

October 23, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Guenzburger, Esq.
Associate Counsel
New York State Department of Health
90 Church Street – 4th Floor
New York, New York 10007

Sunlight Medical Care, P.C.
C/O Secretary of State
99 Washington Avenue
Albany, New York 12210-2822

Gene Brignoni, M.D.

St. John Medical Care, P.C.
C/O Secretary of State
99 Washington Avenue
Albany, New York 12210-2822

REDACTED

Mark L. Furman, Esq.
Hoffman, Polland & Furman, PLLC
220 East 42nd Street – Suite 435
New York, New York 10017

St. John Medical Care, P.C.
C/O Hsu David Lee Yan, M.D., Director
900 Lenox Road – Suite 1
Brooklyn, New York 11203

Medical Arts Care, P.C.
C/O Secretary of State
99 Washington Avenue
Albany, New York 12210-2822

**RE: In the Matter of Gene Brignoni, M.D., and St. John Medical Care, P.C.,
Medical Arts Care, P.C. and Sunlight Medical Care, P.C.**

Dear Parties:

Enclosed please find the Determination and Order (No. 12-217) 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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., 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

-----X
IN THE MATTER :
 :
OF : DETERMINATION
 :
GENE BRIGNONI, M.D., AND ST. JOHN MEDICAL : AND
CARE, P.C., MEDICAL ARTS CARE, P.C. AND :
SUNLIGHT MEDICAL CARE, P.C. : ORDER
 :
 : BPMC 12-217
-----X

A Notice of Hearing and Statement of Charges, both dated February 1, 2012, were served upon the Respondents, Gene Brignoni, M.D., St. John Medical Care, P.C., Medical Arts Care, P.C. and Sunlight Medical Care, P.C. DAVID HARRIS, M.D., M.P.H. (CHAIR), FLORENCE KAVALER, M.D., AND JAMES J. DUCEY, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) (Executive) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Daniel Guenzburger, Esq., Associate Counsel. Respondent Brignoni appeared by Hoffman, Polland & Furman, PLLC, Mark L. Furman, Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Service:	February 16, 2012 (Brignoni)
Date of Service:	February 14, 2012 (P.C.s)
Answer Filed By Respondent:	March 20, 2012
Answer Filed By P.C.s:	None
Pre-Hearing Conference:	March 20, 2012
Hearing Dates:	April 24, 2012 June 18, 2012 July 16, 2012
Witnesses for Petitioner:	April Soltren Mary Geary
Witnesses for Respondent:	Gene Brignoni, M.D.
Deliberations Held:	August 28, 2012

STATEMENT OF CASE

Petitioner has charged Respondents with twenty-seven specifications of professional misconduct¹. The charges include allegations of fraudulent practice, willfully making or filing false reports, violation of a term of probation imposed by the Board, aiding or abetting an unlicensed person to perform activities requiring a medical license, and failing to comply with substantial provisions of State law governing the practice of medicine. Respondent Brignoni denied the allegations. The

¹ The Original Statement of Charges alleged thirty-three specifications of misconduct. Prior to the commencement of testimony, the Department amended the Charges, reducing the total number of specifications alleged to twenty-seven.

three Respondent professional corporations did not appear, either by an authorized representative or counsel, and did not file an answer to the charges.

A copy of the Amended Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Gene Brignoni, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State by the New York State Education Department's issuance of license number 156598 on November 7, 1983. Respondent St. John Medical Care, P.C. was authorized as a professional service corporation by the New York State Department of State on or about June 9, 2008. Respondent Medical Arts Care, P.C. was authorized as a professional service corporation on or about March 12, 2010. Respondent Sunlight Medical Care, P.C. was authorized as a

professional service corporation by the New York State Department of State on or about November 29, 2010. (Exhibits # 3, 4, and 5).

2. On or about June 26, 2003, Respondent Brignoni became subject to terms of probation imposed pursuant to New York State Board of Professional Medical Conduct ("BPMC") Consent Order No. 03-160 ("prior Consent Order"). The prior Consent Order precluded Respondent Brignoni from practicing medicine unless he obtained a practice monitor approved by the Office of Professional Medical Conduct ("OPMC"). Respondent Brignoni's OPMC approved practice monitor under the prior Consent Order was a Dr. Slanetz. (Exhibit #6, pp. 9-11; T. 226).

3. On January 18, 2007, Respondent Brignoni settled a proceeding brought by OPMC for violation of the prior Consent Order. Pursuant to Consent Order No. 07-28 ("the current Consent Order"), Respondent Brignoni's license was suspended for one year to be followed by 3 years of probation. (Exhibit #6, pp. 3-7, 12-13).

4. At the commencement of Respondent's probationary period in or about February, 2008, OPMC Probation Unit case manager Cheryl Ratner ("Ratner") met with Respondent Brignoni to review the terms of probation. Brignoni affixed his

initials next to each term of probation. (Exhibit #6, pp. 3-7; T. 22-23).

5. In April, 2008 Ratner contacted Respondent Brignoni by telephone. She reminded him of his obligations under the current Consent Order, specifically mentioning that if he resumed practice he would be required to obtain \$2 million per occurrence/\$6 million per policy year malpractice insurance coverage. Brignoni acknowledged that he was aware of the requirements of his probation. (T. 26).

6. On April 21, 2008, Ratner informed Respondent Brignoni that OPMC had tentatively approved his proposed practice monitor, Dr. George Zervos. Ratner told Brignoni that final approval of the practice monitor and OPMC authorization to practice was conditioned upon him providing Ratner with a work location, medical office telephone number and proof that he obtained the required insurance coverage. (T. 37).

7. Ratner documented another telephone conversation with Respondent Brignoni on May 27, 2008. She confirmed the details of the conversation in a letter written the same day as her telephone conversation. She wrote: "As we discussed today, before we can complete processing your proposal to have George A. Zervos, M.D. serve as your practice monitor and

before you begin to practice medicine, your practice situation must be verified." (emphasis supplied). As per the letter, by May 30, 2008, Respondent Brignoni was to provide OPMC with the full contact information of the company that would employ him, full address of the anticipated practice locations, and "documentation of medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, as required by Public Health Law Section 230(18)(b) and Probation Term no. 9d." (Exhibit #7A, T. 27-28).

8. Respondent Brignoni failed to respond to Ratner's May 27, 2008 letter. On June 27, Ratner sent a second letter requesting that Brignoni provide the information set forth in the previous letter. (Exhibit #7B, T. 27-28).

9. Respondent Brignoni responded to Ratner's inquiries in a letter dated August 8, 2008 in which he stated, "As of yet I have not been able to start practice due to major personal non-medicine related situations." (Exhibit #22, T. 30-31).

10. In July, 2008 Ratner became aware that Respondent Brignoni's New York State Physician Profile Web site had been updated with a new practice address - 900 Lenox Road, Brooklyn, New York. (T. 37-38). On July 16, 2008, Mary Geary,

an OPMC Senior Professional Medical Conduct Investigator made a site visit to the office practice location identified in Brignoni's Physician Profile. Geary asked the receptionist if Respondent Brignoni had office hours that day. The receptionist told her that Respondent would be at the facility on the following day, July 17, and the receptionist then gave Geary Brignoni's business card. The business card identified the facility name as St. John Medical Care, P.C. (Exhibit #25, T. 138-140). The next day, Geary called the number on the business card and asked the receptionist when Respondent Brignoni had hours. Geary stated that she was told that Brignoni had office hours that day, and the following Tuesday. (Exhibit G, T. 139).

11. Further proof that Respondent Brignoni was practicing medicine can be found in insurance claims submitted by St. John Medical Care, P.C. Respondent Brignoni represented on no-fault insurance claims and in medical records submitted in support of the claims that he treated patients at the St. John facility on various dates on or about and between July 22, 2008 and November 24, 2008. (Exhibits # 9-15, T. 185, 204-205).

12. Brignoni gave conflicting explanations as to whether he actually treated patients at St. John Medical Care,

P.C. In his communication with Ratner, Brignoni repeatedly denied that he practiced medicine. However, when he was interviewed by Senior Medical Conduct Investigator April Soltren ("Soltren"), he stated that he examined patients at follow-up visits. Respondent also told Soltren that a physician assistant evaluated 99 percent of the patients at initial visits. (T. 47). At the hearing held on July 16, 2012, Respondent Brignoni testified that he treated St. John Medical Care, P.C. patients at both initial and at follow-up visits. (T. 182-185).

13. Ms. Soltren assumed responsibility for managing Respondent Brignoni's probation following Ratner's retirement in September, 2010. (T. 20). On October 18, 2010, Soltren contacted Respondent Brignoni to introduce herself. In response to Soltren's inquiry, Brignoni denied that he was practicing medicine. He stated that he was currently working for the Transportation Safety Authority. (T.33). Soltren then informed Respondent Brignoni that if he were to resume the practice of medicine he would have to serve three years of probation, which would require a practice monitor and the required levels of medical malpractice insurance. (T. 33-34). Brignoni asked Soltren whether the malpractice insurance could be obtained out of state. She replied that it did not matter

where the insurance was obtained, but he "needed to provide our office with a copy of the binder before he went to work." (T. 34).

14. On February 24, 2011, Geary made a site visit to a facility called Medical Arts Care, P.C., located at 140-40 Queens Boulevard, Jamaica, New York to ascertain whether Respondent Brignoni was practicing medicine. (T. 140). Brignoni was not present at the facility, but Geary spoke to Carmen Vargas, a biller. Ms. Vargas told Geary that Respondent Brignoni worked at the location two days a week and that he saw patients. (T. 141-142).

15. Geary also spoke to Toni Jackson, the facility office manager, who stated that Respondent Brignoni worked at the facility a couple of days a week and saw patients. (T. 143).

16. Respondent Brignoni represented in no-fault insurance claims and on medical records submitted in support of the claims, that he treated patients at Medical Arts Care, P.C. on October 27, 2010 and November 1, 2010. (Exhibits #16-19).

17. When Respondent Brignoni's one year license suspension ended in February, 2008 he decided to look for a position as a medical director of a health care facility. (T.

213). He did not wish to open a private practice. (T. 214). Representatives of a management company approached Respondent and asked if he wanted to work as a medical director at a facility that they planned to open for treating patients who had been in accidents. (T. 214,228). Respondent described the position to the Hearing Committee as that of "medical overseer, director of the facility." He further testified that the position offered was salaried, and that he was to be paid on a monthly basis. (T. 217).

18. St. John's Medical Care opened toward the end of July, 2008. (T. 177). On March 27, 2008, Respondent Brignoni signed a certificate of incorporation for a medical professional service corporation known as St. John Medical Care, P.C. Paragraph 3 of the certificate states "that each of the proposed shareholders, directors and officers is authorized by law to practice the profession which the corporation is being organized to practice." The certificate of incorporation identifies Respondent Brignoni as the president and sole shareholder of the professional service corporation. Immediately above Respondent Brignoni's signature is the following statement: "IN WITNESS WHEREOF, the undersigned incorporator...affirms that all the statements made

herein are true under the penalties of perjury." (Exhibit #3).

19. Respondent Brignoni had no role in selecting the location for St. John Medical Care, negotiating or signing the lease, or hiring any personnel who worked at the facility. (T. 218-219).

20. Respondent Brignoni did not invest any of his own money in the professional service corporation because, according to this testimony, he "had none". (T. 219, 220 and 239).

21. Respondent conceded that he did not perform any of the legal duties of a corporate officer and acknowledged that he considered himself to be "just an employee." (T. 52-53, T. 213).

22. Respondent Brignoni acknowledged that he did not set policy at St. John Medical Care. He testified that he eventually left the practice in February, 2009 because the managerial staff "started getting into unsavory situations..." (T. 177-178). He further testified that he observed patients presenting under questionable circumstances, and that he suspected these patients had been steered to the facility. (T. 231-232).

23. In 2010, Respondent was approached by a man who he identified as "Lenny" to be a medical director of a facility located at 140-40 Queens Boulevard, Jamaica, New York. The facility was owned and operated through a medical professional service corporation called Medical Arts Care, P.C. At some point in 2010 the physician director/shareholder of Medical Arts Care, P.C. passed away. The facility management decided to continue operating the facility through a new professional service corporation. A management representative asked Respondent Brignoni if he would be identified as the physician director/shareholder of a new professional service corporation through which the management company intended to run the facility. (Exhibit #4; T. 55, 221). Attached to the certificate of incorporation for Respondent Sunlight Medical Care, P.C. is an affidavit sworn to by Respondent Brignoni on September 28, 2010 in which he states that he intends to become the director and shareholder of Sunlight Medical Care, P.C. (Exhibit #5).

24. Respondent's role with respect to Sunlight Medical Care, P.C. was the same as his role at St. John Medical Care, P.C. When asked on cross-examination if he actually owned or set up Sunlight Medical Care P.C., Respondent Brignoni stated, "I didn't do it. I didn't set it

up." (T. 221). Respondent Brignoni invested none of his own money into the facility, did not hire any personnel and had no role in directing policy at Sunlight Medical Care. (T. 239).

25. Respondent Brignoni knowingly and falsely represented on no-fault insurance claims and on medical records that he treated Patients A, B, E, F, G, H, I and J. Patients A, B, E, F and G had initial examinations at St. John Medical Care, P.C. on various dates between July 22, 2008 and November 24, 2008. (Exhibits # 9, 10, 13, 14 and 15).

Patients H, I and J had initial examinations at Medical Arts Care, P.C. on October 27, 2010. (Exhibits # 16-18).

26. On April 26, 2011 and August 1, 2011, Soltren interviewed Respondent Brignoni. He informed Soltren that St. John Medical Care, P.C. employed a physician assistant who conducted 99 percent of the initial evaluations. Brignoni stated that he would perform the follow-up evaluations. (T. 47). Brignoni told Soltren that the management told him to represent in insurance claims and medical records that he was the health care provider who evaluated and treated patients who were actually seen exclusively by the physician assistant. (T. 48, 207).

27. At the hearing, Respondent Brignoni testified that he was asked to follow the above procedure because no-

fault insurance companies would refuse to pay for an initial evaluation performed by a physician assistant. (T. 206).

28. Respondent Brignoni explained to Soltren the procedure he followed for creating medical records at St. John Medical Care, P.C. The physician assistant would orally communicate to Brignoni the significant details of his patient evaluation. Brignoni would take the information provided by the physician assistant and then, in his own handwriting, would enter the information on the pre-printed form entitled "Initial Examination". Respondent would then sign the "Initial Examination" report. (T. 48). This report was then submitted to an insurance company for payment. (Exhibits # 9, 10, 13, 14 and 15).

29. Soltren reviewed with Brignoni the insurance claim and medical record for Patient A, a patient treated at St. John Medical Care, P.C. The claim identified Respondent Brignoni as the treating health care provider. Brignoni acknowledged that he signed the insurance claim. He further admitted that even though he did not treat Patient A, the entries on the medical record were in his handwriting, and he signed the record on the last page of the "Initial Examination" report. (Exhibit # 9, pp. 2, 3, and 9; T. 43, 205).

30. Respondent Brignoni admitted that at the Medical Arts Care facility he would represent on insurance claims and in medical records that he treated a patient even though he knew the patient had been treated by a physician assistant. At Medical Arts Care, a physician assistant named Eddie Clermont would initially evaluate and treat the patients. Brignoni would then meet with Mr. Clermont, record pertinent details of the physician assistant's evaluation and then he would transfer the information to the "Initial Examination" pre-printed form. (T. 49, 50, 189-192).

CONCLUSIONS OF LAW

Respondent Brignoni is charged with twenty-five specifications alleging professional misconduct within the meaning of Education Law §6530. This includes eleven specifications of professional misconduct as defined by N.Y. Education Law §6530(2) by practicing the profession of medicine fraudulently; twenty-two specifications of professional misconduct as defined by N.Y. Education Law §6530(21) by willfully making or filing a false report; one specification of

professional misconduct as defined by N.Y. Education Law §6530(11) by permitting, aiding, or abetting an unlicensed person to perform activities requiring a license; one specification of professional misconduct in violation of N.Y. Education Law § 6530(29) by violating terms of probation lawfully imposed by the State Board, and one specification of professional misconduct in violation of N.Y. Education Law §6530(16) by a willful and/or grossly negligent failure to comply with substantial provisions of State law governing the practice of medicine.

St. John Medical Care, P.C. is charged with seven specifications of fraudulent practice, seven specifications of false reports and one specification of failing to comply with provisions of State law governing the practice of medicine. Medical Arts Care, P.C. is charged with three specifications of fraudulent practice, and three specifications of filing false reports. Sunlight Medical Care, P.C. is charged with one specification of fraudulent practice; one specification of false reports, and one specification of failing to comply with substantial provisions of State law governing the practice of medicine.

The corporations failed to appear and failed to file answers to the charges. Therefore, the charges pertaining to

the three professional corporations are deemed admitted pursuant to Public Health Law §230(10)(c).

Education Law §6530 sets forth the numerous forms of conduct which constitute professional misconduct, but does not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law" sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence, and the fraudulent practice of medicine.

The following definitions were utilized by the Hearing Committee during its deliberations:

Fraudulent Practice

The intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine, constitutes the fraudulent practice of medicine. Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (3rd Dept. 1991), citing Brestin v. Commissioner of Education, 116 A.D.2d 357, 501 N.Y.S.2d 923 (3rd Dept. 1986). In order to sustain a charge that a licensee was engaged in the fraudulent practice of medicine, the hearing committee must find that (1) a false

representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3rd Dept. 1966), aff'd 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). The licensee's knowledge and intent may properly be inferred from facts found by the hearing committee, but the committee must specifically state the inferences it is drawing regarding knowledge and intent. Choudhry, at 894 citing Brestin.

For the remaining specifications of professional misconduct, the Hearing Committee interpreted the statutory language in light of the usual and commonly understood meaning of the language. (See, New York Statutes, §232).

Using the above-referenced definitions as a framework for its deliberations, the Hearing Committee made the following conclusions of law pursuant to the factual findings listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee first considered the credibility of the various witnesses, and thus the weight to be accorded their testimony. The Department presented two witnesses. April Soltren and Mary Geary are both senior medical conduct

investigators employed by the State Board for Professional Medical Conduct. Both gave clear and unambiguous testimony. Ms. Geary testified as to her investigation of Respondent Brignoni's continued practice of medicine in violation of his terms of probation. Ms. Soltren testified as to Brignoni's interactions with the Board during his probation. Their testimony was unshakeable, and amply corroborated by the documentary evidence. The Hearing Committee found them both to be very credible witnesses.

Dr. Brignoni called no other witnesses, but testified in his own behalf. He clearly has a stake in the outcome of this proceeding, and the Hearing Committee evaluated his testimony carefully.

Dr. Brignoni testified that he believed that he was allowed to practice medicine beginning sometime in 2008 because he thought the Department had approved his practice monitor. This testimony was amply contradicted by the documentary evidence as well as Ms. Soltren's testimony.

Respondent's attempt to explain the medical records and insurance claims billed under his name was equally unconvincing. He told Cheryl Ratner that he was not practicing medicine. However, he told April Soltren that he examined patients on follow-up visits after initial examination by a

physician assistant. Then, when he testified at the hearing, he claimed he treated patients at St. John Medical Care at both initial and follow-up visits. Respondent Brignoni's testimony regarding the formation of the professional corporations was equally murky. As a result, the Hearing Committee concluded that Dr. Brignoni was not a credible witness.

Violation of Probation

The terms of probation imposed upon Respondent Brignoni in Board Order #07-28 clearly set forth the requirements for an approved practice monitor as well as the statutorily required malpractice insurance coverage. Respondent admitted that he worked as a "medical director" at both St. John Medical Care, P.C. and at Medical Arts Care, P.C. His testimony that he believed that Dr. Zervos had been approved as his practice monitor is amply contradicted by the documents submitted by the Department. Moreover, at no relevant time did Respondent have malpractice insurance at the required coverage levels. Without the malpractice coverage and an approved practice monitor, Respondent could not, and was not authorized to practice medicine in New York State.

Therefore, the Hearing Committee concluded that Respondent Brignoni violated the terms of his probation, and

sustained the Twenty-third Specification of Professional Misconduct.

Fraudulent Practice

The evidence established that Respondent Brignoni represented on no-fault insurance claims and on related medical records that he treated Patients A, B, E, F, G, H, I and J. Patients A, B, E, F and G had initial examinations at St. John Medical Care, P.C. Patients H, I and J had initial examinations at Medical Arts Care, P.C. When interviewed by Ms. Soltren on April 26, 2011 and on August 1, 2011, Respondent told Ms. Soltren that St. John Medical Care, P.C. employed a physician assistant who conducted 99 percent of the initial evaluations, but that Respondent would perform the follow-up exams. (T. 47). Respondent admitted that "management" told him to represent that he performed the initial evaluations and treatment actually performed by the physician assistant because the insurance companies would refuse to pay for initial evaluations performed by the assistant. (T.206). Respondent further admitted that he created hand-written "medical records" that contained information provided to him by the physician assistant at both St. John Medical and Medical Arts Care, and then simply transcribed by Respondent.

Respondent Brignoni clearly misrepresented the fact that another practitioner evaluated the patients. He knew that his misrepresentations were false statements, and the clear intent was to induce the insurance companies to pay for services which they would otherwise have denied. Thus, the Hearing Committee concluded that Respondent Brignoni's misrepresentations constituted the fraudulent practice of medicine. We are constrained to point out further that, even if Brignoni had conducted the evaluations, he was not lawfully authorized to practice medicine under the terms of the Board Order, and therefore could not lawfully bill for the services - another form of fraudulent practice.

The evidence also established that Respondent Brignoni engaged in fraudulent conduct with respect to the formation of the professional service corporations St. John Medical Care, P.C., and Sunlight Medical Care, P.C. Respondent Brignoni made written representations that he was the sole shareholder, and director of both professional corporations. These representations were clearly false. Brignoni admitted that he invested no money in either corporation, nor did he play any role in the management of either entity. He did not choose the locations of either business; he did not hire staff or purchase

equipment. Indeed, he claimed that he was hired as a mere employee in both instances.

In placing his name on the two professional corporations, Respondent Brignoni sought to conceal the fact that non-physicians actually owned and controlled them. In doing so, Brignoni was able to generate income for himself. In short, Brignoni made false representations on the certificates of incorporation, he knew they were false, and they were intended to benefit him monetarily, at the expense of others. The Hearing Committee unanimously concluded that Brignoni's conduct in this regard constituted the fraudulent practice of medicine.

Based on the foregoing, the Committee unanimously concluded that Respondent Brignoni engaged in the fraudulent practice of medicine, and sustained the First through Eleventh specifications of professional misconduct.

False Reports

Respondent Brignoni as well as St. John Medical Care, P.C., Medical Arts Care, P.C., and Sunlight Medical Care, P.C., was also charged with willfully making or filing false reports, in violation of New York Education Law §6530(21). As discussed previously, Respondent Brignoni knowingly made false statements with the formation and organization of the three professional

service corporations in which he falsely claimed to be a director/shareholder of the corporations. Moreover, he submitted false claims for payment to insurance companies for services he did not provide. Accordingly, the Committee concluded that Respondent Brignoni did willfully make and/or file false reports, and voted to sustain the Twelfth through Twenty-Second specifications of professional misconduct.

Permitting, Aiding or Abetting Unlicensed Practice

Delegating Professional Responsibilities

Respondent Brignoni allowed non-physicians to establish professional service corporations engaged in the practice of medicine. By doing so, he made it possible for unlicensed individuals to own, operate and control the Respondent professional service corporations. This constitutes a violation of Education Law §6530(11). Therefore, the Committee sustained the Twenty-Fourth specification.

Failing to Comply with State Law

Respondent Brignoni was charged with willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of medicine. The evidence established his violations of the terms of the Board Order imposed pursuant to the provisions of New York Public

Health Law §230(18)(b). Therefore, the Committee sustained the Twenty-Fifth Specification of professional misconduct.

