



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

January 22, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Guy Surpris, M.D.
186-04 121st Avenue
St. Albans, New York 11412

Nathan H. Mitchell, Esq.
299 Broadway
New York, New York 10007

Marcia E. Kaplan, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Guy Surpris, M.D.

Dear Dr. Surpris, Mr. Mitchell and Ms. Kaplan:

Enclosed please find the Determination and Order (No. ARB-92-84) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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 : ADMINISTRATIVE
OF : REVIEW BOARD
GUY SURPRIS, M.D. : DETERMINATION
: AND ORDER
: ORDER NO. ARB-92-84

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A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**¹ held deliberations on December 17, 1992 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") October 16, 1992 Determination revoking Dr. Guy Surpris' license to practice medicine in New York State. Dr. Surpris requested the Administrative Review through a Notice of Review which the Board received on November 6, 1992. **JAMES F. HORAN, ESQ.** served as Administrative Officer to the Review Board. Nathan H. Mitchell, Esq., filed a brief on behalf of Dr. Surpris on December 3, 1992 and Marcia Kaplan, Esq. filed a brief on behalf of the Office of Professional Medical Conduct (hereinafter "OPMC") on November 19, 1992.

¹ At the time at which the Administrative Review Board met to deliberate this case, the New York State Senate had confirmed only four members of the five member Administrative Review Board that was created pursuant to Chapter 606 of the Laws of 1991.

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. Surpris pursuant to PHL §230(10)(p) and Education Law §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 State 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 matter found that the

Department had met its burden of proof in establishing that the Respondent was convicted on January 6, 1992, following a guilty plea in the Supreme Court for New York County, of Grand Larceny in the Third Degree (New York Penal Law §155.35) for stealing from New York State and its fiscal agent, Computer Sciences Corporation, from on or about February 1, 1988 to on or about September 12, 1992. The Hearing Committee found that the Respondent submitted magnetic tapes which represented falsely that the Respondent had rendered psychiatric treatment to Medicaid patients. In reliance upon those false representations, the Medicaid Program paid the Respondent \$39,320.00 (thirty nine thousand three hundred twenty dollars). The Hearing Committee concluded that by virtue of the conviction the Respondent had committed professional misconduct within the meaning of Education Law §6530(9)(a)(i).

The Hearing Committee voted unanimously to revoke Dr. Surpris' license to practice medicine in New York State. The Hearing Committee found that, in addition to falsely billing the Medicaid system, the Respondent had tried to repudiate his guilty plea by claiming at the disciplinary hearing that the false billings were clerical errors and that he had lied to the judge at his plea hearing. The Hearing Committee concluded the Respondent's crime, his lack of remorse and his attempt to repudiate his guilty plea demonstrated that the Respondent lacked the moral integrity to practice medicine. The Hearing Committee determined that revocation was the only appropriate sanction.

REQUESTS FOR REVIEW

The Respondent asserts that the Hearing Committee's revocation penalty is disproportionate in the Respondent's case because the criminal conviction underlying this disciplinary proceeding does not involve malpractice, injury to the health and or welfare of a patient, improper prescribing of drugs, substance abuse or mental impairment. The Respondent argues that the revocation penalty deprives him of a property right without due process.

REVIEW BOARD DETERMINATION

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

The Review Board votes unanimously to sustain the Hearing Committee's Determination that the Respondent was guilty of professional misconduct by virtue of his criminal conviction.

The Review Board votes unanimously to sustain the Hearing Committee's Determination revoking Dr. Surpris' license to practice medicine. The penalty was consistent with the Committee's findings and conclusions and is an appropriate penalty under PHL §230-a.

Billing the Medicaid system fraudulently for care which the Respondent did not provide does involve Dr. Surpris' practice of medicine and the Hearing Committee had sufficient grounds based on that conviction to determine that the Respondent lacked the moral integrity expected of a member of the medical profession.

The Review Board has previously upheld, as an appropriate penalty, a Hearing Committee's Determination revoking a physician's license following a conviction for Medicaid fraud Matter of Liriano (Order No.BPMC-92-43-A). Also, the Appellate Division for the Third Department has upheld a determination by the Board by Regents under the former physician disciplinary system revoking a physician's license following the physician's criminal conviction for Medicaid fraud, Manyam v. Sobol, 183 AD 2d 1022, 583 NYS 2d 613 (Third Dept., 1992).

Revoking a physician's license is not a disproportionate penalty for Medicaid fraud and revocation is the appropriate penalty in this case.

ORDER

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

1. The October 19, 1992 Determination by the Hearing Committee on Professional Medical Conduct finding Guy Surpris, M.D. guilty of professional misconduct based upon his criminal conviction of falsely billing the State of New York for services rendered under the Medicaid Program is hereby sustained.
2. The Hearing Committee's Determination revoking Dr. Surpris' license to practice medicine in the State of New York is hereby sustained.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

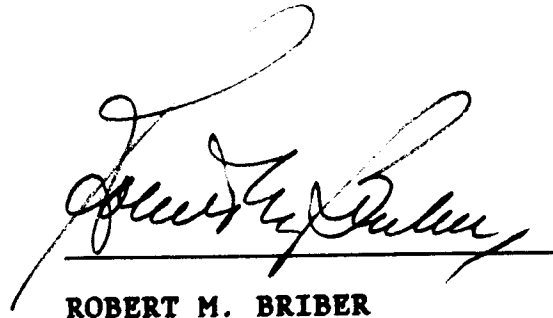
EDWARD C. SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF GUY SURPRIS, 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 Guy Surpris, M.D.

DATED: Albany, New York
January 8, 1993



ROBERT M. BRIBER

IN THE MATTER OF GUY SURPRIS, 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 Guy Surpris, M.D.

DATED: Albany, New York

January 1, 1993

Maryclaire B. Sherwin

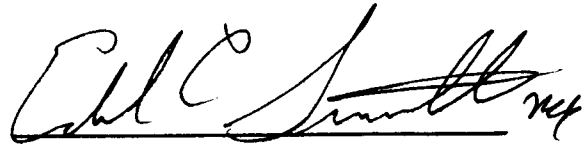
MARYCLAIRE B. SHERWIN

IN THE MATTER OF GUY SURPRIS, 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 Guy Surpris, M.D.

DATED: Albany, New York

January 18, 1993

A handwritten signature in black ink, appearing to read "Ed C. Sinnott", written over a horizontal line. The signature is cursive and includes a small mark at the end that looks like "ref".

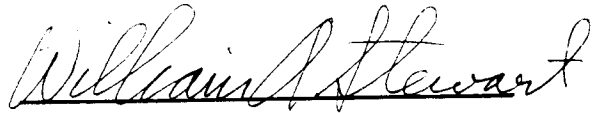
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF GUY SURPRIS, 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 Guy Surpris, M.D.

DATED: Albany, New York

January 7, 1993

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in dark ink and is positioned above the printed name.

WILLIAM A. STEWART, M.D.