



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

February 11, 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.
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 Richard M. Koenig, M.D.

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

Enclosed please find the Determination and Order (No. BPMC-93-19) of the Hearing Committee 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
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.

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the administrative review board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the
Administrative Review Board's Determination and Order.

Very truly yours,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

-----X

IN THE MATTER :

OF :

RICHARD M. KOENIG, M.D. :

-----X

HEARING
COMMITTEE'S
DETERMINATION

AND

ORDER NO. BPMC-93- 19

A Notice of Hearing and Statement of Charges, both dated December 9, 1992, were served upon the Respondent, Richard M. Koenig, M.D. **LEMUEL A. ROGERS, JR., M.D.** (Chairperson), **ALVIN RUDORFER, D.O.**, and **KENNETH KOWALD**, duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law. **BENJAMIN J. MIGLIORE, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on January 20, 1993. The Department of Health appeared by Daniel Guenzburger, Esq., Assistant Counsel. The Respondent was represented by Maria A. Lally, Esq. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

The case was brought pursuant to Public Health Law §230(10)(p). The statute provides for the expedited hearing where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New

York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to N.Y. Education Law §6530(9)(a)(i) (McKinney Supp. 1992). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Richard M. Koenig, M.D. (hereinafter Respondent) was authorized to practice medicine in New York State on April 4, 1975 by the issuance of license number 123515 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice

medicine for the period January 1, 1991 to December 31, 1992.

(Pet. Ex. 1)

2. On April 19, 1991, in the County Court, Rockland County, New York, the Respondent was convicted after a jury trial of twenty counts of offering a false written instrument for filing in the first degree in violation of Penal Law Section 175.35. Penal Law §175.35 is a Class E felony.

(Pet. Ex. 1)

3. The Respondent, a psychiatrist, enrolled as a provider in the Medicaid Program, submitted to the State of New York invoices which the Respondent knew contained false statements and false information. The Respondent was convicted for submitting invoices to the Medicaid Program between July 14, 1986 and March 7, 1989, on which he represented that he had provided certain services to Medicaid recipients, when in fact he knew that the services were not rendered as represented on the invoices. (Pet. Ex. 1)

4. On June 26, 1991, Respondent was sentenced to a six month prison sentence, a fine of Twenty-five Thousand Dollars (\$25,000.00), and five years probation. (Pet. Ex. 1 and 5).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee unanimously concluded that the Department has met its burden of proof. The preponderance of the evidence clearly demonstrated that Respondent was convicted of a crime under New York State Law, in violation of Education Law §6530(9)(a)(i). The Hearing Committee, therefore, concluded that the specification of misconduct contained in the Statement of Charges should be sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in the State of New York be suspended for a period of four (4) months. The suspension shall equate the time served in prison. Additionally, the Respondent shall be placed on probation for the remainder of the probationary period imposed in the criminal matter. The Respondent shall also serve one hundred hours (100) of community service under terms and conditions acceptable to the Director of the Office of Professional Medical Conduct. Written proof of successful completion of the community service is to be provided to the office.

This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

A physician's license to practice medicine is a

privilege granted to the members of the profession. By holding oneself out as a physician, Respondent has placed himself in a position of public trust. Respondent's conduct demonstrates a breach of that public trust. Nevertheless, it was the consensus of the Committee that revocation of his medical license was not warranted. Respondent has paid a stiff financial penalty and has been incarcerated for his conduct. The Committee believes this to be a sufficient deterrent to any similar misconduct by the Respondent in the future. The Hearing Committee also considered the strong support of the Respondent's character witnesses who testified on his behalf that rehabilitation of the Respondent is possible. The Hearing Committee also took into account that this is the Respondent's first conviction and that he showed considerable remorse for his conduct.

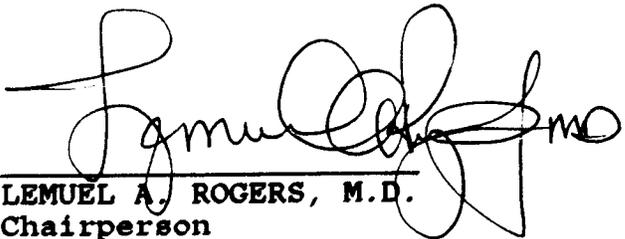
The Hearing Committee believes that successful completion of these terms will enable the Respondent to restore his medical practice to the appropriate clinical and ethical standards expected of members of the profession.

ORDER

Based upon the foregoing, it is hereby ordered that:

1. The specification of misconduct, as contained in the Statement of Charges (Pet. Ex. 1) are **sustained**; and
2. Respondent's license to practice medicine in New York State shall be subject to the terms and conditions described herein.

DATED: ROCHESTER, NEW YORK
February 5, 1993



LEMUEL A. ROGERS, M.D.
Chairperson

ALVIN RUDORFER, D.O.
KENNETH KOWALD

TO: Maria Lally, Esq.
Attorney at Law
148 Central Avenue
Albany, New York 12206

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

A P P E N D I X I

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

-----X
: IN THE MATTER :
: OF : NOTICE
: OF :
: RICHARD M. KOENIG, M.D. : HEARING
: :
-----X

TO: RICHARD M. KOENIG, M.D.
110 Pomona Road
Pomona, New York 10970

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1992) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1992). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 6th day of January, 1993 at 3:00 in the afternoon of that day at 5 Penn Plaza, Sixth Floor, New York, NY 10016 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce

PLAINTIFF'S
DEFENDANT'S
COMPANY'S
~~DEPARTMENT'S~~ **EXHIBIT 1**
PETITIONER'S for identification
RESPONDENT'S in evidence
DATE 1/20/93 REPORTER MC
STERLING REPORTING SERVICE, INC.

witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1992), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, Section 51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the

Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW Section 230-a (McKinney Supp. 1992). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
December 9, 1992


CHRIS STERN HYMAN
Counsel

Inquiries should be directed to: Daniel Guenzburger
Assistant Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

Telephone No.: 212-613-2603

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

-----X

IN THE MATTER : STATEMENT
OF : OF
RICHARD M. KOENIG, M.D. : CHARGES

-----X

RICHARD M. KOENIG, M.D., the Respondent, was authorized to practice medicine in New York State on April 4, 1975 by the issuance of license number 123515 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 to December 31, 1992 at 110 Pomona Road, Pomona, New York 10970.

FIRST SPECIFICATION

1. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(i) (McKinney Supp. 1992) in that he was convicted of an act constituting a crime under New York State law, specifically:

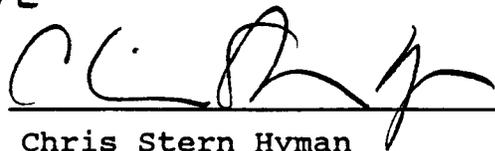
On or about April 19, 1991, in the County Court, Rockland County, New York, the Respondent was convicted after a jury trial of twenty (20) counts of offering a false written instrument for filing in the first degree in violation of Penal Law Section

trial of twenty (20) counts of offering a false written instrument for filing in the first degree in violation of Penal Law Section 175.35 (McKinney 1988). Penal Law Section 175.35 is a class E felony. A person violates Penal Law Section 175.35, when with the intent to defraud the state or any political subdivision of the state, he knowingly offers or presents for filing to a public office a written instrument that contains a false statement or false information. The Respondent was convicted for submitting invoices to the Medicaid program between July 14, 1986 and March 7, 1989, on which he represented that he had provided certain services to Medicaid recipients, when in fact he knew that the services were not rendered as represented on the invoices.

On or about June 26, 1991, the Respondent was sentenced to a six month prison sentence, a fine of twenty-five thousand dollars (\$25,000.00), and five years probation.

DATED: New York, New York

December 9, 1992



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct