

January 13, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Claudia Morales Bloch, Esq.
NYS Department of Health
145 Huguenot Street – Room 601
New Rochelle, New York 10801

Lyubov Moysik, D.O.
REDACTED ADDRESS

Nathan L. Dembin, Esq.
Nathan L. Dembin & Associates, P.C.
1123 Broadway
New York, New York 10010

RE: In the Matter of Lyubov Moysik, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-07) 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

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
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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 SIGNATURE

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

-----X
IN THE MATTER :

DETERMINATION

OF :

AND

LYUBOV MOYSIK, D.O. :
-----X

ORDER

BPMC #12-07

A Notice of Hearing and Statement of Charges, both dated February 10, 2011, were served upon LYUBOV MOYSIK, D.O., Respondent. An Amended Statement of Charges was issued on February 24, 2011. STEVEN I. SHERMAN, D.O., M.S., Chairperson, ZORAIDA NAVARRO, M.D., and JAIME RIVERA, M.P.H., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. CHRISTINE C. TRASKOS, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health ("the Department") appeared by JAMES DERING, General Counsel, by CLAUDIA MORALES BLOCH, ESQ., of Counsel. The Respondent appeared by NATHAN L. DEMBIN & ASSOCIATES, P.C., NATHAN L. DEMBIN, 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

Pre-Hearing Conference: March 10, 2011

Hearing Dates: March 22, 2011,
May 10 and 17, 2011
June 21, 2011
July 12, 19 and 29, 2011
October 4, 2011

Witnesses for Petitioner: Richard D'Amato
Joseph Carfi, M.D.
Marie D'Entrone

Witnesses for Respondent: Lyubov Moysik, D.O.
Alexander E. Weingarten, M.D.
Louis Reznick, D.O.
Israel Jacobowitz, M.D.
Patient R.H.
Patient J.G.

Receipt of Submissions: December 5, 2011

Deliberation Held: December 13, 2011

STATEMENT OF CASE

The State Board for Professional Misconduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq of the Public Health Law of the State of New York [hereinafter "P.H.L."]).

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to §230 of the P.H.L. Lyubov Moysik, D.O. ("Respondent") is charged with Fifty-Three (53)

specifications of professional misconduct, as defined in §6530 of the Education Law of the State of New York ("Education Law"). The charges include allegations of fraudulent practice, willfully making or filing a false report, ordering excessive tests and/or treatment, moral unfitness, negligence on more than one occasion, incompetence on more than one occasion, gross negligence and failure to maintain records. A copy of the Notice of Hearing and Amended Statement of Charges is attached to this Determination and Order as Appendix I. The Respondent filed a timely Answer and denies the factual allegations and specifications of misconduct contained in the Statement of Charges.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Having heard testimony and considered documentary evidence presented by the Petitioner and Respondent, the Hearing Committee

hereby makes the following findings of fact:

1. Lyubov Moysik, D.O., the Respondent, was authorized to practice medicine in New York State on September 1, 1998, by the issuance of license number 211979. (Ex. 1)
2. On July 19, 2001, Respondent became the owner of General Medical Care, P.C. (hereinafter "GMC"). (Ex. 16H; T.1402-1403)
3. The initial incorporation of GMC was done by Andrey Ivanushkin, M.D., a/k/a Andrew Ivanson, in April, 1999. In July, 1999, the PC was transferred to Leonid Slutsky, M.D. an owner of many similar No-Fault clinics. Dr. Slutsky transferred GMC to Aleksandre Martinosov, M.D. in May 2000. Dr. Martinosov, who Respondent testified was a former classmate of hers, transferred GMC to Respondent in July 2001. At all times, GMC was located at 825 Broadway, Brooklyn, New York. (Exs. 16A- 16H ; T. 67-80, 1178-1186)
4. GMC, at all times, had a management company, B-Way Management, Inc., which was also located at 825 Broadway and was incorporated only two months prior to the incorporation of GMC by Dr. Ivanushkin in April, 1999. B-way served as the management company prior to Respondent's ownership of GMC as well as after. (T. 84-85, 146-147)
5. In 2003, Respondent entered into a "Sale of Assets Agreement," whereby the clinic facility at 825 Broadway would be turned over to Jacov Raufov, M.D. under his newly formed PC, 825

Broadway Medical Care, P.C. (Ex. 16 I; T.1489)

6. GMC continued to exist under Respondent's name until it was dissolved in 2009 by Respondent's then attorney, after Respondent's 2009 interview with OPMC. (Exs. 16 I and 19)

7. In 2003, the Office of Professional Medical Conduct investigated Respondent with respect to her practice at GMC. On August 19, 2004, OPMC advised Respondent that an investigation concerning treatment of four patients "has been concluded and the case has been closed without further action anticipated." (Ex. C)

8. In 2009, Respondent was interviewed by OPMC regarding the care rendered to twelve patients at GMC from 2001 to 2002. (Ex. 19)

9. Respondent, as a family practitioner, obtained and documented an adequate medical history from Patients A through L. (T. 510, 739-743, 746, 866)

10. Respondent's physical examinations of Patients A through L were adequate. (T. 443, 746, 748)

11. The diagnoses made by Respondent for Patients A through L were supported by Respondent's history, physical findings and the nature of the automobile accidents. (T. 752)

12. Respondent failed to adequately document medical and clinical follow-up care. (Exs. 4, 5, 7, 9, 11 through 15)

13. There was medical indication and justification for Respondent to prescribe or authorize various durable goods, i.e. Tens

Unit, Red Lamp, Lumbar Cushion etc. for Patients G and H. (T. 809-811)

14. With the exception of follow-up care as stated in Finding #12, Respondent's medical records were within accepted medical standards. (T. 816)

CONCLUSIONS OF LAW

Respondent is charged with Fifty-Three(53) specifications alleging professional misconduct within the meaning of Education Law §6530. Education Law §6530 sets forth a number and variety of forms or types of conduct which constitute professional misconduct. However, Education Law §6530 does not provide definitions or explanations of some of the misconduct charged in this matter. During the course of their deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document entitled: Definitions of Professional Misconduct under the New York Education Law sets forth suggested definitions for gross negligence, negligence gross incompetence, incompetence and the fraudulent practice of medicine.

Gross Negligence

Gross Negligence is the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, and which failure is manifested by conduct that is

egregious or conspicuously bad. Gross Negligence may consist of a single act of negligence of egregious proportions. Gross Negligence may also consist of multiple acts of negligence that cumulatively amount to egregious conduct. Gross Negligence does not require a showing that a physician was conscious of impending dangerous consequences of his/her conduct.

Negligence on More Than One Occasion

Negligence in a medical disciplinary proceeding is defined as the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances. It is not necessary for the Department to prove that any negligence by the Respondent caused actual harm to a patient. If the Hearing Committee should find negligence on more than one occasion, but that the negligence did not cause harm to a patient, then the lack of harm is a factor that may be considered on the question of what penalty, if any should be imposed. Similarly, if the negligence did cause harm to a patient, then that is a factor that may be considered on the question of what penalty, if any, should be imposed.

Incompetence on More Than One Occasion

Unlike negligence, which is directed to an act or omission constituting a breach of the duty of due care, incompetence on more than one occasion is directed to a lack of the requisite knowledge or skill in the performance of the act or the practice of the

profession, the word "incompetence" is to be interpreted by its everyday meaning. These factors may include the Hearing Committee's impression of Respondent's technical knowledge and competence of the various issues and the charges under consideration.

Fraudulent Practice

Fraudulent practice is the intentional misrepresentation or concealment of a known fact, made in some connection with the 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. 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.

Using the above-referenced definition as a framework for its deliberations, the Hearing Committee concluded by a preponderance of the evidence that nine of the fifty-three specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of the deliberations, the Hearing Committee made a determination as to the credibility of all witnesses presented

by the parties. The Committee must determine the credibility of the witnesses in weighing each witness's testimony, First, the Hearing Committee must consider whether the testimony is supported or contradicted by other independent objective evidence. When the evidence is conflicting and presents a clear-cut issue as to the veracity of the opposing witnesses, it is for the Hearing Committee to pass on the credibility of the witnesses and base its inference on what it accepts as the truth. Where a witness's credibility is at issue, the Committee may properly credit one portion of the witness's testimony and, at the same time reject another. The Hearing Committee also understood that they had the option of completely rejecting the testimony of a witness where they found that the witness testified falsely on a material issue.

With regard to the testimony presented, the Hearing Committee evaluated all witnesses for possible bias or motive. The witnesses were also assessed according to their training, experience, credential and demeanor.

Witnesses called by Petitioner:

The Department presented the testimony of Richard D'Amato, an investigator with the Special Investigations Unit of Allstate Insurance Company who testified regarding Allstate's investigation of GMC. The Hearing Committee found Mr. D'Amato to be a credible witness

however he was unclear about the source of his information and he had no knowledge of how the bills were generated. The Department also presented testimony by Joseph Carfi, M.D. Dr. Carfi is board certified in physical medicine and rehabilitation. He is in private practice and is also an Assistant Professor of Rehabilitation Medicine at Mount Sinai School of Medicine. (Ex. 17) The Hearing Committee found Dr. Carfi to be a credible and very objective witness. The Hearing Committee finds however that Dr. Carfi did not review Respondent's examinations of patients from the perspective of a family practitioner and held Respondent in essence to a higher standard. Upon questioning, Dr. Carfi acknowledged that Respondent's patient history was adequate and that overall, at least 95% of Respondent's physical findings were adequate. Dr. Carfi also stated that it is not uncommon for many physicians to order an MRI before completing a good clinical evaluation. (T. 510-513,579)

The Department also offered the testimony of Marie D'Entrone, an investigator from OPMC who was present at the 2009 interview with Respondent. The Hearing Committee found Ms. D'Entrone to be inexperienced and she lacked factual knowledge of the investigation. The Hearing Committee found her testimony to be weak.

Respondent offered Alexander E. Weingarten, M.D. as an expert witness. Dr. Weingarten is board certified in anesthesiology and pain management. He serves on the staff of North Shore University

Hospital and Long Island Jewish Medical Center in New Hyde Park. He is director of pain management at an ambulatory surgery center in Mineola, New York. He is in private practice and focuses on pain management. (T. 724-731) The Hearing Committee found Dr. Weingarten to be knowledgeable and well respected in his profession. They found his testimony to be credible on the questions presented to him. However, the Hearing Committee notes that the defense did not apprise Dr. Weingarten of all of the facts, in particular that the physician assistant performed the initial consultation on each patient, therefore his testimony was given less weight. (T. 891)

Louis Reznick, D.O. also testified on behalf of Respondent. Dr. Reznick was the program director of family practice at Wyckoff Heights Medical Center where Respondent was a student. The Hearing Committee found Dr. Reznick to be a credible witness regarding Respondent's training and character. They note that he testified that Respondent had received no training on the business practice of medicine. (T. 1118)

Israel Jacobowitz, M.D. testified as character witness for Respondent. Dr. Jacobowitz is an attending cardiac surgeon at Maimonides Hospital and a professor of cardiac thoracic surgery at Mt. Sinai School of Medicine. Dr. Jacobowitz knows Respondent from providing cardiac care to some of her patients. Dr. Jacobowitz testified that Respondent maintains the loyalty of her patients and

that there is a level of confidence in her ability to treat and diagnose patients. The Hearing Committee found Dr. Jacobowitz to be a credible character witness. (T. 1471-1478)

Respondent offered the testimony of Patient R.H. and Patient J.H. The Hearing Committee found them credible character witnesses but they had no particular knowledge of the pending charges.

Respondent testified on her own behalf. Respondent was a very emotional witness who stumbled at times in her testimony. She was subjected to extensive cross examination by the Department and numerous questions from the Hearing Committee. Respondent acknowledged that she made errors in her practice. While the Hearing Committee finds Respondent to be a mostly credible witness, they were troubled by some of the inconsistencies in her testimony, particularly when it was revealed that her physician assistant performed the initial assessments and not Respondent.

Factual Allegations

Based upon the Findings of Fact set forth above, the Hearing Committee makes the following unanimous determinations regarding the factual allegations contained in the Statement of Charges:

Paragraph A - A.1	Not Sustained
Paragraph B	Not Sustained
Paragraph C	Not Sustained
Paragraph D	Not Sustained
Paragraph E	Not Sustained
Paragraph F	Not Sustained
Paragraph G	Sustained for documentation only
Paragraph H	Not Sustained
Paragraph I- I.4	Not Sustained
Paragraph J	Not Sustained
Paragraph K	Not Sustained
Paragraph L	Not Sustained
Paragraph M	Not Sustained
Paragraph N	Not Sustained
Paragraph O	Not Sustained
Paragraph P	Not Sustained

Paragraph A and A.1

These Charges as written and as presented cannot be sustained by the Hearing Committee because they find insufficient evidence to support the factual allegations.

Paragraph B

Paragraph B is not sustained by the Hearing Committee because even Dr. Carfi found Respondent's history to be adequate even though he would have preferred a more detailed pain history. Dr. Weingarten stated that "this is not an unreasonable pain history to take in the face of a family doctor with an osteopathic background seeing this patient for the first time." (T.866) This factual allegation is not sustained.

Paragraph C

Paragraph C is not sustained because the Hearing Committee finds that the physicals performed by Respondent were adequate according to Dr. Carfi and Dr. Weingarten. (T. 443, 880) This factual allegation is not sustained.

Paragraph D

Paragraph D as written is not sustained by the Hearing Committee because the charges as written are bundled and make it difficult to sustain as a whole. In general the Hearing Committee finds that the histories and physicals are adequate to support these diagnoses of car accident victims. While the Hearing Committee disagrees with the physician assistant's assessment of post-traumatic stress syndrome, they note that on follow-up visits, Respondent did not agree with the physician assistant by addressing or providing treatment for post-traumatic stress syndrome. This factual allegation is not sustained.

Paragraph E

While the Hearing Committee believes that Respondent has the responsibility to review narrative reports before they are sent out under her signature, the evidence in the record does not support the allegation that Respondent intentionally created and submitted narrative reports to deceive Allstate. This factual allegation is not sustained.

Paragraph F

The Hearing Committee concurs with both experts that there is nothing in Respondent's medical records to support the allegation that she wrote orders or referrals for chiropractic or acupuncture consultations. (T.480,892) This factual allegation is not sustained.

Paragraph G

The Hearing Committee sustains this allegation only with respect to failure to document clinical follow-up for several of the patients. Dr. Carfi acknowledged on cross-examination that he did not critique Respondent's medical and clinical follow-up care in his report to OPMC in 2008. (T.483) The Hearing Committee finds that Respondent's clinical follow-ups were reasonable but in some instances the follow-up documentation was not.

In particular they find that test results for the following were not documented: Patient A -hip x-ray; Patient B- wrist x-ray; Patient D-bilateral hip x-rays; Patient F- cat scan; Patient H- x-rays of cervical spine and lumbar spine; Patient I- radiological tests; Patient J- MRI , lumbar sacral spine; Patient K- MRI of left shoulder and Patient L- x-ray and CT-scan. (Exs. 4,5,7,9,11-15) As a result, the allegation is sustained in part.

Paragraph H

The Hearing Committee finds that the record does not support the allegation that Respondent performed or was aware that

the enumerated nerve destruction procedures were conducted at GMC or that she intentionally and falsely submitted bills to Allstate for these procedures. Respondent testified that she never saw synaptic equipment at GMC and she never ordered the testing. (T. 1197, 1364) The Hearing Committee concludes that there is insufficient evidence in the record to sustain this allegation.

Paragraph I

Dr. Carfi acknowledged that it is it is not uncommon for many physicians to order an MRI before completing a good clinical evaluation. (T. 510-513) He even testified that the brain MRIs for Patients A and H were appropriate. (T. 192, 564) The Hearing Committee concludes that the tests ordered were within the standard of care. They further find that the evidence in the record does not sustain the allegations as written and they are not sustained.

Paragraph J

The Hearing Committee finds insufficient proof in the record to support the contention that Dr. Moysik intentionally and falsely billed Allstate for procedures that she did not perform. This factual allegation is not sustained.

Paragraph K

The Hearing Committee believes that Respondent, from her testimony at the hearing, had no understanding of synaptic nerve block procedures. (T.1206-1211,1391) There is no proof in the record

that Respondent even contemplated this procedure and no proof that she willfully and falsely billed Allstate for this procedure. This factual allegation is not sustained.

Paragraph L

The Hearing Committee finds no basis for the false billing allegation when even the Department's expert testified that there are no bills submitted for functional capacity tests. The Hearing Committee also concurs with Dr. Weingarten that there is no indication in the patient's records that Respondent performed these tests. This factual allegation is not sustained.

Paragraph M

The Hearing Committee notes that this allegation involves physical therapy equipment use by only two patients. The Hearing Committee concurs with Dr. Weingarten that based on these patients complaints "these are just modalities to help the patient heal and to reverse the processes that are causing these new acute symptoms." (T. 809-810) This factual allegation is not sustained.

Paragraph N

The Hearing Committee finds insufficient proof in the record to support the charge that Respondent willfully created false medical records. This factual allegation is not sustained.

Paragraph O

The Hearing Committee finds that for the most part,

Respondent's medical records were adequate. This factual allegation is not sustained.

Paragraph P

While it is alleged that Respondent stated during her 2009 interview that she no longer treats no fault patients, Respondent recollected at the hearing that she only treats her regular patients if they happen to have been involved in a car accident and she does not routinely seek out no fault clients. (T.1315, 1332) There is insufficient proof in the record that Respondent continues to maintain an extensive no fault practice and the allegation as written is not sustained by the Hearing Committee.

Specifications

The First through Thirteen Specifications charged Respondent with practicing the profession of medicine fraudulently. The Fourteenth through Twenty-Fifth Specifications charged Respondent with submitting False Reports. The Twenty-Sixth through Thirty Seventh Specifications charged Respondent with ordering excessive tests and treatments.

The Hearing Committee has determined that the Charges as written and as presented cannot be sustained because the Hearing Committee finds insufficient evidence to support the factual allegations pertaining to fraud. The Hearing Committee could not infer from the Respondent's actions that there was any intentional

misrepresentation by Respondent. Nor could the Hearing Committee infer that Respondent concealed substantial or relevant facts in her practices. While Respondent should have been more diligent in reviewing the billing practice of GMC, the Hearing Committee concludes that the evidence did not establish that Respondent was an active player who knowingly worked with B-way Management and other professionals such as chiropractors and acupuncturists in submitting fraudulent billing to Allstate. Given the totality of the circumstances presented by the evidence including all of the documentation and testimony, the Hearing Committee believes the factual allegations and the Charges cannot be sustained because fraud was not proven by the Department and the intent or knowledge of the Respondent could not be inferred within a reasonable degree of the preponderance of the evidence.

The Hearing Committee does not think that Respondent was as naïve as she was being portrayed. However, based on the record, they cannot conclude that Respondent performed excessive medical tests, submitted false reports and fraudulently billed Allstate for services not performed. As a result, the First through Thirty Seventh Specifications are not sustained.

The Thirty-Eighth Specification charged Respondent with conduct in the practice of medicine that evidences moral unfitness to practice medicine. As the Hearing Committee has not sustained the

aforementioned fraud based allegations, they do not find Respondent's conduct to be morally unfit.

The Thirty-Ninth Specification charged Respondent with practicing medicine with negligence on more than one occasion. As noted above, the Hearing Committee determined that Respondent met the standard of care in treating Patients A through L and this Specification is not sustained.

The Fortieth Specification charged Respondent with practicing medicine with incompetence on more than one occasion. The Hearing Committee believes that the Respondent demonstrated the requisite skill and knowledge in treating Patients A through L and this Specification is not sustained.

The Forty-First Specification charged Respondent with practicing medicine with gross negligence. The Hearing Committee found no evidence of gross negligence in the record and they do not sustain this Specification.

The Forty-Second through Fifty-Third Specifications charged Respondent with failing to maintain a record for Patients A through L which accurately reflects the care and treatment of the patient. While the Hearing Committee found that Respondent's recordkeeping was for the most part adequate, they did find inadequacies regarding follow-up documentation for nine patient records as discussed above. Therefore the Hearing Committee finds sufficient evidence to support

the allegations that Respondent failed to maintain accurate records for Patients A, B, D F H I, J, K and L. As a result, the Forty-Second, Forty-Third, Forty-Fifth, Forty-Seventh and Forty-Ninth through Fifty-Third Specifications are sustained.

DETERMINATION AS TO PENALTY

After a full and complete review of all of the evidence presented and pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, the Hearing Committee, by unanimous vote, determines that Respondent's license to practice medicine is censured and reprimanded. Respondent shall also be placed on a two (2) year general probation for recordkeeping monitoring.

Fraud charges were not sustained against Respondent because the allegations were not supported by the record and cannot be sustained on the Department's guilt by association theory. However, it is clear to the Hearing Committee that Respondent should have monitored the recordkeeping and billing procedures of GMC after she authorized them to use her signature stamp.

The Hearing Committee notes that these allegations are ten years old and there are no present day complaints regarding Respondent's practice. There is no evidence in the record to call into question Respondent's level of care and skill in the treatment of patients and she continues to receive referrals within the

community. The Hearing Committee concludes that a censure and reprimand and recordkeeping monitoring is the appropriate penalty in this instance. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Forty-Second, Forty-Third, Forty-Fifth, Forty-Seventh, Forty-Ninth through Fifty-Third Specifications of professional misconduct, as set forth in the Statement of Charges are SUSTAINED;
2. The First through Forty-First, Forty-Fourth, Forty-Sixth and Forty-Eighth Specifications of professional misconduct, as set forth in the Statement of Charges are NOT SUSTAINED;
3. Respondent is CENSURED AND REPRIMANDED.
4. Respondent's license shall be placed on PROBATION and she shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order; and
5. This Determination and Order shall be effective on personal service on Respondent or seven (7) days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. Section 230(10)(h).

DATED: New York, New York
January 13, 2012

REDACTED SIGNATURE

X STEVEN I. SHERMAN, D.O., M.S. (CHAIR)

ZORAIDA NAVARRO, M.D.
JAIME RIVERA, M.P.H.

TO: Claudia Morales Bloch, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
145 Huguenot Street, Rm. 601
New Rochelle, New York 10801

Lyubov Moysik, D.O.
REDACTED ADDRESS

Nathan L. Dembin, Esq.
Nathan L. Dembin & Associates, P.C.
1123 Broadway
New York, New York 10010

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
LYUBOV MOYSIK, D.O.

NOTICE
OF
HEARING

TO: LYUBOV MOYSIK, D.O.
REDACTED ADDRESS

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on March 22, 2011, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Fl., New York, NY 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here _____

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be


photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
February 10, 2011

REDACTED SIGNATURE


ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Claudia Morales Bloch
Associate Counsel
Bureau of Professional Medical Conduct
145 Huguenot Street, Rm. 601
New Rochelle, NY 10801
914-654-7047

IN THE MATTER
OF
LYUBOV MOYSIK, D.O.

AMENDED
STATEMENT
OF
CHARGES

LYUBOV MOYSIK, D.O., the Respondent, was authorized to practice medicine in New York State on or about September 1, 1998, by the issuance of license number 211979 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent undertook the care and treatment of Patients A - L at General Medical Care, P.C., (General) a clinic which Respondent was the sole named owner, located at 825 Broadway, Brooklyn, N.Y., 11206. (the identity of each patient and the dates of treatment are set forth in the annexed Appendix) Patients A - L were all involved in motor vehicle accidents and claims for services rendered to each patient were submitted by Respondent and/or on her behalf, to Allstate Insurance Company (Allstate) under the New York Motor Vehicle No-Fault Insurance Law.
1. Respondent knowingly and/or wilfully, and with intent to deceive Allstate, rendered care and treatment to these patients in bad faith and as a vehicle to falsely submit No-Fault claims to Allstate for services which either were not medically indicated or justified; excessive and not warranted by the condition of the patient; and/or not performed. In furtherance of said false submissions, Respondent knowingly and/or wilfully created and/or caused to be created, false medical records and initial

narrative reports to Allstate as set forth more fully in the paragraphs B - O, below.

- B. Respondent failed to obtain and/or note an adequate and good faith medical history, and/or history of current complaints from Patients A - L.
- C. Respondent failed to perform and/or note adequate and good faith physical examinations of Patients A -L.
- D. Diagnoses made by Respondent, or made by employees of General under her supervision, were unsupported by the record. Additionally, Respondent failed to appropriately and/or in good faith diagnose and/or note conditions regarding Patients A - L, and/or to follow up on and/or rule out diagnosis, to wit: fibromyalgia, post-traumatic stress syndrome, myositis, sprain of the cervical muscles and ligaments, sprain of the lumbosacral paraspinal muscles and ligaments, cervical radiculopathy, and/or lumbosacral radiculopathy.
- E. Respondent knowingly and/or wilfully created and submitted to Allstate, and/or caused to be created and be submitted to Allstate, narrative reports of the initial consultation visits with Patients A - L which were false and inconsistent with the record as a whole. Respondent intended to deceive.
- F. Respondent inappropriately and without medical indication or justification ordered and/or referred Patients A - L for chiropractic consultation and acupuncture consultation.
- G. Respondent failed to provide and/or note medical and clinical follow-up for Patients A -L, including failing to reassess and observe the patients over time and failing to adjust treatment plans appropriately, especially after various diagnostic testing was done and physical therapy was performed over time.
- H. As to Patients A-L, Respondent knowingly and/or willfully and intentionally

falsely billed Allstate, and/or caused bills to be submitted on her behalf, for nerve destruction procedures, to wit: destruction by neurolytic agent chemodenervation of muscle endplate, cervical spinal muscles and destruction by neurolytic agent, paravertebral facet joint nerve, lumbar, single level; when, in fact, said services were not rendered. Respondent intended to deceive. Furthermore, performance of these procedures on said patients would be inappropriate and not warranted by the condition of the patient.

- I. Respondent inappropriately and without medical indication or justification ordered: for Patients B-L, MRIs of the cervical and/or lumbar spines, and EKGs for Patients A, B, D, I and J. Respondent knowingly and/or wilfully and intentionally falsely billed Allstate, and/or caused bills to be submitted on her behalf, for these tests. Respondent intended to deceive. Additionally, Respondent inappropriately ordered and falsely billed, as alleged herein, for:
 1. MRI of the left knee for Patient A, C and I.
 2. MRI of the right and or left shoulder for Patients B, D, E, G and K.
 3. MRI of the brain for Patients A and H.
 4. X-ray of the left wrist for Patient B.
- J. Respondent knowingly and/or wilfully and intentionally falsely billed Allstate, and/or caused bills to be submitted on her behalf, for manual muscle testing (total evaluation of the body including hands) performed on Patients A-L, when, in fact, such testing was not done, and she knowingly and/or wilfully and intentionally falsely billed for cervical range of motion, lumbar range of motion and manual muscle testing as separate procedures which were all medically unnecessary. In each instance, Respondent intended to deceive.
- K. Respondent knowingly and/or wilfully and intentionally falsely billed Allstate, and/or caused bills to be submitted on her behalf, for Synaptic nerve blocks on Patients A-L, when only transcutaneous electrical nerve stimulation

- (TENS) technique, a physical therapy modality was performed and/or noted to have been performed. Respondent intended to deceive.
- L. Respondent inappropriately and without good faith medical indication or justification performed a Functional Capacity Evaluation on Patients A and C-L. Respondent knowingly and/or wilfully and intentionally falsely billed Allstate, and/or caused bills to be submitted on her behalf these evaluations. Respondent intended to deceive.
- M. Respondent inappropriately and without good faith medical indication or justification prescribed and/or authorized employees of General to prescribe, various durable goods for Patients, to wit:
1. Patient G: Tens Unit, Red Lamp, Massager and Lumbar Cushion
 2. Patient H: Tens Unit, Red Lamp, Lumbar Cushion and Car Seat
- N. Respondent knowingly and/or wilfully and intentionally created and/or caused to be created a medical record for Patients A - L which did not accurately reflect the care and treatment rendered to the patient. Respondent intended to deceive.
- O. Respondent failed to maintain a medical record for Patients A - L in accordance with accepted medical standards and in a manner which accurately reflects her care and treatment of each patient.
- P. Respondent, on or about January 16, 2009, and thereafter, through her attorney, falsely and with intent to deceive, informed the Office of Professional Medical Conduct that she has not participated in No-Fault since leaving practice at General in or about January, 2003. In fact, Respondent has continue to treat patients and submit claims for services under No-Fault through, at least, in or about October, 2009.

SPECIFICATION OF CHARGES
FIRST THROUGH THIRTEENTH SPECIFICATIONS
FRAUDULENT PRACTICE

Respondent 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, A.1, B through I, I.1, I.3, J through L, N and O as to Patient A,
2. Paragraphs A, A.1, B through I, I.2, I.4, J, K, N and O as to Patient B,
3. Paragraphs A, A.1, B through I, I.1, J, K, L, N and O as to Patient C,
4. Paragraphs A, A.1, B through I, I.2, J, K, N and O as to Patient D,
5. Paragraphs A, A.1, B through I, I.2, J, K, N and O as to Patient E,
6. Paragraphs A, A.1, B through I, J, K, N and O as to Patient F,
7. Paragraphs A, A.1, B through I, I.2, J, K, M, M.1, N and O as to Patient G,
8. Paragraphs A, A.1, B through I, I.3, J, K, M, M.2, N and O as to Patient H,
9. Paragraphs A, A.1, B through I, I.1, J, K, N and O as to Patient I.
10. Paragraphs A, A.1, B through K, N and O as to Patient J.
11. Paragraphs A, A.1, B through I, I.2, J, K, N and O as to Patient K.
12. Paragraphs A, A.1, B through K, L, N and O as to Patient L.
13. Paragraph P.

FOURTEENTH THROUGH TWENTY-FIFTH SPECIFICATIONS

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by wilfully 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 the following:

14. Paragraphs A, A.1, E, H, J, K, L as to Patient A,
15. Paragraphs A, A.1, E, H, J, K as to Patient B,
16. Paragraphs A, A.1, E, H, J, K, L as to Patient C,
17. Paragraphs A, A.1, E, H, J, K as to Patient D,
18. Paragraphs A, A.1, E, H, J, K as to Patient E,
19. Paragraphs A, A.1, E, H, J, K as to Patient F,
20. Paragraphs A, A.1, E, H, J, K as to Patient G,
21. Paragraphs A, A.1, E, H, J, K as to Patient H,
22. Paragraphs A, A.1, E, H, J, K as to Patient I.
23. Paragraphs A, A.1, E, H, J, K as to Patient J.
24. Paragraphs A, A.1, E, H, J, K as to Patient K.
25. Paragraphs H, J, K, L as to Patient L.

TWENTY-SIXTH THROUGH THIRTY-SEVENTH SPECIFICATIONS

EXCESSIVE TESTS AND TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(35) by the ordering of excessive tests and/or treatment not warranted by the condition of the patient, as alleged in the facts of the following:

26. Paragraphs A, F, I, I.1, I. 2, J , L as to Patient A,

27. Paragraphs A, F, I, I.2, I.4, J as to Patient B,
28. Paragraphs A, F, I, I.1, J, L as to Patient C,
29. Paragraphs A, F, I, I.2, J as to Patient D,
30. Paragraphs A, F, I, I.2, J as to Patient E,
31. Paragraphs A, F, I, J as to Patient F,
32. Paragraphs A, F, I, I.2, J, M.1 as to Patient G,
33. Paragraphs A, F, I, I.3, J, M.2 as to Patient H,
34. Paragraphs A, F, I, I.1, J as to Patient I.
35. Paragraphs A, F, I, J as to Patient J.
36. Paragraphs A, F, I, I.2, J as to Patient K.
37. Paragraphs A, F, I, J, L as to Patient L.

THIRTY-EIGHTH SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

38. Paragraphs A, A.1, B through I, I.1 through I.4, J, K, L, M, M.1, M.2, N, O and P.

THIRTY-NINTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

39. Paragraphs A, A.1, B through I, I.1 through I.4, J, K, L, M, M.1,

M.2, N and O.

FORTIETH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

40. Paragraphs A, A.1, B through I, I.1 through I.4, J, K, L, M, M.1, M.2, N and O.

FORTY-FIRST SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

41. Paragraphs A, A.1, B through I, I.1 through I.4, J, K, L, M, M.1, M.2, N and O.

FORTY-SECOND THROUGH FIFTY-THIRD SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of the following:

42. Paragraphs B, C, D, G, N and O as to Patient A,
43. Paragraphs B, C, D, G, N and O as to Patient B,

44. Paragraphs B, C, D, G, N and O as to Patient C,
45. Paragraphs B, C, D, G, N and O as to Patient D,
46. Paragraphs B, C, D, G, N and O as to Patient E,
47. Paragraphs B, C, D, G, N and O as to Patient F,
48. Paragraphs B, C, D, G, N and O as to Patient G,
49. Paragraphs B, C, D, G, N and O as to Patient H,
50. Paragraphs B, C, D, G, N and O as to Patient I.
51. Paragraphs B, C, D, G, N and O as to Patient J.
52. Paragraphs B, C, D, G, N and O as to Patient K.
53. Paragraphs B, C, D, G, N and O as to Patient L.

DATE: February 24, 2011
New York, New York

REDACTED SIGNATURE

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Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

Standard Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall make available for review by OPMC, and/or in OPMC's discretion, by a physician proposed by Respondent and approved, in writing, by the Director of OPMC, complete copies of any and all medical and office records selected by OPMC. Respondent shall fully cooperate in the review process.
8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.