PUBLIC

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

IN THE MATTER OF NEW YORK PHYSICAL MEDICINE & REHABILITATION P.C.	CONSENT AGREEMENT AND ORDER

BPMC No. 03-295

The Respondent, New York Physical Medicine & Rehabilitation P.C., says:

The Respondent is a professional service corporation duly authorized by the filing of its certificate of incorporation with the Department of State on January 2, 1992 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 annulling, pursuant to Section 230-a of the Public Health Law and Section 1503(d) of the Business Corporation Law, its certificate of incorporation. This annulment shall be self-executing, 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 hereby requests that the Board issue this Consent Agreement and Order.

The Respondent acknowledges 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 specification 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 annulling its certificate of incorporation. The Respondent agrees that this annulment 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, that 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, or by faxing, a copy of this Consent Agreement and Order to the Respondent in care of Miles R. Jacobson, Jacobson and Goldberg, LLP, 585 Stewart Avenue, Garden City, NY 11530, fax # (516) 222-2339.

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 Osafradu Opam, M.D., who, without his knowledge and consent, was designated in the corporate records on file

with the Department of Education as the sole shareholder, director, and officer of the Respondent. The Respondent and Dr. Opam desire to annul the Respondent's certificate of incorporation, and hereby warrant that Dr. Opam prima facie has the necessary corporate authority to enter into this Consent Agreement and Order on behalf of the Respondent. Dr. Opam also hereby warrants that he is not in possession, custody, or control of any premises maintained by the Respondent, he is not in possession, custody, or control of any patient medical records maintained by the Respondent, and, therefore, the State Board for Professional Medical Conduct acknowledges that Dr. Opam has no record retention responsibilities regarding patient medical records of the Respondent. Accordingly, Dr. Opam hereby consents on behalf of the Respondent to the annulment of the Respondent's certificate of incorporation.

Date: Sep. 15, 2003

New York Physical Medicine & Rehabilitation P.C.

By: _____

Osafradu Opam, M.D.
Sole Shareholder, Director, and Officer as Identified in the Certificate of Incorporation of the Respondent

State of New York

ss.:

County of NASSAU

On the 15 day of Sep. 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared, Osafradu Opam, 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, director, and officer, as identified in the certificate of incorporation of the Respondent, the professional service corporation described in and which executed the above instrument; and that he signed his name thereto by order of 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

MILES R. JACOBSON
Notary Public, State of New York
No. 52-1946090
Qualified in Suffolk County
Commission Expires 5-31-07

AGREED TO:

Date: Sept. 15, 2003

Miles R. Jacobson
Attorney for Osafradu Opam, M.D.
and the Respondent
Jacobson and Goldberg, LLP
585 Stewart Avenue
Garden City, NY 11530

Date: September 17, 2003

Richard J. Zahnleuter
Associate Counsel
Bureau of Professional
Medical Conduct

Date: 24 October, 2003

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 NEW YORK PHYSICAL MEDICINE & REHABILITATION P.C.	ORDER

Upon the proposed Consent Agreement and Order of New York Physical Medicine & Rehabilitation 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, which was filed by the Department of State on January 2, 1992, is hereby annulled, such that this Order shall be self-executing and deemed automatically to be the final and operative document annulling 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, or by faxing, a copy of this Consent Agreement and Order to the Respondent in care of Miles R. Jacobson, Jacobson and Goldberg, LLP, 585 Stewart Avenue, Garden City, NY 11530, fax # (516) 222-2339.

DATED: 10/29/03

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 NEW YORK PHYSICAL MEDICINE & REHABILITATION P.C.	STATEMENT OF CHARGES

The Respondent, New York Physical Medicine & Rehabilitation P.C., is a professional service corporation duly authorized by the filing of its certificate of incorporation with the Department of State on January 2, 1992 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. On January 2, 1992, when the Secretary of State filed the Respondent's certificate of incorporation, MD#1[1] was an individual who was duly authorized by law to practice medicine.

C. Pursuant to the Respondent's corporate records on file with the Department of Education: MD#1 was the Respondent's original shareholder, director and officer; MD#1, however, on June 1, 1997, purportedly transferred some of MD#1's shares of stock in the Respondent to MD#2 and Dr. Opam; MD#1 and MD#2, then, on June 1, 2000, purportedly transferred all of their remaining shares of stock in the Respondent to Dr. Opam, which was when Dr. Opam purportedly became the Respondent's sole shareholder, director and officer.

D. Dr. Opam is an individual who was duly licensed to practice medicine in the State of New York on June 7, 1993.

E. Dr. Opam is a neurologist who on occasion, among other activities, serves as a consultant for professional service corporations practicing medicine.

F. In the course of serving as a neurological consultant, Dr. Opam's name and other identifiers became known to physician shareholders, office management staff, and others associated with professional medical corporations for which he provided neurological consultation services.

G. Upon information and belief based on representations by Dr. Opam: at no time was Dr. Opam aware of, or a participant in, the formation, transfer, or ownership in any way, of the Respondent; at no time did Dr. Opam have any

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[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.

knowledge that the Respondent would be formed under his name, transferred to him, or owned in any way by him; at no time was Dr. Opam ever aware that someone had forged a document or filed a document designating him as a shareholder, director, officer, or owner in any way, of the Respondent; at no time was Dr. Opam aware that the operations of the Respondent continued under his name as a shareholder, director, officer, or owner in any way of the Respondent.

H. Further, upon information and belief based on representations by Dr. Opam: at no time did Dr. Opam ever consider himself, or act as, a shareholder, director, or officer of the Respondent; at no time did Dr. Opam ever sign any corporate documents or ever receive any stock certificates for the Respondent; at no time did Dr. Opam ever control, or benefit from, or have any entitlement to any beneficial interest in, any of the Respondent's accounts or business affairs, other than salary paid to him by the Respondent for services rendered and malpractice insurance premiums paid for him by the Respondent for coverage for services rendered for the Respondent.

I. It was not until in or about May 2003 when a representative of the Office of Professional Medical Conduct of the New York State Department of Health questioned Dr. Opam about the Respondent's ownership that Dr. Opam realized that corporate records of the Respondent on file with the Department of Education identified him as having been the sole shareholder of the Respondent since June 1, 2000 and continuing through to the present.

J. Even though the Respondent continues to be technically authorized to practice

medicine as a professional medical corporation, Dr. Opam never intended to organize the Respondent, or to cause the Respondent to be organized, as a professional medical corporation.

K. From June 1, 2000, which was the first time when Dr. Opam was identified in corporate records of the Department of Education as the sole shareholder, director, and officer, of the Respondent, 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

FIRST SPECIFICATION

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, and K.

DATED: October 9, 2003
Albany, New York

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