



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Richard F. Daines, M.D.
Commissioner
NYS Department of Health

Keith W. Servis
Director
Office of Professional Medical Conduct

Kendrick A. Sears, M.D.
Chair

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

October 5, 2007

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Alexander G. Bateman, Esq.
East Tower 15th Floor
1425 Rexcopp Plaza
Uniondale, New York 11556-1425

Re: Avain Medical, P.C.
Robert A. Florio, M.D.
License No. 214667

Dear Mr. Bateman:

Enclosed please find BPMC No. 07-218 regarding Avian Medical, Professional Corporation, issued by the New York State Board for Professional Medical Conduct. This order carries the penalty of annulment of the certificate of incorporation for the professional corporation listed and goes into effect October 11, 2007.

Please forward the enclosed copy of Order No. 07-218 to Dr. Florio at his Florida address which was not provided to me.

Thank you.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Robert A. Florio, M.D.

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

IN THE MATTER
OF
AVIAN MEDICAL P.C.

CONSENT
ORDER
BPMC No. 07-218

Upon the application of (Respondent) AVIAN MEDICAL, P.C., in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 10-4-2007


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

AVIAN MEDICAL P.C.

AND ORDER

AVIAN MEDICAL 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 June 2, 2004, 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 annulment of its certificate of incorporation such that the annulment shall be effective immediately and shall be self-executing, and this Consent Agreement and Order shall be deemed automatically to be the final and operative document annulling 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 admits 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 annulling its certificate of incorporation. The Respondent agrees that such annulment shall be effective immediately and shall be self-executing, and this Consent Agreement and Order shall be deemed automatically to be the final and operative document annulling 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 Robert Armand Florio, M.D., President, 42 Hey Hoe Woods Road, P.O. Box 712, Palisades, N.Y. 10964, or its attorney, Alex G. Bateman, 1425 Rechson Plaza, East Tower, 15th Floor, Uniondale, N.Y. 11556, 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 President and Shareholder, Robert Armand Florio, M.D., and the Respondent and Robert Armand Florio, 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 to the annulment 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 26, 2007

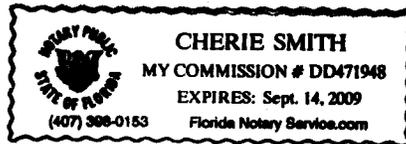
AVIAN MEDICAL P.C.

By: Robert Armand Florio, M.D.
ROBERT ARMAND FLORIO, M.D.
President and Shareholder

State of)
County of) ss:

On the 17 day of Aug 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared, ROBERT ARMAND FLORIO, 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 President and 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.

Cherie Smith
Notary Public



AGREED TO:

Date: AUGUST 21, 2007

Alex G. Bateman
ALEX G. BATEMAN
Attorney for Respondent

Date: September 5, 2007

Christine M. Radman
CHRISTINE M. RADMAN
Associate Counsel
Bureau of Professional Medical Conduct

Date: OCTOBER 1, 2007

Keith W. Servis
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
AVIAN MEDICAL, P.C.

STATEMENT
OF
CHARGES

The Respondent, Avian 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. Robert Florio, M.D., is an individual who is duly licensed to practice medicine in the State of New York.
- C. On or about sometime in July of 2002, Dr. Florio accepted an offer of

employment, after responding to an advertisement in a newspaper publication for a physiatrist, from Eddie Castro and Bart Griggs, who were the managers of Elite Medical Services, P.C. purportedly at 483 Merrick Road in Lynbrook, N.Y. Dr. Florio was to perform electrodiagnostic examinations of patients for a number of other physicians.

- D. On or about sometime in May of 2003, Bart Griggs asked Dr. Florio if he was interested in opening his own professional medical corporation. Dr. Florio would be paid an initial salary of \$2000 monthly pending a determination of profits. Bart Griggs, Eddie Castro and Gary Dalto, D.C. were to provide management services for the corporation; specifically opening and maintaining the corporate bank account, billing, scheduling, renting space from other providers where Dr. Florio would perform diagnostic testing, and office management. Dr. Florio had no contract with Bart Griggs, Eddie Castro and Gary Dalto, D.C. for their management services.
- E. The certificate of incorporation was filed with the New York State Department of State under the name Brook Medical Services, P.C., on May 20, 2003.
- F. Gary Dalto, D.C. was the only other signatory on the Brook Medical Services, P.C. bank account.
- G. Dr. Florio provided the managers of the corporation with his signature stamp for their use in reports and billing.
- H. On or about April 20, 2006, Dr. Florio was giving testimony at an examination under oath for the State Farm Insurance Company. The insurance company's counsel asked Dr. Florio about Avian Medical, P.C., of which the New York

State Department of State showed him to be the sole owner, with the certificate of incorporation filed on June 2, 2004. Dr. Florio denied any knowledge of said professional medical corporation.

- I. The filer of the certificate of incorporation is listed as Progressive Diagnostics, Inc., 483 Merrick Road, 1st Floor, Lynbrook, N.Y. 11563.
- J. At that same examination under oath, Dr. Florio denied having hired a law firm to pursue payment for his medical services under Avian Medical, P.C.
- K. While Dr. Florio does acknowledge that the managers of Brook Medical Services, P.C. approached him about opening another professional medical corporation in his name, such conversation was a preliminary one only, and at no time did Dr. Florio ever agree to its formulation either explicitly or implicitly, nor did he authorize the use of his signature stamp for such a purpose. At no time did Dr. Florio understand that another professional medical corporation would be formed under his name.
- L. According to the certificate of incorporation for Avian Medical, P.C., Dr. Florio was the physician who, in compliance with Sections 1503(a), 1507, and 1508 of the New York Business Corporation Law, was identified as the sole shareholder, director, and officer who organized the Respondent.
- M. At no time did Dr. Florio know that the certificate of incorporation for the Respondent was being filed in his name. At no time did Dr. Florio ever consider himself a shareholder, director, or officer of the Respondent. At no time did Dr. Florio ever sign or receive any stock certificates for the Respondent. At no time did Dr. Florio ever control or benefit from any of the Respondent's accounts or

business affairs. At no time did Dr. Florio ever render any medical service for the Respondent, including diagnosis or treatment of any patient, and, if any bills have ever been submitted by the Respondent to an insurance company or other third party payor under the name of Dr. Florio, those bills are not truthful or accurate.

- N. It was not until on or about April 20, 2006 when an insurance company representative questioned Dr. Florio about the Respondent's ownership that Dr. Florio realized a professional medical corporation, the Respondent, had been established in his name.
- O. Even though the Respondent continues to be technically authorized to practice medicine as a professional medical corporation, Dr. Florio never intended to organize the Respondent, or to cause the Respondent to be organized, as a professional medical corporation.
- P. Further, upon information and belief, no person duly authorized to practice medicine ever organized the Respondent, or caused the Respondent to be organized, as a professional medical corporation.
- Q. From the time the certificate of incorporation of the Respondent was filed with the Secretary of State on June 2, 2004, the Respondent has not been in compliance with Section 1503(a) of the New York Business Corporation Law; and yet the Respondent has allowed the status quo to remain in effect. The Respondent, therefore, has willfully failed to comply with the requirements of Section 1503(a) of the New York Business Corporation Law.

SPECIFICATION OF MISCONDUCT

The Respondent is charged with professional misconduct by reason of
WILLFULLY FAILING TO COMPLY WITH SECTION 1503 OF THE 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 in paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M,
N, O, P, and Q.

DATED: March 26, 2007
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct
Medical Conduct