

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE  
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

June 20, 1990

Madan G. Chugh, Physician  
30 Water Ford Parkway  
Williamsville, N.Y. 14221

Re: License No. 098207

Dear Dr. Chugh:

Enclosed please find Commissioner's Order No. 10361. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER  
Director of Investigations  
By:

MOIRA A. DORAN  
Supervisor

DJK/MAH/er  
Enclosures

CERTIFIED MAIL- RRR

cc: Paul A. Foley, Esq.  
964 Ellicott Square Bldg.  
Buffalo, N.Y. 14203

**REPORT OF THE  
REGENTS REVIEW COMMITTEE**

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**MADAN CHUGH**

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**CALENDAR NO. 10361**



# The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

**MADAN CHUGH**

**No. 10361**

who is currently licensed to practice  
as a physician in the State of New York.

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## REPORT OF THE REGENTS REVIEW COMMITTEE

MADAN CHUGH, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On December 20, 1989, the scheduled date of our hearing, respondent appeared before us in person and was represented by his attorney, Paul A. Foley, Esq. Paul R. White, Esq., represented the Department of Health.

Petitioner's recommendation as to the penalty to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be suspended for two years, three months active, one year and nine months stayed, and probation for one year and nine months with a requirement that Dr. Chugh take 50 credit hours of category one continuing medical education in emergency care.

**MADAN CHUGH (10361)**

Respondent's recommendation as to the penalty to be imposed, should respondent be found guilty, was Censure and Reprimand.

At the hearing we reserved judgment on whether we would permit respondent to introduce additional character reference materials into the record subsequent to the hearing before us and, if additional letters were to be received, the parties would be notified within ten days. We unanimously decided not to receive additional letters and the parties were not notified to make any further submissions. The record contains character references and respondent already had ample opportunity to submit further material prior to the hearing before us.

We have reviewed the record in this matter; and our unanimous findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed follow:

**FINDINGS OF FACT**

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department.
2. On October 17, 1986 a report of an administrative law judge of the New York State Department of Health was issued finding respondent in violation of New York Public Health Law §2803-d.
3. On May 26, 1987 the Commissioner of Health issued an order setting forth additional findings of fact and

conclusions and also finding respondent in violation of New York Public Health Law §2803-d.

4. In Matter of Chugh v. Axelrod (Erie Co., Index No. H-91749), the Appellate Division, Fourth Department, affirmed the decision of the Commissioner of Health. No further appeal was taken from this decision.
5. Respondent was found in violation of a state statute pursuant to a final decision of an agency having the power to conduct the proceeding and after an adjudicatory proceeding had been conducted, in which no appeal is pending, which violation resulting in the final decision would constitute professional misconduct under New York Education Law §6509(11) - - a violation of New York Public Health Law §2803-d - - as set forth in the statement of charges and the record herein.

DETERMINATION AS TO GUILT

The charge contained in the statement of charges, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "A", has been proven by a preponderance of the evidence and respondent is guilty thereof.

We reject respondent's argument that this case cannot be brought as a direct referral. Public Health Law §230(10)(m)(iv) is a procedural statute that defines the scope of this direct referral proceeding. The 1986 amendment of Public Health Law

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§230(10)(m)(iv) broadened the scope of direct referrals to include not only cases based upon a violation of a subdivision of Education Law §6509(5) (the only permissible kind of direct referral prior to the 1986 amendment), but also "based solely upon a finding of a violation of a State or federal statute or regulation pursuant to a final decision or determination of an agency having the power to conduct the proceeding and after an adjudicatory proceeding has been conducted, in which no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and where the violation resulting in the final decision or determination would constitute professional misconduct pursuant to section sixty-five hundred nine of the education law". New York Public Health Law §230(10)(m)(iv).

If petitioner meets the statutory terms contained in Public Health Law §230(10)(m)(iv), then petitioner may maintain a direct referral proceeding. Saleem v. Commissioner of Education, 133 A.D.2d 953, 520 N.Y.S.2d 878 (3rd Dept. 1987).

In this case, petitioner has met the statutory terms of Public Health Law §230(10)(m)(iv). Petitioner has shown, by a preponderance of the evidence, that there was a finding of a violation of a state statute pursuant to a final decision of an agency having the power to conduct the proceeding and after an adjudicatory proceeding has been conducted, in which no appeal is pending. Petitioner proved this by introducing into evidence the

**MADAN CHUGH (10361)**

decision of the Commissioner of Health finding respondent guilty, after a full administrative hearing, of violating New York Public Health Law §2803-d, and the decision of the Appellate Division, Fourth Department, affirming this determination from which no further appeal was taken. Petitioner has also shown, by a preponderance of the evidence, that the violation resulting in the final decision would constitute professional misconduct pursuant to Education Law §6509. Petitioner proved this by introducing into evidence the statement of charges which points out that Education Law §6509(11) makes a violation of Public Health Law §2803-d professional misconduct. We note that this prong of Public Health Law §230(10)(m)(iv) - - showing that the violation resulting in the final decision would constitute professional misconduct pursuant to Education Law §6509 - - is merely a comparison of statutory elements and does not involve any assessment of the merits of the underlying charge. Thus, Public Health Law §230(10)(m)(iv) only requires that petitioner show in this case that Public Health Law §2803-d has some statutory equivalent in Education Law §6509. Clearly, Education Law §6509(11) meets this test as it specifically makes a violation of Public Health Law §2803-d into professional misconduct.

Having addressed the language of the 1986 amendment of Public Health Law §230(10)(m)(iv) within a procedural context and having met the procedural criteria thereof, we now turn to the charge

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under Education Law §6509(11) -- a violation of New York Public Health Law §2803-d. It is our unanimous opinion that, contrary to respondent's contention, the fact that "substantial evidence" was the burden of proof used by the Department of Health in its administrative hearing does not preclude a direct referral proceeding in which we may equate the Department of Health's findings with the violation of Education Law §6509(11). Choi v. State of New York, New York Law Journal, December 5, 1989 (No. 222, 3rd Dept. November 30, 1989). It is our unanimous opinion that said findings prove, by a preponderance of the evidence, that there is a violation of Public Health Law §2803-d and, therefore, that respondent is guilty of professional misconduct under Education Law §6509(11).

We note that the case of Sood v. Commissioner of Education, 137 A.D.2d 918, 524 N.Y.S.2d 584 (3rd Dept. 1988) is distinguishable from the present case. In Sood, there was no genuine finding or admission of guilt in the stipulation entered into between the Department of Health and the respondent therein. In the present case, there is a finding of guilt entered after a full administrative hearing.

**RECOMMENDATION AS TO THE  
PENALTY TO BE IMPOSED**

Respondent's license to practice as a physician in the State of New York be suspended for one year and respondent be required to perform 50 hours of public service upon the charge of which

MADAN CHUGH (10361)

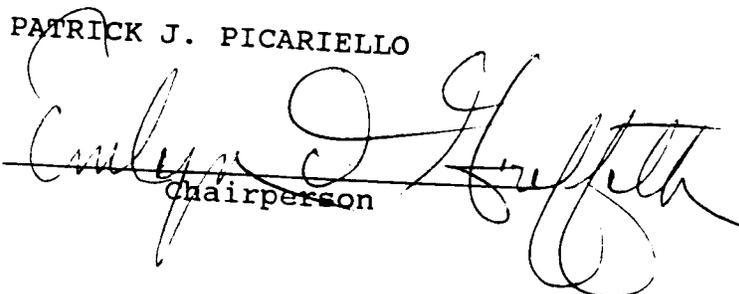
respondent has been found guilty, that execution of said suspension be stayed, and respondent be placed on probation for one year under the terms set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "B".

