ONE STATE STREET PLAZA
NEW YORK, NY 10004

In the Matter of	:	
GARY LEVITON,	:	**FINAL DETERMINATION AND ORDER**
Respondent.	:	**Docket No. 2012-0006-NF**

A hearing having been held in this matter on October 2, 2012, before General Counsel Daniel Alter, the duly designated Hearing Officer, and the attached Hearing Officer's Report and Recommendation ("Report"), dated October 8, 2013, having been issued by the Hearing Officer pursuant to section 305(b) of the Financial Services Law;

NOW, upon due consideration of the hearing record, the Hearing Officer's Report, and any comments or objections thereto submitted by the parties, it is hereby

ORDERED, that the findings, conclusions and recommendations of the Hearing Officer, as set forth in the attached Report, are accepted and adopted, and it is further

ORDERED, that pursuant to Section 5109 of the Insurance Law, the Respondent is prohibited from demanding, requesting or receiving any payment for health services in connection with any claim under Article 51 of the Insurance Law and it is further

ORDERED, that the Respondent shall refrain from treating, for remuneration, as a private patient, any person seeking treatment under Article 51.

Dated: New York, New York
October 8, 2013

BENJAMIN M. LAWSKY
Superintendent of Financial Services

ONE STATE STREET PLAZA
NEW YORK, NY 10004

In the Matter of **GARY LEVITON,** Respondent.	**HEARING OFFICER'S REPORT AND RECOMMENDATION** **Docket No. 2012-0006-NF**

To: Hon. Benjamin Lawsky
Superintendent of Financial Services

This matter came on for hearing on October 2, 2012 at the office of the Department of Financial Services (the "Department" or "DFS"), One State Street Plaza, in the City and County of New York, for the Respondent to show cause why an order should not be issued pursuant to Section 5109 of the New York Insurance Law ("Insurance Law") prohibiting the Respondent from demanding, requesting or receiving any payment for health services in connection with any claim under Article 51 of the Insurance Law (the "no-fault law").

The proceeding began pursuant to a Citation dated August 21, 2012, duly issued and served upon the Respondent in accordance with Sections 304, 304-a, 305 and 306 of the Financial Services Law and Insurance Law Section 5109. The respondent did not appear at the hearing, over which I presided as the designated hearing officer. Sworn testimony was taken, documents were received in evidence, and a stenographic record of the proceeding was made. On the basis of the entire record made herein and after due deliberation thereon, I find, conclude and recommend as follows.

FINDINGS OF FACT

1. Respondent Gary Leviton is licensed by the New York State Department of Education ("Education Department") as a massage therapist and registered through the last day of December, 2013. (Exhibits 3A, 3B.) Respondent is an officer, director or shareholder of two professional service corporations, Gotham Massage Therapy PC ("Gotham PC") and Empire Massage Therapy PC ("Empire PC"). (Exhibits 3A, 3B.)

2. Under cover of two letters, both dated March 8, 2012, the Department sent Respondent requests for information (the "questionnaires") regarding his health care practices at Gotham PC and Empire PC. (Exhibits 2A, 2D.) The letters and questionnaires were sent by certified mail, return receipt

requested, to 40 Pamela Lane, Valhalla, New York 10595, the address for both Gotham PC and Empire PC in the official records of the Education Department. (Exhibits 3A, 3B.) The letters directed the Respondent to respond to the questions, certify his answers before a notary public, and return the questionnaires to the Department within 14 days. (Id.) The letters further advised the Respondent: "**Your response is mandatory and your failure to respond may result in your exclusion from the no-fault system as an authorized medical provider.**" (Id.) Return receipt cards for both letters were signed by a person at that address. (Exhibits 2C, 2F, Transcript at 10-11.)

3. Under cover of two letters, both dated May 8, 2012, the Department sent Respondent second requests for information regarding his health care practices at Gotham PC and Empire PC. (Exhibits 4A, 4B.) The letters directed the Respondent to respond to the questions, certify his answers before a notary public, and return the questionnaires to the Department within 14 days. (Id.) The letters further advised the Respondent: "**Your response is mandatory and your failure to respond may result in your exclusion from the no-fault system as an authorized medical provider.**" (Id.) On May 14, 2012, the requests were personally served on Gotham PC and Empire PC at 40 Pamela Lane, Valhalla, New York 10595. (Exhibits 4A, 4B, Transcript at 14.)

4. On June 22, 2012, the United States Postal Service confirmed that mail is delivered and accepted for Gotham PC and Empire PC at 40 Pamela Lane, Valhalla, New York. (Exhibits 4A, 4B, Transcript at 14.)

5. The Respondent did not respond to any of the questionnaires. (Transcript at 17.)

6. By letter dated June 29, 2012, the Department requested that the Education Department confirm in writing that a reasonable basis exists to proceed with notice and hearings against certain named providers, including the Respondent, to determine whether they should be deauthorized from demanding or requesting payment for services provided under the no-fault law. (Exhibit 5B.) By letter dated July 12, 2012, the Education Department confirmed that there appears to be a reasonable basis to proceed with notice and a hearing against certain named licensees, including the Respondent, in professions over which the Education Department has jurisdiction over professional discipline. (Id.)

CONCLUSION

The Citation seeks an order pursuant to Section 5109 of the Insurance Law prohibiting the Respondent from demanding, requesting, or receiving any payment for health services in connection with any claim under the no-fault law, on the ground that the Respondent has failed to answer upon request of the Superintendent of Financial Services a legal question and/or to produce relevant information concerning the Respondent's conduct in connection with his health care practices. Based on the evidence presented at the hearing, and the reasons set forth below, I conclude that this charge should be sustained and the order of deauthorization from the no-fault system should be granted.

Section 5109 of the Insurance Law authorizes DFS, in consultation with the Education Department and the Department of Health, to promulgate standards and procedures for investigating and suspending or removing the authorization for providers of health services to demand or request payment for health services in connection with any claim under the no-fault law. Pursuant to section 5109(b) of the Insurance Law, the Commissioner of Health and the Commissioner of Education shall provide a list of providers of health services who they deem, after reasonable investigation, subject to suspension or removal of authorization for specified reasons. These reasons include the health service provider's refusal "to appear before, or to answer upon request of, ...the superintendent [of financial services], or any duly authorized officer of the state, any legal question, or to produce any relevant

information concerning his or her conduct in connection with rendering medical services under this article."

Insurance Regulation 68-E authorizes the Superintendent of Financial Services to investigate allegations or information regarding health service providers engaging in the unlawful activities set forth in Insurance Law section 5109(b), and after conducting an investigation, to send to the Commissioners of Health and Education a list of providers which the Superintendent believes to have engaged in any such activities. 11 NYCRR §65-5.2(a). Within 45 days of receipt of the list, the Commissioners of Health and Education shall notify the Superintendent in writing whether they confirm that the Superintendent has a reasonable basis to proceed with notice and a hearing for determining whether any of the listed providers should be deauthorized from demanding or requesting payment for medical services in connection with any claim under the no-fault law. (Id.)

In the hearing conducted before me, the Department showed that it sent the Respondent questionnaires seeking relevant information concerning the Respondent's conduct in connection with rendering health services under the no-fault law, that those questionnaires were delivered, by certified mail and by hand, to the addresses of two professional corporations with which the Respondent is affiliated, and that they were received. The Respondent failed to answer the questionnaires or otherwise provide the requested information. The Department has also shown that it complied with the notice and hearing procedures required by Section 301 of the State Administrative Procedures Act, by Section 305 of the Financial Services Law, and by Regulation 68-E.

The Respondent was warned that failure to respond could result in his exclusion from the no-fault system as an authorized medical provider, yet he failed to respond to the questionnaires or appear at the hearing to explain, object or justify his conduct. The deauthorization of health care providers who do not cooperate with official inquiries is necessary to prevent fraud and protect the integrity of the no-fault system. Accordingly, the Respondent should be prohibited from submitting claims to the no-fault system.

RECOMMENDATION

For the reasons set forth above, I recommend that the Superintendent issue an order prohibiting the Respondent from demanding, requesting or receiving any payment for health services in connection with any claim under Article 51 of the Insurance Law and requiring the Respondent to refrain from treating, for remuneration, as a private patient, any person seeking treatment under Article 51.

Respectfully submitted,

Daniel S. Alter
General Counsel

Dated: New York, New York
October 8, 2013