

February 19, 2010  
Memorandum in Support

**A. 6665 (Gottfried) S. 4495 (Duane)**

*An Act to amend the public health law, the education law and the labor law, in relation to prohibiting participation in torture and improper treatment of prisoners by health care professionals.*

Human Rights Watch strongly supports A. 6665 and S. 4495, prohibiting all healthcare professionals from knowingly engaging, directly or indirectly, in actions that constitute participation or complicity in torture or improper treatment of a prisoner, and establish a duty to report such treatment.

Human Rights Watch, a nongovernmental organization that for more than 30 years has been dedicated to defending and promoting human rights, has been investigating abuses against patients and individuals under medical supervision in medical facilities and detention settings around the world. We have found that in detention settings, such as prisons and jails, juvenile detention centers, and drug treatment and social rehabilitation centers, healthcare professionals may be forced to withhold care or engage in treatment that intentionally or negligently inflicts severe pain or suffering for no legitimate medical purpose, which can be considered cruel and inhuman, and in some cases, where there is state involvement and specific intent, it can be considered torture.

The human rights community's attention to the complicity of doctors and other health workers in torture and cruel and inhuman treatment has in recent years focused on the participation of medical providers in the interrogation of prisoners and counterterrorism efforts. However, as our investigations have illustrated, involvement of healthcare professionals in torture and improper treatment of detained individuals, in New York, the United States generally and internationally, is not limited to such situations. Human Rights Watch has found healthcare providers' involvement in forcible anal and vaginal exams, female genital mutilation, and failure to provide life-saving abortion, palliative care and treatment for drug dependency, to constitute torture or ill-treatment in some situations.

The World Medical Association has encouraged doctors to "honour their commitment as physicians to serve humanity and to resist any pressure to act contrary to the ethical principles governing their dedication to this task; to support physicians experiencing difficulties as a result of their resistance to any such pressure or as a result of their attempts to speak out or to act against such inhuman procedures,"<sup>1</sup> but healthcare professionals are put in a difficult position when there is a conflict between their obligations to their patients and their profession, and demands placed on them by abusive laws or policies, by their superiors, or in the course of their work within detention settings. Empowering medical

providers to challenge these laws and policies and to resist pressure to engage in acts contrary to their legal and ethical obligations is essential to reform efforts.

The bill is also consistent with US obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides in article 10 that states parties shall issue rules and instructions to ensure that medical personnel, as well as others involved in detention and imprisonment, are fully aware of their duties and functions in prohibiting torture and other ill-treatment.

Outlining clear legal obligations beyond the mandates of professional organizations and establishing a duty to report torture and improper-treatment, as provisions in this bill do, is a step in the right direction for New York State.

Human Rights Watch urges that A. 6665 and S. 4495 be approved by the Legislature.

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<sup>1</sup> World Medical Association Declaration Concerning Support for Medical Doctors Refusing to Participate in, or to Condone, the Use of Torture or Other Forms of Cruel, Inhuman or Degrading Treatment, Adopted by the 49th WMA General Assembly Hamburg, Germany, November 1997.