

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PEOPLE OF THE STATE OF NEW YORK, by
ELIOT SPITZER, Attorney General of the State of
New York,

Petitioner,

– against –

PARK AVENUE PLASTIC SURGERY, P.C.;
PARK AVENUE PLASTIC SURGERY, P.L.L.C.;
and DAVID HAIM OSTAD, Individually and as
Owner and Operator of Park Avenue Plastic
Surgery, P.C. and Park Avenue Plastic Surgery,
P.L.L.C.,

Respondents

VERIFIED PETITION

Index No. _____

TO: THE SUPREME COURT OF THE STATE OF NEW YORK

The People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York, allege upon information and belief:

INTRODUCTION

1. Petitioner brings this special proceeding pursuant to Executive Law § 63(12), General Business Law (“GBL”) Article 22-A, and Education Law § 6530 seeking to (1) enjoin the illegal, fraudulent and deceptive conduct of Respondents in failing to deliver on promises to provide medical services, including plastic surgery and other cosmetic procedures, to consumers who paid for such services, (2) recover restitution and damages for eligible consumers, (3) enjoin Respondents from engaging in any business dealing with consumers until a \$200,000 performance bond is filed with the Attorney General, and (4) recover penalties and costs, as authorized by statute.

2. Respondents David Haim Ostad (“Ostad”), Park Avenue Plastic Surgery, P.C. and Park Avenue Plastic Surgery, P.L.L.C. accepted pre-payment for medical services, including plastic surgery and other cosmetic procedures, from certain consumers, but did not provide such services and have not provided refunds to such consumers.

3. Indeed, Respondent Ostad cannot provide such services, as his license to practice medicine in New York was restricted to only medically necessary post-operative care, effective July 21, 2005, and was revoked entirely and indefinitely, effective August 31, 2005, by Surrender Order of the New York State Department of Health Board for Professional Medical Conduct (“State Board”), dated July 21, 2005 (“Surrender Order”).

4. Respondents did not contact consumers to inform them that Respondent Ostad lost his license to practice medicine, nor did Respondents refer consumers to other providers, before closing their offices and disconnecting their office telephones sometime in August 2005.

5. Moreover, Respondents repeatedly misled consumers who inquired about scheduled, pre-paid surgery. Specifically, Respondents told consumers that Ostad would perform their surgeries at some later date when Respondents knew that he could not fulfill these promises because of the Surrender Order that revoked his license.

PARTIES

6. Petitioner is the People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York.

7. Respondent Park Avenue Plastic Surgery, P.C. is a professional corporation registered with the New York State Department of State. Park Avenue Plastic Surgery, P.C. had a principle office at 833 Northern Boulevard, Great Neck, New York, 11021, with satellite

offices providing medical services, including plastic surgery and other cosmetic procedures, at 1045 Park Avenue, New York, New York, 10028 and 1000 Northern Boulevard, Great Neck, New York, 11021.

8. Respondent Park Avenue Plastic Surgery, P.L.L.C. is a professional limited liability corporation registered with the New York State Department of State, with principal offices at 318A Bradley Avenue, Staten Island, New York, 10314. (Respondents Park Avenue Plastic Surgery, P.C. and Park Avenue Plastic Surgery, P.L.L.C. are hereinafter collectively referred to as “PAPS”).

9. Respondent Ostad was a physician licensed to practice medicine in New York State providing medical services, including plastic surgery and other cosmetic procedures, as the owner and operator of Respondents PAPS. He resides at 7 Coachman Court, Old Westbury, New York, 11568.

JURISDICTION

10. Petitioner brings this proceeding pursuant to: (1) Executive Law § 63(12) under which Petitioner People of the State of New York by the Attorney General of the State of New York is empowered to seek injunctive relief, restitution, damages and costs against any person or business entity that engaged in repeated fraudulent or illegal acts or otherwise engaged in persistent fraud or illegality in the conduct of a business; (2) GBL Article 22-A, under which Petitioner is authorized to seek injunctive relief, restitution and civil penalties against any person or business entity which has engaged in deceptive acts or practices or false advertising; and (3) Executive Law § 63(1), empowering the Attorney General of the State of New York to prosecute and defend all actions and proceedings in which the State is interested.

11. No prior application for the relief sought in this petition has been made.

FACTS

Consumer Pre-payments

12. Until July 21, 2005, Respondent Ostad was a physician fully licensed to practice medicine in New York State by license number 191028, issued by the New York State Department of Education on January 4, 1993.

13. Respondent Ostad's license to practice medicine in New York was restricted to only medically necessary post-operative care, effective July 21, 2005, and was revoked entirely and indefinitely, effective August 31, 2005, by Surrender Order of the State Board, dated July 21, 2005.

14. During the regular course of his practice, Respondent Ostad provided various medical services, including plastic surgery and other cosmetic procedures, as owner and operator of Respondents PAPS.

15. Respondents offered discounted rates for plastic surgery and other cosmetic services to patients who agreed to pre-pay for such services.

16. Pursuant to this policy, many of Respondent Ostad's patients pre-paid for services.

17. To date, Respondent Ostad has repeatedly failed to perform promised services for which certain of his patients pre-paid.

18. Likewise, Respondents have repeatedly failed to refer patients to other physicians to perform the services for which patients pre-paid and Respondent Ostad failed to perform.

19. Despite efforts by his patients to recover the pre-payments for services that Respondent Ostad failed to perform, Respondents have repeatedly failed to refund such pre-payments.

20. To date, Petitioner has identified nine consumers who were patients of Respondent Ostad who had pre-paid Respondents for services that they did not receive, and were unable to recoup their payments from Respondents (Exhibits A - I).¹

21. As discussed in more detail below, Respondent Ostad cannot legally perform the services for which consumers pre-paid funds, now or in the future.

22. By retaining pre-paid funds for services that Respondent Ostad did not and cannot perform, Respondents have acted in a deceptive and fraudulent manner.

Revocation of Dr. Ostad's License to Practice Medicine

23. After an investigation into Respondent Ostad's professional conduct emanating from complaints of negligent care from several of his patients, the State Board issued specific charges against Respondent Ostad, including: negligence on more than one occasion; incompetence on more than one occasion; gross negligence; failure to maintain records; and failure to provide records.

24. Respondent Ostad's license to practice medicine in New York State was restricted to only medically necessary post-operative care, effective July 21, 2005, and was revoked entirely and indefinitely, effective August 31, 2005, by Surrender Order of the "State Board, dated July

¹ "Exhibit(s)" refer to exhibits to the attached Affirmation of Paul Beyer in support of this Petition.

21, 2005, and the Surrender of License Application of Respondent Ostad, attached as an exhibit thereto and incorporated therein, dated and signed July 21, 2005.

25. The Surrender Order permitted Respondent Ostad to maintain his business until August 31, 2005 only for the purpose of the orderly closing of his practice, including the referral of patients to other physicians and performing medically necessary post-operative care, but under no circumstances was Respondent Ostad permitted to perform any surgical procedure after July 21, 2005.

26. The Surrender Order incorporated an exhibit attached to Respondent Ostad's Surrender Application entitled, "GUIDELINES FOR CLOSING A MEDICAL PRACTICE AFTER REVOCATION, SURRENDER OR SUSPENSION (of six months or more) OF A MEDICAL LICENCE" ("Guidelines") (Exhibit J). Pursuant to the Guidelines, Respondent Ostad was required to notify all patients of his licence revocation and refer all patients to another physician within 15 days of the date of the Surrender Order which, as noted above, had an effective date of July 21, 2005.

27. At some time in August 2005, Respondents closed their offices and ceased providing any services.

28. In violation of the Guidelines, Respondent Ostad failed to contact the pre-paying consumers to inform them that he had ceased the practice of medicine and did not refer them to another licensed physician.

29. Respondents repeatedly failed to provide refunds to consumers who pre-paid for services that were not delivered.

**Respondents' Affirmative Misrepresentations
to Avoid Refunding Pre-Paying Consumers**

30. Indeed, by their actions and omissions, Respondents repeatedly concealed from consumers the fact that Respondent Ostad had lost his license to practice medicine in New York. Additionally, Respondents repeatedly misled pre-paid consumers to believe that Respondent Ostad was still practicing medicine and that pre-paid services would be scheduled and performed at a later date.

31. In some cases, Respondents made misleading representations after Respondent Ostad had already lost his license to practice medicine in New York by the Surrender Order, dated July 21, 2005.

32. In other instances, Respondents made misleading representations in July 2005 – just days before Respondent Ostad surrendered his license on July 21, 2005 – when Respondents knew that he would be unable to perform the pre-paid services.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
AGAINST RESPONDENTS OSTAD, PARK AVENUE PLASTIC SURGERY, P.C.
AND PARK AVENUE PLASTIC SURGERY, P.L.L.C.:
REPEATED AND PERSISTENT FRAUD
IN VIOLATION OF EXECUTIVE LAW § 63(12)**

33. Executive Law § 63(12) authorizes the Attorney General to commence a special proceeding for injunctive relief and restitution against any person engaged in a repeated or persistent fraudulent activity.

34. By their acts and practices described above, Respondents engaged in repeated and persistent fraudulent acts and practices in violation of Executive Law § 63(12).

35. First, Respondents repeatedly accepted from consumers pre-payment for medical services, including plastic surgery and other cosmetic procedures, but failed to either deliver on a promise to provide such services or provide refunds to consumers.

36. Second, Respondents repeatedly misled consumers who inquired about scheduled, pre-paid surgery to avoid providing refunds to such consumers. Specifically, Respondents avoided having to refund consumers for pre-payments by concealing from consumers the fact that he had lost his license to practice medicine. Respondents further avoided their financial obligation to consumers by telling them that Respondent Ostad would perform their surgeries at some later date, after the Surrender Order of July 21, 2005 that revoked his license, when Respondents knew that Respondent Ostad could not do so because of the Surrender Order.

37. Consumers suffered a financial loss from as a result of Respondents' failure to provide pre-paid services or to provide refunds for pre-payment. Additionally, some of these consumers are unable to seek and pay for treatment with other physicians due to their financial loss.

**SECOND CAUSE OF ACTION
AGAINST RESPONDENTS OSTAD, PARK AVENUE PLASTIC SURGERY, P.C.
AND PARK AVENUE PLASTIC SURGERY, P.L.L.C.:
DECEPTIVE BUSINESS PRACTICES
IN VIOLATION OF GBL § 349**

38. GBL § 349 states that “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful” (GBL § 349[a]).

39. By their acts, omissions and practices described above, Respondents engaged in repeated and persistent deceptive acts and practices in violation of GBL § 349.

40. First, Respondents accepted from consumers pre-payment for medical services, including plastic surgery and other cosmetic procedures, but repeatedly failed to either deliver on a promise to provide such services or provide refunds to consumers.

41. Second, Respondents repeatedly misled consumers who inquired about scheduled, pre-paid surgery to avoid providing refunds to such consumers.

42. By repeatedly and persistently violating GBL § 349, Respondents have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**THIRD CAUSE OF ACTION
AGAINST RESPONDENT OSTAD:
REPEATED AND PERSISTENT VIOLATION OF
EDUCATION LAW § 6530 BY BREACHING
THE STATE BOARD'S SURRENDER ORDER**

43. Education Law § 6530 defines one instance of professional misconduct as: “Violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law” (Education Law § 6530[29]).

44. The Surrender Order issued by the State Board pursuant to Public Health Law § 230 contains two particular conditions, among others: that Respondent Ostad notify his patients that he has lost his license to practice medicine in the state of New York; and that Respondent Ostad refer his patients to other physicians for their care.

45. By failing to notify all his patients that he lost his license and failing to refer all his patients to another physician, Respondent Ostad committed professional misconduct in failing to comply with the State Board's Surrender Order, in violation of Education Law § 6530(29).

46. By repeatedly and persistently violating Education Law § 6530(29), Respondents have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

REQUESTED RELIEF

WHEREFORE, Petitioner requests an order and judgment pursuant to Executive Law § 63(12), GBL Article 22-A and this Court's equitable powers, granting the following relief:

1. permanently enjoining Respondents from violating Executive Law § 63(12) and GBL Article 22-A and from engaging in the fraudulent, deceptive and illegal acts and practices alleged in the Verified Petition;
2. permanently enjoining Respondents from converting, transferring, selling or otherwise disposing of any funds paid to Respondents by consumers for any medical services, including plastic surgery and other cosmetic procedures, which Respondents have failed to provide to such consumers in whole or in part, and any other funds in any account in Respondents Ostad's name or the name of PAPS, or any other assets, wherever located until such time as Respondents have satisfied all financial obligations pursuant to the Court's order;
3. permanently enjoining Respondents from engaging in any business that deals with consumers in the State of New York until a \$200,000 performance bond is filed with the Attorney General by a surety or bonding company licensed by and in good standing with the New York State Department of Insurance, guaranteeing Respondents' compliance with any injunction which may be entered herein, the proceeds of that bond to provide a fund for restitution and damages to consumers defrauded by the past or future conduct of Respondents and to guarantee the payment of penalties and costs;

4. directing Respondents to make full monetary restitution and pay damages to all injured consumers, including those not identified at the time of the Order;
5. directing Respondents to render an accounting to the Attorney General that includes the names and addresses and the amount of money received by Respondents from each and every consumer for any medical services, including plastic surgery and other cosmetic procedures, that Respondents failed to provide to such consumers;
6. permanently enjoining Respondents from, directly or indirectly, destroying or disposing of any records pertaining to their business;
7. directing Respondents to notify Petitioner of any change of address within five days of such change;
8. directing Respondents to pay a civil penalty in the sum of \$500 to the State of New York for each violation of GBL Article 22-A , pursuant to GBL § 350-d;
9. awarding Petitioner costs plus an additional allowance of \$2,000 against each Respondent pursuant to CPLR § 8303(a)(6); and
10. granting Petitioner such other and further relief as the Court deems just and proper.

Dated: Albany, New York
May __, 2006

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