



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

Wendy E. Saunders  
Chief of Staff

May 11, 2009

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Aviyon Medical Rehabilitation, LLC  
c/o Roger Brick  
18 Scotland Drive  
Livingston, New Jersey 03039-2811

Speigel & Utrera, P.A. P.C.  
Registered Agent for  
Competent Medical Rehabilitation, PLLC  
45 John Street – Suite 711  
New York, New York 10038

Midwood Medial Care P.C.  
18 Scotland Drive  
Livingston, New Jersey 07039

Refuah Medical Rehabilitation, PLLC  
117 W. Mt. Pleasant Avenue  
Suite 144  
Livingston, New Jersey 07039

Restorative Medical Rehabilitation, PLLC  
107-13 Jamaica Avenue  
Richmond Hill, New York 11418

Trastevere Medical Rehabilitation, LLC  
247 Prospect Avenue – 3<sup>rd</sup> Floor  
Brooklyn, New York 11215

Francis Ruddy, Esq.  
NYS Department of Health  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007

Competent Medical Rehabilitation, PLLC  
45 John Street – Suite 711  
New York, New York 10038

Eshel Medical Rehabilitation, LLC  
117 West Mount Pleasant Avenue  
#114  
Livingston, New Jersey 07030

Oberon Medical Rehabilitation, PLLC  
355 East 167 Street  
Bronx, New York 10456

Primavera Medical Rehabilitation, PLLC  
107-13 Jamaica Avenue  
Richmond Hills, New York 11418

Spiegel & Utrera P.A. P.C.  
Registered Agent for  
Refuah Medical Rehabilitation, PLLC  
45 John Street – Suite 711  
New York, New York 10038

Tai Yang Medical Acupuncture, PLLC  
107-13 Jamaica Avenue  
Richmond Hills, New York 11418

Roger J. Brick, M.D.  
18 Scotland Drive  
Livingston, New Jersey 07039

SECRETARY OF STATE  
Department of State  
One Commerce Plaza  
99 Washington Avenue  
Albany, New York 12231

**RE: In the Matter of Aviyon Medical Rehabilitation, LLC  
Competent Medical Rehabilitation, PLLC,  
Eshel Medical Rehabilitation, LLC,  
Midwood Medical Care P.C.,  
Oberon Medical Rehabilitation, PLLC,  
Primavera Medical Rehabilitation, PLLC,  
Refuah Medical Rehabilitation, PLLC,  
Restorative Medical Rehabilitation, PLLC,  
Tai Yang Medical Acupuncture, PLLC  
Trastevere Medical Rehabilitation, LLC**

Dear Parties:

Enclosed please find the Determination and Order (No. 09-85) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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

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

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

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

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

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

Sincerely,

Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER  
OF

AVIYON MEDICAL REHABILITATION, LLC,  
COMPETENT MEDICAL REHABILITATION, PLLC,  
ESHEL MEDICAL REHABILITATION, LLC,  
MIDWOOD MEDICAL CARE P.C.,  
OBERON MEDICAL REHABILITATION, PLLC,  
PRIMAVERA MEDICAL REHABILITATION, PLLC,  
REFUAH MEDICAL REHABILITATION, PLLC  
RESTORATIVE MEDICAL REHABILITATION, PLLC  
TAI YANG MEDICAL ACUPUNCTURE, PLLC  
TRASTEVERE MEDICAL REHABILITATION, LLC

DETERMINATION  
AND  
ORDER

BPMC 09 - 85

COPY

Gerald M. Brody, M.D., (Chair), John A. D'Anna, Jr., M.D., M.P.H., and Thomas P. Lemme, R.P.A.-C, MBA, 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. Marc P. Zylberberg, Esq., Administrative Law Judge, ("ALJ") served as Administrative Officer.

The Department of Health ("Department") appeared by Francis Ruddy, Esq., Assistant Counsel. Roger Joseph Brick, M.D. appeared on behalf of Aviyon Medical Rehabilitation, LLC, Competent Medical Rehabilitation, PLLC, Eshel Medical Rehabilitation, LLC, Midwood Medical Care P.C., Oberon Medical Rehabilitation, PLLC, Primavera Medical Rehabilitation, PLLC, Refuah Medical Rehabilitation, PLLC, Restorative Medical Rehabilitation, PLLC, Tai Yang Medical Acupuncture, PLLC, and Trastevere Medical Rehabilitation, LLC ("Respondents").

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:	November 11, 2008
Date of Service of Notice of Hearing and Statement of Charges:	November 25, 2008
Date of Answer to Charges:	February 3, 2009
Pre-Hearing Conference Held:	February 3, 2009
Date of Hearing :	February 11, 2009
Location of Hearing:	Offices of New York State Department of Health 90 Church St., 4 <sup>th</sup> Floor New York, NY 10007
Witness called by the Department:	None
Witness called by the Respondents:	Roger Joseph Brick, M.D.
Deliberations Date:	February 11, 2009
Transcript received:	February 26, 2009

### **STATEMENT OF CASE**

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 *et seq.* of the Public Health Law of the State of New York ["P.H.L."]). This case was brought by the New York State Department of Health,

Bureau of Professional Medical Conduct pursuant to §230 of the P.H.L. Respondents are charged with twenty-three (23) specifications of professional misconduct as set forth in §6530 of the Education Law of the State of New York ("**Education Law**").

Respondents are charged with committing professional misconduct by willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of Medicine (Education Law §6530[16]).

Respondents are also charged with committing professional misconduct by practicing the profession of medicine fraudulently (Education Law §6530[2]). Three of the ten Respondents are charged with committing professional misconduct by having been convicted of committing an act constituting a crime under New York State law (Education Law §6530[9][i])

A copy of the Statement of Charges is attached to this Determination and Order as Appendix # 1. A copy of the Answer submitted by Respondents is attached to this Determination and Order as Appendix # 2.

### **FINDINGS OF FACT**

The following Findings of Fact ("**Findings**") were made after a review of the entire record available to the Hearing Committee in this matter. These Findings represent documentary evidence and testimony found persuasive by the Hearing Committee. Where there was conflicting evidence the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable, or credible in favor of the cited evidence. The Department, which has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings, and all Findings were established by at least a preponderance of the evidence.

1. The State Board for Professional Medical Conduct has obtained jurisdiction over Respondents and this disciplinary proceeding in accordance with Title II-A of Article 2 of the P.H.L., Article XII of the Limited Liability Company Law, and, Article 15 of the Business Corporation Law (determination made by the ALJ; Dr. Brick, on behalf of Respondents, had no objection regarding service effected on Respondents); (P.H.L. §230[10][d]); [P.H.T-8-11]<sup>1</sup>; (Department Exhibits #3 through # 12 and # 60)<sup>2</sup>.

2. Roger Joseph Brick, M.D. was licensed to practice medicine in New York State on October 24, 1980 by the issuance of license number 143817 by the New York State Education Department (Department Exhibit # 13).

3. Aviyon Medical Rehabilitation, LLC<sup>3</sup> ("**Aviyon**"), the first of the ten Respondents in this proceeding, was organized or formed by Roger J. Brick under Section 1203 of the Limited Liability Company Law of the State of New York ("**LLCL**") by the filing of Articles of Organization with the Secretary of State of the State of New York ("**Secretary of State**") on or about September 8, 1998 (Department's Exhibit # 14); (admitted by Respondents)<sup>4</sup>.

4. According to the Secretary of State filing (Finding # 3), Roger Brick affirmed that he was licensed to practice medicine and he intended to become a director and shareholder in Aviyon (Department's Exhibit # 14); (admitted by Respondents).

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<sup>1</sup> Numbers in brackets refer to Hearing transcript page numbers [T- ], or to Pre-Hearing transcript page numbers [P.H.T-]. The Hearing Committee was not present at the Pre-Hearing and did not review the Pre-Hearing transcript but, when necessary, was advised of the relevant legal decisions or rulings made by the ALJ.

<sup>2</sup> Refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit #) or by Dr. Brick on behalf of the 10 Respondents (Respondents' Exhibit #).

<sup>3</sup> Domestic Professional Service Limited Liability Company ("**LLC**")

<sup>4</sup> See Answer submitted by Dr. Brick (Respondents' Exhibit # A [Appendix 2]).

5. Competent Medical Rehabilitation, PLLC<sup>5</sup> ("**Competent**"), the second of the ten Respondents in this proceeding, was organized or formed by Roger J. Brick under Section 1203 of the LLCL by the filing of Articles of Organization with the Secretary of State on or about October 18, 2000 (Department's Exhibit # 16); (admitted by Respondents).

6. According to the Secretary of State filing (Finding # 5), Roger J. Brick was identified as the original member and manager of Competent and that he was licensed to practice medicine (Department's Exhibit # 16); (admitted by Respondents).

7. Eshel Medical Rehabilitation, LLC ("**Eshel**"), the third of the ten Respondents in this proceeding, was organized or formed by Roger J. Brick under Section 1203 of the LLCL by the filing of Articles of Organization with the Secretary of State on or about April 27, 1998 (Department's Exhibit # 17); (admitted by Respondents).

8. According to the Secretary of State filing (Finding # 7), Roger J. Brick was identified as the original member and manager of Eshel and that he was licensed to practice medicine (Department's Exhibit # 17); (admitted by Respondents).

9. Midwood Medical Care PC<sup>6</sup> ("**Midwood**"), the fourth of the ten Respondents in this proceeding, was organized or formed under Section 1503 of the Business Corporation Law ("**BCL**") by the filing of a Certificate of Incorporation with the Secretary of State on or about September 10, 2001 (Department's Exhibit # 19); (admitted by Respondents).

10. On September 17, 2001 Roger J. Brick became the president and 100% shareholder of Midwood (Department's Exhibit # 23).

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<sup>5</sup> Domestic Professional Service Limited Liability Company ("**PLLC**")

<sup>6</sup> Domestic Professional Corporation ("**PC**")



11. According to filings with the Secretary of State, Roger J. Brick was identified as the President, Chief Executive Officer and Principal Executive Midwood Medical Care, P.C. (Department's Exhibits # 20, # 21, and, # 22); (admitted by Respondents).

12. Oberon Medical Rehabilitation, PLLC ("**Oberon**"), the fifth of the ten Respondents in this proceeding, was organized or formed by Roger J. Brick under Section 1203 of the LLCL by the filing of Articles of Organization with the Secretary of State on or about May 1, 2001 (Department's Exhibit # 24); (admitted by Respondents).

13. According to the Secretary of State filing (Finding # 12), Roger Joseph Brick was identified as the original member and the original manager of Oberon and that he was licensed to practice medicine (Department's Exhibit # 24); (admitted by Respondents).

14. Primavera Medical Rehabilitation, PLLC ("**Primavera**"), the sixth of the ten Respondents in this proceeding, was organized or formed by Roger J. Brick under Section 1203 of the LLCL by the filing of Articles of Organization with the Secretary of State on or about July 10, 2001 (Department's Exhibit # 25); (admitted by Respondents).

15. According to the Secretary of State filing (Finding # 14), Roger Joseph Brick was identified as the original member and the original manager of Primavera and that he was licensed to practice medicine (Department's Exhibit # 25); (admitted by Respondents).

16. Refuah Medical Rehabilitation, PLLC ("**Refuah**"), the seventh of the ten Respondents in this proceeding, was organized or formed by Roger J. Brick under Section 1203 of the LLCL by the filing of Articles of Organization with the Secretary of State on or about August 16, 2000 (Department's Exhibit # 26); (admitted by Respondents).

17. According to the Secretary of State filing (Finding # 16), Roger Joseph Brick was identified as the original member and the original manager of Refuah and that he was licensed to practice medicine (Department's Exhibit # 26); (admitted by Respondents).

18. Restorative Medical Rehabilitation, PLLC ("**Restorative**"), the eighth of the ten Respondents in this proceeding, was organized or formed by Roger J. Brick under Section 1203 of the LLCL by the filing of Articles of Organization with the Secretary of State on or about May 13, 2003 (Department's Exhibit # 28); (admitted by Respondents).

19. According to the Secretary of State filing (Finding # 18), Roger Joseph Brick was identified as the original member and the original manager of Restorative and that he was licensed to practice medicine (Department's Exhibit # 28); (admitted by Respondents).

20. Tai Yang Medical Acupuncture, PLLC ("**Tai Yang**"), the ninth of the ten Respondents in this proceeding, was organized or formed by Roger J. Brick under Section 1203 of the LLCL by the filing of Articles of Organization with the Secretary of State on or about September 5, 2001 (Department's Exhibit # 29); (admitted by Respondents).

21. According to the Secretary of State filing (Finding # 20), Roger Joseph Brick was identified as the original member and the original manager of Tai Yang and that he was licensed to practice medicine (Department's Exhibit # 29); (admitted by Respondents).

22. Trastevere Medical Rehabilitation, LLC ("**Trastevere**"), the tenth of the ten Respondents in this proceeding, was organized or formed by Roger J. Brick under Section 1203 of the LLCL by the filing of Articles of Organization with the Secretary of State on or about February 28, 2001 (Department's Exhibit # 30); (admitted by Respondents).

23. According to the Secretary of State filing (Finding # 22), Roger Joseph Brick was identified as the original member and the original manager of Trastevere and that he was licensed to practice medicine (Department's Exhibit # 30); (admitted by Respondents).

24. On September 7, 2005 the Commissioner of the Department of Health issued an Order which suspended Dr Brick's license to practice medicine. On July 25, 2006 a Hearing Committee of the New York State Board for Professional Medical Conduct revoked the medical license of Roger Joseph Brick, M.D., when it sustained the charge that Roger Joseph Brick, M.D. was found guilty of Enterprise Corruption, in violation of New York Penal Law §460.20(1)(a), a class B felony (Department's Exhibits # 56 and # 57).

25. On the revocation of Dr. Brick's license to practice medicine, Respondents (Aviyon, Competent, Eshel, Oberon, Primavera, Refuah, Restorative, Tai Yang, and Trastevere) were no longer authorized to render professional services (LLCL §1204[a]).

26. On the revocation of Dr. Brick's license to practice medicine, Respondent Midwood, was no longer authorized to render professional services (BCL §1504[a]).

27. On June 8, 2005, in the Supreme Court of the State of New York, County of Queens, Respondent Oberon was convicted of the crime of Enterprise Corruption, N.Y. Penal Law §460.20 (1)(A), a B felony, based on a plea of guilty, and on September 6, 2005, Respondent Oberon was sentenced to a \$1,000.00 fine, a \$10.00 crime victim assistance fee ("CVAF"), and a \$200.00 surcharge (Department's Exhibit # 33); (admitted by Respondents).

28. On June 8, 2005, in the Supreme Court of the State of New York, County of Queens, Respondent Restorative was convicted of the crime of Enterprise Corruption, N.Y. Penal Law §460.20 (1)(A), a B felony, based on a plea of guilty, and on September 6, 2005, Restorative was sentenced to a \$1,000.00 fine, a \$10.00 CVAF, and a \$200.00 surcharge (Department's Exhibit # 34); (admitted by Respondents).

29. On June 8, 2005, in the Supreme Court of the State of New York, County of Queens, Respondent Tai Yang was convicted of the crime of Enterprise Corruption, N.Y. Penal Law §460.20 (1)(A), a B felony, based on a plea of guilty, and on September 6, 2005, Tai Yang was sentenced to a \$1,000.00 fine, a \$10.00 CVAF, and a \$200.00 surcharge (Department's Exhibit # 35); (admitted by Respondents).

30. On June 8, 2005, in the Supreme Court of the State of New York, County of Queens, Roger J. Brick was convicted of the crime of Enterprise Corruption, N.Y. Penal Law §460.20 (1)(A), a B felony, based on a plea of guilty, and on September 6, 2005, Roger J. Brick was sentenced to imprisonment of 1 year to 3 years, a \$10.00 CVAF, and a \$200.00 surcharge (Department's Exhibits # 32 and # 36); (admitted by Respondents).

31. As of November 18, 2008 Respondents (Aviyon, Competent, Eshel, Midwood, Oberon, Primavera, Refuah, Restorative, Tai Yang, and Trastevere) had active or current status with the Department of State and/or the Education Department, Office of the Professions (Department's Exhibits # 37 through # 55).

32. In and after the late 1990's, Respondents (Aviyon, Competent, Oberon, Primavera, Restorative, Tai Yang, and Trastevere) through its sole member and manager, Roger Joseph Brick, M.D., knowingly permitted and allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of said Respondents to a person, Arthur Bogoraz ("**Bogoraz**"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and Bogoraz entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received (from insurance companies for treatment for EMG's and physical therapy he performed), 10 to 15% for acupuncture treatment performed, and 10% of collections received from insurance companies for MRI's performed. Mr. Bogoraz received two-third's of collections received (or as otherwise

adjusted) purportedly as management fees paid to one of Bogoraz's management companies. These percentages were fixed and would not change based on the amount of services Bogoraz provided or the financial condition or profitability of said Respondents. Bogoraz operated, controlled, and managed every aspect of said Respondents, and was the de facto owner of said Respondents. Joseph Roger Brick, M.D. had no involvement with or access to information about said Respondents' financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency and basic protocols), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by said Respondents (Aviyon, Competent, Oberon, Primavera, Restorative, Tai Yang, and Trastevere) (Department's Exhibit # 31).

33. That in or around 1998 and 1999, Respondent Eshel, through its sole member and manager, Dr. Roger Brick, knowingly permitted and allowed the ceding of the operation, management, control, and/or (de facto) ownership authority of Eshel to a person, Jacob Kagan ("Kagan"), who was not a licensed physician but rather a layperson. Dr. Brick and Mr. Kagan entered into an arrangement, whereby Dr. Brick received one-third of collections received (for treatment he provided and physical therapy he supervised), and Mr. Kagan received two-third's of collections received purportedly as management fees paid to a number of Kagan's management companies. These percentages were fixed and would not change based on the amount of services Kagan provided or the financial condition or profitability of Eshel. Dr. Brick had no involvement or access to information about Eshel's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by Respondent Eshel (Department Exhibit # 31).

34. That in or around August, 2000, Respondent Refuah, through its sole member and manager, Dr. Roger Brick knowingly permitted and allowed the ceding of the operation, management, control, and/or (de facto) ownership authority of Refuah to Mr. Kagan, a layperson. Dr. Brick received one-third of collections received (for treatment he provided and physical therapy he supervised), and Mr Kagan received two-third's of collections received purportedly as management fees paid to a number of Kagan's management companies. These percentages were fixed and would not change based on the amount of services Mr. Kagan provided or the financial condition or profitability of Refuah. Dr. Brick had no involvement or access to information about Refuah's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by Refuah (Department Exhibit # 31).

35. In or about 2001, Respondent Midwood, through its sole shareholder, director, and officer, Dr. Brick knowingly permitted and allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of Midwood to a person, Yuri Lyubarsky ("Lyubarsky"), who was not a licensed physician but rather a layperson. Dr. Brick and Mr. Lyubarsky entered into an arrangement, whereby Dr. Brick received 15% of the collections received (from insurance companies for treatment Dr. Brick performed or physical therapy he supervised). Mr. Lyubarsky received 85% of collections received purportedly as management fees paid to one of Lyubarsky's management companies. These percentages were fixed and would not change based on the amount of services Mr. Lyubarsky provided or the financial condition or profitability of Midwood. Dr. Brick did not share in any profits generated by Midwood. Dr. Brick had no involvement or access to information about Midwood's financial operations, no involvement with



hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency), and was not a party to nor aware of the arrangement by which office space was obtained (Department Exhibit # 31).

36. From Respondents' inceptions through the date of the Hearing, Dr. Brick did not operate, control, or manage Respondents' affairs in violation of Article XII of the LLCL and Article 15 of the BCL. Dr. Brick allowed non physician lay persons to operate, manage, and/or, control a medical professional service limited liability company (Department's Exhibit # 31).

37. From Respondents' inceptions, unqualified individual(s) were instrumental in owning, operating, controlling, and/or handling the financial affairs of Respondents (Department's Exhibit # 31).

### **CONCLUSIONS OF LAW**

The Hearing Committee makes the unanimous conclusion, pursuant to the Findings listed above, that the Factual Allegations contained in the November 11, 2008 Statement of Charges are **SUSTAINED**.

Based on the above, the complete Findings and the discussion below, the Hearing Committee unanimously concludes that the Specifications of Misconduct contained in the Statement of Charges are **SUSTAINED**. The rationale for the Hearing Committee's conclusions is set forth below.

### **DISCUSSION**

Respondents are charged with twenty-three (23) specifications alleging professional misconduct within the meaning of §6530 of the Education Law. The Hearing Committee determined that all of the allegations, as indicated in our findings, and all of the charges contained in the Statement of Charges were established by a preponderance of the evidence. The Hearing Committee concludes that the extensive documentary evidence sustains the allegations.

The Hearing Committee finds that Dr. Brick's affidavit (Department's Exhibit # 31) and his testimony provides sufficient proof that Dr. Brick knew that the Professional Limited Liability Companies were a sham he set up to allow a non-physician to own and operate a three (3) LLCs, six (6) PLLCs, and one (1) PC. The First through Tenth Specifications are sustained.

Respondents Oberon, Restorative, and Tai Yang were convicted of an act constituting a crime under New York law. The Eleventh through Thirteenth Specifications are sustained.

Dr. Brick, on behalf of each entity Respondent, made false representations by indicating that he would operate, manage and control the entity. Dr. Brick knew that the representation to the Secretary of State was false. Dr. Brick intended to mislead through the false representation as indicated in Dr. Brick's affidavit (Department Exhibit # 31). The Fourteenth through Twenty-Third Specifications are sustained.

#### **DETERMINATION AS TO PENALTY**

The Hearing Committee realizes that a LLC, a PLLC, and, a PC are penalized differently than an individual physician. We note that Dr. Brick who relinquished his responsibilities by allowing unqualified individuals to run the Respondents corporation is no longer practicing medicine in New York State. The Hearing Committee concurs with the Department (and Dr. Brick) that an annulment of the three (3) LLCs, the six (6) PLLCs, and the one (1) PC included in the Statement of Charges is the appropriate penalty for Respondents' failures to comply with State laws regarding the practice of medicine. The Hearing Committee also concurs that annulment is the appropriate penalty for Respondents' fraudulent conduct.

Annulment is authorized under §1203(d) of the LLCL, §1503(d) of the BCL, and §230(a)(5) of the P.H.L. The Hearing Committee believes that annulment goes beyond revocation in that the corporations will be treated as if they never validly existed from day one and they will be unable to



collect on any accounts receivable. The Hearing Committee concludes that this is the appropriate penalty under the circumstances.

All other issues raised by the parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein. Specifically, Respondent's arguments are either rendered academic by the Hearing Committee's decision or have been found to be lacking in merit.

### **ORDER**

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

1. The FIRST through TENTH SPECIFICATIONS (Failing to Comply with a State Law) contained in the Statement of Charges (Department's Exhibit# 1) are **SUSTAINED**; and
2. The ELEVENTH through THIRTEENTH SPECIFICATIONS (Criminal Conviction) contained in the Statement of Charges (Department's Exhibit# 1) are **SUSTAINED**; and
3. The FOURTEENTH through TWENTY-THIRD SPECIFICATIONS (Fraudulent Practice) contained in the Statement of Charges (Department's Exhibit# 1) are **SUSTAINED**; and
4. The licenses of the Professional Limited Liability Companies known as:  
  
COMPETENT MEDICAL REHABILITATION, PLLC; and  
OBERON MEDICAL REHABILITATION, PLLC and  
PRIMAVERA MEDICAL REHABILITATION, PLLC; and  
REFUAH MEDICAL REHABILITATION, PLLC; and  
RESTORATIVE MEDICAL REHABILITATION, PLLC; and  
TAI YANG MEDICAL ACUPUNCTURE, PLLC; and  
  
are hereby **ANNULLED**; and

5. The licenses of the Limited Liability Companies known as:

AVIYON MEDICAL REHABILITATION, LLC,  
ESHEL MEDICAL REHABILITATION, LLC,  
TRASTEVEVE MEDICAL REHABILITATION, LLC

are hereby ANNULLED; and


6. The license of the Professional Corporation known as:

MIDWOOD MEDICAL CARE P.C.,

is hereby ANNULLED; and

7. This Order shall be effective on personal service on the Respondents or 7 days after the date of mailing of a copy to Respondents by certified mail or as provided by P.H.L. §230(10)(h).

DATED: Tuckahoe, New York  
May 9, 2009

  
Gerald M. Brody, M.D. (Chair)  
John A. D'Anna, Jr., M.D., M.P.H.  
Thomas P. Lemme, R.P.A.-C, MBA

State of New York  
Department of State  
Secretary of State  
Service pursuant to:  
§303 of the Limited Liability Company Law  
and §304 and/or §306 of the Business Corporation Law

AVIYON MEDICAL REHABILITATION, LLC  
C/O ROGER BRICK  
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Francis Ruddy, Esq.  
Assistant Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street- 4<sup>th</sup> Fl.  
New York, NY 10007

# APPENDIX 1

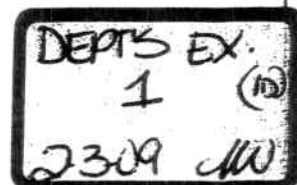
IN THE MATTER

OF

AVIYON MEDICAL REHABILITATION, LLC,  
COMPETENT MEDICAL REHABILITATION, PLLC,  
ESHEL MEDICAL REHABILITATION, LLC,  
MIDWOOD MEDICAL CARE P.C.,  
OBERON MEDICAL REHABILITATION, PLLC,  
PRIMAVERA MEDICAL REHABILITATION, PLLC,  
REFUAH MEDICAL REHABILITATION, PLLC  
RESTORATIVE MEDICAL REHABILITATION, PLLC  
TAI YANG MEDICAL ACUPUNCTURE, PLLC  
TRASTEVEERE MEDICAL REHABILITATION, LLC

STATEMENT  
OF  
CHARGES

Respondents AVIYON MEDICAL REHABILITATION, LLC, COMPETENT MEDICAL REHABILITATION, PLLC, ESHEL MEDICAL REHABILITATION, LLC, OBERON MEDICAL REHABILITATION, PLLC, PRIMAVERA MEDICAL REHABILITATION, PLLC, REFUAH MEDICAL REHABILITATION, PLLC, RESTORATIVE MEDICAL REHABILITATION, PLLC, TAI YANG MEDICAL ACUPUNCTURE, PLLC, TRASTEVEERE MEDICAL REHABILITATION, LLC were authorized as physician professional service limited liability companies by the New York State Department of State on various dates between April, 1998 and May, 2003, pursuant to N.Y. Limited Liability Company Law, Article XII. The aforesaid Respondents are subject to the jurisdiction of the State Board for Professional Medical Conduct, and the pre-hearing and hearing procedures of Title II-A of



Article 2 of the N.Y. Public Health Law, pursuant to §1203(d) of Article XII of the N.Y. Limited Liability Company Law.

Respondent MIDWOOD MEDICAL CARE P.C. was authorized as a physician professional service corporation by the New York State Department of State on or about September 10, 2001, pursuant to N.Y. Bus. Corp. Law, Article 15. Respondent MIDWOOD MEDICAL CARE P.C. is subject to the jurisdiction of the State Board for Professional Medical Conduct, and the pre-hearing and hearing procedures of N.Y. Pub. Health Law, Article 2, Title II-A, pursuant to N.Y. Bus. Corp. Law § 1503(d).

### **FACTUAL ALLEGATIONS**

- A. Pursuant to Article XII of the N.Y. Limited Liability Company Law, only licensed physicians may organize, form, direct and/or be a member of a medical professional service limited liability company ("PLLC"). That AVIYON MEDICAL REHABILITATION, LLC, COMPETENT MEDICAL REHABILITATION, PLLC, ESHEL MEDICAL REHABILITATION, LLC, OBERON MEDICAL REHABILITATION, PLLC, PRIMAVERA MEDICAL REHABILITATION, PLLC, REFUAH MEDICAL REHABILITATION, PLLC, RESTORATIVE MEDICAL REHABILITATION, PLLC, TAI YANG MEDICAL ACUPUNCTURE, PLLC, TRASTEVEVERE MEDICAL REHABILITATION, LLC evaded the legal restrictions on ownership, membership and/or control of PLLCs by concealing from the Departments of State and Education that legally unqualified individual(s) owned, operated and/or controlled medical professional service limited liability companies. The Departments of State and Education are the agencies with regulatory oversight over professional service limited liability companies.

1. That unqualified individual(s) were instrumental in owning, operating, controlling and/or and handling the financial affairs of the following:

- a. AVIYON MEDICAL REHABILITATION, LLC,
- b. COMPETENT MEDICAL REHABILITATION, PLLC,
- c. ESHEL MEDICAL REHABILITATION, LLC,
- d. OBERON MEDICAL REHABILITATION, PLLC,
- e. PRIMAVERA MEDICAL REHABILITATION, PLLC,
- f. REFUAH MEDICAL REHABILITATION, PLLC,
- g. RESTORATIVE MEDICAL REHABILITATION, PLLC,
- h. TAI YANG MEDICAL ACUPUNCTURE, PLLC,
- i. TRASTEVERE MEDICAL REHABILITATION, LLC.

B. Pursuant to Article 15 of the Business Corporation Law, only licensed physicians may organize, hold stock in, direct and/or be an officer of a medical professional service corporation ("PC"). That MIDWOOD MEDICAL CARE P.C. evaded the legal restrictions on incorporation, ownership and/or control of PCs by concealing from the Departments of State and Education that legally unqualified individual(s) incorporated, owned, operated and/or controlled medical professional service corporations. The Departments of State and Education are the agencies with regulatory oversight over professional service corporations.

1. That unqualified individual(s) were instrumental in owning, operating, controlling and/or and handling the financial affairs of the following:

- a. MIDWOOD MEDICAL CARE P.C.

C. On or about October 24, 1980, Roger Joseph Brick, M.D. was licensed to



practice medicine in the State of New York State, and issued license number 143817 by the New York State Education Department.

- D. Pursuant to the articles of organization of Respondent AVIYON MEDICAL REHABILITATION, LLC (hereinafter "AVIYON"), filed with the Secretary of State on September 9, 1998, Roger Joseph Brick, M.D. was Respondent AVIYON's sole member and manager and was identified as the individual who was duly authorized by law to practice medicine.
- E. Roger Joseph Brick, M.D. remained Respondent AVIYON's sole member and manager, but did not own, manage, operate and/or control Respondent AVIYON, from inception through at least April 18, 2008.
- F. Pursuant to the articles of organization of Respondent COMPETENT MEDICAL REHABILITATION, PLLC (hereinafter "COMPETENT"), filed with the Secretary of State on October 18, 2000, Roger Joseph Brick, M.D. was Respondent COMPETENT's sole member and manager and was identified as the individual who was duly authorized by law to practice medicine.
- G. Roger Joseph Brick, M.D. remained Respondent COMPETENT's sole member and manager, but did not own, manage, operate, and/or control Respondent COMPETENT, from inception through at least April 18, 2008.
- H. Pursuant to the articles of organization of Respondent ESHEL MEDICAL REHABILITATION, LLC (hereinafter "ESHEL"), filed with the Secretary of State on April 27, 1998, Roger Joseph Brick, M.D. was Respondent ESHEL's sole member and manager and was identified as the individual who was duly

authorized by law to practice medicine.

- I. Roger Joseph Brick, M.D. remained Respondent ESHEL's sole member and manager, but did not own, manage, operate, and/or control Respondent ESHEL, from inception through at least April 18, 2008.
- J. Pursuant to the certificate of incorporation of Respondent MIDWOOD MEDICAL CARE P.C. (hereinafter "MIDWOOD"), filed with the Secretary of State on September 10, 2001, Roger Joseph Brick, M.D. was Respondent MIDWOOD's sole shareholder, director, and officer, and was identified as the individual who was duly authorized by law to practice medicine.
- K. Roger Joseph Brick, M.D. remained Respondent MIDWOOD's sole shareholder, director, and officer, but did not manage, operate, and/or control Respondent MIDWOOD, from inception through at least April 18, 2008.
- L. Pursuant to the articles of organization of Respondent OBERON MEDICAL REHABILITATION, PLLC (hereinafter "OBERON"), filed with the Secretary of State on May 1, 2001, Roger Joseph Brick, M.D. was Respondent OBERON's sole member and manager and was identified as the individual who was duly authorized by law to practice medicine.
- M. Roger Joseph Brick, M.D. remained Respondent OBERON's sole member and manager, but did not own, manage, operate, and/or control Respondent OBERON, from inception through at least April 18, 2008.

- N. Pursuant to the articles of organization of Respondent PRIMAVERA MEDICAL REHABILITATION, PLLC (hereinafter "PRIMAVERA"), filed with the Secretary of State on July 10, 2001, Roger Joseph Brick, M.D. was Respondent PRIMAVERA's sole member and manager and was identified as the individual who was duly authorized by law to practice medicine.
- O. Roger Joseph Brick, M.D. remained Respondent PRIMAVERA's sole member and manager, but did not own, manage, operate, and/or control Respondent PRIMAVERA, from inception through at least April 24, 2008.
- P. Pursuant to the articles of organization of Respondent REFUAH MEDICAL REHABILITATION, PLLC (hereinafter "REFUAH"), filed with the Secretary of State on August 16, 2000, Roger Joseph Brick, M.D. was Respondent REFUAH's sole member and manager and was identified as the individual who was duly authorized by law to practice medicine.
- Q. Roger Joseph Brick, M.D. remained Respondent REFUAH's sole member and manager, but did not own, manage, operate, and/or control Respondent REFUAH, from inception through at least April 18, 2008.
- R. Pursuant to the articles of organization of Respondent RESTORATIVE MEDICAL REHABILITATION, PLLC (hereinafter "RESTORATIVE"), filed with the Secretary of State on May 13, 2003, Roger Joseph Brick, M.D. was Respondent RESTORATIVE's sole member and manager and was identified as the individual who was duly authorized by law to practice medicine.
- S. Roger Joseph Brick, M.D. remained Respondent RESTORATIVE's sole

member and manager, but did not own, manage, operate, and/or control Respondent RESTORATIVE, from inception through at least April 18, 2008.

- T. Pursuant to the articles of organization of Respondent TAI YANG MEDICAL ACUPUNCTURE, PLLC (hereinafter "TAI YANG"), filed with the Secretary of State on September 5, 2001, Roger Joseph Brick, M.D. was Respondent TAI YANG's sole member and manager and was identified as the individual who was duly authorized by law to practice medicine.
- U. Roger Joseph Brick, M.D. remained Respondent TAI YANG's sole member and manager, but did not own, manage, operate, and/or control Respondent TAI YANG, from inception through at least April 18, 2008.
- V. Pursuant to the articles of organization of Respondent TRASTEVEVERE MEDICAL REHABILITATION, LLC (hereinafter "TRASTEVEVERE"), filed with the Secretary of State on February 28, 2001, Roger Joseph Brick, M.D. was Respondent TRASTEVEVERE's sole member and manager and was identified as the individual who was duly authorized by law to practice medicine.
- W. Roger Joseph Brick, M.D. remained Respondent TRASTEVEVERE's sole member and manager, but did not own, manage, operate and/or control Respondent TRASTEVEVERE, from inception through at least April 18, 2008.
- X. That effective August 4, 2006, a Hearing Committee of the New York State Board for Professional Medical Conduct revoked the medical license of Roger Joseph Brick, M.D., when it sustained the charge finding Roger Joseph Brick, M.D. guilty of having been convicted in New York State Supreme

County, Queens County, of Enterprise Corruption. Previously, the same physician's license was summarily suspended on September 7, 2005.

- Y. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent AVIYON in violation of §§1203(a) and (b), and 1204(a) of the N.Y. Limited Liability Company Law.
- Z. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent COMPETENT in violation of §§1203(a) and (b), and 1204(a) of the N.Y. Limited Liability Company Law.
- AA. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent ESHEL in violation of §§1203(a) and (b), and 1204(a) of the N.Y. Limited Liability Company Law.
- AB. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent MIDWOOD in violation of §§1503(a) and (b), and 1504(a) of the N.Y. Bus. Corp. Law.
- AC. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent OBERON in violation of §§1203(a) and (b), and 1204(a) of the N.Y. Limited Liability Company Law.

- AD. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent PRIMAVERA in violation of §§1203(a) and (b), and 1204(a) of the N.Y. Limited Liability Company Law.
- AE. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent REFUAH in violation of §§1203(a) and (b), and 1204(a) of the N.Y. Limited Liability Company Law.
- AF. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent RESTORATIVE in violation of §§1203(a) and (b), and 1204(a) of the N.Y. Limited Liability Company Law.
- AG. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent TAI YANG in violation of §§1203(a) and (b), and 1204(a) of the N.Y. Limited Liability Company Law.
- AH. As a result of the revocation of said medical license, Roger Joseph Brick, M.D. is no longer duly authorized by law to practice medicine, rendering Respondent TRASTEVEVERE in violation of §§1203(a) and (b), and 1204(a) of the N.Y. Limited Liability Company Law.
- AI. On or about June 8, 2005, in the Supreme Court of the State of New York, County of Queens, Respondent OBERON was convicted of the crime of



Enterprise Corruption, N.Y. Penal Law 460.20 (1)(A), a B felony, based on a plea of guilty, and on or about September 6, 2005, OBERON was sentenced to a \$1,000. fine, \$10. crime victim assistance fee, and \$200. surcharge.

AJ. On or about June 8, 2005, in the Supreme Court of the State of New York, County of Queens, Respondent RESTORATIVE was convicted of the crime of Enterprise Corruption, N.Y. Penal Law 460.20 (1)(A), a B felony, based on a plea of guilty, and on or about September 6, 2005, RESTORATIVE was sentenced to a \$1,000. fine, \$10. crime victim assistance fee, and \$200. surcharge.

AK. On or about June 8, 2005, in the Supreme Court of the State of New York, County of Queens, Respondent TAI YANG was convicted of the crime of Enterprise Corruption, N.Y. Penal Law 460.20 (1)(A), a B felony, based on a plea of guilty, and on or about September 6, 2005, TAI YANG was sentenced to a \$1,000. fine, \$10. crime victim assistance fee, and \$200. surcharge.

AL. On or about June 8, 2005, in the Supreme Court of the State of New York, County of Queens, Roger Joseph Brick, M.D. was convicted of the crime of Enterprise Corruption, N.Y. Penal Law 460.20 (1)(A), a B felony, based on a plea of guilty, and on or about September 6, 2005, Roger Joseph Brick, M.D. was sentenced to imprisonment of 1 year to 3 years, \$10. crime victim assistance fee, and \$200. surcharge.

AM. That in and after the late 1990's, Respondent AVIYON, through its sole member and manager, Roger Joseph Brick, M.D., knowingly permitted and

allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of AVIYON to a person, Arthur Bogoraz (hereinafter "BOGORAZ"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and BOGORAZ entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received (from insurance companies for treatment for EMG's and physical therapy he performed), 10 - 15% for acupuncture treatment performed, and 10% of collections received from insurance companies for MRI's performed, and BOGORAZ received two-third's of collections received (or as otherwise adjusted as stated aforesaid) purportedly as management fees paid to one of BOGORAZ's management companies. These percentages were fixed and would not change based on the amount of services BOGORAZ provided or the financial condition or profitability of AVIYON. BOGORAZ operated, controlled, and managed every aspect of AVIYON, and was the de facto owner of AVIYON. Joseph Roger Brick, M.D. had no involvement with or access to information about AVIYON's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency and basic protocols and asked in a cursory manner if he approved), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by AVIYON.

- AN. That in and after the late 1990's, Respondent COMPETENT, through its sole member and manager, Roger Joseph Brick, M.D., knowingly permitted and allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of COMPETENT to a person, Arthur Bogoraz (hereinafter "BOGORAZ"), who was not a licensed physician but rather a



layperson. Joseph Roger Brick, M.D. and BOGORAZ entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received (from insurance companies for treatment for EMG's and physical therapy he performed), 10 - 15% for acupuncture treatment performed, and 10% of collections received from insurance companies for MRI's performed, and BOGORAZ received two-third's of collections received (or as otherwise adjusted as stated aforesaid) purportedly as management fees paid to one of BOGORAZ's management companies. These percentages were fixed and would not change based on the amount of services BOGORAZ provided or the financial condition or profitability of COMPETENT. BOGORAZ operated, controlled, and managed every aspect of COMPETENT, and was the de facto owner of COMPETENT. Joseph Roger Brick, M.D. had no involvement with or access to information about COMPETENT's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency and basic protocols and asked in a cursory manner if he approved), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by COMPETENT.

- AO. That in and after the late 1990's, Respondent OBERON, through its sole member and manager, Roger Joseph Brick, M.D., knowingly permitted and allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of OBERON to a person, Arthur Bogoraz (hereinafter "BOGORAZ"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and BOGORAZ entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received

(from insurance companies for treatment for EMG's and physical therapy he performed), 10 - 15% for acupuncture treatment performed, and 10% of collections received from insurance companies for MRI's performed, and BOGORAZ received two-third's of collections received (or as otherwise adjusted as stated aforesaid) purportedly as management fees paid to one of BOGORAZ's management companies. These percentages were fixed and would not change based on the amount of services BOGORAZ provided or the financial condition or profitability of OBERON. BOGORAZ operated, controlled, and managed every aspect of OBERON, and was the de facto owner of OBERON. Joseph Roger Brick, M.D. had no involvement with or access to information about OBERON's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency and basic protocols and asked in a cursory manner if he approved), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by OBERON.

- AP. That in and after the late 1990's, Respondent PRIMAVERA, through its sole member and manager, Roger Joseph Brick, M.D., knowingly permitted and allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of PRIMAVERA to a person, Arthur Bogoraz (hereinafter "BOGORAZ"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and BOGORAZ entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received (from insurance companies for treatment for EMG's and physical therapy he performed), 10 - 15% for acupuncture treatment performed, and 10% of collections received from insurance companies for MRI's performed, and

BOGORAZ received two-third's of collections received (or as otherwise adjusted as stated aforesaid) purportedly as management fees paid to one of BOGORAZ's management companies. These percentages were fixed and would not change based on the amount of services BOGORAZ provided or the financial condition or profitability of PRIMAVERA. BOGORAZ operated, controlled, and managed every aspect of PRIMAVERA, and was the de facto owner of PRIMAVERA. Joseph Roger Brick, M.D. had no involvement with or access to information about PRIMAVERA's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency and basic protocols and asked in a cursory manner if he approved), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by PRIMAVERA.

- AQ. That in and after the late 1990's, Respondent RESTORATIVE, through its sole member and manager, Roger Joseph Brick, M.D., knowingly permitted and allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of RESTORATIVE to a person, Arthur Bogoraz (hereinafter "BOGORAZ"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and BOGORAZ entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received (from insurance companies for treatment for EMG's and physical therapy he performed), 10 - 15% for acupuncture treatment performed, and 10% of collections received from insurance companies for MRI's performed, and BOGORAZ received two-third's of collections received (or as otherwise adjusted as stated aforesaid) purportedly as management fees paid to one of BOGORAZ's management companies. These

percentages were fixed and would not change based on the amount of services BOGORAZ provided or the financial condition or profitability of RESTORATIVE. BOGORAZ operated, controlled, and managed every aspect of RESTORATIVE, and was the de facto owner of RESTORATIVE. Joseph Roger Brick, M.D. had no involvement with or access to information about RESTORATIVE's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency and basic protocols and asked in a cursory manner if he approved), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by RESTORATIVE.

- AR. That in and after the late 1990's, Respondent TAI YANG, through its sole member and manager, Roger Joseph Brick, M.D., knowingly permitted and allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of TAI YANG to a person, Arthur Bogoraz (hereinafter "BOGORAZ"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and BOGORAZ entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received (from insurance companies for treatment for EMG's and physical therapy he performed), 10 - 15% for acupuncture treatment performed, and 10% of collections received from insurance companies for MRI's performed, and BOGORAZ received two-third's of collections received (or as otherwise adjusted as stated aforesaid) purportedly as management fees paid to one of BOGORAZ's management companies. These percentages were fixed and would not change based on the amount of services BOGORAZ provided or the financial condition or profitability of TAI YANG. BOGORAZ operated,

controlled, and managed every aspect of TAI YANG, and was the de facto owner of TAI YANG. Joseph Roger Brick, M.D. had no involvement with or access to information about TAI YANG's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency and basic protocols and asked in a cursory manner if he approved), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by TAI YANG.

- AS. That in and after the late 1990's, Respondent TRASTEVERDE, through its sole member and manager, Roger Joseph Brick, M.D., knowingly permitted and allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of TRASTEVERDE to a person, Arthur Bogoraz (hereinafter "BOGORAZ"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and BOGORAZ entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received (from insurance companies for treatment for EMG's and physical therapy he performed), 10 - 15% for acupuncture treatment performed, and 10% of collections received from insurance companies for MRI's performed, and BOGORAZ received two-third's of collections received (or as otherwise adjusted as stated aforesaid) purportedly as management fees paid to one of BOGORAZ's management companies. These percentages were fixed and would not change based on the amount of services BOGORAZ provided or the financial condition or profitability of TRASTEVERDE. BOGORAZ operated, controlled, and managed every aspect of TRASTEVERDE, and was the de facto owner of TRASTEVERDE. Joseph Roger Brick, M.D. had no involvement with or access to information



about TRASTEVERDE's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency and basic protocols and asked in a cursory manner if he approved), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by TRASTEVERDE.

AT. That in or around 1998 and 1999, Respondent ESHEL, through its sole member and manager, Roger Joseph Brick, M.D., knowingly permitted and allowed the ceding of the operation, management, control, and/or (de facto) ownership authority of ESHEL to a person, Jacob Kagan (hereinafter "KAGAN"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and KAGAN entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received (for treatment he provided and physical therapy he supervised), and KAGAN received two-third's of collections received purportedly as management fees paid to a number of KAGAN management companies. These percentages were fixed and would not change based on the amount of services KAGAN provided or the financial condition or profitability of ESHEL. Joseph Roger Brick, M.D. , had no involvement or access to information about ESHEL's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by ESHEL.

AU. That in or around August, 2000, Respondent REFUAH, through its sole

member and manager, Roger Joseph Brick, M.D., knowingly permitted and allowed the ceding of the operation, management, control, and/or (de facto) ownership authority of REFUAH to a person, Jacob Kagan (hereinafter "KAGAN"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and KAGAN entered into an arrangement, whereby Joseph Roger Brick, M.D. received one-third of collections received (for treatment he provided and physical therapy he supervised), and KAGAN received two-third's of collections received purportedly as management fees paid to a number of KAGAN management companies. These percentages were fixed and would not change based on the amount of services KAGAN provided or the financial condition or profitability of REFUAH. Joseph Roger Brick, M.D. , had no involvement or access to information about REFUAH's financial operations, hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency), was not a party to nor aware of the arrangement by which office space was obtained, and did not share in any profits generated by REFUAH.

- AV. That in or about 2001, Respondent MIDWOOD, through its sole shareholder, director, and officer, Roger Joseph Brick, M.D. knowingly permitted and allowed the ceding of the operation, control, management, and/or (de facto) ownership authority of MIDWOOD to a person, Yuri Lyubarsky (hereinafter "LYUBARSKY"), who was not a licensed physician but rather a layperson. Joseph Roger Brick, M.D. and LYUBARSKY entered into an arrangement, whereby Joseph Roger Brick, M.D. received 15% of the collections received (from insurance companies for treatment Roger Joseph Brick, M.D. performed or physical therapy he supervised), and LYUBARSKY received

85% of collections received purportedly as management fees paid to one of LYUBARSKY's management companies. These percentages were fixed and would not change based on the amount of services LYUBARSKY provided or the financial condition or profitability of MIDWOOD. Joseph Roger Brick, M.D. did not share in any profits generated by MIDWOOD. Joseph Roger Brick, M.D. had no involvement or access to information about MIDWOOD's financial operations, no involvement with hiring, firing, or supervising office staff or other medical professionals (other than being consulted regarding physical therapist competency), and was not a party to nor aware of the arrangement by which office space was obtained.

### **SPECIFICATION OF CHARGES**

#### **FIRST THROUGH NINTH SPECIFICATIONS**

#### **FAILING TO COMPLY WITH A STATE LAW**

Respondents AVIYON MEDICAL REHABILITATION, LLC, COMPETENT MEDICAL REHABILITATION, PLLC, ESHEL MEDICAL REHABILITATION, LLC, OBERON MEDICAL REHABILITATION, PLLC, PRIMAVERA MEDICAL REHABILITATION, PLLC, REFUAH MEDICAL REHABILITATION, PLLC, RESTORATIVE MEDICAL REHABILITATION, PLLC, TAI YANG MEDICAL ACUPUNCTURE, PLLC, TRASTEVERE MEDICAL REHABILITATION, LLC are charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(16) by willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of Medicine, to wit, N.Y. Limited Liability Company Law §1203(a) and (b), and §1204, as alleged in the facts of paragraph(s):



1. A, A1, A1(a), C, D, E, X, Y, AL, and/or AM, with respect to Respondent AVIYON MEDICAL REHABILITATION, LLC.
2. A, A1, A1(b), C, F, G, X, Z, AL, and/or AN, with respect to Respondent COMPETENT MEDICAL REHABILITATION, PLLC.
3. A, A1, A1(c), C, H, I, X, AA, AL, and/or AT, with respect to Respondent ESHEL MEDICAL REHABILITATION, LLC
4. A, A1, and A1(d), C, L, M, X, AC, AI, AL, and/or AO, with respect to Respondent OBERON MEDICAL REHABILITATION, PLLC
5. A, A1, and A1(e), C, N, O, X, AD, AL, and/or AP with respect to Respondent PRIMAVERA MEDICAL REHABILITATION, PLLC.
6. A, A1, and A1(f), C, P, Q, X, AE, AL, and/or AU with respect to Respondent REFUAH MEDICAL REHABILITATION, PLLC.
7. A, A1, and A1(g), C, R, S, X, AF, AJ, AL, and/or AQ with respect to Respondent RESTORATIVE MEDICAL REHABILITATION, PLLC.
8. A, A1, and A1(h), C, T, U, X, AG, AK, AL, and/or AR with respect to Respondent TAI YANG MEDICAL ACUPUNCTURE, PLLC.
9. A, A1, and A1(i), C, V, W, X, AH, AL, and/or AS with respect to Respondent TRASTEVEERE MEDICAL REHABILITATION, LLC.

#### **TENTH SPECIFICATION**

##### **FAILING TO COMPLY WITH A STATE LAW**

Respondent MIDWOOD 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, N.Y. Business Corporation Law §1503,

as alleged in the facts of paragraph(s):

10. B, B1, BI(a), C, J, K, X, AB, AL, and/or AV, with respect to Respondent MIDWOOD MEDICAL CARE P.C.

**ELEVENTH THROUGH THIRTEENTH SPECIFICATION**

**CRIMINAL CONVICTION (N.Y.S.)**

Respondents OBERON MEDICAL REHABILITATION, PLLC, RESTORATIVE MEDICAL REHABILITATION, PLLC, TAI YANG MEDICAL ACUPUNCTURE, PLLC are charged with committing professional misconduct as defined in N.Y. Education Law §6530(9)(i) by having been convicted of committing an act constituting a crime under New York state law, as alleged in the facts of paragraph(s):

11. AI with respect to Respondent OBERON MEDICAL REHABILITATION, PLLC.
12. AJ with respect to Respondent RESTORATIVE MEDICAL REHABILITATION, PLLC.
13. AK with respect to Respondent TAI YANG MEDICAL ACUPUNCTURE, PLLC.

**FOURTEENTH THROUGH TWENTY-THIRD SPECIFICATIONS**

**FRAUDULENT PRACTICE**

Respondents AVIYON MEDICAL REHABILITATION, LLC, COMPETENT MEDICAL REHABILITATION, PLLC, ESHEL MEDICAL REHABILITATION, LLC,

MIDWOOD MEDICAL CARE P.C., OBERON MEDICAL REHABILITATION, PLLC, PRIMAVERA MEDICAL REHABILITATION, PLLC, REFUAH MEDICAL REHABILITATION, PLLC, RESTORATIVE MEDICAL REHABILITATION, PLLC, TAI YANG MEDICAL ACUPUNCTURE, PLLC, TRASTEVERE MEDICAL REHABILITATION, LLC are charged with committing professional misconduct as defined by N.Y. Education Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following paragraph(s):

14. A, A1, A1(a), C, D, and/or AM, with respect to Respondent AVIYON MEDICAL REHABILITATION, LLC.
15. A, A1, A1(b), C, F, G, and/or AN, with respect to Respondent COMPETENT MEDICAL REHABILITATION, PLLC.
16. A, A1, A1(c), C, H, I, and/or AT, with respect to Respondent ESHEL MEDICAL REHABILITATION, LLC
17. B, B1, B1(a), C, J, K, and/or AV, with respect to Respondent MIDWOOD MEDICAL CARE P.C.
18. A, A1, and A1(d), C, L, M, and/or AO, with respect to Respondent OBERON MEDICAL REHABILITATION, PLLC
19. A, A1, and A1(e), C, N, O, and/or AP with respect to Respondent PRIMAVERA MEDICAL REHABILITATION, PLLC.
20. A, A1, and A1(f), C, P, Q, and/or AU with respect to Respondent REFUAH MEDICAL REHABILITATION, PLLC.
21. A, A1, and A1(g), C, R, S, and/or AQ with respect to Respondent RESTORATIVE MEDICAL REHABILITATION, PLLC.
22. A, A1, and A1(h), C, T, U, and/or AR with respect to Respondent TAI YANG MEDICAL ACUPUNCTURE, PLLC.
23. A, A1, and A1(i), C, V, W, and/or AS with respect to Respondent

TRASTEVERE MEDICAL REHABILITATION, LLC.

DATED: November // , 2008  
New York, New York

Redacted Signature

  
Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

# APPENDIX 2

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

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In the Matter

of

ANSWER and  
AFFIRMATIVE  
DEFENSES

AVIYON MEDICAL REHABILITATION, LLC,  
COMPETENT MEDICAL REHABILITATION, PLLC,  
ESHEL MEDICAL REHABILITATION, LLC,  
MIDWOOD MEDICAL CARE P.C.,  
OBERON MEDICAL REHABILITATION, PLLC,  
PRIMAVERA MEDICAL REHABILITATION, PLLC,  
REF'UAH MEDICAL REHABILITATION, PLLC  
RESTORATIVE MEDICAL REHABILITATION, PLLC  
'TAI YANG MEDICAL ACUPUNCTURE PLLC  
TRAS'TEVERE MEDICAL REHABILITATION, LLC

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Respondents, for their answer to the Statement of Charges, hereby alleges as follows:

**Factual Allegations**

- A. Admit respondents are professional services business entities., but deny they evaded legal restrictions on ownership or control, or that so-called "unqualified individuals" owned or controlled them.
- B. Denied.
- C. Admitted.
- D. Admitted.
- E. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- F. Admitted.
- G. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- H. Admitted.

- I. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- J. Admitted.
- K. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- L. Admitted.
- M. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- N. Admitted.
- O. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- P. Admitted.
- Q. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- R. Admitted.
- S. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- T. Admitted.
- U. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- V. Admitted.
- W. Admitted Dr. Brick was the sole member, and the balance of the allegations are denied.
- X. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction.
- Y. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction.
- Z. Admitted, except for characterizations of the law and respondents respectfully refer the



tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction.

- AA. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction..
- AB. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction.
- AC. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction.
- AD. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction.
- AE. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction.
- AF. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction.
- AG. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its

meaning and legal construction.

AH. Admitted, except for characterizations of the law and respondents respectfully refer the tribunal and Administrative Law Judge to the applicable statute and/or regulation for its meaning and legal construction.

AI. Admitted.

AJ. Admitted.

AK. Admitted.

AL. Admitted.

AM. Denied.

AN. Denied.

AO. Denied.

AP. Denied.

AQ. Denied.

AR. Denied.

AS. Denied.

AT. Denied.

AU. Denied.

AV. Denied.

#### **SPECIFICATIONS OF CHARGES FIRST THROUGH NINTH**

Denied. As for characterizations of the law, respondents respectfully refer the tribunal and Administrative Law Judge to the cited statute and/or regulation for its meaning and legal construction.

### **SPECIFICATIONS OF CHARGES TENTH**

Denied.

### **SPECIFICATIONS OF CHARGES ELEVENTH THROUGH THIRTEENTH**

Denied. As for characterizations of the law, respondents respectfully refer the tribunal and Administrative Law Judge to the cited statute and/or regulation for its meaning and legal construction.

### **SPECIFICATIONS OF CHARGES FOURTEENTH THROUGH TWENTY-THIRD**

Denied. As for characterizations of the law, respondents respectfully refer the tribunal and Administrative Law Judge to the cited statute and/or regulation for its meaning and legal construction.

### **AFFIRMATIVE DEFENSES**

Respondents ceased all operations, closed all bank accounts, and filed closing tax returns with the New York State Tax Commission, and reasonably believed this would cause their automatic dissolution.

Respondents stopped paying annual franchise taxes, and pursuant to Tax Law § 212, should have been automatically dissolved by the Secretary of State.

Dated: February 3, 2009

Redacted Signature

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Roger S. Brick, M.D. - Sole Member of Respondents

To: **By Fax:** (212-417-4392)  
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To: **By Fax:** (518-402-0751) and **E-mail:** [mpz01@health.state.ny.us](mailto:mpz01@health.state.ny.us)  
Hon. Marc P. Zylberberg - Administrative Law Judge  
Bureau of Adjudication  
433 River Street - 5<sup>th</sup> Floor  
Troy, New York 12180-2299  
(518) 402-0748