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VETO 18

CHAPTER _____

LAWS OF 20 10

SENATE BILL _____

ASSEMBLY BILL 1729

STATE OF NEW YORK

1729

2009-2010 Regular Sessions

IN ASSEMBLY

January 9, 2009

Introduced by M. of A. GOTTFRIED, TOWNS, SCHROEDER -- Multi-Sponsored by -- M. of A. AUBRY, BOYLAND, DINOWITZ, GALEF -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to hospital access of psychologists

S. 5002 Duane

DATE RECEIVED BY GOVERNOR:

JUL 08 2010

ACTION MUST BE TAKEN BY:

JUL 20 2010

DATE GOVERNOR'S ACTION TAKEN:

JUL 15 2010

000001

SENATE VOTE 33 Y 28 N

HOME RULE MESSAGE Y N

DATE 6/16/10

ASSEMBLY VOTE 90 Y 49 N

DATE 3/25/10

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A1729 Gottfried (MS) Same as S 5002 DUANE

<u>06/16/10</u>	A1729	Senate Vote	Aye: 33	Nay: 28
<u>03/25/10</u>	A1729	Assembly Vote	Yes: 90	No : 49
<u>05/06/09</u>	A1729	Assembly Vote	Yes: 108	No : 34

[Go to Top of Page](#)**Floor Votes:**

06/16/10 A1729 Senate Vote Aye: 33 Nay: 28

Aye Adams	Aye Addabbo	Nay Alesi	Aye Aubertine
Nay Bonacic	Aye Breslin	Nay DeFrancisco	Aye Diaz
Aye Dilan	Aye Duane	Aye Espada	Nay Farley
Nay Flanagan	Aye Foley	Aye Fuschillo	Nay Golden
Nay Griffo	Nay Hannon	Aye Hassell-Thompson	Aye Huntley
Aye Johnson C	Nay Johnson O	Aye Klein	Aye Krueger
Aye Kruger	Nay Lanza	Nay Larkin	Nay LaValle
Nay Leibell	Nay Libous	Nay Little	Nay Marcellino
Nay Maziarz	Nay McDonald	Aye Montgomery	Exc Morahan
Nay Nozzolio	Aye Onorato	Aye Oppenheimer	Nay Padavan
Aye Parker	Aye Peralta	Aye Perkins	Nay Ranzenhofer
Nay Robach	Nay Saland	Aye Sampson	Aye Savino
Aye Schneiderman	Aye Serrano	Nay Seward	Nay Skelos
Aye Smith	Aye Squadron	Aye Stachowski	Aye Stavisky
Aye Stewart-Cousins	Aye Thompson	Aye Valesky	Nay Volker
Nay Winner	Nay Young		

[Go to Top of Page](#)**Floor Votes:**

03/25/10 A1729 Assembly Vote Yes: 90 No : 49

Yes Abbate	Yes Alessi	No Alfano	No Amedore
Yes Arroyo	Yes Aubry	No Bacalles	No Ball
No Barclay	No Barra	Yes Barron	Yes Benedetto
Yes Benjamin	Yes Bing	Yes Boyland	ER Boyle
Yes Brennan	ER Brodsky	Yes Brook-Krasny	No Burling
No Butler	No Cahill	No Calhoun	Yes Camara
Yes Canestrari	ER Carrozza	Yes Castelli	Yes Castro
No Christensen	Yes Clark	Yes Colton	No Conte
ER Cook	No Corwin	Yes Crespo	No Crouch
ER Cusick	Yes Cymbrowitz	Yes DelMonte	Yes DenDekker
Yes Destito	Yes Dinowitz	No Duprey	Yes Englebright

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No Errigo	Yes Espaillat	Yes Farrell	No Fields
No Finch	No Fitzpatrick	Yes Gabryszak	Yes Galef
Yes Gantt	Yes Gianaris	Yes Gibson	No Giglio
Yes Glick	Yes Gordon	Yes Gottfried	No Gunther A
No Hawley	No Hayes	Yes Heastie	ER Hevesi
ER Hikind	Yes Hooper	Yes Hoyt	Yes Hyer-Spencer
ER Jacobs	Yes Jaffee	Yes Jeffries	Yes John
No Jordan	Yes Kavanagh	Yes Kellner	No Kolb
No Koon	Yes Lancman	Yes Latimer	Yes Lavine
Yes Lentol	Yes Lifton	No Lopez P	Yes Lopez V
Yes Lupardo	Yes Magee	Yes Magnarelli	Yes Maisel
Yes Markey	Yes Mayersohn	No McDonough	Yes McEneny
No McKevitt	Yes Meng	No Miller J	Yes Miller M
Yes Millman	No Molinaro	No Montesano	Yes Morelle
No Murray	Yes Nolan	No Oaks	Yes O'Donnell
No O'Mara	Yes Ortiz	No Parment	Yes Paulin
Yes Peoples-Stokes	Yes Perry	Yes Pheffer	ER Powell
Yes Pretlow	No Quinn	No Rabbitt	No Raia
Yes Ramos	No Reilich	Yes Reilly	Yes Rivera J
Yes Rivera N	Yes Rivera P	Yes Robinson	Yes Rosenthal
Yes Russell	No Saladino	No Sayward	Yes Scarborough
Yes Schimel	No Schimminger	Yes Schroeder	No Scozzafava
No Skartados	Yes Spano	Yes Stirpe	Yes Sweeney
No Tedisco	No Thiele	No Titone	Yes Titus
No Tobacco	Yes Towns	ER Townsend	Yes Weinstein
Yes Weisenberg	Yes Weprin	Yes Wright	Yes Zebrowski K
Yes Mr. Speaker			

[Go to Top of Page](#)

Floor Votes:

05/06/09 A1729 Assembly Vote Yes: 108 No : 34

Yes Abbate	Yes Alessi	Yes Alfano	No Amedore
Yes Arroyo	Yes Aubry	No Bacalles	No Ball
No Barclay	No Barra	Yes Barron	Yes Benedetto
Yes Benjamin	Yes Bing	Yes Boyland	Yes Boyle
Yes Bradley	Yes Brennan	Yes Brodsky	Yes Brook-Krasny
No Burling	No Butler	Yes Cahill	No Calhoun
Yes Camara	Yes Canestrari	ER Carrozza	Yes Castro
ER Christensen	Yes Clark	Yes Colton	Yes Conte
Yes Cook	No Corwin	ER Crouch	Yes Cusick
Yes Cymbrowitz	Yes DelMonte	Yes DenDekker	Yes Destito
Yes Dinowitz	No Duprey	No Eddington	Yes Englebright

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No Errigo	Yes Espaillat	Yes Farrell	No Fields
No Finch	No Fitzpatrick	Yes Gabryszak	Yes Galef
Yes Gantt	Yes Gianaris	No Giglio	Yes Glick
Yes Gordon	Yes Gottfried	Yes Gunther A	No Hawley
No Hayes	Yes Heastie	Yes Hevesi	ER Hikind
Yes Hooper	Yes Hoyt	Yes Hyer-Spencer	Yes Jacobs
Yes Jaffee	Yes Jeffries	Yes John	No Jordan
Yes Kavanagh	Yes Kellner	No Kolb	Yes Koon
Yes Lancman	Yes Latimer	Yes Lavine	Yes Lentol
Yes Lifton	No Lopez P	ER Lopez V	Yes Lupardo
Yes Magee	Yes Magnarelli	Yes Maisel	Yes Markey
Yes Mayersohn	Yes McDonough	Yes McEneny	Yes McKeivitt
Yes Meng	No Miller	Yes Millman	No Molinaro
Yes Morelle	Yes Nolan	No Oaks	Yes O'Donnell
No O'Mara	Yes Ortiz	Yes Parment	Yes Paulin
Yes Peoples	Yes Peralta	Yes Perry	Yes Pheffer
Yes Powell	Yes Pretlow	No Quinn	No Rabbitt
Yes Raia	Yes Ramos	No Reilich	Yes Reilly
Yes Rivera J	Yes Rivera N	Yes Rivera P	Yes Robinson
Yes Rosenthal	Yes Russell	Yes Saladino	No Sayward
Yes Scarborough	Yes Schimel	ER Schimminger	Yes Schroeder
No Scozzafava	Yes Seminerio	Yes Skartados	Yes Spano
Yes Stirpe	Yes Sweeney	No Tedisco	No Thiele
Yes Titone	Yes Titus	No Tobacco	Yes Towns
No Townsend	Yes Walker	Yes Weinstein	Yes Weisenberg
Yes Weprin	Yes Wright	Yes Zebrowski K	Yes Mr. Speaker

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STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

V E T O # 18

JUL 20 2010

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 1729, entitled:

“AN ACT to amend the public health law, in relation to hospital access of psychologists”

NOT APPROVED

Section 2801-b of the Public Health Law (PHL) makes it an improper practice for a hospital to deny or refuse to act upon an application for staff membership or professional privileges submitted by a physician, podiatrist, optometrist, dentist or licensed midwife, or to terminate or curtail any membership or privileges already granted to such practitioners, unless the hospital provides reasons for doing so and such reasons are related to patient care or welfare, the hospital's objectives or the applicant's character or competency. If a practitioner believes that a hospital has violated these provisions, he or she may file a complaint with the Public Health Council. The Council must investigate and, if it finds that the complaint has credence, direct the hospital to conduct a review of the matter. This bill would amend PHL § 2801-b to add psychologists to the list of professions that are enumerated therein.

I have been receptive to past efforts to extend these protections to additional categories of health care professionals, on the ground that such measures promote patient access to care and quality of care. I acknowledge that psychologists can play a critical role in the delivery of mental health treatment throughout the state, including within hospitals. I know of no reason why any hospital would seek categorically to exclude them from membership or privileges, and I have not been pointed to any case in which this has occurred. The psychologists who urge me to approve the bill assert that they should be entitled to the same protections as are other professions. That is a reasonable desire, but it is one that I unfortunately cannot accommodate.

The governing body of a hospital is responsible for the quality of care delivered by the hospital and for overseeing the selection of its medical staff, and should have a reasonable level of discretion in determining how best to fulfill those obligations. While the bill does not expressly mandate that a particular practitioner be afforded privileges by a hospital, it would contribute to an expectation that such privileges will be afforded and require the hospital to rebut that expectation. I do not believe that this would be an efficient use of limited resources in these difficult financial times.

The bill is disapproved.

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THE SENATE
STATE OF NEW YORK
ALBANY

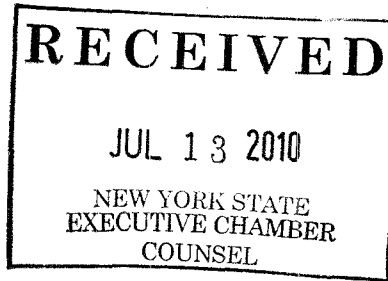
THOMAS DUANE
SENATOR, 29TH DISTRICT

CHAIR:
SENATE COMMITTEE ON HEALTH

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CHILDREN & FAMILIES
CODES
CRIME VICTIMS, CRIME & CORRECTION
CULTURAL AFFAIRS, TOURISM,
PARKS & RECREATION
FINANCE
MENTAL HEALTH &
DEVELOPMENT DISABILITIES
RULES
SOCIAL SERVICES

PLEASE RESPOND TO:
322 EIGHTH AVENUE, SUITE 1700
NEW YORK, NEW YORK 10001
PHONE: (212) 633-8052
FAX: (212) 633-8096

ROOM 430
STATE CAPITOL
ALBANY, NY 12247
PHONE: (518) 455-2451
FAX: (518) 455-6846



July 13, 2010

VIA HAND DELIVERY

Hon. David A. Paterson
Governor
State of New York
Executive Chamber
State Capitol
Albany, NY 12224

Re: S.5002 (Duane)/A.1729 (Gottfried)

Dear Governor Paterson:

The above-referenced legislation (S.5002/A.1729) is currently on your desk for consideration. As prime sponsor of the bill, I urge you to sign this important legislation into law. The bill adds psychologists to the list of practitioners covered under Subdivisions 1 and 3 of Section 2801-b of the Public Health Law.

Current law requires that hospitals must act upon the application for staff membership or professional privileges for certain health professions. The professions currently protected are physicians (including psychiatrists), podiatrists, optometrists, dentists, and midwives. This bill would add psychologists to the list. It would also include psychologists in the list of professions afforded the right to an investigation by the Public Health Council if they file a complaint because staff membership or professional privileges are denied.

Health care is increasingly a multi-disciplinary practice. Hospital committees that consider patient care issues must include the perspective of mental health professionals in their

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considerations. Psychologists bring an important contribution to patient management. This legislation provides recognition to the important role that psychologists play within the health care delivery team.

Nothing in this bill mandates that a hospital provide privileges to any particular psychologist; rather, it establishes due process protections. The bill does not affect a hospital's ability to determine the composition of its medical staff. It simply extends protections currently granted to a number of other health professions to psychologists.

Again, I urge you to sign S.5002/A.1729 into law. Thank you for your consideration and please do not hesitate to contact me for any additional information on this important legislation.

Sincerely,



Thomas K. Duane
Chair, Senate Standing Committee on Health
29th District

cc: Peter Kiernan, Counsel to the Governor
Richard F. Daines, M.D., Commissioner of Health
Assemblymember Richard N. Gottfried

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NEW YORK STATE ASSEMBLY

822 LEGISLATIVE OFFICE BUILDING, ALBANY, NY 12248
TEL: 518-455-4941 FAX: 518-455-5939

250 BROADWAY, RM. 2232, NEW YORK, NY 10007
TEL: 212-312-1492 FAX: 212-312-1494

E-MAIL: GOTTFRR@ASSEMBLY.STATE.NY.US

COMMITTEES:
RULES
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HIGHER EDUCATION
MAJORITY STEERING

RICHARD N. GOTTFRIED
75TH ASSEMBLY DISTRICT

CHAIR
COMMITTEE ON HEALTH

CHAIR
MANHATTAN DELEGATION

July 12, 2010

Peter J. Kiernan
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Re: A.1729 (Gottfried) / S.5002 (Duane);
psychologist hospital privilege denial procedures

Dear Peter:

This bill, which is before the Governor, would require a hospital to provide a stated reason for rejecting or refusing to act upon an application for staff membership or professional privileges. The law currently applies this obligation in relation to applicant physicians, optometrists, dentists, podiatrists, and midwives.

Nothing in this legislation mandates that a hospital provide a particular professional with a hospital staff appointment or professional privileges. Nor does it allow the listed professionals to practice outside their legal scope of practice. Governor Paterson signed the legislation that added midwives to this law.

This legislation affords psychologists due process protections that other health practitioners currently enjoy. It would be an improper practice if the reasons for the denial are unrelated to standards of patient care, patient welfare, the objectives of the institution or the character or competency of the psychologist applying for privileges. Psychologists would be added to the list of practitioners who, upon filing a complaint, would be afforded the right to an investigation of such complaint by the Public Health Council.

New York State has long recognized the value of psychological treatment for mental illness, emotional disruption, and adjustment to medical conditions and regimens. Patient care is enhanced by open dialogue and planning among care providers. When patients are forced to enter the hospital setting, they should have the right to expect a measure of continuity between the acute care team and their other treating professionals. Quality of care depends not only on the technical abilities of an institution, but also upon the patient's willingness to accept and become an active participant in their own recovery. It is here that the psychologist may be an invaluable partner in the mission to heal.

For the above reasons, I urge the Governor to sign this bill into law. Please do not hesitate to contact me or Monica Miller in my Albany office if you have any questions.

Very truly yours,

Richard N. Gottfried
Chair
Assembly Committee on Health

cc: Thomas K. Duane
Richard F. Daines, M.D.

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NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A1729

SPONSOR: Gottfried (MS)

TITLE OF BILL: An act to amend the public health law, in relation to hospital access of psychologists

PURPOSE OR GENERAL IDEA OF BILL: To give psychologists due process in the event of denial by hospitals of license-appropriate privileges or medical staff membership.

SUMMARY OF SPECIFIC PROVISIONS: This legislation amends Section 2801-b of the Public Health Law to add psychologists to the list of health care practitioners who are entitled to receive stated reasons if a hospital rejects or refuses to act upon an application for staff membership or professional privileges. The law currently applies to: physicians, optometrists, dentists, and podiatrists.

It also would be an improper practice if the reasons for the denial are unrelated to standards of patient care, patient welfare, the objectives of the institution or the character or competency of the psychologist applying for privileges. Finally, this legislation adds psychologists to the list of practitioners who, upon filing a complaint, would be afforded the right to an investigation of such complaint by the Public Health Council.

JUSTIFICATION: Section 2801-b of the Public Health Law was established to prohibit hospitals from engaging in improper and discriminatory practices with respect to hospital staff appointments and the extension of professional privileges to certain health practitioners. These health practitioners include physicians, optometrists, dentists and podiatrists. This legislation would add psychologists to the list of health practitioners who are afforded these same due process protections.

New York State has long recognized the ability of psychologists to independently diagnose and treat mental illness. Chapter 676 of the laws of 2002 reinforces that recognition by providing psychologists with a statutory scope of practice. Despite the State's recognition of a psychologist's high level of competence in providing mental health services, many hospitals are still unwilling to grant psychologists professional privileges and staff membership. Existing State Health Department regulations (10 NYCRR Section 405) recognize that "other health care practitioners" may be granted staff membership or professional privileges. The regulations require written criteria for the granting of professional privileges.

Additionally, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) recognizes that the medical staff may include not only physicians, but other licensed individuals who are permitted by law and by the hospital to provide patient care services independently in the

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hospital.

