

# STATE OF NEW YORK

1815

2019-2020 Regular Sessions

## IN SENATE

January 16, 2019

Introduced by Sen. RIVERA -- 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

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

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

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

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

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

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

vidual is authorized by law to practice in this state the profession which such corporation is authorized to practice and is a member of the faculty or medical staff of the medical school, dental school, chiropractic college, college or university with an accredited doctor of physical therapy program or optometry college, or of the general hospital or hospitals, or of a facility authorized to operate pursuant to section 16.03 of the mental hygiene law which such corporation is organized to support.

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

(A) a statement that such corporation is filing such reincorporation certificate under this section, (B) if the name of such corporation has been changed, the name under which such corporation was originally incorporated, (C) the date of incorporation of such corporation, (D) the names and post-office addresses of the holders of record of all of the outstanding shares of such corporation entitled to vote, (E) a statement that such corporation has elected to become and be a university faculty practice corporation organized and operated under by virtue of this section and (F) the statements required by paragraph (c) of this section. (2) Such reincorporation certificate shall be either (A) subscribed in person or by proxy by all of the holders of record of all of the outstanding shares of such corporation entitled to vote and shall have annexed an affidavit of the secretary or an assistant secretary that the persons who have executed the certificate, in person or by proxy, constitute all of the holders of record of all of the outstanding shares of the corporation entitled to vote or (B) subscribed by the president or a vice president and the secretary or an assistant secretary and shall have annexed an affidavit of such officers stating that they have been authorized to execute and file such reincorporation certificate by the votes, cast in person or by proxy, of all of the holders of record of all of the outstanding shares of such corporation entitled to vote at the meeting at which such votes were cast, and that such votes were cast at a meeting of shareholders held on a date specified, upon notice pursuant to section six hundred five of the business corporation law. (3) A reincorporation pursuant to this paragraph shall not effect a dissolution of such corporation, but shall be deemed a continuation of its corporate existence, without affecting its then-existing property rights or liabilities, or the liabilities of its shareholders, directors or officers as such, but thereafter it shall have only such rights, powers and privileges, and it and such shareholders, directors and officers shall be subject only to such other duties and liabilities, as a university faculty practice corporation and members, directors and officers thereof. (4) Upon the filing of a reincorporation certificate in the office of the secretary of state, (A) any issued and outstanding shares of such corporation shall be purchased by such corporation at a purchase price equal to the price for which such shares were originally issued, or such other price as such corporation shall agree

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

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

31 § 2. This act shall take effect immediately.