



# Department of Health


**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**LISA J. PINO, M.A., J.D.**  
Executive Deputy Commissioner

February 16, 2021

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ho Anh, M.D.  


Michael L. Koenig, Esq.  
Hinckley Allen  
30 South Pearl Street, Suite 901  
Albany, New York 12207

Marc S. Nash, Esq.  
Bureau of Professional Medical Conduct  
Corning Tower Building, Room 2512  
Empire State Plaza  
Albany, New York 12237

**RE: In the Matter of Ho Anh, M.D.**

Dear Parties:

Enclosed please find the Corrected Determination and Order (No. 21-006) 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. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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., 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 Judge 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,



James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cmg  
Enclosure

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

COPY

-----x  
IN THE MATTER

OF

HO ANH, M.D.  
-----x

:  
: CORRECTED  
: DETERMINATION  
: AND  
: ORDER  
: BMC-21-006  
:  
:

In accordance with Public Health Law (PHL) § 230, and the New York State Administrative Procedure Act (SAPA) Article 3, a hearing was held by videoconference on December 17, 2020. Pursuant to PHL § 230(10)(e), Mary E. Rappazzo, M.D., Chairperson, Eleanor C. Kane, M.D., and Myra M. Nathan, Ph.D., duly designated members of the State Board for Professional Medical Conduct (BPMC), served as the Hearing Committee in this matter. Jean T. Carney, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Associate Counsel Marc S. Nash. The Respondent appeared in person and through his attorney, Michael L. Koenig, Esq. Jurisdiction over the Respondent was obtained by personal service of the Notice of Referral Proceeding, and Statement of Charges. The Hearing Committee received and examined documents from the Department (Exhibits 1-4). The Respondent testified in his own behalf and submitted documents (Exhibits A-B). A stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains

the charges that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9)(d).

### **BACKGROUND**

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9).

The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(d), having had his license revoked, or suspended, or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, namely Educ. Law § 6530(3).

Under PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice." (Educ. Law § 6530).

### **FINDINGS OF FACT**

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. The Respondent was authorized to practice medicine in New York State on August 9, 2016, by the issuance of license number 286076. (Exhibit 3).

2. On March 3, 2020, the Respondent entered into a stipulated settlement with the Medical Board of California (California Board) which resulted in a Decision dated March 23, 2020 subjecting the Respondent to Public Reprimand, and requiring him to successfully complete an approved course in prescribing practices. The California Board did not impose a monetary penalty. The California Board found that the Respondent, using a telemedicine protocol, diagnosed infections and prescribed antibiotics for two patients who did not have infections. The Respondent failed to obtain reliable medical histories, or perform physical exams, or otherwise verify a medical need for the prescriptions. (Exhibit 4).

3. The Respondent complied with the California Board's Order, and has incorporated changes to his telemedicine practice, including live video consults, in accordance with what he learned from this process. (Exhibits A and B; Respondent's testimony).

#### **VOTE OF THE HEARING COMMITTEE**

The Hearing Committee concludes that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law §6530(d).

VOTE: Sustained (3-0)

## HEARING COMMITTEE DETERMINATIONS

The Department met its burden of proving by a preponderance of the evidence that the Respondent was the subject of disciplinary action by the California Board, and his conduct would have resulted in disciplinary action in New York if the conduct had occurred in New York State. Specifically, the Respondent, using a telemedicine protocol, diagnosed infections and prescribed antibiotics for two patients who did not have infections. The Respondent failed to obtain reliable medical histories, or perform physical exams, or otherwise verify a medical need for the prescriptions. The Respondent's actions constitute a violation of Educ. Law § 6530(3), practicing the profession with negligence on more than one occasion. The committee concludes that the Respondent's actions constitute professional misconduct as defined in Educ. Law §6530(d).

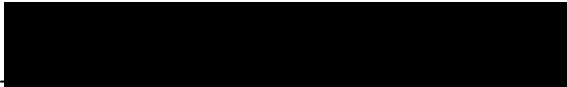
In considering the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties; the Hearing Committee noted that the Respondent expressed remorse, took responsibility for his actions, fully complied with the California Board's Order, and has improved his practice to ensure proper patient care. The Department recommended censure and reprimand, as well as a \$5,000 fine. The Hearing Committee finds that censure and reprimand is appropriate; but declines to impose a monetary penalty.

ORDER


**IT IS HEREBY ORDERED THAT:**


1. The specification of professional misconduct as set forth in the Statement of Charges is sustained; and
2. The Respondent is censured and reprimanded; and
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL §230(10)(h).

**DATED: Albany, New York**  
**, 2021**

  
Mary E. Rappazzo, M.D., Chairperson  
Eleanor C. Kane, M.D.  
Myra M. Nathan, Ph.D.

To: Ho Anh, M.D.

  
Michael L. Koenig, Esq.  
Hinckley Allen  
30 South Pearl Street, Suite 901  
Albany, NY 12207

  
Marc S. Nash, Esq.  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower Building – Room 2512  
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Albany, New York 12237



# APPENDIX A



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

IN THE MATTER  
OF  
HO ANH, M.D.

STATEMENT  
OF  
CHARGES

HO ANH, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 9, 2016, by the issuance of license number 286076 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about March 23, 2020, the Medical Board of California (hereinafter, "California Board") issued a Decision which adopted a Stipulated Settlement and Disciplinary Order signed by Respondent on March 3, 2020, which publicly reprimanded Respondent and directed Respondent to enroll in a prescribing practices course. This disciplinary action was based on information that the California Board could establish a prima facie case that in February 2017, Respondent diagnosed infections for two individuals which each person did not have, and that Respondent's care and treatment of these two individuals was provided without obtaining a reliable history; performing a physical examination; or otherwise verifying that there was a medical indication for prescriptions, for which antibiotics were prescribed.

B. The conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State pursuant to the following Section of New York State Law:

1. New York Education Law § 6530(3) (Practicing the profession with negligence on more than one occasion).

**SPECIFICATION OF CHARGES**

**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice as a physician assistant revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted 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 or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(3)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B and B.1.

DATE: November 3, 2020  
Albany, New York

  
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TIMOTHY J. MAHAR  
Deputy Counsel  
Bureau of Professional Medical Conduct