DEPARTMENT OF HEALTH AND HUMAN SERVICES

Departmental Appeals Board

Civil Remedies Division

In the Case of:	)	
	)	
Howard B. Reife, D.P.M.,	)	DATE: APR 28, 1989
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-64
	)	
The Inspector General.	)	DECISION CR 25
	)	

DECISION OF ADMINISTRATIVE LAW JUDGE ON MOTION FOR SUMMARY DISPOSITION

The Inspector General (the I.G.) notified Petitioner on August 31, 1988 that he was being excluded from participation in Medicare and any State health care programs for a period of five years.1/ The I.G. told Petitioner that his exclusions were due to his conviction of a criminal offense related to the delivery of an item or service under the Medicare program. Petitioner was advised that the law required five year minimum exclusions from participation in Medicare and State health care programs for individuals convicted of a program-related offense.

Petitioner timely requested a hearing, and the case was assigned to me for a hearing and decision. I conducted a prehearing conference on December 20, 1988, at which the I.G. stated that he intended to move for summary disposition. I issued a prehearing Order on December 23, 1988, which established a schedule for filing the motion and responding to it, and which also provided for oral argument on the motion. The I.G. filed a motion for summary disposition which was opposed by Petitioner.

1/ "State health care program" is defined by section 1128(h) of the Social Security Act, 42 U.S.C. 1320a-7(h), to include any State Plan approved under Title XIX of the Act (Medicaid).

Petitioner also moved for summary disposition in his favor. The I.G. requested leave to file a reply to Petitioner's motion, which I granted. Petitioner requested oral argument, and I conducted oral argument in Kansas City, Missouri, on April 17, 1989.

I have considered the arguments of the parties, the undisputed material facts, and applicable law and regulations. I conclude that the exclusions imposed and directed by the I.G. are mandatory. Therefore, I am deciding this case in favor of the I.G.

ISSUES

The issues raised by the parties are whether:

1. the delegation of authority by the Secretary of Health and Human Services (the Secretary) to the I.G. to determine and impose or direct exclusions pursuant to 42 U.S.C. 1320a-7 is unlawful;

2. the Secretary is required to adopt regulations implementing the 1987 revisions to 42 U.S.C. 1320a-7 before the I.G. may make exclusion determinations pursuant to the law;

3. summary disposition is appropriate in this case; and

4. given the undisputed material facts, the I.G.'s determination to exclude Petitioner from participation in the Medicare program, and to direct that he be excluded from participation in State health care programs, for five years, is mandated by law.

APPLICABLE LAWS AND REGULATIONS

1. Section 1128 of the Social Security Act:
Section 1128(a)(1) of the Social Security Act, 42 U.S.C. 1320a-7(a)(1), requires the Secretary to exclude from participation in the Medicare program, and to direct the exclusion from participation in any State health care programs of, any individual or entity "convicted of a criminal offense related to the delivery of an item or service" under Medicare or any State health care program. "Conviction" is defined at 42 U.S.C. 1320a-7(i) to include those circumstances when a party pleads guilty to a criminal charge. The law provides, at 42 U.S.C.

1320a-7(c)(3)(B), that for those excluded under section 1320a-7(a), the minimum exclusion period shall be five years.

The law also provides the Secretary with discretion in certain enumerated circumstances to exclude parties from participation in Medicare and to direct their exclusion from participation in State health care programs. 42 U.S.C. 1320a-7(b)(1)-(14). The law does not prescribe a minimum exclusion period in such cases.

The current law was enacted in August 1987 and embodies revisions of preexisting law. Prior to August 1987, the law provided, at 42 U.S.C. 1320a-7(a), that the Secretary must bar from participation in Medicare, and direct debarment from participation in State plans approved under Title XIX, any physician or other individual "convicted . . . of a criminal offense related to such individual's participation in the delivery of medical care or services under title XVIII, XIX, or XX . . . ." Unlike current law, the law did not prescribe a minimum suspension or exclusion period for such mandatory suspensions. Furthermore, the law did not grant the Secretary the discretionary exclusion authority for the grounds now provided by 42 U.S.C. 1320a-7(b).

Both the pre-1987 law and the current law provide that an excluded party may request a hearing as to the exclusion. The law presently states, at 42 U.S.C. 1320a-7(f), that an excluded party is entitled to a hearing to the same extent as is provided in 42 U.S.C. 405(b). That section provides that a party entitled to an administrative hearing by virtue of an adverse decision by the Secretary shall be given reasonable notice and opportunity for a hearing before the Secretary "with respect to such decision."

2. Regulations Governing Suspension, Exclusion, or Termination of Practitioners, Providers, Suppliers of Services, and Other Individuals: The Secretary delegated to the I.G. the authority to determine, impose, and direct exclusions pursuant to section 1128 of the Social Security Act. 48 Fed. Reg. 21662 (May 13, 1983.) Regulations governing suspension and exclusion of individuals pursuant to section 1128 and this delegation are contained in 42 C.F.R. Part 1001. Section 1001.123(a) provides that when the I.G. has conclusive information that an individual has been convicted of a program-related crime, he shall give that individual written notice that he is being suspended (excluded) from participation. Section 1001.125(b) establishes criteria for the I.G. to use in

determining the appropriate length of exclusions in those cases where the I.G. may exercise discretion.

Section 1001.128 provides that an individual excluded based on conviction of a program-related offense may request a hearing before an administrative law judge on the issues of whether: (1) he or she was in fact, convicted; (2) the conviction was related to his or her participation in the Medicare, Medicaid, or social services program; and (3) whether the length of the exclusion is reasonable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner is a Doctor of Podiatry. P. Ex. A-1.2/

2. On March 28, 1988, Petitioner was charged with the federal criminal offense of knowingly and willfully making false and material statements and representations in applications for Medicare payments. I.G. Ex. 4.

3. The criminal information filed against Petitioner specifically charged him with executing and submitting Medicare claim forms for podiatric services which contained false and fraudulent statements relating to the type of podiatry services allegedly provided to Medicare patients. I.G. Ex. 4.

4. The criminal information filed against Petitioner was filed pursuant to a plea agreement entered between Petitioner and the United States Attorney. I.G. Ex. 3. The agreement recited that the information would be filed against Petitioner, and that Petitioner agreed to plead guilty to the charges contained in the information. Id.

2/ The parties' exhibits and memoranda will be cited as follows:

Petitioner's Exhibit	P. Ex. (letter-page number)
Inspector General's Exhibit	I.G. Ex. (number)
Inspector General's Memorandum	I.G.'s Memorandum at (page)
Petitioner's Memorandum	P.'s Memorandum at (page)
Inspector General's Reply Memorandum	I.G.'s Reply Memorandum at (page)

5. On May 25, 1988, Petitioner pleaded guilty to the charges in the information. I.G. Ex. 5. Petitioner was sentenced to three years' probation, the requirement that he contribute 400 hours of community service, a $5,000 fine, and a $25.00 special assessment. Id.

6. The offense which Petitioner pleaded guilty to is a criminal offense related to the delivery of an item or service under the Medicare program. 42 U.S.C. 1320a-7(a)(1).

7. Petitioner's guilty plea is a conviction as defined by 42 U.S.C. 1320a-7(i).

8. The minimum mandatory exclusion period is five years for a person who has been excluded based on conviction of a criminal offense related to the delivery of an item or service under Medicare.

9. The Secretary delegated to the I.G. the duty to exclude from participation in Medicare, and to direct the exclusion from participation in State health care programs, persons whose exclusion is required or permitted under 42 U.S.C. 1320a-7. 48 Fed. Reg. 21662 (May 13, 1983.)

10. I do not have authority to decide whether the Secretary's delegation of duties to the I.G. pursuant to 42 U.S.C. 1320a-7 is lawful. 42 U.S.C. 1320a-7(f); 42 U.S.C. 405(b); 42 C.F.R. 1001.128.

11. I do not have authority to decide whether the Secretary is required to adopt regulations implementing the 1987 revisions to 42 U.S.C. 1320a-7 before the I.G. may make exclusion determinations pursuant to the law. 42 U.S.C. 1320a-7(f); 42 U.S.C. 405(b); 42 C.F.R. 1001.128.

12. There do not exist disputed issues of material fact in this case; therefore, summary disposition is appropriate. See Federal Rules of Civil Procedure, Rule 56.

13. The I.G. excluded Petitioner from participation in the Medicare program, and directed that Petitioner be excluded from participation in State health care programs, for five years, based on Petitioner's conviction of a criminal offense related to the delivery of an item or service under the Medicare program. The exclusions are

mandatory and for the minimum period of time required by law. 42 U.S.C. 1320a-7(a)(1) and (c)(3)(B).

ANALYSIS

The I.G. bases his motion for summary disposition on Petitioner's conviction of a federal criminal offense of making false statements and representations in claims for Medicare reimbursement, and the provisions of 42 U.S.C. 1320a-7(a)(1), which mandate five year exclusions from participation in the Medicare and State health care programs for persons convicted of criminal offenses related to the delivery of an item or service under the Medicare or Medicaid programs. The I.G. asserts that Petitioner was convicted of an offense "related to" the delivery of an item or service under the Medicare program; therefore, Petitioner's exclusions were mandatory.

Petitioner does not deny that he was convicted of a criminal offense, nor does he deny the particulars of his conviction. However, he challenges his exclusions on the following bases: (1) the Secretary's delegation of authority to the I.G. to impose and direct exclusions pursuant to 42 U.S.C. 1320a-7 is unlawful; (2) Petitioner's exclusions are contrary to law because the Secretary has not yet adopted regulations implementing the 1987 revisions to 42 U.S.C. 1320a-7, and the I.G. is relying on "unpublished guidelines/directives" to determine exclusions; and (3) the I.G. improperly characterized the crime for which Petitioner was convicted as an offense "related to" the delivery of an item or service under the Medicare program, and improperly imposed and directed exclusions on Petitioner pursuant to 42 U.S.C. 1320a-7(a)(1), whereas the offense for which he was convicted should be characterized as an offense for which discretionary exclusions, rather than mandatory exclusions, would be appropriate, pursuant to 42 U.S.C. 1320a-7(b)(1), (b)(6), or (b)(7).

Petitioner also contends that a factual controversy exists in this case and that he is therefore entitled to an evidentiary hearing. Petitioner claims that if he is denied a hearing, such denial constitutes improper application of "collateral estoppel" to the case. See P.'s Memorandum at 26.

Petitioner's arguments in this case are in many respects identical to arguments made by petitioners in Jack W. Greene v. The Inspector General, Docket No. C-56, decided

January 31, 1989, and Michael I. Sabbagh, M.D. v. The Inspector General, Docket No. C-59, decided February 22, 1989. Counsel for Petitioner in this case also represented petitioners in the Greene and Sabbagh cases. Where appropriate, I will incorporate by reference my analysis in Greene and Sabbagh in resolving the issues in this case, rather than repeating verbatim the discussion of those decisions.

1. I do not have authority to decide whether the Secretary lawfully delegated to the I.G. the duty to impose and direct exclusions pursuant to 42 U.S.C. 1320a-7. Petitioner asserts that a "default judgment" should be entered against the I.G. because the Secretary has improperly delegated to the I.G. the authority to impose and direct exclusions. P.'s Memorandum at 35-38. Petitioner contends that the duty to impose and direct exclusions is a "program operating responsibility" which is prohibited from transfer to the I.G. by 42 U.S.C. 3526(a). P.'s Memorandum at 37. Thus, according to Petitioner, exclusions imposed or directed pursuant to this allegedly illegal delegation are invalid. Id. at 38. The I.G. disputes these assertions, arguing that the delegation of exclusion authority to the I.G. is not a "program operating responsibility," and arguing further that Congress has expressly approved the delegation. I.G.'s Memorandum at 3-4.

The identical arguments concerning the lawfulness of the delegation of exclusion authority to the I.G. were made by petitioners in Greene and Sabbagh. In both cases I decided that I lacked authority to hear and decide contentions concerning the lawfulness of delegations of authority from the Secretary to the I.G. My conclusion was premised on my holding that neither 42 U.S.C. 1320a-7 nor 42 U.S.C. 405(b) (incorporated by reference in 42 U.S.C. 1320a-7) provided for administrative review of regulations or policy determinations in exclusion cases. I additionally held that the Secretary's regulatory grant of jurisdiction to administrative law judges to hear and decide exclusion cases did not include a grant of authority to decide the lawfulness of regulations and policies. 42 C.F.R. 1001.128.

Petitioner offers nothing which augments that which was asserted by petitioners in Greene and Sabbagh, and I incorporate the analysis of those decisions, again concluding that I do not have authority to hear and decide Petitioner's contentions concerning the delegation of exclusion authority to the I.G.

2. I do not have authority to decide whether the Secretary is required to adopt regulations implementing the 1987 revisions to 42 U.S.C. 1320a-7 before the I.G. may make exclusion determinations pursuant to the law. Petitioner asserts that the exclusions imposed on him are invalid because the Secretary has not adopted regulations implementing the 1987 revisions to 42 U.S.C. 1320a-7. Petitioner predicates his argument on his claim that the I.G. is relying on an "unpublished" regulation to determine exclusions. P.'s Memorandum at 4-5. He also bases his argument on an asserted requirement for the Secretary to issue regulations clarifying allegedly ambiguous provisions of the law. The I.G. denies that regulations are necessary to implement the provisions of 42 U.S.C. 1320a-7, because the exclusion determination in this case was made in accordance with "ascertainable standards." Patchogue Nursing Center v. Bowen, 797 F.2d 1137, 1143 (2d Cir. 1986), cert. denied 107 S.Ct. 873 (1987).

Petitioner's arguments again repeat those made by petitioners in Greene and Sabbagh. In those cases I held that I lacked authority to decide whether the Secretary was under a duty to issue regulations before implementing the 1987 law, for the same reason that I lacked authority to determine the lawfulness of the Secretary's delegations to the I.G. Inasmuch as Petitioner makes no new argument in this case, I incorporate the analysis of those cases and again hold that I do not have authority to decide whether the Secretary is obligated to issue regulations implementing the 1987 revisions to 42 U.S.C. 1320a-7.3/

3. Summary disposition is appropriate in this case. In both Greene and Sabbagh I held that the absence of disputed material facts made summary disposition appropriate. In Sabbagh I elaborated on the basis for summary disposition, noting that summary disposition would not be appropriate if the case hinged on disputed issues of material fact, but that summary disposition should be

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3/ As I noted in Greene and Sabbagh, my holding that I do not have authority to resolve Petitioner's claims concerning the Secretary's alleged obligation to issue regulations makes it unnecessary at this point to decide Petitioner's contention that the law is ambiguous. But my discussion at Part 4 of this Analysis and at analogous parts of Greene and Sabbagh makes clear that the law is not ambiguous.

entered where there was no disputed issue of material fact, and where the undisputed facts demonstrated that one party is entitled to judgment as a matter of law. Federal Rules of Civil Procedure, Rule 56; Collins v. American Optometric Ass'n., 693 F.2d 636 (7th Cir. 1982).

The issue which I must resolve in deciding the I.G.'s motion for summary disposition is whether the offense which Petitioner was convicted of falls within the ambit of 42 U.S.C. 1320a-7(a)(1). Certain facts must be established in order for me to decide this issue. First, I must determine whether Petitioner was "convicted" of an offense. Here, there is no dispute, because Petitioner concedes that his guilty plea constitutes a "conviction" within the meaning of the law. P.'s Memorandum at 26. Second, I must determine what offense Petitioner pleaded guilty to. Again, there is no dispute on this question. The I.G. has offered as an exhibit Petitioner's plea of guilty and Petitioner has not disputed the authenticity or truthfulness of the document. I.G. Ex. 5.

The parties dispute whether Petitioner's offense is related to the delivery of an item or service under the Medicare program. But, as the factual elements of this issue have been established, the only question left for me to determine is how Petitioner's offense must be characterized under the law. That is a legal question.

Petitioner asserts that there are disputed issues of material fact in this case and argues that, as a consequence, he is entitled to an evidentiary hearing. P.'s Memorandum at 44. His assertion is grounded on his allegation that, despite having pleaded guilty to a criminal offense, he did not engage in unlawful conduct. P.'s Memorandum at 26. From this, he argues that he is "entitled to present . . . his side of the case." Id. Petitioner argues further that entry of summary disposition against him without permitting an evidentiary hearing on the question of whether his conduct was actually unlawful is an improper application of collateral estoppel against him. P.'s Memorandum at 24, 26; see P. Ex. A-1.

Petitioner's argument is without merit, because the facts which he alleges are not material to the issues in this case. The act which triggers the mandatory exclusion provisions of 42 U.S.C. 1320a-7(a)(1) is conviction of an offense related to the delivery of an item or service under the Medicare or State health care programs. The law does not permit an individual convicted of such an offense

to argue against imposition of exclusions, on the ground that he really wasn't guilty of the offense he was convicted of. Furthermore, in a case where the mandatory exclusion provisions of subsection (a)(1) apply, mitigating evidence is irrelevant.4/

Petitioner also offers the affidavit of a former Department of Health and Human Services employee, apparently as expert opinion to show that the offense which Petitioner was convicted of was not an offense related to the delivery of an item or service under the Medicare or State health care programs. P. Ex. A-2. Petitioners in both the Greene and Sabbagh cases made similar offers. In both of those cases I held that how the offenses which petitioners were convicted of should be classified pursuant to 42 U.S.C. 1320a-7 is not a question of fact, but of law. Expert opinion on this legal question is irrelevant.

I conclude that there are no disputed issues of material fact in this case. The only issues in dispute are legal issues. Summary disposition is an appropriate mechanism for deciding the case.

4. Given the undisputed material facts, the IG.'s determination to exclude Petitioner from participation in the Medicare program, and to direct that he be excluded from participation in State health care programs, for five years, is mandated by law. The undisputed facts of this case are that Petitioner pleaded guilty to, and was convicted of, a criminal offense consisting of fraudulently making false Medicare claims for podiatry services. I.G. Ex. 5. The I.G. excluded Petitioner from participation in the Medicare program, and directed that he be excluded from participation in State health care programs, for five years, pursuant to 42 U.S.C. 1320a-7(a)(1) and (c)(3)(B). These sections require mandatory

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4/ The mandatory exclusion provisions of 42 U.S.C. 1320a-7(a)(1) and (c)(3)(B) establish a minimum exclusion period of five years, but permit lengthier exclusions in appropriate cases. The facts underlying Petitioner's conviction might be relevant if, pursuant to 42 U.S.C. 1320a-7(a)(1), the I.G. had imposed and directed exclusions for a period greater than the statutory minimum period of five years. The seriousness of Petitioner's conduct in that circumstance could be relevant in assessing the reasonableness of the exclusions. 42 C.F.R. 1001.125(b).

five year minimum exclusions from participation in Medicare and State health care programs, of five years, for any individual or entity convicted of a criminal offense related to the delivery of an item or service under Medicare or any State health care program.

The offense which Petitioner pleaded guilty to is indistinguishable from the offenses involved in the Greene and Sabbagh cases. Petitioners in those cases were convicted of defrauding the Medicaid program, by misrepresenting the items for which reimbursement claims were made (Greene), or by billing the program for a fictitious service (Sabbagh).

In opposing the exclusions, Petitioner reiterates arguments that failed in Greene and Sabbagh. His principal contention is that the offense which Petitioner was convicted of is not related to the delivery of an item or service under Medicare, within the meaning of 42 U.S.C. 1320a-7(a)(1). He asserts that in 1987 Congress narrowed the scope of offenses which are subject to the mandatory exclusion provisions of 42 U.S.C. 1320a-7(a)(1) by deleting "financial" crimes from the category of offenses which requires exclusions. He argues that in 1987 Congress classified fraud against Medicare or Medicaid as offenses which might justify exclusions under the discretionary exclusion provisions of 42 U.S.C. 1320a-7(b)(1). P.'s Memorandum at 15-23. Therefore, according to Petitioner, his criminal conviction would, at most, justify an exclusion under the discretionary exclusion provisions of 42 U.S.C. 1320a-7(b).5/

Petitioner's argument as to the meaning of the law has two elements. First, Petitioner asserts that in revising the statute in 1987, Congress changed key phrasing in section (a)(1) to narrow its meaning to no longer include "financial offenses" within the mandatory exclusion provisions. He predicates this argument on Congress' 1987 substitution of the term in section (a)(1) "related to the delivery of an item or service" for the predecessor

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5/ A tactic employed by Petitioner throughout his argument is to characterize his offense as benign or noncriminal. He at times refers to the offense as a "billing dispute" (see P.'s Memorandum at 8), and at other times as an "alleged offense" (see P.'s Memorandum at 2). But Petitioner's plea indelibly establishes a criminal conviction for making false claims for Medicare reimbursement. I.G. Ex. 5.

language "related to such individual's participation in the delivery of medical care or services."

I do not accept this analysis. The plain meaning of the 1987 enactment is to require exclusions of individuals or entities convicted of fraud, theft, or embezzlement in connection with the rendering of items or services under the Medicare or State health care programs.6/

The second aspect of Petitioner's argument is based on the language of 42 U.S.C. 1320a-7(b)(1). He asserts that this section, which provides for permissive exclusions of individuals or entities convicted of fraud, theft or embezzlement against government-financed health care programs, was intended to provide the sole basis for excluding parties who committed "financial" offenses related to the delivery of items or services under the Medicare or State health care programs. As I noted in both Greene and Sabbagh, this statutory section, when read out of context, is broad enough in its terms to encompass Petitioner's offense. However, when it is read in context, it becomes evident that Congress intended this section to provide for discretionary exclusions of individuals and entities who are convicted of offenses directed against programs other than Medicare or State health care programs.7/

Petitioner makes two additional arguments concerning the classification of his conduct under 42 U.S.C. 1320a-7. He contends that his conduct should be considered as a claim for "excessive charges" under the discretionary exclusion provisions of 42 U.S.C. 1320a-7(b)(6). He also asserts that, as he was convicted of a criminal offense pursuant to 42 U.S.C. 1320a-7b, his offense falls within the category of discretionary exclusions described in

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6/ Because its meaning is plain, it is unnecessary to compare the current law with predecessor statutes or to examine legislative history to find Congressional intent. However, as I noted in both Greene and Sabbagh, my interpretation of the meaning of 42 U.S.C. 1320a-7(a)(1) is supported by both a comparison of the present statute with its predecessors, and legislative history of the 1987 enactment and predecessor legislation.

7/ This intent is clear without reference to legislative history. Again, however, as I noted in Greene and Sabbagh, legislative history supports my interpretation of the law.

42 U.S.C. 1320a-7(b)(7), and, therefore, he cannot be excluded pursuant to 42 U.S.C. 1320a-7(a)(1). P.'s Memorandum at 31.

The operative fact which triggers the mandatory exclusion provisions of subsection (a)(1) is a conviction for an offense related to the delivery of an item or service under Medicare or Medicaid. Had Petitioner not been convicted of an offense, then the I.G. could appropriately consider whether Petitioner's conduct provided a basis for his exclusion under any of the subsections of 42 U.S.C. 1320a-7(b), including subsections (b)(6) and (b)(7). However, as Petitioner was convicted of an offense described in subsection (a)(1), the I.G. has no choice but to exclude him from participation in Medicare, and to direct his exclusion from participation in State health care programs, for at least five years.

Thus, 42 U.S.C. 1320a-7(b)(7) permits the Secretary to exclude, and to direct the exclusions of, any individual or entity "that the Secretary determines has committed an act which is described" in either 42 U.S.C. 1320a-7a or 42 U.S.C. 1320a-7b (emphasis added). This subsection permits the Secretary to impose and direct exclusions on a party that the Secretary determines has engaged in criminal conduct directed against Medicare or Medicaid, without waiting for that party to be charged with or convicted of a criminal offense. Once that party is convicted, then for purposes of determining exclusions, the facts of the case no longer fall within the provisions of subsection (b)(7), but within subsection (a)(1). The same conclusion applies to cases that, but for a criminal conviction, fall within the provisions of subsection (b)(6).8/

I therefore conclude that this case involves a conviction of a criminal offense related to the delivery of an item or service under the Medicare program, and is governed by the mandatory exclusion provisions of 42 U.S.C. 1320a-7(a)(1).

8/ At any rate, it is difficult to perceive how Petitioner's conduct would fall within the ambit of subsection (b)(6). That subsection permits exclusion of an individual or entity whom the Secretary determines has made excessive or unnecessary charges for services. Petitioner was neither indicted nor convicted for making excessive or unnecessary charges, but, rather, for making false statements in Medicare claims. I.G. Ex. 4, 5.

CONCLUSION

Based on the undisputed material facts, the law, and regulations, I conclude that the I.G.'s determination to exclude Petitioner from participation in the Medicare program, and to direct that Petitioner be excluded from participation in State health care programs, for five years, was mandated by law. Therefore, I am entering a decision in favor of the I.G. in this case.

/s/

Steven T. Kessel
Administrative Law Judge