



Department  
of Health

Public

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

June 29, 2015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Hoi Kam, M.D.  
FCI Ft. Dix  
P.O. Box 2000  
Ft. Dix, New Jersey 08640

Jude B. Mulvey, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Hoi Kam, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 15-161) 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 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  
Office of Professional Medical Conduct  
Riverview Center  
150 Broadway - Suite 355  
Albany, New York 12204

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), (McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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., Chief Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Riverview Center  
150 Broadway – Suite 510  
Albany, New York 12204

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,

  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah  
Enclosure

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

IN THE MATTER  
OF  
HOI KAM, M.D.  
C0-14-02-0619A

DETERMINATION  
AND  
ORDER

BPMC #15-161

COPY

A hearing was held on May 20, 2015, 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 February 25, 2015, were served upon the Respondent, **Hoi Kam, M.D.**

Pursuant to Section 230(10)(p) of the Public Health Law, **Robert A. Catalano, M.D., M.B.A., Chair, Paul C. Harrington, M.D., and, Leslie Moore, N.D., MSOM., Lac.,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.,** Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.,** General Counsel, by **Jude B. Mulvey, Esq.,** of Counsel. The Respondent, **Hoi Kam, M.D.,** did not appear, although duly served. 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 New York Education Law §6530(9) (a)(i) by having been convicted of a crime in New York City criminal courts. Respondent is also charged with violating New York State Education Law §6530 (2) by practicing the profession fraudulently and violating New York Education Law §6530(16) by his willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules, or regulations governing the practice of medicine. 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: None

## 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. Hoi Kam, M.D., the Respondent, did not appear at the hearing although duly served with process. There was no dispute about jurisdiction. (Petitioner's Exhibit 2)
2. Hoi Kam, M.D., the Respondent, was authorized to practice medicine in New York State on July 17, 1990, by the issuance of license number 183043 by the New York State Education Department. (Petitioner's Exhibit 3)
3. On or about March 10, 2014 in Supreme Court, Bronx County, New York, Respondent was convicted, following his guilty plea, of Criminal Facilitation in the 4<sup>th</sup> degree, an A misdemeanor, in violation of New York Penal Law § 115.00. For this crime Respondent was sentenced to time served and fines and court costs of \$250. (Petitioner's Exhibit 5)
4. On or about July 5, 2011, a Hearing Committee for the New York State Board of Professional Medical Conduct ("Hearing Committee") by Decision and Order BPMC 11-172 ("BPMC 11-172"), after a hearing, revoked Respondent's license to practice medicine based upon, among others, Respondent's violation of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Sections

515.2(b)(1)(l)(a) and/or 515.2(b)(12). On or about October 20, 2011, the Administrative Review Board ("ARB") sustained the Hearing Committee's determination that Respondent committed professional misconduct but overturned the penalty of revocation. The ARB suspended Respondent's medical license for five (5) years, stayed the suspension, and placed Respondent on a five (5) year term of probation. (Petitioner's Exhibit 6)

5. On or about December 1, 2011, Respondent submitted a Drug Enforcement Administration ("DEA") renewal application. Respondent answered "no" to the question which asked if he had "ever surrendered for cause or had a state professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation or is any action pending when, in fact:

1. Respondent's New York State medical license had been revoked on or about July 5, 2011; and/or

2. Respondent's New York State medical license had been suspended on or about October 20, 2011. (Petitioner's Exhibit 8)

6. By the United States Department of Justice, Drug Enforcement Administration, Office of Diversion Control Decision and Order, Federal Register Volume 78 Number 204 ("DEA Decision") dated October 22, 2013, Respondent was found to have violated the Controlled Substances Act (CFR 1306.05[a]) by inappropriately pre-signing prescriptions. The DEA suspended Respondent's DEA registration for six months effective November 21, 2013. (Petitioner's Exhibit 8)

**VOTE OF THE HEARING COMMITTEE**

**FIRST 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...",

VOTE: Sustained (3-0)

**SECOND and THIRD SPECIFICATIONS**

"Respondent violated New York State Education Law §6530 (2) by practicing the profession fraudulently ..."

VOTE: Sustained (3-0)

**FOURTH – SIXTH SPECIFICATIONS**

"Respondent violated New York Education Law §6530(16) by his willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules, or regulations governing the practice of medicine..."

VOTE: Sustained (3-0)

**HEARING COMMITTEE DETERMINATION**

The Respondent did not appear at the hearing, although duly served. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for due diligence in the service of process, that jurisdiction had been established over the

Respondent, and that the hearing could proceed on the merits notwithstanding the Respondent's absence.

It is noted that the Respondent was aware of this proceeding and wrote a letter to Chief Administrative Law Judge Horan on April 24, 2015 indicating that he could not afford to go to Albany and consult with lawyers. This letter was received into evidence by the Administrative Officer as Respondent's Exhibit A. The Respondent contended in this letter that the present matter had been before the Board in January of 2015 and the panel at that time merely suspended his license for five (5) years and stayed that suspension.

Doctor Kam maintained in his letter that the present charges are identical to ones that were addressed in the January hearing before the Board. The documentation submitted by the Department shows that Doctor Kam is not correct. There are three new charges in the present case, including conviction for criminal facilitation, a misdemeanor, allegations of fraud for the Respondent's responses to his DEA application, as well as the failure to comply with the applicable rules governing the practice of medicine stemming from the withdrawal of the Respondent's registration due to his inappropriately pre-signing prescriptions. (See T. p. 21)

The Department's attorney, Ms. Mulvey, stated that, given the nature of the new additional charges since the January hearing, there is no other appropriate outcome in New York State but to revoke the Respondent's New York license. The panel, unanimously, agreed with the Department on this recommendation, especially in view of the criminal facilitation conviction in Supreme Court, Bronx County and the Federal DEA action for the pre-signing of prescriptions. Respondent did not appear at the hearing, and his letter and the record does not contain any evidence of mitigating circumstances, or remorse. The panel noted that the Respondent was personally served with notice of this matter and was thus aware of this proceeding and chose not to appear in person. As to the penalty,



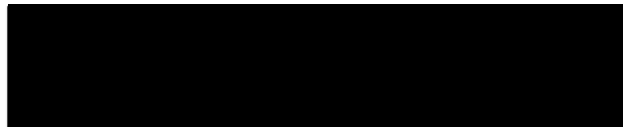
therefore, the Hearing Committee determined that the people of New York State would be protected by a revocation of the Respondent's license. Accordingly, the panel decided, unanimously, to revoke the Respondent's license under the circumstances of this case.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The license of the Respondent to practice medicine in New York State is **revoked**.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10) (h).

**DATED: Delmar, New York**  
**June 24, 2013**



**Robert A. Catalano, M.D., M.B.A., Chair**

**Paul C. Harrington, M.D.**  
**Leslie Moore, N.D., MSOM., Lac.**

To:

Hoi Kam, M.D.  
Respondent  
FCI Ft. Dix  
PO Box 2000  
Ft. Dix, NJ 08640

Jude B. Mulvey, Esq.  
Attorney for Petitioner  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Albany, New York 12237

## APPENDIX 1

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

IN THE MATTER  
OF  
HOI KAM, M.D.  
CO-14-02-0619A

NOTICE  
OF  
HEARING

TO: Hoi Kam, M.D.  
#79686-053  
FCI Ft. Dix  
PO Box 2000  
Ft. Dix, NJ 08640

PLEASE TAKE NOTICE:

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 May 20, 2015, at 1:30 p.m., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-719, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.



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

Department attorney: Initial here                     

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten 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. 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 N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner

hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

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 OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a.  
YOU ARE URGED TO OBTAIN AN ATTORNEY TO  
REPRESENT YOU IN THIS MATTER.

DATE FEBRUARY 25, 2015

Albany, NY

  
MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be directed to:  
Jude B. Mulvey, Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower - Room 2512  
Empire State Plaza  
Albany, NY 12237  
518) 473-4282

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

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IN THE MATTER  
OF  
HOI KAM, M.D.  
CO-14-02-0619A

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STATEMENT  
OF  
CHARGES

HOI KAM, M.D., Respondent, was authorized to practice medicine in New York State on July 17, 1990, by the issuance of license number 183043 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 10, 2014 in Supreme Court, Bronx County, New York, Respondent was convicted, following his guilty plea, of Criminal Facilitation in the 4<sup>th</sup> degree, an A misdemeanor, in violation of New York Penal Law § 115.00. Respondent was sentenced, among others, to time served and fines and court costs of \$250.

B. On or about July 5, 2011, a Hearing Committee for the New York State Board of Professional Medical Conduct ("Hearing Committee") by Decision and Order BPMC 11-172 ("BPMC 11-172"), after a hearing, revoked Respondent's license to practice medicine based upon, among others, Respondent's violation of Title 18 of the Official Compilation at Codes Rules and Regulations of the State of New York ("NYCRR") Sections 515.2(b)(1)(l)(a) and/or 515.2(b)(12). On or about October 20, 2011, the Administrative Review Board ("ARB") sustained the Hearing Committee's determination that Respondent committed professional misconduct but overturned the penalty of revocation. The ARB suspended Respondent's medical license for five (5) years, stayed the suspension, and placed Respondent on a five (5) year term of probation.

C. On or about December 1, 2011, Respondent submitted a Drug Enforcement Administration ("DEA") renewal application. Respondent answered "no" to the question which asked if he had "ever surrendered for cause or had a state professional license or controlled

substance registration revoked, suspended, denied, restricted or placed on probation or is any action pending" when, in fact:

1. Respondent's New York State medical license had been revoked on or about July 5, 2011; and/or
2. Respondent's New York State medical license had been suspended on or about October 20, 2011.

Respondent's answer was an intentional misrepresentation of a fact known to him made in the practice of medicine with the intent to deceive.

D. By the United States Department of Justice, Drug Enforcement Administration, Office of Diversion Control ("DEA") Decision and Order, Federal Register Volume 78 Number 204 ("DEA Decision") dated October 22, 2013, Respondent was found to have violated the Controlled Substances Act (CFR 1306.05[a]) by inappropriately pre-signing prescriptions. The DEA suspended Respondent's DEA registration for six months effective November 21, 2013.

### SPECIFICATIONS OF MISCONDUCT

#### FIRST SPECIFICATION

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

1. The facts in Paragraph A.

#### SECOND AND THIRD SPECIFICATIONS

Respondent violated New York State Education Law §6530 (2) by practicing the profession fraudulently, in that Petitioner charges:

2. The facts in Paragraphs B and C.1; and/or
3. The facts in Paragraphs B and C.2.



FOURTH – SIXTH SPECIFICATIONS

Respondent violated New York Education Law §6530 (16) by his willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules, or regulations governing the practice of medicine, in that Petitioner Charges:

4. The facts in Paragraphs B and C.1;
5. The facts in Paragraphs B and C.2; and/or
6. The facts in Paragraph D.

DATED: *Feb. 25*, 2015  
Albany, New York

  
MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct