

20050608 - KANG

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Complainant
Division of Law - 5th floor
124 Halsey Street
P.O.B. 45029
Newark, New Jersey 07101
By: Joan D. Gelber
Deputy Attorney General
Tel. 973-648-2972

FILED

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**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF AN INQUIRY :
INTO THE PROFESSIONAL PRACTICE OF
DAVID KANG, M.D.
LICENSED TO PRACTICE MEDICINE AND
SURGERY IN THE STATE OF NEW JERSEY:

ADMINISTRATIVE ACTION

FINAL ORDER OF REPRIMAND

This matter was opened to the State Board of Medical Examiners by the Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General, on inquiry into the professional practice of Board-certified internist David Kang, M.D. Dr. Kang maintains a medical office at 1457 Raritan Road, Clark, NJ 07066. He is represented herein by Edward F. Broderick, Jr., Esq.

It appears that on May 20, 2004 Mrs. J.H.¹ sought an urgent consultation with Dr. Kang, upon noticing a lump on her leg. The lump was of particular concern because Mrs. J.H. was 27 weeks' pregnant, and a similar lump found when she was a youngster had been diagnosed as a bone tumor. Dr. Kang was listed as a provider in Mrs. H's newly acquired managed care physician list. After leaving the office of her obstetrician, Mrs. J.H. arrived at Dr. Kang's office and completed intake forms indicating her sole complaint as the lump on her leg. She reported her prior medical history with bone tumor.

Dr. Kang noted her height and weight and instructed the patient to sit on the examining table,

¹Patient identity is maintained as confidential. Full identification has been provided to Dr. Kang.

CERTIFIED TRUE COPY

and took her blood pressure. He did not provide or offer the presence of a chaperone in the examining room. He did not offer a gown. He did not ask her to remove any clothing. He directed her to lie down, and then placed his stethoscope under her cotton maternity T-shirt and over a soft cotton bra. He placed the stethoscope cup directly on one nipple, then on the other nipple for an extended time, causing the patient to feel uncomfortable at the unusual nature of the examination. Dr. Kang did not ask the patient to sit up to check her breathing from the front, nor did he check it from the back. He then inspected the lump on her lower right leg and drew a sketch of its location in his chart, and also drew the location of the earlier tumor as related by the patient. Dr. Kang did not measure the lump or describe its appearance or its texture. He did not ask to check other parts of her body to see if there were other lumps. He gave the patient a referral for an x-ray and for a consultation with an orthopedist. Ms J.H. was anxious to leave the office as quickly as possible after this encounter. She paid a \$10.00 co-pay and left. She did not return to Dr. Kang's office.

Mrs. J.H.'s patient record was subpoenaed from Dr. Kang and received July 20, 2004. Dr. Kang was interviewed July 26, 2004 in the presence of his wife by investigators from the Division of Consumer Affairs. Dr. Kang described how he performed a detailed physical examination of a new patient and stated that he would auscultate a pregnant patient's breath sounds by placing the patient in a sitting position. He described his standard breast examination as having the patient raise her arm, then palpating in direct contact with the skin, both in a lying and sitting position. He specifically denied having performed a breast examination on Mrs. J.H., stating that he thought that was the responsibility of her gynecologist.

On September 7, 2004 the investigator contacted Dr. Kang, seeking an explanation for the entry of "breast - normal" in his chart. Dr. Kang then claimed that he did perform a breast exam because the patient had a lump on her leg and he needed to make sure there were no lumps in her breast or lungs. He specifically admitted that he had listened to the patient's lungs by placing the stethoscope over her nipples.

Dr. Kang's patient chart, as provided in response to the subpoena, contained no intake form or billing record. However, he has acknowledged that he coded the patient's visit as CPT 99204 - *i.e.*, a physician consultation for a new patient requiring moderately complex decisionmaking.

The chart contains no date of birth. Although the patient was pregnant with her third child,

the chart lists medical history and past social history as negative. The systems review section is entirely blank. The chief complaint notes that she is 6 months pregnant, with a history of benign bone tumor and now complains of right lower anterior leg lump. The Physical Examination page is almost completely filled in, suggesting the performance of an examination. There are specific entries for normal general appearance and specific "normal" entries for skin, eyes, ears, nose, throat, thyroid. There is no entry for neurologic exam. Neck: Supple. Heart: Regular sinus rhythm. Lungs: Clear. Abdomen: Soft bowel sounds No masses. Extremities: Right leg lump on right leg mid. There is notation of the referral for x-ray of the leg and to an orthopedist. The chart is signed and dated by Dr. Kang.

On December 29, 2004 Dr. Kang appeared before a Committee of the State Board of Medical Examiners with his original chart.² At that meeting, Dr. Kang asserted that although he had no specific recollection of this patient, it was his practice to provide a paper gown which is open in the back. He admitted that typically there is no one else in the room and he does not offer a chaperone because he is "too busy." He said he checks heart and lungs while the patient is lying down, but also listens from the back with the patient sitting up. He described in great detail how he typically performs a breast examination with the patient lying down, with the gown "raised" (although the gown is open only in the back).

Reviewing his chart for patient J.H., Dr. Kang stated that she had no leg edema, but this was not documented in the chart. Although Dr. Kang had said he did not recall the patient and there is no description of the leg lump in the chart, he now testified that the tumor was soft and solid, anterior and below the knee. He stated that he told the patient he would have to examine other parts of her body. He said he needed to do a breast examination to see if there were other lumps. He admitted that he does sometimes place the stethoscope directly over the nipples. He denied that his manner of breast examination involved any prurient interest involving N.J.A.C. 13:35-6.3, the Board rule prohibiting sexual misconduct with a patient.

²It was noted that Dr. Kang had made additional entries on the chart, without dating them. However, as the entries merely noted that investigators had interviewed him in response to a patient complaint but did not add new data, the changes are not deemed alterations to a patient record.

The Board has considered all of the above, and finds numerous causes for concern:

a) Dr. Kang has misrepresented performance of a comprehensive physical examination, in addition to falsely charting clinical findings of the physical examination, including a breast examination, which he did not perform. This misrepresentation additionally risks the potential transmittal of untruthful or medically unfounded information to any subsequent treating doctor seeing that record. He also misrepresented the provision of a patient gown, in violation of N.J.S.A. 45:1-21(b) and (e) and N.J.A.C. 13:35-6.5.

b) Such physical examination as Dr. Kang did perform was negligent or incompetent in several respects. Although the patient's chief complaint was the lump on her right leg, especially in light of her history of bone tumor, Dr. Kang did not describe the leg lump in any way, neither in appearance, texture on palpation, or size. Also, although he claimed that he had performed a "breast examination" to see if this patient had lumps there, he did not chart any positive or negative findings of lumps there. Nor did he comment on the appearance or non-appearance of any lumps elsewhere on the patient's body. Dr. Kang also failed to perform a proper heart/lung examination and testified in a grossly erroneous manner as to how such examination should be done, stating that the stethoscope could be placed "anywhere" in the chest area including directly on the nipples. His description of a hypothetical breast examination bore no relationship to the manner in which he admitted examining this patient. Dr. Kang billed for, but did not perform, a comprehensive examination, all in violation of N.J.S.A. 45:1-21(b), (c) and/or (d) and (e).

c) Dr. Kang conducted the physical examination without the presence of a chaperone or approved alternative measure, despite the requirements N.J.A.C. 13:35-6.23. in violation of N.J.S.A. 45:1-21(h).

d) Dr. Kang inflated his billing, claiming performance of CPT 99204 - the code requiring three key components: a comprehensive history, a comprehensive examination, and medical decision making of moderate complexity. But the examination actually performed does not meet any of the requirements of that code and therefore is a misrepresentation, in violation of N.J.S.A. 45:1-21(b) and (e), N.J.S.A. 45:9-6 and N.J.A.C. 13:35-6.5.

The Board has taken into account that this is the first offense by Dr. Kang coming to Board attention. However, the Board finds that corrective action is well warranted.

Dr. Kang, having had the opportunity to discuss this matter with his attorney, and wishing to resolve this matter amicably and without further proceedings, has determined not to contest the proposed findings of the Board, which are hereby adopted. Therefore, for good cause shown,

IT IS, ON THIS 27th DAY OF May 2005
ORDERED:

1. Dr. Kang is hereby reprimanded for the violations set forth above.
2. Dr. Kang shall comply with Board rule N.J.A.C. 13:35-6.23, requiring written and other forms of notice, as necessary to the circumstances, of the availability of a chaperone when performing the kinds of physical examinations specified therein.
3. Within 6 months of the entry of the Board Order, Dr. Kang shall take and satisfactorily pass a Board-approved course in proper record keeping and coding of bills.
4. Within 6 months of the entry of the Board Order, Dr. Kang shall take and satisfactorily complete a Board-approved course in avoiding boundary violations.
5. Proofs of the satisfactory completion of Items 3 and 4 shall be submitted to the Medical Director of the State Board of Medical Examiners.
6. The Medical Director may, on notice, request a sampling of patient records to assure compliance with Board requirements.
7. Pursuant to N.J.S.A. 45:1-25, Dr. Kang is assessed a penalty of \$5,000 total for the above violations.
8. Pursuant to N.J.S.A. 45:1-25 Dr. Kang is assessed all costs of the investigation, totaling \$ 2,555.00. Items 5 and 6 are payable to the State Board of Medical Examiners within 10 days of the entry of the Order.
9. Pursuant to N.J.S.A. 45:1-23 and within 10 days of the entry of this Order, Dr. Kang shall reimburse MagnaCare the sum of \$90.00 and shall reimburse \$10.00 to patient J.H. for her co-pay.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license;
- (2) Which censures, reprimands or places on probation;
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such federal or State agency that is publicly available information.

Pursuant to N.J.S.A.45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.