



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 4, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Robert Bogan, Esq.
Mr. Paul Robert Maher, Esq.
New York State Department of Health
Hedley Building
433 River Street, 4th Floor
Troy, N.Y. 12180

Arnold D. Roseman, Esq.
670 White Plains Road
Scarsdale, N.Y. 10583

Egbert Aung Kyang Tan, M.D.
50 Columbus G21
Tuckahoe, N.Y. 10707

RE: In the Matter of Egbert Aung Kyang Tan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-272) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB: sc
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC-00-272

IN THE MATTER

OF

EGBERT AUNG KYAING TAN, M.D.

A Commissioner's Order and Notice of Hearing dated, July 27, 2000, and a Statement of Charges dated July 24, 2000, were served upon the Respondent, **EGBERT AUNG KYAING TAN, M.D.**

GERALD WEINBERGER, M.D., Chairperson, **TERESA S. BRIGGS, M.D., Ph.D.** and **NANCY MACINTYRE, R.N., Ph.D.**, 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 September 20, 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 **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **ARNOLD D. ROSEMAN, ESQ.**, 670 White Plains Road, Scarsdale, New York 10583.

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 where a licensee is charged solely with a violation of Education Law Section 6530(9). In such case, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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)(a)(i). A copy of the Commissioner's Order and Notice of Hearing and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner

None

For Respondent:

Rose Roman
Enrique Adorno
Justa Gonzalez
Egbert Gung Kyaing Tan, M.D., the Respondent

FINDINGS OF FACT

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

1. **EGBERT AUNG KYAING TAN, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 23, 1990, by the issuance of license number 183140 by the New York State Education Department. (Pet's Ex. 4).
2. On April 18, 1997, in the Supreme Court of the State of New York, County of New York, Respondent was found guilty to one count of Grand Larceny in the Second Degree, thirteen (13) counts of Offering a False Instrument for Filing in the First Degree, and two (2) counts of Falsifying Business Records in the First Degree, felonies, and was sentenced to five (5) years probation; one hundred (100) hours of community service, and, ORDERED to pay One Hundred Thousand (\$100,000.00) Dollars restitution. (Pet's Ex. 5)
3. By ORDER, dated July 27, 2000, "**ANTONIA C. NOVELLO, M.D., M.P.H.**", Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional

medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that **EGBERT AUNG KYAING TAN, M.D.**, has been found guilty of committing an act constituting a felony under New York State law, in the Supreme Court of the State of New York, County of New York."

The Commissioner "ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **EGBERT AUNG KYAING TAN, M.D.**, Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12)." (Pet's Ex.1).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(a)(i) by reason of having been convicted of committing an act constituting a crime under New York State law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on April 18, 2000, in the Supreme Court of the State of New York, County of New York, Respondent was found guilty to one count of Grand Larceny in the Second Degree, thirteen (13) counts of Offering a False Instrument for Filing in the First Degree, and two (2) counts of Falsifying Business Records in the First

Degree, felonies, and was sentenced to five (5) years probation; one hundred (100) hours of community service, and, ORDERED to pay One Hundred Thousand (\$100,000.00) Dollars restitution.

There are some mitigating factors in the record which the Hearing Committee has taken into consideration in determining the nature and severity of the penalty to be imposed upon the Respondent.

- The Respondent has already been sentenced to five (5) years probation by the State Court. He has made restitution of One Hundred Thousand (\$100,000.00) Dollars and is in the process of performing the community service as ORDERED by the Court.
- The charges in this case do not reflect on the Respondent's competence as a practicing physician.
- With the exception of the instant charge, the Respondent's medical career has been without blemish.
- The Hearing Committee believes that the Respondent is truly contrite; he regrets his violations of State law, and he will not repeat such conduct.

After due consideration of the full spectrum of penalties available pursuant to statute, the Hearing Committee determines unanimously, (3-0), that the Respondent's serious misconduct warrants a penalty of a five (5) year suspension, staying said suspension and

placing the Respondent on probation under terms and conditions as hereinafter set forth in the ORDER.

ORDER

IT IS HEREBY ORDERED:

1. The Respondent's license to practice medicine in New York State is **SUSPENDED** for five (5) years, suspension **STAYED**.

2. The Respondent is placed on probation for a period to run concurrent with his State Court probation under the following terms and conditions:

- Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
- Respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street, Fourth Floor, Troy, New York 12180: said notice is to include a full description of any employment and practice; professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or

disciplinary actions by a local, state or federal agency, institution or facility, within thirty (30) days of each action.

- Respondent shall maintain legible and complete medical records which accurately reflects the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations.
- Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, including billing records; patient records and/or hospital charts; interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
- Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30)

consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

3. The Respondent shall comply with all of the terms and conditions of probation as prescribed by the State Court. The Respondent shall cause his probation officer to submit semi-annual reports to the Office of Professional Medical Conduct reporting on his compliance or failure to comply with any of the terms of his State Court probation and report on any changes in the duration or terms of his State Court probation.

4. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to this Order and shall assume and bear all cost related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

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

DATED: OCT. 2, 2000

AIDSLE, New York

Gerald Weinberger MD

GERALD WEINBERGER, M.D.
Chairperson

TERESA S. BRIGGS, M.D., Ph.D.
NANCY MACINTYRE, R.N., Ph.D.

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

IN THE MATTER

OF

EGBERT AUNG KYANG TAN, M.D.

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: EGBERT AUNG KYANG TAN, M.D.
50 Columbus G21
Tuckahoe, New York 10707

The undersigned, Antonia C. Novello, M.D., M.P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that EGBERT AUNG KYANG TAN, M.D., has been found guilty of committing an act constituting a felony under New York state law, in the Supreme Court of the State of New York, County of New York.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, EGBERT AUNG KYANG TAN, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public 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 16th day of August, 2000 at 10:00 am in the forenoon at 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. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

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

EXHIBIT

be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. Such evidence or sworn testimony shall be 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 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. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180, (518-402-0751), 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. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

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 or sanction 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 REVOKED OR SUSPENDED, AND/OR THAT YOU MAY BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY IN THIS MATTER.

DATED: Albany, New York

7/27, 2000



ANTONIA C. NOVELLO, M.D., M.P.H.
Commissioner

Inquiries should be addressed to:

Robert Bogan
Assistant 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

IN THE MATTER
OF
EGBERT AUNG KYANG TAN, M.D.

STATEMENT
OF
CHARGES

EGBERT AUNG KYANG TAN, M.D., the Respondent, was authorized to practice medicine in New York state on July 23, 1990, by the issuance of license number 183140 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 18, 2000, in the Supreme Court of the State of New York, County of New York, Respondent was found guilty to one count of Grand Larceny in the Second Degree, thirteen (13) counts of Offering a False Instrument for Filing in the First Degree, and two (2) counts of Falsifying Business Records in the First Degree, felonies, and was sentenced to five (5) years probation and one hundred (100) hours of community service.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by reason of having been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in paragraph A.

DATED: *July 24*, 2000
Albany, New York

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

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias

The exact wording of the rules is found at 10 NYCRR Part 51 of Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or the findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding. Pursuant to Public Health Law §230, the Notice of Hearing must, additionally, specify that the licensee shall file a written answer.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.

51.5 Answer or Responsive Pleading. A party may serve an answer or response to the allegations of the Department. In matters governed by PHL §230, the licensee is required to file a written answer to each of the charges and allegations of the Department. Under the law, any charge or allegation which is not so answered shall be deemed admitted.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, document or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure or a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as is practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent and Surrender Orders. At any

time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

Complaints relating to Public health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of the claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

51.12 Hearing Officer or Hearing Committee Report. The report or determination should be submitted within 60 days of completion of the hearing.

51.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order any party may submit exceptions to said report and proposed order

to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed. Pursuant to PHL 230(c), a notice of request for review of the Hearing Committee determination must be served upon the ARB within 14 days of service of the determination. All parties have 30 days thereafter to submit briefs and 7 days from service of a brief to submit a reply.

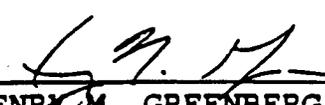
51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

51.16 Establishment, Construction, Rate Hearings. Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York
March 20, 1997


HENRY M. GREENBERG
General Counsel