



**New York State Board for Professional Medical Conduct**

433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863

Dennis P. Whalen  
*Executive Deputy Commissioner of Health*  
Anne F. Salla, Director  
*Office of Professional Medical Conduct*  
William J. Comiskey, Chief Counsel  
*Bureau of Professional Medical Conduct*

William P. Dillon, M.D.  
*Chair*  
Denise M. Bolan, R.P.A.  
*Vice Chair*  
Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

January 26, 1999

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Peter Yau Ling Yong, M.D.  
19 Westmoreland Place  
Douglaston, NY 11363

RE: License No. 119534

Dear Dr. Yong:

Enclosed please find Order #BPMC 99-17 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **January 26, 1999**.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Daniel Goldberg, Esq.  
Jacobson & Goldberg, LLP  
585 Stewart Avenue  
Garden City, NY 11530

Jude Brearton Mulvey, Esq.

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

IN THE MATTER  
OF  
PETER YAU LING YONG, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER  
BPMC #99-17

PETER YAU LING YONG, M.D., (Respondent) says:

That on or about March 15, 1974, I was licensed to practice as a physician in the State of New York, having been issued License No. 119534 by the New York State Education Department.

My current address is 19 Westmoreland Place, Douglaston, New York 11363, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

An administrative hearing before a Hearing Committee of the New York State Board for Professional Medical Conduct was held on August 26, 1998 and September 25, 1998. Following the hearing, the Hearing Committee issued Determination and Order BPMC 98-267 (annexed hereto, made a part hereof and marked as Exhibit "A") and I was found guilty of professional medical misconduct in violation of Education Law Sections 6530(9)(a)(i) and 6530(20).

The Bureau of Professional Medical Conduct ("BPMC") filed an appeal with the Administrative Review Board on November 25, 1998. In consideration of BPMC withdrawing such appeal, I state the following:

1. I do not contest the findings of fact and conclusions of law of the Hearing Committee (see, Exhibit "A");
2. I agree that my license to practice medicine shall be suspended for two years effective June 29, 1998;

3. One year of the suspension is stayed provided I fully comply with the terms and conditions of probation attached hereto as Exhibit B; and
4. I shall be on probation in New York State for two years effective June 29, 1999; and
5. I must obtain a practice monitor, Board Certified in Family Practice, who shall monitor my practice, medical records and all of my triplicate records as is more fully set forth in the annexed terms and conditions of probation; and
6. I shall perform 200 hours of public service in either a medical or non-medical setting, subject to the advance written approval of the Office of Professional Medical Conduct. Such public service may commence prior to my probationary period, and
7. The complete terms and conditions of probation are attached to this Consent Agreement, Stipulation and Order in Exhibit "B" and are incorporated herein; and
8. Respondent's probation shall be supervised by the New York State Department of Probation, Office of Professional Medical Conduct; and
9. In the event that Respondent leaves New York to practice outside the State, the above periods of suspension and probation shall be tolled until Respondent returns to practice in New York State.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, I shall maintain current registration of my license with the New York State Education Department Division of Professional Licensing Services, and pay all registration

fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied; and

That I shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding me. I shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of my compliance with the terms of this Order. I shall meet with a person designated by the Director of OPMC as directed. I shall respond promptly and provide any and all documents and information within my control upon the direction of OPMC.

In the event that the Bureau of Professional Misconduct does not withdraw its notice of appeal to the Administrative Review Board, this application will be considered null and void and I will not be bound by its terms.

I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29) (McKinney Supp 1998).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

AFFIRMED:

DATED 2/24/98

  
PETER YAU-LING YONG, M.D.  
RESPONDENT

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 12/29/98

  
DANIEL M. GOLDBERG, ESQ.  
Attorney for Respondent

DATE: 12/30/98

  
JUDE BREARTON MULVEY, ESQ.  
Assistant Counsel  
Bureau of Professional  
Medical Conduct

DATE: Jan. 15, 1999

  
ANNE F. SAILE  
Director  
Office of Professional  
Medical Conduct

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

IN THE MATTER  
OF  
PETER YAU LING YONG, M.D.

CONSENT  
ORDER


Upon the proposed agreement of PETER YAU LING YONG, M.D.  
(Respondent) for Consent Order, which application is made a part hereof, it is  
agreed to and

ORDERED, that the application and the provisions thereof are hereby  
adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board,  
which may be accomplished by mailing, by first class mail, a copy of the Consent  
Order to Respondent at the address set forth in this agreement or to  
Respondent's attorney by certified mail, or upon transmission via facsimile to  
Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 1/20/99

  
WILLIAM P. DILLON, M.D.  
Chair  
State Board for Professional  
Medical Conduct

## EXHIBIT "B"

### Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.



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

COPY

IN THE MATTER  
OF  
PETER YAU LING YONG, M.D.

DETERMINATION  
AND  
ORDER

BPMC 98-267

**MICHAEL R. GOLDING, M.D.**, (Chair), **SHELDON PUTTERMAN, M.D.**,  
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) of the Public Health  
Law.

**MARC P. ZYLBERBERG, ESQ.**, ADMINISTRATIVE LAW JUDGE ("ALJ"),  
served as the Administrative Officer.

The Department of Health appeared by **HENRY M. GREENBERG, ESQ.**, General  
Counsel, by **JUDE BREARTON MULVEY, ESQ.**, Assistant Counsel.

Respondent, **PETER YAU LING YONG, M.D.**, appeared personally and was  
represented by **JACOBSON & GOLDBERG, LLP**, **MARK L. FURMAN, ESQ.**, of counsel  
and **DANIEL M. GOLDBERG, ESQ.**, of counsel.

Evidence was received and examined, including witnesses who were sworn or  
affirmed. Transcripts of the proceedings were 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 ["P.H.L."]).

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("Petitioner" or "Department") pursuant to §230(12)(b) and §230(10)(e) of the P.H.L.

Under §230(12)(b) of the P.H.L., a Commissioner's Summary Order ("Order") dated June 26, 1998, and a Statement of Charges, dated June 19, 1998, were issued by **BARBARA A. DeBUONO, M.D., MPH**, as Commissioner of Health of the State of New York. Said Order and Statement of charges were served on Respondent on June 29, 1998.

The Commissioner's Order summarily suspended Respondent's license to practice medicine in the State of New York. The Order was accompanied by a Statement of Charges setting forth three specifications of professional misconduct, as delineated in §6530 of the Education Law of the State of New York ("Education Law").

Respondent, Peter Yau Ling Yong, is charged with: (1) committing professional misconduct by having been convicted of committing an act constituting a crime under New York State Law<sup>1</sup>; and (2) practicing the profession fraudulently<sup>2</sup>; and (3) committing professional misconduct by reason of his conduct in the practice of medicine which evidences moral unfitness<sup>3</sup>.

The charges concern Respondent's care and treatment of one patient and specifically the sale of Xanax, a Schedule IV controlled substance, to that patient who was an undercover investigator.

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<sup>1</sup> Education Law §6530(9)(a)(i) and the First Specification of Department's Exhibit # 1 and 1-A.

<sup>2</sup> Education Law §6530(2) and the Second Specification of Department's Exhibit # 1 and 1-A.

<sup>3</sup> Education Law §6530(20) and the Third Specification of Department's Exhibit # 1 and 1-A.

Respondent admits that the criminal conviction occurred but denies all other allegations and specifications. Respondent asserts that he provided the Xanax to the patient in good faith as part of a treatment modality and not purely as a sale of a controlled substance.

A copy of the Commissioner's Order, Notice of Hearing and Amended Statement of Charges is attached to this Determination and Order as Appendix I.

The first day of the Hearing was held on August 26, 1998 and the last day of the Hearing was held on October 19, 1998 (last day for submissions). The Department called one witnesses. The Respondent himself was the only witnesses that he called.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. **Where there was conflicting evidence or testimony, the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable or credible in favor of the cited evidence.** All Findings and Conclusions herein were unanimous. The Department, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was licensed to practice medicine in New York State on March 15, 1974 by the issuance of license number 119534 by the New York State Education Department (Department's Exhibits # 1, 1-A, & 5)<sup>4</sup>; (Uncontested).

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<sup>4</sup> Refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit) or submitted by Dr. Peter Yau Ling Yong (Respondent's Exhibit).

2. Respondent is not currently authorized to practice medicine in New York because his license was summarily suspended by the Commissioner of Health upon service of the Commissioner's Summary Order on June 29, 1998 (Department's Exhibits # 1, 2, & 5); (Uncontested).

3. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent (determination made by the Administrative Officer; Respondent had no objection regarding personal service effected on him); (P.H.L. § 230[10][d]); (Department's Exhibits # 2 & 4); [P.H.T-11]<sup>5</sup>.

4. Patient A<sup>6</sup> was employed as a Special Investigator in the Office of the New York State Attorney General, Medicaid Fraud Unit from 1976 through 1982 and from June 1993 through February 1997. Patient A was promoted to Senior Special Investigator in February 1997 and currently holds that position (Department's Exhibit # 22); [T-79-80].

5. Patient A holds a Master of Professional Studies degree in Criminal Justice from Long Island University, a Master of Public Administration degree from John Jay College of Criminal Justice, and a Bachelor of Arts degree in Criminal Justice from John Jay College (Department's Exhibit # 22).

6. Respondent graduated from the National Defense Medical Center in Taiwan in 1968, at which time he passed the competency examination given to foreign medical students. He performed a one year internship at Sinclair Hospital in 1969, a two year residency at Brooklyn Cumberland Hospital in general pediatrics and then a two year residency at Brooklyn Cumberland Hospital in cardiology which was completed in 1974. Respondent became board certified in pediatrics and started his private practice in 1974 (Respondent's Exhibit # C); [T-158-159].

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<sup>5</sup> Numbers in brackets refer to Hearing transcript page numbers [T- ]; to Pre-Hearing transcript page numbers [P.H.T- ] or to Intra-Hearing transcript page numbers [I.H.T- ]. The Hearing Committee did not review the Pre-Hearing or the Intra-Hearing transcripts but was advised of the relevant legal decisions or rulings made by the ALJ.

<sup>6</sup> Patient A is identified in an Appendix to the Statement of Charges, Department's Exhibit # 1. As an undercover officer, Patient A did not use his real name during his visits to Respondent's office. He shall be referred throughout this Determination and Order as Patient A.

7. Respondent has operated a private, general practice since 1974. He has maintained an office in Chinatown at 8 Chatham Square, New York, New York since 1978, where he has approximately two thousand active patients [T-157-158].

8. Patient A first visited Respondent at his office in Chinatown on January 14, 1994 [T-23].

9. Patient A told Respondent he wanted a prescription for Xanax. When Respondent asked Patient A why he wanted it, he responded that he had previously taken Xanax. Respondent then asked Patient A the milligram dosage he was taking, how many times a day he was taking it and the reason he started taking the medication. Patient A informed Respondent that he was taking a one milligram dose, three times per day [T-24, 167].

10. Patient A told Respondent he had been taking Xanax because of life problems and marital situations. When asked about his general health Patient A responded that he was healthy. Respondent then asked Patient A if he had any further problems and Patient A responded that he had no other problems [T-25].

11. Xanax is a Schedule IV Controlled Substance [T-149].

12. Patient A presented Respondent with a fictitious Medicaid card, at which time Respondent advised him that Respondent did not take Medicaid [T-25].

13. On January 14, 1994 Respondent issued a prescription for Xanax, 90 pills of 1 milligram strength, to Patient A and advised him not to take too many (Department's Exhibit # 24); [T-25].

14. Respondent issued the January 14, 1994 prescription in good faith, believing that it would help Patient A [T-164].

15. Respondent believed Patient A was sincere and did not suspect he was a drug abuser because he did not manifest any of the physical symptoms or unusual behavior of an addict [T-168].

16. Respondent charged Patient A \$60.00 for the January 14, 1994 visit which is Respondent's standard fee for a first visit [T-98, 233].

17. On February 14, 1994 Patient A returned to Respondent's office [T-34].

18. On February 14, 1994, Patient A asked Respondent for a refill of the Xanax prescription [T-36].
19. On February 14, 1994 Respondent asked Patient A if he was having difficulty and if he had ever tried to stop taking Xanax. Patient A indicated that he stopped taking Xanax occasionally [T-36].
20. Respondent asked Patient A how many times a day he was taking the medication and whether he found that he constantly needed the medication [T-36].
21. On February 14, 1994 Respondent wrote Patient A a refill for the Xanax (Department's Exhibit # 16); [T-37].
22. Patient A paid Respondent \$60.00 for the February 14, 1994 visit [T-37].
23. On March 14, 1994 Patient A returned to Respondent's office [T-42-43].
24. On March 14, 1994, Patient A asked Respondent for a refill of the Xanax prescription and again received a one month refill of Xanax (Department's Exhibit # 17); [T-43].
25. On the March 14, 1994 visit, Patient A and Respondent had similar conversations as the previous visits [T-43].
26. Patient A paid Respondent \$60.00 for the March 14, 1994 visit [T-43].
27. Patient A returned to Respondent's office on April 15, 1994 and requested 120 pills of Xanax, instead of 90 but Respondent refused to increase the number of pills and refilled the previous prescription at the same number and strength (Department's Exhibits # 10 & 18); [T-47-49].
28. Patient A paid Respondent \$60.00 for the April 15, 1994 visit [T-52].
29. On April 13, 1995 Patient A returned to Respondent's office and Respondent asked him how he was feeling and whether he had continued to take Xanax. Respondent noted to Patient A that it had been a year since he had seen him [T-52-54].
30. Respondent wrote Patient A another prescription for Xanax (Department's Exhibit # 19); [T-54-55].

31. There is no evidence in the record how much, if any, money was paid by Patient A for the April 13, 1995 visit to Respondent.

32. On April 25, 1997 Patient A returned to Respondent's office [T-63-64].

33. Respondent indicated on Patient A's medical records that Patient A was "doing the same" (Department's Exhibit # 10).

34. Respondent told Patient A his fee for a visit had increased to \$100.00 and Patient A paid Respondent \$100.00 for the April 25, 1997 visit [T-67].

35. Respondent wrote Patient A a prescription for Xanax, 120 pills, as requested by Patient A (Department's Exhibit # 20); [T-66-67].

36. On June 27, 1997 Patient A returned to Respondent's office and requested a refill of the Xanax prescription [T-68-69].

37. Respondent wrote Patient A a prescription for Xanax, 120 pills, as requested by Patient A (Department's Exhibit # 21); [T-69].

38. Patient A paid Respondent \$100.00 for the June 27, 1997 visit [T-69].

39. On the June 27, 1997 visit, Patient A asked Respondent to write a prescription for Xanax for a friend. Respondent refused to write the prescription and advised Patient A that he could not write a prescription without seeing the patient [T-69-70].

40. In compliance with a Grand Jury subpoena and as requested by Patient A, after he identified himself to Respondent as a police officer, Respondent brought approximately 30 to 40 medical records (including the medical records of Patient A) to the Attorney General's Office [T-75, 133].

41. Prior to bringing the medical records to the Attorney General's Office, Respondent wrote a diagnosis on Patient A's record to clarify its meaning because he believed a non-physician would be reviewing them (Department's Exhibit # 10); [T-177, 234-235].

42. Respondent did not hide the fact that he wrote on Patient A's record, after the visit and prior to bringing it to the Attorney General. Respondent deliberately used a red pen and not a blue or black pen as he had used on all of the other entries (Department's Exhibit # 10); [T-178].

43. When Respondent was asked about the red entries in the medical record, he said he added the writing in red [T-75, 178].

44. Respondent understood that the plea of falsifying medical records meant that his record for Patient A falsely suggested, even though it did not explicitly state, that he had given Patient A a physical examination on April 25, 1997 [T-190].

45. Respondent writes triplicate prescriptions for less than one percent of the patients he sees [T-231].

46. Respondent has refused to give a prescription for Xanax to patients whom he suspected of drug abuse [T-167].

47. Respondent did not obtain a history or perform a physical examination of Patient A at any of the seven (7) office visits with Patient A [T-25-26, 232].

48. A Superior Court Information (SCI-8437/97) was filed charging Respondent with the crime of Falsifying Business Records in the First Degree as set forth in §175.10 of the Penal Law of the State of New York ("Penal Law") (Department's Exhibit # 6).

49. On November 6, 1997 Respondent, who was represented by counsel, plead guilty to the above Class E felony in the Supreme Court of the State of New York, County of New York (Department's Exhibits # 7 & 8).

50. On January 8, 1998 Respondent was sentenced on the above plea to a conditional discharge and fined \$10,000 (Department's Exhibits # 7 & 9).

51. Respondent paid the \$10,000 fine required by his sentence (Department's Exhibit # 9).



## 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 Factual Allegation paragraph 1 from the August 17, 1998 Amended Statement of Charges is **SUSTAINED**.

The Hearing Committee concludes that Factual Allegation paragraph 2 from the August 17, 1998 Amended Statement of Charges is **NOT SUSTAINED** because Respondent did not sell the prescriptions for Xanax to Patient A.

The Hearing Committee concludes that Factual Allegation paragraph 3 from the August 17, 1998 Amended Statement of Charges is **NOT SUSTAINED**. Although Respondent may not have provided adequate or complete medical care to Patient A, Respondent did not falsify the records of Patient A.

The Hearing Committee concludes that Factual Allegation paragraph 4 from the August 17, 1998 Amended Statement of Charges is **NOT SUSTAINED** because Respondent issued the Xanax prescriptions in good faith, based on Patient A's reported and perceived condition and Patient A's requests. The Hearing Committee determines that Respondent's good faith belief that Patient A suffered from anxiety disorder resulted in a legitimate medical justification for the prescriptions which was not unreasonable under the circumstances.

The Hearing Committee concludes, based on Factual Allegation paragraph 1, that the **FIRST SPECIFICATION OF CHARGES** is **SUSTAINED**.

The Hearing Committee concludes, based on Factual Allegation paragraph 1, that the **SECOND SPECIFICATION OF CHARGES** is **SUSTAINED**.

The Hearing Committee concludes, based on Factual Allegation paragraph 1, that the **THIRD SPECIFICATION OF CHARGES** is **SUSTAINED**.

The Hearing Committee DOES NOT SUSTAIN the SECOND and THIRD SPECIFICATION OF CHARGES in regard to paragraphs 2, 3 or 4 of the Factual Allegations.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was convicted of committing a crime under New York State Law. Respondent's conviction constitutes professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

### **DISCUSSION**

Respondent is charged with three (3) specifications alleging professional misconduct within the meaning of §6530 of the Education Law. §6530 of the Education Law sets forth a variety of forms or types of conduct which constitute professional misconduct.

The ALJ discussed with the Hearing Committee the types of medical misconduct alleged in this proceeding. One definition was obtained from a memorandum, prepared by Henry M. Greenberg, General Counsel for the New York State Department of Health, dated January 9, 1996<sup>7</sup>. This document, entitled Definitions of Professional Misconduct under the New York Education Law, ("Misconduct Memo"), sets forth a suggested definition of one of the specification relevant in this case, namely, practicing the profession fraudulently.

During the course of its deliberations on these charges, the Hearing Committee consulted the relevant definition contained in the Misconduct Memo, which is as follows:

Fraudulent practice of medicine is an intentional misrepresentation or concealment of a known fact. An individual's knowledge that he is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts.

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<sup>7</sup> A copy was provided to Respondent [P.H.T-6-7].

Acceptable medical standards are based on what a reasonably prudent physician, possessing the required skill, training, education, knowledge or experience to act as a physician, would do under similar circumstances (and having the same information, ie: without the benefit of hindsight). The Department did not present expert testimony regarding the appropriate medical standards for the prescribing of Xanax and the Hearing Committee did not substitute its own medical expertise on this issue.

The Hearing Committee used ordinary English usage and understanding for all other terms, allegations and charges. Other issues raised are addressed where appropriate.

With regard to the testimony presented herein, including Respondent's, the Hearing Committee evaluated both witnesses for possible bias. The witnesses were also assessed according to their training, experience, credentials, demeanor and credibility.

Obviously Respondent had the greatest amount of interest in the results of this proceeding. Respondent provided reasonable explanations for his conduct and his thinking process regarding the treatment of the one patient at issue. Respondent's was very forthright about his conduct, showed remorse and an understanding of his need to change his medical record keeping practice. The Hearing Committee found Respondent to be believable and credited most of his testimony.

Patient A also had a great amount of interest in the results of this proceeding. Patient A was personally involved in the investigation of Respondent for more than 4 years. Patient A made all of the office visits and all of the audio and video tape recordings. The Hearing Committee is not suggesting that Patient A was not credible. However, the Hearing Committee believes that the testimony of Patient A, as elicited from the Department, did not prove, by a preponderance of the evidence, that Respondent fraudulently sold the Xanax prescriptions.

The Hearing Committee totally disregarded all of the audio tapes and the one video tape. The sound was of extremely poor quality and mostly incomprehensible. The video of the one visit was equally abysmal.

The Misconduct Memo does not contain a discussion of moral unfitness. The Hearing Committee determined that to sustain an allegation of moral unfitness, the Department must show that Respondent committed acts which "evidenced moral unfitness". There is a distinction between a finding that an act "evidences moral unfitness" and a finding that a particular person is, in fact, morally unfit. In a proceeding before the State Board for Professional Medical Conduct, the Hearing Committee is asked to decide if certain conduct is suggestive of, or would tend to prove, moral unfitness. The Hearing Committee is not called on to make an overall judgment regarding a Respondent's moral character. The Department is not required to prove that a physician is morally unfit to practice medicine. The Department must prove that a physician committed an act which shows a lack of moral fitness to practice medicine. It is noteworthy that an otherwise moral individual can commit an act "evidencing moral unfitness" due to a lapse in judgment or other temporary aberration.

The standard for moral unfitness in the practice of medicine has two separate and independent possibilities. First, there may be a finding that the accused has violated the public trust which is bestowed by virtue of his or her licensure as a physician. Physicians have privileges that are available solely due to the fact that one is a physician. The public places great trust in physicians solely based on the fact that they are physicians. Hence, it is expected that a physician will not violate the trust the public has bestowed on him or her by virtue of his or her professional status. Second, moral unfitness can be seen as a violation of the moral standards of the medical community which the Hearing Committee, as delegated members of that community, represent.

The Hearing Committee was aware of its duty to keep an open mind regarding the allegations and testimony. All findings by the Hearing Committee were established on their own merits and based on the evidence presented. If evidence or testimony was presented which was contradictory, the Hearing Committee made a determination as to which evidence was more believable based on their observations as to credibility, demeanor, likelihood of occurrence and reliability.

**I            Professional Misconduct under §6530(9)(a)(i) of the Education Law**

On November 6, 1997 Respondent plead guilty to Falsifying Business Records in the First Degree, a Class E felony, in violation of Penal Law §175.10. Respondent was sentenced to a conditional discharge and fined \$10,000.00.

As a matter of law a criminal conviction constitutes professional misconduct under §6530(9)(a)(i) of the Education Law. Respondent's admission and the court record exhibits indicate that Respondent committed the crime. Therefore the Hearing Committee must find Respondent guilty of professional misconduct.

The Hearing Committee notes that this case was not presented as based "solely on a violation of §6530(9)" and is therefore not a direct referral proceeding under P.H.L. §230(10)(p). Under this circumstance, Respondent and the Hearing Committee were not strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the license. Rather, the Hearing Committee was required to assess the documents presented and balance them against the testimony presented.

**II            Professional Misconduct under §6530(2) of the Education Law**

The Hearing Committee believed Respondent's testimony that he believed that he was treating a patient and not selling prescriptions for Xanax. The Hearing Committee determines that the evidence demonstrates that Respondent prescribed Xanax to Patient A in good faith. During his initial visit, Patient A made it clear that he was already taking the medication and needed it to deal with marital stress and life problems. Respondent inquired as to Patient A's physical health, the amount of medication he was taking per day and the original reason he was taking it. Based on the information he obtained, Respondent's belief that Patient A suffered from an anxiety disorder which genuinely could be helped by the Xanax was not unreasonable. The Department provided no expert evidence that Respondent's position was unreasonable or medically unsound.

The Hearing Committee also notes that Patient A did not exhibit to Respondent any evidence that he was a drug abuser. Patient A did not request an unsafe or unusually high dosage, nor did he manifest any physical symptoms or other tell tale signs of addiction. Patient A's visits were all at least one month apart corresponding to the dosage that had been prescribed and would not constitute over use.

Since the Hearing Committee determines that Respondent did not sell the Xanax to Patient A there can be no occurrence of fraud. As previously determined by the Hearing Committee, Respondent issued the Xanax to Patient A in good faith and in the regular course of his medical practice. The fact that Respondent did not perform a physical examination or take an adequate history of Patient A is insufficient to conclude that Respondent was practicing the profession fraudulently. Therefore, Factual Allegation paragraph 2 is not sustained.

