



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*

December 28, 2000

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Fang Shuh Horng, M.D.  
Route 4, Old Farms Subdivision  
Luray, Virginia 22835

Fang Shuh Horng, M.D.  
218 Page Street  
Luray, Virginia 228535

Robert P. Roche, Esq.  
36 South Pearl Street  
Albany, New York 12207

**RE: In the Matter of Fang Shuh Horng, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-362) 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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

**COPY**

**DETERMINATION**

**AND**

**ORDER**

BPMC 00-362

**IN THE MATTER**  
**OF**  
**FANG SHUH HORNG, M.D.**

A Notice of Referral Proceeding and Statement of Charges, both dated, October 6, 2000, were served upon the Respondent, **FANG SHUH HORNG, M.D.**

**TERESA S. BRIGGS, M.D., Ph.D**, Chairperson, **MARGERY W. SMITH, M.D.** and **MS. D. MARISA FINN**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on December 14, 2000, 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 **PAUL ROBERT MAHER, ESQ.**, and **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared by **ROBERT P. ROCHE**, 36 South Pearl Street, Albany, N.Y. 12207.

Evidence was received and transcripts of these proceeding were made.

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



## FINDINGS OF FACT

The following Findings Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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 the cited evidence. All Hearing Committee findings were unanimous unless otherwise stated.

1. **FANG SHUH HORNG, MD.**, the Respondent, was authorized to practice medicine in New York State on August 29, 1972, by the issuance of license number 113993 by the New York State Education Department. (Pet's. Ex. 4)

2. On February 16, 2000, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine (hereinafter "Virginia Board"), by an Order (hereinafter "Virginia Order"), reprimanded Respondent, imposed a \$5,000.00 penalty, and conditions, based on his personal relationship with a patient that included sexual intercourse; providing a false statement to the Department of Health Professions during its investigation with regard to said conduct; and prescribing divers medications to said pregnant patient without ascertaining if she was pregnant. (Pet's. Ex. 5)

## **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct resulting in the Virginia Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State.

## **VOTE OF THE HEARING COMMITTEE**

### **SPECIFICATION**

#### **FIRST SPECIFICATION**

Respondent is charged with professional misconduct by reason of having violated New York 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 State Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action instituted 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

In its disciplinary action against the Respondent, the Board of Medicine of the Commonwealth of Virginia made the following Findings of Fact.

1. From on or about November 10, 1971 to on or about August 20, 1996, Dr. Horng was Patient A's physician. Concurrent with his treatment of Patient A, by his own admission, he engaged in a personal relationship with her which included sexual intercourse. On or about March 10, 1997, Patient A gave birth to a son, of whom Dr. Horng has officially acknowledged paternity.
2. On or about June 25, 1997, in an interview with a Senior Investigator for the Department of Health Professions, Dr. Horng denied that he had a relationship with Patient A outside of their doctor/patient relationship, and he further denied that he had fathered her baby. However, Dr. Horng had signed an Acknowledgment of Paternity in which he affirmed that he was the biological father of Patient A's baby on May 16, 1997.
3. From on or about June 17, 1996, to on or about August 20, 1996, Dr. Horng prescribed divers medications for Patient A, who was pregnant at the time. Dr. Horng did not ascertain whether she might be pregnant, although he knew that Patient A was sexually active at the time, and that he had advised her not to take birth control pills in August 1994.
4. Dr. Horng stated to the Committee that his personal relationship with Patient A only occurred outside of his practice. However, there are numerous entries in Patient A's medical record entered by various

personnel in Dr. Horng's office which reveal that she visited Dr. Horng in his office, and called him at his home, to talk to him for personal reasons.

5. Dr. Horng stated to the Committee that a chaperone was also present in the examining room when he examined or treated female patients.

6. Dr. Horng failed to demonstrate to the Committee an adequate appreciation of boundary issues relating to his patients.

The "Virginia Board" REPRIMANDED the Respondent; imposed a \$5,000.00 penalty; required him to successfully complete a course in physician/patient boundaries; and have a female chaperone present at all times during his examination or treatment of female patients.

By letter, dated December 6, 2000, William L. Harp, M.D. Executive Director, Virginia Board of Medicine, advised the Respondent that the Virginia Board had determined that he had fully complied with the Board's Order and that the matter has been closed effective December 6, 2000.

Based on the evidence in this case, there is no doubt that the Respondent engaged in a sexual relationship with Patient A while she was his patient. The Hearing Committee determines unanimously (3-0) that such conduct is an egregious violation of professional trust and ethics and warrants a penalty of REVOICATION.

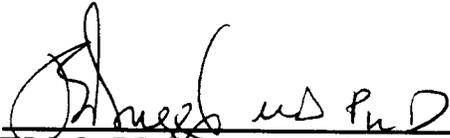
**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

2. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified mail.

DATED: Dec 24, 2000  
Albany, New York

  
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**TERESA S. BRIGGS, M.D., Ph.D., Chairperson**

**MARGERY W. SMITH, M.D.  
MS. D. MARISA FINN**

APPENDIX I

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

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**IN THE MATTER**  
**OF**  
**FANG SHUH HORNG, M.D.**

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**NOTICE OF**  
**REFERRAL**  
**PROCEEDING**

**TO:** FANG SHUH HORNG, M.D.  
RT 4. OLD FARMS SUBDIVISION  
LURAY, VA 22835

FANG SHUH HORNG, M.D.  
218 PAGE STREET  
LURAY, VA 22835

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. 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 2 day of November, 2000 at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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. 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 which 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 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, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 23, 2000.

Pursuant to the provisions of N.Y. 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 October 23, 2000, 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

*Oct. 6*, 2000



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

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0820

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

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**IN THE MATTER  
OF  
FANG SHUH HORNG, M.D.**

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**STATEMENT  
OF  
CHARGES**

FANG SHUH HORNG, M.D., the Respondent, was authorized to practice medicine in New York state on August 29, 1972, by the issuance of license number 113993 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about February 16, 2000, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine (hereinafter "Virginia Board"), by an Order (hereinafter "Virginia Order"), reprimanded Respondent, imposed a \$5,000.00 penalty, and conditions, based on his personal relationship with a patient that included sexual intercourse, providing a false official statement to the Department of Health Professions investigation with regard to the above described conduct, and prescribing divers medications to the above described pregnant patient without ascertaining if she was pregnant.

B. The conduct resulting in the Virginia Board's 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 (3) (negligence on more than one occasion);
2. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, or rules regulations); and/or
3. New York Education Law §6530(20) (moral unfitness).

### **SPECIFICATION**

#### **FIRST SPECIFICATION**

Respondent is charged with professional misconduct by reason of having 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 State Education Law §6530(9)(d) by reason of having had disciplinary action taken after a disciplinary action instituted 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, in that Petitioner charges:

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

DATED: *Oct 6*, 2000  
Albany, New York

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