

**NEW YORK**  
state department of  
**HEALTH**

Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

May 31, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Robert H. Iseman, Esq.  
Iseman, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
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1300 Hoge Building  
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Seattle, Washington 98104-1705

Charles Momah, M.D.  
DOC #888910  
Coyote Ridge Corrections Center  
1301 North Ephrata Avenue  
Connell, Washington 99326

**RE: In the Matter of Charles L. Momah, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-135) 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  
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), (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 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,

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

-----X  
IN THE MATTER : DETERMINATION  
OF :  
CHARLES L. MOMAH, M.D. : AND  
CO-03-09-4449-A : ORDER  
-----X

BPMC #11-135

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated July 20, 2006, were served upon the Respondent, Charles L. Momah, M.D. RAVINDER MAMTANI, M.D. (Chair), JOHN D. THOMAS II, M.D., and THOMAS W. KING, JR., M.P.A., P.E., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Jude B. Mulvey, Esq., Associate. The Respondent failed to appear in person or by counsel. A hearing was held on May 18, 2011. Evidence was received and witnesses sworn and 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). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(iii), in that Respondent was found guilty of a crime under the law of another jurisdiction and which, if committed in this state, would have constituted a crime under New York state law. In addition, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b) by virtue of having been found guilty of improper professional practice by a duly authorized professional disciplinary agency of the State of Washington, where the conduct resulting in the disciplinary action would constitute professional misconduct under New York state law; as well as professional misconduct pursuant to Education Law §6530(9)(d) by having his license to practice

medicine revoked by the duly authorized disciplinary agency of the State of Washington. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

#### 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 transcript page numbers or exhibits. These citations represent 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.

1. Charles L. Momah, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on August 7, 1987 by the issuance of license number 171684 by the New York State Education Department. (Ex. #8).

2. On or about November 16, 2005, in the Superior Court for King County, State of Washington, Respondent was found guilty of one (1) count of Rape in the Third Degree, two (2) counts of Indecent Liberties, and one (1) count of Rape in the Second Degree. On February 6, 2006, Respondent was sentenced to sixty (60) months confinement for Rape in the Third Degree, twelve (12) months confinement for each count of Indecent Liberties, and two hundred forty-five (245) months to life imprisonment for Rape in the Second Degree, \$500 restitution and Community Custody

conditions. (Exhibit #9).

3. On or about June 19, 2006, the State of Washington, Department of Health, Medical Quality Assurance Commission (hereinafter "Washington Board"), by a Stipulated Findings of Fact, Conclusions of Law and Agreed Order ("Washington Order"), revoked Respondent's license to practice medicine, based on providing knowingly false information on a healthcare providers network re-credentialing form; prescribing Percocet and Xanax to a patient with a drug addiction problem whom he had referred to an inpatient drug treatment program; having sex with a patient in his office during the course of a physical examination; threatening the patient not to report the sexual encounter to the police; performing a hysteroscopy on a patient when a hysteroscopy was contraindicated; performing a hysterectomy on a patient when a hysterectomy was contraindicated; inaccurate recordkeeping; abandoning or neglecting a patient under and in need of immediate professional care without making reasonable arrangements for the continuation of such care; performing unnecessary ultrasounds on a patient; performing seven laparoscopies and two laparotomies on a patient, all of which were medically unnecessary and not for the benefit of the patient; sexualized touching a patient's clitoris and vagina, asking a patient, during a physical examination for permission to insert his penis in her, sexually caressing her breasts, kissing

her, calling her for dates, and offering to exchange narcotic drugs for sexual contact; and the criminal conviction set forth in paragraph 2, above. (Exhibit #10).

4. Respondent's criminal conviction was subsequently upheld by the Washington Court of Appeals (Exhibit #11), as well as by the Washington Supreme Court. (Exhibit #12). Respondent's petition for a writ of certiorari was denied by the United States Supreme Court on October 14, 2010. (*Momah v. Washington*, 131 S.Ct. 160 (2010)).

#### 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 evidence amply established that Respondent stands convicted of multiple counts of rape and other sexual misconduct, including second degree rape. He is currently serving a sentence of 20+ years - life for his crimes. Moreover, he has exhausted his appellate remedies through both the State and Federal courts. Therefore, we conclude that Respondent was convicted of crimes under Washington law that would, if committed in New York, would have constituted crimes under New York State law. Thus he is guilty of professional misconduct pursuant to Education Law §6530(9)a)(iii). Accordingly, we sustain the First Specification

of professional misconduct set forth in the Statement of Charges.

In addition, the record demonstrated that the Washington Board revoked Respondent's Washington medical license based upon stipulated findings of fact and conclusions of law. The findings against Respondent involved misconduct in the care of nineteen patients. Respondent was found guilty of especially egregious sexual misconduct with multiple patients, as well as multiple acts of gross negligence, gross incompetence, moral unfitness, willfully harassing, abusing intimidating patients, and abandonment of patients, among other violations. Thus, Respondent was found guilty of numerous acts of improper professional conduct which, if committed in New York, would constitute professional misconduct as set forth in paragraph C of the Statement of Charges. Accordingly, the Hearing Committee sustained the Second and Third Specifications of professional misconduct.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in the State of New York should be revoked. 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.

Respondent abused his position of trust as a physician in order to take sexual advantage of his patients. There can be no mitigation for such actions. The crimes of rape and indecent liberties virtually mandate revocation. In addition, the record established that Respondent lacked the skills and judgment necessary to practice the profession. In the absence of any mitigating evidence, the misconduct found by the Washington Board independently warrants revocation.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Specifications of professional misconduct, as set forth in the Statement of Charges (Exhibit # 5) are SUSTAINED;

2. Respondent's license to practice medicine in New York State shall be and hereby is REVOKED;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Hopewell Junction, New York

MAY 26, , 2011

REDACTED

RAVINDER MAMTANI, M.D. (CHAIR)

JOHN D. THOMAS II, M.D.

THOMAS W. KING, JR, M.P.A., P.E.

TO: Jude B. Mulvey, Esq.  
Associate Counsel  
New York State Department of Health  
Corning Tower, Room 2512  
Albany, New York 12237

Robert H. Iseman, Esq.  
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1301 North Ephrata Avenue  
Connell, Washington 99326

APPENDIX I

## IN THE MATTER

OF

CHARLES M. MOMAH, M.D.  
CO-03-09-4449-A

STATEMENT

OF

CHARGES

CHARLES L. MOMAH, M.D., Respondent, was authorized to practice medicine in New York state on August 7, 1987, by the issuance of license number 171684 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about November 16, 2005, in the Superior Court of Washington for King County, State of Washington, Respondent was found guilty of one (1) count of Rape in the Third Degree, two (2) counts of Indecent Liberties, and one (1) count of Rape in the Second Degree, and on February 6, 2006, was sentenced to sixty (60) months confinement for Rape in the Third Degree, twelve (12) months confinement for each count of the Indecent Liberties, and two hundred forty-five (245) months to life confinement for Rape in the Second Degree, \$500 restitution, and Community Custody conditions.

A. On or about June 19, 2006, the State of Washington, Department of Health, Medical Quality Assurance Commission, (hereinafter "Washington Board"), by a Stipulated Findings of Fact, Conclusions of Law and Agreed Order, (hereinafter "Washington Order"), REVOKED Respondent's license to practice medicine, based on, inter alia, providing knowingly false information on a healthcare providers network re-credentialing application form in May 2001; prescribing Percocet and Xanax to a patient with a drug addiction problem whom he had referred to an inpatient program for drug addiction; having sex with a patient in his office during the course of a physical examination; threatening a patient not to report the sexual encounter to the police; performing a hysteroscopy on a patient when a hysteroscopy was contraindicated; performing a hysterectomy on a patient when a hysterectomy was contraindicated; inaccurate recordkeeping; abandoning or neglecting a patient under and in need of immediate professional care without making reasonable arrangements for the continuation of such care; performing

unnecessary ultrasounds on a patient; performing seven (7) laparoscopies and two (2) laparotomies on a patient all of which were medically unnecessary and not for the benefit of the patient; sexualized touching of a patient's clitoris and vagina; asking a patient, during a physical examination, for permission to insert his penis in her, sexually caressing her breasts, kissing her, calling her for dates, and offering to exchange narcotic drugs for sexual contact; and the criminal conviction set forth in paragraph A, above.

C. The conduct resulting in the Washington 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(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6540(5) (incompetence on more than one occasion);
4. New York Education Law §6530(6) (gross incompetence);
5. New York Education Law §6530(9)(a)(iii) (being convicted of committing an act constituting a crime under state law);
6. New York Education Law §6530(17) (exercising undue influence on a patient);
7. New York Education Law §6530(20) (moral unfitness);
8. New York Education Law §6530(30) (abandoning or neglecting a patient under and in the need of immediate professional care, without making reasonable arrangements for the continuation of such care);
9. New York Education Law §6530(31) (willfully harassing, abusing or intimidating a patient); and/or
10. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of committing a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

**SECOND 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 resulting in the disciplinary action would constitute professional misconduct under the laws New York state, in that Petitioner charges:

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

**THIRD SPECIFICATION**

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

3. The facts in Paragraphs A, B, and/or C.

DATED: *July 20*, 2006  
Albany, New York

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

APPENDIX I

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER  
OF  
CHARLES M. MOMAH, M.D.  
CO-03-09-4449-A

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STATEMENT  
OF  
CHARGES

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7. New York Education Law §6530(20) (moral unfitness);
8. New York Education Law §6530(30) (abandoning or neglecting a patient under and in the need of immediate professional care, without making reasonable arrangements for the continuation of such care);
9. New York Education Law §6530(31) (willfully harassing, abusing or intimidating a patient); and/or
10. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

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DATED: *July 20*, 2006  
Albany, New York

REDACTED

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