

**Court of Appeals
Of the State of New York**

In the Matter of the Application of
JUN WANG, M.D.,

Appellant,

v.

LETITIA JAMES, Attorney General of the State of New York,

Respondent.

**MEMORANUM IN OPPOSITION TO
MOTION FOR LEAVE TO APPEAL**

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Dated: September 2, 2022

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PRELIMINARY STATEMENT

Petitioner Dr. Jun Wang commenced this article 78 proceeding to challenge a determination by respondent Letitia James, the New York State Attorney General, denying his request that the State provide for his legal defense in a medical malpractice case and indemnify him in the event of an adverse judgment pursuant to Correction Law § 24-a. Respondent concluded that such defense and indemnification would be improper because there was no evidence that petitioner performed the challenged medical services “while acting at the request of [DOCCS] or a facility of [DOCCS]” as the statute requires. Respondent explained that in order to meet this statutory requirement, “DOCCS has to directly request a physician to undertake an act or service.” (R. 639.) But here, DOCCS never even communicated with petitioner, let alone hired or asked him to perform the challenged medical services. Supreme Court, Onondaga County (Greenwood, J.) denied the petition.

In this motion, petitioner seeks leave to appeal from a memorandum and order of the Appellate Division, Fourth Department, entered July 21, 2022. The Fourth Department unanimously affirmed Supreme Court’s judgment denying the petition, holding that (1)

respondent's determination was entitled to judicial deference because the determination entailed the application, to a specific set of facts, of a term in a statute that respondent is charged with administering, (2) respondent's determination that Correction Law § 24-a applies only where DOCCS has expressly requested the services of a particular health care provider is a rational one, and (3) there is no evidence that DOCCS expressly requested that petitioner perform the challenged medical services.

Petitioner's motion for leave to appeal presents no issue warranting this Court's review. A complete statement of the facts and respondent's arguments explaining why petitioner's challenge to respondent's determination were properly rejected are set forth in respondent's brief to the Fourth Department. We add the following comments explaining why leave to appeal should be denied.

REASONS FOR DENYING LEAVE

The Fourth Department's unanimous decision that respondent's interpretation of Correction Law § 24-a was rational and therefore entitled to deference does not conflict with any decision of this Court or create a conflict among the Appellate Division's departments. See 22

N.Y.C.R.R. § 500.22(b)(4). Instead, that decision simply applied settled principles of statutory interpretation to respondent's determination. "While as a general rule courts will not defer to administrative agencies in matters of pure statutory interpretation, deference is appropriate where the question is one of specific application of a broad statutory term" in a statute that the relevant agency is charged with administering. *Matter of O'Brien v. Spitzer*, 7 N.Y.3d 239, 242 (2006) (internal quotation marks and citation omitted). In this circumstance, so long as the agency's interpretation "is a reasonable one, courts should not second-guess it." *Id.*

These principles resolve this case. Under Public Officers Law § 17, the State is obligated to provide for the defense and indemnification of state employees who are sued for damages based upon allegedly negligent conduct in which the employees engaged while acting within the scope of employment. *Id.* § 17(2), (3). Correction Law § 24-a extends Public Officers Law § 17's coverage to certain persons who perform work for DOCCS without regard to whether their relationship with the State is one of employee-employer, including licensed healthcare providers who performed authorized services "while acting at the request of [DOCCS]

or a facility of [DOCCS].” The Fourth Department correctly held that the Attorney General is responsible for determining whether an individual sued in a civil action is entitled to a state-provided legal defense and indemnification under Correction Law § 24-a, and that her determination here hinged on the application of the specific facts at hand to the phrase “while acting at the request of [DOCCS] or a facility of [DOCCS]” within that statute. (Op. at 2.) The Fourth Department thus correctly concluded that respondent’s reasonable determination that Correction Law § 24-a applies only where DOCCS has expressly requested the services of a particular health care provider is entitled to deference. (Op. at 2-3.)

Petitioner’s only argument in support of his motion for leave is his contention that respondent’s interpretation of Correction Law § 24-a is unreasonable because it excludes circumstances where DOCCS has impliedly requested a particular healthcare service. (Mot. at 9-11.) But there is nothing erroneous, let alone leaveworthy, about the Fourth Department’s rejection of this alternative interpretation of Correction Law § 24-a. (Op. at 3.)

First, respondent's determination follows from the plain language of Correction Law §24-a. The commonly understood meaning of the phrase "at someone's request" is "on being asked by someone." *McGraw-Hill's Dictionary of American Idioms and Phrasal Verbs* 25 (2005). Thus, a licensed healthcare professional is working within the authorization of his or her license "while acting at the request of [DOCCS] or a facility of [DOCCS]" only if the person is performing healthcare work that DOCCS or a DOCCS facility has asked that person to perform. It is undisputed that no one affiliated with DOCCS or a DOCCS facility asked petitioner to perform the pathology work at issue in the medical malpractice case.

Second, respondent's determination is supported by the purpose and history of Correction Law §24-a. "The purpose of Public Officers Law § 17 is, in essence, to provide insurance against litigation," *Matter of O'Brien*, 7 N.Y.3d at 242, with the State functioning as the insurer and its employees as the insureds, *Matter of Garcia v. Abrams*, 98 A.D.2d 871, 873 (3d Dept. 1983). The same purpose therefore underlies Correction Law § 24-a, with the State serving as the insurer of certain specified categories of licensed healthcare professionals performing authorized healthcare work "while acting at the request of [DOCCS] or a facility of

[DOCCS].” The concept of insurance presupposes that the insurer has had the opportunity to vet its potential insureds and determine whether they present a tolerable risk from a cost-benefit standpoint. This core precept underscores that the persons covered by Correction Law § 24-a must be those that the State, via DOCCS and its various facilities, has specifically asked to perform the sort of healthcare work they perform.

Accordingly, the motion for leave should be denied.

CONCLUSION

Petitioner's motion for leave to appeal should be denied.

Dated: Albany, New York
September 2, 2022

Respectfully submitted,

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PRINTING SPECIFICATIONS STATEMENT

Pursuant to the Uniform Practice Rules of the Appellate Division (22 N.Y.C.R.R.) § 1250.8(j), the foregoing brief was prepared on a computer (on a word processor). A proportionally spaced, serif typeface was used, as follows:

Typeface: Century Schoolbook

Point size: 14

Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc., is 1,027.

State of New York
Court of Appeals

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Respondent.

AD# CA 21-01301 – INDEX# 004977/2021 – OAG #21-027389

STATE OF NEW YORK
COUNTY OF ALBANY ss:
CITY OF ALBANY

Anne Smigel being duly sworn says:

I am over eighteen years of age and an employee in the office of the Attorney General of the State of New York, attorney for the Respondent, herein.

On 2nd day of September, 2022 I served the annexed Memorandum In Opposition to Motion for Leave to Appeal upon the individual named below, by depositing 1 copy thereof, properly enclosed in a sealed, postpaid wrapper, in the letter box of the Capitol Station post office in the City of Albany, New York, a depository under the exclusive care and custody of the United States Postal Service, directed to the said individual at the address within the State respectively theretofore designated by them for that purpose as follows:

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