STATE OF NEW YORK
DEPARTMENT OF HEALTH
433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

Public

December 17, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sherry Morris, D.O. &
East Meadow Medical Services P.C.

REDACTED

Jeffrey Hoffman, Esq.
HOFFMAN & POLLOK, LLP
260 Madison Avenue
New York, New York 10016

Daniel Guenzburger, Esq. &
Anna R. Lewis, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Sherry Morris, D.O.
& East Meadow Medical Services P.C.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-270) 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 and the certificate of incorporation and registration for East Meadow Medical Services, P.C. 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,
REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER OF SHERRY MORRIS, D.O. & EAST MEADOW MEDICAL SERVICES P.C.	DETERMINATION AND ORDER

COPY

A Notice of Hearing and an Amended Statement of Charges dated April 28, 2010 were served upon the Respondent **SHERRY MORRIS, D.O.** and **EAST MEADOW MEDICAL SERVICES P.C.** Chairperson **FRANK IAQUINTA M.D., WILLIAM BISORDI M.D.,** and **MICHAEL COLON** duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. Administrative Law Judge **KIMBERLY A. O'BRIEN ESQ**. served as the Administrative Officer.

The Department of Health appeared by THOMAS CONWAY ESQ., General Counsel, by **DANIEL GUENZBURGER** and **ANNA R. LEWIS**, of Counsel. The Respondent **SHERRY MORRIS, D.O.** appeared in person and by Counsel **JEFFREY C. HOFFMAN ESQ.**

Evidence was received and argument heard, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Notice of Hearing & Amended Statement of Charges	April 28, 2010
Pre-hearing conference	April 29, 2010
Respondent's Answer	April 29, 2010
Hearing Dates	May 10, 2010; June 29, 2010; July 20, 1010; July 27, 2010
Witnesses for Petitioner	Michael Stephano, Patient D, Thomas Scandalis M.D.
Witnesses for Respondent	Sherry Morris D.O.
Final Hearing Transcript Received	August 12, 2010
Parties Briefs	September 10, 2010
Deliberations Date	October 19, 2010

STATEMENT OF THE CASE

The State Board of Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York pursuant to Section 230 et seq. of the Public Health Law of New York. This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to Section 230 of the Public Health Law. Sherry Morris D.O. (hereinafter "Respondent Morris or Respondent") East Meadow Medical Services P.C. (hereinafter "Respondent East Meadow or East Meadow") are charged with thirty-eight specifications of misconduct including: fraudulent practice, willfully making or filing a false report or failure to file a report, failure to comply with state law, moral unfitness and failure to maintain a patient record all as set forth in Section 6530 of the Education Law of the State of New York (hereinafter "Education Law"). Respondents Morris and East

Meadow deny the first through the thirty- eighth specifications of misconduct set forth in the Amended Statement of Charges. Specifically, Respondents Morris and East Meadow deny any and all factual allegations and specifications regarding patients A through K, and Respondent Morris denies any and all factual allegations and specifications regarding employment and accreditation applications, and licensure registration (Ex. A). Respondents Morris and East Meadow request that all factual allegations and the thirty–eight specifications of misconduct set forth in the Amended Statement of Charges, attached hereto and made part of this Decision and Order, and marked as Appendix 1, be dismissed in their entirety.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee ("Hearing Committee" or "Committee"). Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("Tr."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding.

Having heard argument and considered the documentary evidence presented, the Hearing Committee hereby makes the following findings of fact:

1. Respondent, Sherry Morris, D.O was authorized to practice medicine in New York State on or about May 23, 1996, by the issuance of license number 203118, by the New York State Education Department (Ex. 2).

2. Respondent, East Meadow Medical Services, P.C., ("East Meadow ") was authorized as a professional service corporation on April 25, 2003, and Respondent Sherry Morris, D.O. is the sole

owner of East Meadow (Ex. 3). Respondent Morris worked part time at East Meadow where she performed physician assessments for patients seeking chiropractic services, and she was paid a fixed salary that did not vary based on the number of patients she evaluated (Tr. 414- 417, 463). Respondent Morris hired chiropractor Claude Weinberg ("Chiropractor" or "Chiropractor Weinberg") who brought his patients to the East Meadow practice (Tr. 272, 278, 280; Ex. 3).

3. Respondent Morris and Dr. Weinberg recorded the required information for patient insurance claims on a document referred to as a "super bill" (Tr. 276-278). A super bill contains the required information for submitting an insurance claim including: patient name, diagnosis, medical service, and the identity of the health care provider who rendered the particular service (Tr. 276).

4. Respondents and Chiropractor Weinberg used the exact same pre-printed "super bill" form which identified approximately 80 different medical services with the corresponding American Medical Association Current Procedure Terminology Code ("CPT code"), and there are only four CPT codes for chiropractic services (Ex. 4; Tr. 44-46). The majority of services provided by Respondents were chiropractic manipulations performed by Chiropractor Weinberg, and none of the four chiropractic CPT codes were listed on the Respondents' pre-printed "super-bill" and there was no designated space where either Respondent Morris or Chiropractor Weinberg could add the chiropractic CPT codes (Ex. 5 –15; Tr. 46-48, 69-71, 278-280).

5. Respondents were not participating providers in the United Health Care Empire Plan ("Empire Plan"), Patients A through K were being treated "out-of network," and Respondents continually sent the pre-printed "super bills" for these patients to their billing agent who electronically submitted claims to the Empire Plan for processing and reimbursement (Ex.16 & 26; Tr.287). Regardless of whether only chiropractic services were provided Respondents used physician/ medical CPT codes

exclusively, and continued this practice after being told by their billing agent that Respondents must use chiropractic CPT codes when billing for chiropractic services (Tr. 123-128, 298-299).

6. The Empire Plan offers limited chiropractic benefits and does not approve or reimburse for ongoing chiropractic treatment of a chronic condition (Tr. 76-77). Over a three-year period, the insurance company unwittingly paid out more than $50,000.00 for hundreds of East Meadow chiropractic service visits including: Patient B - 116 visits, Patient F- 122 visits, Patient H-250 visits, Patient I - 170 visits, and Patient K - 110 visits (Ex. 6, 10,12, 13,16 & 26; Tr. 49, 54, 71-73).

7. Respondents produced and maintained "cookie cutter" records for Patient A through N that all contained inadequate patient information and orders for continuous chiropractic treatments (Ex. 5-15).

PATIENT D

8. On three occasion between January 24, 2008 through January 31, 2008, Patient D was treated by Chiropractor Weinberg and was never evaluated by Respondent Morris (Ex. 8; Tr. 177-179, 184-186).

9. Respondent Morris admits that she never evaluated Patient D and the notes and findings on the physician evaluation dated January 24, 2008 are all in her handwriting, and her written signature appears at the bottom of the page (Tr. 421-422; Ex.8).

10. On or about September 1, 2003, Respondent commenced employment pursuant to a one-year contract as an Assistant Professor at the New York College of Osteopathic Medicine ("NYCOM"). Respondent's primary responsibilities were providing patient care in a clinical setting and secondarily teaching and supervising medical students (Ex. 17, Tr. 272).

11. In 2003, Thomas Scandalis, D.O. was the Chair of the Department of Family Practice at New York College of Osteopathic Medicine and Respondent Morris's supervisor, and he received

complaints about Respondent's patient care, patient billing, supervision of medical students and overall professionalism (Tr. 212-213, 240-242).

12. One evening in the fall of 2003, Respondent Morris telephoned Dr. Scandalis at his home and she expressed concerns about her future with NYCOM (Tr. 214-219).

13. On November 12, 2003, after an investigation of the complaints made regarding Respondent Morris, Dr. Scandalis relieved the Respondent of all her clinical and teaching responsibilities (Tr. 253-256; Ex.28).

14. On November 19, 2003, Dr. Scandalis and NYCOM Dean Barbara Ross -Lee called Respondent to a meeting with the intent to explain the reasons they were terminating Respondent's employment, however, at the outset of the meeting Respondent Morris tendered her resignation, which was accepted by NYCOM, and the meeting ended (Tr. 221, 236-237).

15. On or about January 22, 2004, Respondent Morris applied for a position as a physician at St Vincent's Midtown Hospital, New York, New York. In the written employment application Respondent was asked to list her professional history in chronological order and omitted the NYCOM position. The same application contained a question asking: "*Have you ever been terminated or forced to resign from a clinical position or have you ever resigned voluntarily while under investigation or threat of sanction?*" to which the Respondent answered "*No*" (Ex. 21).

16. On or about May 14, 2007, Respondent Morris submitted an employment application to the Beth Israel Medical Center and answered "No" to the following question: *"Have your medical/dental staff appointment/employment status or clinical privileges in any hospital or health care facility ever been ... voluntarily relinquished, discontinued or other wise denied?"* (Ex. 20).

17. Respondent Morris filed a New York State Medical License Registration renewal application dated September 21, 2004, and she answered "No" to the following question *"Has any hospital or*

licensed facility restricted or terminated your professional training, employment, or privileges, or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid the imposition of such action due to professional misconduct, unprofessional conduct, incompetence, or negligence?" (Ex.19).

18. On August 1 & 10, 2007, Respondent Morris attended meetings at St. Vincent's Midtown Hospital in which she was asked to respond to allegations that she had improperly altered medical charts (Ex. 29). In a letter dated August 28, 2007, Sister Jane Iannucelli, S.C., Hospital President, and Dr. John Marino, Hospital Medical Director, advised Respondent Morris that her privileges and employment have been terminated (Ex. 22). The termination letter was sent by certified mail and Federal Express, to her home address, 350 West 53rd Street (Penthouse D), New York, New York 10019, and the letter sent by certified mail was returned to sender "unclaimed" and the copy sent by Federal Express was returned to sender "refused by recipient " (Ex. 22 & 31; Tr. 364).

19. On August 23, 2007, Respondent Morris retained the services of an attorney, Stephen Bosin, she and Mr. Bosin compiled an employment "history" and included it with a letter dated August 27, 2007 to the General Counsel of the Hospital, Thomas Hoering, Esq. (Ex. 29 & 30). Mr. Bosin threatened to litigate the matter, if the Hospital did not offer Respondent a severance package and expunge her employment record of any and all references to the investigation (Ex.30).

20. On or about November 18, 2008, Respondent Morris submitted an application for reappointment to the medical staff at Beth Israel Medical Center and Respondent answered "No" to a question regarding whether in the past five years her hospital staff membership had ever been terminated (Ex. 24).

21. On or about November 20, 2009, Respondent Morris renewed her New York State Medical License Registration "on-line" and she answered "No" to a question about whether any hospital or licensed facility restricted or terminated her employment and or privileges (Tr. 466-467; See Ex. 2).

CONCLUSIONS OF LAW

East Meadow Medical Services P.C. was authorized by the New York Department of State as a professional service corporation and is a duly named Respondent in this proceeding, and East Meadow Medical Services P.C.'s certificate of incorporation shall be subject to suspension, revocation or annulment for cause as is provided for with respect to Respondent Morris in this proceeding (See Business Corporation Law Section 1503).

Both Respondents and Petitioner were provided with a copy of the General Counsel's memorandum outlining the definitions of misconduct ("Greenberg Memorandum" or "Memorandum") and given an opportunity to supplement the explanations and case law set forth in the Memorandum, neither the Respondents nor the Petitioner offered supplementation. During the deliberations, the Hearing Officer instructed the Committee that pursuant to the Education Law and Memorandum, in order to make a finding that Respondent(s) perpetrated a fraud they must first find that the Respondent(s) *knowingly* provided false information, *and* they also must both find and articulate the basis for drawing the inference that the Respondent(s) intended to mislead and perpetrate a fraud (See Greenberg Memorandum-ALJ 1A).

DISCUSSION

The Hearing Committee's conclusions were unanimous and based on the entirety of the record including testimony of the Department's witnesses and Respondent, and the documentary evidence introduced at the hearing. The Department has the burden of proof and must establish by a preponderance of evidence that the Respondents are guilty as charged. The Hearing Committee made a credibility determination about the witnesses and found all of the Department's witnesses to be credible noting that their testimony was supported by the record and each witness had little or nothing to gain by their appearance at the proceeding.

The Committee found Respondent Morris lacked credibility in that for the most part her testimony was contradicted and/ or not supported by the record. Respondent Morris also failed to present any of the witnesses promised at the outset of the hearing to corroborate her testimony. While the Committee recognized that Respondent Morris found herself in business with an untrustworthy employee and involved in a number of personnel situations that were not well handled by her employers, they found Respondent's self portrayal as an unwitting victim of Chiropractor Weinberg and her employers simply not credible. It was evident to the Committee that Respondent Morris is a driven and resourceful person who clearly understood that there were serious issues regarding the operation of her professional service corporation East Meadow Medical Services P.C. and her separation from employment at New York College of Osteopathic Medicine and St. Vincent's Midtown Hospital.

Allegations of Fraudulent Practice, Failure to Maintain Patient Records, False Billing Regarding Patients A through K by Respondents Morris and East Meadow

The Department's witness Michael Stephano an insurance representative from United Health Care Empire Plan ("Empire Plan" or "insurance company") provided straightforward

testimony about insurance reimbursement, billing codes, and Respondents' records. The Empire Plan pays substantially more for physician/medical services than it does for chiropractic services, offers only limited chiropractic benefits, and will not approve ongoing chiropractic treatment for a chronic condition. Because Respondents provided extensive chiropractic services for Patients A through K that were exclusively billed as physician/medical services, the insurance company paid for hundreds of East Meadow chiropractic treatments. Mr. Stephano testified that if the hundreds of claims submitted for the eleven East Meadow patients' were properly billed as chiropractic services, he was certain that the insurance company would not have paid the vast majority of the claims.

The Department's second witness Patient D, is a government attorney, who testified that he had suffered from lower back pain. On three occasions in January 2007, he received chiropractic treatments from Chiropractor Claude Weinberg at East Meadow. Patient D's insurance bill showed that he received services from Respondent Morris, however, he testified that she did not provide him with an evaluation. Patient D testified that Respondent Morris called him and acknowledged that she did not evaluate him and told him a mistake was made by a clerk in her office.

Respondent Morris testified that prior to establishing East Meadow she worked in a clinic setting for a number of years, and it is there that she met chiropractor Claude Weinberg. In 2003, they entered into what Respondent described as a small private practice arrangement East Meadow Medical Services P.C, where Respondent Morris was the sole owner and physician in charge of the professional service corporation and Chiropractor Weinberg was her employee. Respondent Morris testified that she worked on a part time basis at East Meadow performing physician assessments for chiropractic services. She drew a fixed salary for her work regardless

of the number of patients she saw any given week. Initially, the Chiropractor was in charge of the operation of East Meadow because he brought his patients to the practice and he provided the majority of the East Meadow services. Respondent Morris testified that on or about 2005 she discovered that the Chiropractor had not been paying required State and Federal taxes for East Meadow, and $18,000.00 was missing from the East Meadow bank account (Tr. 289). Respondent Morris testified that she continued the East Meadow practice with the Chiropractor so they could make money to pay the back taxes, however, at this point Respondent Morris took "control" over the East Meadow bank account and reviewed the bills (Tr. 294-296). Respondent Morris testified that in 2005 or sometime thereafter, a billing agent named "Rob" who reviewed the East Meadow "super bills" warned Respondent Morris that East Meadow could not use physician/medical billing CPT codes for chiropractic services (Tr. 296-298). Respondent Morris said she did not change the billing practices because the Chiropractor told her that his brother who was an attorney said East Meadow could bill using physician/medical codes for chiropractic services. Finally, Respondent Morris testified that while she was aware of and in fact contacted Patient D to tell him that a clerical "mistake" was made by East Meadow and she knows she did not examine him, she did not investigate whether this was an isolated "mistake."

The Committee found Respondent Morris's claim that she and East Meadow were unwitting victims of Chiropractor Weinberg was simply not credible. The Committee found that Respondents had ample evidence that the Chiropractor was an untrustworthy business associate when they discovered in 2005 that the Chiropractor failed to pay taxes on behalf of East Meadow and without permission took $18,000.00 out of the East Meadow account. The Committee drew strong inferences of Respondents intentions to perpetrate fraud from Respondent Morris's active choice to continue to employ the Chiropractor. Further, Respondents' produced "cookie

cutter" patient records for the eleven patients that all showed little or no variation and contained orders for ongoing chiropractic services. Finally, despite the fact that the majority of services provided by East Meadow were chiropractic manipulations and Respondents were told by their billing agent that chiropractic services should be billed using chiropractic CPT codes, they continued to use the pre printed "super bill" with its exclusive list of physician/medical CPT codes and billed in excess of $50,000 worth of chiropractic services using only physician/ medical CPT codes, and if properly billed the insurance company would not have paid the vast majority of the chiropractic service claims.

Based on the foregoing, the Committee found that Respondents actively engaged in fraudulent practice, willfully made and filed false reports in violation of State law, and failed to maintain records that accurately reflect the care and treatment of each of the eleven patients.

Resignation from NYCOM by Respondent Morris

Dr. Scandalis, who supervised Respondent Morris at NYCOM in 2003, provided highly credible testimony about the events that lead to the November 19, 2003 meeting where Respondent tendered her resignation. While the Committee found it somewhat disconcerting that NYCOM did not extensively document evaluations, meetings, and the findings leading to the anticipated termination of Respondent Morris, the Committee found Dr. Scandalis honestly recounted what he could or could not recall of events leading to Respondent' s resignation from NYCOM. Dr. Scandalis testified about a telephone conversation he had with Respondent explicitly stating that he remembered receiving the call because the Respondent contacted him at home fairly late one evening expressing concern about her standing at NYCOM. He also testified that he had received complaints about Respondent Morris and after

an investigation ultimately made a decision to take away Respondent's clinical and teaching responsibilities. Dr. Scandalis testified that he relieved Respondent of her duties on November 12, 2003, and while he did not specifically recall how he notified Respondent his custom and practice is to have a face-to-face meeting. Dr. Scandalis testified that he and the Dean of NYCOM, Barbara Ross –Lee agreed that they would meet with the Respondent on November 19, 2003 and discuss the reasons why NYCOM was terminating Respondent's employment. Dr. Scandalis recalled that the meeting was brief because at the outset of the meeting Respondent Morris submitted her letter of resignation. He recalled that Respondent appeared to be "relieved" when the resignation letter was accepted by NYCOM. Dr. Scandalis provided powerful testimony about why he believes Respondent Morris resigned in anticipation of being fired stating that "[w] hen a physician's privileges are withdrawn to be able to see patients and oversee students, and .. her complete responsibilities are pulled away, and she then has a meeting with the Dean and the Department Chair, and based also on her concerns and the phone call, it is my opinion she felt she would be terminated at that point, and she was allowed to resign, and this letter was accepted as a termination in lieu of her termination from NYCOM" (Tr. 236).

Respondent Morris confirmed that she did call Dr. Scandalis at his home one evening; however, she said she called to tell him that she was unhappy with the demands of the position. Further, Respondent Morris testified that she was never relieved of her duties at NYCOM, and described the November 19, 2003 meeting as amicable stating that after she resigned the Dean gave her a hug and wished her well. Finally, Respondent Morris testified that she had no idea she was about to be fired because just days before her resignation she received a letter of recommendation from a prominent NYCOM physician, and shortly after resigning from NYCOM she was chosen to serve on a Board with NYCOM representatives.

The Committee found that Respondent Morris willfully concealed her work history and the circumstances under which she separated from NYCOM. They inferred her intent to conceal and misrepresent her work history from her failure to list NYCOM in her chronological work history on an employment application. For the following reasons the Committee found Respondent Morris knew she was about to be fired from NYCOM including that: Respondent was relieved of all her clinical and teaching responsibilities, one week after being relieved of her responsibilities she was called to attend a meeting with her supervisor and the Dean of the College, and Respondent had prepared and offered a letter of resignation. Finally, while Respondent admits that she resigned from NYCOM, she failed to disclose it even when she was specifically asked in part whether she ever "*voluntarily resigned*" from a clinical position.

Termination of Respondent's Employment from St. Vincent's Midtown Hospital

The Department also alleged that Respondent Morris failed to disclose her termination of employment from St. Vincent's Midtown Hospital. In April 2004, Respondent Morris commenced a full time position as the Medical Director of the St. Vincent's Midtown Methadone Maintenance Treatment Program. On or about July 2007, St. Vincent's Midtown Hospital ("St. Vincent's or Hospital ") personnel audited the Respondent's charts and the Hospital concluded that Respondent had improperly altered medical records and called Respondent Morris to meetings on August 1, 2007 and August 10, 2007 to discuss the matter. Further, the Department produced a "termination letter" dated August 28, 2007, from the Hospital President and Hospital Medical Director, to Respondent Morris advising her that her privileges and employment had been terminated for "falsification of medical records." The termination letter was sent to Respondent Morris by both certified mail and Federal Express, to

her home address, and the letter sent by certified mail was returned to the sender "unclaimed" and the copy sent by Federal Express was returned to sender "refused by recipient." On August 23, 2007, Respondent Morris retained the services of an attorney, Stephen Bosin, Esq. ("Attorney") to represent her in an employment action against the Hospital, and Respondent Morris and the Attorney compiled a history of her employment issues at St. Vincent's. In a letter to the Hospital dated August 27, 2007, which included the history, the Attorney threatened to bring litigation against the Hospital if Respondent Morris did not receive a severance package and any and all references to an investigation for falsification of medical records were not expunged from her employment record.

Respondent Morris testified that the Hospital was closing and everyone was being let go from the Hospital (Ex. E). Respondent stated that when the Hospital termination letter came she was on vacation, and while she lived in a building with a doorman who customarily receives packages, mail and dry cleaning for the tenants; she did not receive the letter. Respondent testified that she did hire Mr. Bosin and that she assisted him in preparing the history regarding her employment at St.Vincent's. While Respondent Morris did acknowledge that St. Vincent's terminated her for cause, she testified that she did not recognize the termination as valid because proper procedures had not been followed, and for this reason she denied having been terminated for cause.

The Committee found that Respondent knew she was terminated for cause. Unlike the record concerning her separation from NYCOM, the Respondent's termination from St. Vincent's is well-documented including Respondent's efforts to overturn the Hospital's decision to terminate her for cause. Respondent's contorted explanation about what she knew when, and

why she misrepresented that she had been terminated were wholly unacceptable to the Committee.

CONCLUSIONS

The Committee found that from the outset Respondent Morris was conveniently and grossly inattentive to the operation of Respondent East Meadow. Respondents continued to: employ the Chiropractor, use and submit the pre printed "super bill" forms that contained only the reimbursable and lucrative physician/medical CPT codes, and produce and maintain "cookie cutter" patient records with recommendations for ongoing chiropractic services. The misrepresentations made by Respondent Morris on employment, credentialing and licensure applications about her resignation from NYCOM and her termination from St Vincent's serve as further evidence that she will misrepresent the truth for her own benefit.

Based on the foregoing the Hearing Committee sustained all the Factual Allegations set forth in Paragraphs A though P and the First though Thirty-Eighth Specifications of misconduct as set forth in the Amended Statement of Charges (Ex.1). The Hearing Committee found based on a preponderance of the evidence that the Respondents conduct constitutes fraudulent practice, willfully making or filing a false report, failing to comply with state law, failure to maintain a record for a patient which accurately reflects the care and treatment of a patient, and in addition Respondent Morris's overall conduct constitutes moral unfitness pursuant to Education Law Section 6530(2), (21), (16), (32) and (20) respectively (Ex. 1).

DETERMINATION AS TO PENALTY

Respondent Morris used Respondent East Meadow as a vehicle for creating and filing false reports, insurance fraud in violation of State Law, fraudulent practice of medicine, and

failing to maintain records that accurately reflect the care and treatment of a patient. Respondent Morris expressed no remorse and took no responsibility for her actions, and throughout the hearing maintained that she was a victim of circumstance. Respondents' actions impact all patients in New York State adding to the ever-burgeoning cost of health care.

As a physician licensed to practice medicine in New York State, Respondent Morris must be held to the highest ethical standards and it is clear to the Committee that Respondent Morris repeatedly failed to meet these obligations in the operation of East Meadow and by omitting and/or misrepresenting her employment history. However, the Committee did note that while this case involves eleven patients, the Department did not charge Respondent Morris with any specifications involving "hands on" patient care issues and believes that given time to reflect Respondent Morris will take responsibility for her actions, and benefit from working in a supervised setting where she will be primarily responsible for practicing medicine and not running a "business."

After due and careful consideration of the penalties available pursuant to Public Health Law Section 230-a, the Hearing Committee has determined that in order to protect the public the certificate of incorporation for Respondent East Meadow Medical Services P.C. shall be revoked, and the medical license of Respondent Morris shall be *suspended* for one year and during this time she shall complete approved courses in record keeping and ethics, and once Respondent Morris resumes practice she shall be on probation for a period of three-years and during this time shall only practice in an Article 28 facility. The specific terms of probation are attached and made part of this decision and order and marked as Appendix A.

ORDER

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

1. All the Factual Allegations set forth in Paragraph A though P, and the First through Thirty–Eighth Specifications of misconduct as set forth in the Statement of Charges (Ex.1) are **SUSTAINED;**

2. Respondent East Meadow Medical P.C's certificate of incorporation shall be REVOKED;

3. Respondent Morris's license to practice medicine in New York State is hereby **SUSPENDED** for a period of one year. The Respondent shall not resume practice until she successfully completes a record keeping and ethics course approved by the Board of Professional Medical Conduct ("Board"), and shall be on probation for a period of three years. During the three -year probationary period the Respondent shall work in an Article 28 facility. The specific terms of probation are attached and incorporated herein, and marked as Appendix B.

4. This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law Section 230(10)(h).

Pelham Manor, New York
DATED: December 14, 2010

REDACTED
BY: _____
FRANK IAQUINTA M.D Chairperson
WILLIAM BISORDI M.D.
MICHAEL COLON ESQ.

To: Sherry Morris D.O. and East Meadow Medical Services P.C.
REDACTED

Jeffrey Hoffman, Esq.
HOFFMAN & POLLOK, LLP
260 Madison Avenue
New York, New York 10016

Daniel Guenzburger, Esq. and Anna R. Lewis, Esq.,
NYSDOH -Bureau of Professional Medical Conduct
90 Church Street
New York, New York 10007

APPENDIX A
Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. Respondent shall fully cooperate with and respond in a timely manner to request from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. 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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].

5. The Respondent shall be on probation for a period of three years. The three-year period of probation ("period of probation") shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

7. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Within thirty (30) days of the effective date of the period of probation and for the entire three-year period of probation (this period shall toll when and if the Respondent is not practicing) Respondent shall only practice medicine in an Article 28 facility when monitored by a licensed physician ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.

   a. Respondent shall make available to the practice monitor any and all records or access to the practice requested by the monitor, including on-site clinical observation.

   b. The practice monitor shall on a random unannounced basis at least monthly examine a selection (no less than one dozen) of the records maintained by Respondent including patient: evaluation, prescribing, testing and diagnostic information. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

   c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.

   d. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC and shall submit no less than twelve (reports).

9. Respondent shall maintain medical malpractice insurance coverage with limits no less than $2 million per occurrence and $6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

APPENDIX 1

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

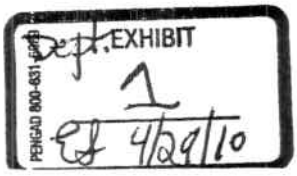
IN THE MATTER OF SHERRY MORRIS, D.O. and EAST MEADOW MEDICAL SERVICES, P.C.	AMENDED STATEMENT OF CHARGES

SHERRY MORRIS, D.O., the Respondent, was authorized to practice medicine in New York State on or about May 23, 1996, by the issuance of license number 203118 by the New York State Education Department.

EAST MEADOW MEDICAL SERVICES, P.C., Respondent, was authorized as a professional service corporation by the New York State Department of State in or about April 25, 2003. Respondent SHERRY MORRIS, D.O. ("Respondent Morris') is an officer and shareholder of East Meadow Medical Services, P.C. ("Respondent East Meadow".)

FACTUAL ALLEGATIONS

A. At all times relevant to the Statement of Charges, Patients A through K were evaluated and treated by Respondent Morris and by a chiropractor, Claude Weinberg, D.C., at 34 Booth Lane, East Meadow, New York. In or about and between 2004 and August 2008, Respondent Morris, through her professional service corporation, Respondent East Meadow, submitted and/or caused to submit insurance claims to the United Healthcare, Empire Plan ("Empire Plan") for physician services allegedly performed on multiple dates when the only service provided was chiropractic treatment At all times relevant to the Statement of Charges, Respondent East Meadow



neither submitted nor caused to submit insurance claims for chiropractic services. (Patients A through K are identified in Appendix A.)

On or about and between March 2006 and July 2008 Patient A had eighty-five (85) visits with Claude Weinberg, D.C. and ten (10) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire plan for dates on which the only service rendered to Patient A was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were physician office visits, reported as either CPT code # 99204 or CPT code #99212. Respondents intended to deceive.

B. In or about and between March 2006 and June 2008 Patient B had ninety-four (94) visits with Claude Weinberg, D.C. and nine (9) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to Patient B was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were physician office visits, reported as either CPT code # 99204 or CPT code #99212. Respondents intended to deceive.

C. In or about and between February 8, 2005 and May 31, 2008 Patient C had forty (40) visits with Claude Weinberg, D.C. and twelve (11) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to Patient C was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were

physician office visits, reported as either CPT code # 99204 or CPT code #99212, or osteopathic manipulations, reported as CPT code # 99825. Respondents intended to deceive.

D. On or about and between January 24, 2008 and January 31, 2008, Claude Weinberg, D.C. treated Patient D on three occasions. Respondent Morris did not evaluate or treat the Patient. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to Patient D was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were physician office visits, reported as either CPT code # 99204 or CPT code #99212. Respondents intended to deceive.
2. Knowingly and falsely represented in a "Narrative" report dated January 24, 2008 that Respondent Morris had evaluated the patient, when, in fact, Respondent Morris knew that she had not done so. Respondents submitted the "Narrative Report" to the Empire Plan and to the OPMC. Respondents intended to deceive.
3. Failed to maintain a record that accurately reflected the evaluation and treatment of the Patient.

E. On or about and between April 19, 2005 and May 8, 2008, Patient E had twenty-eight (28) visits with Claude Weinberg, D.C. and eight (8) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to Patient E was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were either physician office visits, reported as CPT code # 99204 or CPT code

#99212, or osteopathic manipulations, reported as CPT code # 99825. Respondents intended to deceive.

F. On or about and between March 23, 2005 and June 3, 2008 Patient F had one-hundred and nine(109) visits with Claude Weinberg, D.C. and eleven (11) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to Patient F was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were physician office visits, reported as either CPT code # 99204 or CPT code #99212, or osteopathic manipulations, reported as CPT code # 99825. Respondents intended to deceive.

G. On or about and between April 5, 2005 and May 31, 2008 Patient G had sixty-seven (67) visits with Claude Weinberg, D.C. and fifteen(15) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to Patient G was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were either physician office visits, reported as CPT code # 99204 or CPT code #99212, or osteopathic manipulations, reported as CPT code # 99825. Respondents intended to deceive.

H. On or about and between January 2005 and June 5, 2008, Patient H had two hundred and twenty-two (222) visits with Claude Weinberg, D.C. and sixteen (16) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to

Patient H was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were either physician office visits, reported as either CPT code # 99204 or CPT code #99212, or osteopathic manipulations, reported as CPT code # 99825. Respondents intended to deceive.

I. On or about and between January 2005 and June 5, 2008 Patient I had one hundred and forty-nine (149) visits with Claude Weinberg, D.C. and eighteen (18) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to Patient I was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were either physician office visits, reported as CPT code # 99204 or CPT code #99212, or osteopathic manipulations, reported as CPT code # 99825. Respondents intended to deceive.

J. On or about and between March 16, 2005 and June 21, 2008 Patient J had one hundred and thirty-eight (138) visits with Claude Weinberg, D.C. and eighteen (18) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to Patient I was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were either physician office visits, reported as CPT code # 99204 or CPT code #99212, or osteopathic manipulations, reported as CPT code # 99825. Respondents intended to deceive.

K. On or about and between April 5, 2005 and June 12, 2008 Patient K had one hundred and three(103) visits with Claude Weinberg, D.C. and sixteen (16) office visits with Respondent Morris. With respect to insurance claims submitted to the Empire Plan for dates on which the only service rendered to Patient K was chiropractic, Respondent Morris and Respondent East Meadow:

1. Knowingly and falsely represented that the encounters were either physician office visits, CPT code # 99204 or CPT code #99212, or osteopathic manipulations, CPT code # 99825. Respondents intended to deceive.

L. Respondents Morris and East Meadow failed to comply with substantial provisions of state law governing the practice of medicine in that on multiple occasions the Respondents willfully and/or gross negligently violated Penal Law § 176. (Insurance Fraud) by falsely billing the Empire Plan for physician office visits when the actual service provided was chiropractic treatment.

M. Respondent East Meadow failed to maintain records that accurately reflect the evaluation and treatment of Patients A through K.

N. On or about September 1, 2003, Respondent Morris entered into a one year employment contract as an assistant professor in the Department of Family Medicine at the New York College of Osteopathic Medicine, Old Westbury, New York ("NYCOM"). On November 12, 2003, the NYCOM relieved Respondent Morris of her clinic and teaching responsibilities based on preliminary findings from an investigation of complaints from both patients and medical students. On or about November 19, 2003, Respondent Morris submitted her resignation. Respondent concealed, with the intent to deceive, that she had resigned from the

NYCOM while under hospital investigation and/or threat of sanction, on the following applications:

1. Beth Israel Medical Center Application dated May 14, 2007.
2. New York State Medical License Registration Renewal Application dated September 21, 2004.
3. St. Vincent's Midtown Hospital Application dated January 22, 2004.

O. On or about November 20, 2009, Respondent Morris renewed her medical license registration "on-line" with the Office of the Professions of the New York State Department of Education. On the registration renewal application the Respondent was asked if any hospital or licensed facility restricted or terminated her employment and/or privileges.

1. Respondent knowingly and falsely represented that no hospital or licensed facility had terminated her employment and/or privileges, when, in fact, on or about August 28, 2007 the Saint Vincent's Midtown Hospital, 415 West 51th Street, New York, New York. ("St. Vincent's") terminated Respondent's employment and privileges. Respondent intended to deceive.

P. On or about November 18, 2008, the Respondent submitted an application for reappointment to the medical staff of Beth Israel Medical Center, New York, New York. In response to an inquiry on the application, Respondent

1. Knowingly and falsely represented that her hospital staff membership not been terminated within the past 5 years, when, in fact, she knew that St Vincent's Midtown Hospital terminated her hospital membership in or about August 28, 2007. Respondent intended to deceive.

SPECIFICATION OF CHARGES

FIRST THROUGH SEVENTEENTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondents Morris and East Meadow are 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:

1. A and A1.
2. B and B1.
3. C and C1.
4. D and D1.
5. D and D2.
6. E and E1.
7. F and F1.
8. G and G1.
9. H and H1.
10. I and I1.
11. J and J1.
12. K and K1.
13. N and N1.
14. N and N2.
15. N and N3.
16. O and O1.
17. P and P1.

EIGHTEENTH THROUGH THIRTY-FOURTH SPECIFICATIONS

FALSE REPORT

Respondents Morris and East Meadow are 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:

18. A and A1.
19. B and B1.
20. C and C1.
21. D and D1.
22. D and D2.
23. E and E1.
24. F and F1.
25. G and G1.
26. H and H1.
27. I and I1.
28. J and J1.
29. K and K1.
30. N and N1.
31. N and N2.
32. N and N3.
33. O and O1.
34. P and P1.

THIRTY-FIFTH SPECIFICATION

FAILING TO COMPLY WITH STATE LAW

Respondents Morris and East Meadow are charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16) by their wilful and/or grossly negligent failure to comply with substantial provisions of state law governing the practice of medicine, as alleged in the facts of:

35. L.

THIRTY-SIXTH SPECIFICATION

MORAL UNFITNESS

Respondents Morris 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:

36. A, A1, B, B1, C, C1, D, D1, D2, E, E1, F, F1, G, G1, H, H1, I, I1, J, J1, K, K1, N, N1, N2, N3, O, O1, P and/or P1.

THIRTY-SEVENTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent East Meadow is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

37. M.

THIRTY-EIGHTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent Morris is charged with committing professional misconduct as

defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

38. D and D3.

DATE: April 28, 2010
New York, New York

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct