

IN THE MATTER

OF

ORDER

**EMPIRE STATE MEDICAL
DIAGNOSTICS, P.C.**

BPMC No. #07-232

Upon the proposed Consent Agreement and Order of EMPIRE STATE MEDICAL DIAGNOSTICS, P.C., which proposed agreement is made a part hereof, it is AGREED TO and

ORDERED, that the Respondent's certificate of incorporation, which was filed by the Department of State on September 12, 2003, is, hereby, annulled such that the annulment shall be effective immediately and shall be self-executing, and this Order shall be deemed automatically to be the final and operative document annulling the Respondent's certificate of incorporation.

ORDERED, that the proposed agreement and the provisions thereof, including the Appendix to this Order, are, hereby, adopted; it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to the Respondent at the address set forth in this agreement or to the Respondent's attorney by certified mail or upon transmission via facsimile to the Respondent in care of Nils Anderson, M.D., or the Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 10-17-07



KENDRICK A. SEARS, M.D.
Chair
State Board for Professional
Medical Conduct

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

IN THE MATTER	CONSENT
OF	AGREEMENT
EMPIRE STATE MEDICAL DIAGNOSTICS, P.C.	AND ORDER

EMPIRE STATE MEDICAL DIAGNOSTICS, P.C., the Respondent, says:

The Respondent is a professional service corporation duly authorized to practice medicine in New York State by the filing of a certificate of incorporation with the Department of State on September 12, 2003, 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 §1503(d) of the Business Corporation Law.

The Respondent is applying to the State Board for Professional Medical Conduct for a Consent Agreement and Order imposing a penalty, pursuant to §230-a of the Public Health Law and §1503(d) of the Business Corporation Law, of annulment of its certificate of incorporation such that the annulment shall be effective immediately and shall be self-executing, and this Consent Agreement and Order shall be deemed automatically to be the final and operative document annulling the Respondent's certificate of incorporation, and the Respondent requests that the Board issue this Consent Agreement and Order.

The Respondent acknowledges that it has been charged with professional misconduct as set forth in the Statement of Charges, annexed, hereto, made a part hereof, and marked as Exhibit "A."

Subject to the terms, conditions and limitations of this Consent Agreement and Order, the Respondent does not contest the allegations and specification of the Statement of Charges in full satisfaction of all such allegations and specifications.

The Respondent agrees that, in the event the State Board for Professional Medical Conduct agrees with its proposal, this Consent Agreement and Order shall be issued annulling its certificate of incorporation. The Respondent agrees that such annulment shall be effective immediately and shall be self-executing, and this Consent Agreement and Order shall be deemed automatically to be the final and operative document annulling the Respondent's certificate of incorporation. The Respondent agrees, notwithstanding the above, nothing herein shall be construed to absolve the Respondent in any way from paying the Departments of State, Education, and Taxation and Finance any outstanding taxes, fines and penalties. This Consent Agreement and Order, and all Exhibits, shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

In addition, the Respondent agrees that this Consent Agreement and Order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of this Consent Agreement and Order to it in care of Nils Anderson, M.D., in care of its attorney, Michael Brohman, Kamensky Rubinstein Hochman & Delott, 7250 N. Cicero, Suite 200, Lincolnwood, IL 60712, or upon transmission via facsimile to it or its attorney, whichever is earliest.

The Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct in its administration and enforcement of this Consent Agreement and Order by written responses, attending meetings or providing documentation concerning verification of its compliance with the terms of this Consent Agreement and Order.

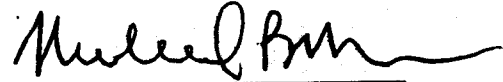
The Respondent stipulates that its failure to comply with any conditions of this Consent Agreement and Order shall constitute misconduct as defined by §6530(29) of the Education Law. The Respondent agrees that in the event it is charged with professional misconduct in the future for violation or non-compliance with any provisions of this Consent Agreement and Order, or in the event that it is charged with professional misconduct in the future or any other type of misconduct, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

The Respondent acknowledges that, in the event that this proposed agreement is not granted by the State Board for Professional Medical Conduct, nothing contained herein shall be binding upon it or construed to be an admission of any act of misconduct alleged or charged against it, such proposed agreement shall not be used against it in any way, and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; such denial by the State Board for Professional Medical Conduct shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by a Committee on Professional Medical Conduct pursuant to the provisions of the Public Health Law.

The Respondent stipulates that the proposed sanction and Consent Agreement and Order are authorized by §§230 and 230-a of the Public Health Law, and that the Board and OPMC have the requisite powers to carry out all included terms. The Respondent is making this application of its own free will and accord and not under duress, compulsion or restraint of any kind of manner. In consideration of the value to it of the acceptance by the Board of this application allowing it to resolve this matter without the various risks and burdens of a hearing on the merits, the Respondent knowingly waives any right it may have to contest, whether administratively or judicially, the Consent Agreement and Order issued hereunder for which it

AGREED TO:

Date: October 2, 2007



MICHAEL BROHMAN
Attorney for Respondent
Kamensky Rubinstein Hochman & Delott
7250 N. Cicero, Suite 200
Lincolnwood, IL 60712

Date: October 10, 2007



RICHARD J. ZAHNLEUTER
Associate Counsel
Bureau of Professional Medical Conduct

Date: 10/16, 2007



KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

**IN THE MATTER
OF
EMPIRE STATE MEDICAL
DIAGNOSTICS, P.C.**

**STATEMENT
OF
CHARGES**

EMPIRE STATE MEDICAL DIAGNOSTICS, P.C., the Respondent, is a professional service corporation duly authorized to practice medicine in New York State by the filing with the Department of State on September 12, 2003 of a certificate of incorporation, pursuant to Article 15 of the New York Business Corporation Law.

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 §1503(d) of the Business Corporation Law.

FACTUAL ALLEGATIONS

- A. A professional service corporation may be organized for the purpose of rendering a professional service only by one or more individuals who are duly authorized by law to render the same professional service, pursuant to the legal requirements of Article 15 of the New York Business Corporation Law, including, but not limited to, §§ 1503(a), 1504(a), 1507, 1508, and 1511.
- B. On September 12, 2003, Nils Anderson, M.D., was an individual who was duly authorized by law to practice medicine in New York State.
- C. Pursuant to the Respondent's certificate of incorporation, filed by the Secretary of State on September 12, 2003, Nils Anderson, M.D., was identified as the individual who was duly authorized by law to practice medicine in New York State who was the Respondent's sole shareholder, director and officer.
- D. From inception through the present, Nils Anderson, M.D., did not control the Respondent.
- E. Persons who were not licensed to practice medicine, including, but not limited to, ZT Technical Services, Inc., an Illinois corporation, were instrumental in the incorporation of the Respondent

in an effort to circumvent the "corporate practice of medicine" doctrine's prohibition against lay involvement in medical care and decision-making.

F. Thereafter, the same persons controlled the Respondent by ostensibly providing a "salary" to Nils Anderson, M.D., and "management services" to the Respondent, which were in reality a means to use the Respondent "to bill and funnel proceeds directly back" to the persons who were not licensed to practice medicine.

F. Nils Anderson, M.D., was relegated to the role of paper owner of the Respondent as opposed to true owner, in contravention of Article 15 of the New York Business Corporation Law, including, but not limited to §§ 1503(a), 1504(a), 1507, 1508, and 1511.

G. The Respondent has allowed the status quo to continue through the present.

H. During the relevant time frames set forth in paragraphs A through G above, the Respondent has not been in compliance with Article 15 of the New York Business Corporation Law, including, but not limited to, §§ 1503(a), 1504(a), 1507, 1508, and 1511.

SPECIFICATION OF MISCONDUCT

The Respondent is charged with professional misconduct by reason of violating Education Law § 6530(12) in that it willfully failed to comply with New York Business Corporation Law § 1503, in violation of the third undesignated clause set forth in New York Education Law § 6530(12), in that Petitioner charges:

1. The factual allegations set forth in Paragraphs A, B, C, D, E, F, G, and/or H.

DATED: *October 10*, 2007
Albany, New York


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