



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

Plainview Professional Medical, P.C.
54 Country Drive
Plainview, New York 11803

Open Medical Diagnostics of Islip, P.C.
c/o John Donovan
260 Seidman Place
Franklin Square, New York 11010

Island Medical Professional, P.C.
40 E. Merrick Road – Suite 106
Valley Stream, New York 11580

Willis Avenue Medical, P.C.
c/o John P. Donovan
33 Willis Avenue – Suite 105
Mineola, New York 11501

Francis Ruddy, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street – 4th Flr.
New York, New York 10007

**RE: In the Matter of Plainview Professional Medical, P.C.,
Open Medical Diagnostics of Islip, P.C.,
Island Medical Professional, P.C.,
Willis Avenue Medical, P.C.**

Dear Parties:

Enclosed please find the Determination and Order (No. 08-191) 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

DETERMINATION
AND
ORDER

BPMC NO. 08-191

IN THE MATTER
OF
PLAINVIEW PROFESSIONAL MEDICAL, P.C.
OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C.
ISLAND MEDICAL PROFESSIONAL, P.C.
WILLIS AVENUE MEDICAL, P.C.

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. Respondents' Plainview Professional Medical, P.C., Open Medical Diagnostics of Islip, P.C., Island Medical Professional P.C., and Willis Avenue Medical, P.C. (hereinafter Respondents) made no appearance and were 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 23, 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:	August 6, 2008
Date of Hearing :	September 15, 2008
Location of Hearing:	Offices of New York State Department of Health 90 Church St., 4 th Floor New York, NY 10007
Witness:	Joseph Cain
Deliberations Date:	September 15, 2008
Transcript received:	September 30, 2008

On August 6, 200, ALJ Marc P. Zylberberg held a Pre-Hearing Conference. Respondents did not appear at this Pre-Hearing and no Counsel appeared on their behalf. At that Pre-Hearing, the ALJ ruled that the service of the Notice of Hearing and Statement of Charges on Respondents was effected on July 21, 2008, and that the Board for Professional Medical Conduct had obtained jurisdiction over all Respondents [P.H.T-6-9]¹; (Petitioner's Exhibits 3-6)². This matter was later transferred to ALJ Traskos.

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

² 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.

On the September 15, 2008 hearing day, Respondents made no appearance and they were not represented by Counsel.

After brief testimony by an investigator from the Office of Professional Medical Conduct, 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:

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 Respondents' 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 Respondents [T.67]. See also Corsello v. New York State Department of Health, 300 A.D.2d 849, 752 N.Y.S.2d 156 (App. Div. 3rd 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. Plainview Professional Medical, P.C., Open Medical Diagnostics of Islip, P.C., Island Medical Professional, P.C., and Willis Avenue Medical, P.C., ("**Respondents**") are 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**”).

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

Respondents 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. Respondents PLAINVIEW PROFESSIONAL MEDICAL P.C., OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C., ISLAND MEDICAL PROFESSIONAL, P.C., and WILLIS AVENUE MEDICAL P.C. were authorized as physician professional service corporations by the New York State Department of State on various dates between August 1999 and April, 2005, pursuant to N.Y. Bus. Corp. Law, Article 15. Respondents are subject to the jurisdiction of the State Board for Professional Medical Conduct, and the pre-hearing and hearing procedures of N.Y. Public Health Law, Article 2, Title 11-A, pursuant to N.Y. Bus. Corp. Law § 1502(d).

2. 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"). PLAINVIEW PROFESSIONAL MEDICAL P.C., OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C., ISLAND MEDICAL PROFESSIONAL, P.C., and WILLIS AVENUE 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 individuals incorporated, owned, operated and/or controlled medical professional service corporations. The Departments of State and Education are the agencies with regulatory oversight over professional service corporations.

3. Unqualified individual(s) were instrumental in operating, controlling and/or handling the financial affairs of the following:

- a. Plainview Professional Medical P.C.,
- b. Open Medical Diagnostics of Islip, P.C.,
- c. Island Medical Professional , P.C.,
- d. Willis Avenue Medical , P.C.

4. Unqualified individual(s) incorporated the following:

- a. Open Medical Diagnostics of Islip, P.C.,
- b. Island Medical Professional , P.C.,
- c. Willis Avenue Medical, P.C.

5. Unqualified individuals owned the following:

- a. Plainview Professional Medical P.C.,
- b. Open Medical Diagnostics of Islip, P.C.,
- c. Island Medical Professional , P.C.,
- d. Willis Avenue Medical , P.C.

6. On or about February 1, 1967, Rafael Garcia, M.D. was licensed to practice medicine in the State of New York, and issued license number 098458 by the New York State Education Department.

7. Pursuant to the certificate of incorporation of Respondent PLAINVIEW PROFESSIONAL MEDICAL P.C. (hereinafter "PLAINVIEW"), filed with the Secretary of State

on March 8, 2000, Rafael Garcia, M.D., was Respondent PLAINVIEW's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.

8. Rafael Garcia, M.D. remained Respondent PLAINVIEW's sole shareholder, director, and officer, but did not operate or control Respondent PLAINVIEW, from inception through the present, and has not practiced medicine at PLAINVIEW since the summer of 2000.

9. Pursuant to the certificate of incorporation of Respondent OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C. (hereinafter "OPEN"), filed with the Secretary of State on April 25, 2005, Rafael Garcia, M.D. was Respondent OPEN's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.

10. Rafael Garcia, M.D. remained Respondent OPEN's sole shareholder, director, and officer, but did not operate or control Respondent OPEN, from inception through the present.

11. Pursuant to the certificate of incorporation of Respondent ISLAND MEDICAL PROFESSIONAL, P.C. (hereinafter "ISLAND"), filed with the Secretary of State on August 19, 1999, Rafael Garcia, M.D. was Respondent ISLAND's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.

12. Rafael Garcia, M.D. remained Respondent ISLAND's sole shareholder, director, and officer, but did not operate or control Respondent ISLAND, from inception through the present, and has not practiced medicine at ISLAND since 2003.

13. Pursuant to the certificate of incorporation of Respondent WILLIS AVENUE MEDICAL, P.C. (hereinafter "WILLIS"), filed with the Secretary of State on December 23, 2004, Rafael Garcia, M.D. was Respondent WILLIS's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.

14. Rafael Garcia, M.D. remained Respondent WILLIS's sole shareholder, director, and

officer, but did not operate or control Respondent WILLIS, from inception through the present, and has not practiced medicine at WILLIS.

15. Effective February 6, 2008, Rafael Garcia, M.D. surrendered his New York State medical license pursuant to New York State Public Health Law §230.13. This action was not disciplinary in nature.

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

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

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

19. As a result of the surrender of said license, Rafael Garcia, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent WILLIS 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 23, 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

Respondents are 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.

Respondents made no appearance at the Hearing and were not represented by counsel. The Respondents 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 required Respondents 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 all Respondents 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 Investigator Joseph Cain presented by the Department 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 physician who advocated his responsibility by allowing unqualified individuals to run these corporations has already surrendered his license. The Hearing Committee concurs with the Department that an annulment of all of the corporations is the appropriate penalty for their 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 corporations will be treated as if it never validly existed from day one and they 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. Respondents 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**

10/3/08

Redacted Signature

KENNETH KOWALD, (Chair)
JINIL YOO, M.D.
FLORENCE KAVALER, M.D.

Plainview Professional Medical, PC
54 Country Drive
Plainview, NY 11803

Open Medical Diagnostics of Islip, PC
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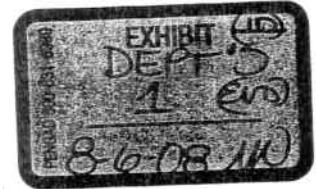
Francis Ruddy, Esq.
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street- 4th Fl.
New York, NY 10007

APPENDIX 1

IN THE MATTER

OF

PLAINVIEW PROFESSIONAL MEDICAL P.C.,
OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C.,
ISLAND MEDICAL PROFESSIONAL, P.C.,
WILLIS AVENUE MEDICAL P.C.



STATEMENT
OF
CHARGES

Respondents PLAINVIEW PROFESSIONAL MEDICAL P.C., OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C., ISLAND MEDICAL PROFESSIONAL, P.C., WILLIS AVENUE MEDICAL P.C. were authorized as physician professional service corporations by the New York State Department of State on various dates between August, 1999 and April, 2005, pursuant to N.Y. Bus. Corp. Law, Article 15. Respondents are 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 PLAINVIEW PROFESSIONAL MEDICAL P.C., OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C., ISLAND MEDICAL PROFESSIONAL, P.C., WILLIS AVENUE 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 individuals

EXHIBIT (1)

incorporated, owned, operated and/or controlled medical professional service corporations. The Departments of State and Education are the agencies with regulatory oversight over professional service corporations.

1. That unqualified individual(s) were instrumental in operating, controlling and/or handling the financial affairs of the following:
 - a. Plainview Professional Medical P.C.,
 - b. Open Medical Diagnostics of Islip, P.C.,
 - c. Island Medical Professional, P.C.,
 - d. Willis Avenue Medical P.C.

 2. That unqualified individual(s) incorporated the following:
 - a. Open Medical Diagnostics of Islip, P.C.,
 - b. Island Medical Professional, P.C.,
 - c. Willis Avenue Medical P.C.

 3. That unqualified individuals owned the following:
 - a. Plainview Professional Medical P.C.,
 - b. Open Medical Diagnostics of Islip, P.C.,
 - c. Island Medical Professional, P.C.,
 - d. Willis Avenue Medical P.C.
- B. On or about February 1, 1967, Rafael Garcia, M.D. was licensed to practice medicine in the State of New York State, and issued license number 098458 by the New York State Education Department.
- C. Pursuant to the certificate of incorporation of Respondent PLAINVIEW PROFESSIONAL MEDICAL P.C. (hereinafter "PLAINVIEW"), filed with the

Secretary of State on March 8, 2000, Rafael Garcia, M.D. was Respondent PLAINVIEW's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.

- D. Rafael Garcia, M.D. remained Respondent PLAINVIEW's sole shareholder, director, and officer, but did not operate or control Respondent PLAINVIEW, from inception through the present, and has not practiced medicine at PLAINVIEW since the summer of 2000.
- E. Pursuant to the certificate of incorporation of Respondent OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C. (hereinafter "OPEN"), filed with the Secretary of State on April 25, 2005, Rafael Garcia, M.D. was Respondent OPEN's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.
- F. Rafael Garcia, M.D. remained Respondent OPEN's sole shareholder, director, and officer, but did not operate or control Respondent OPEN, from inception through the present.
- G. Pursuant to the certificate of incorporation of Respondent ISLAND MEDICAL PROFESSIONAL, P.C. (Hereinafter "ISLAND"), filed with the Secretary of State on August 19, 1999, Rafael Garcia, M.D. was Respondent ISLAND's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.
- H. Rafael Garcia, M.D. remained Respondent ISLAND's sole shareholder, director, and officer, but did not operate or control Respondent ISLAND, from

inception through the present, and has not practiced medicine at ISLAND since 2003.

- I. Pursuant to the certificate of incorporation of Respondent WILLIS AVENUE MEDICAL P.C. (hereinafter "WILLIS"), filed with the Secretary of State on December 23, 2004, Rafael Garcia, M.D. was Respondent WILLIS's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.
- J. Rafael Garcia, M.D. remained Respondent WILLIS's sole shareholder, director, and officer, but did not operate or control Respondent WILLIS, from inception through the present, and has not practiced medicine at WILLIS.
- K. That effective February 6, 2008, Rafael Garcia, 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.
- L. As a result of the surrender of said license, Rafael Garcia, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent PLAINVIEW in violation of §§ 1503(a) and (b), and 1504(a) of the N.Y. Bus. Corp. Law.
- M. As a result of the surrender of said license, Rafael Garcia, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent OPEN in violation of §§ 1503(a) and (b), and 1504(a) of the N.Y. Bus. Corp. Law.
- N. As a result of the surrender of said license, Rafael Garcia, M.D. is no longer

duly authorized by law to practice medicine, rendering Respondent ISLAND in violation of §§ 1503(a) and (b), and 1504(a) of the N.Y. Bus. Corp. Law.

- O. As a result of the surrender of said license, Rafael Garcia, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent WILLIS 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

Respondents PLAINVIEW PROFESSIONAL MEDICAL P.C., OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C., ISLAND MEDICAL PROFESSIONAL, P.C., WILLIS AVENUE MEDICAL P.C. 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:

1. A, A1, A1(a), A3, A3(a), B, C, D, K, and/or L with respect to Respondent PLAINVIEW PROFESSIONAL MEDICAL P.C.
2. A, A1, A1(b), and/or A2, A2(a), A3, A3(b), B, E, F, K, and/or M with respect to Respondent OPEN MEDICAL DIAGNOSTICS OF ISLIP, P.C.
3. A, A1, A1(c), and/or A2, A2(b), A3, A3(c), B, G, H, K, and/or N with respect to Respondent ISLAND MEDICAL PROFESSIONAL, P.C.
4. A, A1, and A1(d), A2, A2(c), A3, A3(d), B, I, J, K, and/or O with

respect to Respondent WILLIS AVENUE MEDICAL P.C.

DATED: June 23, 2008
New York, New York

Redacted Signature

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct