



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

November 17, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael A. Hiser, Esq.
Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower - Room 2438
Albany, New York 12237

Robert P. Roche, Esq.
36 South Pearl Street
Albany, New York 12207

RECEIVED
NOV 18 1994
DEPT. OF PROFESSIONAL MEDICAL CONDUCT

Fang Shuh Horng, M.D.
218 Page Street
Luray, Virginia 22835

Effective date: 11/24/94

RE: In the Matter of Fang Shuh Horng, M.D.

Dear Mr. Hiser and Dr. Horng and Mr. Roche:

Enclosed please find the Determination and Order (No. BPMC-94-235) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he

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 all action 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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc

Enclosure

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

**IN THE MATTER
OF
FANG SHUH HORNG, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-94-235

A Notice of Hearing and Statement of Charges, both dated July 12, 1994, were served upon the Respondent Fang Shuh Horng, M.D. Daniel A. Sherber, M.D., Leo T. Fishel, Jr., M.D. and Louis T. Paris, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. JEFFREY ARMON, ESQ., Administrative Law Judge, served as the Administrative Officer. A hearing was held on September 29, 1994. The Department of Health appeared by Michael A. Hiser, Esq., Assistant Counsel. The Respondent appeared and was represented by Robert P. Roche, Esq. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

The Case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I. By execution of this Determination and Order, all members of the Hearing Committee acknowledge that they have read the record of these proceedings.

FINDINGS OF FACT

The Following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Fang Shuh Horng, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on August 29, 1972 by the issuance of license number 113993 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine.

2. Respondent entered into a Consent Order on November 12, 1993 with the Virginia Board of Medicine by which the Virginia Board took disciplinary action against Respondent's license to practice medicine in that state. In said Consent Order, the Virginia Board made conclusions of Law that Respondent provided substandard medical care to six patients, thereby violating Virginia Code Sections 54.1-2915.A(1) and (3), as further defined in Section 54.1-2914.A(9), (10) and (13). By these sections, Respondent was found to have made false statements or representations or engaged in fraud or deceit, to have conducted his practice in a manner contrary to the standards of ethics of medicine, to have conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public, and to have performed an act likely to deceive, defraud, or harm the public.

3. By its Order, the Virginia Board placed Respondent's Virginia medical license on

indefinite probation and imposed certain terms and conditions, including the restriction of his surgical practice to current, general surgery, the prohibition from performing certain medical procedures, the monitoring of his surgical practice by another surgeon approved by the Virginia Board, and the requirement to participate in five credit hours of continuing medical education in medical record keeping.

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Respondent had been found guilty of improper professional practice or professional misconduct by a duly authorized disciplinary agency of another state and further had had disciplinary action taken by such other state's agency whereby the conduct upon which such actions had been based would, if committed in New York State, have constituted professional misconduct under the laws of New York State, specifically, New York Education Law Section 6530(2) (McKinney Supp. 1994) (practicing the profession fraudulently or beyond its authorized scope); and/or Section 6530(3) (McKinney Supp. 1994) (practicing the profession with negligence on more than one occasion); and/or Section 6530(4) (McKinney Supp. 1994) (practicing the profession with gross negligence on a particular occasion); and/or Section 6530(5) (McKinney Supp. 1994) (practicing the profession with incompetence on more than one occasion); and/or Section 6530 (6) (McKinney Supp. 19994) (practicing the profession with gross incompetence); and/or Section 6530(32) (McKinney Supp. 1994) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient). Therefore the Hearing Committee voted to sustain the specification of professional misconduct contained within the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended for a two year period, said suspension to be stayed, and that Respondent be placed on probation during said two year period of suspension. The period of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in writing, that Respondent has commenced a medical practice in New York State. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. It further determined that Respondent's surgical practice of medicine be restricted to current, standard general surgery.

In reaching its determination, the Committee reviewed the findings of the Virginia Board and agreed with that Board's conclusions as to the seriousness of Respondent's misconduct in his treatment of the six patients at issue. The Hearing Committee considered the penalty imposed by the Virginia Board to be adequate in that it restricted his license by limiting his surgical practice to current and general surgery. The Committee felt it appropriate to impose a penalty similar to that imposed by the state with the greatest interest and noted Respondent's continued residence in Virginia, the unrebutted evidence of his compliance with the terms set forth in the Virginia Consent Order, his testimony that he intends to remain in practice in that state and the evidence of his lack of intent to practice in New York State. Accordingly, the Committee concluded that the penalty set forth above would be most appropriate in protecting the interests of the citizens of New York State.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The specification of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) is **SUSTAINED**.
2. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of two years from the effective date of this Order, said suspension to be **STAYED**.
3. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order.
4. Respondent's surgical practice of medicine be restricted to current, standard general surgery.
5. The periods of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in accordance with the Terms of Probation, of the fact that he has commenced a medical practice in New York State.

DATED : Albany, New York
Nov 7, 1994


DANIEL A. SHERBER, M.D. (Chair)

LEO T. FISHEL, JR., M.D.
LOUIS T. PARIS

TO: Michael A. Hiser, Esq.
Associate Counsel
New York State Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

Robert P. Roche, Esq.
36 South Pearl Street
Albany, New York 12207

Fang Shuh Horng, M.D.
218 Page Street
Luray, Virginia 22835

APPENDIX I

APPENDIX II

TERMS OF PROBATION

1. That Respondent, during the period of probation, shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession;
2. That Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, New York State Health Department, Empire State Plaza, Corning Tower Building, 4th Floor, Albany, New York 12237 of any employment and practice, of Respondent's residence and telephone number, of any change in Respondent's employment, practice, residence, or telephone number within or without the State of New York;
3. Respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that Respondent has paid all registration fees due and owing to the NYSED and Respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by Respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation;
4. Respondent shall submit written proof to the NYSDOH, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) Respondent is currently registered with the NYSED, unless Respondent submits written proof that Respondent has advised DPLS, NYSED, that Respondent is not engaging in the practice of Respondent's profession in the State of New York and does not desire to register, and that 2) Respondent has paid any fines which may have previously been imposed upon Respondent by the Board or by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation.
5. Respondent shall comply with all the terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board.
6. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with, or any other violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against Respondent as may be authorized pursuant to the Public Health Law.
7. Respondent's practice of surgery shall be monitored by a board certified general surgeon to be approved by the Director of the Office of Professional Medical Conduct (OPMC) who shall monitor and evaluate Respondent's surgical practice on a selective basis and who shall submit reports attesting to the propriety of such practice on a bi-annual basis to the Director of the OPMC at the above address. This

monitor shall promptly notify the Director of the OPMC of any failure to comply with appropriate standards of anesthesia care. All expenses associated with monitoring, including fees to the monitoring physician, shall be the sole responsibility of the Respondent.

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
FANG SHUH HORNG, M.D. : PROCEEDING

-----X

TO: Fang Shuh Horng, M.D.
218 Page Street
Luray, Virginia 22835

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 24th day of August, 1994 at 10:00 o'clock in the forenoon of that day at Court of Claims, Courtroom #1, Justice Building, Empire State Plaza, Albany, New York 12237.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the

nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 15, 1994.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before August 15, 1994 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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 proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in

writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
July 12, 1994

Peter D. Van Buren

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

Inquiries should be addressed to:

Michael A. Hiser
Associate Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
FANG SHUH HORNG, M.D. : CHARGES

-----X

FANG SHUH HORNG, M.D., the Respondent, was authorized to practice medicine in New York State on August 29, 1972, by the issuance of license number 113993 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

A. By Official Notification dated May 24, 1993, the Board of Medicine of the Department of Health Professions, Commonwealth of Virginia (hereafter, "Virginia Board of Medicine") informed Respondent that an informal conference committee would be convened to inquire into allegations that the Respondent's treatment of 15 patients may have violated Virginia Code sections 54.1-2915.A(1), (4) and (3), as further defined in section 54.1-2914.A(9), (10) and (13).

B. By Consent Order entered November 12, 1993, the Virginia Board of Medicine made Findings of Fact, Conclusions of Law, and issued an order. In its findings of fact and conclusion of law, the Virginia Board found Respondent to have provided substandard medical treatment to six patients, and thus to have

violated Virginia Code sections 54.1-2915.A(1) and (3), as further defined in section 54.1-2914.A(9), (10) and (13). By these sections, Respondent was found to have made false statements or representations or engaged in fraud or deceit, to have conducted his practice in a manner contrary to the standards of ethics of medicine, to have conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public, and to have performed an act likely to deceive, defraud, or harm the public.

C. By its order, the Virginia Board of Medicine placed Respondent's medical license on indefinite probation, with the following terms and conditions, among others: his surgical practice of medicine was restricted to current, general surgery, and he was not to perform specific procedures (including pancreas procedures, renal procedures, urology procedures, operative orthopaedic procedures, elective chest procedures, and non-emergency vascular procedures); Respondent's surgical practice was to be reviewed and audited at least once a month by a Board certified general surgeon approved by the Virginia Board, with the monitor providing detailed and informative findings to the Board quarterly; and Respondent was ordered to earn five credit hours of continuing medical education in medical recordkeeping. Finally, Respondent was ordered to appear, in approximately one year, before an informal conference committee of the Board for the committee to determine the nature of the ongoing monitoring of Respondent's indefinite probation, and the frequency of further appearances of Respondent before the informal committee.

D. The conduct upon which the finding of Respondent's

improper professional practice or professional misconduct was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically, New York Educ. Law §6530(2) (McKinney Supp. 1994) (practicing the profession fraudulently or beyond its authorized scope); and/or §6530(3) (McKinney Supp. 1994) (practicing the profession with negligence on more than one occasion); and/or §6530(4) (McKinney Supp. 1994) (practicing the profession with gross negligence on a particular occasion); and/or §6530(5) (McKinney Supp. 1994) (practicing the profession with incompetence on more than one occasion); and/or §6530(6) (McKinney Supp. 1994) (practicing the profession with gross incompetence); and/or §6530(32) (McKinney Supp. 1994) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF IMPROPER PROFESSIONAL PRACTICE OR PROFESSIONAL MISCONDUCT

Respondent is charged with having been found guilty of improper professional practice or professional misconduct by a duly authorized disciplinary agency of another state, where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, within the meaning of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1994), in that Petitioner charges:

1. The facts in Paragraphs A, B, C, and/or D.


SECOND SPECIFICATION

HAVING OTHER DISCIPLINARY ACTION TAKEN

Respondent is charged with having his license to practice medicine revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1994), in that Petitioner charges:

2. The facts in Paragraphs A, B, C, and/or D.

DATED: *July 12*, 1994
Albany, New York


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