



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

*Public*

October 17, 2007

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Melchias Mukendi, M.D.  
61 – 15 97<sup>th</sup> Street, Apt. 6F  
Rego Park, New York 11374

Denise L. Quarles, Esq.  
Quarles & Associates, P.C.  
36 West 44<sup>th</sup> Street – Ste. 1018  
New York, New York 10036

Daniel Guenzburger, Esq.  
NYS Department of Health  
Division of Legal Affairs  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of Melchias Mukendi, M.D., and Hudson Medical P.C., City Medical, P.C., MNM Medical Health Care, P.C., New Hope Medical, P.C., West River Medical, P.C., DWP Pain Free Medical, P.C., Choice of Medical Care, P.C.**

Dear Parties:

Enclosed please find the Determination and Order (No. 07-227) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested

items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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

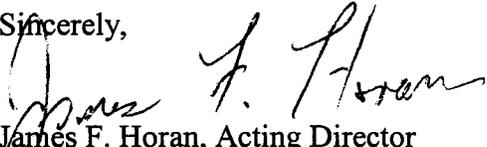
The notice of review served on the Administrative Review Board should be forwarded to:

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

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

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

Sincerely,

  
James F. Horan, Acting Director  
Bureau of Adjudication

JFH:djh

Enclosure

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

COPY

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IN THE MATTER :  
 :  
OF : DETERMINATION  
 :  
MELCHIAS MUKENDI, M.D. AND HUDSON MEDICAL, : AND  
P.C., CITY MEDICAL, P.C., MNM MEDICAL :  
HEALTH CARE P.C., NEW HOPE MEDICAL, P.C., : ORDER  
WEST RIVER MEDICAL, P.C., DWP PAIN FREE :  
MEDICAL, P.C., CHOICE OF MEDICAL CARE, P.C.: BPMC NO. 07-227  
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A Notice of Hearing and Statement of Charges, both dated February 15, 2007, were served upon the Respondents, Melchias Mukendi, M.D., Hudson Medical, P.C., City Medical, P.C., MNM Medical Health Care, P.C., New Hope Medical, P.C., West River Medical, P.C., DWP Pain Free Medical, P.C., and Choice of Medical Care, P.C. DAVID HARRIS, M.D., M.P.H. (CHAIR), ELEANOR KANE, M.D., AND WILLIAM McCAFFERTY, ESQ., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) (Executive) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Daniel Guenzburger, Esq., Associate Counsel. Respondent Mukendi appeared by Quarles & Associates, P.C., Denise L. Quarles, Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

**PROCEDURAL HISTORY**

Date of Service:	February 15, 2007 (Resp.)
Date of Service:	February 26, 2007 (P.C.s)
Answer Filed By Respondent:	April 2, 2007
Answer Filed By P.C.s:	None
Pre-Hearing Conference:	March 23, 2007
Hearing Dates:	April 13, 2007 May 4, 2007 May 11, 2007 May 22, 2007
Witnesses for Petitioner:	Joseph Carfi, M.D. Douglas E. Lentivich, Esq.
Witnesses for Respondent:	Melchias Mukendi, M.D.
Deliberations Held:	July 16, 2007

**STATEMENT OF CASE**

Petitioner has charged Respondents with thirty-four specifications of professional misconduct. The charges relate to Respondent Mukendi's medical care and treatment of five patients. The charges include allegations of ordering excessive tests or treatment not warranted by the condition of the patients, fraudulent practice, willful filing or making of false reports, fee splitting, permitting, aiding or abetting the

unlicensed practice of medicine, and delegation of professional responsibilities to a person not qualified by licensure to perform the responsibility, and moral unfitness.<sup>1</sup> Respondent Mukendi denied the allegations. The seven Respondent professional corporations were each charged with a specification of willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of medicine. The professional corporations did not appear, either by an authorized representative or counsel, and did not file an answer to the charges.

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

#### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

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<sup>1</sup> Following the conclusion of the hearing, counsel for the Department withdrew the Eighth, Tenth, Sixteenth, Seventeenth, Nineteenth, Twentieth, Twenty-First, and Twenty-Second Specifications of misconduct raised against Respondent Mukendi.

1. Melchias Mukendi, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State by the New York State Education Department's issuance of license number 187870 on December 16, 1991. (Stipulated by Parties).

2. Respondent received his medical degree from the Universite Lovanium de Kinshasa in the Republique Democratique du Congo. He graduated in 1967. Following graduation from medical school, Respondent completed three years of training in general surgery and four years of training in ophthalmology. (T. 365; Ex. B1).

3. Respondent emigrated to the United States in 1976. During the next thirteen years the Respondent held various hospital-based positions in New York and Virginia, including three non-consecutive years in different general surgery residency programs. (Ex. B1).

4. In 1994, two years after obtaining his New York State medical license, Respondent commenced an eleven-year association with a number of medical clinics, commonly referred to as "no-fault clinics". These clinics cater to individuals who have been in motor vehicle accidents and whose expenses for medical services are paid by no-fault insurance carriers. Among the clinics that Respondent was involved with are the seven Respondent professional service corporations in

this proceeding: Hudson Medical, P.C., City Medical, P.C., MNM Medical Health Care, P.C., New Hope Medical, P.C., West River Medical, P.C., DWP Pain Free Medical, P.C., and Choice of Medical Care, P.C. (Ex. #3).

5. On September 26, 2005, Respondent signed a sworn, thirteen page statement (hereinafter "the Affidavit"), in which he described his experience working at various no-fault clinics. The Affidavit was prepared by attorneys representing State Farm Insurance Company. (T. 521; Ex. #3).

6. In the Affidavit, Respondent admitted that non-physicians owned and operated the clinics. Although Respondent was identified as the "owner" on public filings with Departments of State and Education, Respondent did not own the clinics nor did he have any control over how the various clinics were operated. The non-physician owners are hereinafter referred to as the "true owners". (Ex. #3, ¶¶ 2, 8, 17, 27, 34, 40).

7. Respondent authorized the "true owners" to list him as the owner on various legal documents, including documents submitted to form professional service corporations. In situations where Respondent was listed as the owner on public corporate filings, he usually received a percentage of the net receivables. (Ex. #3, ¶¶ 21, 34, 41, 45).

8. On at least one occasion, Respondent signed an application to open a bank account for one of the various professional service corporations. On the bank application, Respondent identified himself as a director and shareholder of the professional service corporation. (T. 432; Ex. #3 ¶43; Ex. #15).

9. The "true owners" exerted pressure on Respondent to order the same tests, treatment and medical equipment for each patient. The menu of services that Respondent ordered was determined by the medical services available at a particular clinic. (Ex. #3, ¶¶11, 12, 17, 18, 20, 24,).

10. Respondent complied with the instructions of the "true owners" regarding the ordering of services, although he knew that he was routinely ordering unnecessary medical services. (Ex. #3, ¶¶ 11, 12, 17, 24, 38).

**Patients A through E**

11. During the period December 23, 2003 through August 2, 2004, Respondent treated Patients A through E at West River Medical, P.C. (hereinafter "West River"). West River was a no-fault clinic located at 4738 Broadway, New York, New York. (Ex. #3, 4a, 4b, 5a, 6a, 6b, 7a, 8a, 8b).

12. On or about and between July 1, 2004 and August 2, 2004, Respondent Mukendi evaluated and treated Patient A, a

36 year old female, for injuries the patient reported had been sustained in an automobile accident on June 23, 2004. The patient complained of neck pain, upper back pain, lower back pain, right hip and thigh pain, and anxiety, depression, stress and nervousness. (Ex. # 4A and 4B).

13. Respondent Mukendi ordered an MRI of the cervical spine at the initial visit. This was inappropriate, as it was premature. The patient did not present with any significant neurological findings, such as tingling or pain radiating down the arm. If Patient A did not appropriately respond to treatment, an MRI should have been considered at a later date. (T. 42-45, 216, 235).

14. Respondent Mukendi inappropriately ordered an MRI of the right shoulder at the initial visit. His physical examination of the patient did not reveal weakness, evidence of impingement or a torn rotator cuff. Therefore, an MRI of the shoulder was not indicated. (T. 46).

15. Respondent Mukendi ordered computerized range of motion testing for Patient A. The ordering of this test was inappropriate because the test does not provide any meaningful information beyond that which would be available to a physician from a comprehensive physical examination. (T. 48).

16. One benefit of computerized range of motion testing, according to the manufacturer's promotional literature, is "revenue generation with 100 per cent payback in as little as one month". Computerized range of motion testing can be billed as a separate charge, as opposed to the manual evaluation of range of motion, which would be conducted as a component of the physical examination. (T. 279, 482; Ex. J).

17. Respondent Mukendi ordered an acupuncture consultation for Patient A. He initially evaluated the patient less than one week after her motor vehicle accident. Although acupuncture is effective for treating chronic pain, it is inappropriate for treating acute pain. (T. 49, 268, 274).

18. Acupuncture treatment was available at West River. (T. 411).

19. Respondent Mukendi ordered a psychology consultation for Patient A. Respondent did not diagnose any condition which would justify ordering a psychology consultation. (T. 49, 233-234).

20. Psychological treatment was available at West River. (T. 417).

21. Respondent Mukendi ordered a chiropractic consultation for Patient A, in addition to physical therapy. Chiropractic treatment can be beneficial for someone who has neck or back pain. However, concurrent treatment by physical therapy and chiropractic is no more effective than separately treating with either modality. (T. 178).

22. Chiropractic treatment was available at West River. (T. 413).

23. Respondent Mukendi ordered a bed board and egg crate for Patient A. These types of durable medical equipment are appropriate for patients with musculoskeletal pain who experience difficulty with sleeping in certain positions. Patient A did not complain of any problems with sleeping. There was no medical indication for ordering the bed board and egg crate for Patient A. (T. 109, 231; Ex. #4A and #4B).

24. On or about and between January 19, 2004 and April 26, 2004, Respondent Mukendi treated Patient B. Patient B reported that she had been in an automobile accident on January 17, 2004. At the initial visit, Respondent Mukendi ordered an MRI of the cervical spine, MRI of the right shoulder, computerized range of motion testing, acupuncture consultation, psychology consultation, chiropractic

consultation, and an orthopedic cervical pillow. (Ex. #5; Ex. E).

25. Patient B did not present with any symptoms to suggest an immediate neurological problem. Respondent Mukendi's physical examination did not reveal evidence of a torn rotator cuff, nerve impingement or other such condition that would justify ordering an MRI of either the spine or the shoulder. (T. 74-75).

26. The order for computerized range of motion was inappropriate. (See, Findings of Fact #15-16).

27. The order for acupuncture was inappropriate for a patient suffering from acute pain. (See Findings of Fact #17-18).

28. The order for a psychology consultation was inappropriate. The Patient did not complain of any symptoms of a psychological nature. (See Findings of Fact #19-20; Ex. #5; Ex. C).

29. The order for a chiropractic consultation was inappropriate, when ordered in conjunction with physical therapy. (See, Finding of Fact #21-22).

30. Respondent Mukendi ordered an orthopedic cervical pillow for Patient B. Patient B did not complain of

difficulty sleeping. Therefore, the order for the pillow was inappropriate. (T. 77-78).

31. During the period May 3, 2004 through June 8, 2004, Respondent Mukendi treated Patient C. Patient C reported having been in an automobile accident on April 16, 2004. At the initial visit, Respondent Mukendi ordered computerized range of motion testing, acupuncture, psychology and chiropractic consultations and a bed board and egg crate. (Ex. #6A and #6B).

32. The order for computerized range of motion was inappropriate. (See, Findings of Fact #15-16).

33. The order for acupuncture was inappropriate for a patient suffering from acute pain. (See Findings of Fact #17-18).

34. The order for a psychology consultation was inappropriate. The Patient did not complain of any symptoms of a psychological nature. Respondent admitted that it was inappropriate to order a psychology consultation for this patient. (See Findings of Fact #19-20; T. 679).

35. The order for a chiropractic consultation was inappropriate, when ordered in conjunction with physical therapy. (See, Finding of Fact #21-22).

36. There was no medical indication for ordering a bed board and egg crate for Patient C. (See, Finding of Fact #23; Ex. #6A and #6B).

37. During the period December 26, 2003 and February 16, 2004, Respondent Mukendi treated Patient D. Patient D reported that she had been in an automobile accident on December 23, 2003. (Ex. #7A).

38. At the initial visit, Respondent Mukendi ordered an MRI of the cervical spine, computerized range of motion testing, acupuncture, psychology, chiropractic and neurology consultations. He further ordered an orthopedic cervical pillow, bed board and egg crate. (Ex. #7A).

39. There was no medical indication for ordering an MRI of the cervical spine. Although the patient was in acute pain, there was nothing found in the patient's complaints, or on physical examination which warranted the procedure. (T. 106; Ex. #7A).

40. The order for computerized range of motion was inappropriate. (See, Findings of Fact #15-16).

41. The order for acupuncture was inappropriate for a patient suffering from acute pain. (See Findings of Fact #17-18).

42. The order for a psychology consultation was inappropriate. The Patient did not complain of any symptoms of a psychological nature. (See Findings of Fact #19-20).

43. The order for a chiropractic consultation was inappropriate, when ordered in conjunction with physical therapy. (See, Finding of Fact #21-22).

44. There was no medical indication for a neurological consultation for Patient D. The patient did not present with any findings such as numbness, tingling, or radiating pain. Her reflexes and strength were normal. (T. 107).

45. There was no medical indication for ordering a cervical pillow, bed board and egg crate for Patient D. (See, Findings of Fact #23 and #30).

46. On or about May 3, 2004, Respondent Mukendi treated Patient E. Patient E had been in an automobile accident on April 1, 2004. Respondent Mukendi ordered an MRI of the cervical spine, MRI of both knees, computerized range of motion testing, acupuncture consultation, psychology consultation, chiropractic consultations, and a bed board and egg crate. (Ex. #8A and #8B).

47. There was no medical indication for an MRI of the cervical spine. The cervical examination was normal, and

there were no complaints of pain. (T. 117; See, Findings of Fact #13).

48. There was no medical indication for ordering MRI examination of the patient's knees. Other than a limitation of the range of motion of the right knee, there were no findings elicited during the physical examination to justify the procedures. (T. 115-116).

49. The order for computerized range of motion testing was not medically indicated. (See, Findings of Fact #15 and #16).

50. The order for an acupuncture consultation was not medically indicated. (See, Findings of Fact #17 and 18).

51. Respondent admitted that there was no medical indication for ordering a psychology consultation. (T. 749).

52. The order for a chiropractic consultation was inappropriate, when ordered in conjunction with physical therapy. (See, Finding of Fact #21-22).

53. There was no medical indication for ordering a bed board and egg crate for Patient E. (See, Finding of Fact #23).

#### Professional Service Corporations

54. 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. (T. 318-319).

55. In the Affidavit, Respondent Mukendi admitted that he never actually owned or controlled the operations of any of the clinics with which he was associated, and that the clinics were actually owned and controlled by individuals who were not licensed to practice medicine. (Ex. #3, ¶3).

56. Respondent was falsely identified as a director/shareholder on Certificates of Incorporation for Hudson Medical, P.C., MNM Medical Health Care, P.C., New Hope Medical, P.C., West River Medical, P.C., and Choice of Medical Care, P.C. (Ex. ## 3, 9, 10, 11, 12, 13 and 14).

57. In September, 2001, Respondent Mukendi signed an affidavit that was submitted with the certificate of incorporation for MNM Medical Health Care, P.C. In the affidavit, Respondent Mukendi stated "And I fully intend to become a director and shareholder in the proposed MNM Medical Health Care, P.C. (Ex. #10).

58. Respondent Mukendi knew that he never intended to become a director or shareholder of MNM Medical Health Care, P.C. In the Affidavit, Respondent Mukendi admitted that "Using my name as the owner, Tribisovsky opened a no-fault clinic named MNM Medical Health Care, P.C. ("MNM") at 172

Flatbush Avenue, Brooklyn, New York. In fact, I never actually owned or controlled MNM. Tribisovsky owned and managed its affairs. My only job was to conduct patient examinations". (Ex. #3, ¶17).

59. Respondent Mukendi knowingly concealed with the intent to deceive that unqualified individuals owned Hudson Medical, P.C. (Ex. #3, ¶10).

60. Respondent Mukendi knowingly concealed with the intent to deceive that unqualified individuals owned MNM Medical Health Care, P.C. (Ex. #3, ¶17; Ex. #10).

61. Respondent Mukendi knowingly concealed with the intent to deceive that unqualified individuals owned West River Medical, P.C. Respondent agreed to be listed as the owner and further facilitated the operation of the clinic by agreeing to be a signatory on the corporation's checking account. (Ex. #3, ¶¶34 and 35; T. 820-821).

62. Respondent Mukendi knowingly concealed with the intent to deceive that unqualified individuals owned DWP Pain Free Medical, P.C. (Ex. #3, ¶40).

63. Respondent submitted an application to JP Morgan Chase Bank, N.A., in which he falsely claimed that he was the shareholder/director of Choice of Medical Care, P.C. (Ex. #3 ¶43; Ex. #15; T. 811-814).

64. Respondent knowingly concealed with the intent to deceive that unqualified individuals owned Choice of Medical Care, P.C. (Ex. #3 ¶43; Ex. #15).

65. Respondent Mukendi knowingly permitted, aided and/or abetted individuals who lacked a medical license to organize, own, operate and/or control the following professional service corporations: Hudson Medical, P.C., MNM Medical Health Care, P.C., New Hope Medical, P.C., West River Medical, P.C., DWP Pain Free Medical, P.C., and Choice of Medical Care, P.C. (Ex. ## 3, 9, 10, 11, 12, 13 and 14).

66. Respondent Hudson Medical, P.C. failed to meet applicable state licensing requirements since non-physicians owned and controlled the medical professional service corporation. (Ex. #3 ¶10; Ex. #9).

67. Respondent City Medical, P.C. failed to meet applicable state licensing requirements since non-physicians owned and controlled the medical professional service corporation. (Ex. #3 ¶12).

68. Respondent MNM Medical Health Care, P.C. failed to meet applicable state licensing requirements since non-physicians owned and controlled the medical professional service corporation. (Ex. #3 ¶17; Ex. #11).

69. Respondent New Hope Medical, P.C. failed to meet applicable state licensing requirements since non-physicians owned and controlled the medical professional service corporation. (Ex. #3 ¶27; Ex. #12).

70. Respondent West River Medical, P.C. failed to meet applicable state licensing requirements since non-physicians owned and controlled the medical professional service corporation. (Ex. #3 ¶34; Ex. #13).

71. Respondent DWP Pain Free Medical, P.C. failed to meet applicable state licensing requirements since non-physicians owned and controlled the medical professional service corporation. (Ex. #3 ¶40).

72. Respondent Choice of Medical Care, P.C. failed to meet applicable state licensing requirements since non-physicians owned and controlled the medical professional service corporation. (Ex. #3 ¶43; Ex. #14).

#### Fee Splitting

73. At MNM Medical Health Care, P.C., Respondent Mukendi received thirty percent of the net account receivables. (Ex. #3 ¶21).

74. At West River Medical, P.C., Respondent Mukendi received five percent of net receivables and \$100.00 per hour. (Ex. #3 ¶34).

75. At DWP Pain Free Medical, P.C., Respondent Mukendi received five percent of net receivables. (Ex. #3 ¶41).

76. At Choice of Medical Care, P.C., Respondent Mukendi received five percent of collected receivables. (Ex. #3 ¶45).

#### CONCLUSIONS OF LAW

Respondent Mukendi is charged with nineteen specifications alleging professional misconduct within the meaning of Education Law §6530. This includes five specifications of professional misconduct as defined by N.Y. Education Law §6530(35) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient; seven specifications of professional misconduct as defined by N.Y. Education Law §6530(2) by practicing the profession of medicine fraudulently; three specifications of professional misconduct as defined by N.Y. Education Law §6530(21) by willfully making or filing a false report; one specification of professional misconduct as defined by N.Y. Education Law §6530(19) by permitting an unqualified individual to share in the fees for professional services; one specification of professional misconduct as defined by N.Y.

Education Law §6530(11) by permitting, aiding, or abetting an unlicensed person to perform activities requiring a license; one specification of professional misconduct as defined by N.Y. Education Law §6530(25) by delegating professional responsibilities when the licensee knows or has reason to know that such a person is not qualified by licensure to perform the professional responsibility; and one specification of professional misconduct as defined by N.Y. Education Law §6530(20) by engaging in conduct in the practice of the profession that evidences moral unfitness to practice.

The seven professional service corporations are each charged with one specification of professional misconduct as defined by N.Y. Education Law §6530(16) by a willful and/or grossly negligent failure to comply with substantial provisions of State law governing the practice of medicine.

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

negligence, negligence, gross incompetence, incompetence, and the fraudulent practice of medicine.

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

**Fraudulent Practice**

The intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine, constitutes the fraudulent practice of medicine. Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (3<sup>rd</sup> Dept. 1991), citing Brestin v. Commissioner of Education, 116 A.D.2d 357, 501 N.Y.S.2d 923 (3<sup>rd</sup> Dept. 1986). In order to sustain a charge that a licensee was engaged in the fraudulent practice of medicine, the hearing committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3<sup>rd</sup> Dept. 1966), aff'd 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). The licensee's knowledge and intent may properly be inferred from facts found by the hearing committee, but the committee must specifically state the inferences it is drawing regarding knowledge and intent. Choudhry, at 894 citing Brestin.

### Moral Unfitness

Respondent has also been charged with engaging in conduct which evidences moral unfitness to practice the profession. To sustain an allegation of moral unfitness, the Department must show that Respondent committed acts which "evidence moral unfitness". There is a distinction between finding that an act evidences moral unfitness, and a finding that a particular person is, in fact, morally unfit. In a proceeding before the State Board for Professional Medical Conduct, the Hearing Committee is asked to decide if certain conduct is suggestive of, or would tend to prove, moral unfitness. The Committee is not called on to make an overall judgment regarding a Respondent's moral character. It is noteworthy that an otherwise moral individual can commit an act "evidencing moral unfitness" due to a lapse in judgment or other temporary aberration.

The standard for moral unfitness in the practice of medicine is twofold. First, there may be a finding that the accused has violated the public trust which is bestowed by virtue of his licensure as a physician. Physicians have privileges that are available solely due to the fact that one is a physician. For instance, physicians have access to controlled

substances and billing privileges that are available only to licensed physicians. Patients are asked to place themselves in potentially compromising positions with physicians, such as when they disrobe for examination or treatment. Therefore, it is expected that a physician will not violate the trust the public has bestowed upon him or her by virtue of their professional status.

Second, moral unfitness can be seen as a violation of the moral standards of the medical community which the Hearing Committee, as delegated members of that community, represent. Miller v. Commissioner of Health, 270 A.D.2d 584, 703 N.Y.S.2d 830 (3<sup>rd</sup> Dept. 2000); Selkin v. State Board for Professional Medical Conduct, 279 A.D.2d 720, 719 N.Y.S.2d 195 (3<sup>rd</sup> Dept.) *appeal denied* 96 N.Y.2d 928, 733 N.Y.S.2d 363 (2001); Barad v. State Board for Professional Medical Conduct, 282 A.D.2d 893, 724 N.Y.S.2d 488 (3<sup>rd</sup> Dept. 2001); Reddy v. State Board for Professional Medical Conduct, 259 A.D.2d 847, 686 N.Y.S.2d 520 (3<sup>rd</sup> Dept.) *leave denied* 93 N.Y.2d 813, 695 N.Y.S.2d 541 (1999).

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

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

The Hearing Committee first considered the credibility of the various witnesses, and thus the weight to be accorded their testimony. The Department presented two witnesses. Joseph Carfi, M.D. served as the Department's medical expert.

Dr. Carfi is board certified in physical medicine and rehabilitation. Since 1990, he has maintained a private practice in physical medicine and rehabilitation. He is also assistant clinical professor of rehabilitation at the Mount Sinai School of Medicine. Dr. Carfi does not have an interest in the outcome of this proceeding. He gave balanced, direct, forthright testimony on the medical issues in the case. The Hearing Committee gave his testimony great weight.

The Department also presented Douglas E. Lentivich, Esq. Mr. Lentivich is assistant counsel in the Office of Professions, New York State Education Department. He gave testimony as to the statutory requirements for professional service corporations. The Committee found his testimony credible, as well.

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

Dr. Mukendi testified that the diagnostic examinations and consultations which he ordered were all justified by the medical conditions of the patients. However, his testimony demonstrated a lack of basic medical knowledge. For example, when questioned about acupuncture, he stated that "...I'm comfortable in my ignorance". (T. 414).

Far more damaging to Dr. Mukendi's credibility is the sworn affidavit which he signed on September 26, 2005. (Ex. #3). This affidavit set forth a detailed explanation of the numerous sham professional corporations with which he was associated over a period of years. In the affidavit, Dr. Mukendi admitted being falsely listed as the owner of these corporations, when in fact, the true owners were non-physicians. He further admitted that he ordered diagnostic procedures and consultations, even though he knew they were not necessary. He admitted ordering them because he was told to do so, and because the services were available at the clinics. He also admitted to splitting the fees with the non-physician owners, and that he

received various percentages of net receivables. Occasionally, he also received an hourly rate of payment.

At the hearing, Dr. Mukendi attempted to deny the damaging admissions made in the affidavit. He claimed that he only signed it because the insurance company attorneys pressured him, and threatened him with prison. (T. 455). However, his testimony later shifted, and he acknowledged that the attorneys had not actually threatened him with either prison or a civil lawsuit. (T. 525, 554). Moreover, Dr. Mukendi admitted that he was interviewed by the insurance company attorneys on at least three occasions, and that he voluntarily participated. (T. 526). Based on the information provided, the attorneys prepared a draft affidavit. Dr. Mukendi reviewed the draft and made suggested corrections. (T. 457, 530). Dr. Mukendi further admitted that prior to signing the affidavit, he read through the document, and that the suggested changes/corrections had been made. (T. 532).

The Hearing Committee unanimously concluded that it was far more likely than not that the affidavit was a true and accurate description of Respondent Mukendi's involvement with the various no-fault clinics, and that his testimony at the hearing was not truthful. Accordingly, the Committee gave little credence to his testimony.

Patient's A through E

All five of the patients at issue were seen by Respondent Mukendi at West River Medical, P.C. In the Affidavit, Respondent Mukendi admitted that he referred patients for consultations and treatment by physical therapists, chiropractors, and psychologists, even though the consultations and treatments were not medically necessary. (Ex. #3, ¶38).

The medical records for Patients A through E all include referrals for the same consultations (physical therapy, chiropractic, psychology and acupuncture). Dr. Carfi testified that in each of the patients, the consultations for acupuncture and psychology evaluations were premature. He further testified that it was not appropriate to order both physical therapy and chiropractic.

In addition, Dr. Carfi noted that many of the MRI and other diagnostic procedures were also not medically indicated. In particular, each patient received computerized range of motion testing. The evidence established that the primary benefit of this treatment was revenue generation for the practitioner.

The Hearing Committee concluded that a preponderance of the evidence demonstrated that Respondent Mukendi ordered excessive tests and treatments not warranted by the conditions

of Patients A through E. Accordingly, the Committee voted to sustain the First through Fifth specifications of professional misconduct set forth in the Statement of Charges.

#### Fraudulent Practice

The evidence established that Respondent Mukendi routinely ordered diagnostic tests, treatments, and consultations even though they were not medically indicated for patients visiting the various no-fault clinics. This pattern also was present in the five patients whose care is at issue.

Respondent Mukendi admitted that he received an hourly rate plus a percentage of net receivables at West River. (Exhibit #3, ¶34). The more billable tests, treatments and consultations generated by the clinic, the greater Respondent Mukendi's compensation. We therefore infer that the ordering of unnecessary tests and treatments was done for the financial benefit of Respondent Mukendi and the true owners of the professional service corporations rather than for the benefit of the patients.

The evidence also established that Respondent Mukendi engaged in fraudulent conduct with respondent to the formation of the professional service corporations Hudson Medical, P.C., MNM Medical Health Care, P.C., West River Medical, P.C., DWP Pain Free Medical, P.C. and Choice of Medical Care, P.C.

Respondent Mukendi authorized the lay "true owners" to use his name on legal documents to form the corporations. In the case of MNM, Respondent actually signed the documents. Respondent Mukendi signed an application for a bank account in the name of Choice of Medical Care, P.C., in which he falsely represented that he was a director/shareholder of the corporation.

Based on the foregoing, the Committee unanimously concluded that Respondent Mukendi engaged in the fraudulent practice of medicine, and sustained the Sixth, Seventh, Ninth, and Eleventh through Fourteenth specifications of professional misconduct.

#### **False Reports**

Respondent Mukendi was also charged with willfully making or filing false reports, in violation of New York Education Law §6530(21). As discussed previously, he ordered, and then billed, for medical tests, treatments and consultations which he knew were medically unnecessary. Respondent Mukendi filed false statements with the Education Department in connection with the formation of MNM Medical Health Care, P.C., and filed an application for a bank account in the name of Choice of Medical Care, P.C., in which he falsely claimed to be a director/shareholder of the corporation. Accordingly, the Committee concluded that Respondent Mukendi did willfully file

false reports, and voted to sustain the Fifteenth, Eighteenth and Twenty-Third specifications of professional misconduct.

**Fee Splitting**

In the Affidavit, Respondent Mukendi repeatedly admitted entering into financial arrangements with the lay "true owners" of the professional service corporations, whereby he would receive a percentage of the receivables, and the "true owners" would receive the balance. This arrangement clearly violates the express provisions of Education Law §6530(19). Therefore, the Hearing Committee voted to sustain the Twenty-Fourth specification of professional misconduct.

**Permitting, Aiding or Abetting Unlicensed Practice**

**Delegating Professional Responsibilities**

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

Moreover, Respondent Mukendi completely abdicated his responsibility for determining the appropriate course of diagnosis and treatment for his patients. He allowed the lay

owners to dictate which medical tests and treatments his patients received. By doing so, Respondent Mukendi delegated his professional responsibilities to persons whom he knew were not qualified to perform these responsibilities, in violation of Education Law §6530(25). As a result, the Hearing Committee sustained the Twenty-Sixth specification.

**Moral Unfitness**

Respondent Mukendi has spent virtually his entire career as a physician licensed by the State of New York colluding with non-physician clinic owners to defraud the state's no-fault insurance system. He used his position as a licensee to unjustly enrich himself and the lay owners of the corporations by ordering tests and treatments which were medically unnecessary. He clearly violated the public trust as well as the moral and ethical standards of the profession. The Hearing Committee unanimously concluded that Respondent Mukendi engaged in conduct in the practice of medicine that evidenced moral unfitness to practice, in violation of Education Law §6530(20), and sustained the Twenty-Seventh specification.

**Failing to Comply with State Law**

Respondents Hudson Medical, P.C., City Medical, P.C., MNM Medical Health Care, P.C., New Hope Medical, P.C., West River Medical, P.C., DWP Pain Free Medical, P.C., and Choice of

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

#### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent Mukendi's license to practice medicine as a physician in New York State should be revoked. The Committee further determined that Respondent Mukendi should also be fined \$50,000. The Committee further determined that the certificates of incorporation for the named professional service corporations should also be annulled. These determinations were reached upon due consideration of the full spectrum of penalties available pursuant to statute, including

revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent Mukendi completely abdicated his professional responsibilities towards his patients in order to enrich himself, and the lay owners of the professional service corporations. By doing so, he engaged in a long-standing pattern of fraud, to the detriment of his patients, and the people of the State of New York. Nothing in his testimony before this Hearing Committee demonstrated any remorse for his actions, or led the Committee to believe that there was any possibility for his rehabilitation. Under the circumstances, the Hearing Committee determined that no period of suspension or probation would adequately punish Respondent Mukendi for his actions.

In addition to the revocation of his medical license, the Committee determined that Respondent Mukendi should also be fined the maximum possible fine - \$10,000 - for each patient, for a total fine of \$50,000. The Committee believes that a fine is an appropriate sanction where the evidence established a long-standing pattern of unjust enrichment on the Respondent's part.

With regard to the professional service corporations, the evidence established that each corporation was created under

false pretenses. Since they never met the legal requirements for creation, annulment is the appropriate remedy.

**ORDER**

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

1. The First through Seventh, Ninth, Eleventh through Fifteenth, Eighteenth, and Twenty-Third through Twenty-Seventh, and Twenty-Eighth through Thirty-Fourth Specifications of professional misconduct, as set forth in the Statement of Charges, (Department's Exhibit #1) are **SUSTAINED**;

2. Respondent Melchias Mukendi's license to practice medicine as a physician in New York State be and hereby is **REVOKED**. In addition, a fine in the amount of **FIFTY THOUSAND DOLLARS (\$50,000.00)** is hereby imposed upon Respondent Melchias Mukendi, M.D. Payment of the aforesaid sum shall be made to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York 12237 within thirty (30) days of the effective date of this Order. Any fine not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and

non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32);

3. The Certificates of Incorporation for Respondents Hudson Medical, P.C., City Medical, P.C., MNM Medical Health Care, P.C., New Hope Medical, P.C. West River Medical, P.C., DWP Pain Free Medical, P.C., and Choice of Medical Care, P.C. be and hereby are ANNULLED;

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

DATED: Troy, New York  
October 13, 2007



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

ELEANOR KANE, M.D.

WILLIAM McCAFFERTY, ESQ.

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

Melchias Mukendi, M.D.  
61-15 97<sup>th</sup> Street, Apt. 6F  
Rego Park, New York 11374

Denise L. Quarles, Esq.  
Quarles & Associates, P.C.  
36 West 44<sup>th</sup> Street - Suite 1018  
New York, New York 10036

# APPENDIX I

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

IN THE MATTER

OF

MELCHIAS MUKENDI, M.D. AND HUDSON  
MEDICAL, P.C., CITY MEDICAL, P.C., MNM  
MEDICAL HEALTH CARE, P.C., NEW HOPE  
MEDICAL, P.C. WEST RIVER MEDICAL, P.C.,  
DWP PAIN FREE MEDICAL, P.C., CHOICE OF  
MEDICAL CARE, P.C.

NOTICE  
OF  
HEARING

*In Good*  
Department 1 For ID  
DATE 3-23-07  
ACCOMPLISHED BY TELETYPE NO. MSB

TO: MELCHIAS MUKENDI, M.D., HUDSON MEDICAL, P.C., CITY MEDICAL, P.C., MNM MEDICAL HEALTH CARE, P.C., NEW HOPE MEDICAL, P.C. WEST RIVER MEDICAL, P.C., DWP PAIN FREE MEDICAL, P.C., CHOICE OF MEDICAL CARE, P.C.

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 April 13, 2007 at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, Fourth Floor, New York, New York, 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. 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.

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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, 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.

DATED: New York, New York  
February 15, 2007



Roy Nemerson  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be directed to: Daniel Guenzburger  
Associate Counsel  
Bureau of Professional Medical Conduct  
90 Church Street, Fourth Floor  
New York, New York 10-007  
212-417-4450

**SECURITY NOTICE TO THE LICENSEE**

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

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

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

---

Licensee's Name \_\_\_\_\_ Date of Proceeding \_\_\_\_\_

Name of person to be admitted \_\_\_\_\_

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

Signature (of licensee or licensee's attorney) \_\_\_\_\_

---

This written notice must be sent to:

New York State Health Department  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor South  
Troy, NY 12180  
Fax: 518-402-0751

**IN THE MATTER**

**OF**

**MELCHIAS MUKENDI, M.D. and HUDSON  
MEDICAL, P.C., CITY MEDICAL, P.C., MNM  
MEDICAL HEALTH CARE, P.C., NEW HOPE  
MEDICAL, P.C. WEST RIVER MEDICAL, P.C.,  
DWP PAIN FREE MEDICAL, P.C., CHOICE OF  
MEDICAL CARE, P.C.**

**STATEMENT  
OF  
CHARGES**

MELCHIAS MUKENDI, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 16, 1991, by the issuance of license number 187870 by the New York State Education Department. Respondents HUDSON MEDICAL, P.C., CITY MEDICAL, P.C., MNM MEDICAL HEALTH CARE, P.C., NEW HOPE MEDICAL, P.C., WEST RIVER MEDICAL, P.C., DWP PAIN FREE MEDICAL, P.C., CHOICE OF MEDICAL CARE, P.C. were authorized as physician professional service corporations by the New York State Department of State on various dates between 1994 and November 2004.

**FACTUAL ALLEGATIONS**

- A. On or about and between July 1, 2004 and August 2, 2004, at the West River Medical, P.C., 4738 Broadway, New York, ("West River") Respondent MUKENDI evaluated and treated Patient A for injuries the Patient reported had been sustained in an automobile accident. (Patient A and the other patients in the Statement of Charges are identified in the appendix.) Respondent MUKENDI

inappropriately ordered:

1. MRI of the cervical spine.
2. MRI of the shoulder.
3. Computerized range of motion testing.
4. Acupuncture consultation.
5. Psychological consultation.
6. Chiropractic consultation.
7. Bed board and egg create.

B. On or about and between January 19, 2004 and between April 26, 2004 the Respondent MUKENDI evaluated and treated Patient B at West River for injuries Patient B reported had been sustained in an automobile accident. Respondent MUKENDI inappropriately ordered:

1. MRI of the cervical spine.
2. MRI of the right shoulder.
3. Computerized range of motion testing.
4. Acupuncture consultation.
5. Psychology consultation.
6. Chiropractic consultation.
7. Orthopedic cervical pillow.

C. On or about and between May 3, 2004 and between June 8, 2004 Respondent MUKENDI evaluated and treated Patient C at West River for injuries Patient C reported had been sustained in an automobile accident. Respondent MUKENDI inappropriately ordered:

- ~~1. Pelvic x-ray, withdrawn by Dept. 05/04/2007 JHR~~
2. Computerized range of motion testing.

3. Acupuncture consultation.
4. Psychology consultation.
5. Chiropractic consultation.
6. Bed board and egg crate.

D. On or about and between December 23, 2003 and February 16, 2004

Respondent MUKENDI evaluated and treated Patient D at West River for injuries Patient D reported had been sustained in an automobile accident. Respondent MUKENDI inappropriately ordered:

1. MRI of the cervical spine.
2. Computerized range of motion testing.
3. Acupuncture consultation.
4. Psychological consultation.
5. Chiropractic consultation.
6. Neurology consultation.
7. Orthopaedic cervical pillow.
8. Bed board and egg crate.

E. On or about May 3, 2004 Respondent MUKENDI evaluated and treated Patient E at West River for injuries Patient E reported had been sustained in an automobile accident. Respondent MUKENDI inappropriately ordered:

1. MRI of the cervical spine.
2. MRI of both knees.
3. Computerized range of motion testing.
4. Acupuncture consultation.
5. Psychological consultation.
6. Chiropractic consultation.

7. Bed board and egg crate.

F. From 1994 to the present a significant portion of Respondent's medical practice has been treating patients like Patients A through E above, who claimed injuries from automobile accidents and whose medical care was paid for by no-fault insurance. With regard to Patients A through E and others, RESPONDENT MUKENDI intended to deceive by:

1. Knowingly creating the false impression that he ordered medical services for an appropriate medical purpose, when, in fact, he knew that he routinely ordered services that were not warranted by the condition of the patient.

G. Pursuant to Article 15 of the Business Corporation Law, only licensed physicians may organize, hold stock in, direct and/or be an officer of a medical professional service corporation ("PC"). Respondent MUKENDI enabled non-physicians to evade the legal restrictions on ownership and control of PCs by concealing from the Departments of State and Education that legally unqualified individuals 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. Respondent MUKENDI concealed with the intent to deceive that unqualified individuals owned the following:

- a. Hudson Medical, P.C.
- b. ~~City Medical, P.C.~~
- c. MNM Medical Health Care, P.C.
- d. ~~New Hope Medical, P.C.~~
- e. West River Medical, P.C.

withdrawn

6/19/07

withdrawn

SES

- f. DWP Pain Free Medical P.C.
  - g. Choice of Medical Care, P.C.
2. Respondent MUKENDI permitted, aided and/or abetted individuals who lacked a medical license to organize, own, operate and/or control the medical professional service corporations identified in factual allegations G1(a) through G1(g).
- H. Respondent MUKENDI entered into financial arrangements with the legally unqualified individuals who owned, operated or controlled the medical professional service corporations listed in factual allegations G1(a) through G1(g). Respondent MUKENDI would receive a small percentage of the net account receivables, usually five per cent, with the remainder of the income of the professional service corporation going to the lay owners. By entering into such financial arrangements, Respondent MUKENDI:
- 1. Improperly permitted non-physicians to share in fees for professional medical services.
- I. As previously alleged in factual allegation G1(g), Respondent MUKENDI was the person identified as the shareholder, officer and director in the certificate of incorporation of Choice of Medical Care, P.C. ("Choice"). On or about November 18, 2004, at the direction of ~~Michael Tribisovsky~~<sup>Kaykov</sup>, the unqualified lay owner of the professional service corporation, Respondent MUKENDI executed an application to open a JP Morgan Chase, NA bank account. Respondent knowingly created the false impression that he was the true owner of the professional service corporation, when, in fact, Respondent MUKENDI knew that the owner was ~~Michael Tribisovsky~~<sup>Kaykov</sup>.

- J. As previously alleged in factual allegations G, G1 and G1(a), Respondent HUDSON MEDICAL, P.C. failed to meet applicable state licensing requirements for professional service corporations.
- K. As previously alleged in factual allegations G, G1, G1(b), Respondent CITY MEDICAL, P.C. failed to meet applicable state licensing requirements for professional service corporations.
- L. As previously alleged in factual allegations G, G1, and G1(c), Respondent M.N.M HEALTHCARE, P.C. failed to meet applicable state licensing requirements for professional service corporations.
- M. As previously alleged in factual allegations G, G1, and G1(d), Respondent NEW HOPE MEDICAL, P.C. failed to meet applicable state licensing requirements for professional service corporations.
- N. As previously alleged in factual allegations G, G1, and G1(e), RESPONDENT WEST RIVER MEDICAL, P.C. failed to meet applicable state licensing requirements for professional service corporations.
- O. As previously alleged in factual allegation G, G1, and G1(f), Respondent, DWP PAIN FREE MEDICAL, P.C. failed to meet applicable state licensing requirements for professional service corporations.

- P. As previously alleged in factual allegations G, G1 and G1(g), Respondent Choice of Medical Care, P.C. failed to meet applicable state licensing requirements for professional service corporations

### **SPECIFICATION OF CHARGES**

#### **FIRST THROUGH FIFTH SPECIFICATIONS**

##### **UNWARRANTED TESTS/TREATMENT**

Respondent MUKENDI is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(35) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of:

1. A, A1, A2, A3, A4, A5, A6, and/or A7.
2. B, B1, B2, B3, B4, B5, B6, and/or B7.
3. C, C1, C2, C3, C4, C5, and/or C6.
4. D, D1, D2, D3, D4, D5, D6, D7, and/or D8.
5. E, E1, E2, E3, E4, E5, E6, and/or E7.

#### **SIXTH THROUGH FOURTEENTH SPECIFICATIONS**

##### **FRAUDULENT PRACTICE**

Respondent MUKENDI 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:

6. F and F1.

- 7. G, G1, and G1(a).
- ~~8. G, G1, and G1(b).~~
- 9. G, G1 and G1(c).
- ~~10. G, G1, and G1(d)~~
- 11. G, G1, and G1(e).
- 12. G, G1, and G1(f).
- 13. G, G1 and G1(g).
- 14. I.

withdrawn  
6/19/07

withdrawn  
6/19/07

**FIFTEENTH THROUGH TWENTY-THIRD SPECIFICATIONS**  
**FALSE REPORT**

Respondent MUKENDI is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

- 15. F and F1.
- ~~16. G, G1, and G1(a).~~
- ~~17. G, G1, and G1(b).~~
- 18. G, G1 and G1(c).
- ~~19. G, G1, and G1(d)~~
- ~~20. G, G1, and G1(e).~~
- ~~21. G, G1, and G1(f).~~
- ~~22. G, G1 and G1(g).~~
- 23. I.

withdrawn 6/25/07

withdrawn 6/19/07

withdrawn 6/19/07

withdrawn  
6/25/07

**TWENTY-FOURTH SPECIFICATION**

**FEE SPLITTING**

Respondent MUKENDI is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(19) by permitting an unqualified individual to share in the fees for professional services, as alleged in the facts of:

24. H and H1.

**TWENTY-FIFTH SPECIFICATION**

**PERMITTING, AIDING OR ABETTING THE UNLICENSED PRACTICE OF MEDICINE**

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

25. G and G2.

**TWENTY-SIXTH SPECIFICATION**

**DELEGATING PROFESSIONAL RESPONSIBILITIES**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(25) by delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by licensure to perform the professional responsibility, as alleged in the facts of:

26. G and G2.

## **TWENTY-SEVENTH SPECIFICATION**

### **MORAL UNFITNESS**

Respondent MUKENDI is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

27. A, A1, A2, A3, A4,A5, A6,A7, B,B1, B2,B3, B4, B5,B,6,B7, C,C1,C2,C3,C4, C5, C6, ,D, D1, D2, D3,D4,D5,D6, D7, D8, E, E1,E2,E3, E4,E5, E6,E7, F, F1, G, G1, G1(a). G1(b),G1(c), G1(d), G1(e) G1(f), G1(g), G(2), H, H1, and/or I.

## **TWENTY-EIGHTH THROUGH THIRTY-FIFTH SPECIFICATIONS**

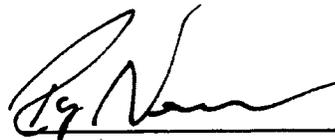
### **FAILING TO COMPLY WITH A STATE LAW**

Respondent HUDSON MEDICAL, P.C., CITY MEDICAL, P.C., MNM MEDICAL HEALTH CARE, P.C., NEW HOPE MEDICAL, P.C., WEST RIVER MEDICAL, P.C.,DWP PAIN FREE MEDICAL, P.C., CHOICE OF MEDICAL CARE, P.C. are charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16) by willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of Medicine, namely Business Corporation Law Section 1503, as alleged in the facts of:

28. G, G1, and G1(a) with respect to Respondent HUDSON MEDICAL, P.C.

29. G, G1, and G1(b) with respect to Respondent CITY MEDICAL, P.C.
30. G, G1, and G1(c) with respect to Respondent MNM MEDICAL HEALTH CARE, P.C.
31. G,G1, and G1(d) with respect to Respondent NEW HOPE MEDICAL, P.C.
32. G,G1, and G1(e) with respect to Respondent WEST RIVER MEDICAL, P.C.
33. G, G1, and G1(f) with respect to Respondent DWP PAIN FREE MEDICAL, P.C.
34. G, G1, and G1(g) with respect to Respondent CHOICE OF MEDICAL CARE, P.C.

DATED: February 15, 2007  
New York, New York



Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct