



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

October 28, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Terrence Sheehan, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

Kyu Yong Lee, M.D.
647 Park Avenue
Paterson, New Jersey 07504

Kern, Augustine, Conroy & Schoppmann, P.C.
Robert J. Conroy, Esq. and
Lawrence M. Schwartz, Esq., of counsel
420 Lakeville Road
Lake Success, New York 11042

RE: In the Matter of Kyu Yong Lee, M.D.

Dear Mr. Sheehan, Dr. Lee and Mr. Conroy:

Enclosed please find the Determination and Order (No. 94-231) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

TB:rlw
Enclosure

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

**IN THE MATTER
OF
KYU YONG LEE, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-94-231

SAMUEL H. MADELL, M.D., (Chair), **C. FRED PECKHAM, JR, D.O.** and **KENNETH KOWALD** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **TERRENCE SHEEHAN, ESQ.**, Associate Counsel.

Respondent, **KYU YONG LEE, M.D.**, appeared personally and was represented by **KERN, AUGUSTINE, CONROY & SCHOPPMANN, P.C.**, by **ROBERT J. CONROY, ESQ.**, of counsel.

A hearing was held on September 8, 1994. Evidence was received and examined, a witness was sworn or affirmed and examined. A Transcript of the proceedings was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [hereinafter "P.H.L."])

This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty to be imposed on the licensee¹ (Respondent).

KYU YONG LEE, M.D., (hereinafter "Respondent") is charged with professional misconduct within the meaning of §6530(9)(d) of the Education Law of the State of New York (hereinafter N.Y.S. Education Law), to wit: "professional misconduct ... by reason of having disciplinary action taken by a duly authorized professional disciplinary agency of another state, for conduct, which conduct, would, if committed in New York State constitute professional misconduct under the Laws of New York State. (Petitioner's Exhibit # 1 and §6530[9][d] of the N.Y.S. Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(d) of the N.Y.S. Education Law, must determine: (1) whether Respondent had his license to practice medicine revoked or suspended after some disciplinary action was taken or instituted against him by a duly authorized professional disciplinary agency of another state; and

¹ P.H.L. §230(10)(p), fifth sentence.

(2) whether Respondent's conduct on which the disciplinary action was taken would, if committed in New York State, constitute professional misconduct under the laws of New York State.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Unless otherwise noted, all Findings and Conclusions herein were unanimous.

1. Respondent was authorized to practice medicine in New York State on September 1, 1970 by the issuance of license number 107042 by the New York State Education Department. (Petitioner's Exhibits # 1 and # 4)²

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994. (Petitioner's Exhibits # 1 and # 4)

3. Frederick Senatore served the Notice of Referral Proceeding (Notice of Hearing), the Statement of Charges, both dated May 27, 1994, and Summary of Department of Health Hearing Rules on Respondent on June 3, 1994 at his address, 647 Park Ave, Paterson, NJ. (Petitioner's Exhibit # 2)

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit)

4. The State Board of Medical Examiners of the State of New Jersey, (hereinafter "New Jersey Board") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of New Jersey. (Petitioner's Exhibit # 3)

5. As a result of information contained in a New Jersey Enforcement Bureau Report of Investigation, Respondent and the New Jersey Board entered into a Consent Order, dated and filed June 22, 1993. (Petitioner's Exhibit # 3)

6. In the Consent Order, Respondent consented to be bound by the terms of the Order. Respondent made no admissions of negligence, wrongdoing or guilt to any charges. The New Jersey Board made no findings of fact nor reached any conclusions of law. (Petitioner's Exhibit # 3)

7. In the Consent Order, Respondent's license to practice medicine in the State of New Jersey was suspended for three (3) years; the first six (6) months of which was to be active suspension, and the remaining two and one-half (2½) years was to be a period of probation. The Consent Order contained various other conditions, limitations and requirements of Respondent. (Petitioner's Exhibit # 3)

8. The Hearing Committee accepts the June 22, 1993 Consent Order and adopts same as its own Findings of Fact. The Consent Order is annexed hereto as appendix II and is incorporated herein.

9. In 1991, Respondent started practicing in a weight loss clinic operated by a long time friend who had suffered an injury. [T-15-19 and T-36]³ Respondent dispensed diuretics and thyroid medication and administered vitamin B-12 shots. [T-36]

³ Numbers in brackets refer to transcript page numbers. [T-]

10. Respondent indicated that he was an employee of his friend, Dr. Palmisano, and as such, Respondent believed compelled to follow the dictates of his employer, regardless of whether or not the patient care was contrary to proper medical knowledge or proper medical judgment or proper medical ethical responsibilities of a physician to his patient. [T-56-58] Respondent continued to dispense thyroid medication, even when he believed it may be dangerous to do so, because Dr. Palmisano told him to do so. [T-66-67]

11. Respondent knew that he was under investigation in April of 1992. [T-73 and T-78] In December 1992, Respondent entered into an Interim Order with the New Jersey Board, in which he voluntarily surrendered his privileges, together with his State and Federal Registrations, regarding Controlled Dangerous Substances. (Petitioner's Exhibit # 3)

12. Respondent's most recent New York State Registration application for a license to practice medicine, signed by Respondent and dated November 23, 1992, indicates a NO to question 1.(a):

"Since you last registered, has any state other than New York instituted charges against you for professional misconduct, unprofessional conduct, incompetence or negligence or revoked, suspended, or accepted surrender of a professional license held by you?"⁴

(Petitioner's Exhibit # 4)

⁴ Although the Statement of Charges do not include allegations of false or misleading statements in Respondent's latest registration application, the Hearing Committee can consider such evidence in terms of the nature and severity of the penalty to be imposed on Respondent.

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the May 27, 1994 Statement of Charges, are SUSTAINED⁵:

Paragraph A. : (4 - 12)

The Hearing Committee determines, based on the above Factual Conclusion, that the SPECIFICATION OF MISCONDUCT contained in the Statement of Charges is SUSTAINED

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was charged with disciplinary action by the State of New Jersey and thereafter Respondent's license was suspended. Respondent's conduct in New Jersey would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

⁵ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

Service of Charges and of Notice of Hearing.

P.H.S. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under oath. Thereafter, registered or certified mail to the licensee's last known address must be served, at least fifteen (15) days before the Hearing.

From the affidavit submitted, personal service of the Notice of Referral Proceeding and the Statement of Charges on Respondent was effected on June 3, 1994. Respondent presented no objection to the manner of service. Service on Respondent was proper and timely.

Professional Misconduct under §6530(9)(d) of the N.Y.S. Education Law.

The New Jersey Board of Medicine is a duly authorized professional disciplinary agency. In 1992, said New Jersey Board charged Respondent with violating New Jersey Statutes and instituted disciplinary action against Respondent. After the institution of said disciplinary action, Respondent entered into an Interim Order, filed December 16, 1992 and then a Consent Order, filed June 22, 1993. In the Consent Order, Respondent's license to practice medicine in New Jersey was suspended for three (3) years.

The Respondent, Dr. Lee, offered mostly incredible testimony. Respondent was evasive and untruthful when it served his purpose, and at times his testimony defied common sense. He lied when he applied for the New York State Registration on November 23, 1992. A great deal of Respondent's testimony was found to be mostly self-protecting and not credible, especially when compared to exhibits in evidence.

Taking all of the allegations of the Statement of Charges as true, the Hearing Committee finds that the record establishes that Respondent prescribed and dispensed diuretics and thyroid medication and administered vitamin B-12 shots in a weight loss practice without independent evaluation of necessity. Respondent failed to perform adequate physical exams. Respondent failed to monitor his patients and continued to indiscriminately dispense thyroid medication when not medically indicated.

The Hearing Committee finds that Respondent's conduct, if committed in New York State, would constitute professional misconduct under §6530 of the N.Y.S. Education Law as follows: (3) practicing the profession with negligence on more than one occasion. Therefore, Respondent has committed professional misconduct pursuant to §6530(9)(d) of the N.Y.S. Education Law.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The Committee is bound by the documentary evidence presented, by Petitioner. Testimony presented by Respondent was more harmful to him than helpful.

Respondent's lack of integrity, character and moral fitness is evident in his course of conduct, as represented by the documents in evidence and the Record.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented, the pattern of indiscriminately dispensing of thyroid medication and the lack of adequate follow-up of medical care and treatment by Respondent, would have resulted in a vote for revocation of Respondent's license.

The Hearing Committee has noted that the State of New Jersey has only suspended Respondent's license for three (3) years. However, the Hearing Committee considers Respondent's misconduct, his misrepresentations and his incredulous testimony to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Albany, New York
October, 26 1994


SAMUEL H. MADELL, M.D., (Chair),

C. FRED PECKHAM, JR, D.O.
KENNETH KOWALD

To: Terrence Sheehan, Esq.,
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

Kern, Augustine, Conroy & Schoppmann, P.C.,
Robert J. Conroy, Esq. and
Lawrence M. Schwartz, Esq., of counsel.
420 Lakeville Road
Lake Success, NY 11042

Kyu Yong Lee, M.D.
647 Park Avenue
Paterson, NJ 07504

A P P E N D I X I

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

-----X
IN THE MATTER : STATEMENT
OF : OF
KYU YONG LEE, M.D. : CHARGES
-----X

KYU YONG LEE, M.D., the Respondent, was authorized to practice medicine in New York State on September 1, 1970 by the issuance of license number 107042 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, 1993 through December 31, 1994.

FACTUAL ALLEGATIONS

- A. On or about June 22, 1993, by a Consent Order issued by the New Jersey State Board of Medical Examiners, Respondent's license to practice medicine and surgery in the State of New Jersey was suspended for a period of 3 years, with the last 2 1/2 years of said suspension to be stayed and Respondent placed on probation for 2 1/2 years. This disciplinary action was imposed on Respondent because Respondent engaged in indiscriminate and inappropriate long term prescribing and dispensing of controlled dangerous substances in a bariatric practice, failed to perform adequate initial exams and

provide adequate subsequent monitoring and engaged in indiscriminate or inappropriate prescribing and dispensing of thyroid hormone, hydrochlorothiazide and vitamin B-12 injections.

SPECIFICATION OF MISCONDUCT

Respondent is charged with committing professional misconduct, within the meaning of N.Y. Educ. Law Section 6530 (9) (d) (McKinney Supp. 1994), in that he has had his license to practice medicine suspended, and/or had other disciplinary action taken, where the conduct upon which the action was based would constitute misconduct as defined by N.Y. Educ. Law Section 6530 (3) (McKinney Supp. 1994).

DATED: New York, New York

5/27/94



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

A P P E N D I X I I

privileges in the State of New Jersey to order, handle, prescribe, dispense, distribute, possess, administer or manufacture any Controlled Dangerous Substances, to deliver to the Board his original current state and federal Controlled Dangerous Substance Registrations, to cease and desist dispensing diuretics, thyroid medication, and injection of B-12, to submit to physician monitoring with reports to the Board, to conduct thorough initial examinations with subsequent laboratory tests and follow-up monitoring, all in a medically appropriate manner.

Upon entering into the interim agreement until the date of entry of this Final Order Respondent actually ceased practicing at 627 E. 24th Street, Paterson, New Jersey in effect closing said practice and voluntarily refraining from the practice of medicine in this State.

The Respondent being desirous of resolving this matter without the necessity of further formal proceedings, and it appearing that Respondent has read the terms of the within Order and understands their meaning and effect and consents to be bound by same, and it further appearing that the Board considered Respondent's demonstrated willingness to comply in the future with accepted medical standards and the law and without making any findings of fact or reaching any conclusions of law, and without Respondent making any admissions of negligence, wrongdoing or guilt, further the Board finds that the within Order is adequately protective of the public interest, and it therefore appearing that good cause exists for the entry of the within Order,

IT IS on this 22nd day of June , 1993

ORDERED:

1. The license of Kyu Yong Lee, M.D. to practice medicine and surgery in this State is hereby suspended for three (3) years, the first six (6) months of which shall be an active suspension of licensure. The remaining two and one-half (2 1/2) years to become a period of probation. The effective date of the active suspension shall commence upon filing of this Order.

2. During the period of active suspension Respondent shall comply with the List of Activities attached hereto and made a part of this Order.

3. In the event that the Board receives any information during the probationary period that Respondent has violated any of the terms or conditions of this order, the Board shall be authorized to enter an order immediately suspending Respondent's license without prior notice and opportunity to be heard, provided, however, a hearing on said information and the suspension may be scheduled on respondent's request. Said hearing shall be held not later than 30 days following request for said hearing. In any such hearing the issues will be limited to whether Respondent violated the terms or conditions of this order.

4. Respondent shall pay 30% of the costs of the investigation totalling \$1,876.80, contemporaneous with the filing of this Order. The remainder of the costs shall be paid by Louis M. Palmisano, M.D.

5. Prior to resuming the practice of medicine Respondent shall provide to the Board written proof of successful completion of a Board-approved mini-residency in Controlled

Dangerous Substances.

6. At the end of the active suspension period, Respondent must appear before a Committee of the Board for the purpose of seeking reinstatement of licensure and application for restoration of Controlled Dangerous Substances privileges. At that time Respondent shall provide proof of compliance with all elements of this order and discuss plans for any future practice of medicine. Said applications shall not be unreasonably denied, however, it will be the sole decision of the Board whether to grant and under what conditions said applications will be granted.

7. At the end of the active suspension period and in the event that Respondent continues a weight loss practice, all initial examinations shall be carried out in a medically appropriate manner and shall include, but not be limited to, a detailed medical history of the patient and family members, a complete physical examination inclusive of a complete blood count (CBC) documented in the patient record, a detailed patient lecture on weight control and follow-up monitoring to include but not be limited to, appropriate physical examinations documented in the patient record and blood work which shall be left to the discretion of the physician, but in any event shall be done on an annual basis or when a patient loses 30 pounds, whichever is first.

8. In the event Respondent's license is reinstated the Board may require that Respondent's practice shall be monitored by another licensed physician who shall be appointed by the Board in writing prior to the commencement of the monitory function.

Respondent shall cause the monitor to review patient records once every two weeks and will submit a written report to the Board of Medical Examiners on a monthly basis. The number of patient records to be reviewed shall be determined by the Board upon Respondent's reinstatement. Respondent will bear the cost of the physician monitor who shall continue until the end of the probationary period or until such time as the Board may order.

9. At the end of the entire suspension period Respondent shall cease and desist unless and until specifically authorized by Board order, dispensing diuretics or thyroid medication and shall refrain from administering or directing the administration of injections for vitamin B-12.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By Sanford M. Lewis, M.D.
Sanford Lewis, M.D.
President

I have read and understand the within Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.

Kyu Yong Lee, M.D.
Kyu Yong Lee, M.D.

I consent to the form of the Order.

Jeffrey Bettan, Esq.
Jeffrey Bettan, Esq.