



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

November 26, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Central Medical Rehabilitation, P.C.
ATTN: Mrs. Carol Cassvan
140-95 Burden Crescent
Briarwood, New York 11435

Central Medical Rehabilitation, P.C.
130 Merrick Road
Lynbrook, New York 11563

Richard J. Zahnleuter, Esq.
NYS Department of Health
Bureau of Legal Affairs
Corning Tower – 25th Floor
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Central Medical Rehabilitation, P.C.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-327) 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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., 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,

A handwritten signature in cursive script that reads "Sean D. O'Brien". The signature is written in black ink and is positioned above the printed name.

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

COPY

**IN THE MATTER
OF
CENTRAL MEDICAL REHABILITATION, P.C.**

DETERMINATION

AND

ORDER

BPMC NO. 03-327

CHARLES J. VACANTI, M.D., Chairperson, **LEMUEL A. ROGERS, Jr., M.D.** and **CHARLOTTE S. BUCHANAN, ESQ.**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to §230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, served as Administrative Officer for the Hearing Committee. The Department of Health appeared by **DONALD P. BERENS, Jr.**, General Counsel, **RICHARD J. ZAHNLEUTER, ESQ.**, Associate Counsel, of Counsel. The Respondent made no appearance at the hearing and was not represented by 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 submits this Determination and Order.

STATEMENT OF CHARGES

The accompanying Statement of Charges alleged forty-four (44) specifications of professional misconduct, including allegations of willfully failing to comply with §1503 of the Business Corporation Law, willful or grossly negligent failure to comply with substantial provisions of State laws governing the practice of medicine, practicing the profession fraudulently, accepting and performing professional responsibilities which the licensee knows or has reason to know that it is not competent to perform, engaging in conduct in the practice of medicine that evidences moral unfitness and willfully making or filing a false report.

SUMMARY OF PROCEEDINGS

Notice of Hearing Date:	September 17, 2003
Pre-Hearing Conference:	October 22, 2003
Hearing Dates:	October 31, 2003

WITNESSES

For the Petitioner:	None
For the Respondent:	None

FINDINGS OF FACT

1. The Respondent, Central Medical Rehabilitation, P.C., is a professional service corporation duly authorized by the filing of its certificate of incorporation with the Department of State on November 21, 1996 to practice medicine in the State of New York pursuant to Article 15 of the Business Corporation Law.
2. The Respondent is subject to the jurisdiction of the State Board for Professional Medical Conduct, and the pre-hearing and hearing procedures of Title II-A of Article 2 of the New York Public Health Law, pursuant to Section 1503(d) of the New York Business Corporation Law.
3. A professional service corporation may be organized by one or more individuals who are duly authorized by law to render the same professional service, pursuant to Section 1503(a) of the New York Business Corporation Law.
4. On November 21, 1996, MD#1 was an individual who was duly authorized by law to practice medicine, and DC#1 was an individual who was not duly authorized by law to practice medicine.
5. Pursuant to the Respondent's certificate of incorporation, filed by the Secretary of State on November 21, 1996, MD#1 was identified as the individual duly authorized by law to practice medicine who was the Respondent's sole shareholder, director and officer.

6. MD#1 was not the true owner of the Respondent.
7. DC#1 was the true owner of the Respondent.
8. MD#1 was paid a fee to allow the true owner, DC#1, to unlawfully obtain a certificate of authority from the Department of Education that indicated that an individual, MD#1, who was duly authorized by law to practice medicine, would be the Respondent's sole shareholder, director and officer in ostensible compliance with Section 1503 of the business Corporation Law. In reality, MD#1 had no true ownership interest in the Respondent.
9. In terms of operation of the Respondent, DC#1, not MD#1, controlled the Respondent and acted as de facto sole shareholder, director and officer in that MD#1: did not share in any of the Respondent's profits; did not pay money or other consideration for any shares in the Respondent; did not receive any money or other consideration to transfer any shares in the Respondent to any other person; was never asked to do anything for the Respondent except be on call, and MD#1 was never called; did not manage or supervise the medical practice for the Respondent; had no role in hiring or supervising the professional staff at the Respondent; did not exercise any control over the Respondent, or act as an officer or director for the Respondent; did not control or have access to the Respondent's bank accounts; did not maintain or have access to the corporate books and records of the Respondent; and, never saw or treated patients at the Respondent.

10. On or about September 30, 1997, MD#1 transferred all of MD#1's shares of stock to MD#2 and MD#2 became the sole shareholder of the Respondent in ostensible compliance with Section 1503(a) of the New York Business Corporation Law.
11. MD#2 subsequently suffered a mentally and physically debilitating medical condition in 1998 that rendered him mentally and physically incapacitated.
12. From the time of the onset of that condition through August 2002, MD#2 no longer had the requisite mental or physical capability to practice medicine or to be the sole shareholder of a professional corporation practicing medicine, and DC#1 remained the true owner of the Respondent.
13. After MD#2's passing in August 2002, and continuing to this point in time, no individual duly authorized to practice medicine has been a shareholder of the Respondent, and DC#1 has remained the true owner of the Respondent.
14. Throughout the tenure of MD#1 as sole shareholder, the Respondent was not in compliance with Section 1503(a) of the New York business Corporation Law.
15. From the time of the onset of MD#2's condition in 1998 throughout August 2002, the Respondent was not in compliance with Section 1503(a) of the New York Business Corporation Law.

16. From August 2002 to this point in time, the Respondent was not in compliance with Section 1503(a) of the New York Business Corporation Law.

17. During the time frames set forth in paragraphs L, M and N, the Respondent allowed the status quo to remain in effect, and, therefore, willfully failed to comply with the requirements of Section 1503(a) of the New York Business Corporation Law.

18. During the same time frames set forth in paragraphs L, M and N, particularly between December 18, 1997 and January 26, 1998, with respect to Patient A, the Respondent billed Insurer #1 19 times at \$229.04 per service, totaling \$4,358.60, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 19 times at \$73.29 per service, totaling \$1,392.51, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#3, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

19. Particularly, between June 13, 1997 and July 26, 1997, with respect to Patient A, the Respondent billed Insurer #1 6 times at \$229.04 per service, totaling \$1,374.24, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 6 times at \$73.29 per service, totaling \$439.74, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550,

when Patient A never received the treatment, the physician, MD#4, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

20. Particularly, between August 21, 1997 and October 24, 1997, with respect to Patient A, the Respondent billed Insurer #1 13 times at \$229.04 per service, totaling \$2,977.52, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 13 times at \$73.29 per service, totaling \$952.77, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#5, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

21. Particularly, on December 8, 1997, with respect to Patient A, the Respondent billed Insurer #1 1 time at \$229.04 per service, totaling \$229.04, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 1 time at \$73.29 per service, totaling \$73.29, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#6, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

22. Particularly, between April 6, 1998 and April 13, 1998, with respect to Patient A, the Respondent billed Insurer #1 2 times at \$229.04 per service, totaling \$458.08, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 2 times at \$73.29 per service, totaling \$146.58, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#7, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

23. Particularly, between January 29, 1997 and March 23, 1997, with respect to Patient A, the Respondent billed Insurer #1 19 times at \$229.04 per service, totaling \$4,351.76 for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 19 times at \$73.29 per service, totaling \$1,392.51, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#8, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

24. Particularly, between January 13, 1998 and January 26, 1998, with respect to Patient B, the Respondent billed Insurer #1 4 times at \$229.04 per service, totaling \$916.60 for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic"

under CPT Code 64441, and 4 times at \$73.29 per service, totaling \$293.16 for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#8, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

25. Particularly, between February 12, 1998 and March 16, 1998, with respect to Patient B, the Respondent billed Insurer #1 13 times at \$229.04 per service, totaling \$2,977.52, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 13 times at \$73.29 per service, totaling \$952.77, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#9, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

26. Particularly, between March 23, 1998 and April 20, 1998, with respect to Patient B, the Respondent billed Insurer #1 6 times at \$229.04 per service, totaling \$1,374.24, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 6 times at \$73.29 per service, totaling \$439.74, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#7, identified on the bill

by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

27. Particularly, between April 20, 1998 and May 26, 1998, with respect to Patient B, the Respondent billed Insurer #1 5 times at \$229.04 per service, totaling \$1,145.20, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 5 times at \$73.29 per service, totaling \$366.45, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#10, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

28. Particularly, between March 12, 1998 and July 10, 1998, with respect to Patient B, the Respondent billed Insurer #1 5 times at \$229.04 per service, totaling \$1,145.20, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 5 times at \$73.29 per service, totaling \$366.45, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#11, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

29. Particularly, between March 27, 1998 and May 13, 1998, with respect to Patient C, the Respondent billed Insurer #1 9 times at \$229.04 per service, totaling \$2,061.36, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 9 times at \$73.29 per service, totaling \$659.61, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient C never received the treatment, the physician, MD#7, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

30. Particularly, between May 20, 1998 and August 25, 1998, with respect to Patient C, the Respondent billed Insurer #1 11 times at \$229.04 per service, totaling \$2,519.44, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 11 times at \$73.29 per service, totaling \$806.19, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient C never received the treatment, the physician, MD#10, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions as to the allegations contained in the Statement of Charges were by unanimous vote of the Hearing Committee. Based upon the entire record, the Findings of Fact, and the Discussion below, the Hearing Committee unanimously concludes that all of the forty-four (44) Specifications of Charges of misconduct contained in the Statement of Charges dated September 17, 2003 are **SUSTAINED**.

DISCUSSION

The Hearing Committee finds that all charges and allegations against Respondent in this matter are deemed admitted pursuant to Public Health Law §230 (10) (c) (2). This statute provides that "the licensee shall file a written answer to each of the charges and allegations in the statement of charges no later than ten days prior to the hearing, that any charge and allegation not so answered shall be deemed admitted and that the licensee may wish to seek the advice of counsel prior to filing such answer." *Corsello v. New York State Department of Health*, 300 A.D. 2nd 849.

The Hearing Committee unanimously concludes that Respondent has committed significant professional medical misconduct. The Committee finds willful failure to comply with §1503 of the Business Corporation Law and §6530 (12) of the New York Education Law for allowing a chiropractor to operate the Professional Corporation (PC) when the law clearly states that only a physician duly authorized by law to practice medicine may own and operate a PC.

They further find that this practice violates § 6530(16) of the Education Law which provides that a PC must comply with substantial provisions of state law governing the practice of medicine, i.e., § 1503 Business Corporations Law. The Hearing Committee also finds that Respondent acted fraudulently for allowing a chiropractor to operate a medical practice and for the fraudulent billing of patients and third parties for services never rendered. This was in violation of § 6530 (2) of the Education Law. The Hearing Committee further finds that a chiropractor is not competent by education and training to operate a medical doctor's office and thus violated §6530(24) of the Education Law.

In addition, the Hearing Committee finds that Respondent filed false reports by billing the insurance company multiple times for services that were never rendered to Patients A, B and C in violation of § 6530 (21). Finally, the Hearing Committee finds that Respondent engaged in conduct in the practice of medicine which evidences moral unfitness to practice medicine by both the misrepresentation that the corporation was run by a medical doctor when it was not and for the fraudulent billing. This was a violation of §6530 (20) of the Education Law.

DETERMINATION AS TO PENALTY

The Hearing Committee realizes that a PC is penalized differently than an individual physician. The Hearing Committee concurs with the Department that an annulment of the corporation is the appropriate penalty. It is authorized under §1503 (f) of the Business Corporation Law and §230 (a) (5) of the Public Health Law. The Hearing Committee believes that annulment goes beyond revocation in that the corporation will be treated as if it never validly existed from day one. The Hearing Committee further agrees that the

physicians involved with the corporation were not the true owners and that the chiropractor, Mr. Gallo, was the actual, albeit fraudulent owner and operator of the corporation since its inception. As a result of the annulment, the Respondent and the chiropractor will be potentially exposed to civil liability for all prior fraudulent actions.

The Hearing Committee also assesses a civil penalty of \$20,000 for violating the Business Corporation Law and for the fraudulent billing. The Hearing Committee concludes that the actions of Respondent were harmful to physicians, the insured patients and their insurance company, as well as to the general public. Therefore, they believe that annulment is the appropriate sanction in this instance.

