



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Public

Dennis P. Whalen
Executive Deputy Commissioner

December 23, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sung O. Kim, M.D.
19 Brooks Crossing
West Boylston, Massachusetts 01583

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical
Conduct
433 River Street, Suite 303
Troy, New York 12180

RE: In the Matter of Sung O. Kim, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-302) 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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

IN THE MATTER
OF
SUNG O. KIM, M.D.

COPY

DETERMINATION

AND

ORDER

BPMC NO. 05-302

A Notice of Referral Proceeding and Statement of Charges, both dated November 4, 2005, were served upon the Respondent, **SUNG O. KIM, M.D.** **SHARON KURITZKY, M.D.**, Chairperson, **PHILIP FLORIO, M.D.** and **RICHARD H. EDMONDS, Ph.D.**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on December 20, 2005, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent failed to appear at the hearing.

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 where 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 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, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivision (28). A copy of the Notice of Referral Proceeding and Statement of Charges is 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. **SUNG O. KIM, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 24, 1980, by the issuance of license number 143980 by the New York State Education Department. (Ex. 4)
2. On July 20, 2005, the Commonwealth of Massachusetts, Board of Registration in Medicine ("the Massachusetts Board") issued a Final Decision and Order wherein Respondent was administered discipline in the form of a reprimand and \$5,000.00 fine for failing to respond to three notifications to respond to complaints about her that had been filed with the board. (Ex. 5)

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Massachusetts Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(b) and (d), in that the conduct would have constituted misconduct in New York, had it been committed here, under New York Education Law §6530(28) (failing to respond within thirty days to written communications from the department of health and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct).

The Hearing Committee concludes that the appropriate penalty to be imposed in New York for this misconduct is revocation of Respondent's license to practice in New York.

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST 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 upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent was administered discipline by the Massachusetts Board after she failed to respond to three notifications to respond to complaints about her that had been filed with the board. These notifications were sent to Respondent's last known address in Massachusetts, and the Board's order indicates that she signed the Certified Mail receipt for at least one of these orders, thereby establishing that the address the Massachusetts Board had for her was the correct address. Respondent thereafter failed to file an answer to the charges regarding these failures to

respond, failed to appear at a pre-hearing conference and failed to respond to an Order to Show Cause based upon the previous failures. Respondent's medical license in Massachusetts had lapsed on January 31, 2005 when she failed to renew the license.

The New York State Department of Health attempted to personally serve Respondent with the Notice of Hearing and Statement of Charges for the instant matter at the same address used by the Massachusetts Board. This address is also the same address Respondent used when she last renewed the registration of her New York License in August, 2001. (Ex. 4) At no time has Respondent filed with the New York State Education Department a change of address from this address as required by New York State Education Law §6502(5), which lends further support to the proposition that the Department used Respondent's actual address.

The affidavit of the process server indicates the attempts were made on November 10, 15 and 19, but that a neighbor stated that Respondent was "never home". This also tends to indicate that Respondent did live at the address used by the Department. The Department also attempted to serve Respondent with the Notice of Hearing and Statement of Charges by Certified Mail, Return Receipt Requested. The envelope was returned to the Department as "unclaimed" after notices were left at the address on November 9, 14 and 24. First class mail sent to Respondent at the same address containing the same documents was not returned to the Department.

The Administrative Law Judge ruled that the Department's attempts to serve Respondent were in accord with Public Health Law §230(10)(d), in that process was sent by Certified Mail to the Respondent's last known address when personal service failed after due diligence (emphasis supplied), and that the Department had thus obtained jurisdiction over her.

As to the penalty to be imposed for Respondent's misconduct in New York State, the Hearing Committee concludes that revocation of Respondent's New York license is the only reasonably effective remedy. According to the Massachusetts Board's Order, her license in that state has lapsed, and she cannot practice there until and unless she responds to the complaints filed with the Board and pays the fine it imposed. There is no evidence that this has occurred, and, as far as this record reveals, Respondent is no longer interested in maintaining either her right to practice in Massachusetts or New York. Revocation of her license will prevent her from being able to practice in New York while she is prevented from doing so in Massachusetts based upon her failure to respond to complaints and other inquiries by the Massachusetts Board.

Respondent may reapply for her New York license in three years.

ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **SUNG O. KIM, M.D.** is **REVOKED**.

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Amherst, New York

Dec 21, 2005


SHARON KURITZKY, M.D.
Chairperson

PHILIP FLORIO, M.D.
RICHARD H. EDMONDS, Ph.D.

APPENDIX 1

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

EXHIBIT

1

IN THE MATTER

OF

SUNG O. KIM, M.D.
CO-05-08-3921-A

NOTICE OF
REFERRAL
PROCEEDING

TO: SUNG O. KIM, M.D.
19 Brooks Crossing
West Boylston, MA 01583

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 Procedure Act Sections 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 20th day of December 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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. You may produce evidence or sworn testimony on your behalf. Such evidence 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, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before December 12, 2005.

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 no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before December 12, 2005, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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.

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 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
November 4, 2005


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
SUNG O. KIM, M.D.
CO-05-08-3921-A

STATEMENT
OF
CHARGES

SUNG O. KIM, M.D., the Respondent, was authorized to practice medicine in New York state on October 24, 1980, by the issuance of license number 143980 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 20, 2005, the Commonwealth of Massachusetts, Board of Registration in Medicine, (hereinafter "Massachusetts Board"), by a Final Decision and Order, (hereinafter "Massachusetts Order") reprimanded Respondent and fined her \$5,000.00, based on failing to respond to four (4) letters from the Massachusetts Board with regard to two (2) investigations, within thirty (30) days.

B. The conduct resulting in the Massachusetts 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(28) (failing to respond within thirty days to written communications from the department of health).

SPECIFICATIONS
FIRST 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 upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

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

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

DATED: *Nov. 4*, 2005
Albany, New York


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