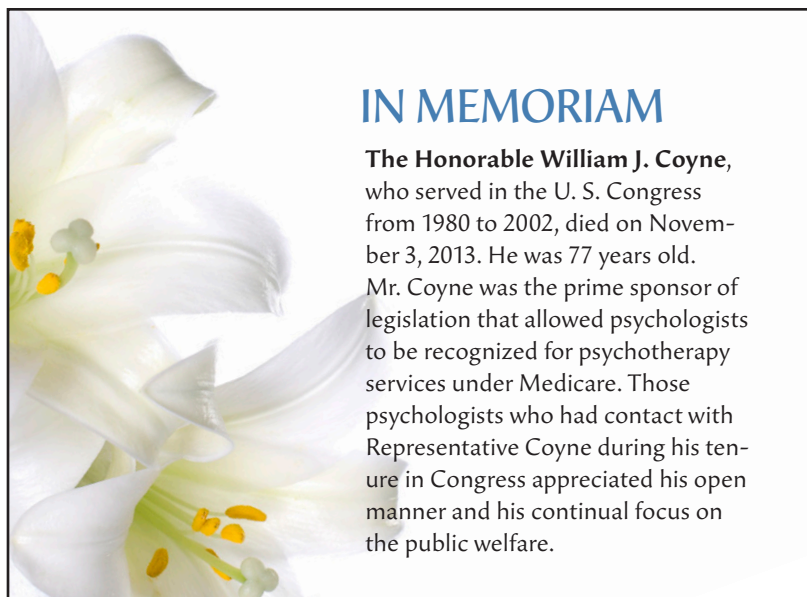
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moral belief systems and to refrain from imposing these moral values onto the patient's thoughts, beliefs, struggles, and conflicts (except in very limited circumstances such as when the life or safety of a third party is at risk). In other words, it is important for psychologists to help patients work through their motivated moral reasoning or struggle with moral dilemmas rather than unwittingly foisting their "expert" value-laden opinion onto the patient's life.

Within the psychotherapy session, patients may ask their treating psychologists directly what they *should do* with a moral quandary. When this situation arises in psychotherapy, the treating psychologist needs to avoid any type of moral persuasion and to refrain from giving a simple response to complex moral dilemmas. A treating psychologist, who gives the solution to a moral impasse, may decrease the tension in the room and temporarily reduce the patient's suffering. Nonetheless, by acting as the patient's moral compass, the psychologist may also, unwittingly, foster dependence and hamper the patient's sense of autonomy, independence, and moral responsibility for that decision and may potentially take valuable moral agency away from the patient.

When individuals make the commitment to become a psychologist, they agree to engage in moral behavior for the benefit of the patient. Moreover, morality in psychotherapy requires psychologists to understand their moral belief systems and recognize that the process of psychotherapy may help patients work through moral predicaments rather than having the psychologists assume that role for their patients.

In this article, we argued that psychologists operate within a moral world when conducting psychotherapy. The theme of morality is not always obvious in the therapeutic relationship. In order to be effective in psychotherapy, psychologists should not only be free of serious character flaws (have an "acceptable moral character"), they also need to know their moral belief systems and permit their patients to work through moral challenges. In future articles, we will address more specific areas of morality in psychotherapy. 🌱



## IN MEMORIAM

**The Honorable William J. Coyne**, who served in the U. S. Congress from 1980 to 2002, died on November 3, 2013. He was 77 years old. Mr. Coyne was the prime sponsor of legislation that allowed psychologists to be recognized for psychotherapy services under Medicare. Those psychologists who had contact with Representative Coyne during his tenure in Congress appreciated his open manner and his continual focus on the public welfare.

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# Should Psychologists Love Their Patients?

Samuel Knapp, EdD, ABPP, Director of Professional Affairs<sup>1</sup>

Should psychologists love their patients? Often the psychotherapeutic relationship engenders intense emotions. Some patients with good interpersonal skills and character are easy to like (others are easy to hate). But Fromm's definition of love ("the active concern for the life and growth of that which we love," 1963, p. 22) did not necessarily require an emotion. Consequently, it should be possible to act in a loving manner toward a patient even in the absence of strong positive feelings, (although it is easier to be motivated to help those whom we like).

The active concern for the well-being of patients requires the willingness and ability to create a therapeutic environment and to implement the techniques necessary to help patients. Some of the conditions necessary for a productive relationship, such as an empathic understanding of the patient, may also occur in more intimate relationships (Norcross & Wampold, 2011). But within psychotherapy, these feelings need to be checked and monitored.

According to the relational model of Alan Fiske, people have four basic cognitive models for social relationships: communal sharing (such as in family relationships); authority ranking (such as in employer/employee relationships); equality matching (involving mutual exchanges, such as carpooling); and market pricing (such as in the seller/consumer relationship; Fiske & Haslam, 1996). However, what is moral depends on the context of the relationship (Rai & Fiske, 2011). The extent of our obligations to others varies according to the nature of the relationship. Of course, we have an obligation to love (promote the growth and well-being of) those with whom we have an intimate relationship and this is typically accomplished by unconditional sharing of resources, promises of life-long commitment, and direct expressions of affection. However, our obligations to those with whom we have a marketing relationship are much different. Although we have an obligation to refrain from harming them and to be fair and honest in our relationships with them, our obligations to them are far more limited than our obligations engendered by communal sharing relationships.

Often real-world relationships combine elements of the four models proposed by Fiske. Psychotherapy is one such hybrid relationship that combines communal sharing (in that personal details are revealed and empathy expressed); authority ranking (in that the psychologist has more information and resources than the typical patient); and marketing (in that money is exchanged for services).

Problems occur when psychotherapists (or patients) fail to appreciate the appropriate mix of these relationship models. For example, as therapy is ending a patient may request that she and the psychologist initiate a social engagement. This may represent a belief on the part of the patient that the intimate sharing of personal details, as found in communal sharing relationships, means that this relationship is predominately a communal sharing one. Or, a psychologist may feel an impulse to give money to a patient who is struggling financially. Although such "gifts" would be expected among people within a communal sharing relationship, giving money to a patient represents a failure to appreciate the limits to communal sharing found in the psychotherapy relationship. That is to say, the determination of whether certain behaviors or traits are helpful "depends on the context in which they operate" (McNulty & Fincham, 2012, pp. 107-108). So what constitutes an appropriate expression of love in a familial relationship might not be an appropriate expression in another type of relationship. 📌

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# What to Do When Psychologists Do Not Leave Instructions Concerning the Disposition of Their Records

Samuel Knapp, EdD, ABPP, Director of Professional Affairs<sup>1</sup>

**I**t is important for psychologists to have a professional will which, among other things, designates the procedures for disposing of their records. In fact the APA Ethics Code (American Psychological Association, 2010) requires psychologists to make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice (Standard 6.02).

To help psychologists fulfill this obligation, PPA has an excellent article written by Drs. Mary O'Leary Wiley and Catherine Spayd on professional wills on the "members-only" section of its website.<sup>2</sup> Unfortunately, at times psychologists have died without giving instructions and the executors have been forced to manage or dispose of these records.

Several times every year, staff at the PPA office will advise family members who have to make decisions about the disposition of records for their loved ones in the absence of specific instructions. Our experience dealing with these family members gives visceral evidence of the importance of having

a professional will. Not only do the family members have to deal with their personal grief and the funeral arrangements, they also have to deal with pragmatic issues of dismantling the psychology practice. This is especially difficult if the family members are not health care professionals or have had no involvement in the management of their loved one's practice.

We urge family members to follow legal guidelines when disposing of old records, such as through shredding. The State Board of Psychology requires that records have to be kept for five years, although many insurance contracts require keeping them longer. The standards for record retention do not change after a psychologist has died. Sometimes family members can simply purchase a shredder and destroy the documents themselves. If the number of records is large, then they can contact a company that will come out and shred medical records for a fee.

Ideally the deceased psychologists will have a file or system that identifies the date of patient termination for their files. In the absence of such a system, the executor or someone delegated by the executor will have to go through the files and identify the last date of contact.

When psychologists in solo practice die unexpectedly, their executors have to handle other practical matters such as deciding how to handle current cases. Fortunately, in many cases colleagues or local psychological associations have responded appropriately to manage the records or facilitate the

referral of existing patients. If the psychologist worked in a group practice, the surviving co-owners of the practice can handle the disposition of records and the referral of current patients. Executors also have to wind down the practices, finish the billing, end contracts, sell furniture, give referrals

*Not only do the family members have to deal with their personal grief and the funeral arrangements, they also have to deal with pragmatic issues of dismantling the psychology practice.*

for active patients and inform referral sources, insurance companies, and other interested parties of the death. Depending on the circumstances, we have sometimes recommended that the survivors place an announcement in a local newspaper stating that the psychologist has died, who has custody of the records, and what patients should do if they want a copy of their records sent to another provider.

Unfortunately, we are aware of situations where family members have not handled the confidentiality of the records appropriately. For example, one family member took the confidential files of his late wife directly to a garbage dump. A sanitation worker saw

<sup>1</sup>Appreciation goes to members of the PPA Ethics Committee who commented on an earlier version of this article.

<sup>2</sup>To get to the members only section, members should enter the username (which is their member number found on the mailing label of the *Pennsylvania Psychologist*) and the password (their last name with the first letter capitalized). When in the members-only section, go to "publications," then "business and practice issues," then to "retirement," and "closing your practice."

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## WHAT TO DO WHEN PSYCHOLOGISTS DO NOT LEAVE INSTRUCTIONS...

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them, identified them as confidential health care information, informed his supervisor, and eventually the local district attorney was notified and was prepared to press charges against the estate of the late psychologist. The grief-driven husband thought he was honoring the wishes of his late wife (he remembered her saying things such as “make sure no one gets these records”), although he was given no more detail on how to dispose of records properly. Fortunately, in this case the district attorney, upon learning all of the facts, decided not to prosecute.

The sudden death of a psychologist can be overwhelming for the survivors. In addition to managing their grief, family members also have to deal with practical issues such as record retention and destruction. Many of these problems can be avoided if psychologists carefully plan for the dissolution of their practices in the event of a sudden death or disability. ■

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## YOU ARE STARTING YOUR OWN PRIVATE PRACTICE!

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and decision maker with respect to the business. Likewise, the sole proprietor is completely autonomous and can act without any constraint as to how he or she manages the business (within the confines of the law and psychological practice rules and regulations). One of the benefits of a sole proprietorship is the fact that there are no organizing documents required to establish it and no additional tax forms beyond the Schedule C required for filing a tax return. Another benefit is that the sole proprietor reaps all the benefits of a profitable business and can expand or contract as he or she sees fit without any restrictions. However, one of the detriments of a sole proprietorship is that the sole proprietor is liable for all of the debts and liabilities of the proprietorship. It is a self-contained entity, self-employment venture with the tax liabilities flowing directly to the sole proprietor as well. Accordingly, although the sole proprietorship has the least administrative costs, legal requirements, and management costs, it has increased liability considerations and tax considerations.

In the event that the attributes of a sole proprietorship do not appeal to the psychologist or if multiple psychological professionals choose to practice together, a different business structure must be considered. The first business structure that is often considered in this situation is that of a partnership.

A partnership is somewhat more complicated to manage than a sole proprietorship but is less complicated than a limited liability company or a corporation. There are three different types of partnerships: general partnerships, limited partnerships, and registered limited liability partnerships.

In all three situations, it is always advisable to have a partnership agreement in writing for the benefit and protection of the partners and this governing document is an added benefit to the partnership structure.

A general partnership has the least administrative and management costs of the three. It is created simply by the intent of the partners and there are no formal filing requirements at the state or federal level. All partners have equal rights in the management and conduct of the business unless the partnership agreement states otherwise. However, the liabilities incurred by the partnership and by each of the partners flow directly to the individuals/partners and not to the partnership as a separate entity. As such, each partner is joint and severally liable for claims against the partnership and each owes a fiduciary duty to the other. Additionally, the partnership itself is not taxed, rather the income, gains, losses, deductibles, and credits are passed out to the partners equally unless otherwise provided in the partnership agreement.

A limited partnership is initially formed by filing a Certificate of Limited Partnership with the Department of

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State. In a limited partnership, there are two types of partners: general partners and limited partners. This disparity in partnership interests can serve as a benefit if differing roles are needed. General partners have virtually complete authority to manage the partnership, whereas limited partners have almost no control with respect to management. However, one of the detriments is that if limited partners participate in management activities beyond those which are allowed by state law, they risk losing their status of being limited partners and, although general partners have unlimited liability for debts and obligations of the limited partnership, the limited partners' liability is restricted to their capital investment. All limited partnerships are required to have at least one general partner who is personally liable for the claims against the partnership. Additionally, the partnership itself is not taxed, rather the income, gains, losses, deductibles, and credits are passed out to the partners equally unless otherwise provided in the partnership agreement.

The last type of partnership is the registered limited liability partnership (RLLP). An RLLP is formed when a general or limited partnership files a Statement of Registration with the Department of State. RLLPs allow general partners to protect themselves from personal liability for the misconduct or negligent acts committed by their partners or acts of those whom an acting partner is directly supervising. This provides the added benefit of protecting their personal assets from claims involving the wrongful acts of another partner. However, an added detriment is that in an RLLP a partner remains liable for (1) debts of the partnership not arising from the negligence or misconduct; (2) debts and obligations arising from the negligence or misconduct of the partner or a person under such partner's direct supervision

*General partners have virtually complete authority to manage the partnership, whereas limited partners have almost no control with respect to management.*

or control; (3) debts for which the partner has agreed in writing to be personally liable; and (4) situations where the RLLP has not maintained the liability insurance required by the act. Another added detriment is increased administrative costs, including that in order to maintain its status as an RLLP, the RLLP must maintain liability insurance or other sufficient security which provides coverage for the negligent acts or misconduct of the partners or agents of the RLLP. This liability insurance must be in the minimum coverage amount of \$100,000 multiplied by the number of general partners in excess of one, but in no event less than \$100,000 or more than \$1,000,000.

Professionals may practice as partners in an RLLP. However, all of the partners in a partnership that renders professional services must be licensed. An RLLP which renders professional services shall continue to be subject

to regulation by the applicable government agency. An RLLP should continue to be taxed as a partnership on both the federal and the state levels even after it has registered as an RLLP. In addition, note that an RLLP has the increased administrative costs of filing an annual registration statement with the Department of State and paying an annual registration fee equal to \$200 multiplied by the number of persons who are general partners at the end of such year and who reside or are organized and existing in Pennsylvania.

Lastly, establishing professionals should consider the limited liability company (LLC) when making their entity decision. A limited liability company is a hybrid between a partnership and a corporation providing both the liability protections of a corporation and the tax benefits of a partnership. Accordingly, one of the primary benefits is that the owners of an LLC, known as members, are treated like shareholders of a corporation for purposes of determining liability, yet with differing rules with respect to the flow through of tax income and losses. However, in the event a psychologist(s) chooses to establish an LLC, it is important to note that the individual malpractice liability requirement of the professional(s) remains.

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A limited liability company is formed by filing a Certificate of Organization and a Docketing Statement with the Department of State. There are additional increased operating costs inasmuch as the structure of an LLC must be set forth in a written Operating Agreement, which is akin to a governing document which includes portions of corporate bylaws and portions of a Shareholder Agreement which addresses items such as management of the LLC, restrictions on the transfer of membership interests, and provisions for withdrawal. The Operating Agreement should also be carefully drafted to ensure that the LLC qualifies for taxation as a partnership for federal income tax purposes.

The most complex business entities are S-corporations and C-corporations. Unlike the standard C-corporation, an S-corporation is a corporation that has made an election under subchapter S of the Internal Revenue Code that allows for special tax treatment and is subject to many specific requirements and contains many features of the partnership except that most liability for the conduct of the practice now flows to the corporation rather than to the individuals within the corporation, yet the shareholders are not subject to double taxation.

In establishing a private practice, an additional administrative requirement is that the name of a professional corporation must be approved by the State Board of Psychology prior to its use and the name cannot contravene the ethical principles set out in § 41.61 (relating to Code of Ethics) and cannot be false, misleading, or deceptive. When using names which limit the practice to a particular area of psychology (such as clinical psychology), the filer is now required to submit documentation of training sufficient to establish the credentials in that area.

Lastly, psychology falls into the category of restricted professional services; therefore, psychologists forming a Restricted Professional Company (RPC), an LLC that provides professional services through its licensed professional

members, must elect RPC status in its Certificate of Organization. Additionally, a Restricted Professional Company cannot engage in any business other than conducting the practice of the restricted professional service or services for which it was specifically organized, except that a restricted professional company may (1) own real and personal property under certain conditions, and/or (2) be a partner, shareholder, member, or other owner of a partnership, corporation, limited liability company, or other association engaged in the business of rendering the restricted professional service or services for which the restricted professional company was organized. Lastly, all of the ultimate beneficial owners of membership interests in and all of the managers, if any, of a restricted professional company must be licensed persons. 

*Please Note: This article was written to provide a basic understanding of the various options for business entity choice for psychologists and not as specific legal advice. For more information about the specifics of establishing a business entity and for specific legal advice as to establishing a specific business entity, psychologists are advised to consult with an attorney.*



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## 2014 CE Calendar

The following programs are being offered either through co-sponsorship or solely by PPA.

### April 11, 2014

*Spring Continuing Education and Ethics Conference*  
Lancaster, PA  
Marti Evans (717) 232-3817

### June 18-21, 2014

*Annual Convention*  
Harrisburg, PA  
Marti Evans (717) 232-3817

### Podcast

*A Conversation on Positive Ethics with Dr. Sam Knapp and Dr. John Gavazzi*  
Contact: [ppa@PaPsy.org](mailto:ppa@PaPsy.org)

For CE programs sponsored by one of the Regional Psychological Associations in Pennsylvania, visit [www.PaPsy.org/index.php/collaboration-communication/](http://www.PaPsy.org/index.php/collaboration-communication/).



Registration materials and further conference information will be mailed to all members.

If you have additional questions, please contact Marti Evans at the PPA office.

## Classifieds

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