



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

Public

September 2, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Chong Hyun Lee, M.D.

REDACTED

Lewis Tesser, Esq.
Tesser, Ryan & Rochman, LLP
509 Madison Avenue
New York, New York 10022

Robert Bogan, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

RE: In the Matter of Chong Hyun Lee, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-159) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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,

REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
CHONG HYUN LEE, M.D.

DETERMINATION

AND

ORDER

BPMC #10-159

A hearing was held on July 21, 2010, at the offices of the New York State Department of Health, 433 River Street, Troy, New York. A Notice of Referral Proceeding and a Statement of Charges, both dated February 17, 2010, were served upon the Respondent, **Chong Hyun Lee, M.D.**, Pursuant to Section 230(10)(e) of the Public Health Law, Chairperson, **John B. Waldman M.D.**, **Eleanor C. Kane M.D.**, and **David Irvine** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **Kimberly A. O'Brien Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway Esq.**, General Counsel, by **Robert Bogan Esq.**, of Counsel. The Respondent appeared at the hearing in person and by Counsel **Lewis F. Tesser Esq.** Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing 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)(a)(i). 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:	Chong Hyun Lee, M.D., Tong Yull Kang

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 or transcript page numbers, denoted by the prefix "Ex." or "Tr." 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. Chong Hyun Lee, the Respondent, was authorized to practice medicine in New York State on September 6, 1973, by the issuance of license number 117609 by the New York State Education Department (Ex.4).

2. On or about February 18, 2009, in the Criminal Court of New York City, County of New York, New York, Respondent pled guilty to offering a false instrument for filing in the second degree, in violation of New York Penal Law 175.30, a class A misdemeanor, and sentenced to a one (1) year conditional discharge and made a confession of judgment for restitution to the State of New York in the amount of \$121, 838.80 (Ex. 5).

VOTE OF THE HEARING COMMITTEE

Respondent violated New York Education Law Section 6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was convicted of a crime related to improper insurance billing. The Hearing Committee was required to hear and consider only evidence and testimony relating to the nature and severity of the crime and penalty to be imposed upon the licensee. The Respondent testified that because of a failed business venture he could not afford qualified office personnel, his wife, who had no training, began to work in his office, and made billing errors (Tr. 13). The Respondent testified about his practice and how throughout the years he has provided medical services to patients at a significantly reduced rate or without any compensation. Reverend Kang, a patient of Respondent, testified at the hearing about Respondent's generous volunteer work.

While Respondent has a history of serving communities in need and is paying restitution to New York State for the false billing, the Hearing Committee is concerned that the Respondent's inability to maintain proper billing in his office has not been addressed. The Hearing Committee determined that Respondent should be on probation for a two-year

period, and during the first year of probation he shall successfully complete continuing medical education in the area of record keeping and medical billing practices and his records shall be reviewed by a medical billing specialist on a monthly basis. The specific terms of probation are attached and made part of this Decision and Order, and marked as Appendix B.

ORDER

IT IS HEREBY ORDERED THAT:

1. The factual allegations and specification contained in the Statement of Charges (Appendix 1) are SUSTAINED; and
2. The Respondent shall be on probation for two years and during the first year of probation Respondent shall successfully complete continuing medical education in the area of record keeping and billing practices, and his records shall be reviewed by a medical billing specialist on a monthly basis (Appendix B) ; and
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: New York,

AUGUST 30, 2010

REDACTED

John B. Waldman, M.D.
Chairperson

Eleanor C. Kane, M.D.
David Irvine

To: Chong Hvun Lee

REDACTED

Lewis Tesser, Esq.
Tesser, Ryan & Rochman, LLP
509 Madison Avenue
New York, New York 10022

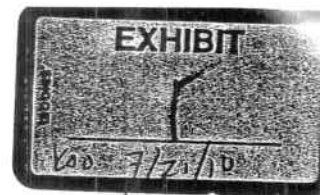
Robert Bogan, Esq.
Bureau of Professional medical Conduct
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

APPENDIX 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, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 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. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. 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].
5. Respondent shall be on probation for a period of two years. The two-year 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.
6. 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.
7. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
8. Respondent shall enroll in and successfully complete a continuing education program in the area of record keeping and medical billing. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the first year of the two-year period of probation.

9. Within thirty (30) days of the effective date of the probation and for first year of the two- year probationary period (this period shall toll when and if the Respondent is not practicing) Respondent shall have a medical billing specialist review his records and billing practices on a monthly basis ("practice monitor"). The practice monitor shall be proposed by Respondent and subject to the written approval of the Director of OPMC.
 - a. Respondent shall make available to the practice monitor any and all records requested by the monitor.
 - b. The practice monitor shall on a random unannounced basis at least monthly examine a selection of records and billing information maintained by Respondent. The review will determine whether the Respondent's medical billing practices are conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical record keeping or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the practice monitor.
 - d. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC and shall submit no less than four (reports).
10. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
11. 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.

APPENDIX I



IN THE MATTER
OF
CHONG HYUN LEE, M.D.
CO-09-03-1317-A

NOTICE OF
REFERRAL
PROCEEDING

TO: CHONG HYUN LEE, M.D.
80 Seaman Avenue
New York, NY 10034

CHONG HYUN LEE, M.D.
REDACTED

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 Procedures Act §§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 22nd day of April, 2010, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

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 not less than ten (10) days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health, whose name appears below. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide, at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here _____

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 (5) 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

February 17, 2010

REDACTED

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

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

IN THE MATTER
OF
CHONG HYUN LEE, M.D.
CO-09-03-1317-A

STATEMENT
OF
CHARGES

CHONG HYUN LEE, M.D., Respondent, was authorized to practice medicine in New York state on September 6, 1973, by the issuance of license number 117609 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 18, 2009, in the Criminal Court of the City of New York, County of New York, New York, Respondent was found guilty, based on a plea of guilty, of Offering a false instrument for filing in the second degree, in violation of New York Penal Law §175.30, a class A misdemeanor, and was sentenced to a one (1) year conditional discharge.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York State law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *February 17*, 2010
Albany, New York

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