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:

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

§ 1412. University faculty practice corporations.

(a) Organization. Notwithstanding any other provision of law, one or more individuals who are duly authorized by law to render the same professional service, which shall be the practice of medicine, the practice of dentistry, the practice of chiropractics, the practice of physical therapy or the practice of optometry, and who are members of the faculty **or medical staff** of the same accredited medical school, dental school, chiropractic college, college or university with an accredited doctor of physical therapy program or optometry college, **a "general hospital", as defined in section twenty-eight hundred one of the public health law, (provided, however, that individuals on the staff of one or more general hospitals can form a single entity hereunder if such hospitals are commonly controlled or one of the hospitals controls the other), or a facility authorized to operate pursuant to section 16.03 of the mental hygiene law,** as applicable, in the state of New York may organize, or cause to be organized, a [~~university faculty~~] practice corporation under this article (1) for the purpose of supporting the [~~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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school, hospital or hospitals, or facility, by, (A) in the case of an accredited medical school, dental school, chiropractic college, college or university with an accredited doctor of physical therapy program or optometry college, providing hospital or medical staff clinical instruction and supervision of students of such school, interns and residents and, incident thereto, rendering professional services; (B) in the case of a general hospital or hospitals, or facility, providing care to individuals that the general hospital or hospitals, or facility are authorized to serve and (2) which shall be operated in compliance with (A) section 501(c)(3) of the United States internal revenue code and (B) the [~~faculty~~] practice plan with which members of the faculty or medical staff of such school, general hospital or hospitals, or facility are required to comply, as applicable, as amended from time to time.

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

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

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

(e) Applicability of laws; members, directors and officers. This chapter shall be applicable to a university faculty practice corporation except to the extent that the provisions thereof conflict with this section. A university faculty practice corporation may consolidate or merge only with another university faculty practice corporation. The following provisions of article fifteen of the business corporation law shall be applicable to a university faculty practice corporation except that each reference in such provisions to a "shareholder" shall be deemed to be a reference to a "member" and each reference in such provisions to "shareholders" shall be deemed a reference to "members": paragraphs (a), (b), (c) and (e) of section fifteen hundred one; paragraphs (b), (c) and (d) of section fifteen hundred three; paragraphs (a), (c) and (g) of section fifteen hundred four; section fifteen hundred five; section fifteen hundred nine except to the extent such section refers to section fifteen hundred ten; paragraph (a) of section fifteen hundred twelve; section fifteen hundred fourteen; and section fifteen hundred fifteen. No individual may be a member, director or 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

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

(g) Effect of section. University faculty practice corporations incorporated or reincorporated under this section shall be organized and operated exclusively for the purposes set forth in paragraph (a) of this section and shall be subject to the restrictions and limitations imposed by or pursuant to paragraphs (a) and (e) of this section. **All university faculty practice corporations incorporated or reincorporated under this section may operate under the name (or portion thereof) or initials of the affiliated school, hospital or hospitals, or facility, or under the name (or portion thereof) or initials of the system with which such affiliated school, hospital or hospitals, or facility are publicly identified.** Notwithstanding anything to the contrary in article twenty-eight of the public health law or the regulations adopted pursuant thereto, no corporation organized under this section shall be deemed to be establishing or operating a hospital, diagnostic center and/or treatment center requiring establishment or construction approval solely by reason of being organized as a not-for-profit corporation. Insofar as the provisions of this section are inconsistent with the provisions of any other law, general or special, the provisions of this section shall be controlling as to the corporations incorporated or reincorporated hereunder.

§ 2. This act shall take effect immediately.