



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

April 14, 1995

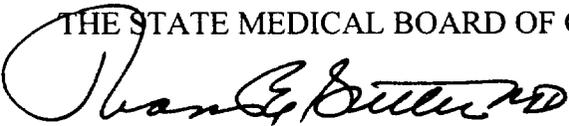
Kwok Wei Chan, M.D.
5 Northland Road
Shrewsbury, MA 01545

Dear Doctor Chan:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on April 12, 1995, including a Motion 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 may be taken to the Franklin County Court of Common Pleas only.

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

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 124 621
RETURN RECEIPT REQUESTED

cc: Richard T. Tucker, Esq.

CERTIFIED MAIL RECEIPT NO. P 741 124 622
RETURN RECEIPT REQUESTED

Mailed 4-21-95



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Snaron W. Murphy, Attorney Hearing Examiner, State Medical Board; and an excerpt of Minutes of the State Medical Board, meeting in regular session on April 12, 1995, including a Motion approving and confirming the Report and Recommendation 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 Kwok Wei Chan, 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.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

4/18/95

Date



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

KWOK WEI CHAN, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 12th day of April, 1995.

Upon the Report and Recommendation of Sharon W. Murphy, Hearing Examiner, Medical Board, in this matter designated 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 Kwok Wei Chan, M.D., to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least four years.

1. Dr. Chan shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio while practicing medicine in this State;
2. At the time of his application for biennial medical licensure renewal in this State, Dr. Chan shall submit declarations stating whether he has complied with all the terms and conditions of his probation in this State and with all terms, conditions, or limitations imposed by any other state medical board;
3. Dr. Chan shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation contained in the terms and conditions of his probation or with any term, condition, or limitation imposed by any other state medical board;
4. Dr. Chan shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by any other state medical board;

5. Dr. Chan shall notify the Board of any restriction to any certificate to practice medicine held by Dr. Chan which is imposed as a direct result of this Order; Dr. Chan shall so advise the Board and shall provide acceptable documentation verifying the same;
6. Dr. Chan shall cause to be submitted to the Board copies of the quarterly reports that the chief of the department of anesthesia at the Medical Center of Central Massachusetts submits to the Massachusetts Board for so long a time as the Massachusetts Board requires such submission;
7. Dr. Chan shall cause to be submitted to the Board the plan for joint psychotherapy dealing with the issues surrounding the conduct described in the Massachusetts Consent Judgment, and documentation of compliance with such plan;
8. Dr. Chan shall refrain from commencing practice in Ohio without prior written Board approval; Dr. Chan may be placed under terms, conditions, or limitations by the Board as the Board deems reasonable and appropriate should Dr. Chan commence practice in this state;
9. Dr. Chan shall provide a copy of this Order to all employers in Ohio and to the chief of staff at each hospital in Ohio where he has, applies for, or obtains privileges;
10. If Dr. Chan violates probation in any respect, the Board, after giving Dr. Chan notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Chan's certificate to practice.

Upon successful completion of probation, Dr. Chan's certificate will be fully restored.

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



Thomas E. Gretter, M.D.
Secretary

(SEAL)

4/18/95
Date

100-1-1-100

**REPORT AND RECOMMENDATION
IN THE MATTER OF KWOK WEI CHAN, M.D.**

The Matter of Kwok Wei Chan, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 27, 1995.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated December 7, 1994, (State's Exhibit 1), the State Medical Board of Ohio notified Kwok Wei Chan, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio, based upon the following allegation:

On or about November 17, 1993, the Massachusetts Board of Registration in Medicine (Massachusetts Board) issued a Consent Judgment placing Dr. Chan's certificate to practice medicine in that state on a five year probation. The Massachusetts Board based its action on Dr. Chan's conduct in the operating room of the Medical Center of Central Massachusetts on or about October 24, 1991.

The Board alleged that the action of the Massachusetts Board constituted "(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: 4731 22(B)(6), Ohio Revised Code, and (B)(18) to wit: Principles of Medical Ethics I and IV, American Medical Association."

The Board advised Dr. Chan of his right to request a hearing in this Matter.

- B. On December 19, 1994, Richard T. Tucker, Esq., submitted a written hearing request on behalf of Dr. Chan. (State's Exhibit 2).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Lili C. Kaczmarek, Assistant Attorney General.

- B. On behalf of Respondent: Although Dr. Chan was advised of his right to attend the hearing and to have legal representation, Dr. Chan chose not to appear either in person or by representation.

EVIDENCE EXAMINED

I. Testimony Heard

Neither party presented testimony.

II. Exhibits Presented

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified by the State and admitted into evidence:

- A. State's Exhibit 3: December 20, 1994, letter to Richard T. Tucker, Esq., from the Board advising that a hearing had been set for January 3, 1995, and further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
- B. State's Exhibit 4: December 28, 1994, letter to Mr. Tucker from the Board, scheduling the hearing for February 27, 1995. (2 pp.)
- C. State's Exhibit 5: Certified copies of information regarding Dr. Chan's staff privileges at the Medical Center of Central Massachusetts and the operating room incident of October 14, 1991. (Note: pages numbered by hearing examiner) (5 pp.)
- D. State's Exhibit 6: Certified copies of additional information regarding Dr. Chan's staff privileges at the Medical Center of Central Massachusetts and the operating room incident of October 14, 1991. (Note: pages numbered by hearing examiner) (21 pp.)
- E. State's Exhibit 7: Certified copies of documents from the Massachusetts Board regarding Dr. Chan. (Note: pages numbered by hearing examiner, to include 1 through 71 and 24A, 25A, 51A, and 52A) (75 pp.)

III. Post-Hearing Admissions to the Record

The following document was submitted by the Respondent after the hearing, and was admitted into evidence without objection from the State's representative.

Respondent's Exhibit A: February 27, 1995, letter to the Board from Dr. Chan presenting his account of the Massachusetts Board's disciplinary action. (3 pp.)

PROCEDURAL MATTERS

Dr. Chan did not appear at the hearing either in person or by representation. He did, however, make a request, through the State's representative, for additional time in which to submit evidence. The hearing examiner granted that request and agreed to hold the record open until Friday, March 3, 1995. The State waived the right to object to any evidence Respondent would submit. On February 28, 1995, Dr. Chan submitted Respondent's Exhibit A and it was admitted into evidence, at which time the hearing record closed.

SUMMARY OF THE EVIDENCE

1. Kwok Wei Chan, M.D., received his medical degree from the University of Cambridge Faculty of Medicine in 1976. He received his license to practice medicine in the State of Massachusetts in 1979. (State's Exhibit 7 at 59). Dr. Chan is certified by the American Board of Anesthesiologists. (State's Exhibit 7 at 25, 51, 59). He currently practices anesthesiology as an employee of Hahnemann Anesthesia Associates in Worcester, Massachusetts. (State's Exhibit 6 at 6, 21).
2. On or about October 24, 1991, in the operating room of the Medical Center of Central Massachusetts, Dr. Chan administered an anesthetic agent to an elderly female patient in preparation for surgery. After administering anesthesia to the patient, Dr. Chan began to argue with the surgeon on that case. Dr. Chan swore at the surgeon and the surgeon threw a prep stick at Dr. Chan. They engaged in a brief scuffle on the operating room floor. The circulating nurse monitored the sleeping patient. After the fight, the two physicians completed the surgery without further incident and without any demonstrated harm to the patient. (State's Exhibit 7 at 60).
3. The Executive Committee of the Board of Trustees of the Medical Center of Central Massachusetts [Executive Committee] held a meeting on March 25, 1992. At that meeting, the Executive Committee considered the conduct of the two physicians. In doing so, the Executive Committee reviewed the written report of Stephen P. Kapaon, M.D., Interim Chair, Department of Anesthesiology, Medical Center of Central Massachusetts. Dr. Kapaon had interviewed the two physicians and read the statements of the operating room personnel who had witnessed the incident. Dr. Kapaon noted that:

[t]he central issue, of which there is no dispute, is that Dr. Chan and [the surgeon] made a critical error in judgment to engage in unquestionably unprofessional behavior that posed a serious threat to patient care. Fortunately, there is no evidence that the patient was harmed in any way by the behavior of the two

physicians. The behavior of both physicians appears to be an aberration; I am not aware of any previous accounts of misconduct.

(State's Exhibit 6 at 2). Dr. Kapaon recommended to the Executive Committee that both physicians be placed on probation for a period of not less than five years. Dr. Kapaon also recommended that any misconduct on the part of either physician during the probationary period should warrant a summary suspension of his hospital privileges. (State's Exhibit 6 at 2).

4. The Executive Committee voted to impose probation for a period of 5 years, through March 25, 1997, on Dr. Chan's hospital privileges. The Executive Committee further determined that if Dr. Chan's conduct during the probationary period should warrant corrective action, the Executive Committee would impose an immediate suspension of all hospital privileges for a minimum period of three months. (State's Exhibit 5 at 5). No clinical supervision or monitoring was ordered as part of the probation. (State's Exhibit 6 at 7).
5. Dr. Chan failed to report the action taken by the Executive Committee to the Massachusetts Board within thirty days as required pursuant to Massachusetts statute. (State's Exhibit 7 at 61). Dr. Chan claimed that he failed to report the action because he was unaware of the requirement to do so since he had never been in a similar situation. (State's Exhibit 7 at 39).
6. On May 19, 1992, the Executive Committee notified the Massachusetts Board of Dr. Chan's conduct and the disciplinary action taken by the medical center. (State's Exhibit 6 at 3-7).
7. The Massachusetts Board filed a Statement of Allegations against Dr. Chan, based on his conduct in the operating room on October 24, 1991. (State's Exhibit 6 at 10). On November 17, 1993, Dr. Chan agreed to a Consent Judgment with the Massachusetts Board. The Consent Judgment set forth the facts (as contained in paragraph 2, above) and Conclusions of Law.

The Massachusetts Board based its disciplinary action on a number of violations, including "conduct which places into question [Dr. Chan's] competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions," and "misconduct in the practice of medicine." (State's Exhibit 6 at 16-18).

The Massachusetts Board ordered Dr. Chan to pay a fine of \$10,000. The Massachusetts Board further ordered that Dr. Chan and the surgeon "present to the Board for its approval a plan for joint psychotherapy to deal with the issues surrounding the conduct described in this Consent Judgment." The

Massachusetts Board also ordered that "the chiefs of the departments of anesthesia and surgery at Medical Center of Central Massachusetts shall submit quarterly reports concerning the behavior and professional performance of Dr. Chan and [the surgeon] for a period of five years after the approval of this Consent Judgment by the Board." (State's Exhibit 6 at 18-19).

The Consent Judgment was later amended to allow Dr. Chan to pay the \$10,000 fine in four installments. (State's Exhibit 7 at 48). There is no evidence of any subsequent amendment.

8. Dr. Chan states that he has "fully honored" the Consent Judgment. He also states that he has practiced with the surgeon involved on numerous occasions and no further incidents have occurred. Dr. Chan notes that he is "very interested in protecting [his] honesty, integrity and good name and, therefore, [does] not wish it be recorded that [he] lost [his] license in the State of Ohio due to disciplinary actions against [him]. Such a move on the part of the State of Ohio would be unnecessary since [he does] not intend to practice in the State of Ohio, and [he is] agreeable to voluntarily surrendering [his] license." (Respondent's Exhibit A).
9. Dr. Chan is licensed to practice medicine in the States of Massachusetts, Ohio, Texas, Georgia, Pennsylvania, Virginia and California. (State's Exhibit 7 at 51). In his 1989 application for renewal of his Massachusetts license to practice medicine, Dr. Chan indicated that he held hospital privileges in locum tenens in various parts of the United States. He also indicated that, during the previous ten years, he had held privileges in various hospitals in Ohio and Texas. (State's Exhibit 7 at 22). In his 1993 application, however, Dr. Chan indicated that he had held a locum tenens position for only a few weeks over the previous two years. (State's Exhibit 7 at 51A).
10. On August 10, 1994, the Commonwealth of Virginia Board of Medicine (Virginia Board) notified Dr. Chan that the Virginia Board intended to investigate whether to discipline Dr. Chan's license to practice medicine in that state based on the Consent Judgment entered into in Massachusetts. (State's Exhibit 7 at 698). The Virginia Board held an informal conference with Dr. Chan on September 14, 1994. (State's Exhibit 7 at 71). No evidence was presented as to the final determination by the Virginia Board.

FINDINGS OF FACT

On or about November 17, 1993, the Massachusetts Board issued a Consent Judgment placing Dr. Chan's license to practice medicine in that state on probation for a period of five years. The Massachusetts Board based its action on Dr. Chan's conduct in the operating room of the Medical Center of Central Massachusetts Medical Center on or about October 24, 1991. At that time, Dr. Chan was involved

in a verbal and physical altercation with the surgeon on the case, after the patient, an elderly woman, had been administered anesthesia. After the scuffle, the surgery was completed without apparent harm to the patient.

CONCLUSIONS

1. The action of the Massachusetts Board constituted "(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: 4731.22(B)(18), Ohio Revised Code, to wit: Principles of Medical Ethics I and IV, American Medical Association."

Section 4731.22(B)(18), Ohio Revised Code, in pertinent part, permits the Board to discipline a physician's certificate to practice medicine for "[t]he violation of any provision of a code of ethics of the American medical association." Principles of Medical Ethics I and IV, American Medical Association, provide that "[a] physician shall be dedicated to providing competent medical service with compassion and respect for human dignity," and "[a] physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law." (See State's Exhibit 1).

Engaging in a "fist-fight" in the operating room after administering anesthesia to a patient is abhorrent conduct for an anesthesiologist. It is clear that Dr. Chan's conduct, upon which the Massachusetts Board based its disciplinary action, violated the Principles of Medical Ethics as noted above.

2. The evidence was insufficient to demonstrate that the action of the Massachusetts Board constituted "(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: 4731 22(B)(6), Ohio Revised Code.

Section 4731.22(B)(6) permits the Board to discipline a physician's certificate to practice medicine for "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established." The State produced evidence only that the Massachusetts Board based its disciplinary action on a number of violations, including "conduct which places

into question [Dr. Chan's] competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions," and "misconduct in the practice of medicine" (emphasis added). The Massachusetts Board did not conclude that Dr. Chan's behavior fell below minimal standards of care; nor did the Massachusetts Board specify whether Dr. Chan committed gross negligence, or gross misconduct, or fraudulent practice. Although it is tempting to conclude that a mid-surgery scuffle with the surgeon demonstrates "[a] departure from, or the failure to conform to, minimal standards of care of similar [anesthesiologists] under the same or similar circumstances," this hearing examiner is unwilling to make such a determination without the benefit of expert testimony. Such a practice could only result in arbitrary and capricious decision-making and undermine the credibility of a Report and Recommendation. Nevertheless, this Board, with its composite expertise, may conclude that Dr. Chan's conduct, and the Massachusetts Board's subsequent action, demonstrates a violation of Section 4731.22(B)(22), Ohio Revised Code, to wit: 4731 22(B)(6).

PROPOSED ORDER

It is hereby ORDERED that:

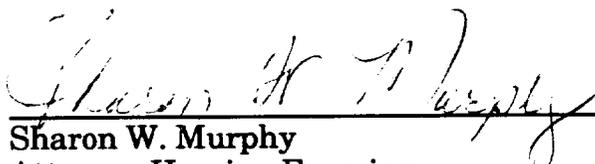
The certificate of Kwok Wei Chan, M.D., to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least four years.

1. Dr. Chan shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio while practicing medicine in this State;
2. At the time of his application for biennial medical licensure renewal in this State, Dr. Chan shall submit declarations stating whether he has complied with all the terms and conditions of his probation in this State and with all terms, conditions, or limitations imposed by any other state medical board;
3. Dr. Chan shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation contained in the terms and conditions of his probation or with any term, condition, or limitation imposed by any other state medical board;
4. Dr. Chan shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by any other state medical board;

5. Dr. Chan shall notify the Board of any restriction to any certificate to practice medicine held by Dr. Chan which is imposed as a direct result of this Order; Dr. Chan shall so advise the Board and shall provide acceptable documentation verifying the same;
6. Dr. Chan shall cause to be submitted to the Board copies of the quarterly reports that the chief of the department of anesthesia at the Medical Center of Central Massachusetts submits to the Massachusetts Board for so long a time as the Massachusetts Board requires such submission;
7. Dr. Chan shall cause to be submitted to the Board the plan for joint psychotherapy dealing with the issues surrounding the conduct described in the Massachusetts Consent Judgment, and documentation of compliance with such plan;
8. Dr. Chan shall refrain from commencing practice in Ohio without prior written Board approval; Dr. Chan may be placed under terms, conditions, or limitations by the Board as the Board deems reasonable and appropriate should Dr. Chan commence practice in this state;
9. Dr. Chan shall provide a copy of this Order to all employers in Ohio and to the chief of staff at each hospital in Ohio where he has, applies for, or obtains privileges;
10. If Dr. Chan violates probation in any respect, the Board, after giving Dr. Chan notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Chan's certificate to practice.

Upon successful completion of probation, Dr. Chan's certificate will be fully restored.

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


Sharon W. Murphy
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

EXCERPT FROM THE DRAFT MINUTES OF APRIL 12, 1995

REPORTS AND RECOMMENDATIONS

Dr. Garg announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Garg asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Sheila A. Barnes, D.O.; Stanley E. Broadnax, M.D.; Kwok Wei Chan, M.D.; Frank DiBenedetto, D.O.; Naba Goswami, M.D.; Sam Hill, D.O.; Don R. Johnson, M.D.; William Patrick Mooney, D.O.; Harvey M. Rodman, M.D.; Kevin Smith, P.A.; And Steve Shu-Tzu Young, M.D. A roll call was taken:

Dr. Garg 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. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye
	Dr. Garg	- aye

In accordance with the provision in Section 4731.22(C)(1), 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 this matter. Carla S. O'Day, M.D., was the Secretary involved in supervision of the cases under consideration this date.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

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All Assistant Attorneys General and all Enforcement Coordinators left the meeting at this time.

REPORT AND RECOMMENDATION IN THE MATTER OF KWOK WEI CHAN, M.D.

.....

DR. STIENECKER MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF KWOK WEI CHAN, M.D. DR. STEINBERGH SECONDED THE MOTION.

.....

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

December 7, 1994

Kwok Wei Chan, M.D.
5 Northland Road
Shrewsbury, MA 01545

Dear Doctor Chan:

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

- (1) On or about November 17, 1993, the Massachusetts Board of Registration in Medicine issued a Consent Judgment placing you on a five-year probation based upon your conduct in the operating room of the Medical Center of Central Massachusetts on or about October 24, 1991. A copy of the Consent Judgment is attached hereto and fully incorporated herein.

The November 17, 1993 Consent Judgment as alleged in paragraph (1) above constitutes "(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: 4731.22 (B)(6), Ohio Revised Code and (B)(18) to wit: Principles of Medical Ethics I and IV, American Medical Association.

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 (30) days of the time of mailing of this notice.

You are further advised that 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.

Mailed 12/8/94

December 7, 1994

Chan
Page 2

In the event that there is no request for such hearing received within thirty (30) 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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Carla S. O'Day, M.D.
Secretary

CSO:bjm

Enclosures:

CERTIFIED MAIL # P 348 888 286
RETURN RECEIPT REQUESTED

cc: Richard T. Tucker, Esq.
370 Main St., Suite 1150
Worcester, MA 01608-1776

CERTIFIED MAIL # P #348 885 591
RETURN RECEIPT REQUESTED

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Board of Registration
in Medicine

Adjudicatory Case
No. 94-19-XX

_____)
)
 In the Matter of)
)
 Kwok Wei Chan, M.D. and)
)
 Mohan Korgaonkar, M.D.)
 _____)

CONSENT JUDGMENT

Facts of the Case

1. Kwok Wei Chan, M.D. (Dr. Chan) is a 1976 graduate of the University of Cambridge Faculty of Medicine and has been licensed to practice medicine in Massachusetts since 1979. He holds certificate number 43820. A board-certified anesthesiologist, he has privileges at the Medical Center of Central Massachusetts. His date of birth is October 18, 1950.

2. Mohan Korgaonkar, M.D. (Dr. Korgaonkar) is a 1967 graduate of Armed Forces Medical College in India and has been licensed to practice medicine in Massachusetts since 1976. He holds certificate number 40284. He is a board certified general surgeon with privileges at Medical Center of Central Massachusetts, University of Massachusetts Medical Center and Worcester City Hospital. His date of birth is July 18, 1944.

3. On or about October 24, 1991, Dr. Chan and Dr. Korgaonkar were in an operating room at the Medical Center of Central Massachusetts where Dr. Korgaonkar was about to commence a surgical procedure on an elderly woman at about 9 p.m. Dr. Chan was to be the anesthesiologist.
4. The two men began to argue. Dr. Chan swore at Dr. Korgaonkar.
5. Dr. Korgaonkar threw a prep stick at Dr. Chan.
6. The two men raised their fists at each other and then scuffled briefly on the operating room floor. During this time, the circulating nurse monitored the patient, who was asleep.
7. The two physicians soon got off the floor and prepared to begin the surgery.
8. The surgery began about 9:30 p.m. and was completed without further incident.
9. Following an investigation of this incident, the hospital placed both physicians on five years' probation.
10. Both physicians failed to report the hospital's disciplinary action to the Board within 30 days.

Conclusions of Law

A. Pursuant to G. L. c. 112, sec. 5 (c) and 243 CMR 1.03(5)(a)3, the Board may discipline Dr. Chan and Dr. Korgaonkar for conduct which places into question their competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized

scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions.

B. Pursuant to 243 CMR 1.03(5)(a)11, the Board may discipline these physicians for violation of any rule or regulation of the Board.

C. Pursuant to 243 CMR 2.07(6), a licensee is required to notify the Board of any restriction or termination of his hospital privileges, other than restriction or termination for minor administrative reasons, within thirty days of its occurrence.

D. Pursuant to 243 CMR 1.03(5)(a)15, the Board may discipline these physicians for failure to report to the Board, within the time period prescribed by law or regulation, any disciplinary action taken against the licensee by another licensing jurisdiction (United States or foreign), by any health care institution, by any professional or medical society or association, by any government agency, by any law enforcement agency, or by any court for acts or conduct substantially the same as acts or conduct which would constitute grounds for complaint as defined in this section.

E. Pursuant to 243 CMR 1.03(5)(a)18, the Board may discipline these physicians for misconduct in the practice of medicine.

F. Pursuant to Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982) and Levy v. Board of

Registration in Medicine, 378 Mass. 519 (1979), the Board may discipline these physicians for conduct which undermines public confidence in the integrity of the medical profession or for conduct which shows lack of good moral character.

The sanction below is imposed for the violations listed in Conclusions of Law A through F above and not on a combination of any or all of them.

Sanction

Dr. Chan and Dr. Korgaonkar are hereby admonished for their conduct as described in this Consent Judgment.

They are hereby ordered to do the following:

1. Within 30 days of the approval of this Consent Judgment by the Board, Dr. Chan and Dr. Korgaonkar shall each pay a fine of ten thousand dollars (\$10,000.00) to the Board.
2. Within 30 days of the approval of this Consent Judgment, they shall present to the Board for its approval a plan for joint psychotherapy to deal with the issues surrounding the conduct described in this Consent Judgment. In addition to and simultaneously with submission of the plan, Dr. Chan and Dr. Korgaonkar shall provide to the Board for its approval, the name of the psychotherapist who shall perform the psychotherapy. This joint psychotherapy shall continue until the Board approves its termination. All expenses of the psychotherapy shall be paid by Dr. Chan and Dr. Korgaonkar in equal shares.
3. The chiefs of the departments of anesthesia and surgery at Medical Center of Central Massachusetts shall submit

quarterly reports concerning the behavior and professional performance of Dr. Chan and Dr. Korgaonkar for a period of five years after the approval of this Consent Judgment by the Board.

Execution of This Consent Judgment

The parties agree that approval of this Consent Judgment is left to the discretion of the Board. The signatures of Dr. Chan, Dr. Korgaonkar and Complaint Counsel are expressly conditioned upon the Board accepting this Consent Judgment in its entirety. If the Board rejects any part of this Consent Judgment, then the entire document shall be null and void and neither the parties nor anyone else may rely on the Consent Judgment, or any parts thereof in this proceeding, in any appeal from this proceeding or in any other proceeding.

As to any matter this Consent Judgment leaves to the discretion of the Board, neither Dr. Chan, Dr. Korgaonkar, nor anyone else acting on their behalf has received any promises or representations regarding same.

Doctor Chan and Dr. Korgaonkar waive any right of appeal they may have resulting from the Board's acceptance of this Consent Judgment.

The Respondents are hereby ordered to provide any employer or health care facility with which either of them has any appointment, privileges or other association, with a copy of this Consent Judgment, by certified mail, return

receipt requested, and the Respondents are further directed to certify to the Board within ten (10) days that they have complied with this directive.

Richard E. Waring

Richard E. Waring
Complaint Counsel
Board of Registration
in Medicine
10 West Street
Boston, Massachusetts 02111
(617) 727-1788

Kw Chan

Kwok Wei Chan, M.D.

Mohan Korgaonkar, M.D.

Approved by the Board of Registration in Medicine
this 17 day of November, 1993.

Paul G. Gitlin

Paul G. Gitlin, J.D.

*Notified
11/18/93
11/18/93*

STATE MEDICAL BOARD
91 NOV 23 11 13 AM '93

PRINCIPLES OF MEDICAL ETHICS

PREAMBLE:

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility not only to patients, but also to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.

- I. A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.
- II. A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- IV. A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law.
- V. A physician shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical services.
- VII. A physician shall recognize a responsibility to participate in activities contributing to an improved community.