

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

John Blevins Davis,

Petitioner

v.

The Inspector General.

Docket No. C-10-743

Decision No. CR2239

Date: September 8, 2010

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, John Blevins Davis, M.D., from participating in Medicare and other federally financed health care programs for a minimum period of five years.

I. Background

Petitioner is a physician. The I.G. excluded Petitioner, because he found that Petitioner had been convicted of a felony as is described at section 1128(a)(4) of the Social Security Act (Act). Petitioner requested a hearing, and the case was assigned to me for a hearing and a decision. The I.G. filed a brief and four proposed exhibits that are identified as I.G. Ex. 1 – I.G. Ex. 4. Petitioner filed a brief and no exhibits. Neither party requested that I convene an in-person hearing.

I receive into evidence I.G. Ex. 1 – I.G. Ex. 4.

II. Issues, Findings of Fact, and Conclusions of Law

A. Issues

The issues in this case are whether:

1. Petitioner was convicted of a felony as is described at section 1128(a)(4) of the Act; and
2. An exclusion of at least five years is mandatory.

B. Findings of Fact and Conclusions of Law

I make the following findings of fact and conclusions of law.

1. Petitioner was convicted of a felony as is described at section 1128(a)(4) of the Act.

Section 1128(a)(4) of the Act mandates the exclusion of any individual that is convicted pursuant to federal or State law of a felony that occurred after August 21, 1996 relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. The evidence that the I.G. offered establishes unequivocally that Petitioner was convicted of such a crime.

On March 20, 2008, Petitioner was convicted of Counts One and Eight of a felony indictment that had been filed against him in the United States District Court for the Middle District of North Carolina. I.G. Ex. 4 at 1; I.G. Ex. 2 at 1, 4. Petitioner's conviction was entered pursuant to a plea agreement. I.G. Ex. 3.

Petitioner was found guilty of the following crimes. First, he was convicted of unlawfully, knowingly, and intentionally obtaining and acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception, and subterfuge. I.G. Ex. 2 at 1. Specifically, Petitioner forged the signature of another physician on a stolen prescription pad to obtain 40 tablets of hydrocodone, a Schedule III controlled substance, from a North Carolina pharmacy. *Id.* Second, he was convicted of unlawfully, knowingly, and intentionally attempting to obtain and acquire possession of a controlled substance by misrepresentation, fraud, forgery, deception and subterfuge. *Id.* at 4. As with the allegations at Count One, Petitioner forged the signature of another physician on a stolen prescription pad to obtain hydrocodone. *Id.*

As I have stated, Petitioner's crimes are felonies committed after August 21, 1996. They relate to the unlawful prescription or dispensing of a controlled substance. The essence

