

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

**IN THE MATTER**  
**OF**  
**AVENUE MEDICAL, P.C.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

BPMC No. 02-254

The Respondent, Avenue Medical, P.C., says:

The Respondent is a professional service corporation duly authorized to practice medicine in the State of New York pursuant to Article 15 of the Business Corporation Law.

The Respondent is subject to the jurisdiction of the State Board for Professional Medical Conduct, and the prehearing and hearing procedures of Title II-A of Article 2 of the New York Public Health Law, pursuant to Section 1503(d) of the New York Business Corporation Law.

The Respondent is applying to the State Board for Professional Medical Conduct for a Consent Agreement and Order imposing a penalty, pursuant to Section 230-a of the Public Health Law and Section 1503(d) of the Business Corporation Law, of revocation of its certificate of incorporation such that the revocation shall be effective immediately and shall be self-executing, provided, however, that pursuant to Article 10 of the Business Corporation Law, the Respondent will be permitted to wind up its affairs notwithstanding this revocation, and this Consent Agreement and Order shall be deemed automatically to be the final and operative document revoking the

Respondent's certificate of incorporation, and the Respondent requests that the Board issue this Consent Agreement and Order.

The Respondent acknowledges that it has been charged with professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit "A."

Subject to the terms, conditions and limitations of this Consent Agreement and Order, the Respondent does not contest the allegations and specifications set forth in the First Specification of the Statement of Charges in full satisfaction of all such allegations and specifications.

The Respondent agrees that, in the event the State Board for Professional Medical Conduct agrees with its proposal, this Consent Agreement and Order shall be issued revoking its certificate of incorporation. The Respondent agrees that such revocation shall be effective immediately and shall be self-executing, except for the application of the provisions of Article 10 of the Business Corporation Law, and this Consent Agreement and Order shall be deemed automatically to be the final and operative document revoking the Respondent's certificate of incorporation. The Respondent agrees, notwithstanding the above, nothing herein shall be construed to absolve the Respondent in any way from paying to the Departments of State, Education, and Taxation and Finance any outstanding taxes, fines and penalties.

In addition, the Respondent agrees that this Consent Agreement and Order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of this Consent Agreement and Order to it in care of its attorney, Peter Birzon, Peter Birzon & Associates, 350 Jericho Turnpike, Suite 104, Jericho, NY 11753, or upon transmission via facsimile to it in care of its attorney, Peter Birzon, Peter Birzon & Associates, 350 Jericho Turnpike, Suite 104, Jericho, NY 11753, whichever is earliest.

The Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct in its administration and enforcement of this Consent Agreement and Order by providing written responses, attending meetings or providing documentation concerning verification of its compliance with the terms of this Consent Agreement and Order.

The Respondent agrees that in the event it is charged with professional misconduct in the future for violation or non-compliance with any provision of this Consent Agreement and Order, or in the event that it is charged with professional misconduct in the future for any other type of misconduct, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

The Respondent acknowledges that, in the event that this proposed agreement is not granted by the State Board for Professional Medical Conduct, nothing contained herein shall be binding upon it or construed to be an admission of any act of

misconduct alleged or charged against it, such proposed agreement shall not be used against it in any way, and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the State Board for Professional Medical Conduct shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by a Committee on Professional Medical Conduct pursuant to the provisions of the Public Health Law.

The Respondent is making this application of its own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to it of the acceptance by the Board of this application allowing it to resolve this matter without the various risks and burdens of a hearing on the merits, the Respondent knowingly waives any right it may have to contest, whether administratively or judicially, the Consent Agreement and Order issued hereunder for which it hereby applies and the respondent asks that the application be granted.

The Respondent is making this application through Fe A. Pung, Administrator of the Estate of Juanito Pung, M.D., who was the President and Sole Shareholder of the Respondent. The Respondent and the Administrator warrant that she has the necessary corporate authority to enter into this Consent Agreement and Order on behalf of the Respondent and to consent on behalf of the Respondent to the revocation of the Respondent's certificate of incorporation.

Date: June 24, 2002

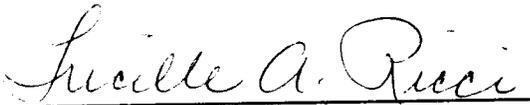
Avenue Medical, P.C.

By: 

Fe A. Pung  
Administrator of the  
Estate of Juanito Pung, M.D., President  
and Sole Shareholder of the  
Respondent

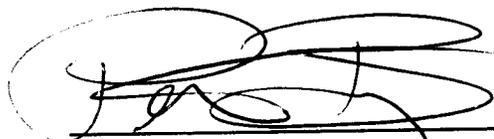
State of New Jersey ss.:  
County of Hunterdon

On the 24<sup>th</sup> day of June 2002, before me personally came Fe A. Pung, who being by me duly sworn, did depose and say that she resides in Teuksbury, New Jersey; that she is the Administrator of the Estate of Juanito Pung, M.D., President and Sole Shareholder of the Respondent, the professional service corporation described in and which executed the above instrument; and that she signed her name thereto by order of the Board of Directors of said corporation.

  
Notary Public  
Commission Expires 4/13/04

AGREED TO:

Date: 7/3/02, 2002



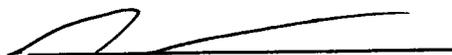
Peter Birzon  
Peter Birzon & Associates  
350 Jericho Turnpike  
Suite 104  
Jericho, NY 11753

Date: July 30, 2002



Richard J. Zahnleuter  
Associate Counsel  
Bureau of Professional  
Medical Conduct

Date: August 16, 2002

  
Dennis J. Graziano  
Director, Office of  
Professional Medical Conduct

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

**IN THE MATTER**  
**OF**  
**AVENUE MEDICAL, P.C.**

ORDER

Upon the proposed Consent Agreement and Order of Avenue Medical, P.C. (the Respondent), which proposed agreement is made a part hereof, it is AGREED TO and

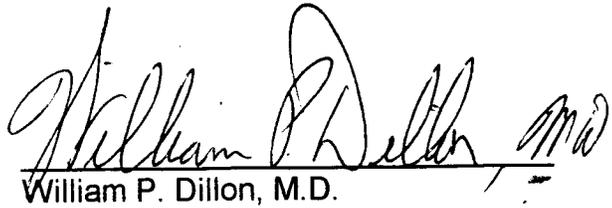
ORDERED, that the Respondent's certificate of incorporation is hereby revoked such that the revocation shall be effective immediately and shall be self-executing, and this Order shall be deemed automatically to be the final and operative document revoking the Respondent's certificate of incorporation.

ORDERED, that the proposed agreement and the provisions thereof, are hereby adopted; it is further

ORDERED, that this Order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of this Consent Agreement and Order to the Respondent in care of its attorney, Peter Birzon, Peter Birzon & Associates, 350 Jericho Turnpike, Suite 104, Jericho, NY 11753, or upon transmission via facsimile to it in care of its attorney, Peter Birzon, Peter Birzon & Associates, 350

Jericho Turnpike, Suite 104, Jericho, NY 11753, whichever is earliest.

DATED: 8/20/02

A handwritten signature in black ink that reads "William P. Dillon, M.D." The signature is written in a cursive style with a large initial "W" and "D".

William P. Dillon, M.D.  
Chair  
State Board for Professional  
Medical Conduct

**EXHIBIT A**

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

**IN THE MATTER**  
  
**OF**  
  
**AVENUE MEDICAL, P.C.**

**STATEMENT  
OF  
CHARGES**

The Respondent, Avenue Medical, P.C., is a professional service corporation duly authorized to practice medicine in the State of New York pursuant to Article 15 of the Business Corporation Law.

The Respondent is subject to the jurisdiction of the State Board for Professional Medical Conduct, and the prehearing and hearing procedures of Title II-A of Article 2 of the New York Public Health Law, pursuant to Section 1503(d) of the New York Business Corporation Law.

**ALLEGATIONS**

A. A professional service corporation may be organized by one or more individuals who are duly authorized by law to render the same professional service, pursuant to Section 1503(a) of the New York Business Corporation Law.

