

**NEW YORK**  
state department of  
**HEALTH**

Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

July 5, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Hoi Yat Kam, M.D.  
Triangle Med Group  
86-41 Lefferts Boulevard  
Richmond Hill, New York 11418

Hoi Yat Kam, M.D.  
REDACTED

Amy T. Kulb, Esq.  
Jacobson, Goldberg & Kulb, LLP  
585 Stewart Avenue - Suite 720  
Garden City, New York 11530

Michael G. Bass, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Hoi Yat Kam, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-172) 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  
HOI YAT KAM, M.D.

DETERMINATION  
AND  
ORDER  
BPMC #11-172

A hearing was held on May 19, 2011, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated February 10, 2011, were served upon the Respondent, Hoi Yat Kam, M.D.

Pursuant to Section 230(10)(e) of the Public Health Law, Thea Graves Pellman, Chair, Arsenio G. Agopovich, M.D., and, Jill M. Rabin, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. David A. Lenihan, Esq., Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by James E. Dering, Esq., General Counsel, by Michael G. Bass, Esq., of Counsel. The Respondent, Hoi Yat Kam, M.D., did appear, with counsel, Amy T. Kulb, Esq., of Jacobson, Goldberg & Kulb, LLP, Garden City, New York. 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

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 §6530(9)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct under the laws of New York state. Specifically, the Respondent was found guilty of intentional wrongdoing in a Medicaid fraud hearing in which it was determined that the Appellant billed for services that he did not render and created false entries in his charts to conceal that fact. For this wrongdoing, the Appellant was excluded from the Medicaid program for five years. The full text of the Medicaid decision is set forth in the record in Exhibit # 5. 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: Hoi Yat Kam, M.D.

## 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. The Respondent, Hoi Yat Kam, M.D., did appear, with counsel, Amy T. Kulb, Esq., of Jacobson, Goldberg & Kulb, LLP, Garden City, New York, and was duly served with process. (Petitioner's Exhibit 2)
2. Hoi Yat Kam, M.D. the Respondent, was authorized to practice medicine in New York State on July 17, 1990, by the issuance of license number 183043 by the New York State Education Department. (Petitioner's Ex. 3)
3. On or about July 27, 2005, the State of New York, Department of Health, (hereafter "NYDOH") by a Notice of Proposed Agency Action, advised Respondent that the NYDOH had tentatively determined to exclude Respondent from participation in the Medicaid Program for five (5) years based on his engaging in unacceptable practices. (Petitioner's Exhibit 5)

4. On or about September 6, 2005, the NYDOH, by a Notice of Agency Action under the Medicaid Program, after a review of documents and arguments submitted by Respondent, determined to exclude him from participation in the Medicaid Program for five (5) years. (Petitioner's Exhibit 5)
5. On or about November 10, 2006, the NYDOH, by a DECISION AFTER HEARING, sustained a decision to exclude Respondent from participation in the Medicaid program for five (5) years, based on the fact that from on or about May 9, 2001 through on or about October 28, 2004, Respondent violated Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) Sections 515.2(b)(1)(a) and/or 515.2(b)(12). (Petitioner's Exhibit 5)
6. The conduct resulting in the NYDOH action described in the paragraphs above, 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);
  2. New York Education Law §6530(3) (practicing the profession. with negligence on more than one occasion);
  3. New York Education Law §6530(16) (failure to comply with substantial provisions of federal, state, or local rules, or regulations governing the practice of medicine); and/or
  4. New York Education Law §6530(32) (failure to maintain a record of each patient which accurately reflects the evaluation and treatment of the patient).

**VOTE OF THE HEARING COMMITTEE**

**SPECIFICATION**

"Respondent violated New York Education Law §6530(9)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct under the laws of New York state..."

**VOTE: Sustained (3-0)**

**PRELIMINARY MATTERS**

It is noted at the outset that Respondent's counsel, Ms. Kulb, had sent the Administrative Officer a letter on April 8, 2011.<sup>1</sup> This letter was in support of Ms Kulb's application for an adjournment and the issuance of a *subpoena duces tecum*. In a later telephone phone conference the adjournment was granted and the hearing was adjourned to May 19, 2011, as a date certain. On the subpoena matter, the Department's attorney, Mr. Bass, by letter of April 26, 2011, stated his opposition to the issuance of a subpoena. This letter is in the present record as ALJ Exhibit # 2. In his letter, Mr. Bass correctly noted that the Respondent could seek reversal of the OMIG action, and if successful, could then petition OPMC to reverse its own finding.

In his response to this application, the Administrative Officer found that the present forum is not the proper place to relitigate the OMIG matter and any attempt to do so would be denied. In his ruling, ALJ Exhibit # 3, the Administrative Officer found that the request for a subpoena was in the nature of disclosure and, in matters such as this, disclosure is limited pursuant to that permitted by 10 NYCRR§§ 51.8. Section 51.8 provides, at the outset, that there shall be no disclosure, including but not limited to bills of particulars, exchanges of documents and witness lists, depositions, interrogatories, discovery and requests for documents. This section goes on to indicate that a hearing officer may not require disclosure and so the application was denied<sup>2</sup> noting that this is the limit of disclosure permitted under this section, and it does not extend to the collateral disclosure requested by Ms. Kulb.

#### **HEARING COMMITTEE DETERMINATION**

The Respondent did appear at the hearing, with counsel, who acknowledged, on the record, receipt of process. (T. 4) There was thus no dispute about jurisdiction. The

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<sup>1</sup> This letter was not shown to the panel and it is in the present record as ALJ Exhibit # 1.

<sup>2</sup> There is an exception in this section under paragraph (b)(1) which provides that, if the department in a notice of hearing states its intent to seek, or states the possibility of, the revocation of a license or permit, upon the service of such notice, any party to the proceeding may demand in writing from any other party disclosure of any of the following which such other party intends to introduce at the hearing :

(i) names of witnesses; however, a summary of the testimony to be given by the witnesses shall not be required to be disclosed;

(ii) a list of documentary evidence;

Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in the State of New York should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

This is a case about Medicaid fraud for which the Respondent has been excluded from the Medicaid program. The five-year exclusion was sustained by a decision after a hearing in 2006. The panel weighed all the facts and circumstances in this case and recognized that this was primarily a case of greed and dishonesty.

The Department asked for at least a suspension and/or probation and a permanent restriction on the Respondent's license such that he would never again be in a position to defraud Medicaid. (T. 74) The panel considered the full range of penalties available in the case and determined that Revocation would be appropriate. The panel considered what the Respondent had done, as set forth in Exhibit # 5, and deemed this conduct warranted revocation.

The panel weighed all the evidence and testimony and appreciated the testimonials and certificates submitted in support of the Respondent. Nevertheless, the panel was troubled and concerned by the Respondent's patent lack of respect for truth. The panel saw this lack of respect for truth as a serious defect in his moral character and thus was

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(iii) photocopies of documentary evidence listed in subparagraph (ii) of this paragraph in the possession of the party upon whom the demand has been made; and (iv) a brief description of physical or other evidence, which cannot be photocopied.

unanimous in concluding that the only appropriate remedy was revocation of his license to practice medicine in New York State.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is hereby revoked.
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: West Hempstead, New York**

~~June~~ July 1, 2011

REDACTED

**Thea Graves Pellman, Chair**

**Arsenio G. Agopovich, M.D.,  
Jill M. Rabin, M.D.,**

To:

Hoi Yat Kam, M.D.  
Triangle Med Group  
86 – 41 Lefferts Blvd.  
Richmond Hill, NY 11418

Hoi Yat Kam, M.D.

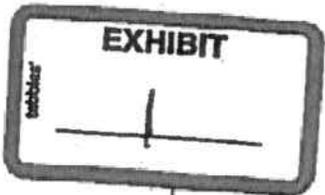
REDACTED

Amy T. Kulb, Esq. - Attorney for Respondent  
Jacobson, Goldberg & Kulb, LLP  
585 Stewart Ave., Suite 720  
Garden City, New York 11530

Michael G. Bass, Esq. - Attorney for Petitioner  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
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

HOI YAT KAM, M.D.  
CO-09-02-1254-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: HOI YAT KAM, M.D.  
Triangle Med Group  
86-41 Lefferts Blvd.  
Richmond Hill, NY 11418

HOI YAT KAM, 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 20<sup>th</sup> day of October, 2010, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> 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

*February 10*, 2011

REDACTED

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

Inquiries should be addressed to:

Michael G. Bass  
Assistant Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, New York 12180  
(518) 486-1841

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

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IN THE MATTER  
OF  
HOI YAT KAM, M.D.  
CO-09-02-1254-A

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STATEMENT  
OF  
CHARGES

HOI YAT KAM, M.D., Respondent, was authorized to practice medicine in New York state on July 17, 1990, by the issuance of license number 183043 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about July 27, 2005, the State of New York, Department of Health, (hereafter "NYDOH") by a Notice of Proposed Agency Action, advised Respondent that the NYDOH had tentatively determined to exclude Respondent from participation in the Medicaid Program for five (5) years based on his engaging in unacceptable practices.

B. On or about September 6, 2005, the NYDOH, by a Notice of Agency Action under the Medicaid Program, after a review of documents and arguments submitted by Respondent, determined to exclude him for participation in the Medicaid Program for five (5) years.

C. On or about November 10, 2006, the NYDOH, by a DECISION AFTER HEARING, sustained a decision to exclude Respondent from participation in the Medicaid program for five (5) years, based on from on or about May 9, 2001 through on or about October 28, 2004, Respondent violated Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) Sections 515.2(b)(1)(i)(a) and/or 515.2(b)(12).

D. The conduct resulting in the NYDOH action described in Paragraphs A, B, and/or C above, would constitute misconduct under the laws of New York state, pursuant to the following section of New York state law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);

2. New York Education Law §6530(3) (practicing the profession with negligence on more than one occasion);
3. New York Education Law §6530(16) (failure to comply with substantial provisions of federal, state, or local rules, or regulations governing the practice of medicine); and/or
4. New York Education Law §6530(32) (failure to maintain a record of each patient which accurately reflects the evaluation and treatment of the patient).

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

DATED: *February 10, 2011*  
Albany, New York

REDACTED

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