

October 25, 1995

Lucia Hodges
Parker, Poe, Adams & Bernstein L.L.P.
2500 Charlotte Plaza
Charlotte, North Carolina 28244

Re: Proposed Certificate of Incorporation:
St. Agnes Physician Hospital Organization, Inc.

Dear Ms. Hodges:

I have reviewed the draft certificate of incorporation faxed to me with your note of September 29, 1995. The proposed corporation would be a "physician hospital organization" (PHO)". The stated powers and purposes of the corporation would be to (1) organize in New York subsidiary independent practice association (IPA) corporations and (2) to arrange for the provision of health care services under contracts with non-health maintenance organization (HMO) entities which offer health plans to individuals or groups.

Concerning the first power and purpose set forth above, the Department would have no objection. Please be advised, however, that pursuant to 10 NYCRR §98.5, the prior approval of the Department, the Insurance Department and the Education Department is required for the filing of an IPA certificate of incorporation with the Secretary of State.

Concerning the second proposed power and purpose, absent the prior licensure of the corporation as a hospital or other type of authorized provider pursuant to Article 65 of the Education Law, the exercise of such power and purpose would

appear to violate the prohibition against the unauthorized corporate practice of medicine insofar as the corporation would arrange for the provision of health care. Enclosed is a recent opinion issued by the Education Department on this issue.

A PHO is a type of entity not currently recognized in New York statutes or regulations. In view of the parameters established by the Education Law, we are uncertain as to its ability to arrange health services. However, no approvals from this department are required for the filing of a certificate containing such power and purpose with the Secretary of State.

The Public Health Council will provide you with a letter stating its approval is also not necessary if you add to the proposed certificate the following provision (also required to be included in the proposed certificate of incorporation or articles of organization of an IPA):

"Nothing contained in this certificate of incorporation shall authorize the corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44 respectively, of the Public Health Law, or to provide hospital service or health related service, or to solicit any funds, contributions or grants, from any source, for the establishment, or operation of, any hospital."

This office will arrange for a Public Health Council letter upon submission of an executed photocopy of the certificate revised as indicated. Please call me at (518) 473-7978 if you have any questions.

Sincerely,

John E. Franzen
Associate Attorney