



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

April 27, 1993

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David Y. Kim, M.D.  
1244 Wisconsin Avenue  
Racine, Wisconsin 53403

Silvia Finkelstein, Esq.  
NYS Department of Health  
Bureau of Professional  
Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York 10001-1810

**RE: In the Matter of David Y. Kim, M.D.**

Dear Dr. Kim and Ms. Finkelstein:

Enclosed please find the Determination and Order (No. BPMC-93-54) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health  
Office of Professional Medical Conduct  
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 than 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 (p), 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.

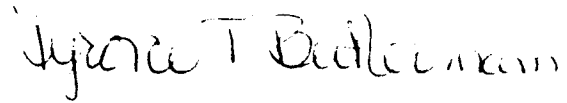
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Corning Tower -Room 2503  
Empire State Plaza  
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.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nam  
Enclosure

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

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IN THE MATTER : HEARING  
OF : COMMITTEE'S  
DAVID Y. KIM, M.D. : DETERMINATION  
: AND  
: ORDER NO. BPMC-93-54

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A Notice of Hearing and Statement of Charges both dated January 6, 1993 was attempted to be served upon the Respondent David Y. Kim, M.D. by certified mail-return receipt requested at his last known address in Racine, Wisconsin. The certified mail was returned to the Bureau of Professional Medical Conduct by the U.S. Postal Service as "Moved, Not Forwardable." (Pet. Ex. #5) **THEA GRAVES PELLMAN**, Chairperson, **MARTIN CHERKASKY, M.D.** and **RICHARD N. PIERSON, JR., M.D.** duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law (PHL). **Benjamin J. Migliore**, Administrative Law Judge, served as the Hearing Officer. A hearing was held on February 23, 1993 at 5 Penn Plaza, Conference Room A, Sixth Floor, New York, New York. The Department of Health appeared by Silvia P. Finkelstein, Esq., Associate Counsel. The Respondent did not appear in person and was not represented by counsel. Evidence was received and a transcript of these proceedings was made.

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

### STATEMENT OF CASE

This proceeding was brought pursuant to PHL §230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of N.Y. Education Law §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 the 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 N.Y. Education Law §6530(9)(b). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order.

### 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 pages 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. David Y. Kim, M.D. (hereinafter Respondent) was authorized to practice medicine in New York State on March 31, 1988 by the issuance of license number 174092 by the New York

State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992. (Pet. Ex. #1).

2. On December 19, 1990, the Wisconsin Medical Examining Board issued a Final Decision and Order finding Respondent, a psychiatrist, guilty of professional misconduct with respect to four patients, and limited his license to medical management evaluations, diagnosis and treatment plans but specifically excluding long term psychotherapy with patients. Respondent was ordered to continue undergoing psychotherapy with an approved therapist for as long as his therapist deemed it necessary. (Pet. Ex. #1) The misconduct consisted of inappropriate sexual acts, both verbal and physical, upon the four patients on various occasions.

3. On October 21, 1992, the Wisconsin Medical Examining Board issued an order revoking Respondent's license to practice medicine in Wisconsin. The Wisconsin Board found that the Respondent violated the terms and conditions of the December 19, 1990 Order by engaging in sexual intercourse with a patient that he was engaging in long term psychotherapy. The Board's decision contained detailed findings of fact evidencing sexual harassing, abusing or intimidating a patient physically or verbally and sexual contact between the licensee and a patient on several occasions. (Pet. Ex. 4)

### 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 Hearing Committee unanimously concluded that the Department of Health had met its burden of proof. The preponderance of the evidence clearly demonstrated that Respondent's license to practice medicine and surgery in the State of Wisconsin has been revoked:

- a) by engaging in in-depth, long term psychotherapy with a patient in violation of the limitations placed upon his license in an earlier hearing and order; and
- b) by engaging in sexual intercourse with a patient under his care.

The offenses proven before the Wisconsin Medical Examining Board, if committed in New York State, would constitute professional misconduct under New York Education Law §6530(9)(b). The Hearing Committee, therefore, sustained the specification of misconduct contained in 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 revoked. 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.

The seriousness of the offenses and the magnitude of the danger to the health and welfare of patients make revocation of the Respondent's license the only possible alternative. The Hearing Committee concluded that it should adopt in its entirety the Opinion, Decision and Order of the State of Wisconsin Medical Examining Board dated November 2, 1992.

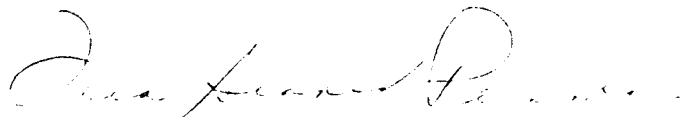
**ORDER**

Based upon the foregoing, it is hereby ordered that:

1. The First and Second Specifications of professional misconduct contained in the Statement of Charges (Pet. Ex. #1) are **sustained**; and
2. Respondent's license to practice medicine in New York State is hereby **revoked**.

**DATED: West Hempstead, New York**

**April 9, 1993**



**THEA GRAVES PELLMAN**  
**Chairperson**

**Martin Cherkasky, M.D.**  
**Richard N. Pierson, Jr., M.D.**



**TO:** David Y. Kim, M.D.  
1244 Wisconsin Avenue  
Racine, Wisconsin 53403

Silvia P. Finkelstein, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York 10001-1810

APPENDIX I

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

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**IN THE MATTER**

**STATEMENT**

**OF**

**OF**

**DAVID Y. KIM, M.D.**

**CHARGES**

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DAVID Y. KIM, M.D., the Respondent, was authorized to practice medicine in New York State on March 31, 1988 by the issuance of license number 174092 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992.

**FIRST SPECIFICATION**

1. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530 (9)(b) (McKinney Supp. 1992) in that he has been found guilty of 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 as defined by N.Y. Educ. Law Secs. 6530(3), 6530(20), and 6530(31), and/or 6530(44) (McKinney Supp. 1992), specifically:

(A) On December 19, 1990, the Wisconsin Medical Examining Board issued a Final Decision and Order finding Respondent, a psychiatrist, guilty of professional misconduct with respect to four patients and limiting his license to medical management, evaluations, diagnosis, and treatment plans but specifically excluding long term psychotherapy with patients. Respondent was ordered to continue undergoing psychotherapy with an approved therapist for as long as his therapist deemed it necessary.

The Findings of Fact of the Wisconsin Medical Examining Board include the following:

(1) Respondent saw Patient 1, an 18 year old woman, on five occasions, from June 8 through August 11, 1981. Respondent's initial diagnosis of Patient 1 was that she was suffering from Borderline Personality Disorder with severe problems of individuation-separation. Respondent assessed Patient 1 as being potentially suicidal in the future with extreme low self-esteem and very marginal ego-strength. During the course of the sessions, Respondent made inappropriate verbal advances to Patient 1 and inappropriately touched her.

(2) Respondent saw Patient 2 from June 1, 1992 through October 7, 1986. Respondent's initial diagnosis of Patient 2 was that she was suffering from major affective disorder, recurrent unipolar depression, and bulimia. Respondent subsequently diagnosed Patient 2 as Borderline Personality Disorder and Bipolar Affective Disorder. During the course of the sessions, Respondent inappropriately touched Patient 2 and verbally abused her by telling her that he masturbated prior to their

sessions so that he would not become sexually excited during the sessions.

(3) Respondent treated Patient 3 from May 30, 1984 through October 20, 1984. On October 20, 1984, during the course of a therapy session, Respondent rubbed Patient 3's leg, hugged her, rubbed her buttocks with his hands, touched her chest area and kissed her on the neck.

(4) Respondent treated Patient 4 from April 23, 1985 through May 10, 1985. Patient 4 returned to Respondent's care on February 19, 1986. On March 12, 1986, Respondent made repeated verbal sexual advances to Patient 4 and inappropriately touched her.

The above conduct if committed in New York State would constitute professional misconduct under N.Y. Educ. Law Secs. 6530(3) negligence on more than one occasion; 6530(20) conduct in the practice of medicine which evidences moral unfitness to practice medicine; 6530(31) willfully harassing, abusing, or intimidating a patient either physically or verbally; and 6530(44) in the practice of psychiatry, any physical contact of a sexual nature between licensee and patient.

## SECOND SPECIFICATION

2. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(b) (McKinney Supp. 1992) in that he has been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct as defined by N.Y. Educ. Law Secs. 6530(3), 6530(20), 6530(24), 6530(31), and/or 6530(44) (McKinney Supp. 1992), specifically:

(A) On October 21, 1992, after a hearing was held, the Wisconsin Medical Examining Board issued an order revoking Respondent's license to practice medicine in the State of Wisconsin. The Wisconsin Board found that by engaging in in-depth, long-term psychotherapy with Patient A subsequent to December 19, 1990 in violation of the limitation on his license, Respondent violated a Board order, which constituted unprofessional conduct. Further, by engaging in sexual intercourse with Patient A while she was his patient, Respondent engaged in unprofessional conduct under Wisconsin law. The Board's decision contained detailed findings of fact which include the following:


Subsequent to the issuance of the Wisconsin Medical Examining Board order of December 19, 1990, referred to above, which limited Respondent's license and specifically forbid him from engaging in psychotherapy with patients, Respondent engaged in in-depth long-term psychotherapy in his treatment of Patient A on fifteen occasions from January 18, 1991 through April 14, 1992, in direct violation of said order.

In addition, between in or about November 1980 and April 1992, respondent had sexual intercourse with Patient A on nine occasions, including cunnilingus and fellatio.

The above conduct if committed in New York State would constitute professional misconduct under N.Y. Educ. Law Secs. 6530(3) practicing the profession with negligence on more than one occasion; 6530(20) conduct in the practice of medicine which evidences moral unfitness to practice medicine; 6530(24) practicing beyond the scope permitted by law; 6530(31) willfully harassing, abusing,

or intimidating a patient either physically or verbally;  
6530(44) in the practice of psychiatry, any physical  
contact of a sexual nature between licensee and patient.

DATED: New York, New York  
January 6, 1993

  
CHRIS STERN HYMAN  
Counsel  
Bureau of Professional Medical  
Conduct