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO

  
chairperson

Dated:

2/27/90

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

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IN THE MATTER : STATEMENT  
OF : OF  
MADAN CHUGH, M.D. : CHARGES

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1. MADAN CHUGH, M.D., the Respondent, was authorized to practice medicine in New York State on February 1, 1967 by the issuance of license number 098207 by the New York State Education Department.

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991 from 2121 Main Street, Buffalo, New York 14214.

3. The Respondent herein is charged with professional misconduct within the purview of N.Y. Educ. Law §6509 (McKinney 1985 and Supp. 1989) as set forth in the attached Specification.

FIRST SPECIFICATION

4. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509(11) (McKinney Supp. 1989) in that he was found to have violated N.Y. Pub. Health Law §2803-d:

On May 26, 1987, the New York State Department of Health issued an Order, PA-87-85, which finally determined that the Respondent was guilty of patient neglect in that he: (1) failed to have a 91 year old nursing home patient medically examined when he received a telephone call advising him that this patient had suffered a burn; (2) issued a telephone order which was neither adequate nor appropriate for the needs of his patient; (3) failed to insure that his patient received emergency first aid; and (4) subjected his patient to a double transfer, first from the nursing home to Sisters of Charity Hospital and then from Sisters of Charity Hospital to Sheehan Emergency Hospital. A civil penalty of \$1,000 was imposed upon the Respondent pursuant to Health Department Order PA-87-85.

All appeals from this administrative adjudicatory proceeding have been exhausted by the Respondent in that the Appellate Division, Fourth Department unanimously confirmed the Health Department's administrative

determination and dismissed the Respondent's CPLR Article  
78 Petition on or about June 2, 1989.

DATED: Albany, New York  
*October 5, 1989*

*Peter D. Van Buren*  
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PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical  
Conduct

EXHIBIT "B"

TERMS OF PROBATION  
OF THE REGENTS REVIEW COMMITTEE

MADAN CHUGH

CALENDAR NO. 10361

1. That respondent shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether respondent is in compliance with the following:
  - a. That respondent, during the period of probation, shall act in all ways in a manner befitting respondent's professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by respondent's profession;
  - b. That respondent, during the period of probation has successfully performed 50 hours of public service to be selected by respondent and previously approved, in writing, by said employee;
  - c. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
  - d. That respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no

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later than the first three months of the period of probation; and

- e. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with the NYSED, unless respondent submits written proof to the New York State Department of Health, that respondent has advised DPLS, NYSED, that respondent is not engaging in the practice of respondent's profession in the State of New York and does not desire to register, and that 2) respondent has paid any fines which may have previously been imposed upon respondent by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;
2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

**ORDER OF THE COMMISSIONER OF  
EDUCATION OF THE STATE OF NEW YORK**

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**MADAN CHUGH**

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**CALENDAR NO. 10361**



# The University of the State of New York

IN THE MATTER

OF

**MADAN CHUGH**  
(Physician)

**DUPLICATE  
ORIGINAL  
VOTE AND ORDER  
NO. 10361**

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Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 10361, and in accordance with the provisions of Title VIII of the Education Law, it was

**VOTED (May 25, 1990):** That the record herein be accepted; that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of MADAN CHUGH, respondent, be accepted; that respondent is guilty of the charge by a preponderance of the evidence; that respondent's license and registration to practice as a physician in the State of New York be suspended for one year and respondent be required to perform 50 hours of public service upon the charge of which respondent has been found guilty; that execution of said suspension be stayed; that respondent be placed on probation for one year under the terms prescribed by the Regents Review Committee; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

**and it is**

**ORDERED:** That, pursuant to the above vote of the Board of

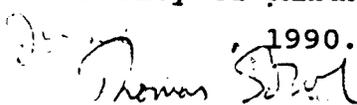
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Regents, said vote and the provisions thereof are hereby adopted and SO ORDERED, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 8<sup>th</sup> day of

1990.

  
Commissioner of Education