

September 4, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Cheuk Lau, M.D.
REDACTED

Harold J. Ruvoldt, Jr., Esq.
Hodgson Russ, LLP
1540 Broadway - 24th Floor
New York, New York 10036

RE: In the Matter of Cheuk Lau, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-284) 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. 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 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., 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,

REDACTED

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

COPY

-----X
IN THE MATTER

: DETERMINATION

OF

: AND

CHEUK LAU, M.D.

: ORDER

CO-11-09-5062-A

-----X
KPMC #13-284

A Commissioner's Order, Notice of Referral Proceeding and Statement of Charges, dated September 13, 2012, were served upon the Respondent, Cheuk Lau, M.D. **PETER B. KANE, M.D. (Chair), WILLIAM P. DILLON, M.D., and LES MOORE, N.D., MSOM, LAc.,** 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 Counsel. The Respondent appeared by Hodgson Russ, LLP, Harold J. Ruvoldt, Jr., Esq., of Counsel. A hearing was held on August 22, 2013. 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)(i) [conviction of committing an act constituting a crime under New York law]. 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. Cheuk Lau, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on June 15, 2000 by the issuance of license number 217818 by the New York State Education Department. (Exhibit #4).

2. On or about February 14, 2012, in Supreme Court, New York County, New York, Respondent was convicted of Criminal Tax Fraud in the Second Degree, a felony, in violation of Tax Law §1805, and City Criminal Tax Fraud in the Third Degree, a felony, in violation of New York City Administrative Law §§1-405. Respondent was sentenced to a total fine of \$798,122, 21 days incarceration, 200 hours community service and three year conditional discharge. On February 23, 2012, Respondent's sentence was amended to a three year conditional discharge and 250 hours community service. (Exhibit #5 and #6).

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 established that Respondent was convicted of committing two felonies under New York law. Therefore, he is guilty of professional misconduct in violation of Education Law §6530(9)(a)(i). As a result, the Hearing Committee voted to sustain the First Specification of professional misconduct set forth in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent should receive a censure and reprimand in satisfaction of the finding of professional misconduct. In addition, Respondent shall be fined \$10,000, and be placed on probation for a term of three years. The complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein. 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.

In rendering our determination on sanction, the Committee considered the arguments made in favor, and in opposition to the Respondent. Respondent argued that he provides a unique service to his patients in Chinatown. He is fluent in multiple Chinese dialects, and is devoted to, and beloved by his patients.

The Hearing Committee considered this argument, and found it to be without merit. Respondent's clinical abilities are not at issue in this matter, nor his devotion to his patients. Absent any evidence to the contrary, we accept those as a given. However, they have no bearing on the outcome of this case.

Respondent also argued that the Certificate of Relief from Disabilities, issued to Respondent by the sentencing Court (Exhibit R.32) precludes the Department from suspending or revoking his license based solely upon the criminal conviction. Again, we disagree.

It is correct to note that the Certificate does "Relieve the holder of all forfeitures, and of all disabilities and bars to employment... by virtue of the fact that this certificate is issued at the time of sentence." The Certificate specifically provides however, "A conviction of the crime or the offense specified on the face of this certificate shall NOT prevent any judicial, **administrative, licensing** or other body, **board** or authority from **relying upon the conviction specified** on the

reverse of this certificate as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or renew any license, permit or other authority or privilege". (Exhibit R.32, p. 2; emphasis supplied). Thus it is clear that this Board may, in an exercise of its discretion, determine to revoke Respondent's medical license, based solely upon the conviction. The Department is under no burden to prove some additional misconduct.

The crimes to which Respondent pled guilty (tax evasion) raise the question of Respondent's integrity and moral fitness to practice the profession. In deciding the proper sanction to be imposed, we gave careful consideration to Respondent's conduct in relation to these actual issues. The uncontroverted evidence demonstrated that Respondent made an initial determination that the financial practices in engaged in on advice of an accounting professional, may have been inappropriate. He sought out legal counsel from Charles Falk, Esq., an expert in tax matters pertaining to offshore bank accounts. Respondent voluntarily disclosed the potential liabilities to both the United States Internal Revenue Service ("IRS"), and the New York State Department of Taxation and Finance.

Respondent filed amended returns with the IRS and resolved all outstanding federal tax issues without any criminal

action. When it turned out that the State had already begun an investigation of Respondent, he stepped forward, pled guilty, paid all necessary back taxes, paid negligence penalties and criminal fines. More to the point, Respondent voluntarily undertook a complete audit of his financial practices, and obtained a modern billing and electronic health records system. He went so far as to incorporate implementation of these new systems into the plea agreement.

These various actions, most of which which Respondent undertook **before** he became aware of any criminal investigations, speak volumes as to Respondent's moral character and integrity. The Hearing Committee considered the Department's request for a period of two months actual suspension, and 48 months stayed suspension. We rejected this request as wholly unsupported by the facts. The Committee had the opportunity to observe and question Respondent. He appeared genuinely remorseful and mortified regarding his prior mistakes. We unanimously determined that the chance that Respondent would ever again commit similar misconduct is virtually zero.

Following the principal of "trust but verify", we do agree with the Department that a period of probation, with monitoring of Respondent's billing practices is appropriate. In addition, we recognize that the crimes in issue were financial in

nature, and therefore determined to impose a \$10,000.00 fine. The Hearing Committee strongly believes that these provisions, along with a censure and reprimand, are the most appropriate sanctions for the misconduct presented.

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 (Exhibit # 1) is **SUSTAINED**;

2. Respondent shall, and hereby does receive a **CENSURE AND REPRIMAND**. Respondent's license to practice medicine in New York State shall be placed on **PROBATION** for a term of **THREE (3) YEARS** from the effective date of this Determination and Order.

The complete terms of probation are set forth in Appendix II of this Determination and Order and incorporated therein;

3. A civil penalty in the amount of **\$10,000.00 (TEN THOUSAND DOLLARS)** be and hereby is imposed on Respondent. Payment of the aforesaid sum shall be made to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 2784, Empire State Plaza, Albany, New York 12237 within thirty (30) days of the effective date of this Order;

4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. 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 §171(27); State Finance Law §18; CPLR §5001; Executive Law §32);

5. 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: Casenovia, New York
AUG 30, 2013

REDACTED

~~PETER B. KANE, M.D. (CHAIR)~~

WILLIAM P. DILLON, M.D.
LES MOORE, N.D., MSOM, LAC.

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

Cheuk Lau, M.D.

REDACTED

Harold J. Ruvoldt, Jr., Esq.
Hodgson Russ, LLP
1540 Broadway - 24th Floor
New York, NY 10036

APPENDIX I

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

IN THE MATTER
OF
CHEUK LAU, M.D.
CO-11-09-5062-A

STATEMENT
OF
CHARGES

CHEUK LAU, M.D., Respondent, was authorized to practice medicine in New York state on or about June 15, 2000, by the issuance of license number 217818 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 14, 2012 in Supreme Court, New York County, New York, Respondent was convicted of Criminal Tax Fraud in the Second Degree, a felony, in violation of Tax Law § 1805, and City Criminal Tax Fraud in the Third Degree, a felony, in violation of New York ~~Village~~ City Administrative Law §§ 1-405. Respondent was sentenced, among others, a fine of \$798,122, 21 days incarceration, 200 hours community service and three year conditional discharge. On February 23, 2012, his sentence was amended to a three year conditional discharge and 250 hours of community service.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

CRIMINAL CONVICTIONS

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, in that Petitioner charges:

1. The facts in Paragraph A

DATED: *Sept. 13*, 2012
Albany, New York

REDACTED

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

APPENDIX II

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his 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), Riverview Center, 150 Broadway Suite 355, Albany, New York 12204; 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. The 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 the 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 the 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 staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which 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. Within thirty (30) days of the effective date of the Order, Respondent shall practice medicine only when his billing practices are monitored by a certified billing and coding specialist, proposed by Respondent and subject to the written approval of the Director of OPMC. The billing and coding specialist shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 25) of records maintained by Respondent. The review will determine whether the Respondent's billing practices are conducted in accordance with generally accepted standards of practice. Any perceived deviation of accepted standards of billing practices or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring billing and coding specialist. Respondent shall cause the billing and coding specialist to report quarterly, in writing, to the Director of OPMC.
9. Respondent shall maintain medical malpractice coverage with limits no less than \$2million per occurrence and \$6million 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.
10. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he 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.