

# STATE OF NEW YORK

2993

2019-2020 Regular Sessions

## IN ASSEMBLY

January 28, 2019

Introduced by M. of A. GOTTFRIED, PAULIN -- read once and referred to the Committee on Higher Education

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

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

LBD04006-01-9

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

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

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

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

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

1 which such corporation is authorized to practice and is a member of the  
2 faculty or medical staff of the medical school, dental school, chirop-  
3 ractic college, college or university with an accredited doctor of phys-  
4 ical therapy program or optometry college, or of the general hospital or  
5 hospitals, or of a facility authorized to operate pursuant to section  
6 16.03 of the mental hygiene law which such corporation is organized to  
7 support.

8 (f) Corporations heretofore incorporated. Any corporation heretofore  
9 incorporated under article fifteen of the business corporation law and  
10 operated in compliance with the requirements of section 501(c)(3) of the  
11 United States internal revenue code may amend its certificate of incor-  
12 poration and be reincorporated as a university faculty practice corpo-  
13 ration organized under this section by making and filing in the office  
14 of the secretary of state a certificate entitled "Certificate of Rein-  
15 corporation of...(name of incorporation) under section 1412 of the Not-  
16 for-Profit Corporation Law." (1) Such reincorporation certificate shall  
17 contain the provisions required, and any other provisions permitted, by  
18 section [402] four hundred two of this chapter and shall also set forth

19 (A) a statement that such corporation is filing such reincorporation  
20 certificate under this section, (B) if the name of such corporation has  
21 been changed, the name under which such corporation was originally  
22 incorporated, (C) the date of incorporation of such corporation, (D) the  
23 names and post-office addresses of the holders of record of all of the  
24 outstanding shares of such corporation entitled to vote, (E) a statement  
25 that such corporation has elected to become and be a university faculty  
26 practice corporation organized and operated under by virtue of this  
27 section and (F) the statements required by paragraph (c) of this  
28 section. (2) Such reincorporation certificate shall be either (A)  
29 subscribed in person or by proxy by all of the holders of record of all  
30 of the outstanding shares of such corporation entitled to vote and shall  
31 have annexed an affidavit of the secretary or an assistant secretary  
32 that the persons who have executed the certificate, in person or by  
33 proxy, constitute all of the holders of record of all of the outstanding  
34 shares of the corporation entitled to vote or (B) subscribed by the  
35 president or a vice president and the secretary or an assistant secre-  
36 tary and shall have annexed an affidavit of such officers stating that  
37 they have been authorized to execute and file such reincorporation  
38 certificate by the votes, cast in person or by proxy, of all of the  
39 holders of record of all of the outstanding shares of such corporation  
40 entitled to vote at the meeting at which such votes were cast, and that  
41 such votes were cast at a meeting of shareholders held on a date speci-  
42 fied, upon notice pursuant to section six hundred five of the business  
43 corporation law. (3) A reincorporation pursuant to this paragraph shall  
44 not effect a dissolution of such corporation, but shall be deemed a  
45 continuation of its corporate existence, without affecting its then-ex-  
46 isting property rights or liabilities, or the liabilities of its share-  
47 holders, directors or officers as such, but thereafter it shall have  
48 only such rights, powers and privileges, and it and such shareholders,  
49 directors and officers shall be subject only to such other duties and  
50 liabilities, as a university faculty practice corporation and members,  
51 directors and officers thereof. (4) Upon the filing of a reincorporation  
52 certificate in the office of the secretary of state, (A) any issued and  
53 outstanding shares of such corporation shall be purchased by such corpo-  
54 ration at a purchase price equal to the price for which such shares were  
55 originally issued, or such other price as such corporation shall agree  
56 to, such price to be paid out of the surplus of the corporation, where-

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

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

30 § 2. This act shall take effect immediately.