



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

**PUBLIC**

January 7, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Masao Mitsui, M.D.  
2 Mott Street  
New York, New York 10013

Paul Stein, Esq.  
New York State Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

**RE: In the Matter of Masao Mitsui, M.D.**

Dear Dr. Mitsui and Mr. Stein:

Enclosed please find the Determination and Order (No. BPMC-96-302) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

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), "the 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 penalties **other than suspension or revocation** 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  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

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,

Handwritten signature of Tyrone T. Butler in black ink, including the initials "TMB" at the end.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

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

COPY

IN THE MATTER

OF

MASAO MITSUI, A/K/A GEORGE WANG,  
A/K/A CHENG C. WANG, M.D.

DETERMINATION

AND

ORDER

BPMC-96-302

A Notice of Referral Proceedings and Statement of Charges, both dated were served upon the Respondent, Masao Mitsui, M.D. **GERALD S. WEINBERGER, M.D.**, Chairman, **ARTHUR J. WISE, M.D.** and **MS. PRICILLA R. LESLIE**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on December 17, 1996. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **PAUL STEIN, ESQ.**, of Counsel. The Respondent appeared in person on his own behalf.

Evidence was received and transcripts of these proceedings were made.

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

**STATEMENT OF CASE**

This 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(e). A copy of the Notice of Referral Proceeding and 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. Numbers in parenthesis 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. Masao Mitsui, M.D., the Respondent, was authorized to practice medicine in New York State on January 23, 1996, by the issuance of license number 115663 by the New York State Education Department (Pet's. Ex. 1 and 2).
2. On October 26, 1994, the Commissioner of the New York State Department of Health issued a Statement of Charges in case CS-94-64, alleging that the Respondent had committed numerous violations of Article 33 of the Public Health Law and Part 80, 10NYCRR (Pet's. Ex. 3).
3. On or about December 5, 1994, the Commissioner of the New York State Department of Health issued a Stipulation and Order (which was signed by Respondent on November 28, 1994) in settlement of case CS-94-64 which states in part:

The Respondent admits and the Commissioner finds that in violation of sections 3304(a) and 3331(6) of the Public Health Law and 10 NYCRR 80.71(a), during the period from January 1, 1992 through April 21, 1994, on 166 occasions, the Respondent

improperly dispensed a total of approximately 1, 170 tablets of Valium 10 mg. and on 14 occasions approximately 380 Librium 10 mg. capsules in that at such times of dispensing he failed to prepare an official New York State prescription form as required. The Respondent further admits and the Commissioner further finds that in violation of Sections 3304(a) and 333(2) of the Public Health Law and 10 NYCRR 80.72, during the period from January 1, 1991 through March 21, 1994, on approximately 224 occasions, he improperly dispensed a total of approximately 2, 553 Butabarbital tablets, 20 Tylenol #4 tablets, 380 Librium 10 mg. capsules, 1,170 Valium 10 mg. tablets and 129 Darvon 65 mg. capsules in that the Respondent failed to place such controlled substances in suitable containers on which were permanently affixed labels with required information permanently written. The Respondent admits and the Commissioner further finds that in violation of Sections 3304(a) of the Public Health law and 10 NYCRR 80.111 and 80.112, during the period from on or about January 1, 1991 through March 21, 1994, failed to maintain a biennial inventory of all controlled substance in his possession on May 1, 1991 and May 1, 1993 (Pet's. Ex. 4).

4. Stipulation and Order CS-94-64 assessed a civil penalty of six thousand dollars against the Respondent and suspended three thousand six hundred dollars of the penalty contingent upon the Respondent's compliance with the requirements of the Public Health Law, the Rules and Regulations promulgated by the Department under the Public Health Law and with the terms set forth in the Stipulation and Order, and specifically contingent upon the Respondent committing no violation of Article 33 of the Public Health Law and/or Part 80 of 10 NYCRR for a period of two years from the effective date of the Stipulation and Order (Pet's. Ex. 4).

**VOTE OF THE HEARING COMMITTEE**

**FIRST SPECIFICATION**

**FINDING OF VIOLATION OF ARTICLE 33 OF THE PUBLIC HEALTH LAW**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(e) (McKinney Supp. 1996), in that he has been found by the Commissioner of Health to be in violation of Article 33 of the Public Health Law.

**SUSTAINED (3-0)**

**DETERMINATION OF THE HEARING COMMITTEE**

The Respondent, in Stipulation and Order, CS-94-64, has admitted violation of Article 33 of the Public Health Law and of Part 80 of 10 NYCRR. A civil penalty of \$6,000.00 was assessed against him, \$3,600.00 of said penalty was suspended provided that the Respondent committed no further violations of Article 33 of the Public Health Law and/or of Part 80 of 10 NYCRR for a period of two years from the effective date of the Stipulation and Order.

The Respondent has complied with the provisions of Stipulation and Order, CS-94-64. He has paid the assessed civil penalty and there is no evidence that he has violated Article 33 of the Public Health Law or Part 80 of 10 NYCRR for the past two years.

There is no evidence that the Respondent personally profited as a result of his violations of Article 33.

The Respondent testified that he recognizes and understands that what he did was wrong and states that he will not make the same mistakes again.

The Respondent testified that he does not currently prescribe or dispense controlled substances.

The Hearing Committee determines (3-0) that no further action should be taken against

the Respondent for those violations cited in Stipulation and Order CS-94-64.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. No further action should be taken against the Respondent for those violations cited in Stipulation and Order CS-94-64.
2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or be certified or registered mail.

**DATED: Ardsley, New York**  
12/28, 1996

  
**GERALD S. WEINBERGER, M.D., Chairman**

**ARTHUR J. WISE, M.D.  
MS. PRICILLA R. LESLIE**

**TO: Paul Stein, Esq.  
New York State Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York 10001**

**Masao Mitsui, M.D.  
2 Mott Street  
New York, New York 10013**





## APPENDIX I

**IN THE MATTER OF**  
**MASAO MITSUI, a/k/a GEORGE**  
**WANG, a/k/a CHENG C. WANG, M.D.**

NOTICE OF  
REFERRAL  
PROCEEDING

TO: MASAO MITSUI, M.D.  
2 Mott Street  
New York, NY 10013

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on December 17, 1996, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

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, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charge and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney

indicated below. Pursuant to §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 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: New York, New York  
November 17, 1996

  
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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Paul Stein  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2617

**IN THE MATTER OF  
MASAO MITSUI, a/k/a GEORGE  
WANG, a/k/a CHENG C. WANG, M.D.**

STATEMENT  
OF  
CHARGES

MASAO MITSUI, M.D., the Respondent, was authorized to practice medicine in New York State on January 22, 1973 by the issuance of license number 115663 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. 1. On or about October 26, 1994, the Commissioner of the New York State Department of Health issued a Statement of Charges in case CS-94-64, which Respondent acknowledged receiving, alleging Respondent had committed numerous violations of Public Health Law Article 33 and Part 80 of 10 New York Code of Rules and Regulations.
2. On or about December 5, 1994, the Commissioner of the New York State Department of Health issued a Stipulation and Order (which was signed by Respondent on November 28, 1994) in settlement of case CS-94-64 that states, inter alia:

The Respondent admits and the Commissioner finds that in violation of sections 3304(a) and 3331(6) of the Public Health Law and 10 NYCRR 80.71(a), during the period from January 1, 1992 through April 21, 1994, on 166 occasions, the Respondent improperly dispensed a total of approximately 1,170 tablets of Valium 10 mg. and on 14 occasions approximately 380 Librium 10 mg. capsules in that at such times of dispensing he failed to prepare an official New York State prescription form as required. The Respondent further admits and the Commissioner further finds that in violation of Sections 3304(a) and 3333(2) of the Public Health Law and 10 NYCRR 80.72, during the period from January 1, 1991 through March 21, 1994, on approximately 224 occasions, he improperly

dispensed a total of approximately 2,553 Butabarbital tables, 20 Tylenol # 4 tablets, 380 Librium 10 mg. capsules, 1,170 Valium 10 mg. tablets and 129 Darvon 65 mg. capsules in that the Respondent failed to place such controlled substances in suitable containers on which were permanently affixed labels with required information permanently written. The Respondent admits and the Commissioner further finds that in violation of Sections 3304(a) of the Public Health Law and 10 NYCRR 80.111 and 80.112, during the period from on or about January 1, 1991 through March 21, 1994, failed to maintain a biennial inventory of all controlled substance in his possession on May 1, 1991 and May 1, 1993.

3. The above-mentioned Stipulation and Order, inter alia, assessed a civil penalty against Respondent of six thousand dollars, and suspended three thousand six hundred dollars of this civil penalty contingent upon Respondent's compliance with the requirements of the Public Health Law, the Rules and Regulations promulgated by the Department under the Public Health Law and with the terms set forth in the Stipulation and Order, and specifically contingent upon Respondent committing no violation of Article 33 of the Public Health Law and/or Part 80 of 10 NYCRR for a period of two years from the effective date of the Stipulation and Order.

### SPECIFICATIONS

#### FIRST SPECIFICATION

#### **FINDING OF VIOLATION OF ARTICLE 33 OF THE PUBLIC HEALTH LAW**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(e) (McKinney Supp. 1996), in that he has been found by the commissioner of health to be in

violation of article thirty-three of the public health law, as  
Petitioner specifically alleges:

1. The facts in Paragraphs A1-3.

Dated: New York, New York  
November 7, 1996

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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct