

Health Professional Corporations: Shareholders Personally Liable & Responsible



THE DIVISIONAL COURT OF ONTARIO RECENTLY WENT BEHIND THE CORPORATE STRUCTURE TO FIND THE CORPORATION'S SHAREHOLDERS PERSONALLY LIABLE AND RESPONSIBLE. IN DOING SO, IT FOUND THAT IN CERTAIN CIRCUMSTANCES SHAREHOLDERS WOULD BE RESPONSIBLE FOR THE ACTIVITIES OF THE HEALTH PROFESSIONAL CORPORATION.

The case is *Davies et al. v. Ontario College of Pharmacists* and was reported in the May 23, 2003 issue of Ontario Reports.

The health care corporation, a pharmacy, committed acts of professional misconduct. The shareholders, officers and directors were licensed pharmacists who carried on their pharmacy business through the corporation. The corporation was convicted of income tax evasion in connection with undeclared volume rebates received from drug companies.

After the conviction, the two pharmacists were charged with professional misconduct by their regulatory college. The College's Discipline Committee found the pharmacists guilty, reprimanded them, and suspended each of them from practice for a period of three weeks.

The pharmacists appealed to the Divisional Court, arguing that a member of the College who is a shareholder, officer or director of a corporation that conducts the business of a pharmacy in

a manner that contravenes the *Income Tax Act* does not engage in conduct that is relevant to the practice of pharmacy.

The question before the College and the courts was whether the College could pierce the corporate veil and get to the controlling shareholders to determine:

- whether or not there were acts of professional misconduct;
- the activity met the threshold of disgraceful, dishonourable and/or unprofessional conduct.

The Divisional Court found that the pharmacists could not hide behind the corporate veil of the corporation through which they carried on their pharmacy business. The Court said that it was not unreasonable for the Discipline Committee to have concluded that the pharmacists' participation in their closely held corporation's tax evasion scheme was conduct that reflected adversely on the profession, as well as on them.

The Court concluded that the pharmacists' conduct could be characterized as conduct "relevant to the practice of pharmacy" that "would reasonably be regarded by members of the profession as disgraceful, dishonourable and/or unprofessional." The Court said that, for this case, the distinction between the notion of "conduct unbecoming" a professional (i.e. conduct unrelated to or outside the practice of the profession but reflecting poorly on the profession and the individual) and "professional misconduct" (i.e. conduct "relating" to the practice of the profession but not strictly involving the actual practice of the profession) was not significant.

The Court dismissed the pharmacists' appeal, and awarded the College the costs of the appeal.

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