



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
*Commissioner*

Wendy E. Saunders  
*Chief of Staff*

October 14, 2008

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

Matthew Chen, M.D.  
Redacted Address

;

Jonathan H. Rose, Esq.  
821 Bancroft Way  
Berkeley, California 94710

Robert Bogan, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180

**RE: In the Matter of Matthew Chen, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 08-193) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,  
Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER  
OF  
MATTHEW CHEN, M.D.

DETERMINATION  
AND  
ORDER

BPMC #08-193

COPY

A hearing was held on September 17, 2008, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated August 5, 2008, were served upon the Respondent, MATTHEW CHEN, M.D.

Pursuant to Section 230(10)(e) of the Public Health Law, **Peter S. Koenig, Sr.**, Chairperson, **Eleanor C. Kane, M.D.**, and **Trevor A. Litchmore, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Robert Bass, Esq.** Of Counsel. The Respondent, **Matthew Chen, M.D.**, did appear, along with counsel, **Jonathan H. Rose, Esq.**, of Berkeley, California.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

## STATEMENT OF CASE

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(42) by failing to comply with a signed agreement to practice medicine in New York State in an area designated by the commissioner of education as having a shortage of physicians or refusing to repay medical education costs in lieu of such required service, or failing to comply with any provision of a written agreement with the state or any municipality within which the licensee has agreed to provide medical service, or refusing to repay funds in lieu of such service as consideration of awards made by the state or any municipality thereof for his or her professional education in medicine, or failing to comply with any agreement entered into to aid his or her medical education. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

### WITNESSES

For the Petitioner:	None
For the Respondent:	Dr. Matthew Chen

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. **MATTHEW CHEN, M.D.**, the Respondent, was authorized to practice medicine in New York State on March 9, 1999, by the issuance of

license number 213338 by the New York State Education Department (Petitioner's Ex. 4).

2. On May 10, 1990 and July 29, 1992, the Respondent entered into agreements with the Sophie Davis School of Biomedical Education/City University of New York dealing with Post Graduation Service Commitments. (Petitioner's Ex. 5).
3. According to the above agreements, the Respondent agreed to provide full-time medical service as a primary care physician for a period of two years in a designated physician shortage area in the City of New York within twelve months following the completion of his primary care training or within five years of graduating from medical school, whichever date is earlier. The respondent further agreed to pay and reimburse the CUNY Biomedical Program the sum of Seventy-Five Thousand Dollars (\$75,000.00) in lieu of fulfilling the two year service commitment, payable within eighteen months (18) following the applicable earlier date. (Petitioner's Ex. 5)
4. In May of 1995, the Respondent graduated from the Sophie Davis School of Biomedical Education with a B.S. degree. (Petitioner's Ex. 4)
5. In June of 1997, the Respondent graduated from the Mount Sinai School of Medicine with an M.D. degree. (Petitioner's Ex. 4)
6. The Respondent did not provide the aforesaid service to the City of New York.
7. The Respondent did not pay the aforesaid \$75,000.00 until June of 2008. (Petitioner's Ex. 5).

8. The Respondent failed to comply with the above signed agreement.  
(Petitioner's Ex. 5).

### **HEARING COMMITTEE DETERMINATION**

The Respondent did appear at the hearing in person and with counsel. The Administrative Law Judge ruled that there was jurisdiction by personal service (Petitioner's Ex. 2)

The Hearing Committee concludes that the conduct of the Respondent constitutes professional misconduct under the laws of New York State, specifically, New York Education Law Section 6530(42) - "failing to comply with any agreement entered into to aid his medical education."

There was no dispute about the fact that the respondent entered into these agreements back in the 1990's or that he did not make the default payment of \$75,000 until 2008, after this Department of Health began the proceedings that have culminated in this hearing.

The Respondent offered several explanations for his conduct. The panel found that these explanations were not persuasive. As to why he moved to California, the Respondent testified that his wife wanted to start a business in the Bay area and that she had relatives there who could help her in this venture. (T. 18)

The documents in the record, Exhibit 5, establish that the Respondent was accepted into a special program in 1990 whereby he did six years in City College's School of Biomedical Education and then completed his medical education in a two year program at Mt. Sinai, graduating with the M.D. degree. This was a special program and it involved a special commitment, namely that he work for two years serving an underserved population in New York in primary care. The signed agreement in the

record, Ex. 5, indicates that if the Doctor doesn't follow through on the commitment, he will be obliged to pay \$75,000. The record shows that the Respondent, in 2008, did pay the required \$75,000. The misconduct in this case stems from the fact that he delayed so long in honoring this commitment. In 2003, there was communication in which Dr. Chen asked for forgiveness of the \$75,00 on the grounds that he was serving a similar population out in California as that contemplated by the original agreement. This proposal was rejected in 2003 and the Attorneys for City College indicated that the \$75,000 was due and owing that year. (Ex. 5)

The Respondent testified that he didn't pay the money back in 2003 because he had to pay special education costs for his brother and these costs were verified in his documentation, Respondent's Ex. C. The testimony at the hearing goes on to show that, in the pivotal year of 2003, when he was asking for forgiveness of the money owed City College, the Respondent proceeded to buy a home in California for some \$536,000.00 (T. 54)

In reviewing the entire record in this case, the panel recognized that the Respondent eventually paid the \$75,000 owed to City College, but this was years after it was marked due and owing, and only after he was sued and the matter was referred to the Department of Health. The panel recognizes that this is a special program and that City College educates young doctors in the hopes that they will do primary medicine for underserved populations in New York and if they don't, they will be obliged to pay back some \$75,000. The doctor in this case moved to California and became an anesthesiologist and proceeded not to pay the required \$75,000 after forgiveness was denied.

The panel, unanimously, found this to be misconduct and deemed a censure, reprimand, and \$7,500.00 fine the appropriate penalty.

**VOTE OF THE HEARING COMMITTEE**

**FIRST SPECIFICATION**

Respondent violated New York Education Law Section 6530(42) by failing to comply with any agreement entered into to aid his medical education, in that Petitioner charges him with failing to comply with a signed agreement to practice medicine in New York State in an area designated by the commissioner of education as having a shortage of physicians or refusing to repay medical education costs in lieu of such required service, or failing to comply with any provision of a written agreement with the state or any municipality within which the licensee has agreed to provide medical service, or refusing to repay funds in lieu of such service as consideration of awards made by the state or any municipality thereof for his or her professional education in medicine, or failing to comply with any agreement entered into to aid his or her medical education.

VOTE: Sustained (3-0)

**ORDER**

**IT IS HEREBY ORDERED THAT:**


1. The Respondent is censured and reprimanded for having failed to comply with a signed agreement to practice medicine in an area designated as having a shortage of physicians in New York State.



2. A fine of \$ 7,500.00 is imposed on the Respondent. The fine is payable in full within 30 days of the effective date of this Order. Payment must be submitted to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower, Room 1258, Albany, New York 12237. Failure to pay the fine on time will subject the Respondent to all provisions of law relating to debt collection by New York State, including 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 and licenses (Tax Law Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

**DATED: Dewitt, New York**  
October 10, 2008

Redacted Signature

  
**Peter S. Koenig, Sr., Chairperson,**  
**Eleanor C. Kane, M.D.,**  
**Trevor A. Litchmore, M.D.,**

To:  
**Matthew Chen, M.D.,**

Redacted Address

**Jonathan H. Rose, Esq.,**  
821 Bancroft Way  
Berkeley, California 94710

Robert Bogan, Esq.  
Attorney for Petitioner  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
433 River Street, Suite 303  
Troy, New York 12180-2299

## **Appendix 1**



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

IN THE MATTER  
OF  
MATTHEW CHEN, M.D.  
CO-07-08-4445-A

NOTICE  
OF  
HEARING

TO: MATTHEW CHEN, M.D.  
John Muir Medical Center  
2305 Camino Ramon  
San Ramon, CA 94583

MATTHEW CHEN, M.D.

Redacted Address

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on September 17, 2008, at 10:00 a.m., at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 12180 , and at such other adjourned dates, times, and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A Summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of actual engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of New York Public Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide, at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence that cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.**

DATED: Albany, New York  
*Aug. 5*, 2008

Redacted Signature

**PETER D. VAN BUREN**  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be directed to:

Robert Bogan  
Associate Counsel  
New York State Department of Health  
Office of Professional Medical Conduct  
433 River Street - Suite 303  
Troy, NY 12180  
(518) 402-01828

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

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IN THE MATTER  
OF  
MATTHEW CHEN, M.D.  
CO-01-04-1771-A

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STATEMENT  
OF  
CHARGES

MATTHEW CHEN, M.D., the Respondent, was authorized to practice medicine in New York state on March 9, 1999, by the issuance of license number 213338 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 10, 1990, and July 29, 1992, Respondent prepared and/or submitted to The Sophie Davis School of Biomedical Education/ City University of New York Medical School, The City College, The City University of New York, an Agreement On Post-Graduation Service Commitment (hereinafter "Agreement"), wherein he, inter alia, agreed to "provide full-time medical service as a primary care physician for a period of two (2) years in a designated physician shortage area in The City of New York within twelve months following the completion of the student's residency training in primary medical care, and if he "fails to begin to fulfill the two-year service commitment within twelve (12) months of the completion of the student's primary care training, or within five (5) years of graduating from medical school, whichever date is earlier, the student agrees to pay and reimburse the CUNY Biomedical Program the sum of Seventy-Five Thousand Dollars (\$75,000.00) in lieu of fulfilling the two-year service commitment, payable within eighteen (18) months following the applicable earlier dated. Following the graduation date from medical school, the \$75,000.00 shall earn interest at the prime rate plus two percentage points."

B. On or about May 1995, Respondent graduated from The Sophie Davis School of Biomedical Education, described in Paragraph A, above, with a B.S. degree.

C. On or about June 1997, Respondent graduated from the Mount Sinai School of Medicine, with an M.D. degree.

D. On or about June 4, 2008, Respondent entered into an agreement to pay \$75,000.00, in full satisfaction of the Agreement, set forth in Paragraph A, above.

E. On or about June 16, 2008, Harold M. Birn, of the law firm of LeSchack & Grodensky, P.C. confirmed the receipt of the \$75,000.00 paid by Respondent, in satisfaction of the Agreement set forth in Paragraph A, above.

F. From on or about June 1997, to on or about June 4, 2008, Respondent knowingly and wrongfully failed to comply with the Agreement, set forth in Paragraph A, above.

#### SPECIFICATION

Respondent violated New York Education Law §6530(42) by failing to comply with a signed agreement to practice medicine in New York state in an area designated by the commissioner of education as having a shortage of physicians or refusing to repay medical education costs in lieu of such required service, or failing to comply with any provision of a written agreement with the state or any municipality within which the licensee has agreed to provide medical service, or refusing to repay funds in lieu of such service as consideration of awards made by the state or any municipality thereof for his or her professional education in medicine, or failing to comply with any agreement entered into to aid his or her medical education:

1. The facts in paragraph A, B, C, D, E, and/or F.

DATED: *Aug. 5*, 2008  
Albany, New York

Redacted Signature

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PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct