

STATE OF NEW YORK ; DEPARTMENT OF HEALTH

-----X
IN THE MATTER

; DETERMINATION

OF

;

AND

AGNES SONG, M.D.

;

ORDER

-----X

ORDER NO. BPMC-92-101

The undersigned Hearing Committee consisted of Conrad Rosenberg, M.D., Chairperson, Datta G. Wagle, M.D. and Mr. Morton M. Kleinman. The committee was duly designated, constituted and appointed by the State Board for Professional Medical Conduct (Board). Harry Shechtman, Esq., Administrative Law Judge, served as Administrative Officer.

The hearing was conducted pursuant to the provisions of New York Public Health Law Section 230 and New York State Administrative Procedure Act Sections 301-307 to receive evidence concerning the charges that the Respondent has violated the terms of probation imposed upon her in an Order of the Commissioner of Education dated December 22, 1988. Witnesses were sworn or affirmed and examined. A stenographic record of the hearing was made.

The Committee has considered the entire record and makes this Determination and Order based upon its Findings of Fact and Conclusions.

The Order above referred to provided among other provisions that the Respondent satisfactorily complete a residency program for a minimum of two years and that during the probationary period she shall not engage in the practice

of medicine.

The Department maintains that the Respondent violated both of these provisions.

SUMMARY OF PROCEEDINGS

Notice of violation: March 27, 1992

Place of Hearing: 5 Penn Plaza
New York, New York

Bureau of Professional
Medical Conduct
appeared by: Sylvia P. Finkelstein, Esq.
5 Penn Plaza
New York, New York

Respondent appeared by: Paul M. Cecero, Esq.
58 Main Street
Hackensack, NJ

Hearings were held on: August 18, and
October 1, 1992

Proposed Findings of Fact
By Department: October 22, 1992
By Respondent: October 22, 1992

Hearing closed as of: October 22, 1992
Date of Deliberation: October 26, 1992

WITNESSES:

The sole witness for the Department was Cheryl Ratner employed by the Office of Professional Medical Conduct as a supervising investigator in the Probation Unit.

The witnesses for the Respondent were, Sun Kyu Song, M.D., the Respondent's husband, and Agnes Song, M.D., the Respondent.

STATEMENT OF THE CASE

The Department has charged Respondent with violating the terms of probation imposed upon her by Order 9255 of the Commissioner of Education, dated December 22, 1988. (Ex. 2)

FINDINGS OF FACT

All Findings of Fact and Conclusions were arrived at by unanimous votes of the Committee.

1. Respondent was licensed to practice as a physician in New York State on September 23, 1977 by the issuance of license number 132555 by the New York State Education Department. (Ex. 2)

2. On or about September 30, 1988, Respondent executed an Application for Consent Order whereby she admitted guilt to eleven specifications of practicing with gross incompetence and two specifications of ordering excessive and/or unnecessary tests, in full satisfaction of all the charges contained in the Statement of Charges dated July 21, 1988. (Ex. 2)

3. An Order was entered pursuant thereto by the State Education Department on December 22, 1988, in which Respondent's license to practice as a physician in the State of New York was suspended for a period of three years, that the execution of said suspension be stayed, and that she be placed on probation for a period of three years, and that she must satisfactorily complete a residency program during the three year probation as outlined in the Terms of Probation. (Ex. 1, Ex. 2)

4. The Terms of Probation required, among other things, that Respondent remain enrolled in said residency program for a minimum of two years and that the residency be

completed during the three year period of probation. In addition, during the period of probation, Respondent was precluded from engaging in the practice of medicine except as required by her participation in the residency program. (Ex. 1, Ex. 2)

5. The Respondent did make many attempts to enter such a program in many institutions but was not able to succeed through no fault on her part. (T. 91-97)

6. At the Hearing herein Petitioner raised the issue that on one occasion, namely on February 8, 1992, the Respondent practiced medicine (T. 108).

7. The Committee finds that there was insufficient probative evidence that the Respondent practiced medicine during the probationary period or thereafter. In addition, it should be noted that the Petitioner makes no reference to this issue in the Proposed Findings of Fact and Conclusions. Findings of Fact and Conclusions.

CONCLUSIONS

There is no doubt that the provisions in the Probation Terms calling for entering into a residency program by the Respondent were not complied with. No intent to avoid this element of the Order by the Education Department was evident. The violation, if such it may be called, was unintentional, and not the fault of the Respondent.

DETERMINATION

The Committee is of the opinion first that no penalty be imposed herein because it finds that the Respondent attempted to comply with the Terms of Probation to the best of her ability but was prevented from complying by conditions beyond her control. The committee however feels that Respondent needs re-training. The nearest program to a residency in the opinion of the committee is the Physician Prescribed Educational Program. The committee therefore determines that the Respondent enter the aforesaid program and be on probation for a period of three years.

ORDER

The Committee unanimously orders that the Respondent be on probation for a period of three years as outlined in the Terms of Probation attached hereto and made a part hereof. Respondent shall in accordance with the Terms of Probation satisfactorily complete Phase I and Phase II of the Physician Prescribed Educational Program.

DATED: New York, New York

Nov. 5, 1992

BY: Conrad Rosenberg
CONRAD ROSENBERG, M.D.
(Chairperson)

DATTA G. WAGLE, M.D.
MORTON M. KLEINMAN

TERMS OF PROBATION

1. AGNES SONG, M.D., during the period of probation, shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by her profession;
2. 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 Department of Health, Empire State Plaza, Tower Building, Albany, New York 12237 of any employment practice, of Respondent's residence address and telephone number, of any change in Respondent's residence address 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 NYSDOH, 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 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 terms, conditions, restrictions, and penalties to which she is subject pursuant to the order of the Board;
6. Respondent shall complete Phase I of the Physician Prescribed Educational Program (PPEP), Department of Family Medicine, 475 Irving Avenue #200, Syracuse, NY 13210. Dr.

William D. Grant, Director of the PPEP program, shall inform Kathleen M. Tanner, Director of the Office of Professional Medical Conduct (OPMC) of Respondent's satisfactory completion of Phase I of the program.

7. Upon completion of Phase I of the PPEP Program, Respondent shall enroll in Phase II. Respondent will be placed at one of the participating hospitals in the New York City area for completion of Phase II. Respondent shall remain enrolled and shall fully participate in Phase II of the program for a period of not less than one year.

8. During Phase II, the preceptor assigned to Respondent shall submit to the OPMC, monthly reports certifying that Respondent is participating in the Program;

A) Respondent's preceptor shall report to the OPMC immediately if Respondent withdraws from the program;

B) Respondent's preceptor shall report to the OPMC any significant pattern of absences;

C) Said preceptor shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgement provided by OPMC;

9. During the probation period, Respondent's private practice shall be monitored by a licensed physician who shall review Respondent's professional performance and practice.

A) Said monitoring physician shall be selected by Respondent and is subject to the approval of the Director of OPMC;

B) Said monitoring physician shall be familiar with the terms of probation contained herein;

C) Said monitoring physician shall meet bi-weekly with Respondent to discuss her private practice and shall review randomly selected office patient records and evaluate whether Respondent's care and treatment comport with generally accepted standards of medical practice;

D) Said monitoring physician shall not be a personal friend nor a relative;

E) Said monitoring physician shall submit to the OPMC monthly reports during the first twelve months of probation, and thereafter quarterly reports, regarding

the quality of Respondent's medical practice and her compliance (or failure to comply) with the Terms of Probation.

F) Said monitoring physician shall acknowledge his/her willingness to comply with the above mentioned monitoring and reporting by executing the acknowledgement provided by OPMC;

10. So long as there is full compliance with every term herein set forth, Respondent may continue to practice her aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with, or any 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.



Board for Professional Medical Conduct

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

C. Maynard Guest, M.D.
Executive Secretary

November 27, 1992

Mr. Robert Bentley
Director
Division of Professional Licensing Services
New York State Department of Education
Empire State Plaza-Cultural Education Center
Albany, New York 12230

RE: License No. 132555

Dear Mr. Bentley:

Please be advised that Dr. Agnes Song, who was served with order #BPMC 92-101 by a committee of the Board for Professional Medical Conduct on November 12, 1992 has appealed the decision of the committee to the Administrative Review Board of the New York State Board for Professional Medical Conduct. Therefore, the penalty is stayed pending a determination by the Review Board. We will notify you of the final decision by the Administrative Review Board.

Sincerely,

C. Maynard Guest, M.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Daniel Kelleher

bcc: Chris Hyman
Roy Nemerson
Carlos Perez
Kenneth Spooner
Cheryl Ratner
Tyrone Butler
Anne Bohenek



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

November 12, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Agnes Song, M.D.
1098 Anderson Avenue
Fort Lee, NJ 07024

Paul M. Cecero, Esq.
58 Main Street
Hackensack, NJ 07601

Sylvia P. Finkelstein, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001-1803

RE: In the Matter of Agnes Song, M.D.

Dear Dr. Song, Mr. Cecero and Ms. Finkelstein:

Enclosed please find the Determination and Order (No. BPMC-92-101) 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:

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
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/crc". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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October 1, 1992

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By Respondent: October 22, 1992

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4. The Terms of Probation required, among other things, that Respondent remain enrolled in said residency program for a minimum of two years and that the residency be

completed during the three year period of probation. In addition, during the period of probation, Respondent was precluded from engaging in the practice of medicine except as required by her participation in the residency program. (Ex. 1, Ex. 2)

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6. At the Hearing herein Petitioner raised the issue that on one occasion, namely on February 8, 1992, the Respondent practiced medicine (T. 108).

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CONCLUSIONS

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ORDER

The Committee unanimously orders that the Respondent be on probation for a period of three years as outlined in the Terms of Probation attached hereto and made a part hereof. Respondent shall in accordance with the Terms of Probation satisfactorily complete Phase I and Phase II of the Physician Prescribed Educational Program.

DATED: New York, New York

Nov. 5, 1992

BY: Conrad Rosenberg
CONRAD ROSENBERG, M.D.
(Chairperson)

DATTA G. WAGLE, M.D.
MORTON M. KLEINMAN

TERMS OF PROBATION

1. AGNES SONG, M.D., during the period of probation, shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by her profession;
2. 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 Department of Health, Empire State Plaza, Tower Building, Albany, New York 12237 of any employment practice, of Respondent's residence address and telephone number, of any change in Respondent's residence address 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 NYSDOH, 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 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 terms, conditions, restrictions, and penalties to which she is subject pursuant to the order of the Board;
6. Respondent shall complete Phase I of the Physician Prescribed Educational Program (PPEP), Department of Family Medicine, 475 Irving Avenue #200, Syracuse, NY 13210. Dr.

William D. Grant, Director of the PPEP program, shall inform Kathleen M. Tanner, Director of the Office of Professional Medical Conduct (OPMC) of Respondent's satisfactory completion of Phase I of the program.

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8. During Phase II, the preceptor assigned to Respondent shall submit to the OPMC, monthly reports certifying that Respondent is participating in the Program;

A) Respondent's preceptor shall report to the OPMC immediately if Respondent withdraws from the program;

B) Respondent's preceptor shall report to the OPMC any significant pattern of absences;

C) Said preceptor shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgement provided by OPMC;

9. During the probation period, Respondent's private practice shall be monitored by a licensed physician who shall review Respondent's professional performance and practice.

A) Said monitoring physician shall be selected by Respondent and is subject to the approval of the Director of OPMC;

B) Said monitoring physician shall be familiar with the terms of probation contained herein;

C) Said monitoring physician shall meet bi-weekly with Respondent to discuss her private practice and shall review randomly selected office patient records and evaluate whether Respondent's care and treatment comport with generally accepted standards of medical practice;

D) Said monitoring physician shall not be a personal friend nor a relative;

E) Said monitoring physician shall submit to the OPMC monthly reports during the first twelve months of probation, and thereafter quarterly reports, regarding

the quality of Respondent's medical practice and her compliance (or failure to comply) with the Terms of Probation.

F) Said monitoring physician shall acknowledge his/her willingness to comply with the above mentioned monitoring and reporting by executing the acknowledgement provided by OPMC;

10. So long as there is full compliance with every term herein set forth, Respondent may continue to practice her aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with, or any 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.