



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
Commissioner

Wendy E. Saunders  
Chief of Staff

September 10, 2007

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

M. Joseph Vitoulis, D.O.  
1030 Franklin Avenue, Apt. 3  
Valley Stream, New York 11580

Ralph A. Erbaio, Jr., Esq.  
Kern, Augustine, Conroy, et al  
420 Lakeville Road  
Lake Success, New York 11042

Paul Stein, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street - 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of M. Joseph Vitoulis, D.O.**

Dear Parties:

Enclosed please find the Determination and Order (No. 07-196) 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), 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 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.

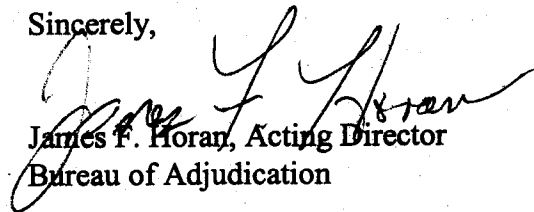
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., 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,



James F. Horan, Acting Director  
Bureau of Adjudication

JFH:djh

Enclosure

COPY

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

BPMC NO. 07-196

**IN THE MATTER  
OF  
M. JOSEPH VITOU LIS, D.O.**

**DETERMINATION**

**AND**

**ORDER**

**FRANK E. IAQUINTA, M.D.**, Chairperson, **JAMES R. DICKSON, M.D.** and **JACQUELINE H. GROGAN**, 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 Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 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 **THOMAS G. CONWAY**, General Counsel, **PAUL STEIN, ESQ.**, Associate Counsel, of Counsel. The Respondent appeared by **KERN, AUGUSTINE, CONROY & SCHOPPMANN, P.C.**, **RALPH A. ERBAIO, Jr., 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 submits this Determination and Order.

**STATEMENT OF CHARGES**

The accompanying Statement of Charges alleged fourteen (14) specifications of professional misconduct for fraudulent practice, ordering unwarranted tests and treatment and

failure to maintain records. The charges are more specifically set forth in the Statement of Charges dated April 4, 2007, a copy of which is attached hereto as Appendix I and made a part of this Determination and Order.

### **WITNESSES**

For the Petitioner:

Brian T. Moynihan, D.O.

Wolfgang G. Gillar, D.O.

For the Respondent:

M. Joseph Vitoulis, D.O.

### **FINDINGS OF FACT**

1. M. Joseph Vitoulis, D.O., the Respondent, was authorized to practice medicine in New York State on or about January 16, 1997, by the issuance of license number 205528 by the New York State Education Department. (P's Ex. 2)
2. "OMT" is the standard abbreviation for osteopathic manipulative treatment or osteopathic manipulative therapy. (P's Ex. 13 at 381-82, T. 29, 220)
3. It is required that osteopathic manipulative therapy be documented in a patient's treatment notes. (T. 30-31)
4. The definition of "osteopathic manipulative therapy" is the art or skill of the use of the hands to diagnose and to treat bodily changes in order to then apply the appropriate technique to enhance the patient's healing and maximize function. (T. 219)
5. The 1999 CPT defines osteopathic manipulative treatment as follows: "Osteopathic manipulative treatment is a form of manual treatment applied by an osteopathic

physician to eliminate or alleviate somatic dysfunction and related disorders. (P's Ex. 13 at 318, T. 219-20)

6. An osteopathic physician uses OMT as a diagnostic modality in addition to just a mechanical treatment. (T. 250)
7. Osteopathic manipulative therapy is taught at colleges of osteopathic medicine in the United States. (T. 227)
8. It is not within the training and qualifications of a chiropractor to perform osteopathic manipulative therapy. The training that a chiropractor receives is not the same training received by an osteopathic physician in osteopathic manipulative therapy. (T. 229-30)
9. Neither physical therapists nor chiropractors can practice OMT. It is not in the scope of their practice. (T. 235)
10. A chiropractor utilizes so called CMT manipulative therapy, RMT and uses the techniques within the purview of the professional teaching that he has received in the chiropractic school. Chiropractors may take some techniques that are originally osteopathic, but they are not in the same approach to diagnosis and treatment. (T. 230)
11. The American Medical Association publishes the CPT codes. The CPT is authoritative for the billing of physician-patient encounters or other encounters that deliver any type of treatment directed towards the patient. (T. 237-338)
12. In 1999, Respondent was aware of the 1999 edition of the CPT and had a copy in his office. (P's Ex. 13, T. 314)
13. The CPT codes for OMT have not changed since 1999. (T. 237)
14. The definition of OMT has not changed for the CPT codes since 1999. (T. 237)

15. Only an osteopathic physician can bill for the OMT codes. (T. 246-47)
16. The coding and billing that took place in Respondent's office was under his control. (P's Ex. 11, 3, T. 394, 292)
17. In the five cases presented to the Hearing Committee (Patients A through E), chiropractors performed many manipulations that were billed as OMT. (P's Ex. 6, 7, 8, 9, and 10 passim, T. 310)
18. The CPT billing codes for chiropractic manipulative therapy are different from those for osteopathic manipulative therapy. (T. 35)
19. In 1999, Respondent was unable to apply the CPT codes for chiropractic manipulative treatment to the cases at issue because the "No-fault system" does not allow chiropractors to use chiropractic codes to bill them for services. Respondent testified that No-fault only pays chiropractors a global fee for any services they provide under an exam code of 99213. He further stated that, "You can't bill for multiple services by a chiropractor under No-fault in . . . one visit." (T. 314-15)
20. Respondent stated that he used codes other than a chiropractic codes, so that he would receive reimbursement from No-fault. (T. 322)
21. According to Dr. Moynihan, Petitioner's expert, when you bill for chiropractic manipulations, you cannot bill for other physical therapy measures on the same day. (T. 153)
22. Respondent admitted that it is not often that you see any description in his office records' daily notes of what was actually done, nor what the patient's progress was. (T. 388-89)

23. Respondent admitted that from his records alone, it would not be possible to determine which services were performed by the chiropractor and which services were performed by a physical therapist. (P's Ex. 6 at 178), T. 306-07

**Patient A**

24. On approximately fifty-one occasions between on or about February 24, 1999 and on or about July 20, 1999, Patient A, a 24 year old male, was seen in Respondent's practice at Lyn N Medical P.C., 90 Hempstead Avenue, Lynbrook, New York for his complaints of headache, neck pain, mid and lower back pain and bilateral shoulder pain following a motor vehicle accident on February 18, 1999. (P's Ex. 3, 5, 16, 6, T. 21-22)
25. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient A performed on various dates, including 5/3/99, 5/5/99, 5/7/99, 5/10/99, 5/14/99, 5/18/99, 5/20/99, 5/24/99, 6/2/99, 6/7/99, 6/9/99, 6/11/99, 6/14/99, 6/15/99, 6/16/99, 6/21/99, 6/24/99, 6/28/99, 7/1/99, 7/7/99, 7/12/99, and 7/15/99, that was not performed by an osteopathic physician or was not performed at all. (P's Ex. 3, 5, 16, 6 at 135-38, 140-43, 146-48, 169, 111-20, 177-80, 182-85, 188-96, and 200, T. 26-35, 48)
26. Respondent ordered excessive tests for Patient A, including magnetic resonance imaging of the cervical spine, various nerve conduction studies of the upper extremities, and multiple diagnostic ultrasound studies. (P's Ex. 3, 5, 16, 6, T. 36-43, 96)
27. There is no significant documentation of cervical radicular pain, weakness or paresthesia which would affect the upper extremities which would necessarily make an MRI and

EMG's of the upper extremities a reasonable diagnostic test under these circumstances.

(P's Ex. 3, 5, 16, 6 at 320, T. 38-39)

28. All of the multiple diagnostic ultrasounds were excessive. None of these tests have any bearing whatsoever on the patient's treatment, outcome, or course. (P's Ex. 3, 5, 16, 6 at 313-318), T. 38-41)
29. Respondent provided treatment to Patient A that was not medically indicated. (P's Ex. 3, 5, 16, 6 passim, T. 43-50)
30. Treatments of Patient A on fifty-one occasions would seem excessive. It's simply the number of treatments. It's the duration of therapy without an obvious improvement. After fifty-one visits, all of the modalities are not working ostensibly. (P's Ex. 3, 5, 16, 6 passim, T. 48-50)
31. Respondent failed to keep an adequate record for Patient A. (P's Ex. 3, 5, 16, 6 passim, T. 50-52)
32. Osteopathic manipulative therapy was not noted in Patient A's treatment notes for 5/3/99, 5/5/99, 5/7/99, 5/10/99, 5/14/99, 5/18/99, 5/20/99, 5/24/99, 6/2/99, 6/7/99, 6/9/99, 6/11/99, 6/14/99, 6/15/99, 6/16/99, 6/21/99, 6/24/99, and 7/12/99. (P's Ex. 3, 5, 16, 6 at 177-80, 182-85, 188-96, and 200, T. 28-30)

### **Patient B**

33. On approximately forty-eight occasions between on or about April 14, 1999 and on or about July 28, 1999, Patient B, a 37 year old male, was seen in Respondent's practice at Lyn N Medical P.C., 46 Fulton Avenue, Hempstead, New York for his complaints of low



back pain, left knee pain, chin pain, and neck pain following a motor vehicle accident on April 12, 1999. (P's Ex. 3, 5, 16, 7, T. 99, 110)

34. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient B performed on various dates, including 4/24/99, 4/26/99, 4/27/99, 4/28/99, 5/5/99, 5/8/99, 5/11/99, 5/12/99, 5/14/99, 5/15/99, 5/18/99, 5/19/99, 5/20/99, 5/25/99, 5/28/99, 6/1/99, 6/2/99, 6/3/99, 6/7/99, 6/14/99, 6/15/99, 6/17/99, 6/21/99, 6/22/99, 6/25/99, 6/28/99, 6/30/99, 7/1/99, 7/6/99, 7/7/99, 7/13/99, 7/14/99, 7/19/99, 7/21/99, 7/26/99, and 7/28/99, that was not performed by an osteopathic physician or was not performed at all. (P's Ex. 3, 5, 16, 7 at 119-23, 158-63, 165-81, 210-11, 215, 217-30, 232-37, and 62-66, T. 100-108)
35. Respondent ordered excessive tests for Patient B, including cervical magnetic resonance imaging, electromyography and nerve conduction velocity studies of upper extremities, and diagnostic ultrasound of six separate areas. (P's Ex. 3, 5, 16, 7 passim, T. 108-10)
36. There is trouble justifying the MRI and the NCV of Patient B of the cervical spine. There is no documentation in the chart to justify them. (P's Ex. 3, 5, 16, 7 at 79 and 71, T. 108-110)
37. Respondent provided treatment to Patient B that was not medically indicated. (P's Ex. 3, 5, 16, 7 passim, T. 110-11, 126-27)
38. Forty-eight visits for Patient B between April 14<sup>th</sup> and July 28<sup>th</sup> are excessive. A patient who requires that many visits and still has not shown significant improvement indicates the need for an early consult with a board-certified pain management specialist, a board-

certified neurologist or orthopedic surgeon, if the patient is not responding to physical therapy. (P's Ex. 3, 5, 16, 7 passim, T. 110-11)

39. Respondent failed to keep an adequate record for Patient B. (P's Ex. 3, 5, 16, 7 passim, T. 111-12)
40. Osteopathic manipulative therapy was not noted in Patient B's treatment notes for 4/27/99, 4/28/99, 5/5/99, 5/8/99, 5/11/99, 5/12/99, 5/14/99, 5/15/99, 5/18/99, 5/19/99, 5/20/99, 5/25/99, 5/28/99, 6/1/99, 6/2/99, 6/3/99, 6/7/99, 6/14/99, 6/15/99, 6/17/99, 6/21/99, 6/22/99, 6/25/99, 7/13/99, 7/14/99, 7/19/99, 7/21/99, 7/26/99, and 7/28/99. (P's Ex. 3, 5, 15, 7 at 210-11, 215, 217-30, 232-37, and 62-66, T. 103-107)

### **Patient C**

41. On over thirty-six occasions between on or about May 5, 1999 and on or about July 15, 1999, Patient C, a 34 year old female, was seen in Respondent's practice at Lyn N Medical P.C., 46 Fulton Avenue, Hempstead, New York for her complaints of low back pain, neck pain, and abdominal pain following a motor vehicle accident on May 3, 1999. (P's Ex. 3, 5, 15, 8, T. 129-30, 140)
42. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient C performed on various dates, including 5/8/99, 5/10/99, 5/13/99, 5/14/99, 5/17/99, 5/20/99, 5/21/99, 5/22/99, 5/24/99, 5/27/99, 5/28/99, 5/29/99, 6/2/99, 6/3/99, 6/7/99, 6/9/99, 6/10/99, 6/15/99, 6/16/99, 6/18/99, and 6/22/99, that was not performed by an osteopathic physician or was not performed at all. (P's Ex. 5, 15, 8 at 204-05, 207-09, 211-15, 126, 218-19, 221-27, 167-73, 175-86, and 188-89, T. 130-34)

43. Respondent ordered excessive tests for Patient C, including multiple nerve studies. (P's Ex. 5, 16, 8 passim, T. 134-39, 155-58)
44. There is not sufficient documentation to justify EMG's of the lower extremities. (P's Ex. 5, 15, 8 at 132 -34, T. 134-38)
45. Respondent provided treatment to Patient C that was not medically indicated. (P's Ex. 5, 16, 8 passim, T. 139-43)
46. Thirty-six visits in seventy days is excessive. (P's Ex. 5, 15, 8 passim, T. 140)
47. Respondent failed to keep an adequate record for Patient C. (P's Ex. 5, 15, 8 passim, T. 143-44)
48. Osteopathic manipulative therapy was not noted in Patient C's treatment notes for 5/8/99, 5/10/99, 5/13/99, 5/14/99, 5/17/99, 5/20/99, 5/21/99, 5/22/99, 5/24/99, 5/27/99, 5/28/99, 5/29/99, 6/2/99, 6/3/99, 6/7/99, 6/9/99, 6/10/99, 6/15/99, 6/16/99, 6/18/99, and 6/22/99. (P's Ex. 5, 15, 8 at 167-73, 175-86, 188-89, T. 132-34)

**Patient D**

49. On approximately thirty-four occasions between on or about March 10, 1999 and on or about December 29, 1999, Patient D, a 68 year old female, was seen in Respondent's practice at Lyn N Medical P.C., 90 Hempstead Avenue, Lynbrook, New York for her complaints of headache, dizziness, neck pain, and bilateral shoulder pain following a motor vehicle accident on March 7, 1999. (P's Ex. 3, 5, 16, 9, T. 158-159, 173)
50. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient D performed on various dates, including 6/14/99, 6/18/99, 6/25/99,

- 6/30/99, 7/9/99, 7/26/99, 8/9/99, 8/18/99, 8/30/99, and 9/13/99, that was not performed by an osteopathic physician or was not performed at all. (P's Ex. 5, 16, 9 at 60-66, 328, 325, 318, 317, and 320, T. 161-70)
51. Respondent provided treatment to Patient D that was not medically indicated. in most cases. (P's Ex. 5, 15, 9 passim, T. 172-75)
  52. If Patient D was not getting better after three or four months, the treatment would be excessive, and this treatment went on for nine months. (P's Ex. 5, 15, 9 passim, T. 174-75)
  53. Respondent failed to keep an adequate record for Patient D. (P's Ex. 5, 15, 9 passim, T. 175-79)
  54. Osteopathic manipulative therapy was not noted in Patient D's treatment notes for 6/14/99, 6/30/99, 8/30/99, and 9/13/99. (P's Ex. 5, 15, 9 at 328, 325, 318, and 317, T.167-70 )

#### **Patient E**

55. On approximately thirteen occasions between on or about June 23, 1999 and on or about August 11, 1999, Patient E, a 27 year old male, was seen in Respondent's practice at Lyn N Medical P.C., 90 Hempstead Avenue, Lynbrook, New York for his complaints of low back pain and left knee pain following a motor vehicle accident on June 19, 1999. (P's Ex. 3, 5, 16, 10, T. 186-87)
56. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient E performed on various dates, including, 6/24/99, 6/30/99, 7/1/99, 7/2/99, 7/7/99, 7/23/99, 7/27/99, 7/28/99, and 8/3/99 that was not performed by an

- osteopathic physician or was not performed at all. (P's Ex. 5, 16, 10 at 223, 225, 227-29, 233, 230-31, 232, and 120-22, T. 187-92)
57. Respondent failed to keep an adequate record for Patient E. (P's Ex. 5, 16, 10 passim, T. 192-93)
58. Respondent's record keeping for Patient E is not adequate for July 23, 27 and 28 because there is treatment that has been billed for and there's no reflection of said treatment in the treatment note. (P's Ex. 5, 16, 10 at 233, 230, and 231, T. 192-93)
59. Osteopathic manipulative therapy was not noted in Patient E's treatment notes for 7/23/99, 7/27/99, and 7/28/99. (P's Ex. 5, 16, 10 at 120-22, T. 189-92)

### **CONCLUSIONS OF LAW**

### **DISCUSSION**

Respondent is charged with fourteen (14) specifications alleging professional misconduct within the meaning of Education Law § 6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but do not provide definitions of the various types of misconduct. During the course of its 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.

The following definitions were utilized by the Hearing Committee during its deliberations:

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 all fourteen (14) specifications of professional misconduct should be sustained. The rationale for the Hearing Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of deliberations, the Hearing Committee made a determination as to credibility of the witnesses presented. The Department offered the testimony of Brian T. Moynihan, D.O. who is board certified in family practice and is also the senior physician of a four-physician family practice group in Wantagh, New York. The Hearing Committee finds that Dr. Moynihan is experienced in osteopathy and that he performed a careful and thorough review of the records. The Hearing Committee notes that Dr. Moynihan provided up front answers on cross examination. The Hearing Committee finds him to be a credible witness.

The Department also offered the testimony of Wolfgang G. Gilliar, D.O. professor and chair of the Department of Osteopathic Manipulative Medicine at the New York College of Osteopathic Medicine. The Hearing Committee finds Dr. Gilliar to be a knowledgeable witness in an academic sense. His testimony provided helpful insights on the CPT. As a result, the Hearing Committee finds him to be a credible witness.

Respondent took the stand on his own behalf. The Hearing Committee found his testimony defensive and fraught with obfuscation. The Respondent never explained himself and the Committee felt like he was holding back information. He never fully justified his use of the

ultrasounds that Dr. Moynihan found unwarranted.(T. 347-351). Overall, the Hearing Committee gave Respondent's testimony little weight.

**PATIENT A**

Factual Allegations A, A.1, A.2 , A.3 and A.4 : SUSTAINED

**PATIENT B**

Factual Allegations B and B.1, B.2, B.3 and B.4: SUSTAINED

**PATIENT C**

Factual Allegations C and C.1, C.2, C.3 and C.4: SUSTAINED

**PATIENT D**

Factual Allegations D and D.1, D.3 and D.4 : SUSTAINED

Factual Allegations D.2 : WITHDRAWN

**PATIENT E**

Factual Allegations E and E.1 and E.2: SUSTAINED

**FRAUDULENT PRACTICE**

Respondent admits that he used codes other than chiropractic codes so that he would receive reimbursement under no fault insurance. He also admitted that his office records for Patients A through E often lacked information on the patient's treatment and progress. He further acknowledged that from his records alone it would be difficult to determine which services were performed by the chiropractor or the physical therapist.

The Hearing Committee concurs with Dr. Moynihan that in all five cases, there are too

many omissions in the records where OMT was billed.(T. 145) They reject Respondent's testimony that he performed all tests and procedures because there is no contemporaneous justification in the medical record. They further note that Respondent's reports appear "canned" and do not consider the individual studies for each patient.

The Hearing Committee finds that the letters Respondent relied on to justify his billing practices ( Resp's Exs. C, D, E and F) do not provide the validation he claimed. These letters provide no option to bill out osteopathic procedures that were performed by a chiropractor. Respondent offered no reasonable explanation for his billing practices and at times appeared to conceal information when answering the Hearing Committee's questions. The Hearing Committee concludes that Respondent knowingly and intentionally billed everything under OMT so that he could receive a higher reimbursement rate from the insurance company. As a result, the First through Fifth Specifications are sustained for fraudulent practice.

### **UNWARRANTED TESTS/TREATMENT**

For Patients A, B and C, Respondent ordered excessive diagnostic tests that were not justified by the documentation in the charts. For Patient A, the lower extremities tests were appropriate, but not the upper. For Patient B, the MRI and EMG of the lower extremities were appropriate but there is no justification for the cervical MRI or the cervical EMGs. For Patient C, the EMGs of the lower extremities were not warranted given the patient's persistent symptoms. The Hearing Committee concurs with Dr. Moynihan that all ultrasounds were unwarranted because they have no bearings on the patient's diagnosis, treatment or outcome. (T. 39-41)

In four out of five cases the patient's had an extensive number of visits in a specified and often limited period of time with no indication of obvious improvement. The Hearing Committee again concurs with Dr. Moynihan that if the patient is not improving over an



extended time, than the office practitioner should seek consultation with other specialties such as pain management, orthopedic surgeons or neurologists. (T. 48, 140)

As a result, the Hearing Committee sustains Specifications Six through Nine.

### **FAILURE TO MAINTAIN RECORDS**

The Hearing Committee concluded that the Respondent's record keeping fell below the accepted standard of care because the records repeatedly lack information on treatment provided and progress of all five patients. Accordingly, the Hearing Committee sustains the Tenth through Fourteenth Specifications.

### **DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined by a unanimous vote that Respondent's license to practice medicine in New York State is suspended for a period of three years, the last two and one-half years are stayed and Respondent will be placed on probation for records and billing monitoring by OPMC. The Hearing Committee further assess a civil penalty of \$10,000 for each instance of fraudulent conduct for an overall civil penalty of \$50,000. 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.

The Hearing Committee concludes that the pattern of incompleteness of the patient records warrant that future records be monitored by OPMC. Respondent's billing practices will also be monitored for fraudulent insurance claims. The Hearing Committee imposes the \$50,000 civil penalty for the five acts of fraud particularly in light of Respondent's repeated

testimony about the importance of getting maximum reimbursement from the insurance company.

The Hearing Committee did not revoke Respondent's license because there was no evidence of individual patient harm. They believe that the six month out right suspension and the \$50,000 fine serve as an adequate deterrent against future fraudulent practices. Under the totality of the circumstances, the Hearing Committee concludes that this penalty is commensurate with the level and nature of Respondent's misconduct.

### **ORDER**


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

1. The First through Fourteenth 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 **SUSPENDED** for a period of **THREE (3) YEARS**, said suspension to be **STAYED for the remaining TWO and ONE-HALF years** ; and
3. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order; and
4. A fine in the amount of **FIFTY THOUSAND DOLLARS (\$50,000)** be and hereby is imposed against Respondent. Payment of the aforesaid 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 within thirty (30) days of the effective date of this Order.

5. That any civil penalty not paid by the date prescribed herein shall be subject to all provisions of laws 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; and non-renewal of permits or licenses (Tax Law, section 171(27); state Finance Law, section 18; CPLR, section 5001; Executive Law, section 32)
6. 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: New York, New York**  
Sept. 7, 2007

  
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**FRANK E. IAQUINTA, M.D.**  
**(Chairperson)**  
**JAMES R. DICKSON, M.D.**  
**JACQUELINE H. GROGAN**

To: Paul Stein, Esq.  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street  
New York, New York 10007

Ralph A. Erbaio, Jr., Esq.  
Kern, Augustine, Conroy & Schoppmann, P.C.  
420 Lakeville Road  
Lake Success, N.Y. 11042

M. Joseph Vitoulis, D.O.  
1030 Franklin Avenue, Apt. 3  
Valley Stream, N. Y. 11580

# **APPENDIX I**

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

IN THE MATTER  
OF  
M. JOSEPH VITOULIS, D.O.

NOTICE  
OF  
HEARING

TO: M. JOSEPH VITOULIS, D.O.  
1030 Franklin Avenue, Apt. 3  
Valley Stream, NY 11580

*Relitigated 1 In Evad*  
7-89-07

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 April 25, 2007, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4<sup>th</sup> Floor New York, New York, 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. 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.

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. SEAN D. O'BRIEN, 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.

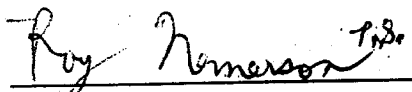
Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to 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  
April 4, 2007

A handwritten signature in cursive script that reads "Roy Nemerson" with a small "T.S." or similar mark at the end. The signature is written over a horizontal line.

ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be directed to: Paul Stein  
Associate Counsel  
Bureau of Professional Medical Conduct  
New York State Department of Health  
90 Church Street, 4<sup>th</sup> Floor  
New York, NY 10007  
(212) 417-4450



IN THE MATTER  
OF  
M. JOSEPH VITOULIS, D.O.

STATEMENT  
OF  
CHARGES

M. Joseph Vitoulis, D.O., the Respondent, was authorized to practice medicine in New York State on or about January 16, 1997, by the issuance of license number 205528 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On approximately fifty-one occasions between on or about February 24, 1999 and on or about July 20, 1999, Patient A, a 24 year old male, was seen in Respondent's practice at Lyn N Medical P.C., 90 Hempstead Avenue, Lynbrook, New York for his complaints of headache, neck pain, mid and lower back pain and bilateral shoulder pain following a motor vehicle accident on February 18, 1999.
1. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient A performed on various dates, including 5/3/99, 5/5/99, 5/7/99, 5/10/99, 5/14/99, 5/18/99, 5/20/99, 5/24/99, 6/2/99, 6/7/99, 6/9/99, 6/11/99, 6/14/99, 6/15/99, 6/16/99, 6/21/99, 6/24/99, 6/28/99, 7/1/99, 7/7/99, 7/12/99, 7/15/99, and 7/20/99, that was not performed by an osteopathic physician or was not performed at all.
  2. Respondent ordered excessive tests for Patient A, including magnetic resonance imaging of the cervical spine, various nerve conduction studies of the upper extremities, and multiple diagnostic ultrasound

studies.

3. Respondent provided treatment to Patient A that was not medically indicated.
4. Respondent failed to keep an adequate record for Patient A.

B. On approximately forty-eight occasions between on or about April 14, 1999 and on or about July 28, 1999, Patient B, a 37 year old male, was seen in Respondent's practice at Lyn N Medical P.C., 46 Fulton Avenue, Hempstead, New York for his complaints of low back pain, left knee pain, chin pain, and neck pain following a motor vehicle accident on April 12, 1999.

1. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient B performed on various dates, including 4/3/99, 4/24/99, 4/26/99, 4/27/99, 4/28/99, 5/5/99, 5/8/99, 5/11/99, 5/12/99, 5/14/99, 5/15/99, 5/18/99, 5/19/99, 5/20/99, 5/25/99, 5/28/99, 6/1/99, 6/2/99, 6/3/99, 6/7/99, 6/14/99, 6/15/99, *Oct* 6/17/99, 6/21/99, 6/22/99, 6/25/99, 6/28/99, 6/30/99, 7/1/99, 7/6/99, 7/7/99, 7/13/99, 7/14/99, 7/19/99, 7/21/99, 7/26/99, and 7/28/99, that was not performed by an osteopathic physician or was not performed at all.
2. Respondent ordered excessive tests for Patient B, including cervical magnetic resonance imaging, electromyography and nerve conduction velocity studies of upper extremities, and diagnostic ultrasound of six separate areas.
3. Respondent provided treatment to Patient B that was not medically indicated.
4. Respondent failed to keep an adequate record for Patient B.

~~3/26/99, 3/29/99, 4/2/99, 4/7/99, 4/9/99, 4/14/99, 4/16/99, 4/19/99,  
4/26/99, 5/3/99, 5/11/99, 5/14/99, 5/21/99, 5/24/99, 6/1/99, 6/7/99,  
6/14/99, 6/18/99, 6/25/99, 6/30/99, 7/9/99, 7/14/99, 7/26/99, 8/11/99,  
8/18/99, 8/30/99, 9/13/99, 9/27/99, and 10/1/99,~~ that was not  
performed by an osteopathic physician or was not performed at all.

*Oct  
4/25/01*

*Withdrawn  
4/25/01  
F.*

2. Respondent ordered excessive tests for Patient D, including various nerve conduction studies.
3. Respondent provided treatment to Patient D that was not medically indicated.
4. Respondent failed to keep an adequate record for Patient D.

E. On approximately thirteen occasions between on or about June 23, 1999 and on or about August 11, 1999, Patient E, a 27 year old male, was seen in Respondent's practice at Lyn N Medical P.C., 90 Hempstead Avenue, Lynbrook, New York for his complaints of low back pain and left knee pain following a motor vehicle accident on June 19, 1999.

1. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient E performed on various dates, including, <sup>24</sup>6/23/99, 6/30/99, 7/1/99, 7/2/99, 7/7/99, 7/23/99, 7/27/99, and 7/28/99, that was not performed by an osteopathic physician or was not performed at all.
2. Respondent failed to keep an adequate record for Patient E.

*Oct  
4/25/01*

- C. On over thirty-six occasions between on or about May 5, 1999 and on or about July 15, 1999, Patient C, a 34 year old female, was seen in Respondent's practice at Lyn N Medical P.C., 46 Fulton Avenue, Hempstead, New York for her complaints of low back pain, neck pain, and abdominal pain following a motor vehicle accident on May 3, 1999.
1. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient C performed on various dates, including 5/8/99, 5/10/99, 5/13/99, 5/14/99, 5/17/99, 5/20/99, 5/21/99, 5/22/99, 5/24/99, 5/27/99, 5/28/99, 5/29/99, 6/2/99, 6/3/99, 6/7/99, 6/9/99, 6/10/99, 6/15/99, 6/16/99, 6/18/99, and 6/22/99, that was not performed by an osteopathic physician or was not performed at all.
  2. Respondent ordered excessive tests for Patient C, including multiple nerve studies.
  3. Respondent provided treatment to Patient C that was not medically indicated.
  4. Respondent failed to keep an adequate record for Patient C.

- D. On approximately thirty-four occasions between on or about March 10, 1999 and on or about December 29, 1999, Patient D, a 68 year old female, was seen in Respondent's practice at Lyn N Medical P.C., 90 Hempstead Avenue, Lynbrook, New York for her complaints of headache, dizziness, neck pain, and bilateral shoulder pain following a motor vehicle accident on March 7, 1999.

1. Respondent, intentionally and with intent to deceive, billed for osteopathic manipulation therapy for Patient D performed on various dates, including ~~3/13/99, 3/17/99, 3/19/99, 3/22/99, 3/23/99, 3/24/99,~~ *3/25/99*

## **SPECIFICATION OF CHARGES**

### **FIRST THROUGH FIFTH SPECIFICATIONS**

#### **FRAUDULENT PRACTICE**

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

1. Paragraphs A and A1.
2. Paragraphs B and B1.
3. Paragraphs C and C1.
4. Paragraphs D and D1.
5. Paragraphs E and E1.

### **SIXTH THROUGH NINTH SPECIFICATIONS**

#### **UNWARRANTED TESTS/TREATMENT**

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


6. Paragraphs A and A2-3.
7. Paragraphs B and B2-3.
8. Paragraphs C and C2-3.
9. Paragraphs D and D2-3.

**TENTH THROUGH FOURTEENTH SPECIFICATIONS**  
**FAILURE TO MAINTAIN RECORDS**

Respondent is charged with committing professional misconduct as defined by 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:

10. Paragraphs A and A4.
11. Paragraphs B and B4.
12. Paragraphs C and C4.
13. Paragraphs D and D4.
14. Paragraphs E and E2.

DATE:           New York, New York  
                  April 4, 2007

  
\_\_\_\_\_  
**ROY NEMERSON**  
Deputy Counsel  
Bureau of Professional Medical Conduct

# **APPENDIX II**

## **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. This review shall also include Respondent's billing records. 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.**