New York State Board for Professional Medical Conduct
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Public

Richard F. Daines, M.D.
Commissioner
NYS Department of Health
James W. Clyne, Jr.
Executive Deputy Commissioner
Keith W. Servis, Director
Office of Professional Medical Conduct

Kendrick A. Sears, M.D.
Chair
Carmela Torrelli
Vice Chair
Katherine A. Hawkins, M.D., J.D.
Executive Secretary

November 29, 2010

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Richard J. Rizzuti, M.D.

REDACTED

Re: Elmont Open MRI & Diagnostic Radiology, P.C.

Dear Dr. Rizzuti:

Enclosed please find Order BPMC #241 issued by the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect December 6, 2010.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Gregory J. Naclerio, Esq.
Ruskin, Moscou, Falitschek, P.C.
East Tower, 15th Floor
1425 RXR Plaza,
Uniondale, NY 11558-1425

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

IN THE MATTER

OF

RICHARD J. RIZZUTI, M.D.

&

ELMONT OPEN MRI & DIAGNOSTIC RADIOLOGY P.C.

CONSENT

ORDER

BPMC No. #10-241

Upon the application of (Respondent) ELMONT OPEN MRI & DIAGNOSTIC RADIOLOGY P.C. (certificate of incorporation filed on 12/11/96) 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 and conditions are adopted, to wit:

ELMONT OPEN MRI & DIAGNOSTIC RADIOLOGY, P.C. shall completely cease the active practice of rendering the professional service of medicine. Respondent ELMONT OPEN MRI & DIAGNOSTIC RADIOLOGY, P.C. shall not be precluded, by this Order, from collecting account receivables for medical services rendered prior to the effective date of this Order; 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 Richard J. Rizzuti, M.D., an officer/shareholder of Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Richard J. Rizzuti, M.D., or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 11/22/10

REDACTED

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

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

IN THE MATTER

OF

RICHARD J. RIZZUTI,M.D.
&
ELMONT OPEN MRI AND DIAGNOSTIC RADIOLOGY P.C.

CONSENT AGREEMENT AND ORDER

RICHARD RIZZUTI, M.D., individually and on behalf of ELMONT OPEN MRI AND DIAGNOSTIC RADIOLOGY, P.C., represents that all of the following statements are true:

That on or about July 1, 1969, I was licensed to practice as a physician in the State of New York, and issued License No. 103871 by the New York State Education Department. I am an officer/shareholder of ELMONT OPEN MRI AND DIAGNOSTIC RADIOLOGY, P.C. ("ELMONT P.C.")

My current address is REDACTED , and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one specification of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I agree not to contest the specification of misconduct, in full satisfaction of the charges against me and ELMONT P.C. and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.

Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of fifteen thousand dollars ($15,000.00) to be paid in full within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1717
Albany, New York 12237

Pursuant to N.Y. Pub. Health Law § 230-a(3), my license to practice medicine in New York State shall be limited:

X To preclude ownership in any type of physician business entity authorized by the New York Department of State; and

X To preclude practice in any medical office or facility where a substantial portion of the income of the office or facility, defined as greater than fifty per cent, is derived from no-fault and workers compensation insurance.

Pursuant to Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of three years subject to the terms set forth in attached Exhibit "B."

by October 30, 2010

I agree that Respondent ELMONT OPEN MRI & DIAGNOSTIC RADIOLOGY, P.C. shall completely cease the active practice of rendering the professional service of medicine. However, Respondent ELMONT OPEN MRI & DIAGNOSTIC RADIOLOGY, P.C. shall not be precluded from collecting account receivables for medical services rendered prior to the effective date of this order.

I further agree that the Consent Order shall impose the following

conditions:

That Respondent shall terminate his professional relationship, as Medical Director with All County. LLC, a facility licensed pursuant to Article 28 of the Public Health Law.

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning

Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

That Respondent shall on an ongoing basis provide the Director of OPMC with evidence, to the satisfaction of the Director, of Respondent's compliance with the License Limitation imposed by this Consent Order.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to N.Y. Pub. Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree 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 agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 10/12/10

REDACTED

RICHARD J. RIZZUTI, M.D.
individually and on behalf of
ELMONT OPEN MRI & DIAGNOSTIC
RADIOLOGY, P.C.
RESPONDENTS

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: Oct 8, 2010

REDACTED

GREGORY J. NACLERIO, ESQ.
Ruskin, Moscou, Evans & Faltischek, P.C.
Attorney for Respondents

DATE: October, 15, 2010

REDACTED

DANIEL GUENZBURGER
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/8/10

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

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

IN THE MATTER

OF

RICHARD J. RIZZUTI, M.D.

&

ELMONT OPEN MRI AND DIAGNOSTIC RADIOLOGY, P.C.

STATEMENT

OF

CHARGES

RICHARD J. RIZZUTI, M.D., the Respondent, was authorized to practice medicine in New York State on or about July, 1 1969 by the issuance of license number 103871 by the New York State Education Department.

ELMONT OPEN MRI AND DIAGNOSTIC RADIOLOGY, P.C., Respondent, is a professional service corporation authorized by the New York State Secretary of State in or about December 11, 1996. Respondent Richard J. Rizzutti is an officer/shareholder of the professional service corporation.

FACTUAL ALLEGATIONS

A. In or about and between November 2004 and September 2007, Respondent Rizzuti evaluated MRI studies of the spine for the five patients listed in the annexed appendix. On at least two occasions Respondent deviated from medically standards by:

1. Over-interpreting an MRI study.

SPECIFICATION OF CHARGES

SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

1. A and A1.

DATE: October 15, 2010
New York, New York

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Terms of Probation for Respondent Rizzuti

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).

2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.

3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.

4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.

5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].

6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.

8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.

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

10. Payment of the fine imposed is also a term of probation. The fine is payable in full within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1717
Albany, New York 12237

PRACTICE MONITOR

11. Within thirty days of the Consent Order's effective date, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

    a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. 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.

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

    c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.

    d. 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.

12. Respondent shall enroll in and complete a continuing education program in the area of diagnostic radiology. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first 90 days of the probation period.

13. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of

noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.