BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
Jason Hui-Tek Yang, M.D.	)	Case No. 800-2016-023228
	)	
Physician's and Surgeon's	)	
Certificate No. A 65311	)	
	)	
Petitioner.	)	
	)	
	)	

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by September 13, 2019, and the time for action having expired at 5:00 p.m. on September 23, 2019, the petition is deemed denied by operation of law.

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	MBC No. 800-2016-023228
JASON HUI-TEK YANG, M.D.	)	
Physician's and Surgeon's Certificate No. A 65311	)	**ORDER GRANTING STAY**
	)	(Government Code Section 11521)
Respondent	)	

Nicholas D. Jurkowitz, Esq. and Alexandra de Rivera, Esq. on behalf of respondent, Jason Hui-Tek Yang, M.D., has filed a Petition for Reconsideration of the Decision in this matter with an effective date of September 13, 2019, at 5:00 p.m.

Execution is stayed until September 23, 2019, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: September 13, 2019

Kimberly Kirchmeyer
Executive Director
Medical Board of California

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
Jason Hui-Tek Yang, M.D.	)	**Case No. 800-2016-023228**
Physician's and Surgeon's Certificate No. A 65311	)	
Respondent	)	

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 13, 2019.

IT IS SO ORDERED August 16, 2019.

MEDICAL BOARD OF CALIFORNIA

By: Kristina Lawson

Kristina D. Lawson, J.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Accusation against:

JASON HUI-TEK YANG, Respondent

MBOC Case No. 8002016023228

OAH No. 2019010415

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 26, 2019, in Los Angeles, California.

Complainant was represented by LeAnna E. Shields, Deputy Attorney General. Respondent was represented by Nicholas D. Jurkowitz, Fenton Law Group, and Richard Moss, Moss Law Group.

Oral and documentary evidence was received. Complainant moved to seal exhibits 3 and 8, which motion was granted, and a separate written order will issue. The record was closed and the matter was submitted for decision on June 26, 2019.

The ALJ hereby makes his factual findings, legal conclusions, and order.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Kimberly Kirchmeyer filed and maintained the Accusation in her official capacity as Executive Officer of the Medical Board of California (Board), Department of Consumer Affairs.

2. Respondent Jason Hui-Tek Yang, M.D. has been licensed by the Board as a physician and surgeon since May 1998. He holds license number A 65311, which was in full force and effect at the times relevant to this matter. Respondent's license is due to expire on February 29, 2020, unless renewed.

3. After he was served with the Accusation, Respondent filed a Notice of Defense, contesting the charges and seeking a hearing on the Accusation. All jurisdictional requirements have been met.

Respondent's Convictions

4. On October 13, 2016, in the Superior Court of California, County of Riverside, Respondent pled guilty to five counts of violating Insurance Code section 1871.4, which statute proscribes making false and fraudulent insurance claims. He also admitted that two enhancements were applicable to his case, those enhancements being added pursuant to Penal Code sections 186.11, subdivision (a)(2), and12022.6, subdivision (a)(1) and (a)(2). By his guilty pleas, Respondent was convicted of five felony violations of Insurance Code section 1871.4, subdivision (a)(1). By admitting to the alleged enhancements, Respondent admitted that the value of one of the counts of insurance fraud was over $500,000, and the other was over $65,000.

5. At the time of the administrative hearing, Respondent had not been sentenced by the court. However, in his plea agreement, he agreed that he would be sentenced to 15 years' imprisonment, which sentence would be suspended, on the condition that Respondent actually serve 180 days in county jail, and he would have five years of formal probation. He was credited with 16 days in jail. Respondent's sentencing has been continued until September 2019; there are other defendants in the criminal proceeding and Respondent's formal sentencing is to follow the co-defendants' sentencing.

6. The facts and circumstances of Respondent's wrongdoing are not crystal clear, and must be derived from the plea, a transcript of Respondent's testimony before the grand jury, his testimony in this matter, and the docket. However, it appears that Respondent went to work part-time with a clinic that treated workers' compensation patients. He paid "rent" to Peyman Heidary, who controlled the clinics, and who ostensibly ran a management firm. The rent was in exchange for space and administrative support. Respondent paid for a billing firm, and a transcribing firm. The payments on the bills he generated were deposited into a bank account he shared with Heidary, the apparent mastermind of a wide-ranging fraud scheme. Heidary was a chiropractor whose license had been revoked; a matter that Respondent did not research. After the costs described above were paid, Respondent then split the balance of his receipts with Heidary. Respondent worked with Heidary for approximately five years, from approximately 2009 to 2014.

7. The patients were supplied by Heidary and apparently routed to the firm by a crooked attorney, who used cappers to obtain clients. From Respondent's grand jury testimony, it appeared that he might have 20 or more patients in a day at one of three clinics operated by Heidary. Respondent did none of the billing, simply

generating reports, and the office staff and the billing firm (whose owner was also indicted for her part in the scheme) generated the bills. From his grand jury testimony, it appears that Respondent didn't seem to notice that every patient's chart indicated the same treatment by various specialist physicians, therapists, psychologists, and Respondent, a psychiatrist who could prescribe medications to the patients.

8. Respondent's crimes are substantially related to the duties, qualifications, and functions of a physician and surgeon.

Other Matters

9. Respondent has significant experience as a psychiatrist. He has no disciplinary record.

10. Respondent is currently employed by the Gooden Center, which provides residential, outpatient, and transitional living treatment to persons with psychiatric disorders, stepping down after a hospitalization. Much of the work on Respondent's part involves patients with drug problems, or mental health problems, or both.

11. Thomas McNulty, the CEO of Gooden Center, and Brandon Brewer, the Chief Operating Officer of the Gooden Center, testified on Respondent's behalf. They hired him knowing about the criminal matter. Respondent does not bill for services, instead charging Gooden Center on an hourly basis. Mr. McNulty is trained as a pharmacist, and is confident of Respondent's prescribing practices. Both of the witnesses testified to the effect that Respondent is a perfect fit for their facility, and Gooden Center will suffer if he must be let go.

12. It appeared from Respondent's testimony in the hearing, and his grand jury testimony, that he was rather naïve about the situation he got himself into when he went to work with Heidary.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to Business and Professions Code sections 2227 and 2234, was established, based on Factual Findings 1 through 3.

2. Respondent's license is subject to discipline pursuant to Business and Professions Code section 2236, subdivision (a), and California Code of Regulations (CCR), title 16, section 1360, for his convictions of crimes that are substantially related to the duties, qualifications, and functions of a physician and surgeon. This Conclusion is based on Factual Findings 4 through 8.

3. Respondent's license is subject to discipline pursuant to Business and Professions Code section 2234, subdivision (e), due to his engaging in dishonest and corrupt acts, based on Factual Findings 4 through 8.

4. Respondent's license is subject to discipline pursuant to Business and Professions Code section 2234, subdivision (a), in that his conduct set forth in Factual Findings 4 through 8 amounts generally to violations of the Medical Practice Act.

5. (A) Respondent is barred from the practice of medicine for 10 years from the effective date of this decision, pursuant to Business and Professions Code section 2273, subdivision (b). Section 2273, subdivision (b) provides that a licensee who is convicted of more than one count of violating Insurance Code section 1871.4 (among

other statutes) in one proceeding "shall have his or her license revoked for a period of 10 years . . . ." After that period, the licensee can seek reinstatement pursuant to Business and Professions Code section 2307.

(B) Respondent argues that since he has not been sentenced, judgment has not entered, and he has not been convicted. This argument relies on the fact that section 2273 does not define a conviction. Respondent points out that the term "conviction" is defined in Business and Professions Code section 2236, subdivision (d), and that the definition is applied to section 2236.1 as well. Otherwise, he would rely on court cases that hold that a conviction occurs when a person is sentenced after a guilty plea or verdict; the sentence is the judgment. (See *Boyll v. State Personnel Board* (1983) 146 Cal.App.3d 1070.)

(C) Section 2236, subdivision (b), defines a conviction to include a plea of guilty. Respondent has entered a plea of guilty, and hence he is subject to discipline because he was convicted of a substantially related crimes, as set forth in Legal Conclusion 3. This does not quite end the analysis of the applicability of section 2273, subdivision (b). For example, there are cases that hold that a guilty plea or guilty verdict are convictions. (*In re Morehead* (1951) 107 Cal.App.2d 346, 350 [a verdict being an ascertainment of guilt, is the conviction]; *Stephens v. Toomey*, (1959(51 Cal.2d 864, 869 [plea of guilty constitutes a conviction].)

(D) The only definition of a conviction within the Medical Practice Act is that which is set forth in Business and Professions Code section 2336, subdivision (b). It appears that sections 2036, 2036.1, and 2273 are in para material with each other, and should be construed to harmonize the three statutes. Thus, when interpreting section 2273, subdivision (b), all acts relating to the subject—a substantially related conviction—should be read with the other statutes, as together constituting one law,

harmonizing them and achieving a uniform and consistent legislative purpose. (58 Cal.Jur.3d. (1989) Statutes, § 118.)

(E) Disciplinary statutes, along with proceedings such as this one, generally have the purpose of public protection. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; Bus. & Prof. Code, § 2001.1 [public protection is the highest priority of the Board].) It is clear that the provisions of section 2273, subdivision (b), are meant to protect the public, for a period of at least 10 years, from errant practitioners who would commit insurance fraud. The meaning of the word conviction in section 2236 should be read into section 2273, subdivision (b).

(F) An alternative analysis of section 2273, subdivision (b), is that it modifies section 2307, the statute controlling petitions for reinstatement of a revoked license. Indeed, section 2273, subdivision (b), references section 2307. Section 2307, subdivision (b)(1), provides that in cases where a license has been revoked for unprofessional conduct, three years must elapse before a petition for reinstatement may be filed and considered by the Board, unless the revocation order states that only two years must elapse. Section 2273, subdivision (b), modifies that period in cases such as this, where there have been two convictions in the same case for a violation of Insurance Code section 1871.4.

6. As noted above, the purpose of proceedings of this type are to protect the public. Here Respondent has plead guilty to five felonies. While he was not the mastermind of the scheme, he profited from it, and he failed to heed signs of impropriety in the operation of Heidary's clinics. While the misconduct occurred several years ago, the guilty plea was entered less than three years ago. (If Respondent's theory were accepted, his conviction hasn't occurred yet, but would likely occur in September.) Even if section 2273, subdivision (b) did not apply, cause to

revoke Respondent's license outright has been established, based on Legal Conclusion 2 and its factual predicates. Public protection requires that Respondent's license be revoked.

ORDER

Physician's and Surgeon's Certificate number A 65311, issued to Respondent Jason Hui-Tek Yang, is hereby revoked.

DATE: July 25, 2019

DocuSigned by:
Joseph D. Montoya
JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Nov 15 2018
BY D. Richards ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JASON HUI-TEK YANG, M.D.** **280 S. Euclid Avenue, #205** **Pasadena, CA 91101** **Physician's and Surgeon's Certificate No. A 65311,** Respondent.	Case No. 8002016023228 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about May 22, 1998, the Board issued Physician's and Surgeon's Certificate No. A 65311 to Jason Hui-Tek Yang, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2020, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

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5. Section 2234 of the Code, states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"...

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"..."

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

"(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if

the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

7. Section 2273 of the Code states, in pertinent part:

"...

"(b) A licensee shall have his or her license revoked for a period of 10 years upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the following provisions in a single case: Section 650 of this code, Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. After the expiration of this 10-year period, an application for license reinstatement may be made pursuant to Section 2307."

8. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

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FIRST CAUSE FOR DISCIPLINE

(Conviction of Crimes Substantially Related to the Qualifications, Functions, or Duties of a Physician and Surgeon)

9. Respondent has subjected his Physician's and Surgeon's Certificate No. A 65311 to disciplinary action under 2227 and 2234, as defined by 2236 and 2273, of the Code, and section 1360 of title 16 of the California Code of Regulations, in that he was convicted of crimes substantially related to the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged hereinafter:

10. On or about May 16, 2016, in the case entitled *The People of the State of California v. Touba Pakdel-Nabati, Quynam Nguyen, and Jason Yang,* Case No. RIF1670176, a criminal complaint was filed in the Superior Court of California, County of Riverside, charging respondent with one (1) count of violating section 182, subdivision (a)(1), of the Penal Code (Conspiracy), eighteen (18) counts of violating section 550, subdivision (a)(6), of the Penal Code (Insurance Fraud), fourteen (14) counts of violating section 1871.4, subdivision (a)(1), of the Insurance Code (False and Fraudulent Claims), and and one (1) count of violating section 549 of the Penal Code (Soliciting, Accepting or Referring Business with the Intent to Violate section 550 of the Penal Code or section 1871.4 of the Insurance Code), all felonies.

11. The criminal complaint also alleged enhancements pursuant to section 12022.6, subdivisions (a)(1) and (a)(2), of the Penal Code (value exceeding $65,000 or $200,000) as to twenty-one (21) counts, and an enhancement pursuant to section 186.11, subdivision (a)(2) of the Penal Code (value exceeding $500,000) as to one (1) count.

12. On or about October 13, 2016, Respondent signed a change of plea form admitting guilt as to five (5) separate counts of violating section 1871.4, subdivision (a)(1), of the Insurance Code (False and Fraudulent Claims). Respondent also admitted the alleged enhancements as to one (1) count pursuant to section 12022.6, subdivision (a)(1), of the Penal Code (value exceeding $65,000).

13. On or about October 13, 2016, Respondent's plea of guilty was entered as to the five (5) separate counts of violating section 1871.4, subdivision (a)(1) and the alleged enhancements.

SECOND CAUSE FOR DISCIPLINE

(Dishonest or Corrupt Acts)

14. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 65311 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (e), in that he has committed dishonest and corrupt acts, as more particularly alleged in paragraphs 9 through 13, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Medical Practice Act)

15. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 65311 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), in that he has committed violations of provisions the Medical Practice Act, as more particularly alleged in paragraphs 9 through 14, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 65311, issued to Respondent Jason Hui-Tek Yang, M.D.;

2. Revoking, suspending or denying approval of Respondent Jason Hui-Tek Yang, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Jason Hui-Tek Yang, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: November 15, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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