B. Upon information and belief, Juanito Pung, M.D., was the individual who was

duly authorized by law to practice medicine and who organized, or caused to be organized, the Respondent to practice medicine in compliance with Section 1503(a) of the New York Business Corporation Law.

C. Upon information and belief, Juanito Pung, M.D., was the physician who, in compliance with Sections 1503(a) and 1504(a) of the New York Business Corporation Law, was the sole shareholder of the Respondent.

D. Upon information and belief, Juanito Pung, M.D., passed away on June 9, 2001.

E. Following the death of Juanito Pung, M.D., on June 9, 2001, the authorization that Juanito Pung, M.D., had to practice medicine no longer had any legal force.

F. Upon information and belief, on August 27, 2001, an administrator of the estate of Juanito Pung, M.D., was appointed.

G. The Respondent did not purchase or redeem Juanito Pung, M.D.'s, shares within 6 months after the appointment of the administrator, pursuant to Section 1510(a) of the New York Business Corporation Law, and there was no sale or transfer of shares to a physician duly authorized by law to practice medicine, pursuant to Section 1510(b) of the New York Business Corporation Law.

H. Accordingly, after 6 months passed on February 27, 2002, the Respondent was no longer authorized to practice medicine.

I. In addition, during the period between the time of the death of Juanito Pung, M.D., on June 9, 2001, and September 4, 2001, the Respondent submitted bills to an insurance carrier under the State's motor vehicle no-fault insurance law regarding Patient

A<sup>1</sup>, who had been involved in a motor vehicle accident, with the express misrepresentations that Juanito Pung, M.D., was the "treating provider" for certain "treatment or health service rendered" to Patient A during that period, that Juanito Pung, M.D., was the sole shareholder of the Respondent during that period, that patient A was "still under [Juanito Pung, M.D.'s] care for this condition" during that period, and that Juanito Pung, M.D., signed each bill during that period. Specific recitations of the date of each treatment, the corresponding amount of money billed by the Respondent, and the date of Juanito Pung, M.D.'s, purported signature on each bill are set forth in Appendix A.

J. In a letter, dated April 24, 2002, the Department of Health sought information and documentation from the Respondent concerning ownership by physician shareholders, business arrangements, and operations of the Respondent, but the Respondent did not comply with the request.

K. In another letter, dated April 24, 2002, the Department of Health sought information and documentation from the Respondent concerning the Respondent's care, treatment, and billing concerning Patient A, but the Respondent did not comply with the request.

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<sup>1</sup>To preserve privacy throughout this document, patients are referred to by letter designation (Patient \_\_). An Appendix of Names is attached hereto for appropriate recipients.

## **SPECIFICATIONS OF CHARGES**

### **FIRST SPECIFICATION**

The Respondent is charged with professional misconduct by reason of FAILING TO RESPOND WITHIN THIRTY DAYS TO WRITTEN COMMUNICATIONS FROM THE DEPARTMENT OF HEALTH AND TO MAKE AVAILABLE RELEVANT RECORDS WITH RESPECT TO AN INQUIRY AND COMPLAINT ABOUT THE RESPONDENT'S PROFESSIONAL MISCONDUCT, in violation of New York Education Law §6530(28), in that Petitioner charges:

1. The factual allegations in paragraphs J, and/or K.

### **SECOND SPECIFICATION**

The Respondent is charged with professional misconduct by reason of PRACTICING THE PROFESSION BEYOND ITS AUTHORIZED SCOPE, in violation of New York Education Law §6530(2), in that Petitioner charges:

1. The factual allegations in paragraphs A, B, C, D, E, F, G, and/or H.

### **THIRD SPECIFICATION**

The Respondent is charged with professional misconduct by reason of a WILLFUL FAILURE TO COMPLY WITH SUBSTANTIAL PROVISIONS OF STATE LAWS GOVERNING THE PRACTICE OF MEDICINE, in violation of New York Education Law §6530(16), in that Petitioner charges:

1. The factual allegations in paragraphs A, B, C, D, E, F, G, and/or H.

**FOURTH THROUGH SIXTY-NINTH SPECIFICATIONS**

The Respondent is charged with professional misconduct by reason of PRACTICING THE PROFESSION FRAUDULENTLY, in violation of New York Education Law §6530(2), in that Petitioner charges:

1. The factual allegations in paragraphs I and I(A)(1) through I(A)(66).

DATED: *July 30*, 2002  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

## APPENDIX A

(I)(A). Specifically, with regard to Patient A, the date of each treatment, the corresponding amount of money billed by the Respondent, and the date of Juanito Pung, M.D.'s, purported signature on each bill are:

1. 6/12/01, \$33.55, 7/3/01
2. 6/12/01, \$22.14, 7/3/01
3. 6/12/01, \$20.03, 7/3/01
4. 6/13/01, \$33.55, 7/3/01
5. 6/13/01, \$22.14, 7/3/01
6. 6/13/01, \$20.03, 7/3/01
7. 6/25/01, \$33.55, 7/3/01
8. 6/25/01, \$22.14, 7/3/01
9. 6/25/01, \$20.03, 7/3/01
10. 6/26/01, \$33.55, 7/3/01
11. 6/26/01, \$22.14, 7/3/01
12. 6/26/01, \$20.03, 7/3/01
13. 6/29/01, \$33.55, 7/3/01
14. 6/29/01, \$22.14, 7/3/01
15. 6/29/01, \$20.03, 7/3/01
16. 7/2/01, \$33.55, 8/6/01
17. 7/2/01, \$22.14, 8/6/01
18. 7/2/01, \$20.03, 8/6/01
19. 7/3/01, \$33.55, 8/6/01
20. 7/3/01, \$22.14, 8/6/01
21. 7/3/01, \$20.03, 8/6/01
22. 7/5/01, \$33.55, 8/6/01
23. 7/5/01, \$22.14, 8/6/01
24. 7/5/01, \$20.03, 8/6/01
25. 7/9/01, \$33.55, 8/6/01
26. 7/9/01, \$22.14, 8/6/01
27. 7/9/01, \$20.03, 8/6/01
28. 7/11/01, \$33.55, 8/6/01
29. 7/11/01, \$22.14, 8/6/01
30. 7/11/01, \$20.03, 8/6/01
31. 7/12/01, \$33.55, 8/6/01
32. 7/12/01, \$22.14, 8/6/01
33. 7/12/01, \$20.03, 8/6/01
34. 7/16/01, \$33.55, 8/6/01
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37. 7/17/01, \$33.55, 8/6/01
38. 7/17/01, \$22.14, 8/6/01
39. 7/17/01, \$20.03, 8/6/01
40. 7/19/01, \$33.55, 8/6/01

41. 7/19/01, \$22.14, 8/6/01  
42. 7/19/01, \$20.03, 8/6/01  
43. 7/23/01, \$33.55, 8/6/01  
44. 7/23/01, \$22.14, 8/6/01  
45. 7/23/01, \$20.03, 8/6/01  
46. 7/24/01, \$33.55, 8/6/01  
47. 7/24/01, \$22.14, 8/6/01  
48. 7/24/01, \$20.03, 8/6/01  
49. 7/26/01, \$33.55, 8/6/01  
50. 7/26/01, \$22.14, 8/6/01  
51. 7/26/01, \$20.03, 8/6/01  
52. 7/28/01, \$33.55, 8/6/01  
53. 7/28/01, \$22.14, 8/6/01  
54. 7/28/01, \$20.03, 8/6/01  
55. 8/1/01, \$33.55, 9/4/01  
56. 8/1/01, \$22.14, 9/4/01  
57. 8/1/01, \$20.03, 9/4/01  
58. 8/2/01, \$33.55, 9/4/01  
59. 8/2/01, \$22.14, 9/4/01  
60. 8/2/01, \$20.03, 9/4/01  
61. 8/7/01, \$33.55, 9/4/01  
62. 8/7/01, \$22.14, 9/4/01  
63. 8/7/01, \$20.03, 9/4/01  
64. 8/9/01, \$33.55, 9/4/01  
65. 8/9/01, \$22.14, 9/4/01  
66. 8/9/01, \$20.03, 9/4/01