



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

November 21, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Hyun-Tae Lee, M.D.
5122 Northridge Road, Apt. 303
Sarasota, Florida 34238

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street, Ste. 303
Troy, New York 12180-2299

RE: In the Matter of Michael Hyun-Tae Lee, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-268) 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.

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.

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.

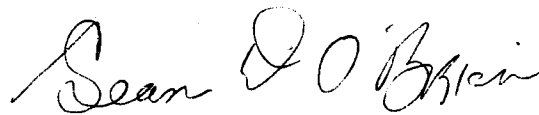
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

COPY
DETERMINATION

IN THE MATTER
OF
MICHAEL HYUN-TAE LEE, M.D.

AND
ORDER

BPMC NO. 05-268

A hearing was held on November 16, 2005, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated October 11, 2005, were served upon the Respondent, **Michael Hyun-Tae Lee, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D.**, Chairperson, **William K. Major, Jr., M.D.**, and **Mr. Frank J. King, Jr., R.P.A.-C.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared at the hearing and represented himself.

Evidence was received and transcripts of these proceedings were made.

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

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Michael Hyun-Tae Lee, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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. All Hearing Committee findings were unanimous.

1. Michael Hyun-Tae Lee, M.D., the Respondent, was authorized to practice medicine in New York State on March 13, 1997, by the issuance of license number 206099 by the New York State Education Department (Petitioner's Ex. 4).

2. On July 14, 2005, the Georgia Composite State Board of Medical Examiners ("Georgia Board"), by a Public Consent Order ("Georgia Order"), publicly reprimanded the Respondent and fined him \$1,000.00 based on his failure to comply with the Georgia

Board's directives on two occasions to complete a Physician Profile, and on his making a false statement on a renewal application for his license to practice medicine (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the Respondent's failure to submit a Physician Profile would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to New York Education Law Section 6530(21) - "Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, or willfully impeding or obstructing such filing, or inducing another person to do so;"

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Georgia Board found fault with the Respondent for failing to respond to its directives on two occasions to complete a Physician Profile. This action, had it occurred in New York State, would have constituted professional misconduct under New York State Education Law Section 6530(21) – "...failing to file a report required by law..." There is, however, an important mitigating circumstance regarding the failure to respond – the absence of evidence that the Respondent's failure was intentional. The Respondent testified that he was a full time traveling emergency room physician who worked in hospitals in nine states. He testified that at the time in question, he was rarely at his home in Florida and that he overlooked the two directives from the Georgia Board. In his testimony, he stated that he did not intentionally fail to respond to the directives, but he took full responsibility for his unintentional failure to comply with the Georgia Physician Profile requirement. This testimony was credible.

The Georgia Board also found fault with the Respondent for making a false statement on his application for renewal of his Georgia license to practice medicine. The false statement was a "Yes" answer to the question, "Have you completed and updated your physician profile?" There is insufficient evidence in the hearing record to conclude that had such conduct occurred in New York State, professional misconduct would have been committed under New York State law. New York Education Law Section 6530(21) includes within the definition of professional misconduct the filing of a false report. However, for such an act to be professional misconduct, the statute provides that the physician must "willfully" file the false report. There is no evidence in the hearing record that the Respondent willfully answered the question on the Georgia application falsely. The Department acknowledged during the hearing that there is no reason to believe that this false information was included on the application willfully. Nothing in the language of

the Georgia order indicates that the Georgia Board believed that the false statement was willful. The fact that the Georgia Board did not impose a more severe sanction on the Respondent is additional evidence that the Georgia Board did not believe that the Respondent had acted willfully.

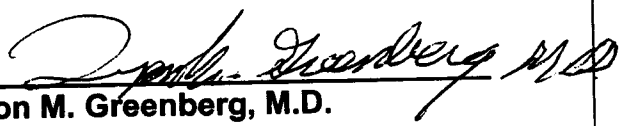
The Petitioner recommended that a civil penalty of \$500.00 be imposed on the Respondent. This Hearing Committee does not see any purpose being served by the imposition of this or any other penalty. There was a problem in Georgia and the Georgia Board addressed that problem adequately and completely by the sanctions imposed in the Georgia Order. The \$1,000.00 civil penalty and the public reprimand imposed in the Georgia Order are all the sanctions needed in Georgia or in New York State to respond to the Respondent's objectionable acts and to provide protection to the public. An additional civil penalty would be duplicative and pointless.

ORDER

IT IS HEREBY ORDERED THAT:

1. The charge regarding failure to file a Physician Profile is sustained.
2. The charge regarding willfully filing a false report is not sustained.
3. No penalty is imposed.
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York
11-18, 2005


Lyon M. Greenberg, M.D.
Chairperson

William K. Major, Jr., M.D.
Frank J. King, Jr., R.P.A.-C.

APPENDIX I

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

IN THE MATTER
OF
MICHAEL HYUN-TAE LEE, M.D.
CO-05-08-3851-A

NOTICE OF
REFERRAL
PROCEEDING

TO: MICHAEL HYUN-TAE LEE, M.D.
5122 Northridge Road
Apt. 303
Sarasota, FL 34238

MichaelLee200@msn.com

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 16th day of November 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before November 7, 2005.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before November 7, 2005, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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: Albany, New York

October 11, 2005



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

IN THE MATTER
OF
MICHAEL HYUN-TAE LEE, M.D.
CO-05-08-3851-A

STATEMENT
OF
CHARGES

MICHAEL HYUN-TAE LEE, M.D., the Respondent, was authorized to practice medicine in New York state on March 13, 1997, by the issuance of license number 206099 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 14, 2005, the Composite State Board of Medical Examiners, State of Georgia (hereinafter "Georgia Board"), by a Public Consent Order ^{AB 11/01/05} ~~Suspending License~~ (hereinafter "Georgia Order"), PUBLICLY REPRIMANDED Respondent and fined him \$1,000.00, based on failing to comply with the ^{Georgia AO 11/16/05} ~~Virginia Board's~~ request, on two (2) occasions, that he complete a Physician Profile, and then making a false statement on an Internet renewal application for his license to practice medicine.

B. The conduct resulting in the Georgia Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(21) (willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state, where the conduct upon which the finding was based

would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530 (9)(d) by having disciplinary action taken by a by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *October 11*, 2005
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct