



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

May 22, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Stein, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, NY 10001

Eric Chun Chu, M.D.
105 Melanie Drive
East Meadow, NY 11554

Judi Abbott Curry, Esq.
Lester, Schwab, Katz & Dwyer
120 Broadway
New York, NY 10271

RE: In the Matter of Eric Chun Chu, M.D.

Dear Mr. Stein, Dr. Chu and Ms. Curry:

Enclosed please find the Determination and Order (No. BPMC-97-118) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

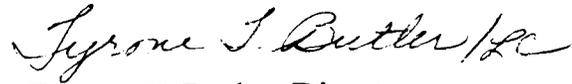
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

COPY

IN THE MATTER
OF
ERIC CHUN CHU, M.D.

DETERMINATION
AND
ORDER
BPMC-97-118

RICHARD N. PIERSON, JR., M.D., Chairperson, **HILDA RATNER, M.D.**, and **NANCY J. MACINTYRE, R.N., PH.D.**, duly designated members of the State Board of Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230 (1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230 (10)(e) and 230 (12) of the Public Health Law. **STEPHEN BERMAS, ESQ.**, Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

SUMMARY OF PROCEEDINGS

Notice of Hearing Dated:	February 27, 1997
Statement of Charges Dated:	February 27, 1997
Hearing Date:	March 25, 1997
Deliberation Date:	April 23, 1997
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, New York
Petitioner Appeared By:	Paul Stein, Esq. NYS Department of Health Bureau of Professional Medical Conduct 5 Penn Plaza - Sixth Floor New York, New York 10001
Respondent appeared By:	Lester, Schwab, Katz & Dwyer BY: Judi Abbott Curry, Esq.

STATEMENT OF CHARGES

The Statement of Charges has been marked as Petitioner's Exhibit 1 and attached hereto as Appendix I.

FINDINGS OF FACT

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 cited evidence. All Findings are unanimous.

1. Respondent was authorized to practice medicine in New York State on July 1, 1988 by the issuance of license number 175003 by the New York State Education Department (Ex. 2).

2. On or about March 17, 1992 or February 4, 1992, Respondent executed an Application for Membership in Queens Physicians Association, Inc., and submitted it to Queens Physicians Association, Inc. c/o Aetna Health Plans of New York, Inc., 2700 Westchester Avenue, Purchase, New York 10577. Although the signature date on this application is indicated to be February 4, 1992, it is referred to in the attached certification as having been executed on or about March 17, 1992 (Ex. 3). In this application, Respondent knowing his answer to be false and with intent to defraud, answered "NO" to the question:

--

HAVE YOU EVER HAD ANY OF THE FOLLOWING ITEMS DENIED, REVOKED, SUSPENDED, NOT RENEWED, PLACED UNDER PROBATION, SUBJECTED TO DISCIPLINARY ACTION OR OTHERWISE LIMITED OR CURTAILED; OR HAVE YOU VOLUNTARILY RELINQUISHED ANY ITEM IN ANTICIPATION OF ANY OF THESE ACTIONS; OR ARE ANY OF THESE ACTIONS PENDING WITH RESPECT TO ANY OF THE FOLLOWING ITEMS?
MEDICARE, MEDICAID, OR OTHER GOVERNMENT PROGRAM

PARTICIPATION (Ex's. 3, 4A and 5A; T. 23, 107-8).

3. On or about December 7, 1990, Respondent executed an Application for Membership in Queens Physicians Association, Inc., and submitted it to Queens Physicians Association, Inc. c/o HealthWays of New York, Inc., 555 White Plains Road, Tarrytown, New York 10591. In this application, Respondent, knowing his answer to be false and with intent to defraud, answered "NO" to the question:

HAVE YOU EVER HAD ANY OF THE FOLLOWING ITEMS DENIED, REVOKED, SUSPENDED, NOT RENEWED, PLACED UNDER PROBATION, SUBJECTED TO DISCIPLINARY ACTION OR OTHERWISE LIMITED OR CURTAILED; OR HAVE YOU VOLUNTARILY RELINQUISHED ANY ITEM IN ANTICIPATION OF ANY OF THESE ACTIONS; OR ARE ANY OF THESE ACTIONS PENDING WITH RESPECT TO ANY OF THE FOLLOWING ITEMS?

.....

MEDICARE, MEDICAID, OR OTHER GOVERNMENT PROGRAM
PARTICIPATION (Ex's. 3 and 4A; T. 107-8).

4. Each of the two provider applications gave Respondent the opportunity for an explanation of his "Yes" or "No" answer, but Respondent did not give any explanation (Ex. 3; T. 114-15).

5. Respondent received a termination notification from the Medicaid office in August of 1989 (T. 104-05; Ex. 4A).

6. The termination notification stated that Respondent would be excluded for five years (T. 105).

7. The termination notification stated that Medicaid intended to collect restitution of \$228, 630 plus interest (T. 105).

8. Nowhere in the termination notification letter does it state that if he chose to challenge the action and the determination to terminate his privileges that it would be stayed or stopped while the appeal process is in progress (T. 106-07).

9. Thirty days after Respondent received the termination notification, he no longer had any Medicaid privileges (T. 107).

10. Thirty days after Respondent received the termination notification, he knew that he no longer had any Medicaid privileges (T. 107).

11. Respondent knew that although he had appealed, he could no longer bill Medicaid once the termination date announced in the termination notification letter went into effect (T. 107-8).

12. Respondent never billed Medicaid after he received the August 1989 termination notification letter, and actually stopped billing Medicaid a month earlier (T. 128).

13. On March 5, 1996, Respondent was interviewed at the offices of the Office of Professional Medical Conduct (OPMC) at 5 Penn Plaza by Nurse Investigator Jo Ann Heath, R.N. in the presence of Medical Coordinator Roger W. Steinhardt, M.D. (T. 16, 18, 43, 45, 54; Ex. 5A).

14. At the March 5, 1996 OPMC interview, Nurse Investigator Jo Ann Heath showed Respondent a copy of his December 7, 1990 provider application (T. 21 and 29; Ex. 3).

15. At the March 5, 1996 OPMC interview, Nurse Investigator Jo An Health showed Respondent a copy of his February 4, 1992 provider application (T. 21 and 29; Ex. 3).

16. At the March 5, 1996 OPMC interview, Respondent admitted that at the time he signed the February 4, 1992 provider application, he was aware that he had been excluded from the Department of Social Services Medicaid program for five years (T. 23; Ex's. 3 and 5A).

CONCLUSION OF LAW

Respondent is found to have engaged in professional misconduct by reason of practicing the profession of medicine fraudulently within the meaning of N.Y. Education Law Sec. 6530(2)(McKinney Supp. 1997) as set forth in Findings of Fact 1 through 16, supra.

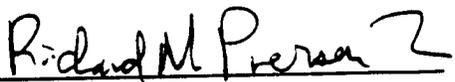
ORDER

Although the Hearing Committee has concluded that the Respondent has committed professional misconduct by practicing medicine fraudulently as charged in the Statement of Charges in this proceeding, the Committee needs more information in order to impose the most appropriate sanction. Specifically, the Committee wants to see an educational assessment to include a psychiatric evaluation of the Respondent.

The Hearing Committee determines and orders that Respondent be reprimanded for the events set forth in paragraphs A and B of the Statement of Charges.

The Hearing Committee further determines and orders that Respondent's license to practice medicine be suspended for three years, provided, however, that the suspension shall be stayed on condition that Respondent promptly, but not later than three months after the service of this Order, commence, at his expense, an educational assessment to include a psychiatric evaluation by an individual or institution recommended by the Office of Professional Medical Conduct. The assessment shall include Respondent's capacity to understand the seriousness of the Charges in this proceeding, and his capacity to fulfill, without impairment, the requirements of the practice of medicine. The Assessment Report shall be made to this Committee within three months after the commencement of the Assessment. Upon receipt of the Assessment Report, the Hearing Committee will conduct further deliberations on the issue of the appropriate sanction for Respondent.

Dated: New York, N.Y.
12 May , 1997


Richard N. Pierson, Jr., M.D.
Chairperson

Hilda Ratner, M.D.
Nancy J. Macintyre, R.N., Ph.D.

APPENDIX I

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

IN THE MATTER
OF
ERIC CHUN CHU, M.D.

NOTICE
OF
HEARING

TO: ERIC CHUN CHU, M.D.
71-24 Roosevelt Avenue
Jackson Heights, NY 11372

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1997) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1997). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on March 25, 1997 at 10:00 a.m., at the Offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made

in writing and by telephone 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. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (telephone: 518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

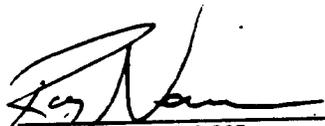
Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to 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. 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 N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1997) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a (McKinney Supp. 1997). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
February 27, 1997


ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to:

Paul Stein
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2617

IN THE MATTER
OF
ERIC CHUN CHU, M.D.

STATEMENT
OF
CHARGES

ERIC CHUN CHU, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1988 by the issuance of license number 175003 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about March 17, 1992, Respondent executed an Application for Membership in Queens Physicians Association, Inc., and submitted it to Queens Physicians Association, Inc. c/o Aetna Health Plans of New York, Inc., 2700 Westchester Avenue, Purchase, New York 10577. In this application, Respondent, with intent to defraud, answered "NO" to the question:

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.....
MEDICARE, MEDICAID, OR OTHER GOVERNMENT PROGRAM PARTICIPATION.

although Respondent knew this statement to be false.

- B. On or about December 7, 1990, Respondent executed an Application for Membership in Queens Physicians Association, Inc., and submitted it to Queens Physicians Association, Inc. c/o HealthWays of New York, Inc., 555 White Plains Road,

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. . . .
MEDICARE, MEDICAID, OR OTHER GOVERNMENT PROGRAM PARTICIPATION

although Respondent knew this statement to be false.

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) (McKinney Supp. 1997) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraph A.
2. Paragraph B.

DATED: New York, New York
February 27, 1997



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical
Conduct