

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Yahya Hedvat, M.D.,
(OI File No. H-15-40389-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-89

Decision Number CR4595

Date: April 27, 2016

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Yahya Hedvat, M.D., from participating in Medicare, Medicaid, and all other federally funded health care programs for a period of at least five years. Sections 1128(a)(4) and (c)(3)(B) of the Social Security Act (Act) mandate the I.G.'s exclusion determination.

I. Background

Petitioner, a physician, requested a hearing in order to challenge the I.G.'s exclusion determination. The I.G. filed a brief and a reply brief in support of his determination, along with three exhibits that are identified as I.G. Ex. 1 – I.G. Ex. 3. Petitioner filed a written statement in opposition to the I.G.'s determination. Neither the I.G. nor Petitioner offered the proposed testimony of any witness. I receive I.G. Ex. 1 – I.G. Ex. 3 into the record.

II. Issues, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether sections 1128(a)(4) and (c)(3)(B) of the Act mandate exclusion of Petitioner for a period of at least five years.

B. Findings of Fact and Conclusions of Law

Section 1128(a)(4) of the Act mandates exclusion of any person who is convicted of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. Section 1128(c)(3)(B) directs exclusion for at least five years of any individual who is excluded pursuant to section 1128(a)(4).

The evidence establishes that, on November 3, 2014, the Superior Court of California, County of Los Angeles (Superior Court) found Petitioner guilty of eight counts of violating section 11153(a) of the California Health and Safety Code. I.G. Ex. 3 at 8. This section makes it a felony for an individual who, when prescribing a controlled substance, knowingly fails to issue the prescription for a legitimate medical purpose while acting in the usual course of his or her professional practice. I.G. Ex. 2; Cal. Health & Safety Code § 11153(a) (West 2014). On that same date, the Superior Court found Petitioner guilty of one additional felony count for a violation of section 11352(a) of the California Health and Safety Code. I.G. Ex. 3 at 8. This section imposes criminal penalties for the unlawful transport, import, sale, furnishing, administering, or giving away of a controlled substance. I.G. Ex. 2; Cal. Health & Safety Code § 11352(a) (West 2014). The court also found Petitioner guilty of an additional felony consisting of violating section 11375(b)(1) of the California Health and Safety Code. I.G. Ex. 3 at 8. This section imposes criminal penalties for the sale or possession for sale of certain controlled substances. Cal. Health & Safety Code § 11375(b)(1) (West 2014).

Petitioner was “convicted” within the meaning of the Act for each of the above offenses because the Superior Court entered a finding of guilt against him for each. Act § 1128(i)(2). Petitioner’s convictions were, on their face, convictions for the unlawful prescription and distribution of controlled substances. That brings his convictions within the reach of section 1128(a)(4) of the Act.¹ Consequently, the I.G. must exclude Petitioner for at least five years. Act § 1128(c)(3)(B).

Petitioner argues that he is not really guilty of the crimes of which he was convicted. He asserts that he was the victim of a scheme that transpired without his knowledge, in

¹ Section 1128(a)(4) of the Act applies to convictions occurring after August 21, 1996. Petitioner’s convictions obviously occurred after that date.