The medical records of Patient A, as recorded by Respondent, indicates dates of visits, prescriptions issued and minimal impression notations. The subsequent addition of a diagnosis on the record of Patient A in red ink prior to bringing the records to the Attorney General's Office is not the alteration of a record by a person who intends to commit fraud. The Hearing Committee accepts Respondent's explanation that he made the additions to clarify his treatment of Patient A because he believed a non-physician would be reviewing the records. The use of a red pen, when the rest of Patient A's medical records are in blue and black, proves that Respondent was not trying to hide the fact that he added this information. Therefore, Factual Allegation paragraph 3 is not sustained.

Since the Hearing Committee does not believe that Respondent fraudulently issued the Xanax prescriptions to Patient A (see discussion above), the Medicaid restitution issue is of no consequence. Therefore, Factual Allegation paragraph 4 is not sustained.

As to Factual Allegation paragraph 1, the Hearing Committee is bound by the guilty plea of Respondent to Penal Law §175.10. One of the elements of that section is an intent to defraud and an intent to commit another crime or to aid or conceal the commission thereof.

Since Respondent's guilty plea involved the practice of medicine, the Hearing Committee must conclude, as a matter of law, that the falsifying of business records in the first degree is practicing the profession fraudulently. Therefore, Factual Allegation paragraph 1 is sustained and the second specification must be sustained.

### **III Professional Misconduct under §6530(20) of the Education Law.**

Since Factual Allegations paragraphs 2, 3 and 4 are not sustained they cannot be used to conclude that Respondent committed acts which constitute moral unfitness to practice medicine.

However, Respondent's criminal conviction and its underlying circumstances do rise to the level of moral unfitness in the practice of medicine. Respondent's conviction for making a false entry on a business record by itself denotes moral unfitness. Respondent's admitted conduct constitutes an act of moral unfitness. Accordingly, Factual Allegation paragraph 1 is sustained and the third specification must be sustained.

### **DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines as follows:

Respondent's license to practice medicine in New York State should be **SUSPENDED** for two (2) years; one and one half (1 ½) year of said suspension should be **STAYED**. The six (6) months of actual suspension should run from the service of the Commissioner's Summary Order (June 29, 1998). Respondent should be placed on probation in New York State for a period of two (2) years from the end of actual suspension; Respondent must comply with the terms and conditions of probation contained in Appendix II. Respondent's probation should be supervised by the New York State Department of Health, by the Office of Professional Medical Conduct.

Respondent should be required to obtain a Practice Monitor, Board Certified in Family Practice, who shall be responsible for monitoring some of Respondent's medical records and all of Respondent's triplicate records as more fully set forth in the annexed terms and conditions of probation. Respondent should also be required to perform 200 hours of public service at a facility such as New York Hospital Beekman/Downtown or similar.

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 Hearing Committee voted unanimously for the penalty indicated above. The Hearing Committee notes that no evidence was presented regarding the ability of Respondent to provide good and adequate medical care to his patients. Nor was Respondent's competence questioned.

The Hearing Committee does not believe that Respondent's misconduct, for which he has taken full responsibility, is sufficient to justify so harsh and draconian a penalty as the revocation of his license. Respondent, who has an otherwise unblemished record of thirty years of family practice, should not lose his license because of a lapse of judgment with one patient. It is important to remember that the charges against Respondent, on which this case is based, pertain solely to his treatment of Patient A. It is equally important to remember that all of the sustained charges of misconduct are the direct result of the criminal conviction for one act (April 25, 1997) of falsifying a business record to which Respondent admitted. The case proven by the Department is based entirely on Respondent's guilty plea.



Respondent was not involved in the wholesale selling of prescriptions for controlled substances. There was no enrichment by Respondent at the expense of the Medicaid program. There was no participation by Respondent in a scheme to defraud the Medicaid program. Most importantly, in the Hearing Committee's opinion, Respondent presents no future threat to his patients, other physicians or regulators in the practice of medicine. Respondent has accepted responsibility for his conduct and has shown true remorse. The Hearing Committee notes that one example of Respondent's willingness to change and accept his responsibility was the attendance of Respondent's wife (a physician) and son (in medical school) at the Hearing. Considering Respondent's cultural background, Respondent's willingness to be reprimanded in front of his family was of significant importance to the Hearing Committee.

There are a number of additional factors which mitigate against depriving Respondent of the ability to practice medicine. Even the unproven allegations raised by the Department concern an isolated circumstance. There was no evidence of a prolonged pattern of behavior. Respondent has operated a private practice in Chinatown since 1978 and has approximately 2000 active patients. It is an important factor that Respondent took responsibility for his misdeeds, readily admitting that he should not have continued to prescribe Xanax for Patient A and that he needed to adopt a more thorough record keeping methodology. It is also important to note that while Respondent did make an error by writing the prescriptions to Patient A, he did refuse Patient's A request to issue the very same prescription to a friend of Patient A.

The Hearing Committee was troubled by a number of unsettling issues which arose during the course of these proceedings. First, the investigation of Respondent began in January, 1994 and continued, sporadically, until June, 1997. Why did the Attorney General's Office take so long? Second, it appears to the Hearing Committee that this case should have been brought as

a direct referral proceeding based solely on the criminal conviction. As such, the case would have taken approximately two hours with limited evidence and testimony, as opposed to two days of hearings and submissions by the parties further unnecessarily delaying the process. This is a poor use of the Department's resources and an unwarranted additional expense to Respondent. Third, the Hearing Committee does not agree that a Commissioner's Summary Order was appropriate or necessary in this case. Although the new law (P.H.L. §230[12][b]) does not require a showing of imminent danger when a licensee has plead guilty to a felony, the use of a Commissioner's Summary Order under the factual circumstances of this case has the potential effect of devaluing the significance of the Commissioner's Orders in the future and cause unjust harm to licensees.

The Department's position was especially weak in insisting that Respondent was selling prescriptions. Surely, if Respondent was interested in selling prescriptions, he would have succumbed to Patient A's prodding and written a prescription for someone else. Respondent's refusal to issue the prescription is strong evidence of his good intentions and integrity. The Hearing Committee also notes that of approximately 30 to 40 medical records reviewed, the Department could not provide any evidence of selling prescriptions to other patients or any evidence of medical improprieties. Finally, Respondent does not even have a high patient prescription rate.

The Hearing Committee believes Respondent is capable of continuing to contribute to medicine. Any sanctions imposed by the Committee must be proportionate to the misconduct found. Therefore, the Hearing Committee determines that license revocation would be disproportionate, inappropriate and excessive.

The Hearing Committee does not believe that censure and reprimand is sufficient to address Respondent's lapse in judgment, even if isolated to one patient.

Since there was insufficient evidence regarding other areas of Respondent's practice, the Hearing Committee finds that limiting Respondent's practice is not an available penalty. Respondent already paid a substantial fine in addition to the immediate loss of being allowed to practice. Therefore, the imposition of monetary penalties is not indicated.

The Hearing Committee does not believe that re-training or attendance at CME seminars is appropriate because there was no evidence that Respondent lacked competence. The Department did clearly establish that the medical records maintained by Respondent were poor and even for a busy family practice can be considered as moderately abysmal. The Hearing Committee believes that the use of a Practice Monitor will adequately address Respondent's medical record inadequacies and prescription practices in a population setting which will foster Respondent's abilities to communicate to a specific group of patients.

The Hearing Committee has chosen a Board Certified Family Practitioner as a monitor because Respondent indicated that the bulk of his practice is family practice.

The Hearing Committee has also chosen to require that Respondent perform public service at a facility such as New York Hospital Beekman/Downtown or similar facility. The Hearing Committee's rationale is that such a setting will provide Respondent opportunities for peer review and discussion. Presently, Respondent practices in a vacuum, by himself, without peer learning opportunities. The Hearing Committee expects Respondent to learn from his public service experience.

The Hearing Committee has reviewed and discussed, with the ALJ, the cases cited by the parties. In Matter of Volpe, M.D., ARB 97-14, the Respondent was involved in a scheme to defraud, obtained a large monetary gain and falsified 120 medical records. In Matter of Saldanha, M.D., ARB 97-58, the Respondent's behavior was determined to be a pattern of falsifications. As previously discussed, Dr. Yong's conduct involved one act with no economical gain.

A review of Matter of Tang, M.D., ARB 95-226 indicates that Dr. Tang's conduct was more flagrant than Dr. Yong's. It is significant as well that Dr. Tang's sentence, for the same penal law section violation, was much greater than the sentence given to Dr. Yong. As the Courts and the Administrative Review Board have indicated in numerous decisions, each case needs to be judged on its own individual facts. Penalty rulings in other similar cases are irrelevant (Matter of Bezar v. DeBuono, \_\_ AD2d \_\_, 659 NYS2d 547 (Third Dept. 1997) and Matter of Bayer, ARB 97-277).

The Hearing Committee unanimously believes that the penalty imposed above is an appropriate balance between adequately safeguarding and protecting the public and sufficiently punishing Respondent for his conduct.

The Hearing Committee believes that an actual 6 month suspension with 1 ½ years of stayed suspension will send a sufficiently sobering message to Respondent and will better benefit society than revocation.

Taking all of the facts, details, circumstances and particulars in this matter into consideration, the Hearing Committee determines the above to be the appropriate sanctions under the circumstances. The Hearing Committee unanimously concludes that the sanctions imposed strike the appropriate balance between the need to punish Respondent, deter future misconduct and protect the public.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

## ORDER

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

1. The Specifications of professional misconduct contained in the Amended Statement of Charges (Petitioner's Exhibit #1-A) are **SUSTAINED** (as they relate to the conviction); and
2. The Specifications of professional misconduct contained in the Amended Statement of Charges (Petitioner's Exhibit #1-A) are **NOT SUSTAINED** (as they relate to all other allegations);  
and
3. Respondent's license to practice medicine in New York State is **SUSPENDED for two (2) years** from June 29, 1998; and
4. **One and one half (1 ½) year of the SUSPENSION is STAYED** as long as Respondent complies with the terms and conditions of probation; and
5. Respondent shall be on **PROBATION** in New York State for a period of **two (2) years** from the end of actual suspension (December 29, 1998); and
6. Respondent must obtain a **PRACTICE MONITOR**, Board Certified in Family Practice, who shall monitor some of Respondent's medical records and all of Respondent's triplicate records as more fully set forth in the annexed terms and conditions of probation; and
7. Respondent shall perform **TWO HUNDRED (200) HOURS OF PUBLIC SERVICE** at a facility such as New York Hospital Beekman/Downtown or similar facility; and
8. The complete terms and condition of probation are attached to this Determination and Order in Appendix II and are incorporated herein; and

9. Respondent's probation shall be supervised by the New York State Department of Health, by the Office of Professional Medical Conduct; and

10. In the event that Respondent leaves New York to practice outside the State, the above periods of suspension and probation shall be tolled until Respondent returns to practice in New York State; and

11. This Determination and Order shall be effective on personal service on the Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

**DATED: New York, New York**

**12 November, 1998**



**MICHAEL R. GOLDING, M.D. (Chair)**

**SHELDON PUTTERMAN, M.D.**

**KENNETH KOWALD**

TO:  
Peter Yau Ling Yong, M.D.;  
19 Westmoreland Place  
Douglaston, NY 11363

Mark L. Furman, Esq.  
Daniel M. Goldberg, Esq.  
JACOBSON AND GOLDBERG, LLP  
585 Stewart Avenue  
Garden City, New York 11530

Jude Brearton Mulvey, Esq.,  
Assistant Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower Building, Room 2509  
Empire State Plaza  
Albany, NY 12237

## EXHIBIT "B"

### Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

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

**IN THE MATTER  
OF  
PETER YAU LING YONG, M.D.**

**COMMISSIONER'S  
SUMMARY  
ORDER**

**TO: PETER YAU LING YONG, M.D.  
19 Westmoreland Place  
Douglaston, NY 11363**

The undersigned, Barbara A. DeBuono, M.D., M.P.H., Commissioner of Health of the State of New York, pursuant to N.Y. Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that Peter Yau Ling Yong, the Respondent, has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York State law, as is more fully set forth in the Statement of Charges attached hereto and made a part hereof.

It is therefore:

**ORDERED**, pursuant to N.Y. Public Health Law §230(12)(b), that effective immediately, Respondent shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law §230(12).


**PLEASE TAKE NOTICE** that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Summary Hearing to be provided to the Respondent either contemporaneously with this Summary Order or subsequently. Said written



Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall notify both the attorney whose name is set forth in this Order, and the Director of the Bureau of Adjudication, New York State Department Health, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180 (Telephone: 518-402-0748).

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a (McKinney Supp. 1998). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
June 3, 1998

  
BARBARA A. DeBUONO, M.D., M.  
Commissioner of Health

Inquiries should be directed to:

Jude Brearton Mulvey  
Assistant Counsel  
N.Y.S. Department of Health  
Division of Legal Affairs  
Coming Tower Bldg. Rm. 2509  
Empire State Plaza  
Albany, New York 12237-0032  
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
PETER YAU LING YONG, M.D. : CHARGES

-----X

PETER YAU LING YONG, M.D., the Respondent, was authorized to practice medicine in New York State on March 15, 1974 by the issuance of license number 119534 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period October 1, 1996 through September 30, 1998.

**FACTUAL ALLEGATIONS**

1. Respondent was convicted of Falsifying Business Records in the First Degree, a class E felony, in violation of Penal Law §175.10, in The People of the State of New York v. Peter Yong (Supreme Court, New York County) on or about November 6, 1997. Respondent was sentenced on January 8, 1998 to a Conditional Discharge and fined \$10,000.
2. On or about April 25, 1997 and/or on at least four prior occasions, Respondent fraudulently sold Patient A [identified in Appendix], an undercover investigator posing as a Medicaid recipient, a prescription for Xanax, a Schedule IV controlled substance, at Respondent's medical

office at 8 Chatham Square, Room 204, County of New York,  
New York State.

3. Respondent falsely reported that he provided medical care to Patient A in the medical records of Patient A which falsely represented that medical care was given to Patient A when, in fact, Patient A did not receive medical care.
4. Respondent fraudulently issued the Xanax prescription(s) to Patient A knowing that restitution would be sought by the issuing pharmacy for the drugs prescribed.

#### **FIRST SPECIFICATION**

##### **CRIMINAL CONVICTION IN NEW YORK STATE**

1. Respondent is charged with committing professional misconduct as defined in New York Education Law §6530(9)(a)(i) (McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under New York State law, in that Petitioner charges:

1. The facts in paragraph 1.

#### **SECOND SPECIFICATION**

##### **PRACTICING THE PROFESSION FRAUDULENTLY**

2. Respondent is charged with practicing the profession

fraudulently or beyond its authorized scope within the meaning of New York Education Law §6530(2), in that Petitioner charges:

1. The facts contained in paragraphs 1, 2, 3 and/or 4.

**THIRD SPECIFICATION**

**MORAL UNFITNESS**

3. Respondent is charged with committing professional misconduct under New York Education Law §6530(20) (McKinney Supp. 1998) by reason of his conduct in the practice of medicine which evidences moral unfitness, in that Petitioner charges:

3. The facts in paragraphs 1, 2, 3 and/or 4.

DATED: *June 19*, 1998  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct