



# 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*

February 10, 2003

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Prompt Comprehensive Medical, P.C.  
C/O Eleanora Zharov, M.D.  
7133 Peri Lane  
Brooklyn, New York 11234

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical  
Conduct  
433 River Street, Suite 303  
Troy, New York 12180-2299

Prompt Comprehensive Medical, P.C.  
C/O Eleanora Zharov, M.D.  
63-118 Woodhaven Boulevard  
Rego Park, New York 11374

Richard Zahnleuter, Esq.  
NYS Department of Health  
Bureau of Professional Medical  
Conduct  
2512 Corning Tower  
Empire State Plaza  
Albany, New York 12237

T. Lawrence Tabak, Esq.  
Augustine, Kern, Schoppman, P.C.  
420 Lakeville Road  
Lake Success, New York 11042

**RE: In the Matter of Prompt Comprehensive Medical, P.C.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-36) 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 Certificate of Incorporation 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 Certificate of Incorporation 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 "Tyrone T. Butler". The signature is written in black ink and is positioned above the typed name.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:djh  
Enclosure

IN THE MATTER

OF

PROMPT COMPREHENSIVE MEDICAL, P.C.

DETERMINATION

AND

ORDER

PBMC NO. 03-36

A hearing was held on January 23, 2003, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Hearing and a Statement of Charges, both dated September 13, 2002, were served upon the Respondent, **Prompt Comprehensive Medical, P.C.** **Hrusikesh Parida, M.D.**, Chairperson, **Eleanor Kane, M.D.**, and **William McCafferty, Esq.**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Richard Zahnleuter, Esq.**, and **Robert Bogan, Esq.**, of Counsel. The Respondent appeared by its attorney, **T. Lawrence Tabek, Esq.**, of Augustine, Kern, Schoppman, 420 Lakeville Road, Lake Success, New York 11042.

Evidence was received and transcripts of these proceedings were made.

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

#### **STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a

violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

Pursuant to Section 1503(d) of the Business Corporation Law, a professional service corporation such as the Respondent is "subject to disciplinary proceedings and penalties, and its certificate of incorporation shall be subject to suspension, revocation or annulment for cause, in the same manner and to the same extent as is provided with respect to individuals and their licenses..." This statute also provides that professional service corporations authorized to practice medicine are subject to the prehearing and hearing procedures applicable to individual physicians in professional medical conduct proceedings.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i). Copies of the Commissioner's Order and Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix 1.

**WITNESSES**

For the Petitioner:

None

For the Respondent:

Eleanora Zharov, M.D.  
Oleg Gutnik, M.D.  
Regina Shed  
Mark Karpilovsky

## **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Prompt Comprehensive Medical, P.C., the Respondent, is a professional service corporation that was duly authorized to practice medicine in New York State pursuant to Article 15 of the Business Corporation Law by filing of its certificate of incorporation on October 25, 1999 (Petitioner's Ex. 4[a]).

2. On April 10, 2002, in the Supreme Court of the State of New York, County of Queens, Criminal Term, based on a plea of guilty authorized by Eleanora Zharov, M.D., the Respondent's president and sole shareholder, the Respondent was found guilty of Insurance Fraud in the Third Degree, a Class D felony, and was sentenced to a fine and a mandatory surcharge (Petitioner's Ex. 5, 6, 7 and 8).

## **VOTE OF THE HEARING COMMITTEE**

### **SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

## **HEARING COMMITTEE DETERMINATION**

It is undisputed that the Respondent was convicted of Insurance Fraud in the Third Degree, a Class D felony. The crime committed was the embellishment on an insurance report of a patient's injuries for the purpose of securing payments from the insurance company in excess of those merited by the patient's actual injuries. The Petitioner

recommended that the penalty for this conviction be revocation of the Respondent's certificate of incorporation and a \$10,000.00 civil penalty. The Petitioner noted that insurance fraud increases the price of insurance for everyone and contended that its proposed penalty was justified because of the deterrent effect it would have on others. The Respondent did not oppose revocation of its certificate of incorporation, but requested that no civil penalty be imposed.

The Respondent's certificate of incorporation will be revoked and a civil penalty of \$3,000.00 will be imposed. A civil penalty in this amount, combined with the revocation of the Respondent's certificate of incorporation, should serve as a sufficient deterrent for the type of misconduct present in this case.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent's certificate of incorporation is revoked.
2. A civil penalty of \$3000.00 is imposed on the Respondent. The civil penalty shall be paid no later than 60 days after the effective date of this Order.
3. Payment of this civil penalty shall be made to the Bureau of Accounts Management, New York State Department of Health, Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York 12237.
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 Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 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: Middletown, New York

February 5, 2003

Hrusikesh Parida

Hrusikesh Parida, M.D.

Chairperson

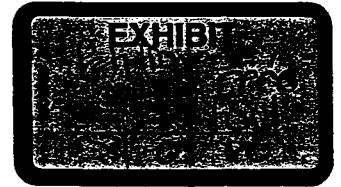
Eleanor Kane, M.D.

William McCafferty, Esq.



# APPENDIX 1

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



IN THE MATTER  
OF  
PROMPT COMPREHENSIVE MEDICAL, P.C.  
FR-01-12-6108-C

COMMISSIONER'S  
ORDER  
AND  
NOTICE OF  
HEARING

TO: PROMPT COMPREHENSIVE MEDICAL, P.C.  
C/O Eleonora Zharov, M.D.  
7133 Peri Lane  
Brooklyn, NY 11234

PROMPT COMPREHENSIVE MEDICAL, P.C.  
C/O Eleonora Zharov, M.D.  
63-118 Woodhaven Blvd.  
Rego Park, NY 11374

T. Lawrence Tabak, Esq.  
Augustine, Kern, Schoppman, P.C.  
420 Lakeville Road  
Lake Success, NY 11042

Gregory J. Naclerio, Esq.  
Ruskin Moscou Faltischek, P.C.  
East Tower 15<sup>th</sup> Floor  
190 EAB Plaza  
Uniondale, NY 11556-0190

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges, attached hereto and made a part hereof, has determined PROMPT COMPREHENSIVE MEDICAL, P.C., has been found guilty of committing acts constituting a felony under New York State law in the Supreme Court of the State of New York, County of Queens, Criminal Term.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately PROMPT COMPREHENSIVE MEDICAL, P.C., Respondent, whose certificate of incorporation was initially filed with the Department of State on October 25, 1999, shall not practice medicine in the State of New York or in any other jurisdiction where that practice of medicine is predicated on authorization in New York State to practice medicine. This order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 21<sup>st</sup> day of November, 2002 at 10:00 am in the forenoon at Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York and at such other adjourned dates, times, and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on its behalf, to issue or have subpoenas issued on its behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against it. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to Section 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.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction 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 CERTIFICATE  
OF INCORPORATION IN NEW YORK STATE BE  
REVOKED OR SUSPENDED, AND/OR THAT  
YOU MAY BE FINED OR SUBJECT TO OTHER  
SANCTIONS SET FORTH IN NEW YORK PUBLIC  
HEALTH LAW SECTION 230-a. YOU ARE  
URGED TO OBTAIN AN ATTORNEY FOR THIS  
MATTER.**

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

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IN THE MATTER  
OF  
PROMPT COMPREHENSIVE MEDICAL, P.C.  
FR-01-12-6108-C

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STATEMENT  
OF  
CHARGES

PROMPT COMPREHENSIVE MEDICAL, P.C., Respondent, is a professional service corporation that was duly authorized to practice medicine in the State of New York pursuant to Article 15 of the Business Corporation Law by filing of its certificate of incorporation on October 25, 1999.

**FACTUAL ALLEGATIONS**

- A. 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.
- B. From on or about October 25, 1999 through at least April 10, 2002, Eleonora Zharov, M.D. was the President and sole shareholder of Respondent.
- C. On or about April 10, 2002, Eleonora Zharov, M.D., directed that a plea of guilty be entered on behalf of Respondent to the charges described in Paragraph D below.
- D. On or about April 10, 2002, in the Supreme Court of the State of New York, County of Queens, Criminal Term, based on the plea of guilty described in Paragraph C above, Respondent was found guilty of Insurance Fraud in the Third Degree, a Class D felony, and was sentenced to a fine and a mandatory surcharge.

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(i) by having been found guilty of committing an act constituting a crime under New York State law, in that Petitioner charges:

1. The facts in paragraph A, B, C, and/or D.

DATED: *September 13*, 2002  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct