



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

June 1, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Barry Kaufman, Esq.
NYS Department of Health
Metropolitan Office
5 Penn Plaza -- 6th Floor
New York, New York 10001

Franklin Szu-Chen Chow, M.D.
PO Box 5657
Vail, Colorado 81658

RE: In the Matter of Franklin Szu-Chen Chow, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-114) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

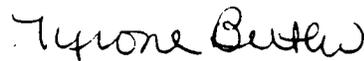
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

IN THE MATTER
-OF-
FRANKLIN SZU-CHEN CHOW, M.D.
Respondent

COPY

DETERMINATION

AND

ORDER

ORDER #99-114

A Notice of Referral Proceeding and Statement of Charges, dated February 22, 1999, were served upon the Respondent, Franklin Szu-chen Chow, M.D. **RICHARD ASHLEY, M.D. (Chair), IRWIN COHEN, M.D. and DENNIS GARCIA** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Henry M. Greenberg, Esq., General Counsel, Barry Kaufman, Esq., Associate Counsel. The Respondent appeared pro se. Evidence was received, statements were heard 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). This statute provides for an expedited proceeding 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 prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d) (disciplinary action taken against the license by another state). The charges herein arise from Respondent entering into a Stipulation and Final Agency Order (hereinafter Stipulation) with the Colorado State Board of Medical Examiners (hereinafter the Colorado Board) pursuant to which the Respondent's license to practice medicine was placed on probation for 5 years. The Stipulation incorporated a Formal Complaint which enumerated conduct, denied by the Respondent, wherein he failed to meet acceptable standards of care. The conduct occurred during the performance of a laproscopic assisted vaginal hysterectomy when one or more blood vessels were injured and it included substandard choice of procedure, failure to order a preoperative coagulation profile, failure to instruct the patient to discontinue the use of ibuprofen products prior to surgery, the negligent insertion of the trocar, failure to both timely obtain a surgical consultation and apply compression upon discovery of injury. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to and made a part of this Determination and Order as Appendix One.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Franklin Szu-chen Chow, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on or about February 13, 1981 by the issuance of license number 145123 by the New York State Education Department. (Pet. Ex. 4).

2. On or about May 15, 1998, the Colorado Board issued a Stipulation which placed the Respondent's license to practice medicine in Colorado on probation for 5 years.

3. The Stipulation incorporated the Formal Complaint which found that the Respondent failed to meet accepted standards of care in connection with a laparoscopic assisted vaginal hysterectomy during which one or more blood vessels were injured. The conduct included substandard choice of procedure, failure to order a preoperative coagulation profile, failure to instruct the patient to discontinue the use of ibuprofen products prior to surgery, the negligent insertion of the trocar, failure to both timely obtain a surgical consultation and apply compression upon discovery of injury. (Pet. Exs. 1 and 3)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent had disciplinary action taken or had his application for a license refused by a professional disciplinary agency of another state. The underlying conduct which was the basis for the action by the State Board would constitute professional misconduct in New York. Specifically, the Committee found the Respondent's actions would fall within the definitions of misconduct set forth at Section 6530(3) (Practicing the profession with negligence on more than one occasion) and Section 6530(4) (Practicing the profession with gross negligence on a particular occasion).

DETERMINATION AS TO PENALTY

The Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be **placed on probation for 5 years**. The period of probation shall run concurrently with that imposed by the Colorado Board. The terms of probation shall be those imposed by the Colorado Board and satisfaction of those terms shall be deemed

compliance and fulfillment of the New York probation. A copy of the Colorado Board's probationary terms is attached hereto as Appendix II and made a part of this Determination and Order. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee felt that no additional penalty should be imposed on the Respondent. This determination was based on several factors. The Committee was impressed with the fact that the Respondent was able to get his former residency program to agree to serve as proctor for performing the required 30 laparoscopic procedures and that he completed these procedures in such a short period of time. The Committee also based its decision on a review of the Assessment Report of the Colorado Personalized Education for Physicians (CPEC). Completion of this evaluation was a requirement of the probation imposed by the Colorado Board. The CPEC Assessment Report was extremely favorable in its judgment of the Respondent's knowledge of medicine, surgical technique, clinical judgment, record keeping and patient communication skills. The Report also recommended that based on the Respondent's demonstrated medical knowledge and clinical judgment no formal supervised learning program was needed.

The Committee has a duty to protect the public in New York. The Committee felt that allowing the Respondent's compliance with the terms of the Colorado Board's probation to concurrently serve as the penalty imposed by this Board would adequately protect the public in New York.

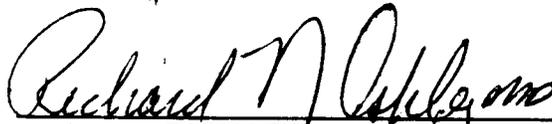
ORDER

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

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) are **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is placed on **PROBATION** for a period of **5 years** to run concurrently with the probation imposed on the Respondent's license by the Colorado Board. The terms are those imposed on the Respondent's license by the Colorado Board, attached hereto as Appendix II.

DATED: New York, New York

26 May, 1999



RICHARD ASHLEY, M.D. (Chair)
IRWIN COHEN, M.D.
DENNIS GARCIA

TO: Barry Kaufman, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Franklin Szu-Chen Chow, M.D.
P.O. Box 5657
Vail, CO 81658

APPENDIX I

IN THE MATTER
OF
FRANKLIN SZU-CHIEN CHOW, M.D.

STATEMENT
OF
CHARGES

FRANKLIN SZU-CHIEN CHOW, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 13, 1981, by the issuance of license number 145123 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about May 15, 1998, the Board of Medicine of the Colorado State Board of Medical Examiners took disciplinary action against Respondent's license to practice medicine, based on charges of failure to meet accepted standards of practice in several respects and on more than one occasion in his treatment of a patient undergoing a laparoscopically assisted vaginal hysterectomy. The disciplinary penalty imposed includes, but is not limited to, probation for a period of five (5) years. The terms of probation include, but are not limited to:
1. Completion of a personalized evaluation of Respondent's medical practice and knowledge and, following evaluation, a personalized learning plan;
 2. A restriction upon Respondent's performing laparoscopic procedures; and
 3. Respondent's medical practice is to be monitored by a "practice monitor."

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1999) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§6530 (3), (4), (5) and (6) as alleged in the facts of the following:

1. The facts in paragraph A,

DATED: February 22, 1999
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

PROBATIONARY TERMS

8. Respondent's license to practice medicine in the state of Colorado is hereby placed on probationary status for a period of five years. During the probationary period, Respondent agrees to be bound by the terms and restrictions set forth in the paragraphs below.

CPEP LEARNING PLAN

9. Within 30 days of the effective date of this Order, Respondent shall enroll with Colorado Personalized Education for Physicians ("CPEP") for the purpose of obtaining an initial evaluation of Respondent's medical practice, and development of a learning plan deemed appropriate by CPEP. Respondent shall complete the initial evaluation within 90 days of the effective date of this Order. Respondent shall successfully complete the learning plan, including any final evaluation, within the time recommended by CPEP, but in no event more than two years from the effective date of this Order. All recommendations made by CPEP shall constitute terms of this Order, and shall be complied with within the time periods set out by CPEP. Upon successful completion of the learning plan Respondent shall provide the Panel with written proof from CPEP of such successful completion. Respondent shall also authorize CPEP to freely communicate with the Panel the results of its evaluation of Respondent, its recommended learning plan, and periodic reports of Respondent's progress in the evaluation and the learning plan.

10. The parties anticipate that Respondent will not be performing laparoscopic procedures during the probationary period. Nevertheless, to the extent practicable, CPEP shall conduct educational activities in the area of laparoscopic

surgery as part of the learning plan. In the event that Respondent performs laparoscopic procedures during the pendency of the learning plan, every such laparoscopic procedure shall be observed by a CPEP proctor. The proctor shall preapprove the patient for the procedure and shall indicate the preapproval in the patient's medical chart. The proctor shall be physically present for the entire surgical procedure on the patient. The proctor must be board certified by the American Board of Obstetrics and Gynecology and have privileges to perform laparoscopic procedures at the facility where the procedure is to be performed. The Respondent shall not be required to be proctored after performing his first 30 laparoscopic procedures. In the event that Respondent performs no laparoscopic procedures or less than 30 such procedures during the pendency of the learning plan, such fact shall not constitute a violation of this Order, or a basis to stay the probation or a basis to delay completion of the learning plan.

PRACTICE MONITORING

11. Respondent's medical practice at all office and hospital locations in Colorado shall be monitored by a "practice monitor." The practice monitor shall be a physician licensed and currently practicing medicine in Colorado. The practice monitor must be knowledgeable in Respondent's area of practice. Most importantly, the practice monitor must function as the eyes of the Board and must not feel an allegiance to Respondent that would prevent a fair and impartial review of Respondent's practice to insure that Respondent is practicing within the standard of care and in compliance with this Order. The practice monitor shall have no financial interest in Respondent's practice of medicine. The practice monitor may be selected by Respondent but must be approved by the Panel. Prior to the Panel's approval, the practice monitor shall submit to the Panel a current curriculum vitae and letter to the Panel. In the letter, the practice monitor shall state that the practice monitor has read this Order, and understands and agrees to perform the obligations as set forth herein.

12. The practice monitor shall perform the following:

a. At least once each month, the practice monitor shall visit all the offices at which Respondent practices medicine, and review at least five charts maintained by Respondent. The practice monitor shall make reasonable efforts to insure that Respondent has no notice of which charts will be selected for review. The practice monitor is authorized to review such other medical records maintained by Respondent as the practice monitor deems appropriate.

b. At least once each month, the practice monitor shall review at least five hospital charts of patients whom Respondent has admitted to hospitals. If Respondent has admitted

fewer than five patients to the hospital in the previous month, the practice monitor shall review all the patients so admitted, if any. The practice monitor shall make reasonable efforts to insure that Respondent has no notice of which charts will be selected for review. The practice monitor is authorized to review such other hospital charts as the practice monitor deems appropriate.

c. The practice monitor shall submit quarterly written reports to the Panel.

d. The practice monitor's reports shall include the following:

- (1) a description of each of the cases reviewed;
- (2) a description of the condition of Respondent's office facilities;
- (3) the practice monitor's opinion whether Respondent is practicing medicine in accordance with generally accepted standards of medical practice; and
- (4) any indication that Respondent has violated a term of this Order.

13. If at any time the practice monitor believes Respondent is not in compliance with this Order, is unable to practice with skill and with safety to patients or has committed unprofessional conduct as defined in § 12-36-117.1, C.R.S., the practice monitor shall immediately inform the Panel.

14. Respondent shall nominate the practice monitor within 30 days of the effective date of this Order. Respondent shall insure that all reports by the monitor are complete and are submitted to the Panel on time. If, in the Panel's judgment, the monitor fails to perform the functions contemplated by this Order, the Panel may require that a new practice monitor assume the responsibilities specified herein. If Respondent becomes aware that the practice monitor has ceased to perform the functions contemplated by this Order, Respondent shall nominate a new practice monitor within 30 days.

SPECIAL TERMS REGARDING PRACTICE MONITORING

It is anticipated by the parties that Respondent's future medical practice may be in areas other than that of internal medicine and gynecology. In the event that Respondent does not admit patients to a hospital, the practice monitor shall be obligated to make, on the part of the practice monitor, to review such hospital patients monthly for the reason that Respondent has not admitted patients shall not constitute a violation of this Order and shall not operate to limit the preliminary period before

on the part of the practice monitor to review five office patients monthly for the reason that Respondent has no such patients shall not be a violation of this Order and shall not operate to toll the probationary period. The parties anticipate that Respondent's future practice may entail the supervision of others to perform acts defined as the practice of medicine. The parties stipulate that any such cases of supervision must be included in the cases to be reviewed by the practice monitor.

OTHER TERMS

16. All costs and expenses incurred by Respondent to comply with this Order shall be the sole responsibility of Respondent, and shall in no way be the obligation of the Board or Panel.

17. Respondent shall obey all state and federal laws during the probationary period ordered herein.

18. Respondent shall report to the Board when gaining hospital privileges so that the Board may notify the hospital pursuant to § 12-36-118(13), C.R.S. Respondent presently holds privileges at the following hospitals:

19. This Order and all its terms shall have the same force and effect as an order entered after a formal disciplinary hearing pursuant to § 12-36-118(5)(g)(III), C.R.S. Failure to comply with the terms of this Order may be sanctioned by the Inquiry Panel as set forth in § 12-36-118(5)(g)(IV), C.R.S. This Order and all its terms also constitute a valid board order for purposes of § 12-36-117(1)(u), C.R.S.

20. Upon the expiration of the probationary period, Respondent may make a written request to the Panel for restoration of Respondent's license to unrestricted status. If Respondent has complied with the terms of probation, such release shall be granted by the Panel in the form of written notice. In the event that Respondent has failed to comply with a probationary term, the Panel shall so notify the Respondent. In addition to any other sanction that may be imposed, failure to comply with a probationary term shall toll the probationary period.

21. At any time, Respondent may request the Board to place his license on inactive status as set forth in § 12-36-137, C.R.S. While Respondent's license is inactive, Respondent must

comply with all provisions of this Order except as set forth below. The probationary period shall be tolled for any period that Respondent's license is inactive.

22. Upon the approval of a request to go inactive, Respondent may cease to comply with the practice monitoring provisions of this Order and such failure to comply shall not constitute a violation of this Order.

23. If Respondent's request to go inactive is approved prior to Respondent's completion of the CPEP learning plan, Respondent need not comply with the provisions of paragraphs 9 and 10 above for that period Respondent remains inactive. Such failure to comply with paragraphs 9 and 10 above shall not constitute a violation of this Order.

24. Respondent may resume the active practice of medicine at any time as set forth in § 12-36-137(5), C.R.S. With such request, Respondent shall nominate a practice monitor and shall supply a new initial evaluation from CPEP. It shall be left to the discretion of CPEP whether a new initial evaluation shall be required. In light of the passage of time or in light of a change in the nature of Respondent's practice, CPEP may require an entirely new initial evaluation. Alternatively, CPEP may rely in whole or in part on the earlier initial evaluation. Also, CPEP may require an entirely new learning plan or it may rely in whole or in part on learning plan activities already completed. If Respondent has not paid CPEP any amount owed for reeducation activities, he shall do so at this time. Respondent shall be permitted to resume the active practice of medicine only after Panel approval of the practice monitor and Panel approval of the new initial evaluation if one is required. Upon reactivation, Respondent must comply with the practice monitoring provisions of this Order. Upon reactivation, Respondent must comply with paragraphs 9 and 10 during the time periods set out except that the time periods shall run from the date of reactivation rather than the effective date of this Order.

25. This Order shall be admissible as evidence at any future hearing before the Board.

26. This Order shall be effective upon approval by the Panel and signature by a Panel member. In no event shall this Order be effective prior to May 15, 1998. Respondent acknowledges that the Panel may choose not to accept the terms of this Order and that if the Order is not approved by the Panel and signed by a Panel member, it is void.

27. Upon becoming effective, this Order shall be open to public inspection and shall be reported as required by law.

ADDITIONAL TERMS OF PROBATION

1. Respondent shall conduct himself at all times in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street, Troy, New York 12180, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.
4. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.
5. Respondent shall submit semi-annual declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the OPMC at the address indicated above.

6. Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice medicine as a physician in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

7. Respondent shall provide to the Director of the OPMC at the address indicated above, copies of all documentation that he is required to submit to the Colorado Board pursuant to the terms of probation imposed by that Board. In the event of the successful completion of said probation the Respondent shall provide proof of the same to the Director of the OPMC.

8. All expenses, including but not limited to those of complying with these terms of probation and the Determination and Order, shall be the sole responsibility of the Respondent.

9. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.