

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

December 31, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anatoliy Ilizarov, M. D.

Redacted Address

William L. Wood, Jr. Esq.
Wood & Scher
222 Bloomingdale Road
White Plains, New York 10583

Courtney Berry, Esq.
NYS Department of Health
90 Church Street - 4th Floor
New York, New York 10007

NYS Department of Health
Bureau of Accounts Management
ESP - Corning Tower - Room 1717
Albany, New York 12237

**RE: In the Matter of Anatoliy Ilizarov, M.D.
and Mincola Medical Practice, P.C.**

Dear Parties:

Enclosed please find the Determination and Order (No. 09-234) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
455 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER

OF

ANATOLIY ILIZAROV, M.D. and
MINEOLA MEDICAL PRACTICE, P.C.

DETERMINATION

AND

ORDER

EPMC #09-234

A Notice of Hearing and Statement of Charges were served on ANATOLIY ILIZAROV, M.D. and Mineola Medical Practice, P.C. and hearings were held pursuant to N.Y. Public Health Law §230 and New York State Admin. Proc. Act §§ 301-307 and 401 on July 8, August 19, and September 23, 2009 at the Offices of the New York State Department of Health, 90 Church Street, New York, New York ("the Petitioner"). **Steven I. Sherman, D.O., CHAIR, Raman Kaul, M.D., and Joan Martinez-McNicholas**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Courtney Berry, Esq.**, Associate Counsel, New York State Department of Health, of Counsel. The Respondent appeared with counsel, **William L. Wood, Jr., Esq.** Evidence was received, including witnesses who were sworn or affirmed, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Service of Notice of Hearing and Statement of Charges:	June 1, 2009
Answer Filed:	June 9, 2009
Pre-Hearing Conference:	June 26, 2009
Hearing Dates:	July 8, 2009 August 19, 2009 September 23, 2009
Witnesses for Petitioner:	Brian P. Gassman Douglas E. Lentivech Joseph L. Cain
Witnesses for Respondent:	Roman Izmailov, DDS. Paul Toubas, M.D. Warren Rosenfeld, M.D. Vladimir F. Burdjalov, M.D. Mrs. Yelena Ilizarov Anatoliy Ilizarov, M.D. Joe Mendiola, Jr., M.D. Ramiro Caballero, M.D. Lyle Eustace Browne, M.D. Alan Spitzer, M.D.
Deliberations Date:	November 18, 2009

STATEMENT OF THE CASE

The Respondents, Dr. Ilizarov and Mineola Medical Practice, P.C., are charged with committing professional misconduct as defined in N.Y. Education Law § 6530 (11) by permitting, aiding, or abetting an unlicensed person to perform activities requiring a license. The Respondents are also charged with committing professional misconduct as defined in N.Y. Education, Law § 6530(33) by failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee and with committing professional misconduct as defined in N.Y. Education Law § 6530(25) by delegating professional responsibilities to persons who Respondents knew or had reason to know, were not qualified by training, licensure or experience. In addition, the Respondents are charged with committing professional misconduct as defined in N.Y. Education Law § 6530(16) by willful and/or gross negligence failing to comply with substantial provisions of State Law governing the practice of Medicine, namely Business Corporation Law Section 1503. The Respondents were also charged with committing professional misconduct as defined by N.Y. Education Law § 6530(2) by practicing the profession of medicine fraudulently.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I

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 transcript page numbers or exhibits, denoted by the prefixes "T." or "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. Respondent was authorized to practice medicine in New York State in 1997 by the issuance of license number 207676 by the New York State Education Department. (Ex. 2) The Respondent is presently a Neonatologist and Medical Director of Mission Hospital in Texas and he resides with his family in Pharr, Texas. (Ex. B)
2. Respondent Mineola Medical Practice P.C. was authorized as a medical professional service corporation by the New York State Department of State on February 18, 1998. (Dep. Ex. 3 & 4).
3. Respondent Mineola Medical Practice, P.C., is a professional service corporation authorized to practice medicine in New York State pursuant to Article 15 of the Business Corporation Law, subject to the jurisdiction of the State Board for Professional Medical Conduct, and the hearing procedures of Title II-A of Article 2 of the New York Public Health Law, pursuant to Section 1503 (d) of the Business Corporation Law. (Dep. Ex. 8).
4. Respondent Mineola Medical Practice P.C. operated out of a van or truck , owned by City Testing Imaging Corp. (Dep. Ex. 10; T. pp. 27; 410-412).
5. Pursuant to Article 15 of the Business Corporation Law, only licensed physicians

may organize, hold stock in, direct and/or be an officer of a medical professional service corporation ("PC"). (Dep. Ex. 8; T. pp. 79-81).

