NEW YORK
state department of
HEALTH

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

Public

October 20, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bay Medical Care, P.C.
7612 Bay Parkway, Suite B
Brooklyn, New York 11214

John Thomas Viti, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Bay Medical Care, P.C.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-258) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: nm
Enclosure

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

COPY

IN THE MATTER

OF

BAY MEDICAL CARE, P.C.
Respondent

DETERMINATION
AND
ORDER
BPMC-14-258

Donald H. Teplitz, D.O. - *Chair*, Joel M. Zinberg, M.D., J.D., and Janet R. Axelrod, Esq., 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 of the State of New York ("P.H.L."). Kimberly A. O'Brien, Esq., Administrative Law Judge ("ALJ") served as the Administrative Officer.

The New York State Department of Health, Bureau of Professional Medical Conduct ("Department") appeared by John Thomas Viti, Esq., Assistant Counsel. BAY MEDICAL CARE, P.C. ("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 20, 2014
Date of Service of Notice of Hearing and Statement of Charges:	August 5, 2014
Answer to Charges:	None

Date of Hearing:	August 27, 2014
Location of Hearing:	New York State Department of Health 90 Church St., 4th Floor New York, NY 10007
Witnesses:	None
Deliberations Date:	August 27, 2014
Final Transcript Received:	September 17, 2014

CONCLUSIONS OF LAW

On August 27, 2014, the Department made a motion that the charges be deemed admitted. The ALJ ruled that the service of the Notice of Hearing and Statement of Charges on Respondent was effected on August 5, 2014, and that the Board for Professional Medical Conduct had obtained jurisdiction over Respondent (Ex. 3). 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."

Respondent did not submit an answer to the charges and allegations in the Statement of Charges. Accordingly, the ALJ ruled that the factual allegations and charges of misconduct contained in the Statement of Charges were deemed admitted by Respondent.

STATEMENT OF THE CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. This case was brought by the Department pursuant to §230 of the P.H.L. Respondent is charged with three (3) specifications of professional misconduct as set forth in §6530 of the Education Law of the State of New York ("Education Law"). Specifically, Respondent is charged with professional misconduct by reason of practicing

the profession fraudulently; willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of Medicine, namely §1503 Business Corporation Law; and willfully making a false report required by law or by the Department of Health or Education Department.

On August 27, 2014 a hearing of this matter was held, Respondent did not appear at the hearing either in person or by a representative. Respondent failed to file an answer and therefore all the Factual Allegations and all the Specifications of Misconduct contained in the Statement of Charges were deemed admitted. A copy of the Notice of Hearing and the Statement of Charges is attached to this Determination and Order as Appendix 1/ "Ex.1" (Department's Ex. 1&2).

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 exhibits "Ex." or transcript pages "Tr." 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, unless otherwise specified.

1. Respondent, BAY MEDICAL CARE, P.C., is a medical professional service corporation. 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. Respondent evaded the legal restrictions on incorporation, ownership, and/or control of a medical professional corporation ("P.C.") by concealing from the New York State Department of State and New York State Education Department that legally unqualified individual(s) incorporated, owned, operated and/or controlled BAY MEDICAL CARE, P.C. (Ex. 5, Ex 6, Ex. 7, Ex. 10; Tr. 10-13). Unqualified individual(s), who were not licensed to practice medicine, were instrumental in operating and controlling Respondent and handling its financial affairs (Ex. 10, Ex. 11, Ex. 12, Ex.

14; Tr. 10).

2. On or about July 24, 1991, Gustave Stephen Drivas, M.D. was licensed to practice medicine in the State of New York, and issued license number186334 by the New York State Education Department (Ex. 2; Ex. 8).

3. Pursuant to Respondent's certificate of incorporation, filed with the Secretary of State on March 14, 2005, Gustave S. Drivas, M.D., license number 18633, was listed as Respondent's sole shareholder, director and officer, and was identified as the individual who was duly authorized by law to practice medicine (Ex. 5).

4. On July 9, 2013, pursuant to Determination & Order BPMC # 13-206, The State Board for Professional Medical Conduct revoked the New York State medical license of "Gustave Stephen Drivas, M.D." based in part upon transactions related to BAY MEDICAL CARE, P.C. (Ex. 8, Ex. 14; Tr. 11-14).

5. As a result of the revocation of said license, Gustave S. Drivas, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent in violation of §1503(a), §1503 (b) and §1504 (a) of the N.Y. Bus. Corp. Law (Ex. 8, Ex. 9).

6. Gustave S. Drivas, M.D. was listed as Respondent's sole owner but did not operate or control Respondent, from inception through July 9, 2013 when his license was revoked (Ex. 5, Ex. 10; Tr. 9-12).

DISCUSSION

Respondent is charged with three (3) specifications alleging professional misconduct within the meaning of §6530 of the Education Law. Respondent made no appearance at the hearing. The Respondent was properly served with the Notice of Hearing and Statement of Charges (Ex. 3). The ALJ ruled that pursuant to Public Health Law PHL§ 230(10)(c) Respondent's failure to file a written Answer to the Statement of Charges resulted in the

allegations and specifications of misconduct being deemed admitted. Based on the foregoing, the Hearing Committee unanimously determined to sustain all the Factual Allegations and Specifications of Misconduct contained in the June 20, 2014 Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee realizes that a P.C. is penalized differently than an individual physician. There is no physician running this corporation and 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(d) 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 factual allegations and the first, second, and third specifications of misconduct contained in the Statement of Charges (Ex:1) are **SUSTAINED**; and

2. Respondent's certificate of incorporation as a P.C. in the State of New York is hereby **ANNULLED**; and

3. This Order shall be effective upon service in accordance with P.H.L. §230(10)(h).

DATED: , **New York**
, **2014**

REDACTED

DONALD H. TEPLITZ, D.O., Chair
JOEL M. ZINBERG, M.D., J.D.
JANET R. AXELROD, ESQ.

BAY MEDICAL CARE, P.C.
7612 Bay Parkway Suite B
Brooklyn, New York 11214

John Thomas Viti, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street- 4th Fl.
New York, NY 10007

APPENDIX 1 / "Ex.1"
Notice of Hearing &
Statement of Charges

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

IN THE MATTER

OF

Bay Medical Care, P.C.

NOTICE

OF

HEARING

TO: Bay Medical Care, P.C.
7612 Bay Parkway Suite B
Brooklyn, New York 11214

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 August 27, 2014, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 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.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here_____

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, Riverview Center,150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, 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.

DATE: June 18, 2014
New York, NY

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:

John Thomas Viti Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007
(212) 417-4450

SECURITY NOTICE TO THE LICENSEE

The proceeding will be held in a secure building with restricted access. Only individuals whose names are on a list of authorized visitors for the day will be admitted to the building

No individual's name will be placed on the list of authorized visitors unless written notice of that individual's name is provided by the licensee or the licensee's attorney to one of the Department offices listed below.

The written notice may be sent via facsimile transmission, or any form of mail, but must be received by the Department **no less than two days prior to the date** of the proceeding. The notice must be on the letterhead of the licensee or the licensee's attorney, must be signed by the licensee or the licensee's attorney, and must include the following information:

Licensee's Name_____Date of Proceeding_____

Name of person to be admitted_____

Status of person to be admitted_____
(Licensee, Attorney, Member of Law Firm, Witness, etc.)

_____
Signature (of licensee or licensee's attorney)

This written notice must be sent to:

New York State Health Department
Bureau of Adjudication
Riverview Center
150 Broadway - Suite 510
Albany, NY 12204-2719
Fax: 518-402-0751

PART 51

UNIFORM HEARING PROCEDURES

(Statutory authority: Public Health Law, §§ 12-a, 206-a, 230, 577, 2801-a, 2803-d, 2806, 2897-a, 3393, 3511; State Administrative Procedure Act, §§ 301, 401; L. 1991, ch. 606, § 29)

Historical Note

Part renum. secs. 43.50–43.55; new filed Aug. 28, 1962; renum. Part 52, new filed Dec. 17, 1968; repealed, filed Feb. 26, 1974; new (§§ 51.1-51.15) filed Nov. 29, 1982 eff. Nov. 29, 1982.

§ 51.1 Applicability.

This Part shall apply to all adjudicatory proceedings to which the Department of Health is a party brought pursuant to the Public Health Law, unless there is a specific statute or regulation to the contrary. This Part shall not apply to proceedings brought pursuant to Part 76, Public Health Administrative Tribunal, of this Title.

Historical Note

Sec. renum. 43.50; new filed Aug. 28, 1962; renum. 52.1, new filed Dec. 17, 1968, repealed, filed Feb. 26, 1974; new filed Nov. 29, 1982 eff. Nov. 29, 1982.

§ 51.2 Definitions.

Whenever used in this Part:

(a) *Commissioner* means the Commissioner of Health of the State of New York or his duly authorized representative.

(b) *CPLR* means the Civil Practice Law and Rules.

(c) *Department* means the Department of Health of the State of New York.

(d) *Hearing officer* means the person duly designated for the purpose of conducting or participating in a hearing pursuant to the Public Health Law, including an administrative officer or an administrative law judge assigned by the department to the hearing.

(e) *Party* means the department and all persons designated as petitioner, respondent, or intervenor in any adjudicatory proceeding subject to this Part.

(f) *Report* means the hearing officer's summary of the hearing record, including his findings of fact, conclusions and recommendation or the findings, conclusions and recommendation of the hearing committee or hearing panel pursuant to Public Health Law, section 230.

Historical Note

Sec. renum. 43.51, new filed Aug. 28, 1962; renum. 52.2, new filed Dec. 17, 1968; repealed, filed Feb. 26, 1974; new filed Nov. 29, 1982 eff. Nov. 29, 1982.

§ 51.3 Notice of hearing and statement of charges.

(a) The notice of hearing shall contain a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the statutes and regulations violated, if any, and a short and plain statement of the matters asserted, or at issue, and/or a statement of charges.

(b) The notice of hearing shall specify the time, place and date for a hearing.

(c) Service of the notice of hearing and statement of charges, if any, shall be served at least 15 days prior to the date of the hearing and shall be by certified or registered mail, or by service consistent with article 3 of the CPLR. Where service is by mail, service shall be deemed complete three days after mailing.

Historical Note

Sec. renum. 43.52, new filed Aug. 28, 1962; renum. 52.3, new filed Dec. 17, 1968; repealed, filed Feb. 26, 1974; new filed Nov. 29, 1982 eff. Nov. 29, 1982.

§ 51.4 Adjournment.

A request for an adjournment of the hearing should be in writing and submitted to the hearing officer and other parties prior to the hearing. Adjournments shall be granted only by the hearing officer, and only after the hearing officer has consulted with both parties. When granted, adjournments should be to a specified time, day and place.

Historical Note

Sec. renum. 43.53, new filed Aug. 28, 1962; renum. 52.4, new filed Dec. 17, 1968; repealed, filed Feb. 26, 1974; new filed Nov. 29, 1982; amd. filed Nov. 28, 1986 eff. Nov. 28, 1986.

§ 51.5 Answer or responsive pleading.

(a) A party may serve on the department an answer, or responsive pleading, signed by the party or the party's attorney. The answer or responsive pleading shall specify which allegations are admitted, which allegations are denied and which allegations a party has insufficient information upon which to form an opinion.

(b) The answer or responsive pleading shall be served no later than three days before the initial hearing date.

(c) An answer or responsive pleading is required if there are affirmative defenses.

Historical Note

Sec. renum. 43.54, new filed Aug. 28, 1962; renum. 52.5, new filed Dec. 17, 1968; repealed, filed Feb. 26, 1974; new filed Nov. 29, 1982 eff. Nov. 29, 1982.

§ 51.6 Amendment of pleadings.

Any party may amend or supplement a pleading at any time prior to the submission of the hearing officer's report to the commissioner, or to the appropriate board or council, by leave of the hearing officer, if there is no substantial prejudice to any other party. Any party may amend or supplement a pleading at any time prior to a hearing committee's final determination and order

pursuant to Public Officers Law, section 230(10), by leave of the hearing officer if there is no substantial prejudice to any other party.

Historical Note

Sec. renum. 43.55, new filed Aug. 28, 1962; renum. 52.6, new filed Dec. 17, 1968; repealed, filed Feb. 26, 1974; new filed Nov. 29, 1982; amd. filed Jan. 14, 1994 eff. Feb. 2, 1994.

§ 51.7 Service of papers.

All notices and papers connected with a hearing, other than the notice of hearing and statement of charges, if any, may be served by ordinary mail. Except where otherwise provided, service by mail shall be deemed complete three days after mailing.

Historical Note

Sec. filed Aug. 28, 1962; renum. 52.7, filed Dec. 17, 1968; new filed Nov 29, 1982 eff Nov. 29, 1982.

§ 51.8 Disclosure.

(a) Except as provided in subdivision (b) of this section or as otherwise agreed to by all parties, there shall be no disclosure, including but not limited to bills of particulars, exchanges of documents and witness lists, depositions, interrogatories, discovery and requests for documents. A hearing officer may not require disclosure. When the parties agree to any form of disclosure, the hearing officer shall ensure that all parties proceed in accordance with the agreement of the parties.

(b) (1) If the department in a notice of hearing states its intent to seek, or states the possibility of, the revocation of a license or permit, upon the service of such notice, any party to the proceeding may demand in writing from any other party disclosure of any of the following which such other party intends to introduce at the hearing:

(i) names of witnesses; however, a summary of the testimony to be given by the witnesses shall not be required to be disclosed;

(ii) a list of documentary evidence;

(iii) photocopies of documentary evidence listed in subparagraph (ii) of this paragraph in the possession of the party upon whom the demand has been made; and

(iv) a brief description of physical or other evidence which cannot be photocopied.

(2) The demand for disclosure shall be made at least 10 days prior to the first scheduled date of hearing. At least seven days prior to the first scheduled date of hearing, the party upon whom the demand has been made shall make the disclosure described in subparagraphs (1)(i) through (iv) of this subdivision or a statement that the party does not have anything to disclose. If, after such disclosure or statement, a party determines to present witnesses or evidence not previously disclosed, the party shall disclose as soon as practicable.

(3) Upon application of any party, the hearing officer:

(i) upon good cause shown, may allow demands and responses within time periods other than those described in paragraph (2) of this subdivision;

(ii) shall allow a party not to disclose information or material protected by statutory or case law from disclosure, including information and material protected because of privilege or confidentiality;

(iii) upon good cause shown, may limit, condition or regulate the use by the party to whom disclosure is made of information or material disclosed; and

(iv) may preclude a party that unreasonably fails to respond to a timely demand for disclosure or to supplement its disclosure from introducing evidence or witnesses not disclosed.

Historical Note

Sec. filed Aug. 28, 1962; renum. 52.8, filed Dec. 17, 1968; new filed Nov. 29, 1982; amds. filed: Nov. 28, 1986; Oct. 1, 1987 as emergency measure, expired 60 days after filing; Dec. 1, 1987 as emergency measure, expired 60 days after filing; March 29, 1988; Sept. 15, 1988 eff. Oct. 5, 1988. Amended (b)(3).

§ 51.9 Hearing officer.

(a) No hearing officer shall preside who has any bias with respect to the matter involved in the proceeding. Any party may file with the department a request, together with a supporting affidavit, that a hearing officer be removed on the basis of personal bias or other good cause.

(b) The hearing officer shall conduct the hearing in a fair and impartial manner.

(c) The hearing officer shall have the power to:

(1) rule upon requests, including all requests for adjournments;

(2) set the time and place of hearing;

(3) administer oaths and affirmations;

(4) issue subpoenas requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers and other evidence;

(5) summon and examine witnesses, including the authority to direct a party, without necessity of subpoena, to appear and to testify;

(6) admit or exclude evidence;

(7) limit the number of times any witness may testify, repetitious examination or cross-examination, and the amount of corroborative or cumulative testimony;

(8) hear argument on facts or law;

(9) order the parties to appear for a prehearing conference to consider matters which may simplify the issues or expedite the proceeding;

(10) order that opening statements be made; and

(11) do all acts and take all measures necessary, but not otherwise prohibited by this Part, for the maintenance of order and the efficient conduct of the hearing.

(d) The hearing officer shall not have the power to:

(1) remove testimony from the transcript by deletion, expungement or otherwise; and

(2) dismiss the charges unless otherwise authorized by designation.

(e) Upon being notified that a hearing officer declines or fails to serve, or in the case of death, resignation or removal of the hearing officer, or upon the initiative of the commissioner, or the appropriate board or council, a successor hearing officer shall be designated to continue the proceeding.

(f) The designation of a hearing officer shall be in writing and filed with the department.

Historical Note

Sec. filed Aug. 28, 1962; renum. 52.9, filed Dec. 17, 1968; new filed Nov. 29, 1982; amd. filed Nov. 28, 1986 eff. Nov. 28, 1986.

§ 51.10 Stipulations and consent orders.

(a) At any time prior to issuance of the final order or determination, parties may enter into a stipulation for the resolution of any or all issues.

(b) The commissioner, or the appropriate board or council, may issue a consent order upon agreement or stipulation of the parties. A consent order shall have the same force and effect as an order issued after a hearing.

(c) In matters governed by Public Health Law, sections 230, 230-a, 230-b and 230-c, a licensee, who is under investigation or against whom a determination has been made that a hearing is warranted, as a condition for the satisfaction of all charges and potential charges, shall admit guilt to at least one of the acts of misconduct alleged, or shall agree not to contest the allegations, or shall assert that he or she cannot successfully defend against at least one of the acts of misconduct alleged, and shall either surrender his or her license or agree to a penalty. The signators to such an agreement shall be the licensee, his or her counsel, if the licensee is represented, the attorney for the department, the director of the Office of Professional Medical Conduct and the chairperson of the State Board for Professional Medical Conduct. The chairperson of the State Board for Professional Medical Conduct shall issue a surrender or consent order based upon said agreement. The order shall have the same force and effect as an order issued after a hearing.

Historical Note

Sec. filed Aug. 28, 1962; renum. 52.10, filed Dec. 17, 1968; new filed Nov. 29, 1982; repealed, new added by renum. 51.11, filed Nov. 28, 1986; amds. filed: Sept. 6, 1991 as emergency measure, expired 90 days after filing; Dec. 31, 1991 eff. Jan. 15, 1992. Added (c).

§ 51.11 The hearing.

(a) *Appearances.* (1) A party may appear in person or by an attorney. If a party appears by an attorney, service of papers shall be made upon the attorney.

(2) Any person appearing on behalf of a party in a representative capacity may be required to show his authority to act in such capacity.

(3) If a party fails to appear at the hearing, issues on which the absent party has the burden of proof may be resolved against that party.

(4) At any time before a report is submitted to the commissioner, or to the appropriate board or council, the hearing officer may open a default or relieve any party of the consequences of any default upon good cause shown.

(b) *Consolidation and severance.* (1) In proceedings which involve common questions of fact, the hearing officer, upon his own initiative or upon motion of any party, may order a consolidation of actions or a joint hearing of any or all issues to avoid unnecessary delay and cost.

(2) The hearing officer, to avoid prejudice or inconvenience, may order a severance of the hearing and hear separately any issue in the proceeding.

(c) *Intervention.* (1) At any time after the institution of a proceeding, the hearing officer may, upon a verified petition and for good cause shown, and upon notice to the parties, permit a person to intervene as a party, except in proceedings brought pursuant to Public Health Law, section 230.

(2) The petition of any person desiring to intervene as a party shall state with precision and particularity:

(i) the petitioner's interest in the matter at issue;

(ii) the nature of the evidence petitioner intends to present and the names of witnesses, if any;

(iii) the nature of the argument petitioner intends to make; and

(iv) any other reason that petitioner should be allowed to intervene.

(d) *Conduct of hearing and evidence.* (1) Each witness shall be sworn or given an affirmation.

(2) The rules of evidence need not be observed.

(3) Each party shall have the right to present evidence and to cross-examine witnesses.

(4) Official notice may be taken of all facts of which judicial notice could be taken and o other facts within the specialized knowledge of the department.

(5) All evidence, including records, documents and memoranda in the possession of the department of which it desires to avail itself, shall be offered and made a part of the record. All such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

(6) The department has the burden of proof and of going forward in all enforcement cases. The petitioner/applicant has the burden of proof and of going forward in all other cases.

(7) In administrative proceedings relating to violation of Public Health Law, section 2803-d, the hearing officer may not compel the disclosure of the identity of the person who made the report or any person who provided information in an investigation of any such report.

(8) Complaints relating to matters governed by Public Health Law, section 230 may not be introduced into evidence by either party and their production may not be required by the hearing officer even if the complainant is a witness.

(9) In matters governed by Public Health Law, section 230, a hearing may proceed if at least two members of the hearing committee are present. At the conclusion of the hearing each member shall affirm that he or she has read and considered evidence introduced at and transcripts of any hearing days at which he or she was not present.

(10) Claims that an administrative hearing has been unreasonably delayed shall be raised only pursuant to this section and claims of unreasonable delay not permitted by this section shall not be entertained in a hearing.

(i) Claims of unreasonable delay occurring after hearing is requested or noticed. Any claim that a hearing has been delayed unreasonably shall be treated as an affirmative defense pursuant to section 51.5 of this Part or otherwise as part of the claimant's case and shall be argued as part of the claimant's case. The burden of proving and the burden of going forward on the issue of unreasonable delay shall be on the claimant.

(*a*) In reviewing a claim of unreasonable delay, the hearing officer shall first calculate the time period that has elapsed between the date the hearing was requested or noticed, whichever is earlier, and the first day of hearing (the "time period"). For purposes of this section, the time period for cases brought pursuant to Public Health Law, section 2803-d or 230, or Subpart 60-1 of this Title, shall be from the date the hearing was noticed to the first day of hearing.

(*b*) If the time period is one year or less, the claim of unreasonable delay shall be denied.

(*c*) If the time period is more than one year, the claimant shall then have the burden of showing that the claimant has been handicapped significantly and irreparably in mounting a case or defense by the time period. A mere assertion of handicap shall not suffice.

(*d*) If the claimant meets such burden, the hearing officer must then determine whether the time period is unreasonable under the circumstances. In making that determination, the hearing officer shall weigh at least the following factors:

(*1*) whether there is a causal relationship between the conduct of the department and the time period, and whether the conduct of the claimant was responsible in whole or in part for the time period;

(*2*) the public policy sought to be effected through the administrative action which is the subject of the administrative hearing;

(*3*) the availability of department resources to pursue the case consistent with other department responsibilities.

(*e*) The hearing officer shall include in the report to the decisionmaker any findings, conclusions and recommendations with respect to unreasonable delay. The report shall also include findings, conclusions and recommendations that will allow the decisionmaker to dispose of the case if the decisionmaker does not follow the recommendation for dismissal on the basis of unreasonable delay.

(ii) Claims of unreasonable delay occurring before hearing is requested or noticed

(a) Claimant may make a record in connection with a claim of an unreasonable delay by the department occurring prior to a request for, or notice of, a hearing that has resulted in substantial prejudice to the claimant's defense due to the passage of time. The department may make a record in opposition to such a claim. A separate hearing on this issue shall not be provided.

(b) Neither a hearing officer nor, in a case of alleged professional misconduct, a hearing committee, shall consider, sustain or reject a claim of unreasonable delay occurring before a hearing is requested or noticed. After a final determination has been rendered, in the event that such determination is adverse to the claimant, and the claimant wishes to pursue the claim of an unreasonable delay occurring prior to a hearing request or notice, the claimant may do so in a proceeding pursuant to article 78 of the CPLR.

(e) *Record.* (1) A verbatim record of the proceedings shall be made by whatever means the department deems appropriate.

(2) The record of the hearing shall include: the notice of hearing, statement of charges, if any, answer and any other responsive pleadings; motions and requests submitted, and rulings thereon; the transcript or recording of the testimony taken at the hearing; exhibits; stipulations, if any; a statement of matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; briefs or objections as may have been submitted and filed in connection with the hearing and any decision, determination, opinion, order or report rendered.

Historical Note

Sec. filed Aug. 28, 1962; renum. 52.11, filed Dec. 17, 1968; new filed Nov. 29, 1982; renum. 51.10, new added by renum. and amd. 51.12, filed Nov. 28, 1986; amds. filed: Aug. 18, 1989; April 19, 1993; Jan. 4, 1994 eff. Feb. 2, 1994. Amended (d)(10).

§ 51.12 Hearing officer's report.

For matters governed by Public Health Law, sections 230, 230-a and 230-b, the hearing officer shall submit the hearing panel's signed final report not more than 52 days after the last day of hearing if service will be effectuated by mail and not more than 58 days after the last day of hearing if service will be effectuated personally. In all other matters, within 60 days of the close of the records, including receipt of the transcript, if any, the hearing officer should prepare his report and submit it to the commissioner or to the appropriate board or council, and to all parties.

Historical Note

Sec. filed Aug. 28, 1962; renum. 52.12, filed Dec. 17, 1968; new filed Nov. 29, 1982; renum. 51.11, new added by renum. 51.13, filed Nov. 28, 1986; amds. filed: Sept. 6, 1991 as emergency measure, expired 90 days after filing; Dec. 31, 1991 eff. Jan. 15, 1992

§ 51.13 Filing of exceptions.

(a) Within 30 days of the date a copy of the report of the hearing officer and proposed order or, hearings governed by Public Health Law, section 230, within 15 days of the date a report of the hearing committee and proposed recommendation is sent to the parties, any party may submit exceptions to the report and order or recommendation to the Supervising Administrative Law Judge.

(b) The exceptions may include:

(1) the particular findings of fact, conclusions of law, or disposition with which the party disagrees, the reasons for disagreement and a substitute finding, conclusion or disposition;

(2) general comments on the suitability of the report and order or recommendation, and

(3) an alternative proposed order or recommendation for consideration and adoption by the commissioner, his designee, or other decisionmaker.

(c) The party shall send a copy of its exceptions to all other parties or their attorneys and the hearing officer.

(d) The opportunity to submit exceptions may be waived by such party

(e) On notice to all parties, the party may request the Supervising Administrative Law Judge to extend the exception period. The Supervising Administrative Law Judge shall only address a request for an extension that has been made prior to the expiration of the exception period and after giving all other parties an opportunity to state their position on the request. The exception period may be extended by the Supervising Administrative Law Judge at the request of either party, for the good cause shown, and on notice to both parties. Extensions of time shall not be granted to allow a party to respond to exceptions already filed by another party.

(f) All exceptions shall be submitted to the commissioner, his designee, or other decisionmaker with the record of the hearing.

Historical Note

Sec. filed Aug. 28, 1962; renum. 52.13, filed Dec. 17, 1968; new filed Nov. 29, 1982; renum. 51.12, new added by renum. 51.14, filed Nov. 28, 1986; renum. 51.14, new filed Aug. 18, 1989 eff. Sept. 6, 1989.

§ 51.14 Final determination and order.

(a) After receipt of the hearing officer's report, the commissioner, or the appropriate board or council, shall make a final determination.

(b) The final determination shall be embodied in a written order which shall contain findings of fact and conclusions of law or reasons for the final determination.

(c) A copy of the order shall be served upon the parties.

Historical Note

Sec. filed Aug. 28, 1962; renum. 52.14, filed Dec. 17, 1968; new filed Nov. 29, 1982; renum. 51.13, new added by renum. 51.15, filed Nov. 28, 1986; renum. 51.15, new added by renum. 51.13, filed Aug. 18, 1989 eff. Sept. 6, 1989.

§ 51.15 Waiver of rules.

Any of the foregoing rules may be waived by agreement of the parties or, if a hearing has convened, by agreement of the parties and with consent of the hearing officer.

Historical Note

Sec. filed Nov. 29, 1982; renum. 51.14, filed Nov. 28, 1986; new filed Dec. 9, 1986; renum. 51.16, new added by renum. 51.14, filed Aug. 18, 1989 eff. Sept. 6, 1989.

§ 51.16 Administrative hearings (one-year time frame).

For hearings requested by applicants proposed for disapproval for establishment pursuant to Public Health Law, section 2801-a(2), or for construction pursuant to Public Health Law, section 2802(5), a notice of hearing shall be issued within 365 days of the receipt by the department of the written request for hearing. For hearings requested by applicants seeking increases in reimbursement rates pursuant to Part 86 of this Title, a notice of hearing shall be issued within 365 days of the rate review officer's determination that there are issues of fact which entitle the applicant to a hearing. Failure to comply with this section shall not affect the validity of the action taken.

Historical Note

Sec. added by renum. 51.15, filed Aug. 18, 1989 eff. Sept. 6, 1989.

§ 51.17 Disqualification for bias.

(a) A hearing officer and, in hearings governed by Public Health Law section 230, a committee member, shall be disqualified for bias. For purposes of this section, bias shall exist only when there is an expectation of pecuniary or other personal benefit from a particular outcome of the case or when there is a substantial likelihood that the outcome of the case will be affected by a person's prior knowledge of the case, prior acquaintance with the parties, witnesses, representatives, or other participants in the hearing, or other predisposition with regard to the case. The appearance of impropriety shall not constitute bias and shall not be a grounds for disqualification. Hearing officers and committee members are presumed to be free from bias.

(b) A hearing officer or committee member may disqualify himself/herself for bias on his/her own motion. A party seeking disqualification for bias had the burden of demonstrating bias. The party seeking disqualification shall submit to the hearing officer an affidavit pursuant to SAPA section 303 setting forth the facts establishing bias. Mere allegations of bias shall be insufficient to establish bias.

(c) The hearing officer shall rule on the request for disqualification.

Historical Note

Sec. filed Aug. 18, 1989 eff. Sept. 6, 1989.

EXHIBIT
Department's-2
8/27/14

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

IN THE MATTER

OF

BAY MEDICAL CARE, P.C.

STATEMENT

OF

CHARGES

Respondent, **BAY MEDICAL CARE, P.C.**, was authorized as a physician professional service corporations ("PSC") by the New York State Department of State and issued Certificates of Authority by the New York State Education Department on March 14, 2005. The Respondent is subject to the jurisdiction of the State Board of Professional Medical Conduct, pursuant to §1503(d) of the New York State Business Corporation Law. Pursuant to Article 15 of the New York State Business Corporation Law ("BCL") only licensed physicians may organize, hold stock in, direct and/or be an officer of a medical PSC. Pursuant to §1503 of the BCL and §6507 of the Education Law, one or more individuals duly authorized by law to render the same professional services within the state may organize or cause to be organized a medical PSC.

FACTUAL ALLEGATIONS

A. Respondent, BAY MEDICAL CARE, P.C., was authorized as a PSC by filing its certificate of incorporation, with the Secretary of State on or about March 14, 2005. Gustave Stephen Drivas, M.D. (DRIVAS) was listed as Respondent's sole shareholder, director and officer, and was identified as the individual who was duly authorized to practice medicine. As of May 2014, DRIVAS is still listed as the sole shareholder, director and officer of Respondent.

1. Respondent, BAY MEDICAL CARE, P.C., through its agent, DRIVAS, knowingly, falsely and with intent to mislead, represented that DRIVAS was the director and sole shareholder on the respective certificate of incorporation. Respondent, through its agent DRIVAS, concealed with the intent to deceive, that non-physicians owned and/or controlled BAY MEDICAL CARE, P.C.

B. DRIVAS'S license to practice medicine was revoked by The State Board for Professional Medical Conduct on July 9, 2013, pursuant to Determination and Order (No. 13-206) based, in part, upon the transactions alleged above.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent, BAY MEDICAL CARE, P.C., is 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:

1. Paragraphs, A, A1 and B.

SECOND SPECIFICATION

WILLFULL AND/OR GROSSLY NEGLIGENTLY FAILING TO COMPLY WITH SUBSTANTIAL PROVISIONS OF STATE LAW GOVERNING THE PRACTICE OF MEDICINE

Respondents, BAY MEDICAL CARE, 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 §1503, as alleged in the facts of:

2. Paragraphs, A, A1 and B.

THIRD SPECIFICATION

WILLFULLY MAKING A FALSE REPORT REQUIRED BY LAW OR BY THE DEPARTMENT OF HEALTH OR EDUCATION DEPARTMENT

Respondents, BAY MEDICAL CARE, P.C., is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the Department of Health or the Education Department, as alleged in the facts of:

3. Paragraphs, A and A1.

DATE: June 20, 2014
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct