

Form 204—General Information
(Certificate of Formation – Professional Association)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A professional association is a professional entity formed for the purpose of providing the professional service rendered by a doctor of medicine, doctor of osteopathy, doctor of podiatry, dentist, chiropractor, optometrist, therapeutic optometrist, veterinarian, or licensed mental health professional. A “licensed mental health professional” means a person, other than a physician, who is licensed by the state to engage in the practice of psychology or psychiatric nursing or to provide professional therapy or counseling services.

A professional association is governed by title 1, title 2, chapters 20 and 21, and title 7, chapters 301 and 302 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A of the BOC governs the formation of a professional association and sets forth the provisions required or permitted to be contained in the certificate of formation.

Title 7, chapter 301 establishes certain restrictions and requirements regarding ownership and management of a professional association. Only a professional individual licensed to practice the same professional service as the professional association may be a governing person, managerial official, owner, or member of a professional association. Only a governing person of the professional association may serve as the president of the association.

Taxes: Professional associations are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide an association name and organizational designation. The entity name must comply with the provisions of chapter 5 of the BOC and the administrative rules on entity name availability adopted by the secretary of state. Chapter 5 of the BOC requires that the entity must be distinguishable in the records from the name of any existing domestic or foreign filing entity, any fictitious name under which a foreign filing entity is registered to transact business in this state, or any name reservation or registration filed with the secretary of state. In addition, the entity name may not contain any word or phrase that by its inclusion in the name: 1) indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue, or 2) falsely implies that the entity is affiliated with a governmental entity. If the entity name does not comply with these provisions, the document cannot be filed.

The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you

may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.texas.gov. If the entity name does not meet the standard for availability, the document will not be filed. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person's rights to the name.

Pursuant to section 5.060 of the BOC, the name of a professional entity must not be contrary to a statute or regulation that governs a person who provides a professional service through the professional entity, including a rule of professional ethics. Contact the state agency or examining board exercising control over the profession to determine whether the name chosen complies with statutory and regulatory requirements governing the profession.

- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The association cannot act as its own registered agent; do not enter the corporate name as the name of the registered agent.

Consent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Management:** A professional association is governed and managed by either a board of directors or an executive committee. Select the management structure and the names of the individuals serving as members of the board or committee. A minimum of one member is required. Members of the board or committee must be individuals who are licensed to provide the same professional service to be rendered by the professional association; there are no residency requirements.

Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for a director, executive committee member, or initial member, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Article 4—Purpose:** The certificate of formation of a professional association must state the type of professional service to be provided by the professional entity. Pursuant to section 2.004 of the BOC, a professional entity may engage in only one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services.

Joint Practice by Certain Professionals: Pursuant to section 301.012 of the BOC, the following professionals are permitted to jointly form and own a professional association to perform a professional service that falls within the scope of practice of those practitioners.

- (1) Doctors of medicine and doctors of osteopathy licensed by the Texas Medical Board, persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners, and persons licensed as chiropractors by the Texas Board of Chiropractic Medical Examiners may jointly form and own a professional association to perform professional services that fall within the scope of practice of those practitioners.
- (2) Persons licensed as physicians under Subtitle B, Title 3, Occupations Code, and persons licensed as physician assistants under Chapter 204, Occupations Code, may form and own a professional association to perform professional services that fall within the scope of practice of those practitioners.
- (3) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional association that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.
- (4) Doctors of medicine and doctors of osteopathy may jointly form and own a professional association with persons licensed as optometrists or therapeutic optometrists by the Texas Optometry Board to perform professional services that fall within the scope of practice of those practitioners.

The state agencies exercising regulatory control over professions to which these joint practice provisions apply continue to exercise regulatory authority over their respective licenses.

- **Initial Mailing Address:** *Effective January 1, 2022*, the certificate of formation of a filing entity must provide the initial mailing address for the entity. The initial mailing address is the address that will be used by the Comptroller of Public Accounts for sending tax information and correspondence to the entity. The initial mailing address may be a post office box or street address.
- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions.

Duration: Pursuant to section 3.003 of the BOC, a domestic entity exists perpetually unless provided otherwise in the certificate of formation. Please note that section 302.002 of the BOC provides that a professional association's existence is subject to certain conditions and limitations. If formation of a professional association with a stated period of duration is desired, use the "Supplemental Provisions/Information" section of this form to provide for a limited duration.

- **Organizers—Original Members:** The certificate of formation of a professional association must state the name and address of each member of the association. Except as provided below, each original member acts as an organizer of the association and must sign the certificate of formation. Each organizer or original member is required to be a licensed individual.

Physician and Physician Assistant PAs: Certain management and ownership restrictions apply to a professional association that is formed and owned jointly by a physician and physician assistant. One or more of the original members must be a physician and each physician that is an original member must sign the certificate of formation as an organizer and must ensure that a physician or physicians control and manage the professional association. A licensed physician assistant who is an original member of the association cannot act as an organizer, director, or officer of the association.

- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file with the secretary of state a statement regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as “in existence” on the records of the secretary of state.

- **Execution:** Each original member must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by a managerial official or organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for a professional association is **\$750**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee if submitting the document by mail or by courier delivery. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697 or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file- stamped copy of the document, if a duplicate copy was provided as instructed.

Need Faster Delivery and Processing? Use our SOSUpload system to electronically submit a PDF copy of the completed and executed document. When submitting a document through SOSUpload, do not include a copy of these instructions, a duplicate copy of the document, payment information,

or personal identifying information (PII). Inclusion of this information may lead to a rejection of the document. For more information on SOSUpload, please call (512) 463-5555; email corpinfo@sos.texas.gov; or visit <https://direct.sos.state.tx.us/lef/index.aspx>

- **FYI:** A professional association is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the association. In addition, section 21.802 of the BOC provides a penalty for the failure to timely file a statement of change of registered office or registered agent with the secretary of state. To be timely, the filing must be made by the association before the 30th day after the change.

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