



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*

October 6, 2008

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Tribeca Medical, P.C.  
280 Riverside Drive, Suite 5K  
New York, New York 10025

Francis Ruddy, 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 Tribeca Medical, P.C.**

Dear Parties:

Enclosed please find the Determination and Order (No. 08-190) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (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 licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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

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


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

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

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

Sincerely,

Redacted Signature

 James F. Horan, Acting Director  
Bureau of Adjudication

JFH:djh

Enclosure

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

COPY

IN THE MATTER  
OF  
TRIBECA MEDICAL, P.C.

DETERMINATION  
AND  
ORDER

BPMC NO. 08-190

Kenneth Kowald,(Chair), Jinil Yoo, M.D., and Florence Kavalier, M.D. duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health Law. Christine C. Traskos Esq., Administrative Law Judge, (“ALJ”) served as the Administrative Officer.

The Department of Health appeared by Francis Ruddy, Esq., Assistant Counsel. Respondent, Tribeca Medical, P.C. et al (hereinafter Respondent) made no appearance and was not represented by Counsel.

Evidence was received and examined. Transcripts of the proceeding were made. After consideration of the record, the Hearing Committee issues this Determination and Order.

**PROCEDURAL HISTORY**

Date of Notice of Hearing and Statement of Charges:	June 26, 2008
Date of Service of Notice of Hearing and Statement of Charges:	July 21, 2008

Date of Answer to Charges:	None submitted
Pre-Hearing Conference Held:	September 3, 2008
Date of Hearing :	September 15, 2008
Location of Hearing:	Offices of New York State Department of Health 90 Church St., 4 <sup>th</sup> Floor New York, NY 10007
Witness:	Joseph Cain
Deliberations Date:	September 15, 2008
Transcript received:	September 30, 2008

On September 3, 2008, the ALJ held a Pre-Hearing Conference. Respondent made no appearance and was not represented by Counsel. At that Pre-Hearing, the ALJ ruled that the service of the Notice of Hearing and Statement of Charges on Respondent was effected on July 21, 2008, and that the Board for Professional Medical Conduct had obtained jurisdiction over Respondent [P.H.T- 7 ]<sup>1</sup>; (Petitioner's Exhibit 3 )<sup>2</sup>; (ALJ's Exhibit 1 ).

On the September 15, 2008 Hearing day, Respondent made no appearance and was not represented by Counsel. After brief testimony from a Department investigator, the Petitioner made a motion to have the charges deemed admitted based on Respondent's failure to file an answer. The Notice of Hearing (Department's Exhibit 1) at page 2 states:

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<sup>1</sup> Numbers in brackets refer to Hearing transcript page numbers [T- ] or to Pre-Hearing transcript page numbers [P.H.T-].

<sup>2</sup> Refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit #). No exhibits were submitted by Respondent. ALJ exhibits were not admitted in evidence and were not reviewed by the Hearing Committee but were made part of the record.

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. (Underline in original)

Public Health Law §230(10)(c) clearly indicates that the failure to file a written answer will result in the charges and allegations being deemed admitted. Due to Respondent's failure to submit a written answer, the ALJ ruled that the factual allegations and charges of misconduct contained in the Statement of Charges (Department's Exhibit 1) were deemed admitted by Respondent [T.58]. See also Corsello v. New York State Department of Health, 300 A.D.2d 849, 752 N.Y.S.2d 156 (App. Div. 3<sup>rd</sup> Dep't. 12/19/2002).

#### STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 *et seq.* of the Public Health Law of the State of New York ["P.H.L."]). This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("Petitioner" or "Department") pursuant to §230 of the P.H.L. Tribeca Medical, P.C. ("Respondent") is charged with one (1) specification of professional misconduct as set forth in §6530 of the Education Law of the State of New York ("Education Law").

Respondent is charged with professional misconduct by reason of: failing to comply with State law by willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of Medicine, namely Business Corporation Law §1503.

Respondent failed to submit an answer and therefore all the Factual Allegations and all the

Specifications of Misconduct contained in the Statement of Charges are deemed admitted. A copy of the Notice of Hearing and the Statement of Charges is attached to this Determination and Order as Appendix 1.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record available to the Hearing Committee in this matter. These facts represent testimony and/or documentary evidence found persuasive by the Hearing Committee in arriving at a particular finding. The Petitioner, which has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings of Fact.

1. 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"). That Respondent TRIBECA MEDICAL, P.C. (Hereinafter "TRIBECA") evaded the legal restrictions on incorporation, ownership, and/or control of PCs by concealing from the Departments of State and Education that legally unqualified individual(s) incorporated, owned, operated and/or controlled the medical professional service corporation. The Departments of State and Education are the agencies with regulatory oversight over professional service corporations.

2. Unqualified individual(s), who were not licensed to practice medicine, were instrumental in operating and controlling Respondent, and handling its financial affairs.

3. On or about October 25, 1996, Ahmed Halima, M.D. was licensed to practice medicine in the State of New York State, and issued license number 204777 by the New York State Education Department.

4. Pursuant to Respondent's certificate of incorporation, filed with the Secretary of State

on March 14, 2001, Ahmed Halima, M.D. was Respondent's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.

5. Ahmed Halima, M.D. remained Respondent's sole shareholder, director, and officer, but did not operate or control Respondent, from inception through June 8, 2006, the date he left Respondent professional corporation.

6. Effective June 3, 2008, Ahmed Halima, M.D. surrendered his New York State medical license pursuant to New York State Public Health Law §230.13. That action was not disciplinary in nature.

7. On or about June 8, 2006, Respondent caused the records of the State Education Department, Office of the Professions, Professional Corporations Unit, State of New York, to record a change in Respondent's ownership from Ahmed Halima, M.D. to Raphael Cilento, M.D.

8. On or about February 25, 1963, Raphael Cilento, M.D. was licensed to practice medicine in the State of New York State, and issued license number 089966 by the New York State Education Department.

9. In a Determination and Order, dated February 24, 2007, effective March 1, 2007, a Hearing Committee for Professional Medical Conduct sustained charges finding Raphael Cilento, M.D. guilty of having a psychiatric condition which impaired his ability to practice and that he failed to comply with an Order issued pursuant to New York State Public Health Law § 320(7), and his medical license was revoked effective March 1, 2007.

10. Upon information and belief, on a date on or after June 8, 2006, Raphael Cilento, M.D. transferred his ownership of Respondent to Prasad Chalasani, M.D., although no notice of such transfer was given to or recorded with the State Education Department, Office of the Professions, Professional Corporations Unit, State of New York.

11. On or about January 25, 1972, Prasad Chalasani, M.D, was licensed to practice medicine in the State of New York, and issued license number 111694 by the New York State Education Department.

12. In a Determination and Order, effective March 10, 2008, the Administrative Review Board for Professional Medical Conduct affirmed the Hearing Committee determination of October 24, 2007 finding Prasad Chalasani, M.D. guilty of having violated the terms of probation previously imposed by the New York State Board for Professional Medical Conduct. The Review Board revoked Dr. Chalasani's Medical license, effective March 10, 2008.

13. As a result of the surrender of said license, Ahmed Halima, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent in violation of §1503(a) and (b), and §1504 (a) of the N.Y. Bus. Corp. Law.

14. As a result of the revocation of said license, Raphael Cilento, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent in violation of §1503(a) and (b), and §1504 (a) of the N.Y. Bus. Corp. Law.

15. As a result of the revocation of said license, Prasad Chalasani, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent in violation of §1503(a) and (b), and §1504 (a) of the N.Y. Bus. Corp. Law.

### CONCLUSIONS OF LAW

The Hearing Committee makes the unanimous conclusion, pursuant to the Findings of Fact listed above, that all the Factual Allegations contained in the June 26, 2008 Statement of Charges are **SUSTAINED**.

Based on the above, the complete Findings of Fact and the discussion below, the Hearing Committee unanimously concludes that **ALL THE SPECIFICATIONS OF MISCONDUCT**



contained in the Statement of Charges are **SUSTAINED**.

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

### **DISCUSSION**

Respondent is charged with one (1) specification alleging professional misconduct within the meaning of §6530 of the Education Law. The Hearing Committee determined that all of the allegations and all of the charges contained in the Statement of Charges were established by a preponderance of the evidence.

Respondent made no appearance at the hearing and was not represented by counsel. The Respondent had been properly served with the Notice of Hearing and Statement of Charges. The ALJ also ruled that the requirements of the Public Health Law mandated Respondent to file a written Answer to the Statement of Charges and that the failure to do so results in the allegations and specifications of misconduct being deemed admitted by the Respondent pursuant to PHL§ 230(10) (c) and established case law. In addition to the fact that the allegations are deemed admitted, the Hearing Committee concludes that the documentary evidence and the credible testimony of Department Investigator Joseph Cain sustains the allegations independently.

### **DETERMINATION AS TO PENALTY**

The Hearing Committee realizes that a PC is penalized differently than an individual physician. They note that the individual physicians who advocated their responsibility by allowing unqualified individuals to run this corporation are no longer practicing medicine in this State. The Hearing Committee concurs with the Department that an annulment of the corporation is the appropriate penalty for its failure to comply with State laws regarding the practice of medicine. Annulment is authorized under § 1503 (f) of the Business Corporation Law and § 230 (a ) (5) of the Public Health Law. The Hearing Committee believes that annulment goes beyond revocation

in that the corporation will be treated as if it never validly existed from day one and it will be unable to collect on any accounts receivable. The Hearing Committee concludes that this is the appropriate penalty under the circumstances.

**ORDER**

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

1. The FIRST SPECIFICATION contained in the Statement of Charges (Petitioner's Exhibit1) is **SUSTAINED**; and
2. Respondent's license to practice medicine in the State of New York is hereby **ANNULLED**; and
3. This Order shall be effective on personal service on the Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

**DATED: Port Washington, New York**

**2008**

10/2/08

Redacted Signature

**KENNETH KOWALD, (Chair)**

**JINIL YOO, M.D.**

**FLORENCE KAVALER, M.D.**

Tribeca Medical, P.C.  
280 Riverside Dr. Suite 5K  
New York, NY 10025

Francis Ruddy, Esq.  
Assistant Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street- 4<sup>th</sup> Fl.  
New York, NY 10007

# APPENDIX 1

IN THE MATTER  
OF  
TRIBECA MEDICAL, P.C.

STATEMENT  
OF  
CHARGES

Respondent TRIBECA MEDICAL, P.C. was authorized as a physician professional service corporation by the New York State Department of State on March 14, 2001, pursuant to N.Y. Bus. Corp. Law, Article 15. Respondent is subject to the jurisdiction of the State Board for Professional Medical Conduct, and the pre-hearing and hearing procedures of N.Y. Pub. Health Law, Article 2, Title II-A, pursuant to N.Y. Bus. Corp. Law § 1503(d).

**FACTUAL ALLEGATIONS**

- A. 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"). That TRIBECA MEDICAL, P.C. evaded the legal restrictions on incorporation, ownership and/or control of PCs by concealing from the Departments of State and Education that legally unqualified individual(s) incorporated, owned, operated and/or controlled the medical professional service corporation. The Departments of State and Education are the agencies with regulatory oversight over professional service corporations.
1. Unqualified individual(s), who were not licensed to practice medicine, were instrumental in operating and controlling Respondent, and handling its financial affairs.



3  
B. On or about October 25, 1996, Ahmed Halima, M.D. was licensed to practice medicine in the State of New York State, and issued license number 204777 by the New York State Education Department.

4  
C. Pursuant to Respondent's certificate of incorporation, filed with the Secretary of State on March 14, 2001, Ahmed Halima, M.D. was Respondent's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.

5  
D. Ahmed Halima, M.D. remained Respondent's sole shareholder, director, and officer, but did not operate or control Respondent, from inception through June 8, 2006, the date he left Respondent professional corporation.

6  
E. That effective June 3, 2008, Ahmed Halima, M.D. surrendered his New York State medical license pursuant to New York State Public Health Law §230.13. That action was not disciplinary in nature.

7  
F. That on or about June 8, 2006, Respondent caused the records of the State Education Department, Office of the Professions, Professional Corporations Unit, State of New York, to record a change in Respondent's ownership from Ahmed Halima, M.D. to Raphael Cilento, M.D.

8  
G. On or about February 25, 1963, Raphael Cilento, M.D. was licensed to practice medicine in the State of New York State, and issued license number 089966 by the New York State Education Department.

9  
H. In a Determination and Order, dated February 24, 2007, effective March 1,

2007, a Hearing Committee for Professional Medical Conduct sustained charges finding Raphael Cilento, M.D. guilty of having a psychiatric condition which impaired his ability to practice and that he failed to comply with an order issued pursuant to New York State Public Health Law Section 230(7), and his medical license was revoked effective March 1, 2007.

- I. Upon information and belief, on a date on or after June 8, 2006, Raphael Cilento, M.D. transferred his ownership of Respondent to Prasad Chalasani, M.D., although no notice of such transfer was given to or recorded with the State Education Department, Office of the Professions, Professional Corporations Unit, State of New York.
- J. On or about January 25, 1972, Prasad Chalasani, M.D. was licensed to practice medicine in the State of New York, and issued license number 111694 by the New York State Education Department.
- K. In a Determination and Order, effective March 10, 2008, the Administrative Review Board for Professional Medical Conduct affirmed the Hearing Committee determination of October 24, 2007 finding Prasad Chalasani, M.D. guilty of having violated the terms of probation previously imposed by the New York State Board for Professional Medical Conduct. The Review Board revoked Dr. Chalasani's medical license, effective March 10, 2008.
- L. As a result of the surrender of said license, Ahmed Halima, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent in violation of §§ 1503(a) and (b), and 1504(a) of the N.Y. Bus. Corp. Law.

- M. As a result of the revocation of said license, Raphael Cilento, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent in violation of §§ 1503(a) and (b), and 1504(a) of the N.Y. Bus. Corp. Law.
- N. As a result of the revocation of said license, Prasad Chalasani, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent in violation of §§ 1503(a) and (b), and 1504(a) of the N.Y. Bus. Corp. Law.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**FAILING TO COMPLY WITH A STATE LAW**

Respondent TRIBECA MEDICAL, P.C. is 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:

1. A, A1, B, C, D, E, F, G, H, I, J, K, L, M, and/or N.

DATED: June 26, 2008  
New York, New York

Redacted Signature

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Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

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