6. Respondents entered into a management services contract with City Testing Imaging Corp. City Testing Corporation was owned by Respondent Ilizarov's relative, Timor Ilizarov. Timor Ilizarov is not a physician licensed in New York. (Dep. Ex. 10; T. pp. 180; 401 -403; 406-407).

7. A management company may own property, own equipment, and provide non-professional support to a medical professional corporation. (T. pp. 83-84; 125-126).

8. The New York State Education Department Office of the Professions (hereinafter State Education) licenses and registers 49 professions, including physicians. The Professional Corporations Unit is responsible for certifying professional corporations. In conjunction with the Department of State, the Office of the Professions reviews applications for Professional Corporation status and gives Professional Corporations authority to practice. (T. pp. 73-79).

9. Only a licensed physician may own, operate and control a medical Professional Corporation (Dep. Ex. 8; T. pp. 79-81). The owner of a medical Professional Corporation must practice in the Professional Corporation and cannot treat the Professional Corporation as a pure investment (T. p. 120).

10. Under New York State law, it is impermissible for a non-physician management company to run the medical aspects of a Professional Corporation. This would violate the corporate practice of medicine doctrine. (T. pp. 84-85).

11. The corporate practice of medicine doctrine prohibits a general business corporation

from offering medical services. The enterprise providing medical services must be solely in the control of a physician (T. pp.81-83).

12. The State Education Department reviews management services agreements between professional corporations and management companies for appropriateness. State Education looks to see whether there is an intermingling or co-mingling between companies in terms of how far involved the management company might be into the permissible daily dealings of the professional corporation. (T. pp. 89-92, 96-97).

13. State Education has rejected management services agreements when the agreement contained objectionable terms (T. pp. 97-99). The management services contract between Mineola Medical and City Testing had provisions that were improper. (Dep. Ex. 10; T. pp 100-117; 129-130).

14. The contract between Respondent Mineola Medical P.C. and City Testing Corp. specified that City Testing would be responsible for developing, implementing and monitoring practice assurance guidelines for Mineola Medical, and for instructing the Professional Corporation's physicians in practicing within those guidelines. (Dept, Ex.10).

15. A management company cannot develop, implement and monitor practice assurance guidelines for a medical Professional Corporation, or instruct the Professional Corporation's physicians in practicing within those guidelines. (T.p.86; pp. 100-104, 129-130, 132-133).

16. A management company cannot be responsible for a medical Professional Corporation's quality control (T. pp. 86; 100-104; 129-130; 132-133).

17. A management company cannot supervise medical and technical personnel in the

provision of medical services. (T. pp. 85-86). A management company cannot hire professional help to perform professional services for a Professional Corporation. A management company cannot perform professional services for a Professional Corporation. (T. pp.157-161).

18. A management company cannot direct medical services, cannot make medical judgments and cannot impinge on medical judgments. Medical judgments and control of professional services must rest with the physicians of the medical Professional Corporation. (T. pp. 85;132-133).

19. The contract between Mineola Medical and City Testing provided for an interest-free 120-day loan from the management company to the Professional Corporation. There is a prohibition against taking things of value, such as bonuses, as inducements for practice. The financial arrangement between Mineola Medical and City Testing improperly gave financial dominion and control over the Professional Corporation to the management company. (Dep. Ex. 10; T. pp.105-106).

20. The contract specified that in their first year of operation, Mineola Medical would pay \$960,000 to City Testing. In their second year, Mineola Medical agreed to pay \$1,080,000 to City Testing. (Dep. Ex. 10), however, Mineola Medical never grossed \$1 million (T. pp. 460-467; 549-551).

21. Respondent Mineola Medical Practice P.C. performed videofluoroscopies (vfs) from the mobile van. (T. p. 27).

22. Videofluoroscopy is an imaging study that uses radiation to record body movement on videotape. (T. pp. 28-29;414-415; 565).

23. The Mineola Medical van traveled to various physician and chiropractic offices throughout New York City. The videofluoroscopies were performed by a licensed radiologic technologist (LRT). There was no supervision of the videofluoroscopies by a physician. (Dep. Ex. 6; T. pp. 27; 30-31; 50-53; 411-412; 424-427; 431-432; 497; 723-724).

24. Timor Ilizarov hired Brian Gassman, LRT, to perform videofluoroscopies for Mineola Medical. (T. pp. 26;47-48;194). Prior to his work at Mineola Medical, Gassman had no training or experience performing videofluoroscopies on patients who were mobile. Rather, he was provided with a videotape for training. (T. pp. 31 ;52-53; 57-58;69-70;195;520-524; 745-746).

25. Timor Ilizarov instructed Brian Gassman that as long as there was a physician at the location where the van traveled, Gassman could perform the videofluoroscopies. (T. pp. 32; 40; 50-54).

26. It is outside the scope of an LRT to perform videofluoroscopies unsupervised. Videofluoroscopies must be performed by, or under the immediate personal supervision of a physician. "Immediate personal supervision of a physician" is defined as "in the same room." (Dep. Ex. 6 & 7; T. pp. 34-35; 39-40).

27. Timor Ilizarov hired Zoya Maksumova, M.D. to interpret the videofluoroscopies performed by Mineola Medical's LRT. The videotapes were delivered to Maksumova. (T. pp. 69; 194; 218-221). Respondent Ilizarov never met, spoke with, or interviewed Maksumova prior to her hiring. (T. pp. 190-191 ;194; 575).

28. Maksumova believed that the LRTs were being supervised by physicians at the locations (T. p.190; 230).

29. Most of the offices visited by Mineola Medical were chiropractic offices. (T. pp. 66-68; 70-71; 231-232; 497).

30. It is not within the scope of a chiropractor's license to perform or order a videofluoroscopy. If a chiropractor feels that a videofluoroscopy is warranted, the chiropractor must refer the patient to a physician, who can order and/or perform videofluoroscopy. (Dep. Ex. 11 and 12; T. pp. 162-165; 234-235).

31. Respondents Ilizarov and Mineola Medical allowed and enabled LRTs to practice outside the scope of their licenses and to perform duties that they were not licensed to perform. (Dep. Ex. 6; Dep. Ex. 7; T. pp. 31; 32; 34-35; 39-40; 50-54; 57-58; 69-70; 195; 745-746).

32. The New York City Department of Health conducted inspections of Mineola Medical Practice P.C., which included interviews with Timor Ilizarov and City Testing employees. Throughout the inspection processes, Timor Ilizarov was identified as the owner of Mineola Medical. (Dep. Ex. 6).

33. The State Education Department would not have registered a Medical Professional Corporation with a non-licensed owner. (T. pp. 92-95).

34. The State Education Department reviews proposed Professional Corporation names for appropriateness. State Education rejects names as inappropriate that do not describe the profession to be practiced by the Professional Corporation. (T. p.88).

35. The New York City Department of Health inspection file for Mineola Medical contains a quality assurance audit interview conducted with Timor Ilizarov, Owner, and Brian Gassman, LRT. Under "Organization," T. Ilizarov is listed as the administrator/executive

director, radiation safety officer, chief, department of radiology, and individual responsible for entire QA program for Mineola Medical. This cannot be attributed to poor draftsmanship of the management services contract. (Dep. Ex. 6; T. pp. 43-44; 141-142).

36. Respondent Ilizarov was never present for the inspections performed by the New York City Department of Health. (Dep. Ex. 6; T. pp. 727-728).

37. In October 2000, the New York City Health Department issued a stop-work order to Mineola Medical Practice Professional Corporation following the discovery that radiologic technologists performing videofluoroscopies unsupervised. (Dep. Ex. 6; T. pp. 34-35; 195; 419).

38. Respondent Ilizarov did not attend the New York City Department of Health hearing after the stop-work order. Rather, Timor Ilizarov attended the hearing and testified that after he had numerous conversations with New York City DOH personnel, he was under the impression that what they were doing was permissible. (Dep. Ex. 6; T. pp. 196; 419-422; 477).

39. The New York City Department of Health did not discipline Mineola Medical for the violation of City and State law; rather, Mineola Medical was required to have a physician supervise the videofluoroscopies. (Dep. Ex. 6).

40. Timor Ilizarov then hired Walter Medina, D.O. to perform videofluoroscopies for Mineola Medical Practice, P.C. after the New York City Department of Health hearing. Respondent Ilizarov never met, spoke with, or interviewed Dr. Medina prior to his hiring. (Dep. Ex. 6; T. pp. 195-196; 215; 422; 573-575; 748-750).

41. Dr. Medina was not a radiologist. Respondent Ilizarov knew little about Medina, other

than the fact that he was a D.O. and had an interest in sports medicine. Medina eventually lost his New York medical license, (T. pp.207; 223; 535-536).

42. Prior to being hired by Mineola, Dr. Medina did not perform videofluoroscopies. (T. p. 758-762).

43. Respondent Ilizarov did not practice in Mineola Medical. (T. pp. 542-547). Respondent Ilizarov is a neonatologist and has had no training in radiology or videofluoroscopy (Dep. Ex. 2; T. pp. 226-227; 478; 542-547).

44. Respondent Ilizarov failed to participate in the control and operation of Mineola Medical Practice P.C. (T. pp. 227). At no time did Respondent Ilizarov ever see, diagnose, treat or render any care to patients for Respondent Mineola Medical P.C.(T. pp. 438-439; 478).

45. Respondent Ilizarov did not hire, train or supervise LRTs. (T. pp. 32; 194-195; 467-468; 471; 485-486; 575). Respondent Ilizarov did not speak with Dr. Maksumova about supervision of LRTs (T. pp. 725-726).

46. Respondent Ilizarov did not attend the arbitration proceedings with the insurance companies. These arbitration proceedings involved a significant amount of money. Timor Ilizarov attended and testified on behalf of Mineola Medical Practice P.C. (T. pp. 728-732; 735-739).

47. Respondent Ilizarov, as sole shareholder of Mineola Medical, was the only one authorized to sign the Department of State biannual statements. However, Timor Ilizarov signed one of the biannual statements and an unknown person apparently signed Respondent Ilizarov's name to another biannual statement. (Dept. Ex. 3;T. pp. 728-732).

48. When OPMC requested Mineola Medical's patient and business records, the records were in Timor Ilizarov's possession. Eventually, the records were turned over by Timor. (T. pp. 183-188).

49. Respondent Ilizarov referred OPMC questions about supervision of the LRTs and Dr. Maksumova's working arrangements to *Timor* Ilizarov and provided Timor's telephone number to Investigator Joseph Cain. (T. pp. 189-190).

50. Mineola Medical was run, operated and controlled by Timor Ilizarov. (T. pp. 186; 739-745),

CONCLUSIONS OF LAW

Based on the above noted Findings of Fact, the panel concluded, unanimously, that Factual Allegations A 2, A 3, B and C, as set forth in the Statement of Charges (Appendix 1), were proven by a clear preponderance of the evidence. The panel concluded, also unanimously, that Factual Allegations A 1 and C 1, as set forth in the Statement of Charges (Appendix 1), were not proven by a clear preponderance of the evidence. The Hearing Committee, therefore, by unanimous vote, **SUSTAINED** factual allegations A 2, A 3, B and C and did **not sustain** the Factual Allegations A 1 and C 1,

The rationale for the Hearing Committee's conclusions is set forth in the Discussion below.

The specific legal conclusions of law for each specification are as follows:

FIRST AND SECOND SPECIFICATIONS

These charges assumed that the Respondents permitted, aided or abetted an unlicensed person to perform activities requiring a license.

The panel determined, after a careful review of the entire record and testimony, that the person who performed the Videofluoroscopies, Mr. Gassman, was in fact a licensed x-ray technologist. This point was brought out by the Chair of the panel in his questioning of Mr. Gassman. (T. 44)

Since the gravamen of Specifications One and Two was that an unlicensed person was permitted to perform activities and since, according to the record, the individual in question was, in fact, licensed, the panel did not sustain those charges.

THIRD SPECIFICATION

This charge specified that the Respondents failed to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee. The law is clear that Videofluoroscopies are to be performed under the supervision of a physician and the record shows that the Respondents allowed a licensed x-ray technologist. (LRT) to practice outside the scope of their license and perform Videofluoroscopies unsupervised by a physician. Accordingly, the panel determined that the Third Specification was sustained (Findings of Fact #s 24, 25, 26, 28, 30, 31, 36).

FOURTH AND FIFTH SPECIFICATIONS

Respondents delegated professional responsibilities to persons who Respondents knew, or had reason to know, were not qualified by training, licensure or experience. Videofluoroscopies may be performed only by or under the immediate personal supervision

of a physician. Respondents allowed LRTs to perform Videofluoroscopies unsupervised. Further, only a licensed physician may own, operate and control a Medical Professional Corporation. Respondents delegated dominion and control over Mineola Medical to a non-physician. The Fourth and Fifth Specifications are therefore sustained. (Findings of Fact #s 4, 5, 6, 13, 14, 15, 16, 17, 18, 19, 22, 24, 25, 26, 27, 28, 31, 32, 35, 36, 37, 39, 42, 43, 44, 45, 46, 47, 48, 49, 50).

SIXTH SPECIFICATION

Respondents exercised willful and/or gross negligence in failing to comply with substantial provisions of State law governing the practice of Medicine, namely Business Corporation Law Section 1503. Only a physician may own, operate and control a Medical Professional Corporation. Respondents knew that Mineola Medical was operated and controlled by a non-physician. Respondents allowed this impermissible operation of Mineola Medical. The Sixth Specification was therefore sustained. (Findings of Fact #s 1, 2, 3, 4, 5, 6, 10, 14, 15, 16, 17, 18, 19, 20, 21, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50).

SEVENTH SPECIFICATION

This Specification alleged that the Respondents practiced the profession of medicine fraudulently by causing and allowing Mineola Medical to be formed and subsequently re-registered under the name of Respondent Ilizarov, while knowing that Mineola Medical was

operated and controlled by a non-physician. In order to determine if fraud was present, the panel took into account the elements of the charge of fraud.

Specifically, the panel recognized that the intentional misrepresentation or concealment of a known fact, made in connection with the practice of medicine, constitutes the fraudulent practice of medicine. Fraudulent practice of medicine is present when (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.

The panel evaluated all the testimony and evidence in this case and determined that the Department did not establish, by a preponderance of the evidence, that all the elements of fraud, and in particular the element of intent, were proven and thus the charge of fraud could not be sustained.

VOTE OF THE HEARING COMMITTEE

FIRST AND SECOND SPECIFICATIONS

PERMITTING, AIDING OR ABETTING AN UNLICENSED PERSON

Respondents are charged with committing professional misconduct as defined in N.Y. Education Law § 6530(11) by permitting, aiding or abetting an unlicensed person to

perform activities requiring a license.

Vote: NOT SUSTAINED (3-0)

THIRD SPECIFICATION

FAILURE TO SUPERVISE

Respondents are charged with committing professional misconduct as defined in N.Y. Education Law § 6530(33) by failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee.

Vote: SUSTAINED (3-0)

FOURTH AND FIFTH SPECIFICATIONS

UNLAWFUL DELEGATING

Respondents are charged with committing professional misconduct as defined in N.Y. Education Law § 6530(25) by delegating professional responsibilities to persons who Respondents knew or had reason to know, were not qualified by training, licensure or experience.

Vote: SUSTAINED (3-0)

SIXTH SPECIFICATION

FAILURE TO COMPLY WITH A STATE LAW

Respondents are charged with committing professional misconduct as defined in NY. Education Law § 6530(16) by willfully and/or grossly negligently failing to comply with substantial provisions of State Law governing the practice of Medicine, namely

Business Corporation Law Section 1503.

Vote: SUSTAINED (3-0)

SEVENTH SPECIFICATION

FRAUDULENT PRACTICE

Respondents are charged with committing professional misconduct as defined by N.Y. Education Law § 6539(2) by practicing the profession of medicine fraudulently.

Vote: NOT SUSTAINED (3-0)

DISCUSSION

The Hearing Committee carefully reviewed the Exhibits admitted into evidence, the transcripts of the three (3) hearing days, the Department's Proposed Findings of Fact, Conclusions of Law, and Sanction as well as the Respondent's Proposed Findings of Fact and Conclusions of Law. During the course of its deliberations on these charges, the Hearing Committee considered the following instructions from the ALJ:

1. The Committee's determination is limited to the Allegations and Charges set forth in the Statement of Charges. (Appendix I)
2. The burden of proof in this proceeding rests on the Department. The Department must establish by a preponderance of the evidence that the allegations made are true.

Credible evidence means the testimony or exhibits found worthy to be believed.

Preponderance of the evidence means that the allegations presented are more likely than not to have occurred (more likely true than not true). The evidence that supports the claim must appeal to the Hearing Committee as more nearly representing what took place than the evidence opposed to its claim.

3. The specifications of misconduct must be supported by the sustained or believed allegations by a preponderance of the evidence. The Hearing Committee understands that the Department must establish each and every element of the charges by a preponderance of the evidence and, as to the veracity of the opposing witnesses, it is for the Hearing Committee to pass on the credibility of the witnesses and to base its inference on what it accepts as the truth.

4. Where a witness's credibility is at issue, the Committee may properly credit one portion of the witness' testimony and, at the same time, reject another. The Hearing Committee understands that, as the trier of fact, they may accept so much of a witness' testimony as is deemed true and disregard what they find and determine to be false. In the alternative, the Hearing Committee may determine that if the testimony of a witness on a material issue is willfully false and given with an intention to deceive, then the Hearing Committee may disregard all of the witness' testimony.

5. The Hearing Committee employed ordinary English usage and vernacular for all other terms and allegations. The Hearing Committee was aware of its duty to keep an open mind regarding the allegations and testimony. With regard to the testimony presented, the Hearing Committee evaluated all the witnesses for possible bias or motive. The witnesses

were also assessed according to their training, experience, credentials, demeanor, and credibility. The Hearing Committee considered whether the testimony presented by each witness was supported or contradicted by other independent objective evidence.

The Hearing Committee first considered the credibility of the various witnesses, and thus the weight to be accorded their testimony. The Department presented three witnesses all of which the panel found credible and persuasive. Brian Gassman was called as a witness by the Department to explain the operation of Mineola Medical. Mr. Gassman was a licensed radiological technologist, hired by Timor Ilizarov to operate the Respondent Mineola Medical Practice's van and performed videofluoroscopies in the van. Mr. Gassman explained that Videofluoroscopy is an imaging study that uses radiation to record body movement on videotape. According to Gassman, the Mineola Medical van traveled to various physician and chiropractic offices throughout New York City and videofluoroscopies were performed by a licensed radiologic technologist. There was no supervision of the videofluoroscopies by a physician. The testimony clearly established that Timor Ilizarov hired Brian Gassman, LRT, to perform videofluoroscopies for Mineola Medical and that prior to his work at Mineola Medical, Gassman had no training or experience performing videofluoroscopies on patients who were ambulatory.

Eventually, the New York City Department of Health cited Mineola Medical for performing videofluoroscopies on patients without a physician present and then, and only then, did Timor Ilizarov hire Doctor Medina to perform the videofluoroscopies for Mineola Medical. The record shows that throughout this entire period, the Respondent Anatoliy Ilizarov was the absentee paper owner of Mineola Medical. Timor did everything for the

operation of this enterprise and it was Timor who responded to the charges brought by the New York City Department of Health. In fact the record shows that Timor Ilizarov signed one of the biannual statements and the evidence indicates that an unknown person signed Respondent Ilizarov's name to another biannual statement. Furthermore, when OPMC requested Mineola Medical's patient and business records, the records were in Timor Ilizarov's possession and it was Timor who turned them over to OPMC. Respondent Ilizarov referred OPMC questions about supervision of the LRTs and Maksumova's working arrangements to *Timor Ilizarov* and provided Timor's telephone number to Investigator Joseph Cain.

The inescapable conclusion from the testimony of the Department's witnesses was that Mineola Medical was run, operated and controlled by Timor Ilizarov who is not a physician and that Dr. Ilizarov failed to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee. Clearly, Dr. Ilizarov delegated professional responsibilities to persons who he knew or had reason to know, were not qualified by training, licensure or experience.

The Department's witnesses show that these failures of the Respondent Doctor also constitute violations of the Business Corporation Law Section 1503 by willful and/or gross negligence in failing to comply with substantial provisions of State Law governing the practice of Medicine by again delegating professional responsibilities to persons who he knew or had reason to know, were not qualified by training, licensure or experience.

The character witnesses for Respondent Doctor Ilizarov did not rebut the Department's case but they did impress the panel. They demonstrated that Dr. Ilizarov is a

highly skilled practitioner in the field of Neonatology and has enormous promise for the future in contributing to that specialty. The specialists that were presented at the hearing by the Respondent's attorney, Mr. Wood, were unanimous in their high regard for Dr. Ilizarov as a practitioner. In particular, Dr. Paul Toubas said that he was a very intelligent physician, very kind and that he was a stellar physician (T. 276, 277). In a similar vein, Dr. Lyle Eustace Browne said he could honestly say that he always felt comfortable knowing that Dr. Ilizarov was the fellow on call when Dr. Browne was on service. In one word, Dr. Browne described Dr. Ilizarov as "outstanding" and then went on to paint a picture of him as very thorough, knowledgeable and well read. (T. 633)

Likewise, Dr. Alan Spitzer, who was the Respondent's supervisor in Neonatology at Stony Brook Hospital on Long Island, said Dr. Ilizarov was very talented and that he stood out in terms of the quality of care he provided (T. 667). Similar praise was given by Dr. Joe Mendiola, who came all the way from Texas to testify and stated that he regarded the Respondent as a "gifted individual" (T. 600) who helped introduce jet ventilators into their Texas practice (T. 601).

Dr. Vladimir Burdjalov, who had known the Respondent back in the U.S.S.R, recalled what he had observed in Moscow during years of medical training and practice in their specialty of Neonatology and testified that Dr. Ilizarov had the reputation of being a very honest person who would never hide anything behind his jacket and that he was always honest and truthful to everybody. (T. 319-325) Dr. Joe Mendiola echoed this testimony from his experience with the Respondent in Texas and stated that he agreed that Dr. Ilizarov has a positive reputation for honesty and truth telling (T. 598).

The panel weighed all this testimony from both sides and found that the pivotal aspect of this case was that Mineola Medical Practice, P.C. was never truly owned, operated or controlled by Respondent Ilizarov and that, at best, Dr. Ilizarov was a paper figurehead. It was clearly established that the management contract gave City Testing, a.k.a. Timor Ilizarov, substantial control over Mineola Medical. In addition, City Testing, a.k.a. Timor Ilizarov, had financial dominion and control superiority over Mineola Medical. The panel was concerned that Timor Ilizarov never testified to explain his role and relationship to the respondents. The panel concluded from the evidence that Timor was in charge and was identified as the real owner of Mineola Medical. Therefore, Mineola Medical was never lawfully run as a Medical Professional Corporation. Accordingly, it is not enough that this Medical Professional Corporation has been dissolved. The panel agreed with the Department that this Medical Professional Corporation must be declared void *ab initio*. The panel also agreed with the Department that the proper sanction for Mineola Medical Practice PC is annulment of its Certificate of Incorporation.

On review of the entire record, the panel found that Respondent Anatoliy Ilizarov allowed his name and license to be used in this venture and therefore allowed the improper practices with the unsupervised LRTs. The overwhelming evidence in this case shows that Dr. Anatoliy Ilizarov allowed Timor Ilizarov to run the Medical Professional Corporation. Dr. Anatoliy Ilizarov, therefore, condoned what was happening at Mineola Medical and put patients at risk in the process. The panel determined that these actions and omissions constitute medical misconduct on the part of Respondent Anatoliy Ilizarov.

HEARING COMMITTEE DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, after due deliberation, unanimously determined that the first, second and seventh charges and specifications raised against Respondents were not sustained and that the third, fourth, fifth, and sixth charges and specifications raised against Respondents were sustained.

The Committee has a responsibility to protect the patients and people of the State of New York. The issue before this Committee is to impose a penalty that offers the best protection to the people of the State. The panel weighed all the evidence and testimony and appreciated the seriousness of the offenses charged. As for the Corporation, the panel unanimously found that Mineola Medical Practice, P. C. should be declared Void *ab Initio* as a Professional Corporation and that its Certificate of Incorporation should be Annulled. As for the Doctor personally, the panel also saw a physician doing good work and did not want to revoke or suspend his license as there was no allegation of actual harm done to patients. The Committee also noted that over six years has passed since any of the wrongdoing in this case transpired and that in his eleven years of practice no other misconduct case has ever been brought against this Doctor.

At the close of the case, Dr. Ilizarov indicated that this experience has been the most difficult in his life and that he has learned his lesson well and that, in the future, he will never open a practice outside of his training and that if he does run a radiology business in

the future he will make sure that those running it are consistent with the law and that he will never overstep the boundaries of the law in the future. Dr. Ilizarov appeared, to the Committee, to be remorseful and contrite.

The Committee took this personal statement of the Respondent into account in determining an appropriate punishment and the panel concluded, unanimously, that revocation or suspension was not warranted by the facts in this case and that that a censure and reprimand, coupled with a \$10,000.00 fine, would adequately protect the people of New York.

ORDER

IT IS HEREBY ORDERED THAT:

1. The First, Second, and Seventh Specifications of professional misconduct, as set forth in the Statement of Charges, are **NOT SUSTAINED**;
2. The Third, Fourth, Fifth, and Sixth Specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**;
3. The Respondent, Dr. Anatoliy Ilizarov, is **censured** and **reprimanded** for his conduct in this matter.
4. A fine of \$10,000.00 is imposed on the Respondent Dr. Anatoliy Ilizarov . The fine is payable in full within 30 days of the effective date of this Order. Payment must be submitted to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower, Room 1717, Albany, New York 12237. Failure to pay the fine on time will subject the Respondent to all provisions of law relating to debt

collection by New York State, including 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 and licenses (Tax Law Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).

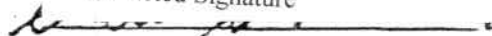
5. The Respondent, Mineola Medical Practice, P. C. is declared **Void *ab Initio*** as a Professional Corporation and its Certificate of Incorporation is hereby **Annulled**.

6. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Woodmere, New York

12/29, 2009

Redacted Signature



Steven I. Sherman, D.O., CHAIR.

Raman Kaul, M.D.,
Joan Martinez-McNicholas

TO:

Anatoliy Ilizarov, M.D.

Redacted Address

Courtney Berry, Esq.
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
90 Church Street
New York, N.Y. 10007

William L. Wood, Jr., Esq.
Wood & Scher -- Attorney for Dr. Ilizarov
222 Bloomingdale Road
White Plains, N.Y. 10583

New York State Dept. of Health
Bureau of Accts. Management
Corning Tower, Room 1717
Empire State Plaza
Albany, NY 12237

APPENDIX I

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

IN THE MATTER
OF
Anatoliy Ilizarov, M.D. and Mineola Medical
Practice, P.C.

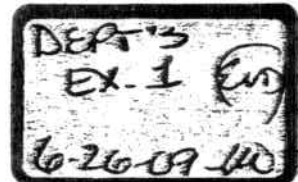
NOTICE
OF
HEARING

TO: Anatoliy Ilizarov, M.D. and Mineola Medical Practice P.C.
Redacted Address

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on July 8, 2009, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, N.Y., N.Y., 10007, and at such other adjourned dates, times and places as the committee may direct.

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



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
June / , 2009

Redacted Signature

Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Courtney Berry
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, N.Y. 10007
(212)417-4450

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

IN THE MATTER

OF

Anatoliy Ilizarov, M.D. and Mineola Medical Practice P.C

STATEMENT
OF
CHARGES

Anatoliy Ilizarov, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 25, 1997, by the issuance of license number 207676 by the New York State Education Department. Respondent Mineola Medical Practice P.C. was authorized as a physician professional service corporation by the New York State Department of State on February 18, 1998.

Respondent Mineola Medical Practice, P.C., is a professional service corporation authorized to practice medicine in New York State pursuant to Article 15 of the Business Corporation Law, 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 Business Corporation Law.

FACTUAL ALLEGATIONS

- A. Respondent Ilizarov created and incorporated Respondent Mineola Medical Practice P.C., located in Brooklyn, N.Y., on or about February 18, 1998. Respondent Mineola Medical Practice P.C. was operated out of a van, owned by City Testing Imaging Corp. Respondent Mineola Medical Practice P.C. performed videofluoroscopies from the van.
1. These videofluoroscopies were performed inappropriately, by radiologic technologists, rather than by or under the immediate

- personal supervision of a physician.
2. Respondent Ilizarov failed to participate in the control and operation of Mineola Medical Practice P.C.
 3. Respondent Ilizarov did not diagnose or treat patients for Respondent Mineola Medical P.C.
- B. Respondent Mineola Medical P.C. willfully or grossly negligently failed to meet applicable state licensing requirements for professional service corporations, pursuant to Section 1503(a) of the New York Business Corporation Law.
- C. Pursuant to Article 15 of the Business Corporation Law, only licensed physicians may organize, hold stock in, direct and/or be an officer of a medical professional service corporation ("PC"). Respondent Ilizarov enabled non-physicians to evade the legal restrictions on ownership and control of Respondent Mineola Medical Practice P.C. by concealing from the Departments of State and Education that legally unqualified individuals owned, operated and/or controlled a medical professional service corporation. The Departments of State and Education are the agencies with regulatory oversight over professional service corporations.
1. Respondent Ilizarov did so with the intent to deceive.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

PERMITTING, AIDING OR ABETTING

AN UNLICENSED PERSON

Respondents are charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(11) by permitting, aiding or abetting an

unlicensed person to perform activities requiring a license as alleged in the facts of the following:

1. Paragraphs A and its subparagraphs.
2. Paragraphs B, and C.

THIRD SPECIFICATION
FAILURE TO SUPERVISE

Respondents are charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(33) by failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee, as alleged in the facts of:

3. Paragraph A and its subparagraphs.

FOURTH AND FIFTH SPECIFICATIONS
UNLAWFUL DELEGATING

Respondents are charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(25) by delegating professional responsibilities to persons who Respondents knew or had reason to know, were not qualified by training, licensure or experience as alleged in the facts of:

4. Paragraph A and its subparagraphs.
5. Paragraph C.

SIXTH SPECIFICATION
FAILURE TO COMPLY WITH A STATE LAW

Respondents are charged with committing professional misconduct as

defined in N.Y. Educ. Law § 6530(16) by willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of Medicine, namely Business Corporation Law Section 1503, as alleged in the facts of:

6. Paragraphs A and its subparagraphs, B, and C.

SEVENTH SPECIFICATION
FRAUDULENT PRACTICE

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

7. Paragraphs A and its subparagraphs, B, C, and C1.

DATED: June 7, 2009
New York, New York

Redacted Signature

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct