



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Public

February 9, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Weixing Guo, M.D.

REDACTED

Joel Abelove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

RE: In the Matter of Weixing Guo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-32) 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

COPY

IN THE MATTER
OF
WEIXING GUO, M.D.

DETERMINATION
AND
ORDER

BPMC #11-32

A hearing was held on December 16, 2010, at the offices of the New York State Department of Health, 433 River Street, Troy, New York. The State Board of Professional Medical Conduct obtained jurisdiction over Respondent, **Weixing Guo, M.D.**, and the Notice of Referral Proceeding and Statement of Charges, both dated November 2, 2010, were received by Respondent. ¹ Pursuant to Section 230(10)(e) of the Public Health Law, Chairperson, **Jerry Waisman M.D.**, **Arsenio G. Agopovich M.D.**, and **Janet Miller R.N.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **Kimberly A. O'Brien Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway Esq.**, General Counsel, by **Joel Abelove Esq.**, of Counsel. The Respondent did not appear at the hearing in person or by Counsel. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

¹ During the hearing, the Petitioner offered documents regarding jurisdiction and service of the Notice of Hearing and Statement of Charges, and these documents were made part of the record (Ex. 1-4,6; See Tr. 8-13). After the hearing, Respondent notified the Petitioner that he was moving to China and did not intend to appear at a hearing, and has a new address (See ALJ 1).

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 Education Law Section 6530(9)(b) & 6530(9)(d). 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 or transcript page numbers, denoted by the prefix "Ex." or "Tr." 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. Weixing Guo, the Respondent, was authorized to practice medicine in New York State on September 27, 2002, by the issuance of license number 226526 by the New York State Education Department (Ex.4).

2. On or about February 12, 2009, the West Virginia Board of Medicine (hereinafter "West Virginia Board") made findings related to Respondent's improper prescribing practices and his acknowledged "sexual event with a patient," and by Consent Order revoked Respondent's license to practice medicine, stayed the revocation, and among other things prohibited Respondent from prescribing Schedule II, III, and IV controlled substances until September 1, 2010 (Ex. 4).

3. On or about March 8, 2010, the West Virginia Board by a Notice of Revocation lifted the stay of revocation and REVOKED Respondent's license to practice medicine in the State of West Virginia upon finding that Respondent was guilty of professional misconduct and improper professional practice involving incidents of sexual contact with patients and prescribing of controlled substances (Ex. 5).

4. The West Virginia Board found Respondent guilty of professional misconduct and if the conduct occurred in New York State it would constitute negligence on more than one occasion, incompetence on more than one occasion, moral unfitness, and willfully harassing, abusing, or intimidating a patient pursuant to New York Education Law Sections 6530(3), 6530(5), 6530(20), and 6530(31) respectively (See Ex.1, 4&5).

VOTE OF THE HEARING COMMITTEE

Respondent violated New York Education Law Section 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)

Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other 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 Hearing Committee was required to hear and consider only evidence and testimony relating to the nature and severity of the crime and penalty to be imposed upon the licensee. The Department presented unrefuted documentary evidence that Respondent's license to practice medicine in West Virginia was revoked after the West Virginia Board found that Respondent was guilty of having sexual contact with patients and improperly prescribing narcotics. The Respondent did not appear at the hearing in person or by a representative and offered nothing in mitigation of the charges. In the absence of any mitigating evidence and the serious nature of the West Virginia Board's findings, the Hearing Committee determined that they must revoke Respondent's license to practice medicine in order to protect the people of the State of New York.

ORDER

IT IS HEREBY ORDERED THAT:

1. The factual allegations and specifications contained in the Statement of Charges (Appendix 1) are SUSTAINED; and
2. The Respondent's license to practice medicine in the State of New York shall be REVOKED; and
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: _____, New York,

February 2, 2011

REDACTED

~~Jerry Waisman, M.D.~~
Chairperson

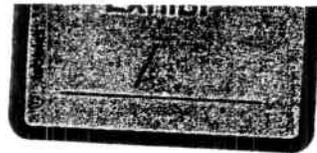
Arsenio G. Agopovich, M.D.
Janet Miller, R.N.

To Weixing Guo
Lian hua 6 Qu.C-308
Tai Zhou City
Jiang Su Province 225300
People's Republic of China

Joel Ablove, Esq.
Bureau of Professional Medical Conduct
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Appendix 1

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



IN THE MATTER
OF
WEIXING GUO, M.D.
CO-09-02-1188-A

NOTICE OF
REFERRAL
PROCEEDING

TO: WEIXING GUO, M.D.
REDACTED

WEIXING GUO, M.D.
REDACTED

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 Procedures Act §§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 16th day of December, 2010, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. 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 who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

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 not less than ten (10) 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. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated 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 New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here _____

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 (5) 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 2, 2010

REDACTED

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

Inquiries should be addressed to:

Joel E. Ablove
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

IN THE MATTER
OF
WEIXING GUO, M.D.
CO-09-02-1188-A

STATEMENT
OF
CHARGES

WEIXING GUO, M.D., Respondent, was authorized to practice medicine in New York State on September 27, 2002, by the issuance of license number 226526 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 12, 2009, the West Virginia Board of Medicine (hereinafter "West Virginia Board"), by a Consent Order (hereinafter "West Virginia Order"), REVOKED Respondent's license to practice medicine, the REVOCATION is immediately STAYED, and until September 1, 2010, he shall cease and desist from prescribing Schedule II, III, and IV controlled substances, and may administer such controlled substances only in a hospital setting and only for purposes of or in connection with anesthesia, based on his violation of West Virginia Code § 30-3-14(c)(8),(17) and 11 CSR 1A 12.1(r); and West Virginia Code § 30-3-14(c)(17) and 11 CSR 1A 12.1(e) and (j) and 12.2(d).

B. On or about March 8, 2010, the West Virginia Board, by a Notice of Revocation (hereinafter "West Virginia Revocation"), LIFTED the STAY of REVOCATION of Respondent's medical license. The West Virginia Board REVOKED Respondent's license to practice medicine and surgery in West Virginia in the interests of patient health, safety and welfare, base on further investigations which revealed additional incidents of sexual misconduct with patients and incidents of inappropriate prescribing of controlled substances.

C. The conduct resulting in the West Virginia Board disciplinary actions 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(5) (incompetence on more than one occasion);
3. New York Education Law §6530(20) (moral unfitness); and/or
4. New York Education Law §6530(31) (willfully harassing, abusing, or intimidating a patient either physically or verbally).

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 his license to practice medicine suspended or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension 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:

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

DATED: *November 2*, 2010
Albany, New York

REDACTED

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