

FILED

Dec 30, 2002

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
DOCKET NO.

IN THE MATTER OF THE SUSPENSION) OR REVOCATION OF THE LICENSE OF)	Administrative Action
))
SUNG JONG PAHNG, M.D.)	FINAL ORDER
LICENSE NO. MA67722)	OF DISCIPLINE
))
TO PRACTICE MEDICINE AND SURGERY)	
IN THE STATE OF NEW JERSEY)	
)	

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Respondent, Sung Jong Pahng, M.D., license No. MA67722, is a physician licensed in the State of New Jersey and has been a licensee at all times relevant hereto. As a consequence of Respondent's failure to submit his license renewal in 1999, Respondent's license to practice medicine in the State of New Jersey was automatically suspended pursuant to N.J.S.A. 45:9-6.1, which allows for reinstatement upon payment of certain fees.

2. On December 17, 2001, a Consent Agreement and Order was entered between Respondent and the New York Board for Professional Medical Conduct. Respondent was charged with one specification of professional misconduct. Specifically, on or

CERTIFIED TRUE COPY

about April 23, 2001, Respondent was found guilty of Tax Evasion, in violation of Title 26 United States Code, Section 7201 in the United States District Court, Southern District of New York. Thereafter, Respondent was sentenced to five years probation, a fine of \$250,000, payment of \$100 mandatory special assessment, and there was a requirement to perform two thousand (2,000) hours of community service. A copy of the criminal documents is attached as Exhibit A.

3. Thereafter, on December 20, 2001, a Consent Order was entered by the New York Department of Health, State Board for Professional Medical Conduct, wherein Respondent was found to be in violation of New York Education Law since he was convicted of committing an act constituting a crime under federal law. A penalty was imposed which included five years suspension stayed; five years probation, to run concurrent with the probation imposed upon Respondent, on April 23, 2001, by the United States District Court, Southern District of New York, to include that Respondent perform the community service imposed thereby; and a fine of \$5,000. A copy of the New York Order #BPMC 01-315 is attached as Exhibit A.

CONCLUSIONS OF LAW

1. The above New York Order provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g)

in that New York has imposed a stayed suspension upon his license to practice medicine.

2. The above criminal conviction for a crime involving moral turpitude or relating adversely to the activity regulated by the Board provides grounds to take disciplinary action pursuant to N.J.S.A. 45:1-21(f).

Based on the foregoing findings and conclusions, a Provisional Order of Discipline suspending respondent's license to practice medicine and surgery in the State of New Jersey, and staying such suspension to be served as a period of probation was entered on July 26, 2002 and a copy was forwarded to respondent at the last known address on file with the Board. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

Although the record reflects that the Provisional Order was served upon respondent, no response has been received to date. Accordingly, the Board considered the matter, determined that

further proceedings were not necessary and the Provisional Order should be made final.

ACCORDINGLY, IT IS on this 30th day of Dec 2002, ORDERED that:

1. Respondent's license to practice medicine in the State of New Jersey be and hereby is suspended for a period of five years, said suspension to be stayed and is to be served as a five year period of probation to run concurrent with the period of probation imposed by the United States District Court, Southern District of New York.

2. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a committee thereof) to demonstrate fitness to resume practice, and any practice in this State prior to said appearance shall constitute grounds for the charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on Respondent's practice should his license be reinstated.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

William V. Harrer MD BLD

By: _____
William V. Harrer, M.D., B.L.D.
Board President

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

6-1

----- x

UNITED STATES OF AMERICA :

- v. - : INFORMATION

SUNG J. PAHNG, : 00 Cr.

Defendant. :

----- x

COUNT ONE

The United States Attorney charges:

Tax Evasion

1. From in or about each of the calendar years set forth below, through on or about each of the filing dates set forth below, in the Southern District of New York and elsewhere, SUNG J. PAHNG, the defendant, unlawfully, wilfully, and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar years 1997 and 1998 by preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed with the Internal Revenue Service ("IRS"), false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, on behalf of himself, wherein SUNC J. PAHNG, the defendant, failed to report income from a medical facility, whereas, as PAHNG then and there well knew and believed, the tax due and owing for the calendar years 1997 and 1998 was substantially in

EXHIBIT A



excess of the amounts reported, as set forth below:

<u>Calender</u> <u>Year</u>	<u>Filing</u> <u>Date</u>	<u>Reported</u> <u>Taxable</u> <u>Income</u>	<u>Reported</u> <u>Taxes Due</u> <u>And Owing</u>	<u>Actual</u> <u>Taxable</u> <u>Income</u>	<u>Actual</u> <u>Taxes Due</u> <u>And Owing</u>
1997	4/15/98	\$403,175	\$158,634	\$479,834	\$191,072
1998	8/19/99	\$970,259	\$399,242	\$1,114,154	\$460,016

(Title 26, United States Code, Section 7201.)

Mary Jo White
MARY JO WHITE
United States Attorney



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

September 18, 2000

BY TELECOPY and U.S. MAIL
Randy M. Mastro, Esq.
Daniel J. Fetterman, Esq.
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166-0193

Re: United States v. Sung J. Pahng
00 Cr. 1194

Gentlemen:

This prosecution and the protection against prosecution, with respect to tax offenses, set forth below have been approved by the Tax Division, Department of Justice.

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from SUNG J. PAHNG ("the defendant") to the above-referenced one-count criminal Information. That Information charges the defendant with income tax evasion, in violation of Title 26, United States Code, § 7201, and carries a maximum sentence of 5 years' imprisonment, a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to the United States, a \$100 special assessment, supervised release of three years, and the costs of prosecution. In addition to the foregoing, the Court may also order restitution as a condition of probation or supervised release.

