

**STATE OF NEW YORK : DEPARTMENT OF HEALTH**

-----X

IN THE MATTER :

OF :

NIRAV R. SHAH, M.D., M.P.H., as Commissioner of Health of the State of New York, to determine the action to be taken with respect to: :

ORDER

COMPREHENSIVE COMMUNITY DEVELOPMENT CORP. :

Respondent :

as operator of SOUNDVIEW HEALTHCARE NETWORK 731 White Plains Road Bronx, New York 10473 :

arising out of alleged violations of Article 28 of the Public Health Law of the State of New York and Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) :

-----X

A Notice of Hearing and Statement of Charges, dated May 29, 2012, were served on Respondent for an Order revoking Respondent’s operating certificate, pursuant to Public Health Law (“PHL”) § 2806(1), and assessing civil monetary penalties against the Respondent pursuant to PHL §§ 12 and 206. On June 14, 2012, the Department requested permission to amend the Statement of Charges, which permission was granted. The Amended Statement of Charges (Department Ex. 1) alleges that Respondent violated Parts 401 and 751 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (“NYCRR”), in connection with its operation of a diagnostic and treatment center established pursuant to Article 28 of the PHL by:

1. failing to ensure the provision of staff, space, facilities, supplies and equipment for all functions and services adequate to meet the health care and safety needs of its patient population and to facilitate the efficient operation of the center;
2. failing to report to the Department of Health's Office of Health Systems Management the termination of any services vital to the continued safe operation of its facilities or the health and safety of its patients and personnel;
3. failing to develop and implement policies and procedures written in accordance with prevailing standards of professional practice with respect to ensuring the referral to a health-care facility or health-care practitioner for services not available at Respondent's facilities;
4. failing to develop and implement policies and procedures written in accordance with prevailing standards of professional practice with respect to ensuring prompt follow-up action on patients with abnormal test results;
5. effectively discontinuing its operation without first providing the Commissioner of Health with ninety (90) days' notice of its intention to do so and obtaining written approval from the Commissioner;
6. discontinuing its operation without first obtaining the Commissioner of Health's written approval of a plan for the maintenance, storage and safekeeping of the Respondent's patients' medical records;
7. changing the extent and kind of services it provides without first submitting a proposal of this change in writing to the Department of Health;
8. failing to promptly surrender its operating certificate to the Department of Health upon discontinuance of its operation;
9. making changes to its physical plant without first submitting to the Department written proposals of these changes, and obtaining approval for these changes from the Department; and
10. failing to be responsible for the establishment of policies and the management and operation of the Respondent's health-care center in compliance with all applicable laws, rules and regulations.

The Department of Health appeared by Mark Fleischer, Esq. Respondent appeared by its Senior Vice President, Alejandro Espada.

Evidence was received and witnesses were sworn and examined. A transcript of the

proceedings was made. The transcript was received on November 20, 2012. On December 21, 2012, counsel for the Department submitted proposed findings and conclusions. The Administrative Law Judge issued his report and recommendations on January 10, 2013.

**NOW**, on reading and filing the Notice of Hearing, Statement of Charges, the Record herein and the Administrative Law Judge's Report, I hereby adopt the Report of the Administrative Law Judge as my own; and

**IT IS HEREBY ORDERED:**

1. The ten charges that Respondent failed to comply with the provisions of Article 28 or the rules and regulations promulgated thereunder, are sustained.
2. Respondent's operating certificate is revoked.
3. Respondent is assessed a civil penalty of \$20,000 (\$2,000 for each of the ten sustained charges).
4. This Order shall be effective on personal service on Respondent or 7 days from the date of mailing of a copy to Respondent by certified or registered mail.

DATED: Albany, New York  
\_\_\_\_\_, 2013

BY: \_\_\_\_\_  
Nirav R. Shah, M.D., M.P.H.  
Commissioner of Health

TO: Mark Fleischer, Esq., Director

Bureau of Administrative Hearings  
Division of Legal Affairs  
New York State Department of Health  
Corning Tower, Room 2412  
Empire State Plaza  
Albany, New York 12237-0029

Alejandro Espada  
Senior Vice President  
Comprehensive Community Development Corporation  
Soundview Healthcare Network  
731 White Plains Road  
Bronx, New York 10473

