

Public

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

IN THE MATTER
OF
NY MEDICAL & DIAGNOSTICS, P.C.

ORDER
BPMC No. #07-101

Upon the proposed Consent Agreement and Order of **NY MEDICAL & DIAGNOSTICS, P.C.**, which proposed agreement is made a part hereof, it is **AGREED TO** and

ORDERED, that the Respondent's certificate of incorporation, which was filed by the Department of State on August 30, 1996 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, including the Appendix to this Order, 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 the Consent Order to the Respondent at the address set forth in this agreement or to the Respondent's attorney by certified mail or upon transmission via facsimile to the Respondent in care of Arthur Luban, M.D., or the Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 5-7-07



KENDRICK A. SEARS, M.D.
Chair
State Board for Professional
Medical Conduct

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

IN THE MATTER	CONSENT
OF	AGREEMENT
NY MEDICAL & DIAGNOSTICS, P.C.	AND ORDER

NY MEDICAL & DIAGNOSTICS, P.C., says:

The Respondent is a professional service corporation duly authorized to practice medicine in New York State by the filing with the Department of State on August 30, 1996 of a certificate of incorporation, 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 §1503(d) of the 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 §230-a of the Public Health Law and §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 all its affairs, including, but not limited to, collection of outstanding accounts receivable, 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 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 the Departments of State, Education, and Taxation and Finance any outstanding taxes, fines and penalties. This Consent Agreement and Order, and all Exhibits, shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

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 Arthur Luban, M.D., 5127 Surf Avenue, Brooklyn, NY 11224 or its attorney, Edward D. Greenberg, Schwartz & Greenberg, 150 Broadway, Suite 1007, New York, NY 10038, or upon transmission via facsimile to it or its attorney, 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 written responses, attending meetings or providing documentation concerning verification of its compliance with the terms of this Consent Agreement and Order.

The Respondent stipulates that its failure to comply with any conditions of this Consent Agreement and Order shall constitute misconduct as defined by §6530(29) of the Education Law. The Respondent agrees that in the event it is charged with professional misconduct in the future for violation or non-compliance with any provisions of this Consent Agreement and Order, or in the event that it is charged with professional misconduct in the future or 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; 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 stipulates that the proposed sanction and Consent Agreement and Order are authorized by §§230 and 230-a of the Public Health Law, and that the Board and OPMC have the requisite powers to carry out all included terms. The Respondent is making this application of its own free will and accord and not under duress, compulsion or restraint of

any kind of 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, the Respondent agrees to be bound by it, and the Respondent asks that the application be granted.

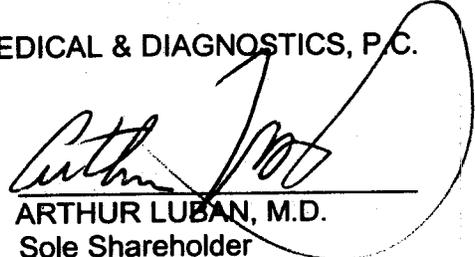
The Respondent is making this application through its sole shareholder, Arthur Luban, M.D., and the Respondent and Arthur Luban, M.D., warrant that he has the necessary corporate authority to enter into this Consent Agreement and Order on behalf of the Respondent and to consent on behalf of the Respondent and the revocation of the Respondent's certificate of incorporation.

The Respondent understands and agrees that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed Consent Agreement and Order, based upon its application, or to decline to do so. The Respondent further understands and agrees that no prior or separate written or oral communication can limit that discretion.

Date: MARCH 13, 2007

NY MEDICAL & DIAGNOSTICS, P.C.

By:


ARTHUR LUBAN, M.D.
Sole Shareholder

ALBAN N. DIAZ
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01D16035017
Qualified in Kings County
Commission Expires Dec. 20, 2009



State of _____)
County of _____)
ss:

On the _____ day of _____ 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared, Arthur Luban, M.D., personally known to me or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his capacity as the Sole Shareholder of the Respondent, the professional service corporation described in and which executed the above instrument; and that he signed his name thereto by order to the Board of Directors of said corporation, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

AGREED TO:

Date: March 23, 2007


EDWARD D. GREENBERG
Attorney for Respondent
Schwartz & Greenberg
150 Broadway, Suite 1007
New York, NY 10038

Date: April 5, 2007


RICHARD J. ZAHNLEUTER
Associate Counsel
Bureau of Professional Medical Conduct

Date: 5/3/07, 2007


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

**IN THE MATTER
OF
NY MEDICAL & DIAGNOSTICS, P.C.**

**STATEMENT
OF
CHARGES**

NY MEDICAL & DIAGNOSTICS, P.C., the Respondent, is a professional service corporation duly authorized to practice medicine in New York State by the filing with the Department of State on August 30, 1996 of a certificate of incorporation pursuant to Article 15 of the New York Business Corporation Law.

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 §1503(d) of the Business Corporation Law.

FACTUAL ALLEGATIONS

- A. A professional service corporation may be organized for the purpose of rendering a professional service only by one or more individuals who are duly authorized by law to render the same professional service, pursuant to the legal requirements of Article 15 of the New York Business Corporation Law, including, but not limited to, Section 1503(a).
- B. On August 30, 1996, MD#1¹ was an individual who was duly authorized by law to practice medicine.
- C. On or before July 20, 1998, MD#1 transferred all of MD#1's shares of stock to MD#2 and MD#2 became the individual who was duly authorized by law to practice medicine who was the sole shareholder, director and officer of the Respondent in ostensible compliance with Section 1503(a) of the New York Business Corporation Law.
- D. MD#2 continuously remained as the Respondent's sole shareholder, director and officer from acquisition through the present, but MD#2 did not control the Respondent.

¹ To preserve privacy throughout this document, physicians are referred to by numerical designation preceded by the acronym "MD"(MD#___). A name-identifying Appendix is attached hereto for appropriate recipients.

E. Persons who were not licensed to practice medicine were instrumental in controlling the Respondent, including, but not limited to, hiring and supervising professional staff, accessing bank accounts, disbursing funds, and otherwise handling banking and financial affairs.

F. MD#2 was relegated to the role of the owner of record of the Respondent in contravention of Article 15 of the New York Business Corporation Law, including, but not limited to, Section 1503(a).

G. The Respondent allowed the status quo to continue through the present.

H. During the relevant time frames set forth in paragraphs A through G above, the Respondent was not in compliance with Article 15 of the New York Business Corporation Law, including, but not limited to, Section 1503(a).

SPECIFICATION OF MISCONDUCT

The Respondent is charged with professional misconduct by reason of WILLFULLY FAILING TO COMPLY WITH SECTION 1503 OF THE NEW YORK BUSINESS CORPORATION LAW, in violation of the third undesignated clause set forth in New York Education Law §6530(12), in that Petitioner charges:

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

DATED: *April 9*, 2007
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct