



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

May 12, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard M. Koenig, M.D.
110 Pomona Road
Pomona, New York 10970

Maria Lally, Esq.
148 Central Avenue
Albany, New York 12206

Daniel Guenzburger, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Richard M. Koenig, M.D.

Dear Dr. Koenig, Ms. Lally and Mr. Guenzburger:

Enclosed please find the Determination and Order (ARB No. 93-19) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

RECEIVED
MAY 21 1993
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 than 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)].

Very truly yours,

Tyrone T. Butler nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

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IN THE MATTER	:	<u>ADMINISTRATIVE</u>
	:	<u>REVIEW BOARD</u>
OF	:	<u>DETERMINATION</u>
	:	<u>AND ORDER</u>
RICHARD M. KOENIG, M.D.	:	<u>ARB NO.93-19</u>

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The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** held deliberations on May 3, 1993 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") February 5, 1993 Determination and Order finding Dr. Richard M. Koenig guilty of Professional Misconduct. The Office of Professional Medical Conduct (OPMC) requested the review through a Notice of Review which the Review Board received on February 22, 1993. **James F. Horan, Esq.** served as Administrative Officer to the Review Board. Daniel Guenzburger, Esq. submitted a brief on behalf of OPMC on March 23, 1993. Maria A. Lally, Esq. submitted a brief on behalf of Dr. Koenig on March 25, 1993.

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.

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 Office of Professional Medical Conduct brought this proceeding against Dr. Koenig pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9), which provide an expedited hearing in cases in which professional misconduct charges against a physician 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. 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 determined that the Respondent had committed professional misconduct based upon his conviction in Rockland County Court on 20 charges of offering a false written instrument for filing in the first degree, a Class E Felony. The Hearing Committee found that the Respondent had submitted invoices to the Medicaid Program between July, 1986 and March, 1989 for services to Medicaid recipients which the Respondent did not actually provide. The County Court sentenced the Respondent to six months imprisonment, a Twenty-Five Thousand (\$25,000) Dollar fine, and five years probation. The Hearing Committee's Determination and Order indicates that the Respondent actually spent four months incarcerated.

The Hearing Committee voted to suspend the Respondent's license to practice medicine for four months, placed the Respondent on probation for the remainder of the probationary period imposed in the criminal matter and ordered that the Respondent perform 100 hours of community service. The Hearing Committee noted that "the suspension shall equate the time served in prison". The Hearing Committee found that the Respondent had breached the public trust, but they concluded that the period of incarceration and the stiff fine in the criminal matter would be sufficient deterrent to any similar misconduct by the Respondent in the future.

REQUESTS FOR REVIEW

The main issue which the parties raise in their briefs

is whether the Hearing Committee suspended Dr. Koenig for four months, in addition to the four months which Dr. Koenig was unable to practice medicine due to his incarceration, or whether the phrase "The suspension shall equate the time served in prison" meant that the Hearing Committee considered the suspension to be satisfied already by the time that Dr. Koenig did not practice due to the incarceration.

The Office of Professional Medical Conduct has also requested that the Review Board make some technical corrections to the Hearing Committee's Determination and Order.

REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted. We sustain the Hearing Committee's Determination and Order that the Respondent committed professional misconduct.

As to the Hearing Committee's Penalty, we interpret the phrase "the suspension shall equate the time spent in prison" to mean that the time the Respondent spent in prison, away from his practice, satisfies the four-month suspension penalty which the Hearing Committee imposed. The Hearing Committee placed the Respondent on probation for the remaining period of the court imposed probation, which indicates to us that the Hearing Committee intended that the Respondent's probationary period begin immediately, rather than that the probation begin following a further suspension.

Based upon our interpretation of the Hearing Committee's penalty, we unanimously vote to sustain the penalty. The penalty is consistent with the Committee's findings that the Respondent pled guilty to several charges that he overbilled the Medicaid Program, spent four months imprisoned and paid a heavy fine. We find the Hearing Committee penalty to be appropriate. The Respondent's incarceration, the heavy penalty he has paid, the period of probation and the community service will be sufficient to deter the Respondent and other physicians from such conduct in the future. An additional suspension is clearly not necessary.

ORDER

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

1. The February 5, 1993 Determination and Order of the Hearing Committee on Professional Medical Conduct which found Richard M. Koenig, M.D. guilty of professional misconduct is **sustained**.
2. The Hearing Committee's penalty, as we interpret the penalty in our Determination, is **sustained**.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

MARYCLAIRE B. SHERWIN

EDWARD C. SINNOTT, M.D.

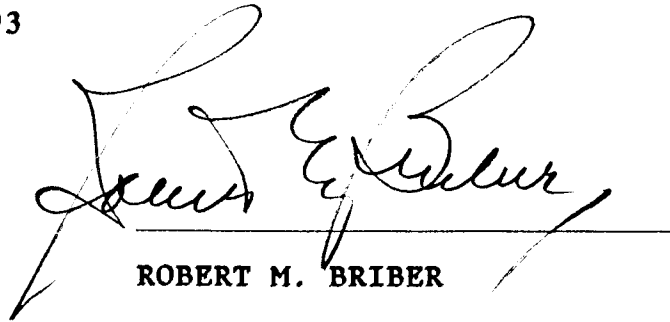
WILLIAM A. STEWART, M.D.

IN THE MATTER OF RICHARD M. KOENIG, 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. Koenig.

DATED: Albany, New York

May 3, 1993



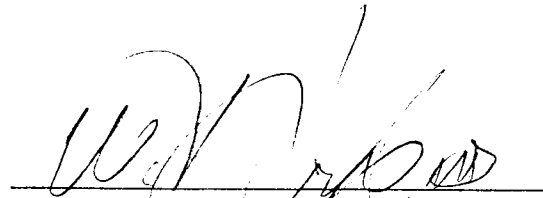
ROBERT M. BRIBER

IN THE MATTER OF RICHARD M. KOENIG, M.D.

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

DATED: Brooklyn, New York

May 3, 1993

A handwritten signature in cursive script, appearing to read 'W. S. Price', is written over a horizontal line.

WINSTON S. PRICE, M.D.

IN THE MATTER OF RICHARD M. KOENIG, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Koenig.

DATED: Albany, New York

May 3, 1993

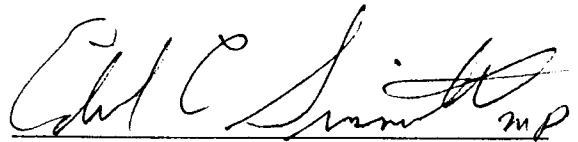
MaryClaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF RICHARD M. KOENIG, 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. Koenig.

DATED: Albany, New York

May 3, 1993

A handwritten signature in cursive script, reading "Ed C Sinnott M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF RICHARD M. KOENIG, 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. Koenig.

DATED: Albany, New York

May 3, 1993

William A. Stewart

WILLIAM A. STEWART, M.D.