

NEW YORK
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HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

July 2, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gustave Stephen Drivas, M.D.
REDACTED

Gustave Stephen Drivas, M.D.
3377 Richmond Avenue
Staten Island, New York 10312

Nicholas M. Wooldridge, Esq.
Law Offices of Bukh & Associates, PLLC
1123 Avenue Z
Brooklyn, New York 11229

John Thomas Viti, Esq.
NYS Department of Health
90 Church Street - 4th Floor
New York, New York 10007

RE: In the Matter of Gustave Stephen Drivas, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-206) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

REDACTED
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:
Enclosure

COPY

IN THE MATTER
OF
GUSTAVE STEPHEN DRIVAS, M.D.

DETERMINATION
AND
ORDER

BPMC #13-206

A Notice of Hearing and Statement of Charges, both dated November 15, 2012 were served on the Respondent, Gustave Stephen Drivas, M.D., on or about December 12, 2012. Gary J. Schwall, M.B.A., R.P.A., Chair, Stephen M. Lapidus, M.D., and James R. Dickson, M.D., members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) of the Public Health Law ("PHL"). Denise Lepicier, Administrative Law Judge ("ALJ"), served as the Administrative Officer.

The Department of Health appeared by John T. Viti, Associate Counsel. Respondent Gustave Stephen Drivas, M.D., appeared by the Law Offices of Bukh & Associates, Nicholas M. Wooldridge, Esq., of Counsel. Evidence was received and witnesses sworn and heard, and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Date of Service:	December 12, 2012
Answer Filed by Respondent:	April 24, 2013
Pre-Hearing Conference:	January 4, 2013
Hearing Date:	April 24, 2013

Witness for Petitioner:	Nichole Matthews
Witness for Respondent:	James Beadle
Deliberations Held:	April 24, 2013

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a professional disciplinary agency of the State of New York, authorized pursuant to PHL § 230, et seq. This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct (the "Petitioner"). The Department of Health has jurisdiction to conduct disciplinary hearings for physicians, physician assistants, specialist's assistants, physicians working on a limited permit, and medical residents when there is a violation of the misconduct provisions of the N.Y. Education Law ("Educ. Law"). The Respondent is charged with 30 specifications of misconduct in the Statement of Charges. Specifications one through ten charge the Respondent with the fraudulent practice of medicine in violation of Educ. Law § 6530(2). Specifications eleven through twenty charge the Respondent with willfully making a false report in violation of Educ. Law § 6530(21). Specifications twenty-one through thirty charge the Respondent with willfully or grossly negligently failing to comply with substantial provisions of state law governing the practice of medicine in violation of Educ. Law § 6530(16).

Respondent filed an answer to the Statement of Charges denying each of the specifications.¹ A copy of the Statement of Charges is attached to this Determination and Order as Appendix 1. A copy of the Respondent's Answer is attached to this Determination as Appendix 2.

FINDINGS OF FACT

The following findings of fact were made after a review of the entire record in this matter. Numbers and letters in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence.

1. The Respondent was licensed to practice medicine in the State of New York on or about July 24, 1991, upon issuance of license number 186334 by the New York State Education Department. (Ex. 1, p. 1 & 2, p. 2)

BAY MEDICAL CARE, P.C.

2. Respondent filed or caused to be filed a certificate of incorporation for Bay Medical Care, P.C., a professional service corporation incorporated for the purpose of practicing medicine on

¹ In addition, the Respondent asserted four affirmative defenses. The ALJ, noting legal issues in the affirmative defenses, requested that the attorneys brief the issues prior to hearing. Respondent's counsel failed to brief the issues prior to hearing. Furthermore, the affirmative defenses were never addressed during the hearing or in summation. (See hearing transcript.)

March 14, 2005. The Certificate of Incorporation lists the Respondent as the only licensee associated with the corporation and names the Respondent as the President and the sole and original shareholder, director and officer of the corporation. Respondent signed the Certificate of Incorporation. (Ex. 13, p. 1 & 3)

3. In or about March of 2009, Respondent submitted a biennial statement to the Department of State for Bay Medical Care, P.C., indicating no change of address for the corporation. He signed the statement as the President of the corporation. (Ex. 13A, p. 2)

4. The Department of State website, as of May 29, 2012, named the Respondent as the Chairman or Chief Executive Officer of Bay Medical Care, P.C., and indicated that the corporation was still active. (Ex. 11, p. 1)

5. Respondent filed or caused to be filed a certified copy of the Certificate of Incorporation for Bay Medical Care, P.C., with the State Education Department in March of 2005. Subsequently, Respondent submitted a triennial statement to the Education Department signed by Respondent on January 7, 2008 listing the Respondent as the sole shareholder, officer and director. (Ex. 13B, p. 3-8)

6. The New York State Education Department website on May 30, 2012, listed Bay Medical Care, P.C., as being current through February 28, 2011. (Ex. 12)

7. In his answer the Respondent specifically admitted that as of July 25, 2012, he was still

listed as the sole shareholder, director and officer of Bay Medical Care, P.C. (Exs. 4 & C, p. 1)²

8. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that " Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblit, Yuriy Baumblit, and Roman Azimov amongst other lay persons who are not licensed to practice medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name." Bay Medical Care, P.C., was one of the corporations listed below in the affidavit. (Ex. 10, p. 2-5)

² Respondent denied with respect to each professional service corporation the general Factual Allegations B(2) and B(3) having to do with Respondent's knowledge of the falsity of his representations and his intent to mislead in making them.

DRIVAS MEDICAL CARE, P.C.

9. Respondent filed or caused to be filed a certificate of incorporation for Drivas Medical Care, P.C., a professional service corporation incorporated for the purpose of practicing medicine and surgery on December 5, 2002. The Certificate of Incorporation lists the Respondent as the only licensee associated with the corporation and the sole and original shareholder, director and officer of the corporation. Respondent signed the Certificate of Incorporation. (Ex. 17)

10. In or about January of 2005, Respondent submitted a biennial statement to the Department of State for Drivas Medical Care, P.C., indicating no change of address for the corporation. He signed the statement as the President of the corporation and listed himself as the Chief Executive Officer. (Ex. 17B, p. 2-3)

11. The Department of State website, as of May 29, 2012, named the Respondent as the Chairman or Chief Executive Officer of Drivas Medical Care, P.C., and indicated that the corporation had been dissolved as of April 25, 2012. (Ex. 14) The dissolution of Drivas Medical Care, P.C., was confirmed by a sworn statement from the Department of State. (Ex. 17A)

12. Respondent filed or caused to be filed a certified copy of the Certificate of Incorporation for Drivas Medical Care, P.C., with the State Education Department listing the Respondent as the sole shareholder, officer and director. Subsequently, Respondent submitted triennial statements to the Education Department signed by Respondent on June 16, 2003, and January 10, 2007, listing the Respondent as the sole shareholder, officer, and director. (Ex. 17C, p. 2-10)

13. The New York State Education Department website on May 30, 2012, listed Respondent

as being the sole officer, director, and shareholder of Drivas Medical Care, P.C. (Ex. 15)

14. Respondent specifically admitted all of the facts related to Drivas Medical Care, P.C., alleged by the Department except the fact that as of July 25, 2012, he was still listed as the sole shareholder, director and officer of Drivas Medical Care, P.C. (Exs. 4, p.1 & C, p.1)

15. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that "Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblit, Yuriy Baumblit, and Roman Azimov amongst other lay persons who are not licensed to practice medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name." Drivas Medical Care, P.C., was one of the corporations listed below in the affidavit. (Ex. 10, p. 2-3)

DSG MEDICAL, P.C.

16. Respondent filed or caused to be filed a certificate of incorporation for DSG Medical,

P.C., a professional service corporation incorporated for the purpose of practicing medicine on August 5, 2004. The Certificate of Incorporation lists the Respondent as the only licensee associated with the corporation and the sole and original shareholder, director and officer of the corporation. (Ex. 20)

17. The Department of State website as of May 29, 2012, indicated that the corporation had been dissolved as of January 26, 2011. (Ex. 18, p.1) The dissolution of DSG Medical, P.C., was confirmed by a sworn statement from the Department of State. (Ex. 20A, p. 2)

18. Respondent filed or caused to be filed a certified copy of the Certificate of Incorporation for DSG Medical, P.C., with the State Education Department listing the Respondent as the sole shareholder, officer and director. (Ex. 20B)

19. The New York State Education Department website on May 30, 2012, listed Respondent as being the sole officer, director, and shareholder of DSG Medical, P.C. (Ex. 19)

20. Respondent did not personally sign the Certificate of Incorporation. (Ex. 20) However, Respondent specifically admitted all of the facts related to DSG Medical, P.C., alleged by the Department except the fact that as of July 25, 2012 he was still listed as the sole shareholder, director and officer of DSG Medical, P.C. (Exs. 4, p. 12 & C, p. 1)

21. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that "Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional

corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblyt, Yuriy Baumblyt, and Roman Azimov amongst other lay persons who are not licensed to practice medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name." DSG Medical Care, P.C., was one of the corporations listed below in the affidavit. (Ex. 10, p. 2-3)

G.S.D. MEDICAL, P.C.

22. Respondent filed or caused to be filed a certificate of incorporation for G.S.D. Medical, P.C., a professional service corporation incorporated for the purpose of practicing medicine on January 29, 2004. The Certificate of Incorporation lists the Respondent as the only licensee associated with the corporation and the sole and original shareholder, director and officer of the corporation. Respondent signed the Certificate of Incorporation. (Ex. 23)

23. The Department of State website, as of May 29, 2012, indicated that the corporation had been dissolved as of October 28, 2009. (Ex. 21, p. 1) The dissolution of G.S.D. Medical, P.C., was confirmed by a sworn statement from the Department of State. (Ex. 23A, p. 2)

24. Respondent filed or caused to be filed a certified copy of the Certificate of Incorporation for G.S.D. Medical, P.C., with the State Education Department listing the Respondent as the sole

shareholder, officer and director. (Ex. 23B, p. 2-6)

25. The New York State Education Department website on May 30, 2012, listed G.S.D. Medical, P.C., as closed on October 28, 2009. (Ex. 22)

26. Respondent specifically admitted all of the facts related to G.S.D. Medical, P.C., alleged by the Department except the fact that as of July 25, 2012, he was still listed as the sole shareholder, director and officer of G.S.D. Medical, P.C. (Exs. 4, p. 2 & C, p.1)

27. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that "Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblit, Yuriy Baumblit, and Roman Azimov amongst other lay persons who are not licensed to practice medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name." G.S.D. Medical, P.C., was one of the corporations listed below in the affidavit. (Ex. 10)

MAGNA MEDICAL, P.C.

28. Magna Medical, P.C., was incorporated by a physician named Dan Lewis on October 29, 1999, as a professional service corporation to engage in the practice of medicine, among other things. (Ex. 26, p. 4-6; Ex. 29, p. 6-12)

29. Respondent informed the Education Department by letter dated January 31, 2001, that he became the President, sole director and shareholder of Magna Medical, P.C., on January 31, 2001. (Ex. 29, p. 15)

30. The Respondent signed at least one triennial statement sent to the Education Department as the current shareholder, officer, and director of Magna Medical, P.C. (Ex. 29, pp. 4-5) However, Dan Lewis, M.D., who had incorporated Magna Medical, P.C., signed a biennial statement sent to the Department of State in October of 2001 stating that he was the Chief Executive Officer and President. (Ex. 29B, p. 2-3)

31. The Department of State website, as of May 29, 2012 indicated that the corporation had been dissolved as of April 27, 2011. (Ex. 24, p. 1) The dissolution of Magna Medical, P.C., was confirmed by a sworn statement from the Department of State. (Ex. 29A, p. 2)

32. The Department of State website for Magna Medical, P.C., despite the dissolution of the corporation, listed Dan Lewis, M.D., as the Chairman or Chief Executive Officer as of May 29, 2012. (Ex. 24, p. 1)

33. Respondent specifically denied all of the facts related to Magna Medical, P.C., alleged by the Department. (Exs. 4, p. 2-3 & C, p. 2)

34. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance

company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that "Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblyt, Yuriy Baumblyt, and Roman Azimov amongst other lay persons who are not licensed to practice medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name." Magna Medical, P.C., was one of the corporations listed below in the affidavit. (Ex. 10)

ROOSEVELT MEDICAL, P.C.

35. Respondent filed or caused to be filed a certificate of incorporation for Roosevelt Medical, P.C., a professional service corporation incorporated for the purpose of practicing medicine and surgery on January 8, 2003. The Certificate of Incorporation lists the Respondent as the only licensee associated with the corporation and the sole and original shareholder, director and officer of the corporation. Respondent signed a letter permitting Guy A. Rider to incorporate Roosevelt Medical, P.C., on Respondent's behalf. (Ex. 32)

36. The Department of State website as of May 29, 2012, indicated that the corporation had been dissolved as of October 28, 2009. (Ex. 30, p. 1) The dissolution of Roosevelt Medical, P.C., was confirmed by a sworn statement from the Department of State. (Ex. 32A, p. 2)

37. Respondent filed or caused to be filed a certified copy of the Certificate of Incorporation for Roosevelt Medical, P.C., with the State Education Department listing the Respondent as the sole shareholder, officer and director. (Ex. 32B)

38. The Respondent filed or caused to be filed at least one triennial statement with the Education Department as the sole officer, director, and shareholder of Roosevelt Medical, P.C., and signed as the President. (Ex. 32B, p. 2-3)

39. The Education Department website as of June 7, 2012, indicated that the corporation was closed on October 28, 2009. (Ex. 31)

40. Respondent specifically admitted all of the facts related to Roosevelt Medical, P.C., alleged by the Department except the fact that as of July 25, 2012, he was still listed as the sole shareholder, director and officer of Roosevelt Medical, P.C. (Exs. 4, p. 2-3 & C, p.2)

41. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that "Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and

controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblit, Yuriy Baumblit, and Roman Azimov amongst other lay persons who are not licensed to practice medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name.” Roosevelt Medical, P.C., was one of the corporations listed below in the affidavit. (Ex. 10)

SUTPHIN BEST MEDICAL CARE, P.C.

42. Respondent filed or caused to be filed a certificate of incorporation for Sutphin Best Medical Care, P.C., a professional service corporation incorporated for the purpose of practicing medicine on November 15, 2000. The Certificate of Incorporation lists the Respondent as the only licensee associated with the corporation and the sole and original shareholder, director and officer of the corporation. Respondent signed an affidavit as part of the incorporation process for Sutphin Best Medical Care, P.C., asserting that he was “the stockholder and director of the proposed professional corporation.” (Ex. 35)

43. Respondent filed or caused to be filed a biennial statement with the Department of State for Sutphin Best Medical Care, P.C., on November 14, 2002, listing him as the Chief Executive Officer. He signed the statement as the President of the corporation. (Ex. 35A)

44. The Department of State website as of May 29, 2012, indicated that the corporation had been dissolved as of July 30, 2003. (Ex. 33, p. 1) The dissolution of Sutphin Best Medical Care,

P.C., was confirmed by a filing with the Department of State. (Ex. 35B, p. 2-4)

45. Respondent filed or caused to be filed a certified copy of the Certificate of Incorporation for Sutphin Best Medical Care, P.C., with the State Education Department listing the Respondent as the sole shareholder, officer and director. (Ex. 35C)

46. The State Education Department website as of May 30, 2012, listed the Respondent as the sole officer, director and shareholder of Sutphin Best Medical Care, P.C., although the corporation was not listed as current. (Ex. 34)

47. Respondent specifically admitted all of the facts related to Sutphin Best Medical, P.C., alleged by the Department except the fact that as of July 25, 2012, he was still listed as the sole shareholder, director and officer of Sutphin Best Medical, P.C. (Ex. 4, p. 2-3 & C, p. 2)

48. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that "Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblit, Yuriy Baumblit, and Roman Azimov amongst other lay persons who are not licensed to practice

medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name.” Sutphin Best Medical Care, P.C., was one of the corporations listed below in the affidavit. (Ex. 10)

TRI-STATE MEDICAL DIAGNOSTIC, P.C.

49. Respondent filed or caused to be filed a certificate of incorporation for Tri-State Medical Diagnostic, P.C., a professional service corporation incorporated for the purpose of practicing medicine on May 4, 2004. The Certificate of Incorporation lists the Respondent as the only licensee associated with the corporation and the sole and original shareholder, director and officer of the corporation. Respondent signed the Certificate of Incorporation. (Ex. 38)

50. The Department of State website as of May 29, 2012, indicated that the corporation had been dissolved as of January 26, 2011. (Ex. 36, p. 1) The dissolution of Tri-State Medical Diagnostic, P.C., was confirmed by a sworn statement from the Department of State. (Ex. 38A, p. 2)

51. Respondent filed or caused to be filed a certified copy of the Certificate of Incorporation for Tri-State Medical Diagnostic, P.C., with the State Education Department listing the Respondent as the sole shareholder, officer and director. (Ex. 38B)

52. The State Education Department website as of May 30, 2012, listed the Respondent as the sole officer, director and shareholder of Tri-State Medical Diagnostic, P.C., although the corporation was not listed as current. (Ex. 37)

53. Respondent denied all of the facts related to Tri-State Medical Diagnostic, P.C., alleged

by the Department. (Exs. 4, p 2-3 & C, p. 2)

54. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that "Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblit, Yuriy Baumblit, and Roman Azimov amongst other lay persons who are not licensed to practice medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name." Tri-State Medical Diagnostic, P.C., was one of the corporations listed below in the affidavit. (Ex. 10)

CONEY ISLAND MEDICAL CARE, P.C.

55. Respondent filed or caused to be filed a certificate of incorporation for Coney Island Medical Care, P.C., a professional service corporation incorporated for the purpose of practicing medicine on August 2, 2004. The Certificate of Incorporation lists the Respondent as the only licensee associated with the corporation and the sole and original shareholder, director and

officer of the corporation. Respondent is listed as the President. Respondent signed the Certificate of Incorporation. (Ex. 41)

56. The Department of State website as of May 29, 2012, indicated that the corporation had been dissolved as of May 25, 2007. (Ex. 39, p. 1) The dissolution of Coney Island Medical Care, P.C., was confirmed by a filing with the Department of State. (Ex. 41A)

57. Respondent filed or caused to be filed a certified copy of the Certificate of Incorporation for Coney Island Medical Care, P.C., with the State Education Department listing the Respondent as the sole shareholder, officer and director. (Ex. 41B)

58. The State Education Department website as of May 30, 2012 listed the Respondent as the sole officer, director and shareholder of Coney Island Medical Care, P.C., although the corporation was not listed as current. (Ex. 40)

59. Respondent specifically admitted all of the facts related to Coney Island Medical, P.C., alleged by the Department except the fact that as of July 25, 2012, he was still listed as the sole shareholder, director and officer of Coney Island Best Medical, P.C. (Exs. 4, p 2 & C, p. 2)

60. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that "Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and

controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblit, Yuriy Baumblit, and Roman Azimov amongst other lay persons who are not licensed to practice medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name.” Coney Island Medical Care, P.C., was one of the corporations listed below in the affidavit. (Ex. 10)

SVS WELLCARE MEDICAL, PLLC.

61. Respondent filed or caused to be filed Articles of Organization for SVS Wellcare Medical, PLLC, a professional service limited liability company organized for the purpose of practicing medicine on April 24, 2006. The Articles of Organization list the Respondent as the only original member and manager. Respondent did not sign the Articles of Organization. (Ex. 44)

62. Respondent filed or caused to be filed a biennial statement with the Department of State for SVS Wellcare Medical, PLLC, through an agent, Sergey Shelikov, who identified himself as the organizer in April of 2008. (Ex. 44A, p.2)

63. The Department of State website as of May 29, 2012, indicated that the company was still active. (Ex. 42, p. 1)

64. Respondent filed or caused to be filed a certified copy of the Articles of Organization for SVS Wellcare Medical, PLLC, with the State Education Department listing the Respondent as

the sole original member and manager. (Ex. 44B, p. 3-7)

65. The State Education Department file for SVS Wellcare Medical, PLLC, reveals that three other physicians joined SVS Wellcare Medical, PLLC over time. (Ex 44B, p. 2, 8, 11)

66. The State Education Department website as of May 30, 2012, listed the Respondent and three other physicians as the members/managers of SVS Wellcare Medical, PLLC, and the company was listed as current. (Ex. 43)

67. Respondent specifically admitted all of the facts related to SVS Wellcare Medical, PLLC, alleged by the Department except that he denied that he concealed with the intent to deceive that non-physicians owned and/or controlled the company and he denied that he aided and/or abetted non-physicians in organizing, owning and controlling the company. (Exs. 4, p. 3 & C, p. 2)

68. On or about January 31, 2007, Respondent signed an affidavit prepared by an insurance company investigator. He had discussed the contents with the investigator previously, and, before signing the affidavit, Respondent read the affidavit. (T. 48-63) In the affidavit Respondent admitted that "Although I was the sole shareholder and director of the professional service corporations listed below I did not control the corporations. Most of the professional corporations that list my name on the corporate paper work and public records were secretly owned and controlled by laypersons who I now know are legally prohibited from owning and controlling medical practices. My understanding is that all profits from the corporations were funneled to laypersons through fees for management and or billing and collection services so that laypersons could illegally profit from medical services. . . . Alex Goferman, Rima Baumblit,

Yuriy Baumblyt, and Roman Azimov amongst other lay persons who are not licensed to practice medicine, and management billing companies such as Forest Hills Billing Services Inc, Lenox Health Management Corp. sought to seek profits by fraudulently incorporating these professional service corporations in my name." SVS Wellcare Medical, PLLC, although not a professional service corporation, was one of the companies listed below in the affidavit. (Ex. 10)

DISCUSSION

CREDIBILITY

The Department called only one witness, the insurance company investigator who was investigating Respondent's relationship to multiple professional service corporations and professional limited liability companies. She appeared to answer all questions honestly and to the best of her knowledge. Her testimony was credible.

The Respondent called only the insurance company employee who notarized the Respondent's signature and this witness' testimony added little to the understanding of the case. What was noteworthy, however, was the Respondent's failure to testify. Respondent appeared at the hearing but did not testify in his own behalf to explain anything. The Hearing Committee was thereby entitled to draw adverse factual inferences against the Respondent. In In the Matter of Steiner v. DeBuono, 239 A.D.2d 708, 710-711, 657 N.Y.S.2d 485, 486-487 (App. Div. 3rd Dept. 1997), the court explained the propriety of drawing the adverse inference as follows:

It is well established that the invocation of the 5th Amendment privilege against self-incrimination during the course of either a civil or administrative proceeding may carry

with it an adverse factual inference (*see, Baxter v Palmigiano, 425 US 308, 316-320; Marine Midland Bank v Russo Produce Co., 50 NY2d 31; Matter of DeBonis v Corbisiero, 155 AD2d 299, lv denied 75 NY2d 709, cert denied 496 US 938*). The contention that such inference cannot be drawn without the clear invocation of such privilege, like here where a physician is never called to testify in his or her own defense and instead chooses to remain silent, is without merit. As we found in *Matter of Terra v Department of Health (199 AD2d 577)*, where a physician charged with professional medical misconduct “neither appeared, testified nor offered evidence on his behalf” (*id.*, at 578), the Hearing Committee properly drew an adverse inference from his silence (*see also, Matter of Jean-baptiste v Sobol, 209 AD2d 823*).

The Hearing Committee is entitled to draw an adverse inference with respect to each factual allegation charged. However, even without such inferences, there is sufficient factual evidence submitted by the Department to persuade by a preponderance of the evidence that the factual allegations are true.

The Department has proven the following factual allegations, by a preponderance of evidence, except as otherwise noted:

Allegation A

Allegation B

Allegation B(1)(a)

Allegation B(1)(b), except insofar as the allegation states “As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of DRIVAS MEDICAL CARE, P.C.”

Allegation B(1)(c), except insofar as the allegation states “As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of DSG MEDICAL, P.C.”

Allegation B(1)(d), except insofar as the allegation states “As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of G.S.D. MEDICAL, P.C.”

Allegation B(1)(e), except insofar as the allegation states “As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of MAGNA MEDICAL, P.C.”

Allegation B(1)(f), except insofar as the allegation states “As of July 25, 2012, DRIVAS is still

listed as the sole shareholder, director and officer of ROOSEVELT MEDICAL, P.C.”

Allegation B(1)(g), except insofar as the allegation states “As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of SUTPHIN BEST MEDICAL CARE, P.C.”

Allegation B(1)(h), except insofar as the allegation states “As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of TRI-STATE MEDICAL DIAGNOSTIC, P.C.”

Allegation B(1)(i), except insofar as the allegation states “As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of CONEY ISLAND MEDICAL CARE, P.C.”

Allegation B(2), except insofar as this allegation includes Magna Medical Care, P.C.

Allegation B(3)

Allegation C

Allegation C(1), except insofar as it states that “As of July 25, 2012, DRIVAS is still listed as a member of the SVS WELLCARE MEDICAL, PLLC.”

Allegation C(2)

Allegation C(3)

Having proven these factual allegations, the question remaining is whether the facts proven rise to the level of misconduct as a matter of law.

THE BUSINESS CORPORATION LAW AND THE PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY LAW

Article 15 of the New York State Business Corporation Law (“BCL”) permits one or more “individuals duly authorized by law to render the same professional service within the state [to] organize, or cause to be organized, a professional service corporation for pecuniary profit . . . for the purpose of rendering the same professional service.” BCL § 1503(a). BCL § 1503(b)

goes on to state, in relevant part, that:

The certificate of incorporation of a professional service corporation . . . (i) shall state the profession or professions to be practiced by such corporation and the names and resident addresses of all individuals who are to be the original shareholders, directors and officers of such corporation, and (ii) shall have attached thereto a certificate or certificates issued by the licensing authority **certifying that each of the proposed shareholders, directors and officers is authorized by law to practice a profession which the corporation is being organized to practice . . .** (boldtype supplied)

Article 12 of the Limited Liability Company Law (“LLCL”) permits “one or more professionals each of whom is authorized by law to render a professional service within the state, or one or more professionals, at least one of whom is authorized by law to render a professional service within the state, may form, or cause to be formed, a professional service limited liability company for pecuniary profit . . . for the purpose of rendering the professional service or services as such professionals are authorized to practice. With respect to a professional service limited liability company formed to provide medical services as such services are defined in article 131 of the education law, each member of such limited liability company must be licensed pursuant to article 131 of the education law to practice medicine in this state.” LLCL § 1203(a). LLCL § 1203(b) goes on to state, in relevant part, that:

The articles of organization of a professional service limited liability company . . . (i) shall state the profession or professions to be practiced by such limited liability company and (A) the names and residence addresses of all individuals who are to be the original members and original managers, if any, of such limited liability company, . . . [and] (ii) shall have attached thereto a certificate or certificates issued by the licensing authority . . . **certifying that each of the proposed members and managers, if any, . . . is authorized by law to practice a profession that such limited liability company is being formed to practice . . .** (boldtype supplied)

Clearly, a professional service corporation or a professional service limited liability company must be managed, directed and operated **only** by licensed professionals. The

allegations in this matter are that Respondent permitted non-professionals to run the professional service corporations and the professional service limited liability company organized in his name and using his license.

FRAUDULENT PRACTICE

The intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine, constitutes the fraudulent practice of medicine. Matter of Choudhry v. Sobol, 170 A.D.2d 893, 894, 566 N.Y.S.2d 723, 725 (3d Dept. 1991), citing Matter of Brestin v. Commissioner of Education, 116 A.D.2d 357, 359, 501 N.Y.S.2d 923, 925 (3d Dept. 1986). In order to sustain a charge that a licensee was engaged in the fraudulent practice of medicine, the hearing committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3d Dept. 1966), aff'd 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). The licensee's knowledge and intent may properly be inferred from facts found by the hearing committee, but the committee must specifically state the inferences it is drawing regarding knowledge and intent. Choudhry, at 894, citing Brestin. See also, Adler v. Bureau of Professional Medical Conduct, 211 A.D.2d 990, 622 N.Y.S.2d 609 (3d Dept. 1995); Berger v. Board of Regents, 178 A.D.2d 748; 577 N.Y.S.2d 500 (3d Dept. 1991).

In this case, Respondent clearly knew that he was not acting as the director, officer or manager of the professional companies he initiated. He readily admitted to the insurance

company investigator that he did not “control the corporations.” (Ex. 10)³ He also admitted in his discussions with the investigator that non-physicians, and some management billing companies, “sought to seek profits by fraudulently incorporating these professional service corporations in [his] name.” (Ex. 10; T. 61-62) It is reasonable to conclude that Respondent intended to mislead the State Department and the Education Department as to who was controlling and operating these businesses. The Respondent incorporated eight separate professional service corporations. In each case, the Certificate of Incorporation listed the Respondent as the sole shareholder, director and officer of the corporation. Respondent, nevertheless, admitted in the affidavit he signed on January 31, 2007, that he “did not control the corporations.” In addition, he signed biennial and triennial statements for many of these companies as the chief executive officer. Finally, he admitted knowing of the scheme to incorporate these companies for the profit of non-physicians and assisted the scheme by lending his name and license number to the incorporation process and for continuing business obligations. Respondent knew what he was doing and did so intending to mislead.

It is also true that Respondent was well aware that non-professionals should not be

³ Although Respondent spoke in terms of professional service corporations in his affidavit, SVS Wellcare Medical was officially a professional limited liability company, a company organized under a law similar to the professional service corporation law. It was clearly identified in the affidavit as a PLLC. Because Respondent read and signed this affidavit and “SVS Wellcare Medical, PLLC,” was listed as a PLLC in the affidavit, it can be reasonably inferred that the Respondent intended his explanation in the affidavit to also apply to the PLLC.

controlling the professional service corporations. Although Magna Medical Care, P.C., is not one of the eight corporations discussed above because it was not incorporated by the Respondent, correspondence between the Respondent and the Education Department reveals that Respondent knew as early as April of 2001 that a non-professional could not be a shareholder, officer, or director of a professional service corporation. The Education Department wrote to Respondent concerning Respondent's listing of a non-professional as a shareholder, officer, or director. Respondent wrote back asserting that the person referred to as a shareholder, officer, or director, was not any of the above and had been listed in the documents submitted by Magna Medical in error. If it was not absolutely clear to Respondent before receiving the Education Department letter concerning who could control and own professional service corporations, his own letter of April 24, 2001, reveals his knowledge of this fact after that date. (Ex. 29)

Given the Respondent's knowledge that these corporations were actually controlled by non-physicians and his assistance to these persons in signing documentation and allowing his name and license to be used to start and continue these corporations as businesses, the first, second, third, fourth, sixth, seventh, eighth, and ninth specifications in the Statement of Charges are sustained.⁴

⁴ It is noted that although it is alleged that Respondent was listed as the sole shareholder, director and officer of all of these corporations on July 25, 2012, seven of these corporations were already dissolved before that date, i.e., Drivas Medical Care; DSG Medical; G.S.D. Medical; Roosevelt Medical; Sutphin Best Medical Care; Tri-State Medical Diagnostic; and Coney Island

The tenth specification is sustained with respect to SVS Wellcare Medical, PLLC, on the same grounds as noted above. There is no real distinction to be made between it and the corporations discussed above with respect to ownership and control of the company. It is found that Respondent knowingly and intentionally misled the State Department and the Education Department as to the ownership and control of SVS Wellcare Medical, PLLC. (See also, footnote 3)

The allegations with respect to Magna Medical Care, P.C., pose different issues. Magna Medical was incorporated by another physician, Dan Lewis. Even after its dissolution, the Department of State continued to list Dan Lewis as the Chairman or Chief Executive Officer.⁵ However, the Respondent notified the Education Department that he had become the president and sole director of the corporation on January 31, 2001. The Department of State apparently was never notified of this change and Dan Lewis signed a biennial statement sent to the Department of State in October of 2001 as the Chief Executive Officer and President. Respondent corresponded with the Education Department after the January 31, 2001, date and

Best Medical. The date July 25, 2012, was actually immaterial to the substance of the charges, i.e., that Respondent incorporated all of these corporations and was listed as the sole shareholder, director and officer, knowing that he did not own and control the corporations, and intending to mislead about the actual control of the corporations. (Exs. 10 & C; see allegations B(1), (2) & (3)) This specific allegation, therefore, will not be held to be fatal to the Department's charges because no evidence was produced to prove this immaterial assertion.

⁵ Respondent did not "knowingly, falsely and with intent to mislead [represent] that he was the director and sole shareholder on the certificate of incorporation for . . . Magna Medical Care,

signed a triennial statement sent to the Education Department. Respondent represented himself as the sole shareholder, director and president of the corporation to the Education Department but admitted in his affidavit that the corporation was not controlled by him. Whether he deceived the Department of State or not, he clearly knowingly and intentionally deceived the Education Department. Moreover, Respondent knew and intended to mislead the Education Department by concealing the fact that non-physicians owned and controlled the corporation. The specification of fraud with respect to Magna Medical, P.C., (the fifth specification) is sustained.

MAKING FALSE REPORTS

Respondent is charged with committing professional misconduct by willfully making a false report in violation of Educ. Law § 6530(21) with respect to each of the ten companies he incorporated or organized.⁶ The Committee has already concluded that Respondent organized these companies fraudulently, and therefore willfully, and that he falsely represented that he

P.C.” Factual allegation B(2) cannot be sustained with respect to Magna Medical.

⁶ The Department actually charged “Willfully making a false report required by law or by the department of health or the education department.” (Ex.4, p. 4) The Department has actually conflated two separate clauses charging as it has. Educ. Law § 6530(21) makes the following misconduct: 1) willfully making or filing a false report; 2) failing to file a report required by law or by the department of health or the education department; 3) willfully impeding or obstructing such filing, or inducing another to do so. The Department has conflated the first two categories of misconduct. As the Department has simply added a requirement to the charge that it did not need to add, the only charge to be considered with respect to the Eleventh through Twentieth specifications will be “willfully making or filing a false report.”

would be the officer, director, and/or manager of each. His affidavit makes clear that he did not “control” these companies. In filing the organizing papers with the Department of State for each of these companies, Respondent filed false reports. With respect to Magna Medical, P.C., the Respondent made a false report to the Education Department asserting that he was the president of this corporation, knowing that non-physicians actually controlled it. Consequently, the eleventh through twentieth specifications of misconduct in the Statement of Charges are sustained.

FAILING TO COMPLY WITH SUBSTANTIAL PROVISIONS OF STATE LAW

The Respondent is charged with a willful and/or grossly negligent failure to comply with substantial provisions of state law governing the practice of medicine in violation of Educ. Law § 6530(16) with respect to each of the companies he formed. Since Respondent knew that non-professionals could not be shareholders, directors or officers of the professional service corporations and could not be managers of the professional service limited liability company, Respondent did not comply with BCL § 1503 and LLCL § 1203 when he allowed non-professionals to “own and control” these companies. These provisions govern how a physician may organize businesses to engage in delivering medical services. They are substantial provisions of law. Consequently, the eleventh through twentieth specifications of misconduct are sustained.

CONCLUSION

The Hearing Committee has come to the unanimous conclusion that all of the specifications charged by the Department are SUSTAINED.

DETERMINATION AS TO PENALTY

The Hearing Committee has considered the full range of sanctions available pursuant to PHL § 230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or partially; (3) limitation on practice; (4) revocation of the license; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) monetary penalties; (8) a course of education or training; (9) performance of public service; and, (10) probation. The Committee has concluded that the only appropriate sanction is revocation of the Respondent's license.

The Committee considers this an appropriate sanction in light of the fact that Respondent clearly knew how his companies were being misused, participated in the fraud, and took no action to end the fraud for many years. Indeed, the first corporation to which Respondent lent his name and license was incorporated in the year 2000 (Sutphin). Other companies were active for many years. Indeed, despite the charges herein, Bay Medical Care, P.C., and SVS Wellcare Medical, PLLC, are both still active businesses according to the Department of State. Further, the last company Respondent organized was SVS Wellcare Medical, PLLC, which started business on April 24, 2006 less than a year before the insurance company investigator confronted Respondent about his companies. Respondent basically continued to lend his credentials to fraudulent business organizations until he was caught. In light of all of the above, the only appropriate sanction is revocation.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED THAT:

1. The FIRST through TENTH SPECIFICATIONS, the ELEVENTH through TWENTIETH SPECIFICATIONS, and the TWENTY-FIRST through THIRTIETH SPECIFICATIONS contained in the Statement of Charges (Ex. 4) are SUSTAINED; and
2. Respondent's license to practice medicine in the State of New York is REVOKED, and
- 3: This Order shall be effective on personal service on the Respondent, or seven (7) days after the date of mailing of a copy to Respondent's last known address by certified mail.

DATED: New York
June , 2013

REDACTED

GARY J. SCHWALL, M.B.A., R.P.A., Chair

JAMES R. DICKSON, M.D.

STEPHEN M. LAPIDUS, M.D.

TO: Gustave Stephen Drivas, M.D.

REDACTED

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New York State Department of Health
Division of Legal Affairs
Bureau of Professional Medical Conduct
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New York, N.Y. 10007

Appendix 1

IN THE MATTER
OF
GUSTAVE STEPHEN DRIVAS, M.D.

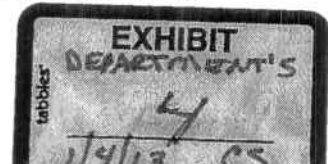
STATEMENT
OF
CHARGES

Respondent **GUSTAVE STEPHEN DRIVAS, M.D.** (hereinafter "DRIVAS") was authorized to practice medicine in New York State on or about July 24, 1991, by the issuance of license number 186334 by the New York State Education Department.

*Amended 4/24/13
DL*

FACTUAL ALLEGATIONS

- A. Pursuant to Article 15 of the New York State Business Corporation Law ("BCL") and ~~Article 16 of the New York State Education Law ("Education Law")~~ only licensed physicians may organize, hold stock in, direct and/or be an officer of a medical professional service corporation ("PSC").
- B. Pursuant to §1503 of the BCL and §6507 of the Education Law, one or more individuals duly authorized by law to render the same professional services within the state may organize or cause to be organized a medical PSC.
- 1) a. BAY MEDICAL CARE, P.C., was authorized as a PSC by filing its certificate of incorporation, with the Secretary of State on or about March 14, 2005. DRIVAS was listed as the sole shareholder, director and officer, and was identified as the individual who was duly authorized to practice medicine. As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of BAY MEDICAL CARE, P.C.
- b. DRIVAS MEDICAL CARE, P.C., was authorized as a PSC by filing its certificate of incorporation with the Secretary of State on or about December 5, 2002. DRIVAS was listed as the sole shareholder, director and officer, and was identified as the individual who was duly authorized to practice medicine. As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of DRIVAS MEDICAL CARE, P.C.
- c. DSG MEDICAL, P.C., was authorized as a PSC by filing its certificate of incorporation with the Secretary of State on or about August 5, 2004. DRIVAS was listed as the sole shareholder, director and officer, and was



identified as the individual who was duly authorized to practice medicine. As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of DSG MEDICAL, P.C.

d. G. S. D. MEDICAL, P.C., was authorized as a PSC by filing its certificate of incorporation with the Secretary of State on or about January 29, 2004. DRIVAS was listed as the sole shareholder, director and officer, and was identified as the individual who was duly authorized to practice medicine. As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of G. S. D. MEDICAL, P.C.

e. MAGNA MEDICAL, P.C., was authorized as a PSC by filing its certificate of incorporation with the Secretary of State on or about October 29, 1999. Dr. Dan Lewis was listed as the sole shareholder, director and officer, and was identified as the individual who was duly authorized to practice medicine. On or about January 31, 2001, DRIVAS informed the Department of Education that Dr. Lewis had resigned as director of MAGNA MEDICAL, P.C. and DRIVAS joined MAGNA MEDICAL, P.C. as its officer, director, and/or shareholder. On or about October 2001 MAGNA MEDICAL, P.C., filed its Biennial Statement with the Secretary of State, still listing Dr. Lewis as MAGNA MEDICAL, P.C.'s sole shareholder, director and officer.

f. ROOSEVELT MEDICAL P.C., was authorized as a PSC by filing its certificate of incorporation with the Secretary of State on or about January 8, 2003. DRIVAS was listed as the sole shareholder, director and officer, and was identified as the individual who was duly authorized to practice medicine. As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of ROOSEVELT MEDICAL P.C.

g. SUTPHIN BEST MEDICAL CARE P.C., was authorized as a PSC by filing its certificate of incorporation with the Secretary of State on or about November 15, 2000. DRIVAS was listed as the sole shareholder, director and officer, and was identified as the individual who was duly authorized to practice medicine. As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of SUTPHIN BEST MEDICAL CARE P.C.

h. TRI-STATE MEDICAL DIAGNOSTIC, P.C., was authorized as a PSC by filing its certificate of incorporation with the Secretary of State on or about May 4, 2004. DRIVAS was listed as the sole shareholder, director and officer, and was identified as the individual who was duly authorized to practice medicine. As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of TRI-STATE MEDICAL DIAGNOSTIC, P.C.

i. CONEY ISLAND MEDICAL CARE, P.C., was authorized as a PSC by filing its certificate of incorporation filed with the Secretary of State on or about August 2, 2004 DRIVAS was listed as the sole shareholder, director and officer, and was identified as the individual who was duly authorized to practice medicine. As of July 25, 2012, DRIVAS is still listed as the sole shareholder, director and officer of CONEY ISLAND MEDICAL CARE, P.C.

2. Respondent, DRIVAS, knowingly, falsely and with intent to mislead represented that he was the director and sole shareholder on the certificate of incorporations for, BAY MEDICAL CARE, P.C., DRIVAS MEDICAL CARE, P.C., DSG MEDICAL, P.C., G. S. D. MEDICAL, P.C., MAGNA MEDICAL, P.C., ROOSEVELT MEDICAL P.C., SUTPHIN BEST MEDICAL CARE P.C., TRI-STATE MEDICAL DIAGNOSTIC, P.C., CONEY ISLAND MEDICAL CARE, P.C.

3. Respondent, DRIVAS, concealed with the intent to deceive, that non-physicians owned and/or controlled, BAY MEDICAL CARE, P.C., DRIVAS MEDICAL CARE, P.C., DSG MEDICAL, P.C., G. S. D. MEDICAL, P.C., MAGNA MEDICAL, P.C., ROOSEVELT MEDICAL P.C., SUTPHIN BEST MEDICAL CARE P.C., TRI-STATE MEDICAL DIAGNOSTIC, P.C., CONEY ISLAND MEDICAL CARE, P.C.

C. Pursuant to Article 12 of the New York Limited Liability Company Law, only licensed physicians may organize, form, direct and/or be a member of a medical PLLC.

1203 Amended 4/24/13

1. a. Pursuant to §1202 of the New York Limited Liability Company Law, SVS WELLCARE MEDICAL, PLLC's was authorized as a PLLC by filing its articles of organization, with the Secretary of State on April 24, 2006. DRIVAS was listed as an original member, and was identified as the individual who was duly authorized to practice medicine. As of July 25, 2012, DRIVAS is still listed as a member of the SVS WELLCARE MEDICAL, PLLC.

2. Respondent, DRIVAS, concealed with the intent to deceive that non-physicians owned and/or controlled SVS WELLCARE MEDICAL, PLLC.

3. Respondent, DRIVAS, permitted, aided and/or abetted non-physicians to organize, own, and/or control SVS WELLCARE MEDICAL, PLLC.

SPECIFICATION OF CHARGES

FIRST THROUGH TENTH SPECIFICATIONS

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent GUSTAVE STEPHEN DRIVAS, M.D. is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraphs, A, B, B1(a), B2, and B3 with respect to BAY MEDICAL CARE, P.C.
2. Paragraphs, A, B, B1(b), B2, and B3 with respect to DRIVAS MEDICAL CARE, P.C.
3. Paragraphs, A, B, B1(c), B2, and B3 with respect to DSG MEDICAL, P.C.
4. Paragraphs, A, B, B1(d), B2, and B3 with respect to G. S. D. MEDICAL, P.C.
5. Paragraphs, A, B, B1(e), B2, and B3 with respect to MAGNA MEDICAL, P.C.
6. Paragraphs, A, B, B1(f), B2, and B3 with respect to ROOSEVELT MEDICAL P.C.
7. Paragraphs, A, B, B1(g), B2, and B3 with respect to SUTPHIN BEST MEDICAL CARE P.C.
8. Paragraphs, A, B, B1(h), B2 and B3 with respect to TRI-STATE MEDICAL DIAGNOSTIC, P.C.
9. Paragraphs, A, B, B1(i), B2, and B3 with respect to CONEY ISLAND MEDICAL CARE, P.C.
10. Paragraphs, C, C1, C2, C3 with respect to SVS WELLCARE MEDICAL, PLLC.

ELEVENTH THROUGH TWENTIETH SPECIFICATIONS

WILLFULLY MAKING A FALSE REPORT REQUIRED BY LAW OR BY THE DEPARTMENT OF HEALTH OR EDUCATION DEPARTMENT

Respondent GUSTAVE STEPHEN DRIVAS, M.D. is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or

filing a false report, or failing to file a report required by law or by the Department of Health or the Education Department, as alleged in the facts of:

11. Paragraphs, A, B, B1(a), B2, and B3 with respect to BAY MEDICAL CARE, P.C.
12. Paragraphs, A, B, B1(b), B2, and B3 with respect to DRIVAS MEDICAL CARE, P.C.
13. Paragraphs, A, B, B1(c), B2, and B3 with respect to DSG MEDICAL, P.C.
14. Paragraphs, A, B, B1(d), B2, and B3 with respect to G. S. D. MEDICAL, P.C.
15. Paragraphs, A, B, B1(e), B2, and B3 with respect to MAGNA MEDICAL, P.C.
16. Paragraphs, A, B, B1(f), B2, and B3 with respect to ROOSEVELT MEDICAL P.C.
17. Paragraphs, A, B, B1(g), B2, and B3 with respect to SUTPHIN BEST MEDICAL CARE P.C.
18. Paragraphs, A, B, B1(h), B2 and B3 with respect to TRI-STATE MEDICAL DIAGNOSTIC, P.C.
19. Paragraphs, A, B, B1(i), B2, and B3 with respect to CONEY ISLAND MEDICAL CARE, P.C.
20. Paragraphs, C, C1, C2, C3 with respect to SVS WELLCARE MEDICAL, PLLC.

TWENTY-FIRST THROUGH THIRTIETH SPECIFICATIONS

**WILLFULL AND/OR GROSSLY NEGLIGENTLY FAILING TO COMPLY WITH
SUBSTANTIAL PROVISIONS OF STATE LAW GOVERNING
THE PRACTICE OF MEDICINE**

Respondent, DRIVAS, is charged with committing professional misconduct as defined in N.Y. Education Law §6530(16) by willfully and/or grossly negligently failing to comply with substantial provisions of state law, namely Business Corporation Laws §1503, governing the practice of medicine as alleged in the facts of:

21. Paragraphs, A, B, B1(a), B2, and B3 with respect to BAY MEDICAL CARE, P.C.

22. Paragraphs, A, B, B1(b), B2, and B3 with respect to DRIVAS MEDICAL CARE, P.C.
23. Paragraphs, A, B, B1(c), B2, and B3 with respect to DSG MEDICAL, P.C.
24. Paragraphs, A, B, B1(d), B2, and B3 with respect to G. S. D. MEDICAL, P.C.
25. Paragraphs, A, B, B1(e), B2, and B3 with respect to MAGNA MEDICAL, P.C.
26. Paragraphs, A, B, B1(f), B2, and B3 with respect to ROOSEVELT MEDICAL P.C.
27. Paragraphs, A, B, B1(g), B2, and B3 with respect to SUTPHIN BEST MEDICAL CARE P.C.
28. Paragraphs, A, B, B1(h), B2 and B3 with respect to TRI-STATE MEDICAL DIAGNOSTIC, P.C.
29. Paragraphs, A, B, B1(i), B2, and B3 with respect to CONEY ISLAND MEDICAL CARE, P.C.
30. Paragraphs, C, C1, C2, C3 with respect to SVS WELLCARE MEDICAL, PLLC.

DATE: November 15, 2012
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

Appendix 2

NICHOLAS M. WOOLDRIDGE, ESQ.
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STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER)	
)	
OF)	
)	
GUSTAVE STEPHEN DRIVAS MD)	ANSWER TO STATEMENT
)	OF CHARGES
)	
)	
)	
)	

Respondent, GUSTAVE STEPHEN DRIVAS, MD, hereby answers the Statement of Charges as follows:

FACTUAL ALLEGATIONS:

1. As to Paragraph A, admits the allegations set forth therein.
2. As to Paragraph B, and its subparts the defendant answers as follows:
 - B. Admit.
 - B1a: Admit.
 - B1b: Admits the allegations contained therein, but denies that as of July 25, 2012 he is still the sole shareholder, director and officer.
 - B1c: Admits the allegations contained therein, but denies that as of July 25, 2012 he is still the sole shareholder, director and officer.
 - B1d: Admits the allegations contained therein, but denies that as of July 25, 2012 he is still the sole shareholder, director and officer.



B1e: Denies.

B1f: Admits the allegations contained therein, but denies that as of July 25, 2012 he is still the sole shareholder, director and officer.

B1g: Admits the allegations contained therein, but denies that as of July 25, 2012 he is still the sole shareholder, director and officer.

B1h: Denies:

B1i: Admits the allegations contained therein, but denies that as of July 25, 2012 he is still the sole shareholder, director and officer.

B2: Denies.

B3: Denies.

3. As to Paragraph C and its subparts defendants answers as follows:

C: Admits.

C1a: Admits:

C2: :Denies:

C3: Denies.

SPECIFICATION OF CHARGES

FIRST THROUGH TENTH SPECIFICATIONS:

PRACTICING THE PROFESSION FRAUDULENTLY:

4. Denies all specifications 1-10 set forth therein

ELEVENTH THROUGH TWENTIETH SPECIFICATIONS:

WILLFULLY MAKING A FALSE REPORT REQUIRED BY LAW OR BY THE DEPARTMENT OF HEALTH OR EDUCATION DEPARTMENT

5. Denies all specifications 11-20 set forth therein.

TWENTY-FIRST THROUGH THIRTIETH SPECIFICATIONS

WILLFULL AND/OR GROSSLY NEGLIGENTLY FAILING TO COMPLY
WITH SUBSTANTIAL PROVISIONS OF STATE LAW GOVERNING THE
PRACTICE OF MEDICINE:

6. Denies all specification 21-30 set forth therein.

AFFIRMATIVE DEFENSES

Respondent hereby assert the following affirmative defenses:

83. The Department has failed to state a claim against the Respondent.

84. The Department's claims are barred by the Doctrine of Laches, waiver,
and/or ratification.

85. The Department has failed to bring this action in a timely manner and has
exercised unreasonable delay, and said claims are barred by the statute of limitations.

86. The Department has failed to plead fraud with particularity.

87. Respondent, Defendant reserve the right to assert additional affirmative
defenses in the event discovery indicates that they may be appropriate.

Dated: February 9, 2013
Brooklyn, New York

REDACTED

By: Nicholas Wooldridge Esq
Attorney for Defendant
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