ORDER

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

1. The First through Forty-Fourth Specifications of Professional Misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) are **SUSTAINED**; and
2. Respondent's license to practice medicine in New York State be and hereby is **ANNULLED**.
3. A civil penalty in the amount of **TWENTY THOUSAND DOLLARS (\$20,000.00)** be and hereby is assessed against Respondent. Payment of the aforesaid sum shall be made to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 2230, Empire State Plaza, Albany, New York, 12237 within thirty (30) days of the effective date of this Order;
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses (Tax Law § 171(27); State Finance Law §18; CPLR §5001; Executive Law §32;
5. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Rochester, New York
25 November, 2003



CHARLES J. VACANTI, M.D.
(Chairperson)

LEMUEL A. ROGERS, Jr., M.D.
CHARLOTTE S. BUCHANAN, ESQ.

To: Richard J. Zahnleuter, Esq.
NYS Department of Health
Corning Tower- 25th Fl.
Empire State Plaza
Albany, New York 12237

Central Medical Rehabilitation, P.C.
140-95 Burden Crescent
Briarwood, New York 11435
Attn: Mrs. Carol Cassvan

Central Medical Rehabilitation, P.C.
130 Merrick Rd.
Lynbrook, New York 11563

APPENDIX 1

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

IN THE MATTER

OF

CENTRAL MEDICAL REHABILITATION,
P.C.

STATEMENT

OF

CHARGES



ORIGINAL

The Respondent, Central Medical Rehabilitation, P.C., is a professional service corporation duly authorized by the filing of its certificate of incorporation with the Department of State on November 21, 1996 to practice medicine in the State of New York pursuant to Article 15 of the Business Corporation Law.

The Respondent is subject to the jurisdiction of the State Board for Professional Medical Conduct, and the prehearing and hearing procedures of Title II-A of Article 2 of the New York Public Health Law, pursuant to Section 1503(d) of the New York Business Corporation Law.

ALLEGATIONS

- A. A professional service corporation may be organized by one or more individuals who are duly authorized by law to render the same professional service, pursuant to Section 1503(a) of the New York Business Corporation Law.

- B. On November 21, 1996, MD#1¹ was an individual who was duly authorized by law to practice medicine, and DC#1 was an individual who was not duly authorized by law to practice medicine.
- C. Pursuant to the Respondent's certificate of incorporation, filed by the Secretary of State on November 21, 1996, MD#1 was identified as the individual duly authorized by law to practice medicine who was the Respondent's sole shareholder, director and officer.
- D. MD#1 was not the true owner of the Respondent.
- E. DC#1 was the true owner of the Respondent.
- F. MD#1 was paid a fee to allow the true owner, DC#1, to unlawfully obtain a certificate of authority from the Department of Education that indicated that an individual, MD#1, who was duly authorized by law to practice medicine, would be the Respondent's sole shareholder, director and officer in ostensible compliance with Section 1503 of the Business Corporation Law. In reality, MD#1 had no true ownership interest in the Respondent.
- G. In terms of operation of the Respondent, DC#1, not MD#1, controlled the Respondent and acted as de facto sole shareholder, director and officer in that MD#1: did not share in any of the Respondent's profits; did not pay money or other consideration for any shares in the Respondent; did not receive any money or other consideration to transfer any shares in the Respondent to any other person; was never asked to do anything for the Respondent except be

¹To preserve privacy throughout this document, patients are referred to by letter designation preceded by the word "Patient" ("Patient ___"), physicians are referred to by numerical designation preceded by the acronym "MD" (MD = ___), and chiropractors are referred to by numerical designation preceded by the acronym "DC" ("DC# ___"). A name-identifying Appendix is attached hereto for appropriate recipients.

on call, and MD#1 was never called; did not manage or supervise the medical practice for the Respondent; had no role in hiring or supervising the professional staff at the Respondent; did not exercise any control over the Respondent, or act as an officer or director for the Respondent; did not control or have access to the Respondent's bank accounts; did not maintain or have access to the corporate books and records of the Respondent; and, never saw or treated patients at the Respondent.

- H. On or about September 30, 1997, MD#1 transferred all of MD#1's shares of stock to MD#2 and MD#2 became the sole shareholder of the Respondent in ostensible compliance with Section 1503(a) of the New York Business Corporation Law.
- I. MD#2 subsequently suffered a mentally and physically debilitating medical condition in 1998 that rendered him mentally and physically incapacitated.
- J. From the time of the onset of that condition through August 2002, MD#2 no longer had the requisite mental or physical capability to practice medicine or to be the sole shareholder of a professional corporation practicing medicine, and DC#1 remained the true owner of the Respondent.
- K. After MD#2's passing in August 2002, and continuing to this point in time, no individual duly authorized to practice medicine has been a shareholder of the Respondent, and DC#1 has remained the true owner of the Respondent.
- L. Throughout the tenure of MD#1 as sole shareholder, the Respondent was not in compliance with Section 1503(a) of the New York Business Corporation Law.
- M. From the time of the onset of MD#2's condition in 1998 throughout August

2002, the Respondent was not in compliance with Section 1503(a) of the New York Business Corporation Law.

N. From August 2002 to this point in time, the Respondent was not in compliance with Section 1503(a) of the New York Business Corporation Law.

O. During the time frames set forth in paragraphs L, M, and N, the Respondent allowed the status quo to remain in effect, and, therefor, willfully failed to comply with the requirements of Section 1503(a) of the New York Business Corporation Law.

P. During the same time frames set forth in paragraphs L, M, and N, particularly between December ¹⁸~~12~~, 1997 and January 26, 1998, with respect to Patient A, the Respondent billed Insurer #1 ^A~~18~~ times at \$229.04 per service, totaling ~~\$4,129.20~~ ^{4358.60}, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and ¹⁹~~18~~ times at \$73.29 per service, totaling ~~\$1,319.22~~ ^{1392.51}, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#3, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

Q. Particularly, between June 13, 1997 and July 26, 1997, with respect to Patient A, the Respondent billed Insurer #1 6 times at \$229.04 per service, totaling \$1,374.24, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 6 times at \$73.29 per service, totaling \$439.74, for "Application of Surface (Transcutaneous)

Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#4, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

- R. Particularly, between August 21, 1997 and October 24, 1997, with respect to Patient A, the Respondent billed Insurer #1 13 times at \$229.04 per service, totaling \$2,977.52, for "Introduction/Injection of Anesthetic Agent (Nerve Block); Diagnostic or Therapeutic" under CPT Code 64441, and 13 times at \$73.29 per service, totaling \$952.77, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#5, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.
- S. Particularly, on December 8, 1997, with respect to Patient A, the Respondent billed Insurer #1 1 time at \$229.04 per service, totaling \$229.04, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 1 time at \$73.29 per service, totaling \$73.29, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#6, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

T. Particularly, between April 6, 1998 and April 13, 1998, with respect to Patient A, the Respondent billed Insurer #1 2 times at \$229.04 per service, totaling \$458.08, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and 2 times at \$73.29 per service, totaling \$146.58, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#7, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

U. Particularly, between January ²⁹~~31~~, 1997 and March 23, 1997, with respect to Patient A, the Respondent billed Insurer #1 ¹⁹~~18~~ times at \$229.04 per service, totaling ^{4351.76}~~\$4,129.20~~, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and ¹⁹~~18~~ times at ^{1392.51}~~\$1,349.22~~, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient A never received the treatment, the physician, MD#8, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

V. Particularly, between January 13, 1998 and January 26, 1998, with respect to Patient B, the Respondent billed Insurer #1 ⁴~~5~~ times at \$229.04 per service, totaling ^{916.60}~~\$1,145.20~~, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and ⁴~~5~~ times at \$73.29 per

^{293.16}
service, totaling ~~\$368.45~~, for "Application of Surface (Transcutaneous)

Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#8, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

W. Particularly, between February 12, 1998 and March ¹⁶~~23~~, 1998, with respect to

Patient B, the Respondent billed Insurer #1 ¹³~~14~~ times at \$229.04 per service, totaling ^{2977.52}~~\$3,206.56~~, for "Introduction/Injection of Anesthetic Agent (Nerve

Block), Diagnostic or Therapeutic" under CPT Code 64441, and ¹³~~14~~ times at \$73.29 per service, totaling ^{952.77}~~\$1,026.06~~, for "Application of Surface

(Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#9, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

X. Particularly, between ^{March 23,}~~April 3,~~ 1998 and April 20, 1998, with respect to Patient

B, the Respondent billed Insurer #1 6 times at \$229.04 per service, totaling \$1,374.24, for "Introduction/Injection of Anesthetic Agent (Nerve Block),

Diagnostic or Therapeutic" under CPT Code 64441, and 6 times at \$73.29 per service, totaling \$439.74, for "Application of Surface (Transcutaneous)

Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#7, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never

provided it, and never authorized the Respondent to submit the corresponding billing.

Y. Particularly, between April ²⁰/~~22~~, 1998 and May 26, 1998, with respect to Patient B, the Respondent billed Insurer #1 ⁵/~~4~~ times at \$229.04 per service, totaling ~~1145.20~~ \$916.16, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and ⁵/~~4~~ times at \$73.29 per service, totaling ~~366.45~~ \$293.16, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#10, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

Z. Particularly, between ^{March 12,} ~~June 1,~~ 1998 and ^{July 10,} ~~August 4,~~ 1998, with respect to Patient B, the Respondent billed Insurer #1 ⁵/~~4~~ times at \$229.04 per service, totaling ~~1145.20~~ \$3,206.56, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and ⁵/~~4~~ times at \$73.29 per service, totaling ~~366.45~~ \$1,026.06, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient B never received the treatment, the physician, MD#11, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

AA. Particularly, between March 27, 1998 and May ¹³/~~20~~, 1998, with respect to Patient C, the Respondent billed Insurer #1 ⁹/~~10~~ times at \$229.04 per service,

2061.36
totaling ~~\$2,290.40~~, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and ~~10~~⁹ times at \$73.29 per service, totaling ~~\$732.90~~^{659.61}, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient C never received the treatment, the physician, MD#7, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

BB. Particularly, between May ~~29~~²⁰, 1998 and August 25, 1998, with respect to Patient C, the Respondent billed Insurer #1 ~~10~~¹¹ times at \$229.04 per service, totaling ~~\$2,290.40~~^{2061.36} ~~25~~^{19.44}, for "Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic" under CPT Code 64441, and ~~10~~¹¹ times at \$73.29 per service, totaling ~~\$732.90~~^{806.19}, for "Application of Surface (Transcutaneous) Neurostimulator" under CPT Code 64550, when Patient C never received the treatment, the physician, MD#10, identified on the bill by typed name and signature stamp as having provided the treatment never ordered it, never provided it, and never authorized the Respondent to submit the corresponding billing.

CC. In a letter, dated March 4, 2002, the Department of Health sought the following information and documentation from the Respondent, but the Respondent did not ever comply with the request: (1) list of employee names, job titles and job descriptions with their dates of employment for anyone who was employed, who was a consultant, who was an independent contractor, or who provided patient services at the Respondent's facilities; (2) contracts with licensed

professionals for professional services; (3) contracts between the Respondent and any other entity for professional services or management services with the Respondent between January 1, 1997 and the date of the letter, March 4, 2002; and (4) account numbers and bank identities and addresses for all bank accounts maintained by the Respondent and its management company, as well as the names and addresses of persons who are or were authorized signatories of each account.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

The Respondent is charged with professional misconduct by reason of **WILLFULLY FAILING TO COMPLY WITH SECTION 1503 OF THE BUSINESS CORPORATION LAW**, in violation of the third undesignated clause set forth in New York Education Law §6530(12), in that Petitioner charges:

1. The factual allegations in paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M, N, and/or O.

SECOND SPECIFICATION

The Respondent is charged with professional misconduct by reason of a **WILLFUL OR GROSSLY NEGLIGENT FAILURE TO COMPLY WITH SUBSTANTIAL PROVISIONS OF STATE LAWS GOVERNING THE PRACTICE OF MEDICINE**, in violation of New York Education Law §6530(16), in that Petitioner charges:

2. The factual allegations in paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M, N, and/or O.

THIRD SPECIFICATION

The Respondent is charged with professional misconduct by reason of **PRACTICING THE PROFESSION FRAUDULENTLY**, in violation of New York Education Law §6530(2), in that Petitioner charges:

3. The factual allegations in paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M, N, and/or O.

FOURTH SPECIFICATION

The Respondent is charged with professional misconduct by reason of ACCEPTING AND PERFORMING PROFESSIONAL RESPONSIBILITIES WHICH THE LICENSEE KNOWS OR HAS REASON TO KNOW THAT IT IS NOT COMPETENT TO PERFORM, in violation of the second undesignated clause of New York Education Law §6530(24), in that Petitioner charges:

4. The factual allegations in paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M, N, and/or O.

FIFTH SPECIFICATION

The Respondent is charged with professional misconduct by reason of ENGAGING IN CONDUCT IN THE PRACTICE OF MEDICINE THAT EVIDENCES MORAL UNFITNESS TO PRACTICE MEDICINE, in violation of New York Education Law §6530(20), in that Petitioner charges:

5. The factual allegations in paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M, N, and/or O.

SIXTH THROUGH EIGHTEENTH SPECIFICATIONS

The Respondent is charged with professional misconduct by reason of PRACTICING THE PROFESSION FRAUDULENTLY, in violation of New York Education Law §6530(2), in that Petitioner charges:

6. The factual allegations in paragraph P.
7. The factual allegations in paragraph Q.
8. The factual allegations in paragraph R.
9. The factual allegations in paragraph S.
10. The factual allegations in paragraph T.

11. The factual allegations in paragraph U.
12. The factual allegations in paragraph V.
13. The factual allegations in paragraph W.
14. The factual allegations in paragraph X.
15. The factual allegations in paragraph Y.
16. The factual allegations in paragraph Z.
17. The factual allegations in paragraph AA.
18. The factual allegations in paragraph BB.

NINETEENTH THROUGH THIRTY-FIRST SPECIFICATIONS

The Respondent is charged with professional misconduct by reason of
ENGAGING IN CONDUCT IN THE PRACTICE OF MEDICINE THAT EVIDENCES
MORAL UNFITNESS TO PRACTICE MEDICINE, in violation of New York Education
Law §6530(20), in that Petitioner charges:

19. The factual allegations in paragraph P.
20. The factual allegations in paragraph Q.
21. The factual allegations in paragraph R.
22. The factual allegations in paragraph S.
23. The factual allegations in paragraph T.
24. The factual allegations in paragraph U.
25. The factual allegations in paragraph V.
26. The factual allegations in paragraph W.
27. The factual allegations in paragraph X.
28. The factual allegations in paragraph Y.
29. The factual allegations in paragraph Z.

30. The factual allegations in paragraph AA.

31. The factual allegations in paragraph BB.

THIRTY-SECOND THROUGH FORTY-FOURTH SPECIFICATIONS

The Respondent is charged with professional misconduct by reason of
WILLFULLY MAKING OR FILING A FALSE REPORT, in violation of New York
Education Law §6530(21), in that Petitioner charges:

32. The factual allegations in paragraph P.

33. The factual allegations in paragraph Q.

34. The factual allegations in paragraph R.

35. The factual allegations in paragraph S.

36. The factual allegations in paragraph T.

37. The factual allegations in paragraph U.

38. The factual allegations in paragraph V.

39. The factual allegations in paragraph W.

40. The factual allegations in paragraph X.

41. The factual allegations in paragraph Y.

42. The factual allegations in paragraph Z.

43. The factual allegations in paragraph AA.

44. The factual allegations in paragraph BB.

FORTY-FIFTH SPECIFICATION

The Respondent is charged with professional misconduct by reason of FAILING TO RESPOND WITHIN THIRTY DAYS TO WRITTEN COMMUNICATIONS FROM THE DEPARTMENT OF HEALTH AND TO MAKE AVAILABLE RELEVANT RECORDS WITH RESPECT TO AN INQUIRY AND COMPLAINT ABOUT THE RESPONDENT'S PROFESSIONAL MISCONDUCT, in violation of New York Education Law §6530(28), in that Petitioner charges:

45. The factual allegations in paragraph CC.

DATED:

September 17, 2003
Albany, New York

Peter D. Van Buren

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct