



ANDREW M. CUOMO
Governor

Department
of Health

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

Public

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 20, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

SVS Wellcare Medical, PLLC
7616 Bay Parkway -1st Floor
Brooklyn, New York 11214

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

RE: In the Matter of SVS Wellcare Medical, PLLC

Dear Parties:

Enclosed please find the Determination and Order (No. 15-009) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the 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.

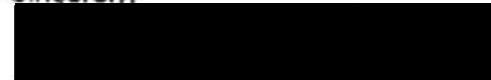
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., 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,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

State Of New York : Department Of Health
State Board For Professional Medical Conduct

In the Matter of

SVS Wellcare Medical, PLLC (Respondent)

Determination and Order No. 15- 009

COPY

David Harris M.D., M.P.H. (Chair), Airlie Cameron, M.D. and Joseph R. Madonia, L.C.S.W.-R., duly designated members of the State Board for Professional Medical Conduct (BPMC), served as the Hearing Committee in this matter pursuant to New York Public Health Law (PHL) § 230(10)(e)(McKinney Supp. 2015). James F. Horan, Administrative Law Judge, served as the Committee's Administrative Officer. The Department of Health (Petitioner) appeared by John Thomas Viti, Esq. No one appeared for the Respondent. The Committee received and examined documents from the Petitioner and a stenographic reporter prepared a transcript of the proceeding. After consideration of the record, the Hearing Committee sustains the charge that the Respondent Physician Professional Limited Liability Company committed professional misconduct by practicing medicine fraudulently, willfully failing to comply with substantial provisions of State law governing medical practice and willfully making a false statement. The Committee votes 3-0 to annul the Respondent's certificate of incorporation.

Procedural History

Date of Notice of Hearing and
Statement of Charges:

August 11, 2014

Date of Service of Notice of Hearing and
Statement of Charges:

August 19, 2014

Date of Answer to Charges:

None submitted

Date of Pre-Hearing Conference:

December 1, 2014

Date of Hearing:

December 10, 2014

Location of Hearing:

New York State Department of Health
90 Church St., 4th Floor
New York, NY 10007

Transcript received:

December 23, 2014

The Administrative Officer called the parties to appear at a pre-hearing conference in this matter at 2:30 p.m. on December 1, 2014. The Respondent failed to appear for the Pre-Hearing Conference and the Administrative Officer ruled that the matter would proceed in the Respondent's absence. The Petitioner made a motion to amend the charges [Petitioner Exhibit 2A], which the Administrative Officer granted. The Petitioner moved further to have the charges deemed admitted based on Respondent's failure to file an answer. The Petitioner's Exhibit 1, the Notice of Hearing, states at page 2 that:

"Pursuant to the provisions of PHL § 230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted."

The Administrative Officer ruled that due to the failure to file an answer to the charges, the charges would be deemed admitted. Also at the Pre-hearing, the Administrative Officer determined that the Respondent received legally sufficient notice concerning the hearing and that the Board had obtained jurisdiction over the Respondent. The Administrative Officer also received 14 documents into evidence from the Petitioner [Exhibits 1-13]. At hearing, the Administrative Officer received an additional document from the Petitioner in evidence as Exhibit 14. A full list of the exhibits in evidence appears as Appendix I to this Determination.

The Committee found at the hearing that the Notice of Hearing and PHL § 230(10)(c) clearly indicated that the failure to file a written answer would result in the charges and allegations being deemed admitted. Due to Respondent's failure to submit a written answer, the factual allegations and charges of misconduct contained in the Statement of Charges [Exhibit 2] are deemed admitted by the Respondent, Corsello v. New York State Department of Health, 300 A.D.2d 849, 752 N.Y.S.2d 156 (3rd Dept. 2002).

Statement of Case

The State Board for Professional Medical Conduct functions pursuant to PHL § 230 *et seq.* as a duly authorized professional disciplinary agency of the State of New York. The Petitioner charged that the Respondent committed professional misconduct under the definitions in N.Y. Education Law (EL) §§ 6530 (2), 6530(16) & 6530(21) (McKinney Supp. 2015), by practicing medicine fraudulently, willfully failing to comply with substantial provisions of State law governing medical practice and willfully making a false report required by law, by the Department of Health or the State Education Department. This Determination and Order attaches a copy of the Notice of Hearing, Statement of Charges and Amended Statement of Charges as Appendix II.

Findings of Fact

The Committee makes the following Findings of Fact after a reviewing the entire record in this matter. The brackets following the Findings cite to testimony [T], documentary evidence

[Ex.] or Official Notice of a statute or regulation [ON] on which the Committee relied in arriving at a particular finding. In instances in which other information in the record conflicts with the evidence on which the Committee relied in making the Findings, the Committee considered and rejected that other information. Under PHL § 230(10), the Petitioner bore the burden to prove its case by a preponderance of the evidence. The Committee agrees unanimously on all Findings.

1) Committees from BPMC conduct disciplinary hearing in matters alleging professional misconduct under EL §§ 6530 and 6531 [ON PHL § 230(1)].

2) The Respondent Professional Limited Liability Company (PLLC) participated in the Medicare Program and provided, among other things, physical therapy, nerve conduction studies, vestibular function tests, allergy services and vitamin infusions [Ex. 10].

3) In a New York PLLC, one or more professionals, each of whom are authorized by law to render a professional service, may form a PLLC [ON New York Limited Liability Company Law (LLCL) § 1203(a)(McKinney Supp. 2015)].

4) With respect to a PLLC formed to provide medical services, each PLLC member must be licensed to practice medicine [ON LLCL § 1203(a)].

5) The Articles of Organization for the Respondent listed Gustave Drivas, M.D. (Drivas) as the original member and manager for the Respondent [Ex. 4].

6) The Respondent received authorization to operate as a New York PLLC by filing its Articles of Organization in March 2006 with the New York State Department of State and the New York State Education Department [Ex. 5].

7) On or about January 31, 2007, Drivas signed an affidavit for an insurance company investigator [Ex. 9].

8) The Drivas Affidavit admitted that Drivas was the sole shareholder/director of the Respondent, but laypersons legally prohibited from owning a PLLC actually controlled the Respondent rather than Drivas [Ex. 9].

9) The Drivas Affidavit stated further that all profits from the Respondent were funneled to laypersons through fees for management/billing and collection services, so that laypersons would profit illegally from medical services [Ex. 9].

10) Following a hearing in 2013, a BPMC Committee revoked Drivas' license to practice medicine in New York State for practicing medicine fraudulently, willfully making a false report and failing to comply with substantial portions of State law governing the practice of medicine [Ex. 7].

11) In their Determination and Order, the BPMC Committee found that Drivas knowingly and intentionally misled the New York State Department of State and the New York State Education Department concerning the Respondent's ownership and control [Ex. 7].

12) Drivas was convicted in the United States District court for the Eastern District of New York in September 2013, on one count of conspiracy to commit health care fraud and one count of health care fraud [Ex. 10, Ex. 11].

13) The charges in the criminal case alleged a scheme to defraud the Medicare Program by paying kickbacks to Medicare beneficiaries to receive unnecessary services at health care providers, including the Respondent [Ex. 10].

14) The District Court sentenced Drivas to spend 12 years and seven months in prison and to pay \$50,943,386.00 in restitution [Ex. 11].

Conclusions

Factual Allegations: The Hearing Committee makes the unanimous conclusion, pursuant to the Findings we listed above, to sustain the Factual Allegations A., A.1 and B from the August 11, 2014 Statement of Charges. The Respondent failed to file an answer to the Statement Charges, so the Factual Allegations were deemed admitted. In addition, documents in evidence proved Factual Allegation A, that the Respondent received authorization to operate as a PLLC by filing its Articles of Organization in April 2006, with Drivas identified as the sole original member and as the individual authorized to practice medicine [Ex. 4, Ex. 5, Ex. 6]. In addition, the Drivas Affidavit proved Factual Allegation A.1, that the Respondent, through its agent Drivas, knowingly, falsely and with intent to mislead, represented Drivas was the sole original member and concealed with intent to deceive that non-physicians owned and/or controlled the Respondent [Ex. 9]. Further documentation proved Allegation B that BPMC revoked Drivas' medical license, in part based on the transactions charged in Factual Allegations A. and A.1. [Ex. 7, Ex. 8]. The Committee finds that the Petitioner proved all three Factual Allegations by preponderant evidence. We turn now to the Specifications of Charges.

First Specification: The Petitioner charged that the Respondent engaged in misconduct under the definition at EL § 6530(2) by practicing medicine fraudulently. The Committee sustains that Specification 3-0 and we find that the sustained Factual Allegations A., A.1, and B. proved that charge by preponderant evidence.

Second Specification: The Petitioner charged that the Respondent engaged in misconduct under the definition at EL 6530(16) by failing willfully or by gross negligence to comply with substantial provisions of State law governing the practice of medicine, specifically LLCL §

1203. The Committee sustains that Specification 3-0 and we find that the sustained Factual Allegations A., A.1 and B proved that Specification by preponderant evidence.

Third Specification: The Petitioner charged that the Respondent engaged in professional misconduct under the definition at EL § 6530(21) by willfully filed a false report required by law or by the Department of Health or the Education Department. The Committee sustained that Specification 3-0 and we find that the sustained Allegations A. and A.1 proved that Specification by preponderant evidence.

Determination As.To Penalty

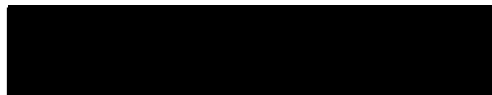
The Committee now considers the sanction to impose for the misconduct. Under LLCL §1203(d), a PLLC practicing medicine is subject to the same pre-hearing and hearing provisions that apply to individual physicians under PHL §§ 230 *et seq.* and the statute provides further that the PLLC is subject to the revocation, suspension or annulment of its Articles of Organization for cause. The Committee votes 3-0 to annul the Respondent's Articles of Incorporation. In New York, a physician PLLC provides medical services through and under the direction of its member physicians and those member physicians must control the PLLC. The Respondent never existed or functioned for that legal purpose, but rather existed to allow non-physicians to control the Respondent and to facilitate a scheme to defraud the Medicare Program. The Committee finds annulment the appropriate sanction for an entity that functioned fraudulently from its inception.

ORDER

Based on the foregoing, the Committee issues the following ORDER:

1. The Committee sustains the First, Second and Third Specifications contained in the Statement of Charges (Appendix II);
2. The Committee annuls the Respondent's Articles of Organization.

DATED: January/6, 2015 , New York


David Harris, M.D., M.P.H. (Chair),
Airlie Cameron, M.D.,
Joseph R. Madonia, L.C.S.W.-R.,

To:

SVS Wellcare Medical, PLLC
7616 Bay Parkway, 1st Floor
Brooklyn, NY 11214

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

Appendix I

List of Exhibits

- Ex. 1 Notice of Hearing,
- Ex. 2 Statement of Charges,
- Ex. 2A Amendment to Statement of Charges,
- Ex. 3 Affidavit of Service by the Secretary of State,
- Ex. 4 State Education Department Documents,
- Ex. 5 Department of State Documents,
- Ex. 6 Division of Corporations Entity Information,
- Ex. 7 BPMC Determination and Order 13-206,
- Ex. 8 Administrative Review Board Determination – Gustave Drivas, M.D.,
- Ex. 9 Drivas Affidavit,
- Ex. 10 United States District Court Superseding Indictment,
- Ex. 11 United States District Court Judgment, two counts,
- Ex. 12 United States District Court Judgment, one count,
- Ex. 13 United States Court of Appeals Summary Order,
- Ex. 14 Returned Letter.

Appendix II

Statement of Charges (attached)

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

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**IN THE MATTER
OF
SVS WELLCARE MEDICAL, PLLC**

**NOTICE
OF
HEARING**

TO: SVS Wellcare Medical, PLLC
7616 Bay Parkway 1st Floor
Brooklyn, New York 11214

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on December 10, 2014, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses

and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

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

Department attorney: Initial here 

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the

deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW
YORK STATE BE REVOKED OR SUSPENDED, AND/OR
THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS
SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATE: August 17, 2014
New York, NY


Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

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

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IN THE MATTER

OF

SVS WELLCARE MEDICAL, PLLC.

STATEMENT

OF

CHARGES

Respondent **SVS WELLCARE MEDICAL, PLLC**, (hereinafter, SVS) was authorized as a physician professional service limited liability company ("PLLC") by the New York State Department of State on April 24, 2006, and issued a Certificate of Authority by the New York State Education Department. The Respondent is subject to the jurisdiction of the State Board for Professional Medical Conduct, pursuant to §1203(d) of the New York Limited Liability Company Law. Pursuant to Article 12 of the New York Limited Liability Company Law, only licensed physicians may organize, form, direct and/or be a member of a medical PLLC.

FACTUAL ALLEGATIONS

- A. Pursuant to §1202 of the New York Limited Liability Company Law, Respondent SVS was authorized as a PLLC by filing its articles of organization with the Secretary of State on April 24, 2006. Gustave Stephen Drivas, M.D. ("DRIVAS") was listed as the Respondent's sole original member and identified as the individual who was duly authorized to practice medicine. DRIVAS is still listed as a member of SVS.
1. Respondent, SVS through its agent DRIVAS, knowingly, falsely and with intent to mislead, represented that DRIVAS was the sole original member on the respective articles of organization. Respondent, through its agent DRIVAS, concealed with the intent to deceive that non-physicians, formed owned and/or controlled SVS.
- B. DRIVAS'S license to practice medicine was revoked by The State Board for Professional Medical Conduct on July 9, 2013, pursuant to Determination and Order (No. 13-206) based, in part, upon the transactions alleged above.

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SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent, SVS, is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraphs, A, A1 and B.

SECOND SPECIFICATION

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

Respondents, SVS, 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 New York Limited Liability Company Law §1203, as alleged in the facts of:

2. Paragraphs, A, A1 and B.

THIRD SPECIFICATION

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

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

3. Paragraphs, A and A1.

DATE:

August // , 2014
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

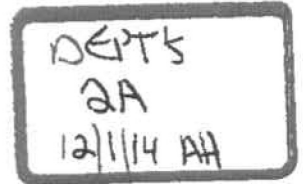
NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

November 20, 2014

Honorable James F. Horan
New York State Department of Health
Bureau of Adjudication
150 Broadway- Suite 510
Albany, New York 12204-2719



RE: SVS Wellcare Medical, PLLC

Dear Judge Horan:

Please accept this Letter as the Department's Motion to Amend its Statement of Charges in the above referenced matter. This Motion is made to correct two errors in Paragraph A of the Factual Allegations set forth against the Respondent. The corrected language will appear as follows:

FACTUAL ALLEGATIONS

A. Pursuant to §1202 1203 of the New York Limited Liability Company Law, Respondent SVS was authorized as a PLLC by filing its articles of organization with the Secretary of State on April 24, 2006. Gustave Stephen Drivas, M.D. ("DRIVAS") was listed as the Respondent's sole original member and identified as the individual who was duly authorized to practice medicine. ~~DRIVAS is still listed as a member of SVS.~~ As of August 4, 2014 Drivas was still listed as a member of SVS.

Unless objected to, the requested amendment can be made by noting the corrections on the Statement of Charges.

Respectfully Submitted


John Thomas Viti
Associate Counsel
New York State Health Department
Division of Legal Affairs
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007
Ph: 212-417-4450 Fax: 212-417-4392

Cc: SVS Wellcare Medical, PLLC

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twitter.com/HealthNYGov

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