



***New York State Board for Professional Medical Conduct***

*433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863*

Richard F. Daines, M.D.  
*Commissioner  
NYS Department of Health*

Keith W. Servis  
*Director  
Office of Professional Medical Conduct*

Kendrick A. Sears, M.D.  
*Chair*

Michael A. Gonzalez, R.P.A.  
*Vice Chair*

Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

*Public*

July 30, 2007

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Hotek Kim, M.D.  
REDACTED

Re: License No. 121583

Dear Dr. Kim:

Enclosed is a copy of Order #BPMC 07-156 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect August 6, 2007.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order and return it to the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299**

Sincerely,

REDACTED  
Ansel R. Marks, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: John Carlin, Esq.  
Levene, Gouldin & Thompson, LLP  
P.O. Box F-1706  
Binghamton, NY 13902

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

IN THE MATTER  
OF  
HOTEK KIM, M.D.

CONSENT  
ORDER

BPMC No. #07-156

Upon the application of Hotek Kim, M.D. 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, are adopted 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 Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 7-27-07

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  
HOTEK KIM, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

Hotek Kim, M.D., representing that all of the following statements are true, deposes and says:

That on or about September 16, 1974, I was licensed to practice as a physician in the State of New York, and issued License No. 121583 by the New York State Education Department.

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 three specifications of professional misconduct.

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

I admit the Second Specification as to Factual Allegations A.3 and A.3(a) and A.4 only, in full satisfaction of the charges against me, and agree to the following penalties:

- 1) a censure and reprimand
- 2) Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of two years, subject to the terms set forth in Exhibit B.

I further agree that the Consent Order shall impose the following conditions:

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 30 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.

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 the 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 7-9-07

REDACTED

\_\_\_\_\_  
HOTER KIM, M.D.  
RESPONDENT

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

DATE: 7/13/07

REDACTED

~~JOHN CARVIN, ESQ.~~  
Attorney for Respondent

DATE: 7/19/07

REDACTED

~~CINDY M. FASCIA~~  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 7/26/07

REDACTED

~~KEITH W. SERVIS~~  
Director  
Office of Professional Medical Conduct

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

IN THE MATTER  
OF  
HOTEK KIM, M.D.

STATEMENT  
OF  
CHARGES

Hotek Kim, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 16, 1974, by the issuance of license number 121583 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A (identified in appendix) on or about December 16, 2002 at United Health Services Hospital, Wilson Division, in Binghamton, New York. Respondent's care of Patient A failed to meet the standard of care, in that:
1. Respondent's care of Patient A in the PACU (recovery room) prior to her being returned to the OR (operating room) for additional surgery failed to meet the standard of care, in that Respondent failed to sedate Patient A and/or to take other measures to insure Patient A's airway would be protected.
  2. Respondent's care of Patient A in the OR during her second surgery failed to meet the standard of care, in that:
    - a. Respondent chose to manage Patient A's anesthesia so that she would rapidly awaken in the

EXHIBIT A



- recovery room.
- b. Respondent failed to plan for or institute appropriate measures to protect Patient A's airway following her second surgery.
3. Respondent's care of Patient A subsequent to her second surgery and/or in the PACU following that surgery failed to meet the standard of care, in that:
    - a. Respondent, having planned and having administered anesthesia with the plan that Patient A would rapidly awaken in the recovery room, failed to remain with Patient A in the recovery room and/or failed to plan for or to take appropriate measures to protect Patient A's airway.
    - b. Respondent failed to ensure that extubation of Patient A occurred under controlled conditions with preparations in place for reintubation if necessary.
  4. Respondent failed to adequately document his treatment of Patient A in her medical record.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **GROSS NEGLIGENCE**

Respondent is charged with committing professional misconduct by reason of practicing the profession of medicine with gross negligence on a particular occasion in violation of New York Education Law § 6530(4), in that Petitioner charges:

1. The facts in Paragraphs A and A.1; and/or A.2 and A.2(a) and/or A.2(b); and/or A.3 and A.3(a) and/or A.3(b) and/or A.4.

## **SECOND SPECIFICATION**

### **NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct by reason of practicing the profession of medicine with negligence on more than one occasion in violation of New York Education Law § 6530(3), in that Petitioner charges:

2. The facts in Paragraphs A and A.1; and/or A.2 and A.2(a) and/or A.2(b); and/or A.3 and A.3(a) and/or A.3(b) and/or A.4.

## **THIRD SPECIFICATION**

### **FAILURE TO MAINTAIN RECORDS**

Respondent is charged with professional misconduct by reason of his failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in violation of New York Education Law § 6530(32), in that Petitioner charges:

3. The facts in Paragraphs A and A.4.

DATE: July 19, 2007  
Albany, New York

REDACTED

Peter D. Van Buren  
Deputy Counsel  
Bureau of Professional Medical Conduct

## **EXHIBIT B**

### **Terms of Probation**

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 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.

### **CONTINUING MEDICAL EDUCATION**

9. Respondent, during the period of probation, shall complete a total of 40 hours of Category I Continuing Medical Education (CME). All CME courses are subject to the prior written approval of OPMC. Said 40 hours of CME shall be in addition to any other CME that Respondent is required to complete to maintain licensure in any jurisdiction or privileges in any facility.
10. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or 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.