Psychologists can treat a patient who is suicidal in the community, but when the patient is in need of acute care in a hospital, a psychologist can no longer care for a patient with whom he or she has had a long-standing relationship. This bill would appropriately include psychologists under Section 2801-b. It is important to note that nothing in this legislation mandates that a hospital provide a particular psychologist with a hospital staff appointment or professional privileges. Nor does it allow psychologists to practice outside their legal scope of practice. Rather, this legislation affords psychologists due process protections that other health practitioners currently enjoy.

PRIOR LEGISLATIVE HISTORY:

2003: A.6813 - passed Assembly
2004: A.6813-A - advanced to 3rd reading
2005-06: A.5496-A - passed Assembly
2007-08: A.6340 - passed Assembly

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: 180 days after it becomes law.

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DIVISION OF THE BUDGET BILL MEMORANDUM

Session Year 2010

SENATE:
No.

ASSEMBLY:
No. A. 1729

Primary Sponsor: Gottfried

Law: Public Health Law

Sections: 2801 - b

Division of the Budget recommendation on the above bill

APPROVE:

NO OBJECTION:

1. Subject and Purpose:

This bill prohibits hospitals from denying staff membership or professional privileges without providing notice of the reasons. The bill specifies that a denial must be related to standards of patient care, patient welfare, the objectives of the institution, or the character and competency of the applicant. The bill also affords psychologists the right to file complaints with the Public Health Council and have these complaints investigated.

These same provisions currently apply to physicians, optometrists, dentists and podiatrists.

2. Budget Implications: None

This bill will not result in additional State costs.

3. Recommendation: No Objection

This bill has been referred to the Division of the Budget for comment. After careful review, we find that the bill has no appreciable impact on State finances or programs. Therefore, the Budget Division has no objection to its enactment.



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

MEMORANDUM

To: Honorable Peter J. Kiernan, Esq.
Counsel to the Governor

From: Matthew W. Tebo, Esq.
Legislative Counsel

Date: June 23, 2010

Subject: A.1729 (M. of A. Gottfried)
Recommendation: No comment

The Department of State has no comment on the above referenced bill.

If you have any questions or comments regarding our position on the bill, or if we can otherwise assist you, please feel free to contact me at (518) 474-6740.

MWT/mel

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STATE OF NEW YORK

DAVID A. PATERSON
GOVERNOR

PETER J. KIERNAN
COUNSEL TO THE GOVERNOR

July 7, 2010

Honorable Richard N. Gottfried
New York State Assembly
Room 822
Legislative Office Building
Albany, New York 12248

Honorable Thomas K. Duane
New York State Senate
Room 430
State Capitol
Albany, New York 12247

Dear Assemblyman Gottfried and Senator Duane:

As you know, legislation that you have sponsored (A.1729 / S.5002) has now passed both houses of the Legislature, and will soon be sent to the Governor for action.

In order to assist the Governor in reviewing this legislation and deciding whether it should be signed into law, we would greatly appreciate receiving any relevant documents or information that you have on this bill. In particular, we would very much like to receive:

- copies of the sponsor's memorandum in support of this bill;
- copies of any comment letters in support of or in opposition to this bill that you received from outside organizations, individuals or other third parties;
- if hearings were held on the bill, copies of the transcripts of those hearings; and
- any other documents or information that you believe should be considered by the Governor.

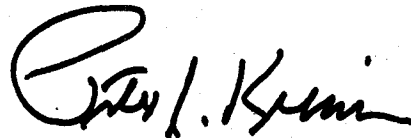
The State Constitution gives the Governor only 10 days to act on bills after they have been forwarded by the Legislature, and we therefore would appreciate receiving the above information at your earliest convenience. Please send any materials you have to:

Kristin Ross
Legislative Secretary's Office
Executive Chamber
State Capitol – Room 225
Albany, New York 12224

Any information that you provide will be included in the bill jacket that is maintained by the State Archives and constitutes the legislative history of bills that have been signed into law.

Thank you for your consideration and assistance, and please feel free to contact this office if you have any questions.

Very truly yours,



Peter J. Kiernan
Counsel to the Governor

cc: K. Ross



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
NY 12234

Acting Counsel and Deputy Commissioner for Legal Affairs
Tel. 518-474-6400
Fax 518-474-1940

June 29, 2010

TO: Counsel to the Governor
FROM: Erin M. O'Grady-Parent
SUBJECT: A.1729
RECOMMENDATION: Approval
REASON FOR RECOMMENDATION:

This bill would amend the Public Health Law to add psychologists to the list of health care practitioners who are entitled to receive stated reasons if a hospital rejects or refuses to act upon an application for staff membership or professional privileges at such hospital. The reasons for such denial would be required to relate to standards of patient care, patient welfare, the objectives of the hospital, or the character or competency of the psychologist. The bill would also add psychologists to the list of practitioners who, upon filing a complaint alleging an improper denial of hospital privileges, would be afforded the right to an investigation of such complaint by the Public Health Council.

The State Education Department recommends approval of this bill, which would ensure that psychologists are recognized as authorized health care professionals entitled to be considered for hospital staff membership and privileges. Under current Public Health Law §2801-b, only certain health care practitioners, such as physicians, including psychiatrists, optometrists, dentists, and podiatrists are afforded protection from denials of hospital admitting privileges. Although New York State Health Department regulations recognize that "other health care practitioners" may be granted staff membership or professional privileges at hospitals, current law does not expressly list psychologists as having these privileges.

Psychologists, like physicians, may need to admit or treat their patients at hospitals and in turn, require hospital membership and privileges. Under Article 153 of Title VIII of the Education Law, psychologists are licensed professionals regulated by the State Education Department. The statutory scope of practice of psychology includes the diagnosis of certain mental or emotional disorders or disabilities. This bill will help ensure that psychologists are granted hospital privileges to allow them to continue to effectively treat their patients without expanding their scope of practice.

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Further, there is a notable growing need for mental health treatment by appropriately licensed providers. For over three decades, the New York State Insurance Law has included what is known as the "freedom of choice" provision, which ensures that patients have the right to seek mental health therapy services from psychologists as well as physicians, including psychiatrists. The recent passing of the federal and State parity laws for insurance reimbursement recognize parity between mental health care reimbursement and physical health care reimbursement, as well as identify psychologists among those authorized to provide such services. Overall, this bill will help prevent discrimination in the issuance of hospital staff membership and professional privileges, provide patients with their freedom of choice of care, and help ensure patients receive appropriate mental health treatment by their psychologists who may better know and understand their health care needs, which will, in turn, reduce the potential for patient harm



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

Memorandum

TO: Peter Kiernan, Counsel to the Governor

FROM: James W. Clyne Jr., Executive Deputy Commissioner *gwc*

SUBJECT: Assembly Bill 1729

DATE: July 14, 2010

Your office has requested the Department's comments on Assembly Bill 1729, which is before the Governor for executive action. This bill would amend the Public Health Law (PHL) to prohibit hospitals from denying staff membership or professional privileges to psychologists without cause.

This bill would amend PHL § 2801-b to provide that it is an "improper practice" for a hospital to refuse to act upon an application for staff membership or professional privileges, or to deny, withhold, diminish or terminate such privileges for psychologists without stating the reasons or if such reasons are not related to standards of patient care, patient welfare, the objectives of the hospital or the character and competence of the psychologist. The legislation would also add psychologists to the list of health care practitioners who can file a complaint with the Public Health Council against a hospital for "improper practice," which triggers an investigation of the matter. This bill would take effect 180 days after enactment.

The provisions of PHL §2801-b currently apply to physicians, podiatrists, optometrists, dentists and licensed midwives. With assistance from the Department, the Public Health Council investigates and makes determinations with regard to claims of improper practice. The Department estimates that fewer than ten claims, each requiring between three and six months to be fully addressed, are filed on an annual basis.

The Department of Health has no objection to Assembly Bill 1729.

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STATE OF NEW YORK
OFFICE OF MENTAL HEALTH
COUNSEL

JOHN V. TAURIELLO
Deputy Commissioner and Counsel

44 Holland Avenue
Albany, New York 12229

July 7, 2010

Honorable Peter J. Kiernan
Counsel to the Governor
Executive Chamber
State Capitol Building
Albany, NY 12224

RE: A.1729

Dear Mr. Kiernan:

The Office of Mental Health (OMH) takes no position on the above-referenced legislation, which is before the Governor for Executive action.

This legislation amends Section 2801-b of the Public Health Law to add psychologists to the list of health care practitioners who are entitled to receive stated reasons if a hospital rejects or refuses to act upon an application for staff membership or professional privileges. The law currently applies to: physicians, optometrists, dentists, and podiatrists.

Given that the State Department of Health (DOH) has the statutory oversight authority of hospitals defined in Article 28 of the Public Health Law, we defer to DOH for their comments and a position on this legislation.

