



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

April 10, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Stein, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Joel S. Sankel, Esq.
Sankel, Skurman & McCartin
750 Third Avenue
New York, New York 10017

Karl Merwin Easton, M.D.

REDACTED

RE: In the Matter of Karl Merwin Easton, M.D.

Effective Date: 04/17/95

Dear Mr. Stein, Mr. Sankel and Dr. Easton :

Enclosed please find the Determination and Order (No. 95-10) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Corning Tower, Room 438
Albany, New York 12237

RECEIVED
APR 10 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

REDACTED

Lyrone I. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

**IN THE MATTER
OF
KARL MERWIN EASTON, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-10**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.**¹ held deliberations on March 24, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) January 18, 1995 Determination finding Dr. Karl Merwin Easton (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on February 1, 1995. James F. Horan served as Administrative Officer to the Review Board. Joel S. Sankel, Esq. filed a brief for the Respondent which the Board received on March 6, 1995.

SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

¹Dr. Sinnott and Mr. Shapiro participated in the deliberations by telephone conference.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

HEARING COMMITTEE DETERMINATION

The Petitioner brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent had committed professional misconduct, based upon a decision by the Appellate Division of the State Supreme Court, for the Second Judicial Department. The decision came in an action which the New York State Attorney General commenced against the Respondent and several individuals and corporations to enjoin the defendants from operating certain mental health facilities and to recoup public and residents' funds allegedly misappropriated by the defendants through Medicaid and real estate fraud. The Appellate Division awarded judgement against the Respondent in the sum of Seven Million Five Hundred Seventy-Three Thousand Seven Hundred and Three (\$7,573,703.00) Dollars, representing Medicaid fraud and treble damages. The Appellate Division found that the evidence proved that the Respondent and other defendants fraudulently billed Medicaid for home visits that were not actually performed. By Order dated September 28, 1994, New York State Supreme Court for New York County (Parness, J.) determined that the civil suit constituted an adjudicatory proceeding.

The Committee concluded that the Respondent committed acts which constituted Medicaid fraud and that the Respondent's lack of integrity, character and moral fitness were evident from his course of conduct. The Committee determined that the Respondent's misconduct was very serious and that the revocation of the Respondent's license was the only appropriate sanction to impose under the circumstances.

REQUESTS FOR REVIEW

By letter dated February 3, 1995, the Respondent requested that the Administrative Review Board extend the period for the review in this case until after the Appellate Division for the First Department rendered a decision in the Respondent's challenge to the Petitioner's authority to conduct a referral proceeding in the Respondent's case. The Review Board considered the issue at our deliberations on February 17, 1995 and denied the request for extension. Our Administrative Officer advised the parties of the denial through a February 21, 1995 letter.

In his brief the Respondent asks the Review Board to consider whether (a) the Hearing Committee's penalty is appropriate; (b) whether the Board should remand this matter to the Committee for reconsideration and further proceedings; and, (c) whether the Referral Hearing Committee had authority to act based upon the judgement in a civil lawsuit.

The Respondent raises several points for review.

- I. There is no authority for a referral hearing to revoke Dr. Easton's license based upon a civil law suit.
- II. There are critical differences between adjudicatory and civil proceedings.
- III. The Hearing Committee was prejudiced by an affidavit which was not received in evidence.
- IV. The background of the Medicaid fraud finding and the trial judge's finding exonerating the Respondent should have been allowed into evidence.
- V. The Respondent's counsel was cut off improperly from requesting that the Hearing Committee dismiss the charges against the respondent in the interest of justice.
- VI. Prior punishment against the Respondent should have mitigated the penalty.

VII. The Respondent had insufficient time to prepare for the hearing.

The Respondent asks that the Review Board overrule the Hearing Committee's Determination on the grounds that there was no authority to proceed, or that in the alternative, that the matter be sent back for a fair and equitable rehearing.

The Petitioner urges the Board to sustain the Hearing Committee's Determination. The Petitioner contends that most of the issues which the Respondent raises are outside the scope of the Board's limited jurisdiction. The Petitioner contends that the Supreme Court had held already that a civil trial is an adjudicatory proceeding. The Petitioner argues that the Respondent had an opportunity to present evidence, that there is nothing in the record to demonstrate any prejudice to the Respondent, and that the Respondent was not entitled to use the direct referral proceeding to relitigate any issues from the civil proceeding.

REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted.

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of professional misconduct, based upon the Second Department's Determination that the Respondent had defrauded the Medicaid program.

The Supreme Court has already ruled that the Petitioner had the authority to bring this action as a direct referral, so the Respondent's Points I and II are legal issues which are beyond our scope of review. Further, neither the Review Board nor the Hearing Committee can overrule or ignore the Second Department's decision that the Respondent defrauded the Medicaid program. The Respondent can not, therefore, relitigate this issue before the Review Board, as the Respondent tries to do through his Point IV.

The Review Board denies the Respondent's request for a remand for a new hearing. The Respondent had ample opportunity to present his case to the Hearing Committee at the original hearing. The Review Board sees no prejudice to the Respondent from the initial hearing.

The Review Board sustains the Hearing Committee's Determination revoking the Respondent's license to practice in New York State. The Committee's Determination is consistent with the finding that the Respondent participated in an extensive scheme to defraud the Medicaid program. The question in this proceeding was not whether or not the State can recover and obtain full restitution from the Respondent. The issue in this case is whether the Respondent is fit to continue practicing medicine in this state. The Respondent has demonstrated that he lacks the integrity to continue practicing medicine in this State. The Respondent used his medical license to defraud the Medicaid program. The Hearing Committee's penalty is appropriate and just, in view of the extensive and intentional nature of the Respondent's misconduct.

The Review Board considered imposing a civil penalty in addition to the revocation of the Respondent's license. The Board finally voted 4-1 not to impose any additional penalty.

ORDER

NOW, based upon this Determination, the Review Board issues the following **ORDER**:

1. The Administrative Review Board **SUSTAINS** the Hearing Committee's January 18, 1995 Determination finding Dr. Karl Merwin Easton guilty of professional misconduct.
2. The Review Board **SUSTAINS** the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF KARL MERWIN EASTON, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Easton.

DATED: Albany, New York

April 3, 1995

REDACTED

ROBERT M. BRIBER

IN THE MATTER OF KARL MERWIN EASTON, M.D.

SUMNER SHAPIRO, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Easton.

DATED: Delmar, New York

April 4, 1995

REDACTED

SUMNER SHAPIRO

IN THE MATTER OF KARL MERWIN EASTON, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Easton.

DATED: Brooklyn, New York

APRIL 4, 1995

REDACTED

WINSTON S. PRICE, M.D.

IN THE MATTER OF KARL MERWIN EASTON, M.D.

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Easton.

DATED: Roslyn, New York

March 30, 1995

REDACTED

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF KARL MERWIN EASTON, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Easton.

DATED: Syracuse, New York

30 Mar, 1995

REDACTED

WILLIAM A. STEWART, M.D.