<b>IN THE MATTER</b>	:
<b>OF</b>	:
<b>NIRAV SHAH, M.D., M.P.H., as Commissioner of Health of the State of New York, to determine the action to be taken with respect to:</b>	<b>: REPORT</b>
	<b>: AND</b>
	<b>RECOMMENDATIONS</b>
	:
<b>COMPREHENSIVE COMMUNITY DEVELOPMENT CORP.</b>	:
<b>Respondent</b>	:

as operator of

**SOUNDVIEW HEALTHCARE NETWORK  
731 White Plains Road  
Bronx, New York 10473**

**arising out of alleged violations of Article 28 of the Public  
Health Law of the State of New York and Title 10 (Health)  
of the Official Compilation of Codes, Rules and Regulations  
of the State of New York (NYCRR)**

-----X

TO: Nirav R. Shah, M.D., M.P.H.  
Commissioner of Health of the State of New York

Hearing Before: David A. Lenihan  
Administrative Law Judge

Held at: Offices of the Department of Health  
90 Church Street, New York, New York 10007 and  
The Riverview Center, 150 Broadway,  
Albany, New York 12204

Hearing Dates: June 18, 2012 and October 19, 2012

Transcript received and record closed - November 20, 2012

Parties: New York State Department of Health  
Corning Tower, Room 2412  
Empire State Plaza  
Albany, New York 12237-0029  
By: Mark Fleischer, Esq.

Respondent:

Comprehensive Community Development Corp.  
Soundview Healthcare Network  
731 White Plains Road  
Bronx, New York 10473

By: Alejandro Espada, Senior Vice President.

### **Statement of the Case**

The Department commenced this proceeding through a Notice of Hearing and Statement of Charges dated May 29, 2012, for an Order revoking the Respondent's operating certificate, pursuant to Public Health Law ("PHL") §2806(1), and assessing civil monetary penalties against the Respondent pursuant to PHL § 12 and 206. On June 14, 2012, the Department requested permission to amend the Statement of Charges, which permission was granted. The Amended Statement of Charges (Dept. Ex. 1) alleges that the Respondent violated Parts 401 and 751 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"), in connection with its operation of a diagnostic and treatment center established pursuant to Article 28 of the PHL by the following:

1. failing to ensure the provision of staff space, facilities, supplies and equipment for all functions and services adequate to meet the health care and safety needs of its patient population and to facilitate the efficient operation of the center;
2. failing to report to the Department of Health's Office of Health Systems Management the termination of any services vital to the continued safe operation of its facilities or the health and safety of its patients and personnel;
3. failing to develop and implement policies and procedures written in accordance with prevailing standards of professional practice with respect to ensuring the referral to a health-care facility or health-care practitioner for services not available at Respondent's facilities;
4. failing to develop and implement policies and procedures written in accordance with prevailing standards of professional practice with respect to ensuring prompt follow-up action on patients with abnormal test results;
5. effectively discontinuing its operation without first providing the Commissioner of Health with ninety (90) days' notice of its intention to do so and obtaining written approval from the Commissioner;
6. discontinuing its operation without first obtaining the Commissioner of Health's written approval of a plan for the maintenance, storage and safekeeping of the Respondent's patients' medical records;
7. changing the extent and kind of services it provides without first submitting a proposal of this change in writing to the Department of Health;
8. failing to promptly surrender its operating certificate to the Department of Health upon discontinuance of its operation;
9. making changes to its physical plant without first submitting to the Department written proposals of these changes, and obtaining approval for these changes from the Department; and
10. failing to be responsible for the establishment of policies and the management and operation of the Respondent's health-care center in compliance with all applicable laws, rules and regulations.

At the initial hearing on this matter on June 18, 2012, Alejandro Espada, Senior Vice President of the Soundview Healthcare Network appeared on behalf of the Respondent Comprehensive Community Development Corp.

An Attorney, Nathan Dembin, accompanied Mr. Espada to the hearing. Attorney Dembin indicated on the record, (T. 4, 17) that he was not retained by the Respondent and was present only to request an adjournment and was not making a formal appearance for the Respondent. Attorney Dembin made it clear on the record (T. 25) that he had not been retained and had not been paid. (T. 26). The request for an adjournment was denied, and the ALJ made it clear that he had no intention of holding the case in abeyance. (T. 30)

The hearing commenced on June 18, 2012 in New York City and was concluded in Albany on October 19. The Respondent did not present any witnesses of its own or documentation to rebut the Department's case.

### **Procedural History**

The hearing was held on June 18, 2012 at the Department of Health's offices at 90 Church Street, New York, New York, and on October 19, 2012 at the Department of Health's offices at the Riverview Center, 150 Broadway, Suite 510, Albany, New York. Administrative Law Judge ("ALJ") David A. Lenihan presided at the hearing on these dates.

## Evidence

The Department presented three witnesses:

1. Madeline Penachio, a Ph.D. and licensed clinical social worker employed by the Department of Health's Bureau of Hospital Services as a Public Health Administrator, who conducted a survey at the Respondent's main site at 731 White Plains Road, Bronx, on May 1, 2012.
2. [REDACTED], a registered nurse is who is employed as a surveyor by IPRO, an organization formerly known as the Island Peer Review Organization. IPRO is one of the federally designated [quality improvement organizations](#) in the United States. Headquartered in [Lake Success, New York](#). IPRO is an agency contracted by the Department of Health to, among other things, conduct surveys of Diagnostic and Treatment Centers licensed by the Department of Health pursuant to Article 28 of the Public Health Law. [REDACTED] conducted a survey of the Respondent's main site on multiple days between May 4, 2012 and June 15, 2012.
3. Ruth Leslie, is employed by the Department of Health's Bureau of Hospital Services as the Deputy Director of the Division of Certification and Surveillance, and exercises supervisory oversight over the intake of complaints and over the regional offices that survey diagnostic and treatment centers licensed by the Department to ensure that they are complying with Parts 401, 750 and 751 of Title 10 of the New York Code of Rules and Regulations.

The Department submitted the following exhibits which were received into evidence:

- Dept. Ex. 1 Amended Statement of Charges
- Dept. Ex. 1A Notice of Hearing with Original Statement of Charges with Affidavits of Personal Service
- Dept. Ex. 2 Madeline Penachio's survey notes
- Dept. Ex. 3 [REDACTED] survey notes
- Dept. Ex. 4 Letter to Soundview Clinic dated May 3, 2012 from Kathleen Gaine, MPA, Acting Regional Program Director of the Bureau of Hospital and Primary Care Services
- Dept. Ex. 5 Statement of Deficiencies
- Dept. Ex. 6 Soundview Response to Statement of Deficiencies, dated May 7, 2012
- Dept. Ex. 7 Letter to Soundview, dated May 17, 2012 from Kathleen Gaine, MPA, Acting Regional Program Director of the Bureau of Hospital and Primary Care Services
- Dept. Ex. 8 Letter dated, June 29, 2012, from Neil Calman, M.D to Richard Cook, Director, Office of Health Systems Management
- Dept. Ex. 9 Documents from Institute for Family Health
- Dept. Ex. 10 Soundview Operating Certificate

The Respondent did not present any witnesses, nor did it submit any evidence or documentation to rebut the Department's case.

### **Applicable Law and Regulations**

Public Health Law ("PHL") § 2803-d and 10 NYCRR Parts 401 and 751 were enacted for the purpose of promoting the public health and safety of patients of hospitals, including diagnostic and treatment centers (hereinafter referred to as "D & TC") as well as the communities they were established to serve.

10 NYCRR 751.2(q) requires an operator of a D&TC to ensure the provision of staff; space, facilities, supplies and equipment for all functions and services adequate to

meet the health care and safety needs of its patient population and to facilitate the efficient operation of the center.

10 NYCRR 751.10(b)(4) requires an operator of a D&TC to report to the Department of Health's Office of Health Systems Management the termination of any services vital to the continued safe operation of its facilities or the health and safety of its patients and personnel.

10 NYCRR 751.5(a)(6) requires an operator of a D&TC to develop and implement policies and procedures written in accordance with prevailing standards of professional practice with respect to ensuring the referral to a health-care facility or health-care practitioner for services not available at Respondent's facilities.

10 NYCRR 751.5(a)(5) requires an operator of a D&TC to develop and implement policies and procedures written in accordance with prevailing standards of professional practice with respect to ensuring prompt follow-up action on patients with abnormal test results.

10 NYCRR 401.3(g) provides, *inter alia*, that no medical facility shall discontinue its operation or surrender its operating certificate unless 90 days' notice of its intention to do so is given to the Commissioner of Health and his written approval is obtained.

10 NYCRR 401.3(i) provides, *inter alia*, that no medical facility shall discontinue its operation or surrender its operating certificate whether voluntarily or pursuant to judicial or administrative proceedings without first obtaining the Commissioner's written approval of a plan for the maintenance, storage and safekeeping of its patients' medical

records. It provides further that the plan shall provide for adequate safeguards for these records, make them accessible to the patients and their physicians, and may provide for their ultimate disposition.

10 NYCRR 401.3(a) provides, *inter alia*, that proposed changes in the extent and kind of services provided by medical facilities shall be submitted to the department in writing and that such changes shall not be made until the receipt of the appropriate department approval as set forth in section 710.1(b) of Title 10.

10 NYCRR 401.3(j) provides, *inter alia*, that an operating certificate shall be promptly surrendered to the department upon discontinuance of operation.

10 NYCRR 751.2 provides, *inter alia*, that an operator of a D&TC is responsible for the establishment of policies and the management and operation of the center in compliance with all applicable laws, rules and regulations, including the provisions of Article 28 of the PHL and 10 NYCRR.

PHL § 10 (2) provides, *inter alia*, that the written reports of state and local health officers, inspectors, investigators, nurses and other representatives of state and local health officers on questions of fact pertaining to, concerning or arising under and in connection with complaints, alleged violations, investigations, proceedings, actions, authority and orders, related to the enforcement of this chapter, the state sanitary code or any local health regulation shall be presumptive evidence of the facts so stated therein, and shall be received as such in all courts and places.

PHL § 2806 (1) provides, inter alia, that a hospital operating certificate may be revoked, suspended, limited or annulled by the commissioner on proof that the hospital has failed to comply with the provisions of Article 28 or the rules and regulations promulgated thereunder.

PHL § 2801 (1) defines “Hospital” as, among other things, a facility or institution engaged principally in providing services by or under the supervision of a physician, including but not limited to a D&TC.

### **Findings of Fact**

1. The Respondent is a D&TC (Diagnostic and Treatment Center) licensed by the Department of Health (“the Department”) pursuant to PHL Article 28. The Respondent’s operating certificate authorizes it to provide sixteen specified types of health-care services at its primary facility at 731 White Plains Road, Bronx, New York, as well as at two approved extension clinics at Delaney Sisters Health Center, 2727 White Plains Road, Bronx, New York and Tremont-Crotona Health Center, 165 Burnside Avenue, Bronx, New York. These services include, but are not limited to, Audiology, Dental, Family Planning , Optometry. Pediatric, Prenatal, Podiatry, Primary Medical Care. and Psychology. (Dept. Ex. 10.)

2. The Respondent closed its two authorized extension clinics over one year ago

without so notifying the Department and/or obtaining DOH approval for the closing (Transcript “T. ” at 63, 169; Dept. Ex. 2, p. 3; Dept. Ex. 3, p. 1). At or near those times, the Respondent began operating extension clinics at two other locations without first notifying the Department and/or obtaining Department approval (T. at 169-170; Dept. Ex. 2, p. 3). These acts constitute violations of 10 NYCRR 401.3.

3. On or about April 28, 2012, the Respondent effectively discontinued its operation. At this time, and in the weeks that followed, most, if not all, of the Respondent’s clinical staff ceased seeing patients, and the Respondent canceled almost all its patients’ scheduled appointments (T. at 57, 60-62, 64, 68, 120, 145-146, 154; Dept. Ex. 2, p. 1; Dept. Ex. 3, pp. 20-23, 25). Prior to its closure, the Respondent ceased paying its physician’s medical malpractice insurance and ceased paying most, if not all, of its employees (T. at 56, 58, 63, 65, 68, 145-146; Dept. Ex. 2, p. 1; Dept. Ex. 3, pp. 1,18, 20-21, 23). By June 29, 2012, the Respondent surrendered its lease at its main site, and another healthcare provider moved into that location (T at 169-170; Dept. Ex. 8; Dept. Ex. 9). This conduct constitutes a violation of 10 NYCRR 751.2(q).

4. The Respondent did not notify the Department or obtain Department approval prior to discontinuing its operation (T. at 161-162). Indeed, the Department first learned that the Respondent ceased seeing patients when it received a complaint from members of the Respondent’s clinical staff that the Respondent had allowed its physicians’ malpractice insurance to lapse and had failed to pay staff members (T at 145-146). This conduct constitutes violations of 10 NYCRR 401.3(a), 401.3(g) and 751 .10(b)(4).

5. The Respondent did not develop or implement policies and procedures to ensure

the referral of its patients to other healthcare facilities or practitioners. In fact, the Respondent did not even begin referring its high risk patients, including third state prenatal patients, until weeks after it ceased seeing these patients, and most patients were not referred at all (T. at 62, 65-66, 111-112, 157-158; Dept. Ex. 2, p. 1; Dept. Ex. 3, pp.2,6, 10, 11, 17, 21, 23). Also, the Respondent hindered patients' abilities to obtain timely referrals to alternative healthcare providers by falsely representing to patients and the public that it remained open and that the disruption of services was temporary and due to a dispute with the Department of Health, and by rescheduling patients at Soundview whose appointments were canceled. (T. at 62, 64, 93, 110, 111-112, 121, 127, 158-159; Dept Ex. 2, p. 1; Dept Ex. 3, pp. 8, 17-18, 20, 23, 131). This conduct constitutes a violation of 10 NYCRR 751.5(a)(6).

6. The Respondent did not develop or implement policies and procedures to ensure prompt follow-up action on patients with abnormal test results (Dept. Ex. 3, pp. 14-18). This conduct constitutes a violation of 10 NYCRR 741.5(a)(5).

7. The Respondent did not, prior to discontinuing its operation, provide the Department with a written plan for the maintenance, storage and safekeeping of its patients' medical records, which would both provide for adequate safeguards for these records and make them accessible to the patients and their physicians (T. at 157-158). In fact, the Respondent did not plan for the maintenance and safeguarding of medical records, and made it difficult for patients to access their medical records by failing to maintain open

and sufficiently staffed telephone lines, and failing to maintain sufficient staffing on its premises (T. at 64-66, 111-112, 114-116, 119, 122, 157-158, 160; Dept. Ex. 3, pp. 2,6, 8, 10, 11,23,26, 28). Eventually, the Respondent abandoned its patient medical records at its former locations, over which it has no site control (T. at 163-165; Dept. Ex. 8). This conduct constitutes a violation of 10 NYCRR 401.3(i).

8. The Respondent has not surrendered its operating certificate to the Department of Health since discontinuing its operation (T. at 161-162). This constitutes a violation of 10 NYCRR 401.3(j).

9. The Respondent's failure to comply with multiple provisions of 10 NYCRR Parts 401 and 751, as set forth above, constitutes a violation of 10 NYCRR 751.2.

The Department presented uncontroverted evidence in support of each of its ten Charges. An appropriate remedy, in light of the Respondent's multiple violations of PHL Article 28 and 10 NYCRR Parts 401 and 751, is the revocation of the Respondent's operating certificate. In addition, the Respondent should be assessed a civil monetary penalty of \$2,000 for each sustained charge, for a total assessed penalty of \$20,000. This civil monetary penalty is appropriate and necessary to deter the Respondent, as well as other licensed healthcare providers from violating Article 28 and its implementing regulations

## **DISCUSSION**

The Department presented an overwhelming and unrefuted case for the revocation of the Respondent's operating certificate. The patients in this case have not been treated

with the respect that the law demands. The Respondent has discontinued services without giving the Department or the patients the notice they are due. This unilateral discontinuance of service would alone warrant the revocation. The Department went on to show that there was no plan to provide for the continuity of care for high-risk patients.

In addition, the clear evidence from the testimony in this case is that the Respondent has ceased to provide services and that there is no one on site to provide information about the patients, let alone their medical records. It is clear that such an entity should not possess an operating certificate and thus it is recommended that the outstanding certificate be revoked.

In addition to revocation, the facts in this case are so egregious that the maximum civil financial penalty should be imposed to serve as a deterrent to other providers. The patients of this State are entitled to respectful treatment and such egregious misconduct as was established in this case should be punished.

### **CONCLUSIONS**

Based on the foregoing Findings of Fact, the documentary evidence, testimony and the entire record, I reach the following Conclusions:

The charges against Respondent Comprehensive Community Development Corp. were clearly established by substantial evidence and should, therefore, be sustained and the outstanding certificate of the Respondent should be revoked.

**RECOMMENDATIONS**

Based on the foregoing, I hereby make the following recommendations;

1. The ten charges and allegations against the Respondent should be **SUSTAINED;**
2. A civil penalty of \$20,000 should be imposed.
3. The outstanding certificate of the Respondent should be revoked.

**DATED: Albany, New York  
January 10, 2013**

**Respectfully submitted,**

\_\_\_\_\_  
**David Lenihan  
Administrative Law Judge**

**New York State Department of Health  
Bureau of Adjudication  
Riverview Center  
150 Broadway – Suite 510  
Albany, New York 12204-2719**