

Memorandum in Support

COMMITTEE ON NOT-FOR-PROFIT CORPORATION LAW OF THE BUSINESS LAW SECTION

BLS #6

June 6, 2018

S. 8612

By: Senator Hannon

A. 10997

By: M. of A. Gottfried

Senate Committee: Corporations, Authorities
and Commissions

Assembly Committee: Higher Education

Effective Date: immediately

AN ACT to amend the Not-for-Profit Corporation Law, in relation to university faculty practice corporations.

LAW & SECTION REFERRED TO: Section 1412 of the not-for-profit corporation law.

THE COMMITTEE ON NOT-FOR-PROFIT CORPORATION LAW OF THE BUSINESS LAW SECTION SUPPORTS THIS LEGISLATION

The Committee strongly supports the passage and enactment of this legislation. We believe the bill would improve the ability of health care and developmental disabilities facilities to furnish services to the public in a more cost-effective manner and to reduce the needless administrative complexity presented under current law in light of recent changes in practice by the New York State Education Department (“NYSED”) with respect to the scope of practice of professional service corporations. Nonetheless, the bill should go further and provide the same powers with respect to (1) “hospitals,” not just “general hospitals” and (2) facilities licensed under the Mental Hygiene Law that provide care to persons with mental illness or substance or alcohol abuse disorders.

The bill would permit members of the medical staffs of general hospitals and developmental disabilities facilities licensed under Article 16 of the Mental Hygiene Law (so-called “Article 16 facilities”) who are authorized to practice the same profession to organize or cause to be organized a practice corporation for the purpose of supporting the mission of the general hospital or Article 16 facility by providing care to individuals the hospitals or Article 16 facilities are authorized to serve. In addition, such practice corporations would be required to operate in compliance with Section 501(c)(3) of the Internal Revenue Code.

For decades, medical professionals with the hospitals and other health related facilities would form professional service corporations to organize such practices. Often,

such corporations obtained tax exempt status under Section 501(c)(3) in their own right, on the basis that the profession they practiced was conducted wholly for the charitable purpose of the improvement of health and, through careful corporate structuring, without the inurement of any of the earnings of the corporation to the professional shareholders of the corporation. The public benefitted from such corporations because the practices of the professionals involved were more efficiently integrated with the operations of the related facilities.

Recently, NYSED raised questions about the ability of such medical staff practice organizations to assume these not-for-profit attributes, namely, supporting their related hospital and operating in compliance with Section 501(c)(3), given the fact that they are organized under Section 1503 of the Business Corporation Law. NYSED's Office of Professions is required to consent to the formation of professional service corporations, and thus NYSED's objections have become an obstacle to such corporations being formed. NYSED has reportedly declined to accept the view that the practice of a profession is the appropriate business purpose of the corporation under Section 1503 and is not different in substance because such practice is conducted in a charitable manner.

The bill, however, does not apply to other facilities that are substantially similar in scope, purpose, and licensing to the facilities covered by the bill, namely, (1) diagnostic and treatment centers and the other facilities that are within the definition of "hospital" but not "general hospital" in Article 28 of the Public Health Law and facilities licensed under the Mental Hygiene Law to serve persons with mental illness and/or persons with alcohol or substance abuse disorders. The nature of the health care industry is increasing the need for and role of health care facilities that aren't general hospitals. Similarly, there is a large population of persons with mental illness or alcohol or substance abuse disorders that receive care from facilities specifically licensed for that purpose. Accordingly, a significant public benefit is lost if the bill is not extended to these other facilities.

For the foregoing reasons, the Committee on Not-For-Profit Corporation Law of the Business Law Section **SUPPORTS** this legislation and respectfully recommends its expansion as described above.