



FILED  
COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION  
2008 SEP 11 PM 1:32  
CLERK OF COURTS

CHOONG H. KIM, M.D.,

Appellant, :

v. :

Case No. 08CVF06-8184

OHIO STATE MEDICAL BOARD, :

Judge Schneider

Appellee. :

**DECISION (1) GRANTING APPELLANT'S MOTION TO EXTEND TIME,**  
**FILED JULY 21, 2008, AND**  
**(2) GRANTING APPELLEE'S MOTION TO DISMISS,**  
**FILED JULY 2, 2008**  
(Case Terminated)

Rendered this 10 day of September, 2008.

Schneider, J.

I. Motion to Extend Time

On July 21, 2008, appellant filed his motion to extend the time in which to file his memorandum contra appellee's July 2 motion to dismiss.

Appellant filed his memorandum contra August 4. In the interest of deciding appellee's motion on the merits, appellant will be permitted to file his response.

II. Motion to Dismiss

On July 2, 2008, appellee filed its motion to dismiss. Appellee argues that appellant's notice of appeal did not conform to O.R.C. 119.12 because the notice of appeal was untimely.

According to Ohio's Administrative Procedure Act,

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of his appeal. A copy of such notice of appeal shall also be filed by the appellant with the court. Unless otherwise provided by law relating to a particular agency, such notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section.

O.R.C. 119.12. When "a statute confers a right of appeal . . . strict adherence to the statutory conditions is essential." Harrison v. Ohio St. Med. Bd. (Franklin 1995), 103 Ohio App. 3d 317, 321 (quoting Holmes v. Union Gospel Press (1980), 64 Ohio St. 2d 187, 188); see Hughes v. Ohio Dep't of Commerce (Franklin App., Dec. 1, 2005), No. 04AP-1386, 2005 Ohio App. LEXIS 5697, at \*6-7.

"The failure to file a copy of the notice of appeal within the fifteen-day period as set forth in R.C. 119.12 deprives the common pleas court of jurisdiction over the appeal." Nibert v. Ohio Dep't of Rehab. & Corr. (1998), 84 Ohio St. 3d 100 (syllabus). Likewise, if the original notice of appeal of an agency's decision is not filed with the agency within the requisite time-period, a court lacks jurisdiction to hear the appeal. See Harrison, 103 Ohio App. 3d at 321 ("appellant failed to comply with R.C. 119.12, in that he failed to file an original notice of appeal with the board within fifteen days"); see also Hayes v. Montgomery Cty. Bd. of Comm'rs (Montgomery 1994), 94 Ohio App. 3d 597, 600 ("The reference to 'such notices of appeal' in the fifteen-day filing requirement is limited to the notice of appeal and does not include the copy."); Hughes, 2005 Ohio App. LEXIS 5697, at \*7-9 ("by filing an original notice with the Franklin Court of Common Pleas and then a photocopy of the notice of appeal with DFI, Hughes failed to strictly comply with the requirements of R.C. 119.12"). An administrative appeal is thus properly dismissed if the

statutory procedures have not been followed.

Appellee argues that the Board's "Notice of Opportunity for Hearing" was mailed June 14, 2007; that "[t]he certified copy of the Medical Board's Order was not deliverable as addressed and was forwarded by the United States Postal Service on March 22, 2008"; that "[o]n March 26, 2008, the certified copy of the Medical Board's Order was signed for by Bernie Plensnicar," an employee of "Par-Excel Services, Inc., a medical billing company utilized by Appellant, Dr. Kim"; that "Dr. Kim picked up his forwarded mail which included the Medical Board's Order no later than April 30, 2008"; and that appellant filed his notice of appeal June 5, 2008.

In response, appellant argues that he did not "view[] the certified copy of Appellee's mailing sometime between March 26 and April 30"; that "[a]lthough R.C. § 119.12 . . . technically required Appellant to file his notice of appeal within fifteen days of the March 14 mailing of Appellee's order, . . . at no time during that fifteen-day period did Appellant ever have a copy of the order and—necessarily—his compliance with the fifteen-day requirement of R.C. § 119.12 was an impossibility due to Appellee's failure to comply with the notice requirements of R.C. § 119.09"; that "the certified mail receipt was signed by someone other than Appellant"; and that appellant's former attorney and Par-Excel Services' personnel did not notify appellant that they had received a certified notice addressed to him and did not forward the notice to him.

In this regard, dismissal is proper. Appellant did not file his notice of appeal within fifteen days as required by O.R.C. 119.12. Although appellant seeks to avoid dismissal despite his acknowledgement that "R.C. § 119.12 . . . technically required Appellant to file his notice of appeal within fifteen days of the March 14 mailing of Appellee's order," the Tenth District Court of Appeals has noted that when "a statute confers a right of appeal . . . strict adherence to the statutory conditions is essential." See Harrison, 103 Ohio App. 3d at 321.

Also, appellant has failed to show that the Board's order had not been properly served. Appellant cites no legal authority which has held that a party himself must personally sign for certified mail for service to be valid or that service is improper if a party does not actually see the order. Furthermore, appellee has presented uncontroverted evidence that the Board's order was first sent to appellant's address of record and then forwarded to the address to which appellant requested that his mail be forwarded. As such, appellant's argument that he did not actually see the order within the fifteen-day period, even though the order was sent to the addresses provided by appellant, does not show that proper service was not achieved.

Also, appellant cites no legal authority for his argument that he was not even required to file his notice of appeal within fifteen days after actual receipt of the order, despite O.R.C. 119.12's requirement that his notice of appeal had to be filed within fifteen days of the date on which the order was mailed. Even if appellant were permitted to file his notice of appeal more than fifteen days after the order was mailed, it does not follow

that appellant would not be bound by any time-limit after actually receiving the notice, and appellant cites no legal authority which would permit him to do so.

Finally, in his affidavit, appellant states that "I dispute and deny . . . that between March 26, 2008 and April 30, 2008 I opened and reviewed a certified notice for the State Medical Board" and that "[t]he first time I actually received an read the certified notice from the State Medical Board was many weeks after it was allegedly mailed to me on March 14, 2008." (Appellant's affidavit, paras. 8&9.) However, these statements that appellant had not both received **and** read the order does not controvert appellee's evidence that appellant actually received the order or show that appellant filed his notice of appeal either within fifteen days after the order was mailed or after the order was actually received. In any event, appellant's affidavit does not demonstrate that service was improper. As such, case-law regarding improper service is inapplicable to the present case.

The Board's order was mailed to appellant's address of record June 14, 2007, was forwarded by USPS, and was received by Par-Excel Services, the address to which appellant requested that his mail be forwarded, March 26, 2008. However, appellant did not file his notice of appeal until June 5, 2008. Thus, appellant's notice of appeal is untimely and is properly dismissed.

### III. Conclusion

Therefore, appellant's motion to extend time and appellee's motion to dismiss are GRANTED. Counsel for appellee shall prepare an appropriate entry and submit the proposed entry to counsel for the adverse party pursuant to Loc. R. 25.01. A copy of this decision shall accompany the proposed entry when presented to the Court for signature.



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CHARLES A. SCHNEIDER, JUDGE

Copies to:

Douglas P. Whipple, Esq.  
26600 Detroit Road, 3<sup>rd</sup> Floor  
Cleveland, Ohio 44145  
Attorney for Appellant

Barbara J. Pfeiffer, Esq.  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
Assistant Attorney General  
Attorney for Appellee

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2008 JUN -5 PM 10:19  
CLERK OF COURTS

STATE MEDICAL BOARD  
OF OHIO  
2008 JUN 16 P 12:30

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

08 CVF 06 8184

CHOONG HONG KIM, M.D.  
7821 Rockdove Lane  
Concord, Ohio 44077,

Appellant,

vs.

THE STATE MEDICAL BOARD OF  
OHIO,  
c/o Lance A. Talmage, M.D., Secretary  
30 East Broad Street, 3<sup>rd</sup> Floor  
Columbus, Ohio 43215-6127

Appellee.

) CASE NO.  
)  
) JUDGE  
)  
) (Administrative Appeal from The State  
) Medical Board of Ohio decision; In The  
) Matter Of Choong Hong Kim, M.D.,)

) NOTICE OF APPEAL  
) (Hearing Requested)

Now comes the Appellant, Choong Hong Kim, M.D., and hereby gives notice of his appeal to the Franklin County Court of Common Pleas pursuant to Section 119.12 of the Ohio Revised Code from the attached decision of the State Medical Board of Ohio entered March 12, 2008, adopting the recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner, In the Matter of Choong Hong Kim, M.D., a copy of which is attached hereto, permanently revoking the certificate of Choong Hong Kim, M.D., to practice medicine and surgery in the State of Ohio. The grounds for appeal are the following:

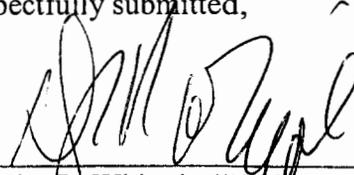
- A. The revocation of Appellant's medical license is not supported by reliable, probative, and substantial evidence.
- B. The revocation of Appellant's medical license is contrary to law.

- C. The revocation of Appellant's medical license was arbitrary and capricious.
- D. The revocation of Appellant's medical license constitutes an abuse of discretion.

STATE MEDICAL BOARD  
OF OHIO  
2008 JUN 16 PM 12:30

In accordance with R.C. 119.12, an original of the Notice of Appeal has been filed with the State Medical Board of Ohio and in accordance with R.C. 119.12 and Local Rule 11.06, an original and a copy of the Notice of Appeal have been filed with the Franklin County Court of Common Pleas.

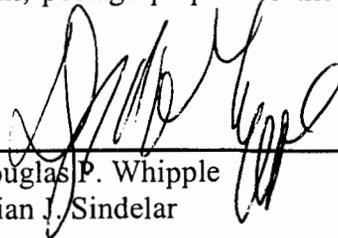
Respectfully submitted,



Douglas P. Whipple (#0026754)  
Brian J. Sindelar (#0080245)  
Seeley, Savidge, Ebert & Gourash Co. L.P.A.  
26600 Detroit Road  
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[bjvindelar@sseg-law.com](mailto:bjvindelar@sseg-law.com)  
*Attorneys for Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of May, 2008, an original of the foregoing *Notice of Appeal* was sent via regular U.S. Mail, postage prepaid to the State Medical Board of Ohio and a copy and an original were sent via regular U.S. Mail, postage prepaid to the Franklin County Clerk of Courts.



Douglas P. Whipple  
Brian J. Sindelar

STATE MEDICAL BOARD  
OF OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO  
2008 JUN 10 10:30

IN THE MATTER OF

\*

\*

CHOONG HONG KIM, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on March 12, 2008.

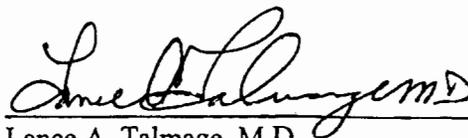
Upon the Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Choong Hong Kim, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.  
Secretary

March 12, 2008  
Date

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127



Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

March 12, 2008

Choong Hong Kim, M.D.  
2825 Lake Avenue  
Ashtabula, OH 44004

Dear Doctor Kim:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 12, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in cursive script, reading "Lance A. Talmage", is written over the typed name.

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3931 8317 9384  
RETURN RECEIPT REQUESTED

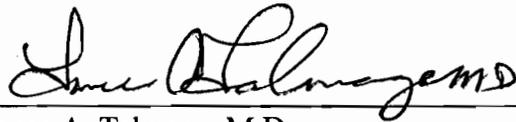
Cc: Debra S. McMillan, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3931 8317 9391  
RETURN RECEIPT REQUESTED

*Mailed 3-14-08*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 12, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Choong Hong Kim, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.



Lance A. Talmage, M.D.  
Secretary

(SEAL)

March 12, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

CHOONG HONG KIM, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on March 12, 2008.

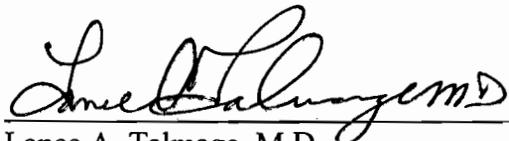
Upon the Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Choong Hong Kim, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.  
Secretary

March 12, 2008

Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF CHOONG HONG KIM, M.D.**

The Matter of Choong Hong Kim, M.D., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on October 24, 2007.

**INTRODUCTION**

I. Basis for Hearing

By letter dated June 14, 2007, the State Medical Board of Ohio [Board] notified Choong Hong Kim, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's action was based on the allegation that, while Patient 1 was a coworker and patient of Dr. Kim, he placed her hand on his exposed penis against her will. Additionally, the Board claimed that Dr. Kim falsely reported on his 2004 certificate renewal form that he had not had any clinical privileges discontinued.

The Board further alleged that Dr. Kim's acts, conduct and/or omissions constitute: (a) "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code, Gross Sexual Imposition; and (b) "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, \* \* \* or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as set forth in Section 4731.22(B)(5), Ohio Revised Code. Accordingly, the Board advised Dr. Kim of his right to request a hearing in this matter. (State's Exhibit 1A)

On July 10, 2007, Dr. Kim's counsel requested a hearing. (State's Exhibit 1B)

II. Appearances at the Hearing

On behalf of the State of Ohio: Marc Dann, Attorney General, by Barbara J. Pfeiffer and Karen A. Unver, Assistant Attorneys General.

On behalf of the Respondent: Debra S. McMillan, Esq.

**EVIDENCE EXAMINED**

I. Testimony Heard

Choong Hong Kim, M.D.  
Patient 1  
Lieutenant Terry Moisia  
Mary Lou Clatterbuck (via deposition)  
James Lauer  
Timothy Kraus

II. Exhibits Examined

A. State's Exhibits

State's Exhibits 1A through 1Q: Procedural exhibits. [State's Exhibit 1A was redacted in part to obscure information unrelated to this matter, and page 4 of that exhibit was admitted under seal.]

State's Exhibit 2: Dr. Kim's 2004 Ohio certificate-renewal application.

State's Exhibit 3A: Documents maintained by the Ashtabula County Sheriff's Office related to a May 2003 incident, Case No. 03-05-11-64. [Redacted in part to obscure Patient 1's identity and Social Security numbers.]

State's Exhibit 3B: Documents maintained by the Ashtabula County Sheriff's Office related to a May 2003 incident, Case No. 03-05-11-64. [Admitted under seal.]

State's Exhibit 4: June 2003 termination notice to Dr. Kim from the Ashtabula Nursing & Rehabilitation Center.

State's Exhibit 5: April 2007 affidavit of Mary Lou Clatterbuck.

State's Exhibit 6 was not admitted.

State's Exhibit 7: Patient 1's patient record. [Admitted under seal.]

State's Exhibit 8: Settlement agreement between Dr. Kim and Patient 1. [Admitted under seal.]

State's Exhibit 8A: Settlement agreement between Dr. Kim and Patient 1. [Redacted in part to obscure Patient 1's identity.]

State's Exhibit 9A: Transcript of a June 2003 telephone conversation between Dr. Kim and Patient 1. [Admitted under seal.]

State's Exhibit 9B: Audio recording of a June 2003 telephone conversation between Dr. Kim and Patient 1. [Admitted under seal.]

State's Exhibit 9C: Audio recording of two June 2003 telephone messages from Dr. Kim to Patient 1. [Admitted under seal.]

State's Exhibit 9D: Transcript of a June 2003 telephone conversation between Dr. Kim and Patient 1. [Redacted in part to obscure Patient 1's identity.]

State's Exhibit 10: Diagrams of the Ashtabula Nursing & Rehabilitation Center.

State's Exhibit 11A: Transcript of deposition of Mary Lou Clatterbuck in lieu of live testimony. [Admitted under seal.]

State's Exhibit 11B: Transcript of deposition of Mary Lou Clatterbuck in lieu of live testimony. [Redacted in part to obscure Patient 1's identity.]

B. Respondent's Exhibit

Respondent's Exhibit A: March 2007 subpoena issued by the Board to Dr. Kim for a deposition.

### SUMMARY OF THE EVIDENCE

All exhibits, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

#### Background

1. Choong Hong Kim, M.D., was born in Seoul, South Korea. Dr. Kim obtained his medical degree in 1968 from the College of Medicine at Yonsei University in South Korea. (See, Ohio eLicense Center Home Page. 24 Jan. 2008. State of Ohio. <<https://license.ohio.gov/Lookup/>>)<sup>1</sup>
2. The hearing record does not reflect when Dr. Kim came to the United States. However, he testified that he had resided in Illinois for a period of time, although he had no medical practice there. Then, he moved to Ohio, and he stated that he has practiced medicine in Ashtabula County since that time. He obtained his Ohio certificate in 1975. (Hearing Transcript [Tr.] at 15, 72-73. See also, Ohio eLicense Center Home Page. 24 Jan. 2008. State of Ohio. <<https://license.ohio.gov/Lookup/>>).
3. Dr. Kim worked at Brown Memorial Hospital in Conneaut, Ohio. He provided primary care services to patients in the psychiatric unit of the hospital. At that time, he also maintained a private medical practice. He testified that, later, he sold his practice to Brown Memorial Hospital and became an employee of the hospital. After that, Brown Memorial Hospital was taken over by what is now University Hospitals, a health care system in northern Ohio. (Tr. at 19-21, 24-25, 61-62, 247, 314, 320)

While employed at University Hospitals, Dr. Kim had a contractual dispute. Dr. Kim was part of a physicians group at University Hospitals, but things did not go well because "the services they provided, they didn't give any accountability for the charges they charged him." Dr. Kim remained employed there until approximately 2001, when his employment was terminated. Dr. Kim had to leave the community because of a "non-compete" clause in the

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<sup>1</sup>The Hearing Examiner takes administrative notice of this background information.

employment contract. There had been picketing by patients and others when Dr. Kim was terminated from University Hospitals. (Tr. at 61-63, 88, 182, 214, 321-323, 339; State's Exhibit [St. Ex.] 11A at 9, 27, 29-31; St. Ex. 11B at 9, 27, 29-31)

4. Thereafter, Dr. Kim opened his own medical practice in Ashtabula, Ohio. Additionally, in 2002, Dr. Kim obtained privileges at the Ashtabula County Medical Center [ACMC]. (Tr. at 73-74, 134, 342)

Dr. Kim noted that, at ACMC, he had had disagreements regarding the care to be provided to the patients admitted. Additionally, Dr. Kim explained that female employees at ACMC had alleged that Dr. Kim had sexually abused/harassed them, but he had just hugged them as he had always done. Dr. Kim admitted that, as a result, ACMC had planned to suspend him, but he had resigned his privileges at ACMC sometime after June 2003 and before the suspension took effect. Dr. Kim testified that ACMC has since asked him to interpret echocardiograms. (Tr. at 74-78, 153-156)

5. Currently, Dr. Kim has his own medical practice in Ashtabula, Ohio. His practice involves geriatric medicine and adult medicine. He indicated that he has 2,000 to 3,000 patients, and they tend to be very poor. Also, Dr. Kim is the medical director at the Austinburg Nursing Home. (Tr. at 16-17, 72, 78-79, 82)
6. Dr. Kim holds a medical license in Ohio and he said that he had previously held a license in Illinois, but it had expired. (Tr. at 15-16)

#### **Doctor/Patient Relationship between Dr. Kim and Patient 1**

7. Dr. Kim and Patient 1 both testified that, in the 1990s, they had met when they both worked at Brown Memorial Hospital. Patient 1 is a licensed practical nurse and worked on the same "hospital wing" as Dr. Kim. (Tr. at 21, 24, 29, 176, 180-181, 240, 247)
8. Dr. Kim and Patient 1 both testified that he had initially treated Patient 1 when he was working at Brown Memorial Hospital. Dr. Kim stated that her records for that time period are maintained at that facility. Patient 1 continued as Dr. Kim's patient after his employment was terminated at Brown Memorial Hospital and he had established a private practice in Ashtabula. Patient 1's file at the Ashtabula office location indicates that she visited his Ashtabula office on December 19 and 31, 2002, January 30, and February 1, 2003. Patient 1 was an active patient in May 2003 and, at that time, she had been one of his patients for six or eight years.<sup>2</sup> (Tr. at 26-27, 161, 181-182, 219, 249; St. Ex. 7 at 8-11, 20)

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<sup>2</sup>Additionally, the evidence indicates that Patient 1 was married and Dr. Kim had been her husband's physician, as well as the physician for other members of Patient 1's family. (Tr. at 23, 25, 181, 194, 201, 215, 223)

### **Ashtabula County Nursing and Rehabilitation Center**

9. Dr. Kim explained that, for many years, he had provided medical services for his patients that resided at the Ashtabula County Nursing and Rehabilitation Center [nursing home].<sup>3</sup> He was not employed by the nursing home; rather, he had held privileges that had allowed him to treat his patients while they resided there. (Tr. at 28-29; see also, St. Ex. 11A at 8, 10-12 and St. Ex. 11B at 8, 10-12)
10. Patient 1 began working at the nursing home in approximately May 2002. She is a floor nurse and is responsible for providing medications, taking vital signs, and directing the aides. She has always worked the night shift, which begins at 6:45 p.m. (Tr. at 173-175, 183, 234)
11. Both Dr. Kim and Patient 1 occasionally worked at the nursing home at the same time. They were both working at the nursing home in the evening of May 11, 2003. At that time, Dr. Kim was in his early sixties and Patient 1 was in her early thirties. (Tr. at 30-31, 137, 183, 241-242, 250)

### **Dr. Kim's Version of the Events of May 11, 2003**

It should be noted that the first allegation in this case involves a claim of the commission of the felony of gross sexual imposition by Dr. Kim on May 11, 2003. Dr. Kim admits that "inappropriate" behavior took place at the nursing home on May 11, 2003, but he contends that it was consensual and denies that it constitutes the felony of gross sexual imposition. (Tr. at 108-109, 162)

12. Dr. Kim explained that, on May 11, 2003, he went to the nursing home about 7:00 p.m., in order to see a patient. Dr. Kim testified that, when he had first seen Patient 1, she had walked up to him, hugged him, and kissed him. Dr. Kim stated that a nurse's aide was nearby. Dr. Kim testified that he had been very embarrassed by Patient 1's kiss, but he had not asked her why she had kissed him. Instead, Dr. Kim asked Patient 1 to assist him while he provided medication to the patient he was there to see. (Tr. at 30-31, 39-41, 91-92, 94, 162)
13. Dr. Kim testified that, after providing medication to that patient, he and Patient 1 had returned to the nurse's station. Dr. Kim stated that, while at the nurse's station, they had kissed and hugged again. Next, Dr. Kim testified that Patient 1 had spoken with him about her own medical problems. Dr. Kim stated that Patient 1 had asked for prescriptions for a pain medication and sleeping pills. Dr. Kim stated that he had asked her to make an appointment at his office, but she had responded that she needed the medications sooner. Dr. Kim testified that he could not recall the dosages for the medications and, therefore, had asked Patient 1 to bring him the Physicians Desk Reference [PDR]. (Tr. at 31-33, 95-97)

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<sup>3</sup>The nursing home is an approximately 200-bed facility in Kingsville, Ohio. It has five "wings" designated A through E. (Tr. at 174; St. Exs. 4, 10, 11A at 8, 11B at 8)

14. Dr. Kim testified that, upon Patient 1's return to the nurse's station with the PDR, she had sat next to him so closely that their bodies were touching. He stated that the chair was wide enough for two people. He testified that he had asked Patient 1 to sit on his lap, but she had refused because someone might see them. Next, he testified that he had put his hand on top of Patient 1's hand, holding her hand. He acknowledged that he had unzipped his pants, and his penis had been visible. He admitted that he had then taken her hand and had placed it on his exposed penis. (Tr. at 35-36, 99, 100, 102-103, 109, 140)
15. Dr. Kim denied that Patient 1 had pulled her hand away and had questioned him. Instead, he claimed that Patient 1 had not said anything, but had had an awkward look on her face. Dr. Kim testified that, although he had placed Patient 1's hand on his penis, he had not forced Patient 1 to do anything and he had not threatened her. (Tr. at 36-37, 108, 111)<sup>4</sup>
16. Next, Dr. Kim testified that, while seated at the nurse's station, Patient 1 had then wrapped her hand around his penis and had rubbed it for approximately one minute. He contended that, while this was occurring, he had finished writing the prescriptions. Dr. Kim further contended that he did not ejaculate, but instead had asked Patient 1 to stop. He stated that, after she had stopped, he had gone to a nearby bathroom and urinated. He noted that, upon his return, he had advised Patient 1 to come to his office when seeking controlled substance medication because he was uncomfortable prescribing a controlled substance without having her patient chart. After that, he stated that he had hugged and kissed Patient 1 again, and then had left the nursing home. (Tr. at 43-46, 102, 104, 106-107, 110, 112, 163, 166)
17. Dr. Kim also stated that he had asked Patient 1 to have sexual intercourse with him and she had refused to do so at the nursing home, but had agreed to have sexual intercourse with him "someday." (Tr. at 107-108, 141, 144-145)

### **Patient 1's Version of the Events of May 11, 2003**

18. Patient 1 agreed that Dr. Kim had come to the nursing home on May 11, 2003, in order to provide medication to a patient. She first saw him by the nurse's station and she acknowledged that they had given each other a hug. She similarly testified that she had assisted him in providing medication to the patient. She testified that they had walked separately back to the nurse's station on "E Wing." Patient 1 also similarly testified that, after Dr. Kim had provided the medication to the patient, she had asked him for prescriptions and he had agreed. (Tr. at 183-184, 203, 243-244)
19. Patient 1 stated that, while Dr. Kim was sitting at the desk in the nurse's station and documenting the provision of medication to the other patient, she had walked up to him and had asked him for two "refill" prescriptions. She stated that he had written one of the prescriptions but could

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<sup>4</sup>Dr. Kim acknowledged that he had told the Board's enforcement attorney that he never had had his penis out and that he never had put Patient 1's hand on it. He explained that he had made those statements to the Board's enforcement attorney because he and Patient 1 had executed a confidential settlement agreement. (Tr. at 46-48; St. Exs. 8, 8A; Respondent's Exhibit A) Those incorrect statements by Dr. Kim are *not* alleged by the Board to be false statements in violation of Section 4731.22(B)(5), Ohio Revised Code.

not recall the dosage for the second prescription, and had asked for the PDR. She left to retrieve the PDR, which was located in another section of the nursing home. (Tr. at 186, 244, 255)

20. Patient 1 testified that, when she had returned, Dr. Kim had been seated at the desk in a one-person, rolling desk-chair. She stood by the desk, leaning with both hands on the desk and looking over his right shoulder, while he looked in the book. Patient 1 next testified that Dr. Kim had put his hand on her left hand and held it, which did not offend her. (Tr. at 186-189, 244-245)

But, then, as Dr. Kim was holding her hand, Patient 1 testified that he had moved or guided her hand toward him. (Tr. at 247) Patient 1 described her reaction and the subsequent events as follows:

- A. I kind of jerked away a little bit. And he said, no, that's all right. And with his prior history, you know, I didn't feel that uncomfortableness –

\* \* \*

- Q. Can you please state for the record what you mean by prior history?

- A. Dr. Kim was a very hands-on doctor. He, you know, held your hand when he talked to you, looked you in the face when he talked to you. You got a hug every visit. He was just, you know – he was your ideal doctor.

\* \* \*

- Q. So when he took your hand at that time, what happened next?

- A. He drew my hand into his crotch as he scooted the chair back.

\* \* \*

- Q. Let me – let me back you up, then, for a moment. He takes your hand, and where exactly does he put it?

- A. On top of his exposed penis under the desk – well, he wasn't under the desk anymore when he pushed his chair out a little bit.

(Tr. at 189-191; see also, Tr. at 245)

21. She explained that she had pulled her hand away from Dr. Kim, had questioned him, and he had not responded or reacted. Instead, Patient 1 testified that Dr. Kim had stood up and had gone to the bathroom at the nurse's station. (Tr. at 192-193, 245)

22. Patient 1 stated that she had stood there for a period of time, trying to grasp what had happened. Dr. Kim came out of the bathroom, stated "I'm finished," and walked toward the front entrance of the nursing home. Patient 1 indicated that he had turned around and had placed his index finger up to his lips. (Tr. at 196-197; 245, 256)
23. Patient 1 testified that, at that point, she had "lost it," had begun "bawling," and had walked away in the opposite direction. She next told a coworker, her supervisor, and the director of nursing what had happened. Very shortly after the incident, she wrote a description of what had transpired. (Tr. at 198-201, 227-228, 246; St. Ex. 3A at 7-8; St. Ex. 3B at 7-8)
24. She testified that she had left the nursing home shortly thereafter and called the Ashtabula County Sheriff's Department. A sheriff took her statement that same evening. (Tr. at 204-205; St. Ex. 3A at 4-5; St. Ex. 3B at 4-5)
25. Patient 1 denied that she had kissed Dr. Kim on May 11, 2003, or at any other time, and she denied that he had asked her to have sex with him. Patient 1 explained that Dr. Kim's placement of her hand on his penis was not consensual. Also, Patient 1 stated that the incident had happened very quickly, and she had not realized what had happened until her hand was on top of his exposed penis. (Tr. at 243-244, 245, 251)

#### **The Nursing Home's Actions after the May 11, 2003 Incident**

26. In May 2003, Mary Lou Clatterbuck was the nursing home's administrator. She explained that she and the nursing home's director of nursing investigated the incident by: (a) speaking with Patient 1, (b) speaking with another staff member who saw her after the incident, and (c) obtaining written statements from both. Ms. Clatterbuck also testified that she believes all employees on duty on that wing were also questioned. (St. Ex. 5; St. Ex. 11A at 7, 21, 32-36, 47; St. Ex. 11B at 7, 21, 32-36, 47)

Ms. Clatterbuck recalled the incident as Dr. Kim's reaching up under Patient 1's "lower half" while she had been reaching for the PDR. Ms. Clatterbuck further recalled that Patient 1 did not state that she had kissed Dr. Kim earlier that night. Ms. Clatterbuck admitted that she had not asked Patient 1 whether the incident was consensual, but that was because "it was very evident from her statement to me that it wasn't." (St. Ex. 11A at 16-17, 36; St. Ex. 11B at 16-17, 36)

27. Ms. Clatterbuck recalled that, until June 3, 2003, Dr. Kim had treated patients at the nursing home. She testified that, on or about June 3, she had sent notice to Dr. Kim, terminating his privileges at the nursing home. She further recalled that, after June 3, Dr. Kim had contacted her and had asked her why his privileges were terminated. (St. Ex. 4; St. Ex. 5; St. Ex. 11A at 12-13, 16, 37-41, 49; St. Ex. 11B at 12-13, 16, 37-41, 49)
28. Dr. Kim recalled a different set of actions taken by the nursing home and a different time frame for the termination of his privileges. Dr. Kim testified that, shortly after the incident on May 11, 2003, the director of nursing at the nursing home had telephoned him and informed

him that he was permitted to provide medical services to his patients residing at the nursing home, but only when accompanied by a supervisor. He stated that, later, the director of nursing ordered Dr. Kim to refer all of his nursing home patients to another physician. Dr. Kim testified that, roughly two or three months after the incident, he had been informed that he was not permitted to practice medicine at the nursing home. (Tr. at 52-54, 115)

Also, Dr. Kim did not recall receiving the June 3, 2003, termination notice from the nursing home. However, he did recall being verbally informed of the termination of his privileges. At that time, he understood the basis of the termination to be the May 2003 incident with Patient 1. (Tr. at 54-55, 58-59, 86-87, 112, 113, 157, 159)

29. Dr. Kim further stated:

Q. \* \* \* Did you ever contact anyone at the nursing home to provide your side of the story in 2003?

A. \* \* \* [T]he nursing home is not my important income source. It's actually – I'm going there for my service for my patient because of the continuing [patient relationship], not because I make a lot of money from there.

Q. But weren't you concerned in 2003 that this would impact you significantly?

A. Not really.

(Tr. at 159)

#### **Telephone Calls between Dr. Kim and Patient 1 after the May 11, 2003 Incident**

30. Dr. Kim testified that he was concerned about Patient 1 because others had learned of the incident at the nursing home. He explained that he was not concerned whether he would still be able to treat residents of the nursing home, but he was concerned that Patient 1 might lose her job at the nursing home. He testified that, because of this concern, he had called Patient 1. He explained that he had called her at least three times and left messages. He testified that his messages stated "I want to talk to you" and "I can offer you \$30,000." (Tr. at 114-116, 121, 152-153, 168)

31. Patient 1 stated that Dr. Kim's calls began one week after the incident. She knew they were from Dr. Kim because her telephone identified the caller. She did not answer them and she did not speak to Dr. Kim. Patient 1 testified that, on June 22, 2003, she received calls from Dr. Kim, and he had left a voicemail message and had sent two text messages. As a result, she contacted the Ashtabula County Sheriff Department again. Patient 1 described his messages as: (a) stating that his practice was his life, (b) stating that Patient 1 should think about what she was doing, and (c) offering her \$30,000 to "shut up." (Tr. at 207-208, 246)

**The Ashtabula County Sheriff Department's Actions after the May 11, 2003 Incident**

32. Lieutenant Terry Moisiso was one of the officers at the Ashtabula County Sheriff's Department who was involved in investigating the May 11, 2003, incident at the nursing home. Lieutenant Moisiso described the Sheriff Department's initial investigation activities and documentation. He became involved in the investigation in June 2003. (Tr. at 261-266, 280, 297-298; St. Ex. 3A at 10; St. Ex. 3B at 10)
33. Lieutenant Moisiso testified that, on June 23, 2003, Patient 1 had told him about messages left on her telephone and she had come into the Sheriff's Department that same day. Patient 1 agreed to allow the Sheriff's Department to record the voicemail and text messages from Dr. Kim, and to log the information in her telephone related to calls from Dr. Kim. Additionally, at that same time, Patient 1 agreed to make a "pretext" telephone call to Dr. Kim. Lieutenant Moisiso testified that the text of that conversation was partially scripted in advance and the telephone conversation was recorded with Patient 1's permission. (Tr. at 210-212, 269-273, 294-296; St. Exs. 3 at 14, 9A, 9B, 9D) The following is a portion of the June 23, 2003, conversation between Dr. Kim and Patient 1:

Dr. Kim: Yeah, are you going to sue me?

Patient 1: What do you mean am I going to sue you?

Dr. Kim: That is what I heard.

Patient 1: About what happened at the County Home?

Dr. Kim: Uh-huh.

\* \* \*

Patient 1: And I had utter, the most highest respect for you and you know, what made you think that I wanted to see your penis and put my hand on it?

Dr. Kim: Okay, so...

Patient 1: You didn't answer my question?

Dr. Kim: Why don't I, we talk.

Patient 1: Talk, where?

Dr. Kim: My office.

Patient 1: I don't feel comfortable coming in. I mean, this is very hard.

Dr. Kim: Very hard.

Patient 1: I mean. I don't, I sat there and I thought, you know I don't want to destroy his career, but I didn't do anything.

Dr. Kim: Well, anyway, if you are going to do that my career is stopped.

Patient 1: Your career is stopped, if I do that.

Dr. Kim: Think very seriously, okay.

Patient 1: Did you think very seriously when you did that?

Dr. Kim: No, it was abrupt.

\* \* \*

Patient 1: It was just an abrupt thing you did?

Dr. Kim: Yeah. So, I don't know how much I have to tell you, that you are going to kill me.

\* \* \*

Patient 1: I still cannot fathom what the hell you were thinking.

Dr. Kim: I cannot, [i]f what we had is going out, I cannot be a Doctor anymore.

Patient 1: What do you mean, what we had?

Dr. Kim: So...

Patient 1: Dr. Kim, be straight with me, what do you mean what we had?

Dr. Kim: What happened. See, so then if I really... I am...

(St. Ex. 9D at 2-4)<sup>5</sup> On June 23, 2003, Patient 1 informed the Sheriff's Department that she would like to pursue criminal charges for the May 11, 2003, incident. (St. Ex. 3A at 14; St. Ex. 3B at 14)

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<sup>5</sup>Dr. Kim acknowledged that the transcript accurately reflected the conversation that took place. He also acknowledged that, when he was calling Patient 1, his impression was that she would not speak to him. (Tr. at 125-126, 157)

34. Lieutenant Moisiso acknowledged that the Sheriff's Department did not take statements from or interview anyone else at the nursing home. Additionally, he acknowledged that he was not aware of any statement that Patient 1 had given at the nursing home and he was not aware of Patient 1's disciplinary problems involving intimidation. He further explained that he did not speak with Dr. Kim in the course of the investigation because Dr. Kim's attorney would not allow it. (Tr. at 285, 287, 289, 299)
35. On June 23, 2003, Lieutenant Moisiso requested that criminal charges be filed by the Ashtabula County Prosecutor. Lieutenant Moisiso testified that he had found Patient 1 to be credible. (Tr. at 275-276, 289) Specifically, he testified:

I've investigated many, many sex crimes. In the 18 years that I did it, I've had extensive training in it. I've had many convictions in it, dealing with from 4-year-old children to 50-year-old females, that credibility is so important in these types of instances.

I would have had no problem whatsoever to go to the grand jury or have [Patient 1] testify to the grand jury as far as what had transpired here. I have no issues with credibility. If I did, then, again, we would have pursued that another way and established credibility. Part of the pretext call, part of the investigative tool that it is, is to establish credibility.

(Tr. at 298-299)

36. The Ashtabula County Prosecutor did not file criminal charges. (Tr. at 293-204)

#### **Settlement between Patient 1 and Dr. Kim**

37. Dr. Kim testified that, several months after the incident, he had learned that Patient 1 was going to pursue criminal charges or file a lawsuit as a result of the incident on May 11, 2003. (Tr. at 120)
38. In early 2004, Patient 1 and Dr. Kim executed a settlement agreement, pursuant to which Dr. Kim agreed to pay Patient 1 \$75,000, and Patient 1 agreed to discharge Dr. Kim from any and all damages "connected with, resulting from or arising out of any conduct, behavior or speech allegedly engaged in by Dr. Kim directed toward her during any and all professional and/or personal encounters." (St. Exs. 8, 8A)

#### **Additional information Concerning Dr. Kim and Patient 1**

39. The record reflects the following additional information from and/or about Dr. Kim:
- Dr. Kim testified that he is an affectionate person and he regularly would hug all of the nursing staff. He stated that he had hugged Patient 1 prior to

the May 2003 incident, but he had never kissed her before the incident. (Tr. at 43, 146-148)

- Dr. Kim testified that he had understood, at the time of the incident, that it would not be appropriate for a doctor to have a sexual relationship with a patient. (Tr. at 162)
- Dr. Kim explained that he had not had sexual intercourse for six or seven months prior to the incident at the nursing home. (Tr. at 142-144)
- Dr. Kim testified that, in mid-2007, the nursing home had asked him to “come back” and “admit patient[s].” (Tr. at 89, 137)
- Dr. Kim stated that, in June 2003, he had voluntarily spoken with the chief executive officer of ACMC about the incident at the nursing home, telling the chief executive office only that Patient 1 had kissed him. (Tr. at 116-117, 135-136)

40. The record reflects the following additional information from and/or about Patient 1:

- Patient 1 testified that she had publicly criticized Dr. Kim’s termination from University Hospitals and was quoted in the newspaper, stating how the community had lost a great doctor. (Tr. at 214)
- Patient 1 acknowledged that, as Dr. Kim’s patient, she had discussed her sex drive following a hysterectomy, but had not otherwise had conversations with Dr. Kim about sex. (Tr. at 193-195)
- Patient 1 has had disciplinary issues at the nursing home, which were taken into consideration in the investigation by the nursing home administrator. The disciplinary issues involved insubordination for threatening and intimidating a new staff member, threatening a unit manager, and attendance. (Tr. at 234-237; St. Ex. 11A at 24, 26; St. Ex. 11B at 24, 26)

### **Character Witnesses**

41. Dr. Kim presented two witnesses as character witnesses: James Lauer and Timothy Kraus. Mr. Lauer, who has known Dr. Kim for 25 years, testified that he had managed a credit union and had been a city councilman for Conneaut, Ohio. He stated that Dr. Kim was his physician. (Tr. at 312)

Mr. Lauer described Dr. Kim as follows:

Dr. Kim loved everybody. His patients loved him. Dr. Kim is a very religious man. Dr. Kim never had a harsh word for anybody. He helped everybody. The poor class of people – I’ve known Dr. Kim to have patients that couldn’t afford medicine or food and Dr. Kim would reach in his pocket and give them money to buy medicine and food with.

\* \* \*

Dr. Kim is the type of a man, he would walk in and he would hug his patients, male or female. And this is the way Dr. Kim has worked. Because I've walked in his office, he has hugged me. He's hugged my wife. And that's just Dr. Kim. He loves everybody. I mean, he never had a harsh word for anyone.

(Tr. at 314-315)

42. Additionally, Mr. Lauer testified that Dr. Kim was much so respected, honest and trusted that many of his patients had followed him when he had moved to Ashtabula, Ohio. Mr. Lauer denied that he had heard rumors that Dr. Kim is a "womanizer." (Tr. at 322-323)

Mr. Lauer felt that the allegation of gross sexual imposition raised in this matter was a "setup" because Dr. Kim has "never made" any advances to anyone and would not do so. Mr. Lauer stated that he had not known that the allegation involved one of Dr. Kim's patients. Additionally, Mr. Lauer testified that he did not think Dr. Kim would ever ask a patient to sit on his lap or allow a patient to masturbate him at the nursing home.<sup>6</sup> (Tr. at 325, 330-332)

43. Timothy Kraus, who has known Dr. Kim for 31 years, also testified in support of Dr. Kim. Mr. Kraus is minister of the Conneaut Church of Christ in Conneaut, Ohio. Also, he is one of Dr. Kim's patients. (Tr. at 335, 338, 360)

Mr. Kraus testified about Dr. Kim as follows:

I know that Dr. Kim is a warm and friendly physician. I know that his patients adore him for that reason and that he had built strong relationships with people in the hospitals where he's worked, with the staff in particular. And he has been especially appreciated by the nursing staff.

\* \* \*

He has been especially important to our older citizens and those of lower income. When Dr. Kim opened his office in Ashtabula, it took some time from when he applied until he had his Medicare reimbursement approval, and he told his patients that – to come in for treatments, that he would not charge them.

\* \* \*

I know many of his patients, and they have told me that he has given them money for medication if he didn't have samples and they were not able to

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<sup>6</sup>As noted earlier, Dr. Kim testified that he had asked Patient 1 to sit on his lap and he had allowed Patient 1 to masturbate him at the nursing home. (Tr. at 100, 102, 109, 110)

purchase medication. Some he actually gave money so they could buy medicine. He is generous and caring.

(Tr. at 344-346)

44. With respect to the allegation of gross sexual imposition raised in this matter, Mr. Kraus was aware of it because Dr. Kim had mentioned the incident four or five years ago and had provided further details more recently. Mr. Kraus felt convinced that, despite Dr. Kim's admissions to him about the incident with Patient 1, Dr. Kim would not pursue one of his patients for his own benefit. (Tr. at 348, 355-356)
45. Additionally, Dr. Kim testified regarding his own community and charitable activities. He noted that he supports and contributes to his patients' local activities. Also, he explained that he has been active in international charitable activities. He stated that, on numerous occasions, he has traveled to Mexico, China, and North Korea to provide volunteer medical services. (Tr. at 83-84)

#### **April 2004 Ohio Certificate Renewal Application**

46. On April 24, 2004, Dr. Kim completed and signed an Ohio certificate renewal application. (Tr. at 59) In signing the application, he certified that the information on that application was true and correct. He answered "No" in response to the following question:

At any time since signing your last application for licensure/renewal in Ohio:

Have you had any clinical privileges or other similar institutional authority suspended, restricted or revoked for reasons **other than failure to maintain records on a timely basis or to attend staff meetings?**

(St. Ex. 2; emphasis in original.)

47. Dr. Kim testified that he had understood that question would apply only to the loss of privileges at a hospital. Additionally, he testified that he did not answer the question affirmatively because he did not have a formal written contract with the nursing home. (Tr. at 66, 112)

#### **FINDINGS OF FACT**

1. From December 2002 to May 2003, in the routine course of his medical practice, Choong Hong Kim, M.D., undertook the treatment of Patient 1, as identified in the confidential Patient Key. Dr. Kim had treated Patient 1 for several years prior to December 2002 as well.
2. On May 11, 2003, shortly after being asked by Patient 1 to write two prescriptions for refill medications for her, Dr. Kim placed Patient 1's hand on his exposed penis against her will and compelled her by force to touch his exposed penis. Dr. Kim placed Patient 1's hand on

his exposed penis for sexual arousal or gratification purposes. These events occurred at the Ashtabula County Nursing & Rehabilitation Center where Patient 1 worked as a nurse. Dr. Kim and Patient 1 were not married to each other on May 11, 2003.

3. On April 27, 2004, Dr. Kim caused to be submitted to the Board an application for renewal of his certificate to practice medicine and surgery in Ohio. By signing the renewal application on April 27, 2004, he certified that the information provided therein was true and correct in every respect.
4. On the renewal application, Dr. Kim answered "No" in response to question number 6 in the renewal application, which asked:

At any time since signing your last application for licensure/renewal in Ohio:

Have you had any clinical privileges or other similar institutional authority suspended, restricted or revoked for reasons **other than failure to maintain records on a timely basis or to attend staff meetings?**

However, on June 3, 2003, Dr. Kim's privileges to practice at Ashtabula County Nursing & Rehabilitation Center were discontinued and terminated.

### CONCLUSIONS OF LAW

1. On May 11, 2003, Section 2907.05, Ohio Revised Code, stated in pertinent part:
  - (A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:
    - (1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

\* \* \*
  - (B) Whoever violates this section is guilty of gross sexual imposition.
    - (1) Except as otherwise provided in this section, a violation of division (A)(1), (2), (3), or (5) of this section is a felony of the fourth degree. \* \* \*

2. Additionally, “sexual contact” and “force” were defined as follows on May 11, 2003:

“Sexual contact” means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person. Section 2907.01(B), Ohio Revised Code.

“Force” means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing. Section 2901.01(A)(1), Ohio Revised Code.

3. Dr. Kim’s acts, conduct and/or omissions, as set forth in Findings of Fact 1 and 2, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code, Gross Sexual Imposition.
4. Dr. Kim’s acts, conduct, and/or omissions, as set forth in Findings of Fact 3 and 4, individually and/or collectively constitute “a false, fraudulent, deceptive, or misleading statement” because it was “a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived,” as set forth in Section 4731.22(B)(5), Ohio Revised Code.
5. Dr. Kim’s acts, conduct and/or omissions, as set forth in Findings of Fact 3 and 4, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, \* \* \* or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as set forth in Section 4731.22(B)(5), Ohio Revised Code.
6. The evidence establishes that Dr. Kim failed to disclose the termination of privileges at the Ashtabula County Nursing & Rehabilitation Center in response to the direct question on the certificate renewal application, and the surrounding circumstances support a conclusion that Dr. Kim intended to mislead or deceive the Board when he falsely answered that question.

\* \* \* \* \*

The Hearing Examiner did not find Dr. Kim’s testimony about the events of May 11, 2003, to be credible. It is very questionable that Patient 1, a long-time patient who had never expressed strong affection for Dr. Kim, would, while on duty: (1) kiss him on the lips spontaneously in the middle of the hallway at the nursing home; (2) kiss him “deeply” shortly thereafter at the nurse’s station; or (3) agree to rub his exposed penis at the nurse’s station. There was no credible evidence to establish that Patient 1 consented to touching Dr. Kim’s exposed penis.

Moreover, the Hearing Examiner notes that Dr. Kim has provided false statements on a number of occasions: (1) in 2003, his voluntary explanation of the incident to the CEO of ACMC lacked key facts about the nature of the incident, so much so that it was virtually a different incident; (2) in 2004, Dr. Kim falsely answered the renewal application question; (3) in early 2007, Dr. Kim made false statements to the Board's enforcement attorney about the incident; and (4) at hearing, Dr. Kim testified that he was not concerned about the impact of the incident on him, yet the recorded telephone call establishes that he had been extremely concerned about it.

The Hearing Examiner acknowledges that there are some inconsistencies between Patient 1's testimony and her written statements regarding the incident. Additionally, one may question why Patient 1 remained at the nurse's station after Dr. Kim went to the bathroom. Yet, when weighing all the evidence, the Hearing Examiner cannot conclude that this was a consensual event, as Dr. Kim has alleged. Rather, the reliable, probative, and substantial evidence establishes that Dr. Kim's acts toward Patient 1 on May 11, 2003, constituted gross sexual imposition.

With regard to the 2004 renewal application, the Hearing Examiner does not accept Dr. Kim's statement that he misunderstood the question or that his answer was correct because he did not have a written contract with the nursing home. In the Hearing Examiner's view, this testimony was an attempt, after the fact, to justify his false statement to the Board.

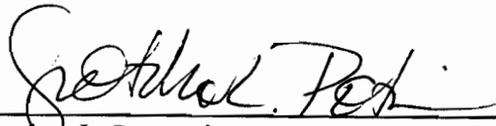
The Hearing Examiner finds that Dr. Kim is not a physician to be trusted with patients or the truth. He is not deserving of a certificate to practice medicine and surgery in Ohio.

### PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Choong Hong Kim, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

  
Gretchen L. Petrucci  
Hearing Examiner

# State Medical Board of Ohio

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## EXCERPT FROM THE DRAFT MINUTES OF MARCH 12, 2008

### REPORTS AND RECOMMENDATIONS, REMAND IN THE MATTER OF ROBERT STANLEY COLEMAN, JR., M.D., AND THE PROPOSED FINDINGS AND PROPOSED ORDERS IN THE MATTERS OF CHOONG HONG KIM, M.D., AND ROBERT ALAN KNOX, D.P.M.

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders; and any objections filed in the matters of Choong Hong Kim, M.D., and Robert Alan Knox, D.P.M.; the Remand in the Matter of Robert Stanley Coleman, Jr., M.D., and the Proposed Findings and Proposed Orders in the matters of Lon A. Castle, M.D. and Milissa Lee Tarrant. A roll call was taken:

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Dr. Amato	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

Dr. Varyani asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Dr. Amato	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye

Dr. Varyani - aye

Dr. Varyani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

The original Reports and Recommendations, Remand Findings, Conclusions and Order, and Proposed Findings, Orders and Journal Entries shall be maintained in the exhibits section of this Journal.

CHOONG HONG KIM, M.D.

.....  
**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF CHOONG HONG KIM, M.D. MR. BROWNING SECONDED THE MOTION.**

.....  
A vote was taken on Dr. Steinbergh's motion to approve and confirm:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Madia	- aye
	Mr. Browning	- aye
	Dr. Amato	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.med.ohio.gov](http://www.med.ohio.gov)

June 14, 2007

Choong Hong Kim, M.D.  
2825 Lake Avenue  
Ashtabula, OH 44004

Dear Doctor Kim:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) From in or about December 2002 to in or about May 2003, in the routine course of your practice, you undertook the treatment of Patient 1 as identified on the attached Patient Key (key confidential to be withheld from public disclosure).
- (2) On or about May 11, 2003, shortly after being asked by Patient 1 to refill two prescriptions for her, you placed Patient 1's hand on your exposed penis against her will. These events occurred at the Ashtabula County Nursing and Rehabilitation Center where Patient 1 worked as a nurse.
- (3) On or about April 27, 2004, you caused to be submitted to the Board an application for renewal of your certificate to practice medicine and surgery in Ohio. By signing the renewal application on or about April 27, 2004, you certified that the information provided therein was true and correct in every respect.

You answered "No" in response to question number 6 in your renewal application, which asked:

At any time since signing your last application for licensure / renewal in Ohio: . . .

Have you had any clinical privileges or other similar institutional authority suspended, restricted or revoked for reasons **other than failure to maintain records on a timely basis or to attend staff meetings?**

*Mailed 6-14-07*

In fact, on or about June 3, 2003, your privileges to practice at Ashtabula County Nursing and Rehabilitation Center were discontinued.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2907.05, Ohio Revised Code, Gross Sexual Imposition.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink that reads "Lance A. Talmage M.D." The signature is written in a cursive style with a large, stylized initial 'L'.

Lance A. Talmage, M.D.  
Secretary

LAT/DPK/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3931 8318 3510  
RETURN RECEIPT REQUESTED