Thank you for the opportunity to comment on this legislation.

Sincerely,

A handwritten signature in cursive script that reads "John V. Tauriello".

John V. Tauriello
Deputy Commissioner and Counsel

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STATE OF NEW YORK
OFFICE OF MENTAL HEALTH
COUNSEL

JOHN V. TAURIELLO
Deputy Commissioner and Counsel

44 Holland Avenue
Albany, New York 12229

July 21, 2010

Honorable Peter J. Kiernan
Counsel to the Governor
Executive Chamber
State Capitol Building
Albany, NY 12224

Re: A.1729

Dear Mr. Kiernan:

The Office of Mental Health (OMH) takes no position on the above-referenced legislation, which is before the Governor for Executive action.

This legislation amends Section 2801-b of the Public Health Law to add psychologists to the list of health care practitioners who are entitled to receive stated reasons, with appropriate justification, if an Article 28 hospital rejects or refuses to act upon an application for staff membership or professional privileges. The law currently applies to physicians, podiatrists, optometrists, dentists, and licensed midwives.

Given that the State Department of Health (DOH) has the statutory oversight authority of hospitals defined in Article 28 of the Public Health Law, we defer to DOH for their comments and a position on this legislation.

Thank you for the opportunity to comment on this legislation.

Sincerely,

John V. Tauriello
Deputy Commissioner and Counsel

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Daniel Sisto, President

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OPPOSITION Memorandum

March 29, 2010

TO: Members, New York State Senate

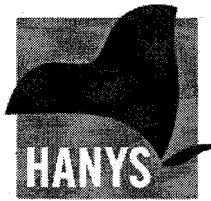
**RE: S.5002 (Duane)—In Senate Health Committee
A.1729 (Gottfried)—Passed Assembly**

This bill would amend the Public Health Law in relation to staff privileges for psychologists. The Healthcare Association of New York State (HANYS) recognizes that a wide variety of health practitioners play a valuable role in providing patient care. Nothing in the current law, however, prohibits a psychologist from rendering patient care in institutions as part of the health care team or from receiving staff membership or professional privileges.

HANYS has consistently opposed efforts to add additional practitioners to those covered by the provisions of Subdivisions 1 and 3 of Section 2801-b of the Public Health Law. HANYS believes that with regard to the issue of staff membership or professional privileges, the composition of the medical staff is best determined on an individual institution basis after a cooperative and consultative process among the administration of the hospital, the hospital board, and the existing medical staff. Hospitals have established policies on credentialing, and legislatively mandating how hospitals must deal with non-physician applications would be counterproductive to the goal of efficient facility operation. The bill interferes with a hospital's process of appropriately credentialing those providers who meet its specific skill needs. We are also concerned that this bill may convey the intent of a right to admit patients to hospitals, rather than be credentialed, something that HANYS has also consistently opposed.

HANYS believes that this bill is unnecessary and that it creates an artificial expectation that full staff privileges will be granted by the hospital. Hospitals can already do what is delineated in this bill, and nothing in current law prohibits psychologists from rendering patient care in institutions as part of the health care team or from receiving staff membership or professional privileges. HANYS continues to believe that the composition of the medical staff is best determined on an institution basis after a cooperative and consultative process among the administration of the hospital, the hospital board, and the existing medical staff.

For the reasons cited above, HANYS opposes this legislation.



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June 11, 2010

OPPOSITION Memorandum

TO: Members, New York State Senate

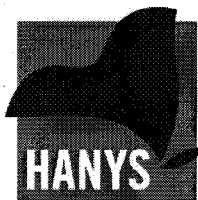
**RE: S.5002 (Duane)—On 3rd Reading in the Senate, Calendar #866
Same as A.1729 (Gottfried)—Passed Assembly**

This bill would amend the Public Health Law in relation to staff privileges for psychologists. The Healthcare Association of New York State (HANYS) recognizes that a wide variety of health practitioners play a valuable role in providing patient care. Nothing in the current law, however, prohibits a psychologist from rendering patient care in institutions as part of the health care team or from receiving staff membership or professional privileges.

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HANYS believes that this bill is unnecessary and that it creates an artificial expectation that full staff privileges will be granted by the hospital. Hospitals can already do what is delineated in this bill, and nothing in current law prohibits psychologists from rendering patient care in institutions as part of the health care team or from receiving staff membership or professional privileges. HANYS continues to believe that the composition of the medical staff is best determined on an institution basis after a cooperative and consultative process among the administration of the hospital, the hospital board, and the existing medical staff.

For the reasons cited above, HANYS opposes this legislation.



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July 8, 2010

Mr. Peter Kiernan
Counsel to the Governor
Executive Chamber
New York State Capitol
Albany, New York 12224

RE: A.1729 (Gottfried)/S.5002 (Duane)

Dear Mr. Kiernan:

I write in regard to the above referenced bill, which is awaiting delivery to the Governor for his action. This bill would amend the Public Health Law in relation to hospital staff privileges for psychologists. The Healthcare Association of New York State respectfully asks the Governor to veto this bill.

A wide variety of health practitioners plays a valuable role in providing patient care and nothing in the current law prohibits a psychologist from rendering patient care in institutions as part of the health care team or from receiving staff membership or professional privileges.

With regard to the issue of staff membership or professional privileges, the composition of the medical staff is best determined on an individual institution basis after a cooperative and consultative process among the administration of the hospital, the hospital board, and the existing medical staff. Therefore, HANYS has consistently opposed efforts to add additional practitioners to those covered by the provisions of Subdivisions 1 and 3 of Section 2801-b of the Public Health Law. Hospitals have established thoughtful policies on credentialing. Legal mandates directing hospitals on the consideration of non-physician applications would be counterproductive to the goal of efficient facility operation. HANYS believes that, if enacted, this bill would create an artificial expectation that full staff privileges will be granted by the hospital.

For the reasons and concerns articulated above, HANYS requests that the Governor veto the measure.

Sincerely,

Robin B. Frank
Vice President, Governmental Affairs and Continuing Care

A1729

LEGISLATIVE MEMORANDUM



NYSUT represents more than 600,000 professionals in education and health care. Affiliated with AFT • NEA • AFL-CIO.

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NYSUT
800 Troy-Schenectady Road
Latham, NY 12110-2455
(518) 213-8000, (800) 542-9810

Stephen K. Allinger, *Director of Legislation*

S-5002	Duane	Health Committee
A-1729	Gottfried	On Calendar #363

PROVISIONS OF BILL

This legislation amends Section 2801-b of the Public Health Law by making it an improper practice for a governing body of a hospital to fail to act upon the application for staff membership or professional privileges by a psychologist without providing due process in stating the reasons for their action.

Moreover, it also would be an improper practice if the reasons for denial are unrelated to standards of patient care, patient welfare, the objectives of the institution or the character or competency of the psychologist applying for the privileges.

In addition, this legislation adds psychologists to those practitioners who, upon filing a complaint, would be afforded the right to an investigation of such complaint by the Public Health Council.

STATEMENT OF SUPPORT

Currently, psychologists are not included in Section 2801-b of the Public Health Law, which was established to prohibit hospitals from engaging in improper and discriminatory practices with respect to hospital staff appointments and the extension of license appropriate professional privileges to certain health practitioners. This legislation, therefore, provides psychologists with the same opportunity currently afforded certain other health professionals (*physicians, dentists, podiatrists and optometrists*) concerning due process in the event of denial by hospitals of license appropriate privileges and/or medical staff membership.

The scope of practice law recognizes that psychologists independently diagnose and treat mental illness. NY State Health Department regulations (10 NYCRR) allow hospitals to grant staff membership and professional privileges (Section 407.8a; 407.1f), to "any licensed independent practitioner" and this is consistent with current JCAHO policy. The only implication and outcome of this amendment is to give nothing more to psychologists beyond the constraints of the laws and regulations that currently govern their practice, when expecting appropriate recognition of their professional status from hospitals.

The kinds of concerns that prompted the professions currently covered by PHL 2801-b to seek its protections, should also be seen as applicable to, and the reasonable right, of psychologists. They certainly deserve the same protections as the other professionals noted in PHL 2801-b and for the same reasons. Hospitals should be expected to apply their policies equitably to all health practitioners, consistent with current law, regulation and ethical professional practice.

NYSUT AND ITS AFFILIATE THE NEW YORK STATE PSYCHOLOGICAL ASSOCIATION STRONGLY URGES THE ENACTMENT OF THIS LEGISLATION.

23462
4/28/09
Full Assy.
DB

000024



July 9, 2010

Mr. Peter Kiernan
Counsel to the Governor
Executive Chamber
New York State Capitol
Albany, New York 12224

RE: A.1729 (Gottfried)/S.5002 (Duane)

Dear Mr. Kiernan,

On behalf of the New York State Psychological Association representing almost 3,000 psychologists and students of psychology in New York, I am urging the Governor to approve A.1729/ S.5002 a bill which amends Section 2801-b of the Public Health Law to include psychologists in the list of those health providers who are afforded a due process in the event that they are denied appropriate hospital privileges and/or medical staff membership. This bill would **NOT** mandate hospitals do anything but simply require them to provide the reason for the denial.

The intent of this law was to provide practice protections to classes of professionals who provide services within hospitals and to prohibit hospitals from engaging in improper and discriminatory practices. Psychologists are licensed in New York State to independently diagnose and treat mental illness and are not limited by setting. Hence, we believe that psychologists deserve the same protections as the other professions noted in PHL 2801-b, namely dentists, podiatrists, optometrists and licensed midwives. We believe that hospitals should be expected to apply their policies equitably to all health practitioners, consistent with current law, regulations and ethical professional practice.

Over the past few weeks the Governor's office has received almost 100 letters of support for this bill from psychologists across New York State. This legislation is important to psychologists and the individuals that they serve. We are requesting the same due process that is provided to other health care professionals. Please feel free to contact me, (Dr Jerry Grodin jgrodin@aol.com/518-587-4161,ext 301) or our Executive Director, Tracy Russell, (trussell@nyspa.org/518-437-1040) with any questions concerning this matter.

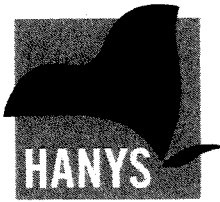
Sincerely,

A handwritten signature in cursive script that reads "Jerold Grodin PhD".

Jerold Grodin, PhD
President

CC:
Steve Allinger, NYSUT Legislative Division
NYSPA Council of Representatives

000025



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June 11, 2010

OPPOSITION Memorandum

TO: Members, New York State Senate

**RE: S.5002 (Duane)—On 3rd Reading in the Senate, Calendar #866
Same as A.1729 (Gottfried)—Passed Assembly**

This bill would amend the Public Health Law in relation to staff privileges for psychologists. The Healthcare Association of New York State (HANYS) recognizes that a wide variety of health practitioners play a valuable role in providing patient care. Nothing in the current law, however, prohibits a psychologist from rendering patient care in institutions as part of the health care team or from receiving staff membership or professional privileges.

HANYS has consistently opposed efforts to add additional practitioners to those covered by the provisions of Subdivisions 1 and 3 of Section 2801-b of the Public Health Law. HANYS believes that with regard to the issue of staff membership or professional privileges, the composition of the medical staff is best determined on an individual institution basis after a cooperative and consultative process among the administration of the hospital, the hospital board, and the existing medical staff. Hospitals have established policies on credentialing, and legislatively mandating how hospitals must deal with non-physician applications would be counterproductive to the goal of efficient facility operation. The bill interferes with a hospital's process of appropriately credentialing those providers who meet its specific skill needs. We are also concerned that this bill may convey the intent of a right to admit patients to hospitals, rather than be credentialed, something that HANYS has also consistently opposed.

HANYS believes that this bill is unnecessary and that it creates an artificial expectation that full staff privileges will be granted by the hospital. Hospitals can already do what is delineated in this bill, and nothing in current law prohibits psychologists from rendering patient care in institutions as part of the health care team or from receiving staff membership or professional privileges. HANYS continues to believe that the composition of the medical staff is best determined on an institution basis after a cooperative and consultative process among the administration of the hospital, the hospital board, and the existing medical staff.

For the reasons cited above, HANYS opposes this legislation.

000026

GNYHA STATEMENT OF OPPOSITION

April
Twenty-Eight
2009

TO: Members of the New York State Legislature
FROM: Greater New York Hospital Association
RE: A. 1729/S. 5002: Hospital Privileges for Psychologists

A. 1729/S. 5002 would amend the Public Health Law to make it an improper practice for the governing body of a hospital to deny staff membership or professional privileges to psychologists based solely on the practitioner's category of licensure. Greater New York Hospital Association (GNYHA) strongly opposes this bill and urges its defeat.

GNYHA believes that section 2801-b of the Public Health Law protects health care practitioners from discrimination with respect to the granting of staff membership and professional privileges. According to 2801-b, the governing body of a hospital cannot deny certain professionals staff privileges without stating the reasons for the denial or, if the reasons are unrelated to patient care, the objectives of the institution. A. 1729/S. 5002 would expand the intent of section 2801-b by prohibiting a governing body of a hospital from denying staff membership to a psychologist based solely on the psychologist's licensure category. GNYHA opposes this expansion because it takes away the essential ability of a hospital's governing body to make judgments regarding the nature and scope of its operations as qualified by the existing provisions of the Public Health Law, without removing any of the governing body's ultimate responsibility for the quality of care delivered within its facility.

Part 405.2 of Title 10 of the New York State Codes, Rules and Regulations places a great deal of responsibility with the governing body of the hospital, specifically, making the governing body legally responsible for the quality of patient care services, for implementing an ongoing evaluation of services delivered by the hospital, and for implementing and overseeing the medical staff appointment and reappointment process, among other requirements. Given that the ultimate responsibility of care rendered within the hospital rests with the governing body, GNYHA believes that it is inappropriate to restrict the governing body from making judgments regarding the nature and scope of its operations.

Further, hospitals should in no way be even tacitly required to offer privileges to certain categories of health professionals whom they are not able to appropriately supervise, peer review, credential or otherwise accommodate.

A. 1729/S. 5002 represents an encroachment upon the prerogatives of the hospital's governing body without removing any of the governing body's ultimate responsibility for the quality of care delivered within the facility. For these reasons, GNYHA strongly opposes A. 1729/S. 5002 and urges its defeat.



GREATER NEW YORK HOSPITAL ASSOCIATION

555 W 57TH STREET, SUITE 1500 • NEW YORK, NY • 10019 • 212.246.7100

000027

MEDICAL SOCIETY
of the
STATE OF NEW YORK

Gerard L. Conway, Esq.
Senior Vice President/
Chief Legislative Counsel

Division of Governmental Affairs
MEMORANDUM IN OPPOSITION

S5002

**ON ASSEMBLY HEALTH
COMMITTEE AGENDA**

A.1729 (Gottfried)

**AN ACT to amend the public
health law, in relation to hospital
access of psychologists**

This measure would amend the public health law to add psychologists to the list of practitioners for whom a hospital would have to provide written reasons if its governing body refused to act upon an application for staff membership or professional privileges. Further, this bill would also make it improper to withhold staff membership or professional privileges based upon the category of licensure. **The Medical Society of the State of New York opposes this legislation.**

The Medical Society recognizes that psychologists play a vital role in providing patient care. Nothing in the current law, however, prohibits psychologists or any other health practitioner from rendering patient care in institutions as part of the health care team or from receiving staff membership or professional privilege. This measure is unreasonable in the fact that it would mandate professional privileges regardless of whether or not the institution utilized the profession in its delivery of health care.

We believe that the composition of the medical staff is best determined by the individual institution in accordance with their needs. Hospitals have established policies on credentialing and legislatively mandating how hospitals must deal with applications would be counterproductive to the goal of efficient facility operation. It would force health care personnel and hospital staff to devote more time to paperwork and less time to patient care. We are also concerned that this measure may convey the intent that any health practitioner should have the right to admit patients to hospitals, a right to which we are opposed.

For all of the reasons stated above, the Medical Society of the State of New York opposes this measure and urges its defeat.

Respectfully submitted,

GERARD L. CONWAY, ESQ.

4/17/09- Oppose
BKE

000028

Legislative Secretary

From: Patty Marcucia [PMarcucia@nysdental.org]
Sent: Wednesday, June 23, 2010 2:22 PM
To: Legislative Secretary
Subject: RE: A1729

The New York State Dental Association does not have a position on A.1729.

*Patricia J. Marcucia
New York State Dental Association
20 Corporate Woods Blvd., Suite 602
Albany, NY 12211*

*518-465-0044 Telephone
518-465-3219 Fax*

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From: Legislative Secretary [mailto:Legislative.Secretary@chamber.state.ny.us]
Sent: Wednesday, June 23, 2010 1:22 PM
To: 'James Malatras (james.malatras@oag.state.ny.us)'; Jamie elacqua (JElacqua@osc.state.ny.us); Kathleen Dillman (kdillman@osc.state.ny.us); Mary Ledbetter (mary.ledbetter@dos.state.ny.us); Matthew Tebo (matthew.tebo@dos.state.ny.us); Lisa Struffolino (lstruffo@mail.nysed.gov); rtrautwe@mail.nysed.gov (rtrautwe@mail.nysed.gov); Amy Nickson (ajn01@health.state.ny.us); Erin Hammond (eah04@health.state.ny.us); James Clancy (jmc36@health.state.ny.us); David Wollner (coledvw@omh.state.ny.us); John Tauriello (colejvt@omh.state.ny.us); Linda Ashline (lashline@cityhall.nyc.gov); Steve Williams (swilliams1@cityhall.nyc.gov); Elizabeth Dears Kent (Idears@mssny.org); Gerry Conway (gconway@mssny.org); Linda Lambert (LLAMBERT@NYACP.ORG); New York State Academy of Family Physicians (fp@nysafp.org); James W. Lytle (jlytle@manatt.com); James Walsh (jwalsh@manatt.com); Jan Dorman (nysoa2020@aol.com); Kristin Walsh (kmwcnm@optionline.net); Harold Iselin (iselinh@gtlaw.com); Leonard Thaler (lthaler@nyspma.org); Pamela Maderios (madeirosp@gtlaw.com); Patty Marcucia; Beth Wanek; Glenn Liebman (gliebman@mhany.org); Trix Niernberger (trix@naminys.org); Rudy Nydegger (nydegger@union.edu); William Egan (wegan@nyspa.org); Kenneth Raske (raske@gnyha.org); Robert Murphy (rmurphy@nyshfa.org); Karen Bonilla (kbonilla@hanys.org); Robin Frank (rfrank@hanys.org); Andy Fogarty (afogarty@nyhpa.org); Richard Gallo (rjgallo@msn.com); Seth Stein (centraloffice@nyspsych.org)
Subject: A1729

Legislative Secretary

From: Robert Murphy [rmurphy@nyshfa.org]
Sent: Thursday, June 24, 2010 10:41 AM
To: Legislative Secretary
Subject: RE: A1729

Since the New York State Health Facilities Association does not represent hospitals we take no position on A1729. Robert J. Murphy

From: Legislative Secretary [mailto:Legislative.Secretary@chamber.state.ny.us]
Sent: Wednesday, June 23, 2010 1:22 PM
To: 'James Malatras (james.malatras@oag.state.ny.us)'; Jamie elacqua (JElacqua@osc.state.ny.us); Kathleen Dillman (kdillman@osc.state.ny.us); Mary Ledbetter (mary.ledbetter@dos.state.ny.us); Matthew Tebo (matthew.tebo@dos.state.ny.us); Lisa Struffolino (lstruffo@mail.nysed.gov); rtrautwe@mail.nysed.gov (rtrautwe@mail.nysed.gov); Amy Nickson (ajn01@health.state.ny.us); Erin Hammond (eah04@health.state.ny.us); James Clancy (jmc36@health.state.ny.us); David Wollner (coledvw@omh.state.ny.us); John Tauriello (colejvt@omh.state.ny.us); Linda Ashline (lashline@cityhall.nyc.gov); Steve Williams (swilliams1@cityhall.nyc.gov); Elizabeth Dears Kent (ldears@mssny.org); Gerry Conway (gconway@mssny.org); Linda Lambert (LLAMBERT@NYACP.ORG); New York State Academy of Family Physicians (fp@nysafp.org); James W. Lytle (jlytle@manatt.com); James Walsh (jwalsh@manatt.com); Jan Dorman (nysoa2020@aol.com); Kristin Walsh (kmwcnm@optionline.net); Harold Iselin (iselinh@gtlaw.com); Leonard Thaler (lthaler@nyspma.org); Pamela Maderios (madeiosp@gtlaw.com); Patty Marcucia (pmarcucia@nysdental.org); Beth Wanek (bwanek@nysdental.org); Glenn Liebman (gliebman@mhanys.org); Trix Niernberger (trix@naminys.org); Rudy Nydegger (nydegger@union.edu); William Egan (wegan@nyspa.org); Kenneth Raske (raske@gnyha.org); Robert Murphy; Karen Bonilla (kbonilla@hanys.org); Robin Frank (rfrank@hanys.org); Andy Fogarty (afogarty@nyhpa.org); Richard Gallo (rjgallo@msn.com); Seth Stein (centraloffice@nyspsych.org)
Subject: A1729

000030



East Amherst

Psychology Group L.L.P.

The Honorable Governor Patterson
Executive Chamber
Albany, New York 12224

James P. Butters, Psy.D.
William M. Casey, Ph.D.
Karen W. Chesnutt, Ph.D.
Lorraine M. Engl, Ph.D.
Carol "Cari" Evans, Ph.D.
Tedd R. Habberfield, Ph.D.
Warren D. Keller, Ph.D.
LeAdelle Phelps, Ph.D.
Nancy L. Zoeller, Ph.D.

Dear Governor Patterson,

This is an urgent request for you to approve S.5002/A.1729 - a bill which amends Section 2801-b of the Public Health Law to include psychologists in the list of healthcare providers who would be afforded *due process* related to a hospital's denial of their application for staff membership or professional privileges. This bill would NOT mandate hospitals to do anything except *provide an explanation* to the applying psychologist about reasons for the denial - which this law indicates must be related to standards of patient care, patient welfare, the objectives of the hospital, or the character or competency of the psychologist.

The intent of this law was to provide practice protections to classes of professionals who provide services within hospitals and to prohibit hospitals from engaging in improper and discriminatory practices. Psychologists are licensed in New York State to independently diagnose and treat mental illness and are not limited by setting. Hence, we believe that psychologists deserve the same protections as the other professions noted in PHL 2801-b, namely dentists, podiatrists, optometrists and licensed midwives. We believe that hospitals should be expected to apply their policies equitably to all health practitioners, consistent with current law, regulations and ethical professional practice.

Sincerely,

37 South Cayuga Rd.
Williamsville, NY 14221
716/626-7492 Fax: 716/626-4496

E-Mail: EAPG9750@aol.com

9750 Transit Rd.
E. Amherst, NY 14051
716/636-1375 Fax: 716/636-4501

000031

From: Martin Lyden [martinlyden@gmail.com]
Sent: Wednesday, June 30, 2010 6:56 AM
To: Governor Paterson
Subject: sign Bill S5002

Dear Governor Patterson:

The Due Process Bill passed the Senate last week. The Bill awaits your signature. I urge you to sign Bill S5002.

Thank you,

Martin Lyden, Ph.D.
Licensed Psychologist
1807 Ninth Street
Rensselaer, NY 12144-1420
Phone (518) 271 6949
Fax (518) 449 7965
<martinlyden@gmail.com>

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New York State Psychiatric Association, Inc.

Area II Council of the American Psychiatric Association
400 Garden City Plaza, Garden City, N.Y. 11530 - (516) 542-0077

MEMORANDUM IN OPPOSITION

S. 5002 (by Senator Duane)
1st REPORT CAL. 866
June 8, 2010

A.1729 (by Assembly Member Gottfried)
PASSED THE ASSEMBLY

The New York State Psychiatric Association, representing over 4700 psychiatrists practicing in New York State, appreciates the opportunity to comment on the above referenced bill.

This bill amends Section 2801-b of the Public Health Law to grant to psychologists, who have or are seeking staff membership or professional privileges at a general hospital, certain due process rights enjoyed by other health care professionals enumerated in Section 2801-b. The New York State Psychiatric Association NYSPA is not opposed to instituting such rights where a hospital wishes to employ the services of a licensed psychologist; but, we are opposed to this bill as we believe it could result in a diminution of a hospital's right to manage its mission according to the needs of its patients.

Nothing in current law in New York State prevents a hospital from granting staff membership and professional privileges to psychologists who meet such qualifications as the hospital may establish for such positions. Where such staff membership or professional privileges are granted to psychologists, it is fitting that such psychologist be afforded the same due process rights as other professionals credentialed by such hospital.

Over the years, in relation to this matter, the New York State Psychiatric Association NYSPA has indicated it would remove its opposition to this measure, if the legislation included language codifying the common law understanding of a hospital's right to determine its mission as well as the compliment of professionals it feels are necessary to carry out its mission. In that regard we respectfully submit the following language, which we propose to be added to the bill as a statement of legislative findings and intent:

Section 1. Declaration of legislative intent. Section 2801-b of the public health law is a narrow exception to the common law rule in this state that a general hospital may in its sole discretion exclude any health care provider and that absent a contractual obligation to the contrary, denial of professional privileges constitutes no legal wrong. The prevailing understanding of section 2801-b of such law, which is hereby confirmed, is that the statute does not require any hospital to grant staff membership or professional privileges to any of the classes of health care providers enumerated in the statute and that a general hospital may choose not to include any such class of health care provider on its staff, except as the state hospital code may otherwise require. Nor does section 2801-b of the public health law require any general hospital electing to grant professional privileges to one or more of the enumerated classes of health care providers to grant each class the same scope or extent of professional privileges. For example, a general hospital may elect to grant admitting or discharge privileges to one or more classes and to withhold or deny them to one or more other classes. Other general hospitals may choose to restrict an enumerated class of health care providers authority within the general hospital to diagnose or treat a patient without the approval of another class of provider or of some other hospital official. In addition, many general hospitals have affiliated staffs and/or allied health staffs with varying levels of privileges, none of which is constrained by section 2801-b of such law under the prevailing understanding of that statute, which is hereby confirmed. Nothing in this declaration is intended to limit the application of any federal or state law prohibiting discrimination or prohibiting restraint of trade or commerce. Section 2801-b of the public health law shall hereafter be construed and applied in a manner consistent with this section. In this context, the Legislature finds and determines that it is appropriate to add licensed psychologists to the classes of health care providers enumerated in section 2801-b of the public health law.

For further information please contact:

Richard Gallo, Government Relations Advocate - New York State Psychiatric Association
Phone: (518) 465-3545 Email: richardgallo@galloassociates.org

000033

July 7, 2010

Client-Matter: 57914-030

Peter Kiernan, Esq.
Counsel to the Governor
Executive Chamber
New York State Capitol
Albany, New York 12224

Re: S.5002/A.1729

Dear Mr. Kiernan:

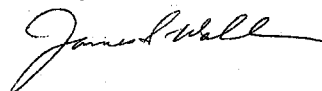
On behalf of the New York State Optometric Association ("NYSOA"), we have no objection to S.5002/A.1729 which recently passed the Senate and the Assembly and is expected to soon be delivered to the Governor for his consideration. This bill would amend the Public Health Law to prohibit a hospital from withholding, limiting or unfairly depriving a psychologist of professional privileges in such hospital.

Under current law, a hospital is prohibited from withholding, limiting or unfairly depriving various professionals' – optometrists, physicians, podiatrists, dentists, or midwife – of professional privileges.

Because the bill would not impact the practice of optometry on way or another, the NYSOA has no objection to the legislation. However, we would add that we believe it is fundamentally fair for any healthcare professional, who is qualified and appropriately licensed, to serve patients without arbitrary interference from hospitals or any other third party. More importantly, we believe that a patient's quality of care is greatly improved when a healthcare professionals is accessible in any place – such as a hospital – where vital medical services are most needed. For a hospital to limit a patient's access to a psychologist through the withholding of professional privileges would unreasonably jeopardize a patient and would require the patient to seek such care at an offsite location – at potentially great physical and emotional cost. As was the case when the NYSOA advocated for optometrists to be able to serve patients in hospitals, we believe the direct access to patients afforded by the granting of professional privileges is in the best interest of the patient and does not deprive a hospital of its ability to ensure that any healthcare professional in its halls is qualified to provide such services.

If you have any questions related to the NYSOA's position on this legislation, please contact Jim Walsh, with Manatt, Phelps & Phillips, LLP, at (518) 431-6700.

Sincerely,



Jim Walsh

2

Marjorie S. Maltin, Ed.D.

CERTIFIED PSYCHOLOGIST
102 CYPRESS DRIVE
WOODBURY, NEW YORK 11797
TELEPHONE (516) 367-3490

The Honorable Governor Patterson
Executive Chamber
Albany, New York 12224

June 21, 2010

Dear Governor Patterson,

This is an urgent request for you to approve S.5002/A.1729 - a bill which amends Section 2801-b of the Public Health Law to include psychologists in the list of healthcare providers who would be afforded *due process* related to a hospital's denial of their application for staff membership or professional privileges. This bill would NOT mandate hospitals to do anything except *provide an explanation* to the applying psychologist about reasons for the denial – which this law indicates must be related to standards of patient care, patient welfare, the objectives of the hospital, or the character or competency of the psychologist.

The intent of this law was to provide practice protections to classes of professionals who provide services within hospitals and to prohibit hospitals from engaging in improper and discriminatory practices. Psychologists are licensed in New York State to independently diagnose and treat mental illness and are not limited by setting. Hence, we believe that psychologists deserve the same protections as the other professions noted in PHL 2801-b, namely dentists, podiatrists, optometrists and licensed midwives. We believe that hospitals should be expected to apply their policies equitably to all health practitioners, consistent with current law, regulations and ethical professional practice.

Sincerely,

Marjorie Maltin Ed.D.

000035

**MAX HEINRICH, PHD, PSYCHOLOGIST, PC
164 ARGYLE RD., B'KLYN, NY, 11218,
718.703.6920**

June 21, 2010

**The Honorable Governor, David Patterson
Executive Chamber
Albany, New York 12224**

Dear Governor Patterson:

This is an urgent request for you to approve S.5002/A.1729 - a bill which amends Section 2801-b of the Public Health Law to include psychologists in the list of healthcare providers who would be afforded due process related to a hospital's denial of their application for staff membership or professional privileges. This bill would NOT mandate hospitals to do anything except provide an explanation to the applying psychologist about reasons for the denial - which this law indicates must be related to standards of patient care, patient welfare, the objectives of the hospital, or the character or competency of the psychologist.

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Sincerely,

Max Heinrich, Ph.D.

000036

**BRIGHTON
CHILD, FAMILY
& INDIVIDUAL
PSYCHOLOGICAL
SERVICES, L.L.P.**

Ruth B. Goldberg, Ph. D.

2
p. 2
Phone: (585) 271-3050
Fax: (585) 271-7313
drruthgoldberg@gmail.com

4 Chelmsford Road
Rochester, New York 14618

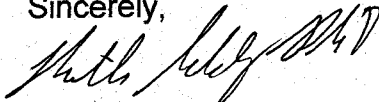
The Honorable Governor Patterson
Executive Chamber
Albany, New York 12224

Dear Governor Patterson,

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Sincerely,



000037

JAMES R. CLARK, Ph.D.

CLINICAL PSYCHOLOGIST
920 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14618
PHONE 585-671-5401

June 22, 2010

The Honorable David Patterson
Executive Chamber
Albany, New York 12224

Dear Governor Patterson,

This is an urgent request for you to approve S.5002/A.1729 - a bill which amends Section 2801-b of the Public Health Law to include psychologists in the list of healthcare providers who would be afforded *due process* related to a hospital's denial of their application for staff membership or professional privileges. This bill would NOT mandate hospitals to do anything except *provide an explanation* to the applying psychologist about reasons for the denial – which this law indicates must be related to standards of patient care, patient welfare, the objectives of the hospital, or the character or competency of the psychologist.

The intent of this law was to provide practice protections to classes of professionals who provide services within hospitals and to prohibit hospitals from engaging in improper and discriminatory practices. Psychologists are licensed in New York State to independently diagnose and treat mental illness and are not limited by setting. Hence, we believe that psychologists deserve the same protections as the other professions noted in PHL 2801-b, namely dentists, podiatrists, optometrists and licensed midwives. We believe that hospitals should be expected to apply their policies equitably to all health practitioners, consistent with current law, regulations and ethical professional practice.

Sincerely,



James R. Clark, Ph.D.

000038

GNYHA STATEMENT OF OPPOSITION

June
Twenty-nine
2010

TO: Peter Kiernan
Counsel to the Governor

FROM: Greater New York Hospital Association

RE: VETO REQUEST: A. 1729/S. 5002

A. 1729/S. 5002 would amend the Public Health Law to make it an improper practice for the governing body of a hospital to deny staff membership or professional privileges to psychologists based solely on the practitioner's category of licensure. Greater New York Hospital Association (GNYHA) strongly opposes this bill and urges its defeat.

GNYHA believes that section 2801-b of the Public Health Law protects health care practitioners from discrimination with respect to the granting of staff membership and professional privileges. According to 2801-b, the governing body of a hospital cannot deny certain professionals staff privileges without stating the reasons for the denial or, if the reasons are unrelated to patient care, the objectives of the institution. A. 1729/S. 5002 would expand the intent of section 2801-b by prohibiting a governing body of a hospital from denying staff membership to a psychologist based solely on the psychologist's licensure category. GNYHA opposes this expansion because it takes away the essential ability of a hospital's governing body to make judgments regarding the nature and scope of its operations as qualified by the existing provisions of the Public Health Law, without removing any of the governing body's ultimate responsibility for the quality of care delivered within its facility.

Part 405.2 of Title 10 of the New York State Codes, Rules and Regulations places a great deal of responsibility with the governing body of the hospital, specifically, making the governing body legally responsible for the quality of patient care services, for implementing an ongoing evaluation of services delivered by the hospital, and for implementing and overseeing the medical staff appointment and reappointment process, among other requirements. Given that the ultimate responsibility of care rendered within the hospital rests with the governing body, GNYHA believes that it is inappropriate to restrict the governing body from making judgments regarding the nature and scope of its operations.

Further, hospitals should in no way be even tacitly required to offer privileges to certain categories of health professionals whom they are not able to appropriately supervise, peer review, credential or otherwise accommodate.

A. 1729/S. 5002 represents an encroachment upon the prerogatives of the hospital's governing body without removing any of the governing body's ultimate responsibility for the quality of care delivered within the facility. For these reasons, GNYHA strongly opposes A. 1729/S. 5002 and urges the Governor to veto this legislation.

000039



GREATER NEW YORK HOSPITAL ASSOCIATION

555 W 57TH STREET, SUITE 1500 • NEW YORK, NY • 10019 • 212.246.7100

Legislative Secretary

From: Robert Murphy [rmurphy@nyshfa.org]
Sent: Thursday, June 24, 2010 10:41 AM
To: Legislative Secretary
Subject: RE: A1729

Since the New York State Health Facilities Association does not represent hospitals we take no position on A1729. Robert J. Murphy

From: Legislative Secretary [mailto:Legislative.Secretary@chamber.state.ny.us]
Sent: Wednesday, June 23, 2010 1:22 PM
To: 'James Malatras (james.malatras@oag.state.ny.us)'; Jamie elacqua (JElacqua@osc.state.ny.us); Kathleen Dillman (kdillman@osc.state.ny.us); Mary Ledbetter (mary.ledbetter@dos.state.ny.us); Matthew Tebo (matthew.tebo@dos.state.ny.us); Lisa Struffolino (lstruffo@mail.nysed.gov); rtrautwe@mail.nysed.gov (rtrautwe@mail.nysed.gov); Amy Nickson (ajn01@health.state.ny.us); Erin Hammond (eah04@health.state.ny.us); James Clancy (jmc36@health.state.ny.us); David Wollner (coledvw@omh.state.ny.us); John Tauriello (colejvt@omh.state.ny.us); Linda Ashline (lashline@cityhall.nyc.gov); Steve Williams (swilliams1@cityhall.nyc.gov); Elizabeth Dears Kent (Idears@mssny.org); Gerry Conway (gconway@mssny.org); Linda Lambert (LLAMBERT@NYACP.ORG); New York State Academy of Family Physicians (fp@nysafp.org); James W. Lytle (jlytle@manatt.com); James Walsh (jwalsh@manatt.com); Jan Dorman (nysoa2020@aol.com); Kristin Walsh (kmwcnm@optionline.net); Harold Iselin (iselin@gtlaw.com); Leonard Thaler (lthaler@nyspma.org); Pamela Maderios (madeirosp@gtlaw.com); Patty Marcucia (pmarcucia@nysdental.org); Beth Wanek (bwanek@nysdental.org); Glenn Liebman (gliebman@mhanys.org); Trix Niernberger (trix@naminys.org); Rudy Nydegger (nydegger@union.edu); William Egan (wegan@nyspa.org); Kenneth Raske (raske@gnyha.org); Robert Murphy; Karen Bonilla (kbonilla@hanys.org); Robin Frank (rfrank@hanys.org); Andy Fogarty (afogarty@nyhpa.org); Richard Gallo (rjgallo@msn.com); Seth Stein (centraloffice@nyspsych.org)
Subject: A1729

Legislative Secretary

From: Patty Marcucia [PMarcucia@nysdental.org]
Sent: Wednesday, June 23, 2010 2:22 PM
To: Legislative Secretary
Subject: RE: A1729

The New York State Dental Association does not have a position on A.1729.

*Patricia J. Marcucia
New York State Dental Association
20 Corporate Woods Blvd., Suite 602
Albany, NY 12211*

*518-465-0044 Telephone
518-465-3219 Fax*

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From: Legislative Secretary [mailto:Legislative.Secretary@chamber.state.ny.us]

Sent: Wednesday, June 23, 2010 1:22 PM

To: 'James Malatras (james.malatras@oag.state.ny.us)'; Jamie elacqua (JElacqua@osc.state.ny.us); Kathleen Dillman (kdillman@osc.state.ny.us); Mary Ledbetter (mary.ledbetter@dos.state.ny.us); Matthew Tebo (matthew.tebo@dos.state.ny.us); Lisa Struffolino (lstruffo@mail.nysed.gov); rtrautwe@mail.nysed.gov (rtrautwe@mail.nysed.gov); Amy Nickson (ajn01@health.state.ny.us); Erin Hammond (eah04@health.state.ny.us); James Clancy (jmc36@health.state.ny.us); David Wollner (coledvw@omh.state.ny.us); John Tauriello (colejvt@omh.state.ny.us); Linda Ashline (lashline@cityhall.nyc.gov); Steve Williams (swilliams1@cityhall.nyc.gov); Elizabeth Dears Kent (Idears@mssny.org); Gerry Conway (gconway@mssny.org); Linda Lambert (LLAMBERT@NYACP.ORG); New York State Academy of Family Physicians (fp@nysafp.org); James W. Lytle (jlytle@manatt.com); James Walsh (jwalsh@manatt.com); Jan Dorman (nysoa2020@aol.com); Kristin Walsh (kmwcnm@optionline.net); Harold Iselin (iselin@gtlaw.com); Leonard Thaler (lthaler@nyspsma.org); Pamela Maderios (madeirosp@gtlaw.com); Patty Marcucia; Beth Wanek; Glenn Liebman (gliebman@mhansy.org); Trix Niernberger (trix@naminys.org); Rudy Nydegger (nydegger@union.edu); William Egan (wegan@nyspa.org); Kenneth Raske (raske@gnyha.org); Robert Murphy (rmurphy@nyshfa.org); Karen Bonilla (kbonilla@hanys.org); Robin Frank (rfrank@hanys.org); Andy Fogarty (afogarty@nyhpa.org); Richard Gallo (rjgallo@msn.com); Seth Stein (centraloffice@nyspsych.org)

Subject: A1729

STATE OF NEW YORK

1729

2009-2010 Regular Sessions

IN ASSEMBLY

January 9, 2009

Introduced by M. of A. GOTTFRIED, TOWNS, SCHROEDER -- Multi-Sponsored by
 -- M. of A. AUBRY, BOYLAND, DINOWITZ, GALEF -- read once and referred
 to the Committee on Health

AN ACT to amend the public health law, in relation to hospital access of
 psychologists

The People of the State of New York, represented in Senate and Assem-
 bly, do enact as follows:

1 Section 1. Subdivisions 1 and 3 of section 2801-b of the public health
 2 law, as amended by chapter 605 of the laws of 2008, are amended to read
 3 as follows:

4 1. It shall be an improper practice for the governing body of a hospi-
 5 tal to refuse to act upon an application for staff membership or profes-
 6 sional privileges or to deny or withhold from a physician, podiatrist,
 7 optometrist, dentist [~~or~~], licensed midwife, or psychologist staff
 8 membership or professional privileges in a hospital, or to exclude or
 9 expel a physician, podiatrist, optometrist, dentist [~~or~~], licensed
 10 midwife or psychologist from staff membership in a hospital or curtail,
 11 terminate or diminish in any way a physician's, podiatrist's,
 12 optometrist's, dentist's [~~or~~], licensed midwife's or psychologist's
 13 professional privileges in a hospital, without stating the reasons
 14 therefor, or if the reasons stated are unrelated to standards of patient
 15 care, patient welfare, the objectives of the institution or the charac-
 16 ter or competency of the applicant. It shall be an improper practice for
 17 a governing body of a hospital to refuse to act upon an application or
 18 to deny or to withhold staff membership or professional privileges to a
 19 podiatrist based solely upon a practitioner's category of licensure.

20 3. After the filing of any such complaint, the public health council
 21 shall make a prompt investigation in connection therewith. In conducting
 22 such investigation, the public health council is authorized to receive
 23 reports from the governing body of the hospital and the complainant, as
 24 the case may be, and the furnishing of such information to the public

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

LBD01103-01-9

A. 1729

2

1 health council, or by the council to the governing body or complainant,
2 shall not subject any person or hospital to any action for damages or
3 other relief. Such information when received by the public health coun-
4 cil, or its authorized representative, shall be kept confidential and
5 shall be used solely for the purposes of this section and the improve-
6 ment of the standards of patient care and patient welfare. The records
7 of such proceedings shall not be admissible as evidence in any other
8 action of any kind in any court or before any other tribunal, board,
9 agency, or person. If the council shall determine after such investi-
10 gation that cause exists for crediting the allegations of the complaint,
11 the council shall promptly so advise the governing body of the hospital
12 against which the complaint was made, and shall direct that such govern-
13 ing body make a review of the actions of such body in denying or with-
14 holding staff membership or professional privileges from the complainant
15 physician, podiatrist, optometrist, dentist ~~or~~, licensed midwife or
16 psychologist or in excluding or expelling such physician, podiatrist,
17 optometrist, dentist ~~or~~, licensed midwife or psychologist from staff
18 membership or in curtailing, terminating or in any way diminishing such
19 physician's, podiatrist's, optometrist's, dentist's ~~or~~, licensed
20 midwife's or psychologist's professional privileges in the hospital.

21 § 2. This act shall take effect on the one hundred eightieth day after
22 it shall have become a law, provided, that the addition, amendment
23 and/or repeal of any rule or regulation necessary for the implementation
24 of the provisions of this act on its effective date is authorized and
25 directed to be completed on or before such date.
