

At IAS Part 5 of the Supreme Court  
of the State of New York, held in and  
for the County of New York, 90  
Centre Street, New York, NY, on the  
25<sup>th</sup> day of September, 2012

**BARBARA JAFFE**  
J.S.G.

Application of CHEUK W. LAU, M.D.,

Petitioner,

Index No.: 103857/2012

For a Judgment Pursuant to New York CPLR Article 78  
and a Declaratory Judgment

**ORDER TO SHOW CAUSE**

-against-

NEW YORK STATE DEPARTMENT OF HEALTH,  
NIRAV R. SHAH, M.D., in his Official Capacity as  
Commissioner of Health, NEW YORK STATE BOARD  
FOR PROFESSIONAL MEDICAL CONDUCT, and  
KENDRICK A. SEARS, M.D., in his official capacity as  
Chair of the New York State Board for Professional  
Medical Conduct,

Respondents.

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Upon reading the Verified Petition dated September 25, 2012; the Affidavit of  
Cheuk W. Lau, M.D., sworn to on September 25, 2012; the Affirmation of Harold J. Ruvoldt,  
Esq., with exhibits A and B, dated September 25, 2012, the Affidavit of Good Faith of  
Jacqueline I. Meyer sworn to on September 25, 2012, and due deliberation having been had  
thereon and sufficient cause appearing, it is hereby:

**ORDERED**, that Respondents New York State Department of Health, Nirav R.  
Shah, M.D., in his Official Capacity as Commissioner of Health, New York State Board for  
Professional Medical Conduct, and Kendrick A. Sears, M.D., in his official capacity as Chair of

the New York State Board for Professional Medical Conduct (collectively "Respondents"),  
or counsel shall appear and appear and show cause on October 23, 2012 at 9:30 a.m./p.m., or as soon thereafter  
as counsel can be heard, at IAS Part 5, Room 280, of this Court to be held at 80 Centre  
Street, New York, New York, why this Court should not enter an order:

- (1) Pursuant to CPLR § 7803(3), vacating Commissioner's Order and Notice of Referral Proceeding ("Order"), dated September 13, 2012, directing Petitioner to refrain from the practice of medicine (in any form) in the State of New York "effective immediately," as arbitrary and capricious and an abuse of discretion;
- (2) Pursuant to CPLR § 6301, staying and enjoining the enforcement of the Order and the summary suspension of Petitioner's medical license pending final resolution of the hearing and decision in the proceeding before the Committee on Professional Conduct of the State Board of Professional Medical Conduct;
- (3) Pursuant to CPLR § 3001, declaring unconstitutional the New York State Public Health Law § 230(12)(b) which permits the Commissioner to summarily suspend a practitioner's medical license – without providing the practitioner with an opportunity to be heard for months following the suspension – and thereby prohibiting the practice of medicine in the State of New York by the practitioner in any form; and
- (4) For such other and further relief as this Court deems just and proper; and it is further

**ORDERED**, that pending the hearing ~~and return date~~ of Petitioner's motion ~~and~~

~~further Order of the Court~~, Respondents are hereby temporarily restrained, enjoined, and prohibited from enforcing the summary suspension of Petitioner's license to practice medicine as directed by the Order; and it is further

**ORDERED**, that service <sup>of a copy</sup> of this Order to Show Cause, together with the papers upon which it is made shall be served upon Respondents by ~~email and Federal Express~~ <sup>Personal Service</sup> on ~~counsel for~~ the New York State Board for Professional Medical Conduct, Jude B. Mulvey,

BARBARA JAFFE  
J.S.C.

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Associate Counsel, at Bureau of Professional Medical Conduct, Corning Tower - Room 2512  
Empire State Plaza, Albany, New York 12237, and jbm02@health.state.ny.us) and that such  
service shall be deemed good and sufficient, ~~and it is further~~ *and service upon the Attorney General*  
*if made on or before the 2<sup>nd</sup> day of Oct.*  
*and it is further*

**ORDERED**, that service of the Respondents' opposition papers, if any, shall be made by email and Federal Express on counsel for Petitioner, Hodgson Russ LLP (Harold J. Ruvoldt, of Counsel), 1540 Broadway, New York, NY 10036, and harold\_ruvoldt@hodgsonruss.com, no later than ~~Oct. Dec. 12~~, 2012; and it is further

~~**ORDERED**, that service of Petitioner's reply papers, if any, shall be made in the same manner as the aforesaid service of the REDACTED Cause, and the papers upon which it is based, by no later than September \_\_, 2012.~~

Oral Argument  
Directed  
REDACTED  
JSC  
BARBARA JAFFE  
J.S.C.

ENTER: *^*  
REDACTED  
J.S.C.  
BARBARA JAFFE  
J.S.C.

SEP 25 2012