It is understood that, to the extent he has not already done so, prior to the date of sentencing, the defendant shall file accurate amended personal tax returns for the calendar years 1997 and 1998. In addition, to the extent he has not already done so, the defendant will pay past taxes due and owing to the Internal Revenue Service ("IRS") by him for calendar years 1997 and 1998, including any applicable penalties on such terms and conditions as will be agreed upon between the defendant and the IRS. In addition, SUNG J. PHANG, will not contest the applicability of civil fraud penalties.

Randy A. Mastro, Esq.
Daniel J. Fetterman, Esq.
September 18, 2000
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In consideration of his plea to the above offense, the defendant will not be further prosecuted criminally by this Office and, with respect to tax offenses, the Tax Division, Department of Justice, for any crimes relating to his (failure to report as income payable in tax years 1997 and 1998 income he received from a medical facility. This Agreement does not provide any protection against prosecution except as set forth) above. The defendant agrees that he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

In consideration of the foregoing and pursuant to Sentencing Guidelines § 6E1.4, the parties hereby stipulate to the following:

A. Offense Level

1. Because the offense charged in the Information involved a tax loss, the base offense level is determined with reference to tax table set forth in Guidelines Section 2T4.1. See U.S.S.G. § 2T1.1(a).

2. Pursuant to Section 2T1.1(c), the tax loss is treated as equal to 28% of the defendant's underreported gross income, unless a more accurate determination of the tax loss can be made. See U.S.S.G. § 2T1.1(c)(1), comment. (n.1). In the present case, the actual tax loss is more than \$70,000, but less than \$120,000. Accordingly, the defendant's base offense level is 14.

3. Assuming the defendant pleads guilty and allocutes to the satisfaction of the Court, the defendant will have demonstrated a recognition and an affirmation of personal responsibility for his criminal conduct, warranting a 2 level decrease in his offense level pursuant to U.S.S.G. § 3E1.1(a).

In accordance with the above, the applicable Guidelines offense level is 12.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history.

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Daniel J. Fetterman, Esq.
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In accordance with the above, the defendant's Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated sentencing Guidelines range is 10 to 16 months. In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to §5E1.2. At Guidelines level 12, the applicable fine range is \$3,000 to \$30,000.

D. Other Agreements

The defendant reserves the right to move for a downward departure from the above Guidelines range, pursuant to Sentencing Guidelines § 5K2.0, on the basis of PAHNG's extraordinary charitable contributions and public service to the New York Korean community. The Government reserves the right to oppose a motion for a downward departure on this basis. The parties agree that, other than as set forth above, neither a downward nor an upward departure from the stipulated Sentencing Guidelines range is warranted. Accordingly, other than as set forth above, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court sua sponte consider such a departure or adjustment.

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and PAHNG, nothing in this agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Sentencing range set forth above (or such other range as the Court may determine) the defendant should be sentenced; or (iii) to seek an appropriately adjusted Sentencing range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, see U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, see U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this agreement.

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It is understood that pursuant to Sentencing Guidelines § 6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is further agreed (i) that the defendant will neither appeal, nor otherwise litigate under Title 28, United States Code, Section 2255, any sentence within or below the stipulated Sentencing range and (ii) that the Government will not appeal any sentence within or above the stipulated Sentencing range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation.

The defendant hereby acknowledges that he has accepted this plea Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on appeal or collaterally, on the ground that the Government has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and impeachment material pursuant to Gioglio v. United States, 405 U.S. 150 (1972) that has not already been produced as of the date of the signing of this agreement.

It is further agreed that should the conviction following PHANG's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced or reinstated

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Daniel J. Fetterman, Esq.
September 18, 2000
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against PAHNG, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed. It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office and, to the extent set forth above, the Tax Division, Department of Justice.

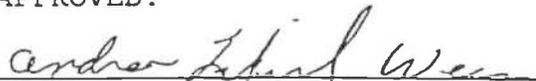
Apart from any written Proffer Agreement(s) that may have been entered into between this Office, the Tax Division, Department of Justice and PAHNG, this Agreement supersedes any prior understandings, promises, or conditions between this Office, the Tax Division, Department of Justice and PAHNG. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

MARY JO WHITE
United States Attorney

By: 
Joseph V. De Marco
Assistant United States Attorney

APPROVED:

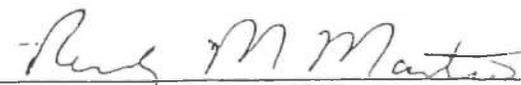

Andrea Likwornik Weiss
Acting Chief, Major Crimes Unit

AGREED AND CONSENTED TO:


SUNG J. PAHNG

12-18-00
DATE

APPROVED:


Attorney for PAHNG

12/14/00
DATE

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA,

4 v.

00 Cr. 1194 (GBD)

5 SUNG JONG PAHNG,

6 Defendant.

7 -----x

New York, N.Y.
December 14, 2000
11:45 a.m.

10 Before:

11 HON. GEORGE B. DANIELS,

12 District Judge

13 APPEARANCES

14 MARY JO WHITE
15 United States Attorney for the
Southern District of New York
16 BY: JOSEPH DeMARCO
Assistant United States Attorney

17 GIBSON, DUNN & CRUTCHER LLP
18 Attorneys for Defendant
19 BY: RANDY MASTRO
DANIEL J. FETTERMAN

20
21
22
23
24
25

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA,

4 v.

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5 SUNG JONG PAHNG,
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9 December 14, 2000
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14 MARY JO WHITE
15 United States Attorney for the
Southern District of New York
16 BY: JOSEPH DeMARCO
Assistant United States Attorney

17 GIBSON, DUNN & CRUTCHER LLP
18 Attorneys for Defendant
19 BY: RANDY MASTRO
DANIEL J. FETTERMAN

20

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please identify
3 yourselves for the record starting with the government.

4 MR. DeMARCO: Joseph DeMarco for the government.
5 Good afternoon.

6 THE COURT: Good morning.

7 MR. DeMARCO: With me is Stephen Minikel of the FBI.

8 MR. MASTRO: Randy Mastro and Dan Fetterman for Mr.
9 Pahng.

10 THE COURT: Good morning.

11 Let me first start with you, Mr. DeMarco. What is
12 the status at this point?

13 MR. DeMARCO: I believe there is an application by
14 the defense.

15 THE COURT: Let me turn to you, Mr. Mastro.

16 MR. MASTRO: At this time, your Honor, pursuant to a
17 plea agreement with the government, the defendant wishes to
18 enter a plea. I believe your Honor has been handed a copy of
19 that plea agreement.

20 THE COURT: That's a plea to?

21 MR. DeMARCO: The single count of the single count
22 information.

23 THE COURT: Why don't we swear in Mr. Pahng.

24 (Defendant sworn)

25 THE COURT: First of all, Mr. Pahng, do you

1 understand that you are now under oath, and if you answer any
2 of my questions falsely, your false or untrue answers may
3 later be used against you in another prosecution for perjury
4 or making a false statement? Do you understand that?

5 THE DEFENDANT: Yes, I do, your Honor.

6 THE COURT: Now, your attorney has just indicated to
7 me that you wish to withdraw your plea of not guilty and enter
8 a plea of guilty to the one count of the information in this
9 case. Is that what you wish to do?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How old are you, Mr. Pahng?

12 THE DEFENDANT: 38 years old.

13 THE COURT: What is your full name?

14 THE DEFENDANT: Sung Jong Pahng.

15 THE COURT: How far did you go in school?

16 THE DEFENDANT: I went to college, medical school,
17 and I finished my training and residency, and I am board
18 certified in physical medicine and rehabilitation.

19 THE COURT: Are you now or have you recently been
20 under the care of a doctor or psychiatrist?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you ever been treated or
23 hospitalized for mental illness or any type of addiction,
24 including drug or alcohol addiction?

25 THE DEFENDANT: No.

1 THE COURT: In the past 24 hours, have you taken any
2 drugs, medicine or pills, or have you drunk any alcohol?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Is your mind clear today?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are you feeling OK today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, do either counsel have any doubt as
9 to the defendant's competence to plead at this time?

10 MR. DeMARCO: None from the government, your Honor.

11 MR. MASTRO: None, your Honor.

12 THE COURT: Mr. Mastro, your attorney, has informed
13 me that you wish to withdraw your plea of not guilty to Count
14 One of this information and enter a plea of guilty to that
15 count. Is that in fact what you wish to do today?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Have you had a full opportunity to
18 discuss your case with your attorney and to discuss the
19 consequences of entering a plea of guilty?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Are you satisfied with your attorney, Mr.
22 Mastro, in this case and his representation of you?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: On the basis of Mr. Pahng's responses to
25 my questions and my observations of his demeanor, I find that

1 he is fully competent to enter an informed plea at this time.

2 Now, Mr. Pahng, before I accept any plea from you, I
3 am going to ask you certain questions, and my questions are
4 intended to satisfy me that you wish to plead guilty because
5 you are guilty and that you fully understand the consequences
6 of your plea. If you do not understand any of my questions,
7 stop me, and either ask me or your attorney for a further
8 explanation. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, I am going to describe to you
11 certain rights that you have under the Constitution and laws
12 of the United States. You will be giving up these rights if
13 you enter a plea of guilty. Please listen carefully because
14 at the end of my description of your rights, I will ask you
15 whether you have fully understood what I have said.

16 First of all, you have indicated you wish to plead
17 guilty to this information. Have you received a copy of the
18 information?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you read it?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you discuss that information with
23 your attorney?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that you have a

1 constitutional right to be charged by an indictment rather
2 than an information? An indictment would be from a grand jury
3 and not like this information which is simply a charge by the
4 prosecutor. Do you understand that you have waived your right
5 to be charged by an indictment and you have consented to being
6 charged by this information by the government? Do you
7 understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you waive that right voluntarily and
10 knowingly?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Now, under the Constitution and laws of
13 the United States, you would have a right to a speedy and
14 public trial by a jury on the charge against you which is
15 contained in this information. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If there were a trial, you would be
18 presumed innocent and the government would be required to
19 prove your guilt by competent evidence and beyond a reasonable
20 doubt. You would not have to prove that you were innocent at
21 trial. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If there were a trial, you would have the
24 right to be represented by an attorney, and if you could not
25 afford one, an attorney would be provided to you free of cost

1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: If there were a trial, you would have a
4 right to see and hear all of the evidence against you and your
5 attorney could cross-examine those witnesses, and you would
6 have a right to have your attorney object to the government's
7 evidence and offer evidence in your behalf, if you so desired,
8 and you would have the right to have subpoenas issued or other
9 compulsory process used to compel witnesses to testify in your
10 defense. Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: If there were a trial, you would have the
13 right to testify if you wanted to, but no one could force you
14 to testify if you did not want to. Furthermore, no inference
15 or suggestion of guilt could be drawn if you chose not to
16 testify at trial. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand each and every one of
19 these rights that I have just informed you of?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that by entering a plea
22 of guilty today, you are giving up each and every one of these
23 rights and that you are waiving these rights and that you will
24 have no trial? Do you understand all of that?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Do you understand that you can change
2 your mind right now and refuse to enter a plea of guilty, you
3 do not have to enter this plea if you do not want to for any
4 reason, do you understand that fully?

5 THE DEFENDANT: Yes, your Honor. !

6 THE COURT: Now, the information in this case charges
7 one count of income tax evasion in violation of Title 26,
8 United States Code, Section 7201. Do you understand the
9 nature of those charges against you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that the government
12 would have to prove each and every part or element of that
13 charge beyond a reasonable doubt at trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that the maximum
16 sentence for this crime is a maximum of five years'
17 imprisonment; a maximum fine of up to \$250,000 or twice the
18 gross pecuniary gain derived from the offense or twice the
19 gross pecuniary loss to the United States, plus a \$100 special
20 assessment, and supervised release of three years, and
21 possibly the cost of prosecution? Do you understand that
22 those are the maximum penalties that can be imposed?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Now, supervised release means that you
25 will be subject to monitoring when you are released from

1 prison, if you are sentenced to prison, and said monitoring
2 would be under terms and conditions which could lead to
3 reimprisonment without a jury trial if you violated those
4 conditions of your release. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you further understand if you are a
7 citizen of the United States, and I accept your guilty plea
8 and adjudge you guilty, that adjudication might deprive you of
9 valuable civil rights, such as the right to vote, the right to
10 hold public office, the right to serve on a jury and the right
11 to possess any kind of firearm? Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you also understand if you are not a
14 citizen of the United States, and I accept your guilty plea
15 and adjudge you guilty, that adjudication may subject you to
16 deportation or deprive you of the right to apply for United
17 States citizenship or to reenter this country? Do you
18 understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand if you are sentenced to
21 prison; parole has been abolished and you will therefore not
22 be released any earlier because of parole?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Under current law there are sentencing
25 guidelines that judges must follow in determining your

1 sentence. Have you talked with your attorney about the
2 sentencing guidelines?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that although there is
5 a calculation of the guideline range contained in the plea
6 agreement, the court will not be able to determine your
7 guideline sentence range until after a presentence report has
8 been completed by the Probation Department and you and the
9 government have had a chance to challenge any of the factual
10 parts of the probation office report?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you further understand even after it's
13 determined what guideline range applies in your case, I have
14 the authority in some circumstances to impose a sentence that
15 is higher or lower than the sentence called for by the
16 guidelines? Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that if your attorney
19 or the attorney for the government has attempted to estimate
20 or predict what your sentence will in fact be, their estimate
21 or prediction could be wrong?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: No one, not even your attorney or the
24 government's attorney, can, nor should they, give you any
25 assurance of what exactly your sentence will be since, as I

1 have just said, that sentence cannot be determined until after
2 the probation office report is completed and I have ruled on
3 the challenges to the report, if any, and I have determined
4 whether I believe there are grounds to depart up or down from
5 the guideline range. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you also fully understand even if your
8 sentence is different from what your attorney or anyone else
9 told you it might be, or if it's different from what you
10 expect, you will still be bound by your guilty plea and you
11 will not be allowed to withdraw your guilty plea on that
12 basis? Do you understand?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand that by this plea
15 agreement, I believe page 4 of the plea agreement, that you
16 are giving up or waiving your right to appeal if I sentence
17 you within the guideline range as set forth in the plea
18 agreement, and, likewise, the government is giving up their
19 right to appeal if you are sentenced within that range? Do
20 you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: So, basically, if the sentence is not
23 above the range calculated in the plea agreement, you have
24 given up your right to appeal, and if the sentence is not
25 below what is calculated in the plea agreement, the government

1 is giving up their right to appeal. Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Now, as I have been referring to, I have
4 been given this letter plea agreement. Did you read this
5 agreement before you signed it? !

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did you discuss it with your attorney
8 before you signed it?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Did you fully understand the agreement
11 before you signed it?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Is that your signature on this agreement

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Does this letter agreement constitute
16 your complete and total understanding of the entire agreement
17 as signed by the government, your attorney and you?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Is everything you understand about your
20 plea and sentence contained in this agreement?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Has anything been left out, to your
23 knowledge?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Now, has anyone offered you any

1 inducements or threatened you or forced you to plead guilty or
2 to enter into this plea agreement?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Mr. Mastro, do you know of any valid
5 defense that would prevail at trial or do you know of any
6 reason why your client should not be permitted to plead guilty
7 at this time?

8 MR. MASTRO: No, your Honor.

9 THE COURT: Mr. Mastro, please tell me what you did in
10 connection with the charge in this information, the crime
11 alleged in this information to which you are entering a plea
12 of guilty, that makes you guilty of that crime.

13 THE DEFENDANT: Your Honor, I am a medical doctor and
14 in the tax years of 1997 and 1998, I received money from a
15 medical facility which I knew was income that I should have
16 declared on my tax return. At that time, I was going through
17 a difficult time in my life, both personal and financial, so I
18 decided not to declare that income on my tax return. Although
19 I did not keep an exact record of the amount, the approximate
20 amount for 1997 is 77,000 and 1998 is \$144,000.

21 I know that this was wrong, and I deeply, deeply
22 regret making this mistake, your Honor.

23 THE COURT: When you committed these acts, did you do
24 them willfully and knowingly?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did you do them with an intent to evade
2 the income tax due?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: When you committed these acts, did you
5 know what you were doing was wrong and illegal?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Mr. DeMarco, would you just summarize the
8 government's evidence against the defendant?

9 MR. DeMARCO: I would be happy to, your Honor.

10 Before I do, though, your Honor, may I just point out
11 two additional things?

12 THE COURT: Sure.

13 MR. DeMARCO: First, that by and through the plea
14 agreement, Mr. Pahng may be subject, may be subject to
15 restitution penalties as well. I don't know how that's going
16 to play out in this case, but I just wanted Mr. Pahng to
17 understand that.

18 He should also understand that not only would he have
19 the right to trial counsel if he could not afford counsel,
20 counsel would be appointed for him at any point in the
21 proceeding, pretrial, post-trial, and I just wanted that to be
22 on the record as well and make sure Mr. Pahng understood that.

23 THE COURT: Do you understand those two points, Mr.
24 Pahng?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Mr. Mastro.

2 MR. MASTRO: I just wanted to say we don't contest
3 that they would have had adequate evidence. Dr. Pahng has
4 just given an allocution that fully covers the subject, and he
5 has acknowledged his crime and that what he did was wrong and
6 he had intent to do that. Under those circumstances, we
7 believe there is an adequate allocution and your Honor has
8 asked all the right questions, so there is no question whether
9 the government would have been able to prove the case. So I
10 suggest to your Honor we need not burden the court with
11 additional record making when Dr. Pahng has already given an
12 adequate allocution, more than adequate, to express his
13 contrition for the crime that he committed, your Honor.

14 THE COURT: Is that plea acceptable to the
15 government?

16 MR. DeMARCO: I will represent to the court that the
17 government could make out a prima facie case of guilt on the
18 charge alleged against Mr. Pahng, and that that evidence would
19 be the traditional evidence that one would see in court, which
20 would include witness statements, documentary evidence and the
21 like.

22 THE COURT: Mr. Pahng, how do you now plead to the
23 charge, guilty or not guilty?

24 THE DEFENDANT: Guilty, your Honor.

25 THE COURT: Are you pleading guilty because you are

1 in fact guilty?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Are you pleading guilty voluntarily and
4 of your own free will?

5 THE DEFENDANT: Yes, your Honor. !

6 THE COURT: Because you have acknowledged that you
7 are guilty as charged in the information, because you know
8 your rights and are waiving them, because your plea is entered
9 knowingly and voluntarily and is supported by an independent
10 basis in fact containing each of the essential elements of the
11 offense, I accept your guilty plea and adjudge you guilty of
12 the offense to which you have pled.

13 Now, Mr. Pahng, the probation office will next
14 prepare a presentence report to assist me in sentencing you.
15 You will be interviewed by the probation office and it's
16 important that the information you give to the probation
17 officer be truthful, accurate and complete. Aside from your
18 guilty plea today, your meeting with the probation officer
19 provides you a further opportunity to demonstrate recognition
20 and acceptance of personal responsibility for your crime.
21 Such recognition and acceptance by you is important in
22 calculating and determining your sentence.

23 Now, the report is, accordingly, important in my
24 decision as to what your sentence will be. You and your
25 attorney have a right and will have an opportunity to examine

1 the report and challenge or comment upon it and speak on your
2 behalf before sentence. I will also hear from the attorney
3 for the government at that time.

4 Let me set a date for sentence. How is Tuesday,
5 March 13, at 10 o'clock? !

6 MR. DeMARCO: Yes.

7 MR. MASTRO: Fine, your Honor.

8 THE COURT: Then I will see you on that date.

9 Is there anything else that we need to address today?

10 MR. DeMARCO: Not from the government's point of
11 view.

12 MR. MASTRO: Just one other point I wanted to make
13 for the record, your Honor, because the government and the
14 defendant agreed as part of this plea agreement that the
15 defendant reserves the right to move for a downward departure
16 based on Dr. Pahng's extraordinary charitable works and
17 contributions to his community. And we intend to do that,
18 your Honor, because we believe it would be a shame for such a
19 fine doctor and philanthropist, who has given so much to that
20 community and is so valuable to that community, that he should
21 have a sentence that would involve him having to be pulled out
22 of that community. So we will be making that application and
23 I want the court to be aware of that.

24 MR. DeMARCO: The government reserves its right to
25 oppose that and, obviously, all of the understandings and

1 promises relating to that are contained in the plea agreement.

2 THE COURT: So, I assume at this point that the March
3 13 date is enough time for both sides to fully put before me
4 before that time what you would like me to consider, so the
5 earliest you can get me submissions on that before sentence
6 the better. I will try to get a presentence report as early
7 as possible and then I will hear all sides on March 13. If
8 for some reason you need more time or there is something else
9 you want me to consider, just let me know as early as
10 possible.

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA,

4 v.

00 Crim. 194 (GBD)

5 SUNG J. PAHNG,

6 Defendant.

7 -----x

April 23, 2001
10:20 a.m.

9 Before:

10 HON. GEORGE B. DANIELS,

11 District Judge

12 APPEARANCES

13 MARY JO WHITE
14 United States Attorney for the
Southern District of New York
15 JOSEPH DE MARRO,
Assistant United States Attorney

16 GIBSON, DUNN & CRUTCHER,
17 Attorneys for Defendant

BY: RANDY MASTRO
18 BY: DANIEL J. FETTERMAN,
BY: KATHRYN E. NEALON

19 Also present:
20 Glen Rosen,
John Katsoulaki,
21 Internal Revenue Service Special Agents

22
23
24
25

1 (In open court; case called)

2 MR. DE MARRO: Good morning, Judge, Joseph DeMarro
3 for the government. With me are IRS Special Agents Glenn
4 Rosen and John Katsoulaki. Good morning.

5 THE COURT: Good morning, Mr. DeMarro.

6 MR. MASTRO: Good morning, your Honor, Randy Mastro
7 from Gibson, Dunn & Crutcher, with my client, Dr. Pahng. And
8 my colleagues Dan Fetterman and Katy Nealon.

9 THE COURT: First of all, let me apologize for the
10 delay, I really wanted to spend a little bit more time.

11 I received, several weeks ago, the submission by the
12 defense, and received about two weeks ago, I believe, the
13 probation department report. I did receive a letter on Friday
14 from the government, which I have also reviewed. But I wanted
15 to go over the material one more time this morning, the
16 complete material again, before we move forward to sentence.

17 Let me first start with you, Mr. Mastro.

18 You read and reviewed with your client, Mr. Pahng,
19 the presentence report in this case?

20 MR. MASTRO: Yes, your Honor.

21 THE COURT: And, Mr. Pahng, you pled guilty before
22 me, and you are before me for sentencing today.

23 Have you received and read and reviewed with your
24 attorney the resentence report prepared by the probation
25 office?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Mastro, at this point, this time, do
3 you have any objections to the presentence report?

4 MR. MASTRO: No, your Honor.

5 THE COURT: I note there were some corrections,
6 suggestions made to the probation department, and they have
7 indicated they acted on those suggestions.

8 Mr. DeMarro, do you have any objections to the
9 presentence report?

10 MR. DE MARRO: No, your Honor.

11 THE COURT: Let me start with the government.

12 Mr. DeMarro, I have your letter. Would you like to
13 be heard with regard to sentence further on behalf of the
14 government?

15 MR. DE MARRO: Judge, we will rest on that letter.

16 THE COURT: Mr. Mastro, why don't I start with you.
17 Would you like to be heard on behalf of Mr. Pahng?

18 MR. MASTRO: Thank you, your Honor, and I will try
19 to be brief.

20 But in any situation like this, where a man's liber
21 ty is at stake, I must say a few words, because Dr. Pahng is an
22 extraordinary person. I have come to know him well. And I
23 have had the honor of representing many clients, your Honor,
24 and I have been successful in other occasions in seeking a
25 downward departure for other good persons, but I have never

1 represented a person that I believe more disserving for a
2 downward departure, for his extraordinary charitable works fo
3 his community, the Korean community. And the people are here
4 to support him today, because he is such a vital part of that
5 community.

6 Your Honor, Dr. Pahng made a mistake, he has admitted
7 his offense, he is extremely remorseful for that offense.

8 But I am reminded, your Honor, of the words of
9 another wise judge in this district, that granted a downward
10 departure to another physician, oh, so vital to his community
11 He noted that life is like a ledger. On one side of the
12 ledger is the mistakes he made, and Dr. Pahng acknowledged the
13 mistakes he made; and on the other side of the ledger are the
14 good things we do.

15 I suggest to you that this man's life, with the
16 exception of one mistake, is exceptional, a Christian man, who
17 has dedicated his life to his community.

18 He comes out of a Christian missionary family, spent
19 his early childhood years in Africa while his father was a
20 physician in Dr. Schweitzer's clinic. He supports his
21 sister's missionary work in the Philippines.

22 He has done so much, as you know from the three doze
23 letters from the community leaders, clerics and patients, and
24 others who have attested to all the good he has done for the
25 Korean medical community, and for so many individuals in that

1 community.

2 He, quote, is the only Korean doctor in New York who
3 has regular free clinic hours.

4 No one serves the Korean community better.

5 And, quote, he defines the nobility of the
6 profession. He is greatly respected in the Korean community.

7 What makes this an even more extraordinary case, in
8 my experience, is that this isn't just our view that Dr. Pahng
9 should be granted a downward departure. Yes, it was important
10 that, in plea negotiations, the government agreed that we
11 could move for a downward departure, but now we see, your
12 Honor, the probation department has recommended to your Honor,
13 and this is rare in my experience, that Dr. Pahng be given
14 probation, be given a downward departure from the current
15 level 12 to at least a level 8.

16 And even the government, and in my experience this is
17 also rare, and much appreciated, on the part of the
18 government, the government has recognized that this is a case
19 that qualifies for a downward departure under the
20 extraordinary charitable contributions test. And the
21 government has said it does not oppose a downward departure.
22 And, indeed, goes on to say to your Honor a downward departure
23 from the level 12 to a level 10, that would be home
24 confinement and work release, so he can continue his
25 charitable works and his clinical practice. The government

1 suggests that that would be a downward departure for
2 consideration.

3 But, your Honor, what makes this case so rare is the
4 unanimity of opinion that this is a man whose extraordinary
5 charitable works, whose pro bono medical works to the Korean
6 community that desperately needs that, in Flushing, Queens,
7 this is a man who needs to remain in the community so he can
8 continue to provide that free clinic in that community. This
9 is a man who has given so much philanthropically, and so much
10 as a doctor, to those who couldn't afford care, that I can
11 think of no better resolution here, in the interests of
12 justice, then to see to it that this man, who has acknowledged
13 his mistake, who has fully paid his financial debt to the IRS,
14 and that was \$126,666.96, he has paid that to the IRS.

15 I can think of no better resolution here then to give
16 him that second chance in that ledger of life, with all the
17 good that he has done against this one mistake, to give him
18 that chance to remain in his community and redouble his
19 philanthropic charitable efforts, his free clinic, and all the
20 medical care that is so necessary in his community, that he
21 provides so much of it on a pro bono basis.

22 So, your Honor, I implore you, not only as Dr.
23 Pahng's counsel, but as someone who has come to have great
24 respect for him personally, and has heard the stories of so
25 many in his community, and all the good that he has done for

1 them, please grant their doctor a downward departure, your
2 Honor. We believe that probation is appropriate, that would
3 be a downward departure from level 12 to level 8. At a
4 minimum your Honor should grant from a level 12 to level 11.
5 We think the most appropriate downward departure is not only
6 downward departure, but probation.

7 Thank you, your Honor.

8 THE COURT: Mr. Pahng, would you like to be heard
9 before I impose sentence?

10 THE DEFENDANT: Yes. I deeply regret my mistake. I
11 learn a painful lesson. And I hope and pray that your Honor
12 gives me the second chance to continue with my work in the
13 community.

14 This has been the most painful experience. And if I
15 am given a second chance, I will see to it that I will do much
16 more for the community that I have ever done.

17 Thank you.

18 THE COURT: I have considered all the comments made
19 to me today, and on papers. I fully reviewed the submissions
20 by both the defense and the government, and the presentence
21 report submitted to me. And the recommendations.

22 I do find that there are mitigating circumstances of
23 a kind to a degree not adequately taken into consideration by
24 the sentencing commission, that would warrant a downward
25 departure in this case. I have considered Mr. Pahng's

1 background.

2 I believe this is an atypical case. I believe the
3 nature of his charitable work and community service in the
4 community to date to have been substantial. Although it does
5 not, in any sense, make the nature of the crime any less
6 serious.

7 But I do find that based on the, not just the
8 exceptional nature of his charitable work in community service
9 so far, I find that the community will best be served by his
10 continued service in that regard. Particularly in a community
11 where it is in dire need of the kinds of medical services that
12 numerous letters have indicated to me that he has provided,
13 particularly under circumstances in which he has provided, at
14 no cost, in a community that has clearly been underserved in
15 terms of the kinds of services, the medical treatment and
16 medical services that are sorely needed in this community.

17 I find that the ends of justice would also best be
18 served by a downward departure.

19 And although I had struggled with the extent of that
20 downward departure, because of the serious nature of the
21 crime, I have determined that given the nature of the sentence
22 that I intend to impose, that the downward departure to a
23 level 8 is appropriate in this circumstance and is warranted.
24 And that a period of confinement, either prison confinement or
25 home detention, is not warranted or necessary, or appropriate

1 in this case.

2 I read the numerous letters in support, by
3 individuals and community leaders, and public officials, and
4 clearly there are many people here today to express that
5 support for Mr. Pahng.

6 Given the nature of not just the extraordinary and
7 exceptional community service that he has performed in the
8 past, but given the fact that he is uniquely in a position to
9 continue to provide those kinds of services to the community
10 in the future, I will follow, in substantial part, the
11 recommendation of the probation department in imposing, first
12 a sentence of five years probation based on that downward
13 departure, and the reasons for that downward departure, that
14 five years probation. I will also impose, because I have
15 determined not to impose a period of even home confinement, I
16 will impose the maximum fine of \$250,000 in this case.

17 I think that that is also an appropriate punishment
18 for the nature of the crime that has been committed in this
19 case. And I do not believe that that is not beyond the means
20 of Mr. Pahng to pay over the period of, on an appropriate
21 schedule, over the period of the five years' probation.

22 Although it has been represented to me that he has
23 made all payments of back taxes, I will make, as a part of the
24 sentence, if there is any further restitution that is still
25 outstanding, and it sounds to me that there probably is not.

1 Further, the restitution that is still outstanding, we can
2 determine by the IRS, that Mr. Pahng should pay whatever
3 restitution that there should be, which would also include an
4 back state or federal taxes, or local taxes, that he would
5 have been or may still be responsible for.

6 I have determined that another condition of his
7 period of probation is that Mr. Pahng should complete what is
8 substantially higher than what was recommended, I think it is
9 appropriate for Mr. Pahng to complete 2000 hours of community
10 service. That community service to be to provide free medical
11 care to the poor and uninsured who are unable to afford that
12 care, which is consistent with the kind of community service
13 that he has already been providing, which is one of the
14 reasons why I believe that a substantially high amount should
15 be imposed as a condition of the probation, and to be provided
16 over the period of probation, over the five-year period of
17 probation, or whatever short period of time that Mr. Pahng
18 would provide those services, and document the provision of
19 those services.

20 I will also impose the mandatory special assessment
21 of \$100 in this case.

22 And I considered all of the factors involved in this
23 case. Mr. Pahng's actions, obviously, should not be excused
24 and I think that this is an appropriate sentence given what
25 I believe will best serve the interests of justice, the

1 interests of the community, and an appropriate sentence of
2 punishment deterrence in this case, given the nature of the
3 crime, and the nature of Mr. Pahng's individual circumstances

4 Also, the standard conditions of probation, mandatory
5 conditions are imposed. It is the recommended mandatory
6 conditions of Mr. Pahng, not committing federal, state or local
7 crimes; not illegally possessing any controlled substance, and
8 not possessing a firearm or destructive device.

9 And if the probation department feels it is
10 appropriate, although it does not appear to be appropriate at
11 this point, any other conditions of possible drug testing or
12 standard conditions which the probation department might
13 impose.

14 Now, let me first turn to Mr. DeMarro. Is there
15 anything else that I should address that I have not?

16 MR. DE MARRO: No, your Honor. I assume that as to
17 the community service, that the precise schedule is to be
18 determined by the probation department with the proviso it be
19 completed within the five-year period?

20 THE COURT: Yes, definitely.

21 Mr. Mastro, anything further at this point?

22 MR. MASTRO: Your Honor, just one point of
23 clarification. I think, your Honor, it is much appreciated,
24 your Honor's ruling.

25 In terms of the \$250,000 fine, I wanted to point out

1 to your Honor in that regard, perhaps it is appropriate, that
2 the payments to the IRS of \$69,000, in the payments are the
3 penalty plus the interest on that amount, are a penalty that
4 he has already paid in connection with the back tax
5 obligation. So he has already been penalized over 69,000 plus
6 interest in that regard. So I would ask your Honor to
7 consider, and all your consideration is much appreciated, but
8 crediting that fine amount for what -- for the IRS payment,
9 which is more than 69,000 plus interest was a penalty already
10 in paying the IRS.

11 THE COURT: Did you want to be heard on that, Mr.
12 DeMarro?

13 MR. DE MARRO: No, your Honor.

14 THE COURT: I have considered that, Mr. Mastro. And
15 my attitude is that I don't consider that to be a penalty, I
16 consider that to have been his responsibility, whether he had
17 been convicted of a crime or not. It was his obligation to
18 pay those taxes, and pay those taxes at the appropriate time.

19 And even those individuals where no criminal
20 liability or criminal intent is found, that those individuals
21 would still have that obligation to pay those taxes. And if
22 those taxes were not paid timely, to pay the penalties and
23 interest on those taxes. So I have considered that.

24 I have considered that also in light of what I
25 considered to be Mr. Pahng's substantial assets and current

1 assets, and his obvious ability to be able to earn a
2 substantial income in the future.

3 And I believe that it is not unreasonable for a
4 schedule to be set by the probation department, for Mr. Pahng
5 to pay, over a five-year period, an average of \$50,000, given
6 the nature of his assets and the nature of his income,
7 potentially. Particularly in light of the fact that that
8 played a substantial part in my deciding that a downward
9 departure with no jail time, combined with the substantial
10 community service, has made me determine that no period of
11 confinement is necessary, or appropriate, given all of the
12 other factors. So I have considered that. And I do believe
13 that is an appropriate part of the sentence as I have
14 structured it.

15 MR. MASTRO: Thank you, your Honor.

16 THE COURT: Now, Mr. Pahng, you can appeal this
17 sentence within ten days of today, under certain limited
18 circumstances. You should discuss that with your attorney.

19 If there is any reason that you feel that you should
20 appeal, if you feel that your guilty plea is somehow unlawful
21 at the time I questioned you on the voluntariness of your
22 plea, if there is some defect in the plea proceedings that wa
23 not waived by your plea, or the sentence that I just imposed
24 is contrary to law, or the sentence is inappropriate and
25 illegal in some other manner. But that would be the sentence

1 of the Court.

2 And I would hope that both you and the community tha
3 you serve, will move forward and look forward to many more
4 good works, and putting this particular episode behind you,
5 given the nature of the crime and what you will have to face
6 with regard to penalties in this case. I believe that that i
7 the appropriate sentence. Thank you very much.

8 MR. MASTRO: Thank you, your Honor.

9 THE DEFENDANT: Thank you, your Honor.

10 MR. DE MARRO: Good day, your Honor.

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New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D., M.P.H., Dr., P.H.
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NYS Department of Health*

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Office of Professional Medical Conduct

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Chair

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Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

December 20, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sung Jong Pahng, M.D.
1B 23 Edwards Street
Roslyn Heights, New York 11577

RE: License No. 188371

Dear Dr. Pahng:

Enclosed please find Order #BPMC 01-315 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect December 20, 2001.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1258
Empire State Plaza
Albany, New York 12237

Sincerely

A handwritten signature in black ink, appearing to read "Ansel R. Marks". The signature is written in a cursive style with a large initial "A".

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: David E. Ruck, Esq.
120 Broadway
18th Floor
New York, NY 10271

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

IN THE MATTER
OF
SUNG JONG PAHNG, M.D.
CO-01-04-1524-A

CONSENT
AGREEMENT
AND ORDER
BPMC No. 01-315

SUNG JONG PAHNG, M.D., (Respondent) deposes and says:

That on or about February 14, 1992, I was licensed to practice as a physician in the State of New York, having been issued License No. 188371 by the New York State Education Department.

My current address is 1B 23 Edwards Street, Roslyn Heights, New York 11577 and I will advise the Director of the Office of Professional Medical Conduct of any change of my address within thirty (30) days thereof.

I understand that the New York State Board of Professional Medical Conduct has charged me with one (1) specification of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A."

I do not contest the one (1) specification, in full satisfaction of the charges against me. I, hereby, agree to the following penalties:

five (5) years suspension stayed;

five (5) years probation; to run concurrent with the probation imposed, upon

Respondent, on or about April 23, 2001, by the United States District Court,

Southern District of New York, to include Respondent perform the Community

Service imposed thereby, and

a \$5,000.00 fine.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain active registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possess his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his/her license.

I, hereby, stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event that I am charged with professional misconduct in the future, the agreement and order shall be admitted into evidence in that proceeding.

I, hereby, make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

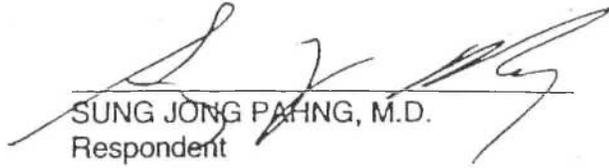
I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement or to my attorney or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner, in consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits. I knowingly waive any right I may have to contest the Consent Order for which I, hereby, apply, whether administratively or judicially, and ask that the Application be granted.

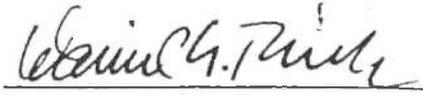
AFFIRMED:

DATED: 12-5-01


SUNG JONG PAHNG, M.D.
Respondent

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 12/5/01


DAVID E. RUCK, Esq.
Attorney for Respondent

DATE: 17 December 2001


ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 17 December 2001


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
SUNG JONG PAHNG, M.D.
CO-01-04-1524-A

STATEMENT
OF
CHARGES

SUNG JONG PAHNG, M.D., the Respondent, was authorized to practice medicine in New York state on February 14, 1992 by the issuance of license number 188371 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 23, 2001, in the United States District Court, Southern District of New York, Respondent was found guilty of Tax Evasion, in violation of 26 USC §7201, and was sentenced to five (5) years probation, a \$250,000.00 fine, a \$100.00 mandatory special assessment, and required to perform two thousand (2000) hours community service.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by having been convicted of committing acts constituting crimes under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *July 20*, 2001
Albany, New York

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

Standard Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

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

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

IN THE MATTER
OF
SUNG JONG PAHNG, M.D.

CONSENT
ORDER

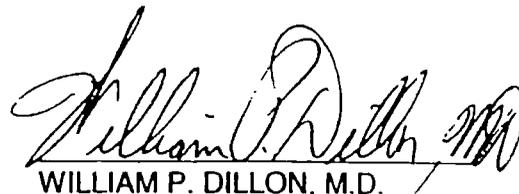
Upon the proposed agreement of **SUNG JONG PAHNG, M.D.** (Respondent) for Consent Order, which application is made a part hereof, it is agreed and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 12/20/01



WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct