



# 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*

Dennis P. Whalen  
*Executive Deputy Commissioner*

April 8, 2002

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
Paul Robert Maher, Esq.  
NYS Department of Health  
Hedley Building-4<sup>th</sup> Floor  
433 River Street  
Troy, New York 12180

Mikyung S. Kwah, M.D.  
P.O. Box 280310  
San Francisco, California 94116

Mikyung S. Kwah, M.D.  
109 Alton Avenue  
San Francisco, California 94116

**RE: In the Matter of Mikyung S. Kwah, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-103) 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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

**COPY**

IN THE MATTER

OF

**MIKYUNG S. KWAH, M.D.**

**DETERMINATION**

**AND**

**ORDER**

BPMC #02-103

A hearing was held on March 21, 2002, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Hearing and a Statement of Charges, both dated January 25, 2002, were served upon the Respondent, **Mikyung S. Kwah, M.D.** **Arsenio G. Agopovich, M.D.**, Chairperson, **Hrusikesh Parida, M.D.**, and **Mr. Peter S. Koenig, Sr.**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.** and **Paul Robert Maher, Esq.**, of Counsel. The Respondent did not appear at the hearing, either 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.

**STATEMENT OF CASE**

The First, Second, and Third Specifications of the Statement of Charges were brought pursuant to Public Health Law Section 230(10). This section authorizes the State

Board for Professional Medical Conduct to appoint a hearing committee to determine whether a physician has committed professional misconduct and, if so, to determine the penalty to be imposed.

The Fourth, Fifth, Sixth and Seventh Specifications were brought pursuant to Public Health Law Section 230(10)(p). This 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) and (d).

A copy of the Notice of Hearing and the 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. Mikyung S. Kwah, M.D., the Respondent, was authorized to practice medicine in New York State on June 8, 1999, by the issuance of license number 214171 by the New York State Education Department (Petitioner's Ex. 4).

2. On November 23, 1996, the North Carolina Medical Board ("North Carolina Board") issued the Respondent a license to practice medicine (Petitioner's Ex. 5).

3. On November 3, 1998, the Respondent withdrew from an ophthalmology program at Duke University in which she had participated from July 1, 1996, to November 3, 1998, to avoid being terminated from that program (Petitioner's Ex. 5, 6).

4. On May 9, 1999, the Respondent submitted an Application for License and First Registration to the New York State Education Department. On this application, she falsely answered "No" to Question 15, "Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" On this application, she also falsely answered "No" to Question 24, "Are you licensed or have you ever been licensed as a physician in any other state or country?" (Petitioner's Ex. 4, 5, 6)

5. By a letter dated August 17, 2000, the Medical Board of California ("California Board") advised the Respondent that her application for a license to practice medicine in California was denied, based on two false statements made by the Respondent on her license application. The false statements were a failure to disclose her participation in the Duke University ophthalmology program and her denial that she had withdrawn from any medical school or postgraduate training program. (Petitioner's Ex. 5).

6. On October 9, 2001, the North Carolina Board, by a Findings of Fact, Conclusions of Law, and Order ("North Carolina Order"), revoked the Respondent's

license to practice medicine, based upon the denial of her application for a license to practice medicine in California (Petitioner's Ex. 5).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent resulting in the California Board's refusal to grant the Respondent a license would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to New York Education Law Section 6530(21), which defines professional misconduct as "[w]illfully making or filing a false report, or failing to file a report required by law..." Contrary to the Statement of Charges, the Hearing Committee does not conclude that a false statement on an application for a license to practice medicine constitutes a violation of New York Education Law Section 6530(2), which defines professional misconduct as "[p]racticing the profession fraudulently..." The Hearing Committee reaches this conclusion because it is not possible to commit fraud in the practice of medicine prior to commencing the practice of medicine. Likewise, the Hearing Committee disagrees with the allegation in the Statement of Charges that the false statements on the California application would, had they been committed in New York State, be violations of New York Education Law Section 6530(20), which defines professional misconduct as "[c]onduct in the practice of medicine which evidences moral unfitness to practice medicine..." The false statements on the California application may be evidence of moral unfitness to practice medicine, but they were made prior to the practice of medicine, not in the practice of medicine.

The Hearing Committee finds, contrary to the Statement of Charges, that the disciplinary action taken by the North Carolina Board was not taken for an act that would constitute professional misconduct in New York State, had it been committed in New York State. The North Carolina Board revoked the Respondent's medical license solely

because her California license application had been denied (Petitioner's Ex. 5, p. 3). The reasons for the California Board's determination are not mentioned in the North Carolina Order and played no role therein. Having a license application denied is not, in and of itself, within the definition of professional misconduct under New York State law. Therefore, it cannot be concluded that the North Carolina Board took disciplinary action against the Respondent for an act that would constitute professional misconduct in New York State, had it been committed in New York State.

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

"Respondent violated New York Education Law Section 6530(2) by practicing the profession fraudulently..." (regarding the false statements on her application to practice medicine in New York State)."

VOTE: Not sustained (3-0)

#### **SECOND SPECIFICATION**

"Respondent violated New York State Education Law Section 6530(20) by conduct in the practice of medicine which evidences moral unfitness..." (regarding the false statements on her application to practice medicine in New York State)

VOTE: Not sustained (3-0)

#### **THIRD SPECIFICATION**

"Respondent violated New York State Education Law Section 6530(21) by willfully making or filing a false report..." (regarding the false statements on her application to practice medicine in New York State)

VOTE: Sustained (3-0)

#### FOURTH SPECIFICATION

"Respondent violated New York State 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 [California] 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: Not sustained (3-0)

The Hearing Committee concludes that the denial of an application to practice medicine is not a finding of "improper professional practice or professional misconduct..."

#### FIFTH SPECIFICATION

"Respondent violated New York State 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 [North Carolina] 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: Not sustained (3-0)

#### SIXTH SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having her license to practice medicine revoked or having other disciplinary action taken or having her application for a license refused by a duly authorized professional disciplinary agency of another state [California], where the conduct resulting in the revocation or other disciplinary action or license refusal would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

## SEVENTH SPECIFICATION

“Respondent violated New York Education Law Section 6530(9)(d) by having her license to practice medicine revoked or having other disciplinary action taken or having her application for a license refused by a duly authorized professional disciplinary agency of another state [North Carolina], where the conduct resulting in the revocation or other disciplinary action or license refusal would, if committed in New York state, constitute professional misconduct under the laws of New York state...”

VOTE: Not sustained (3-0)

### HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing. Petitioner's Exhibits 2 and 3 and statements made during the hearing by both attorneys representing the Petitioner demonstrate the steps taken by the Petitioner to serve the Notice of Hearing and the Statement of Charges on the Respondent. The Administrative Officer ruled that the Petitioner's efforts to serve the Respondent were sufficient and that the hearing could proceed. The copies of the papers sent by first class mail to the Respondent's Post Office box were not returned and Mr. Maher confirmed in a telephone conversation with the Respondent that the Post Office box to which this mailing was sent was still hers. This leads to the conclusion that either the Respondent or someone authorized by her received these papers.

The other efforts to serve the papers on the Respondent, that is, those that were not successful, were unsuccessful because of failings by the Respondent. The failed attempts to serve the Respondent are the result of the Respondent changing her address without fulfilling her duty to notify the New York State Department of Education of this fact, and of her failure to claim certified mail at her Post Office box. Also, when Mr. Maher

spoke to the Respondent on the telephone, she refused to tell him her new address. It is the Respondent who must bear the consequences of her actions.

The Specifications in the Statement of Charges that have been sustained in this Determination and Order are sufficient justification for revoking the Respondent's license to practice medicine. The number of false statements on the California and New York applications demonstrates that the false statements were intentional and that the Respondent is not honest enough to be trusted with a license to practice medicine. Since the Respondent did not appear at the hearing, there is no evidence of mitigation, rehabilitation or contrition in the hearing record. Revocation is the only penalty commensurate with the Respondent's professional misconduct.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine is revoked.
2. This Order shall be effective upon personal service on the Respondent, upon service on the Respondent by certified or registered mail, or upon satisfaction of the requirements of Public Health Law Section 230(10)(h).

**DATED: Troy, New York**  
April 3, 2002

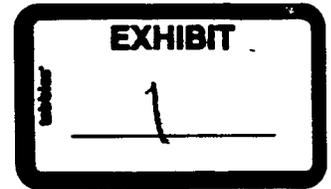
  
Arsenio G. Agopovich, M.D.  
Chairperson

Hrusikesh Parida, M.D.  
Peter S. Koenig, Sr.

# **APPENDIX I**

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

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**IN THE MATTER**  
**OF**  
**MIKYUNG S. KWAH, M.D.**  
**CO-01-11-5605-A**

**NOTICE**  
**OF**  
**HEARING**

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**TO:** MIKYUNG S. KWAH, M.D.  
PO Box 280310  
San Francisco, CA

MIKYUNG S. KWAH, M.D.  
109 Alton Avenue  
San Francisco, CA 94116

**PLEASE TAKE NOTICE:**

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 21<sup>st</sup> of March, 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, 12180 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, that 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 Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five(5) 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 Section 230(10)(c), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten(10) days prior to the date of the hearing. Any Charge and 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 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.

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 THE OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

*January 25*, 2002

  
PETER D. VAN BUREN  
Deputy Counsel

Inquiries should be directed to:

Robert Bogan  
Associate Counsel  
Division of Legal Affairs  
Bureau 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

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**IN THE MATTER**  
**OF**  
**MIKYUNG S. KWAH, M.D.**  
**CO-01-11-5605-A**

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**STATEMENT**  
**OF**  
**CHARGES**

**MIKYUNG S. KWAH, M.D.**, the Respondent, was authorized to practice medicine in New York state on June 8, 1999, by the issuance of license number 214171 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about November 23, 1996, the North Carolina Medical Board (hereinafter "North Carolina Board"), issued Respondent a Free and Unrestricted License to Practice Medicine, # 0096-01652

B. On or about November 3, 1998, Respondent withdrew from an Ophthalmology program at Duke University in which she had participated from July 1, 1996 until November 3, 1998, to avoid being terminated from that program.

C. On or about May 9, 1999, Respondent submitted an application for License and First Registration to the New York State Education Department wherein she falsely answered "No" to Question 15, "Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or un-voluntarily resigned or withdrawn from such association to avoid imposition of such measures?" and "No" to Question 24, "Are you licensed or have you ever been licensed as a physician in any other state or country?"

D. On or about August 17, 2000, the Medical Board of California (hereinafter "California Board") by letter, sent by certified mail – return receipt requested, advised Respondent that her application for licensure in California was denied, based upon two (2) false

statements made by Respondent on her Medical Application for Physician and Surgeon's Licensure.

E. On or about October 9, 2001, the North Carolina Board, by a Findings and Fact, Conclusion of Law, and Order (hereinafter "North Carolina Order"), revoked Respondent's license to practice medicine and surgery in North Carolina, based upon denial of her application for license by the state of California.

F. The conduct resulting in the California Board refusing Respondent's application for a license 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(2) (practicing the profession fraudulently or beyond its authorized scope);
2. New York Education Law §6530(20) (moral unfitness); and/or
3. New York Education Law §6530(21) (willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department).

G. The conduct resulting in the North Carolina Medical 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(2) (practicing the profession fraudulently or beyond its authorized scope);
2. New York Education Law §6530(9)(b) (having been found guilty of improper professional practice or professional misconduct by a duly authorized 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 the home state, constitute professional misconduct under the laws of the home state);
3. New York Education Law §6530(9)(d) (having her application for a license refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license refusal, would if committed in the home state, constitute professional misconduct under the laws of the home state);

4. New York Education Law §6530(20) (moral unfitness); and/or
5. New York Education Law §6530(21) (willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department).

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York State Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

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

#### **SECOND SPECIFICATION**

Respondent violated New York State Education Law §6530(20) by conduct in the practice of medicine which evidence moral unfitness, in that Petitioner charges:

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

#### **THIRD SPECIFICATION**

Respondent violated New York State Education Law §6530(21) by willfully making or filing a false report, in that Petitioner charges:

3. The facts in Paragraphs A, B, and/or C.

#### **FOURTH AND FIFTH SPECIFICATIONS**

Respondent violated New York State Education Law §6530(9)(b) 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:

4. The facts in Paragraphs D and/or F.
5. The facts in Paragraphs D, E, F and/or G.

**SIXTH AND SEVENTH SPECIFICATIONS**

Respondent violated New York Education Law §6530(9)(d) by having her license to practice medicine revoked or having other disciplinary action or having her application for a license refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation or other disciplinary action or license refusal would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

6. The facts in Paragraphs D and/or F.
7. The facts in Paragraphs D, E, F, and/or G.

DATED: *January 25*, 2002  
Albany, New York

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