

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

August 8, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2405
Albany, New York 12237-0032

Mark X. Huang, M.D.
136-20 38th Avenue – Suite 5F
Flushing, New York 11354

Alfredo F. Mendez, Esq.
Abrams Fensterman
630 Third Avenue
New York, New York 10017

RE: In the Matter of Mark X. Huang, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-157) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise

unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

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 licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health (the Department), and authorized it to conduct disciplinary proceedings in matters of professional medical conduct.

Definitions of professional misconduct applicable to physicians, physician assistants and specialist assistants are set forth in Ed.L 6530 and 6531. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(a)(ii).

Pursuant to PHL 230(10)(p), a "direct referral procedure" is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner:	None
Petitioner exhibits:	Department Exhibits 1-4
Witnesses for the Respondent:	Mark X. Huang, M.D. Ding Wen Wu, M.D. Pei-Nian Wang
Respondent exhibits:	Respondent Exhibits A-P

A transcript of the hearing was made. (Transcript, pages 1-57.)

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent Mark X. Huang, M.D. was authorized to practice medicine in New York State on January 30, 2001 under license number 220258. (Exhibit 3.)
2. On June 22, 2009, in the United States District Court, Eastern District of New York, the Respondent was found guilty, based upon a plea of guilty, of one count of health care fraud in violation of 18 USC 1347, a felony. The Respondent was sentenced to twelve months imprisonment, a \$50,000 fine, and \$2,549,977 in restitution. The sentence of imprisonment was to be suspended if he paid \$2 million of the restitution within eight months. The Respondent paid the restitution within the required period and was sentenced to three years supervised release.

HEARING COMMITTEE DETERMINATION

After reviewing records obtained from the US District Court (Exhibits 4, 5; Exhibits A, B, D), the hearing committee unanimously determined that, as alleged in the statement of charges, the Respondent violated Ed.L 6530(9)(a)(ii) which defines professional misconduct, in pertinent part, as:

9. (a) Being convicted of committing an act constituting a crime under... federal law.

The Petitioner recommended revocation of the Respondent's license on the grounds that the conviction was for health care fraud on a large scale. (Transcript, page 51.)

The conviction in this case arose from the Respondent's billing of health care programs over a period of several years for physical therapy services that were not provided by licensed physical therapists. The Respondent employed acupuncturists and massage

therapists who were authorized to provide the services in question, but the Respondent fraudulently billed health care programs by representing that the services were provided by licensed physical therapists. The panel noted evidence indicating that this has apparently been a widespread practice in the medical community in which the Respondent practiced.

The hearing committee unanimously agreed that the scale – millions of dollars – and the time period – five years – of the health care fraud in which the Respondent knowingly engaged called for a substantial penalty that would include some action against the Respondent's license for some substantial period. The hearing committee recognized, however, that there is no evidence of any criticisms going to the quality of the medical care provided by the Respondent, even for services he billed fraudulently. The hearing committee was also persuaded of the Respondent's genuine remorse and favorably impressed by his ready acceptance of full responsibility for his actions. The hearing committee found particularly persuasive the favorable views expressed by the court during the Respondent's sentencing hearing, views with which even the prosecution agreed. (Exhibit D.)

The hearing committee concluded that the Respondent's license should be suspended for nine months; that upon returning to practice his business and billing practices should be monitored for one year; and that he should also undergo specific training in business practices, ethics and billing issues related to the practice of medicine.

The hearing committee's vote was unanimous (3-0).

APPENDIX I

IN THE MATTER
OF
MARK X. HUANG, M.D.
CO-11-10-5409-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

EXHIBIT

TO: Mark X. Huang, M.D.
136-20 38th Ave., Suite 5F
Flushing, NY 11354

The undersigned, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that **MARK X. HUANG, M.D.**, Respondent, licensed to practice medicine in the State of New York on January 30, 2001, by license number 220258, has been convicted of committing an act constituting a felony under federal law, in the United States District Court, Eastern District of New York, as is more fully set forth in the Statement of Charges attached, hereto, and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), effective immediately **MARK X. HUANG, M.D.**, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN VIOLATION OF THIS COMMISSIONER'S ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY, DEFINED BY NEW YORK EDUCATION LAW §6512.

PLEASE TAKE NOTICE that 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 the 13th day of June 2012, at 10:30 a.m., at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

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. Respondent shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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.

The hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing 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. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, and by 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. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

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 or sanction 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 FORTH 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
April 23, 2012

REDACTED

NIRAV R. SHAH, M.D., M.P.H.
Commissioner of Health
New York State Department of Health

inquires should be addressed to:

Michael G. Bass
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

IN THE MATTER
OF
MARK X. HUANG, M.D.
CO-11-10-5409-A

STATEMENT
OF
CHARGES

MARK X. HUANG, M.D., Respondent, was authorized to practice medicine in New York state on or about January 30, 2001, by the issuance of license number 220258 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 22, 2009, in United States District Court, Eastern District of New York, Respondent plead guilty to one count of Health Care Fraud, a felony, in violation of Title 18 of the United States Code Section 1347. On or about April 19, 2011, in United States District Court, Eastern District of New York, Respondent was sentenced, inter alia, to twelve (12) months and one (1) day of imprisonment, to be suspended if Respondent paid two (2) million dollars of restitution within eight (8) months of April 19, 2011.

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *April 23*, 2012
Albany, New York

REDACTED

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