

STATE OF NEW YORK

8612

IN SENATE

May 10, 2018

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to university faculty practice corporations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1412 of the not-for-profit corporation law, as
2 added by and paragraph (f) as amended by chapter 555 of the laws of
3 1993, paragraphs (a), (c) and (e) as amended by chapter 323 of the laws
4 of 2012, paragraph (d) as amended by chapter 549 of the laws of 2013,
5 and subparagraph 2 of paragraph (f) as amended by chapter 172 of the
6 laws of 1999, is amended to read as follows:

7 § 1412. University faculty practice corporations.

8 (a) Organization. Notwithstanding any other provision of law, one or
9 more individuals who are duly authorized by law to render the same
10 professional service, which shall be the practice of medicine, the prac-
11 tice of dentistry, the practice of chiropractics, the practice of phys-
12 ical therapy or the practice of optometry, and who are members of the
13 faculty or medical staff of the same accredited medical school, dental
14 school, chiropractic college, college or university with an accredited
15 doctor of physical therapy program or optometry college, a "general
16 hospital", as defined in section twenty-eight hundred one of the public
17 health law, (provided, however, that individuals on the staff of one or
18 more general hospitals can form a single entity hereunder if such hospi-
19 tals are commonly controlled or one of the hospitals controls the
20 other), or a facility authorized to operate pursuant to section 16.03 of
21 the mental hygiene law, as applicable, in the state of New York may
22 organize, or cause to be organized, a [~~university faculty~~] practice
23 corporation under this article (1) for the purpose of supporting the
24 [~~educational mission of such school by providing~~] mission of such
25 school, hospital or hospitals, or facility, by, (A) in the case of an
26 accredited medical school, dental school, chiropractic college, college
27 or university with an accredited doctor of physical therapy program or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD15325-05-8

1 optometry college, providing hospital or medical staff clinical instruc-
2 tion and supervision of students of such school, interns and residents
3 and, incident thereto, rendering professional services; (B) in the case
4 of a general hospital or hospitals, or facility, providing care to indi-
5 viduals that the general hospital or hospitals, or facility are author-
6 ized to serve and (2) which shall be operated in compliance with (A)
7 section 501(c)(3) of the United States internal revenue code and (B) the
8 [~~faculty~~] practice plan with which members of the faculty or medical
9 staff of such school, general hospital or hospitals, or facility are
10 required to comply, as applicable, as amended from time to time.

11 (b) Definition. "University faculty practice corporation" means [~~a~~]
12 any practice corporation organized or reincorporated under this section.
13 Such corporations shall be referred to herein as "university faculty
14 practice corporations".

15 (c) Certificate of incorporation. The certificate of incorporation of
16 a university faculty practice corporation shall meet the requirements of
17 this chapter and shall have attached thereto a certificate or certifi-
18 cates issued by the licensing authority certifying that each of the
19 proposed members, if any, directors and officers is authorized by law to
20 practice the profession which the corporation is being organized to
21 practice. The certificate shall also state (1) the name of the medical
22 school, dental school, chiropractic college, college or university with
23 an accredited doctor of physical therapy program or optometry college,
24 or the name of the general hospital or hospitals or facility authorized
25 to operate pursuant to section 16.03 of the mental hygiene law, as
26 applicable, in the state of New York of which the proposed members, if
27 any, directors and officers are faculty or members of medical staff, as
28 applicable; and (2) that such corporation shall operate in compliance
29 with (A) section 501(c)(3) of the United States internal revenue code
30 and (B) the [~~faculty~~] practice plan with which members of the faculty of
31 such school or members of the medical staff of such general hospital or
32 hospitals, or facility are required to comply, as amended from time to
33 time.

34 (d) Type. A university faculty practice corporation is a charitable
35 corporation under this chapter.

36 (e) Applicability of laws; members, directors and officers. This chap-
37 ter shall be applicable to a university faculty practice corporation
38 except to the extent that the provisions thereof conflict with this
39 section. A university faculty practice corporation may consolidate or
40 merge only with another university faculty practice corporation. The
41 following provisions of article fifteen of the business corporation law
42 shall be applicable to a university faculty practice corporation except
43 that each reference in such provisions to a "shareholder" shall be
44 deemed to be a reference to a "member" and each reference in such
45 provisions to "shareholders" shall be deemed a reference to "members":
46 paragraphs (a), (b), (c) and (e) of section fifteen hundred one; para-
47 graphs (b), (c) and (d) of section fifteen hundred three; paragraphs
48 (a), (c) and (g) of section fifteen hundred four; section fifteen
49 hundred five; section fifteen hundred nine except to the extent such
50 section refers to section fifteen hundred ten; paragraph (a) of section
51 fifteen hundred twelve; section fifteen hundred fourteen; and section
52 fifteen hundred fifteen. No individual may be a member, director or
53 officer of a university faculty practice corporation unless such indi-
54 vidual is authorized by law to practice in this state the profession
55 which such corporation is authorized to practice and is a member of the
56 faculty or medical staff of the medical school, dental school, chirop-

1 ractic college, college or university with an accredited doctor of phys-
2 ical therapy program or optometry college, or of the general hospital or
3 hospitals, or of a facility authorized to operate pursuant to section
4 16.03 of the mental hygiene law which such corporation is organized to
5 support.

6 (f) Corporations heretofore incorporated. Any corporation heretofore
7 incorporated under article fifteen of the business corporation law and
8 operated in compliance with the requirements of section 501(c)(3) of the
9 United States internal revenue code may amend its certificate of incor-
10 poration and be reincorporated as a university faculty practice corpo-
11 ration organized under this section by making and filing in the office
12 of the secretary of state a certificate entitled "Certificate of Rein-
13 corporation of...(name of incorporation) under section 1412 of the Not-
14 for-Profit Corporation Law." (1) Such reincorporation certificate shall
15 contain the provisions required, and any other provisions permitted, by
16 section ~~[402]~~ four hundred two of this chapter and shall also set forth
17 (A) a statement that such corporation is filing such reincorporation
18 certificate under this section, (B) if the name of such corporation has
19 been changed, the name under which such corporation was originally
20 incorporated, (C) the date of incorporation of such corporation, (D) the
21 names and post-office addresses of the holders of record of all of the
22 outstanding shares of such corporation entitled to vote, (E) a statement
23 that such corporation has elected to become and be a university faculty
24 practice corporation organized and operated under by virtue of this
25 section and (F) the statements required by paragraph (c) of this
26 section. (2) Such reincorporation certificate shall be either (A)
27 subscribed in person or by proxy by all of the holders of record of all
28 of the outstanding shares of such corporation entitled to vote and shall
29 have annexed an affidavit of the secretary or an assistant secretary
30 that the persons who have executed the certificate, in person or by
31 proxy, constitute all of the holders of record of all of the outstanding
32 shares of the corporation entitled to vote or (B) subscribed by the
33 president or a vice president and the secretary or an assistant secre-
34 tary and shall have annexed an affidavit of such officers stating that
35 they have been authorized to execute and file such reincorporation
36 certificate by the votes, cast in person or by proxy, of all of the
37 holders of record of all of the outstanding shares of such corporation
38 entitled to vote at the meeting at which such votes were cast, and that
39 such votes were cast at a meeting of shareholders held on a date speci-
40 fied, upon notice pursuant to section six hundred five of the business
41 corporation law. (3) A reincorporation pursuant to this paragraph shall
42 not effect a dissolution of such corporation, but shall be deemed a
43 continuation of its corporate existence, without affecting its then-ex-
44 isting property rights or liabilities, or the liabilities of its share-
45 holders, directors or officers as such, but thereafter it shall have
46 only such rights, powers and privileges, and it and such shareholders,
47 directors and officers shall be subject only to such other duties and
48 liabilities, as a university faculty practice corporation and members,
49 directors and officers thereof. (4) Upon the filing of a reincorporation
50 certificate in the office of the secretary of state, (A) any issued and
51 outstanding shares of such corporation shall be purchased by such corpo-
52 ration at a purchase price equal to the price for which such shares were
53 originally issued, or such other price as such corporation shall agree
54 to, such price to be paid out of the surplus of the corporation, where-
55 upon such shares shall be deemed cancelled as of the date of such filing
56 and (B) such reincorporation certificate shall be deemed to replace the

1 certificate of incorporation of such corporation. The department of
2 state shall not file such certificate of reincorporation unless the
3 consent of the commissioner of taxation and finance is attached thereto.
4 Such certificate of consent shall only be given if the commissioner of
5 taxation and finance ascertains that all taxes imposed under article
6 nine-A of the tax law, as well as penalties and interest charges related
7 thereto, accrued against the corporation have been paid.

8 (g) Effect of section. University faculty practice corporations incor-
9 porated or reincorporated under this section shall be organized and
10 operated exclusively for the purposes set forth in paragraph (a) of this
11 section and shall be subject to the restrictions and limitations imposed
12 by or pursuant to paragraphs (a) and (e) of this section. All universi-
13 ty faculty practice corporations incorporated or reincorporated under
14 this section may operate under the name (or portion thereof) or initials
15 of the affiliated school, hospital or hospitals, or facility, or under
16 the name (or portion thereof) or initials of the system with which such
17 affiliated school, hospital or hospitals, or facility are publicly iden-
18 tified. Notwithstanding anything to the contrary in article twenty-eight
19 of the public health law or the regulations adopted pursuant thereto, no
20 corporation organized under this section shall be deemed to be estab-
21 lishing or operating a hospital, diagnostic center and/or treatment
22 center requiring establishment or construction approval solely by reason
23 of being organized as a not-for-profit corporation. Insofar as the
24 provisions of this section are inconsistent with the provisions of any
25 other law, general or special, the provisions of this section shall be
26 controlling as to the corporations incorporated or reincorporated here-
27 under.

28 § 2. This act shall take effect immediately.