Respondents St. John Medical Care, P.C. and Sunlight Medical Care, P.C., were each charged with one specification of professional misconduct within the meaning of Education Law §6530(16) by failing to comply with Business Corporation Law §1503. The corporations failed to appear and failed to file answers to the charges. The evidence presented at the hearing clearly established that the corporations were fraudulently established, in that they were actually owned and operated by non-physicians. In any event, the charges are deemed admitted pursuant to Public Health Law §230(10)(c). Accordingly, the Hearing Committee concluded that the Twenty-Sixth and Twenty-Seventh specifications of professional misconduct were sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent Brignoni's license to practice medicine as a physician in New York State should be revoked. The Committee further determined that Respondent Brignoni should also be fined \$120,000. The Committee further determined that the certificates of incorporation for the named professional

service corporations should also be annulled. These determinations were reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent Brignoni has a long-standing history of disciplinary problems, dating back to 2002.² In September, 2002, the Department charged Respondent Brignoni with negligence and incompetence with respect to two patients and fraud with respect to false representations on two hospital applications. He pled that he could not successfully defend against the negligence and incompetence charges. There was no plea with respect to the fraud allegations. Pursuant to Board Order #03-160, Respondent was placed on probation with a practice monitor for three years, was fined, and his medical license was restricted to a non-surgical practice.

In December, 2006, the Department initiated a Violation of Probation Proceeding against Brignoni. The issues in the proceeding included his failure to notify both OPMC and his practice monitor that he was working at 6 separate facilities. There was also a charge that Brignoni intentionally

² Following the Hearing Committee's decision to sustain the charges set forth in the Amended Statement of Charges (Exhibit #1A), the Administrative Law Judge distributed copies of Brignoni's prior disciplinary history, along with a memorandum on sanction submitted by the Counsel for the Department.

misrepresented to the OPMC the true nature of his affiliation with one of the facilities. Pursuant to Board Order #07-28, Brignoni resolved the Violation of Probation Proceeding by agreeing to one year of active license suspension to be followed by three years of probation. Board Order #07-28 is the Board Order at issue in this case.

Respondent Brignoni has flagrantly demonstrated contempt for the law and the authority of the State Board. He ignored the clear mandates of his terms of probation and resumed his medical practice unlawfully. Having done so, he further violated the law by submitting fraudulent insurance claims, and assisting non-licensed individuals to operate professional service corporations by lying on the incorporation documents. This conduct alone warrants revocation of his medical license. Brignoni's prior disciplinary history makes the case for revocation all the more compelling.

After being disciplined in 2003 and placed on probation, Brignoni repeatedly violated the terms of his original Board Order (#03-160), failing to disclose to the Board and his practice monitor that he was practicing at six different facilities. He also fraudulently sought to conceal his relationships with these facilities. Respondent was given two

chances to demonstrate that he is willing to practice in conformance with the law and standards of the profession. Clearly, he is unwilling to do so.

In addition to the revocation of his medical license, the Committee determined that Respondent Brignoni should also be fined the maximum possible, for a total fine of \$120,000. The Committee believes that a fine is an appropriate sanction where the evidence established a pattern of practice aimed at generating fraudulent income at the expense of society.

With regard to the professional service corporations, the evidence established that each corporation was created under false pretenses. Since they never met the legal requirements for creation, annulment is the appropriate remedy.

ORDER

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

1. The First through Twenty-Seventh Specifications of professional misconduct, as set forth in the Amended Statement of Charges, (Department's Exhibit #1A) are SUSTAINED;

2. Respondent Gene Brignoni's license to practice medicine as a physician in New York State be and hereby is REVOKED. In addition, a fine in the amount of ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00) is hereby imposed upon Respondent Gene Brignoni, M.D. Payment of the aforesaid sum shall be made to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 2748, Empire State Plaza, Albany, New York 12237 within thirty (30) days of the effective date of this Order. Any fine not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32);

3. The Certificates of Incorporation for Respondents St. John Medical Care, P.C., Medical Arts Care, P.C. and Sunlight Medical Care, P.C. be and hereby are ANNULLED;

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

DATED: Albany, New York
6 June 18, 2012

REDACTED

DAVID HARRIS, M.D., M.P.H. (CHAIR)

FLORENCE KAVALER, M.D.
JAMES J. DUCEY

TO: Daniel Guenzburger, Esq.
Associate Counsel
New York State Department of Health
90 Church Street - 4th Floor
New York, New York 10007

Gene Brignoni, M.D.

REDACTED

Mark L. Furman, Esq.
Hoffman, Polland & Furman, PLLC
220 East 42nd Street - Suite 435
New York, New York 10017

Sunlight Medical Care, P.C.
C/O Secretary of State
99 Washington Avenue
Albany, New York 12210-2822

St. John Medical Care, P.C.
C/O Secretary of State
99 Washington Avenue
Albany, New York 12210-2822

Medical Arts Care, P.C.
C/O Secretary of State
99 Washington Avenue
Albany, New York 12210-2822

St. John Medical Care, P.C.
C/O Hsu David Lee Yan, M.D., Director
900 Lenox Road - Suite 1
Brooklyn, New York 11203

APPENDIX I

**IN THE MATTER
OF
GENE BRIGNONI, M.D., ST. JOHN MEDICAL CARE,
P.C., MEDICAL ARTS CARE P.C. and SUNLIGHT
MEDICAL CARE P.C.**

**AMENDED
STATEMENT
OF
CHARGES**

GENE BRIGNONI, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 7, 1983, by the issuance of license number 156598 by the New York State Education Department. Respondent ST. JOHN MEDICAL CARE, P.C. was authorized as a professional service corporation by the New York State Department of State on or about June 9, 2008. Respondent MEDICAL ARTS CARE P.C. was authorized as a professional service corporation on or about March 12, 2010. Respondent SUNLIGHT MEDICAL CARE P.C. was authorized as a professional service corporation by the New York State Department of State on or about November 29, 2010.

FACTUAL ALLEGATIONS

- A. Pursuant to New York State Board of Professional Medical Conduct Order No. 07-28 ("Board Order") Respondent BRIGNONI was placed on probation from on or about February 12, 2008, to on or about February 12, 2011. A probation term imposed pursuant to the Board Order provided that "Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor")

EXHIBIT
Department's
2A
4.24.12

proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine." Another probation term imposed required that "Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order." Respondent violated the terms of probation imposed by the Board Order in that he:

1. Practiced medicine without having obtained a "practice monitor" approved by the OPMC. During the period of probation Respondent BRIGNONI evaluated and treated multiple patients at medical offices located at 900 Lenox Road, Brooklyn, New York and 140-40 Queens Boulevard, Jamaica, New York.
2. Failed to maintain medical malpractice coverage within the limits required by the Board Order and Public Health Law § 230(18).

- B. Respondent BRIGNONI knowingly and falsely represented on no-fault insurance claims and on medical records that were submitted to the insurance companies to support the claims that he was the provider who had evaluated and/or treated the patient, when, in fact, he knew that he had

neither evaluated nor treated the patient, with regard respectively to patients listed below. Respondent BRIGNONI intended to deceive .

1. Patient A (Date of service - 7/22/08)
2. Patient B (Date of service - 8/27/08)
3. Patient D (Date of service - 11/17/08)
4. Patient E (Date of service - 11/24/08)
5. Patient F (Date of service - 11/24/08)
6. Patient G (Date of service - 11/24/08)
7. Patient H (Date of service - 10/27/10)
8. Patient I (Date of service - 10/27/10)
9. Patient J (Date of service - 10/27/10)

C. Pursuant to Article 15 of the Business Corporation Law, only licensed physicians may organize, hold stock in, direct and/or be an officer of a medical professional service corporation ("PC"). Respondent BRIGNONI enabled non-physicians to evade the legal restrictions on ownership and control of PCs by falsely representing on legal documents filed with the Departments of State and Education that he, a licensed physician, was a director, officer, and sole shareholder of Respondents ST. JOHN MEDICAL CARE P.C. and SUNLIGHT MEDICAL CARE P.C.

1. On or about March 28, 2008, Respondent BRIGNONI knowingly

and falsely represented on the certificate of incorporation for Respondent ST. JOHN MEDICAL CARE P.C. that he was an officer, director and the sole shareholder.

- a. Respondent BRIGNONI concealed, with the intent to deceive, that non-physicians owned and/or controlled the medical professional service corporation.
2. On or about September 28, 2010 Respondent BRIGNONI signed an affidavit in which he represented that he was the licensed physician who intended to become the original director and sole shareholder of Respondent SUNLIGHT MEDICAL CARE P.C. On or about November 29, 2010 the affidavit was filed with New York State Department of State along with certificate of incorporation for SUNLIGHT MEDICAL CARE, P.C. The certificate of incorporation identifies Respondent BRIGNONI as president and sole shareholder of the medical professional service corporation.
 - a. Respondent BRIGNONI concealed, with the intent to deceive, that non-physicians owned and/or controlled the medical professional service corporation.
 3. Respondent BRIGNONI permitted, aided and/or abetted individuals who lacked a medical license to organize, own, operate and/or control Respondent ST. JOHN MEDICAL CARE P.C. and Respondent

SUNLIGHT MEDICAL CARE P.C.

- D. Respondent ST. JOHN MEDICAL CARE, P.C., through Respondent BRIGNONI acting within the scope of his duties as its employee/agent:
1. Knowingly, falsely, and with intent to mislead, represented on insurance claims and in medical records that Respondent BRIGNONI was the treating health care provider for Patients A, B, D, E, F, and G; and
 2. Knowingly, falsely, and with intent to mislead, represented that Respondent BRIGNONI was the director and sole shareholder on the certificate of incorporation for ST. JOHN MEDICAL CARE, P.C.
- E. Respondent MEDICAL ARTS CARE, P.C., through Respondent BRIGNONI acting within the scope of his duties as its employee/agent, knowingly, falsely, and with intent to mislead, represented on insurance claims and in medical records that Respondent BRIGNONI was the treating health care provider for Patients H, I and L on insurance claims and in medical records.
- F. Respondent SUNLIGHT MEDICAL CARE, P.C., through Respondent BRIGNONI acting within the scope of his duties as its employee/agent,

knowingly, falsely, and with intent to mislead, represented that Respondent BRIGNONI was the director and sole shareholder of SUNLIGHT MEDICAL CARE, P.C. on an affidavit dated November 26, 2010 submitted to the Departments of State and Education.

- G. Respondent ST. JOHN MEDICAL CARE, P.C. failed to meet applicable New York State licensing requirements for professional service corporations in that it was organized, operated and controlled by non-physicians.
- H. Respondent SUNLIGHT MEDICAL CARE P.C. failed to meet applicable New York State licensing requirements for professional service corporations in that it was organized, operated and controlled by non-physicians.

SPECIFICATION OF CHARGES

FRAUDULENT PRACTICE

FIRST THROUGH SEVENTH SPECIFICATIONS

Respondents BRIGNONI and ST. JOHN MEDICAL CARE, P.C. are charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraphs B, B1 and/or D1 as to Patient A.

2. Paragraphs B, B2 and/or D1 as to Patient B.
3. Paragraphs B, B4 and/or D1 as to Patient D.
4. Paragraphs B, B5 and/or D1 as to Patient E.
5. Paragraphs B, B6. and/or D1 as to Patient F.
6. Paragraphs B, B7 and/or D1 as to Patient G.
7. Paragraphs D and D2.

FRAUDULENT PRACTICE

NINTH THROUGH TENTH SPECIFICATIONS

Respondents BRIGNONI and/or MEDICAL ARTS CARE, P.C. are charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

8. Paragraphs B, B8 and/or E as to Patient H.
9. Paragraphs B, B9. and/or E as to Patient I.
10. Paragraphs B, B10 and/or E as to Patient J.

FRAUDULENT PRACTICE

ELEVENTH SPECIFICATION

Respondents BRIGNONI and SUNLIGHT MEDICAL CARE, P.C. are charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by

practicing the profession of medicine fraudulently as alleged in the facts of the following

11. Paragraphs C, C2, and/or H.

FALSE REPORTS

TWELFTH THROUGH EIGHTEENTH SPECIFICATIONS

Respondents BRIGNONI AND ST. JOHN MEDICAL CARE, P.C. are charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by wilfully 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:

12. Paragraphs B, B1 and/or D1 as to Patient A.
13. Paragraphs B, B2 and/or D1 as to Patient B.
14. Paragraphs B, B4 and/or D1 as to Patient D.
15. Paragraphs B, B5 and/or D1 as to Patient E.
16. Paragraphs B, B6. and/or D1 as to Patient F.
17. Paragraphs B, B7 and/or D1 as to Patient G.
18. Paragraphs D and D2.

FALSE REPORTS

NINETEENTH THROUGH TWENTY-FIRST SPECIFICATIONS

Respondents BRIGNONI and. MEDICAL ARTS CARE, P.C. are charged with

committing professional misconduct as defined by N.Y. Educ. Law § 6530(21) by wilfully 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 the following

19. Paragraphs B, B8 and/or E as to Patient H.
20. Paragraphs B, B9 and/or E as to Patient I.
21. Paragraphs B, B10 and/or E as to Patient J.

FALSE REPORTS

TWENTY-SECOND SPECIFICATION

Respondents BRIGNONI and. SUNLIGHT MEDICAL CARE, P.C. are charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(21) by wilfully 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 the following

22. Paragraphs C, C2, and C2(a).

VIOLATION OF A TERM OF PROBATION

TWENTY-THIRD SPECIFICATION

Respondent BRIGNONI is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any term of probation imposed pursuant to section two hundred thirty of the public health law, as alleged in the

facts of:

23. Paragraphs A, A1 and/or A2.

PERMITTING, AIDING OR ABETTING AN UNLICENSED PERSON

TWENTY-FOURTH SPECIFICATION

Respondent BRIGNONI is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(11) by permitting, aiding or abetting an unlicensed person to perform activities requiring a license as alleged in the facts of the following:

24. Paragraphs C and C3.

FAILING TO COMPLY WITH A STATE LAW

TWENTY-FIFTH SPECIFICATION

Respondent BRIGNONI 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 Section 230(18)(b) of the Public Health Law, as alleged in the facts of:

25. Paragraph A and A2.

FAILING TO COMPLY WITH A STATE LAW

TWENTY-SIXTH SPECIFICATION

Respondent ST. JOHN 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 Section 1503, as alleged in the facts of:

26. Paragraph G.

FAILING TO COMPLY WITH A STATE LAW

TWENTY-SEVENTH SPECIFICATION

Respondent SUNLIGHT 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 Section 1503, as alleged in the facts of:

27. Paragraph H.

DATE: April 19, 2012
New York, New York

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct