

Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the Case of:	)	
	)	
Laxmipathi Garipalli, M.D.,	)	Date: February 12, 2009
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-09-102
	)	Decision No. CR1900
Centers for Medicare & Medicaid	)	
Services.	)	

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**DECISION GRANTING SUMMARY JUDGMENT**

I grant summary judgment to the Centers for Medicare & Medicaid Services (CMS) affirming its determination to revoke the Medicare billing privileges of Petitioner Laxmipathi P. Garipalli, M.D. The undisputed material facts of this case establish that CMS was authorized to do so by the provisions of 42 C.F.R. § 424.535(a)(3)(B).

**I. Background**

Petitioner is a physician who participated in the Medicare program. On May 16, 2008 a Medicare contractor notified Petitioner that his Medicare billing privileges were being revoked. Petitioner requested a hearing and the case was assigned to me for a hearing and a decision.

CMS moved for summary judgment and Petitioner opposed the motion. CMS filed seven proposed exhibits, which it designated as CMS Exhibit (Ex.) 1 - CMS Ex. 7, in support of its motion. Petitioner filed a single exhibit, which he designated "Exhibit A", in opposition to the motion. I am receiving all of these exhibits into the record of this case and I cite to them, as is appropriate, in the body of this decision. My decision, however, rests on the undisputed material facts as alleged by the parties.

## II. Issue, findings of fact and conclusions of law

### A. Issue

The issue in this case is whether CMS is authorized to revoke Petitioner's Medicare billing privileges.

### B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth each Finding below as a specific heading.

*1. CMS has discretion to revoke the Medicare billing privileges of any individual who has been convicted within the past 10 years of a felony that CMS determines to be detrimental to the best interests of Medicare and its beneficiaries.*

CMS revoked Petitioner's Medicare billing privileges based on the authority of 42 C.F.R. § 424.535(a)(3). That regulation authorizes CMS to revoke any participating provider's Medicare billing privileges where that provider, within the 10 years prior to his or her enrollment or re-enrollment in Medicare, has been convicted of a federal or State felony that CMS determines to be detrimental to the best interests of Medicare and its beneficiaries.

On its face the regulation confers broad discretion on CMS to define what felonies might constitute crimes that are detrimental to Medicare and its beneficiaries. But, the regulation also provides that certain crimes are, as a matter of law, detrimental. Among those are:

Financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions.

42 C.F.R. § 424.535(a)(3)(B).

Any determination by CMS to revoke the billing privileges of an individual who has been convicted of such a crime – with “convicted” being defined to include a guilty plea to such a crime – is clearly within CMS's discretion. I am without authority to invalidate a determination by CMS to revoke a provider's billing privileges pursuant to section 424.535(a)(3)(B) if the undisputed material facts establishes it to fall within the reach of the regulation.

***2. The undisputed material facts establish that Petitioner was convicted of a crime as is defined by 42 C.F.R. § 424.535(a)(3)(B). Consequently, CMS may revoke Petitioner's billing privileges.***

The undisputed material facts of this case establish that, on February 28, 2008, Petitioner entered into a plea agreement with the United States Attorney for the District of New Jersey in which he pleaded guilty to knowingly and intentionally embezzling, stealing, obtaining by fraud, and misapplying property under the control of the University of Medicine and Dentistry in New Jersey (UMDNJ), in violation of Title 18, United States Code, Section 666, and Title 18, United States Code, Section 2. CMS Ex. 4, at 1; CMS Ex. 3, at 7. The charges to which Petitioner pled are felonies under federal law. Petitioner's plea was in response to a criminal information charging him with willfully failing to perform the bona fide services which he had agreed to perform under an employment contract with UMDNJ and in doing so, unlawfully obtaining payments of about \$280,000. CMS Ex. 1, at 6.

These undisputed facts, standing alone, are all that is necessary to sustain CMS's authority to exclude Petitioner pursuant to 42 C.F.R. § 424.535(a)(3)(B). They establish that Petitioner pled guilty to a federal felony involving embezzlement, a financial crime.

Petitioner offers various arguments in opposition to CMS's motion. He contends that there are disputed issues of material fact which mandate a hearing in this case.

What is notable about Petitioner's arguments is that he does not dispute any of the facts alleged by CMS nor does he deny that CMS has discretionary authority to revoke his billing privileges. All of Petitioner's arguments rest, at bottom, on his contention that CMS abused its discretion. Essentially, Petitioner argues that it would be unfair to revoke his billing privileges. Moreover, according to Petitioner, CMS's determination runs contrary to public policy and would be counterproductive if CMS's objective truly is to eliminate provider fraud. Specifically, Petitioner contends that:

- CMS treated Petitioner unfairly in light of Petitioner's cooperation with federal authorities in an ongoing investigation into practices as UMDNJ.
- Revoking his billing privileges would be unfair inasmuch as Petitioner has not pled guilty to a crime involving theft from or fraud directed against the Medicare program.
- CMS has been unfair to him inasmuch as it allegedly singled him out and treated him differently from other similarly situated physicians. Petitioner alleges that no physician other than he has ever had his billing privileges revoked while that

physician was cooperating in an ongoing investigation. According to Petitioner, it was his reasonable expectation, based on representations made to him, that he would retain his Medicare billing privileges until the date he was sentenced for his crime.

- CMS's determination to revoke Petitioner's billing privileges allegedly has serious adverse policy implications with respect to ongoing anti-fraud efforts by the Office of Inspector General of the Department of Health and Human Services and the United States Attorney. Allegedly, the determination will have a chilling effect on the possible decisions of other similarly situated providers to cooperate.

I have no authority to address these arguments. As I discuss above, at Finding 1, CMS has discretion to determine when to revoke billing privileges in those cases where the criteria of 42 C.F.R. § 424.535(a)(3)(B) are met, and I have no authority to question that exercise of discretion. There is nothing in the regulations – and indeed, Petitioner has identified nothing – that would allow me to override CMS's determination based on equitable considerations such as those raised by Petitioner.

Petitioner also contends that he was led to believe during the course of his plea negotiations with the United States Attorney that he would not have his billing privileges revoked at any time prior to his sentencing. Such an agreement, if it exists, would not be binding on CMS. But, in any event, the very terms of Petitioner's plea agreement informed him that the agreement was limited to the proceedings brought by the United States Attorney's Office for the District of New Jersey and could not bind other federal agencies or authorities from commencing any civil or administrative matters against Petitioner. CMS Ex. 4, at 4.

Finally, Petitioner argues that he has been denied due process due to alleged irregularities in the way in which CMS provided him with notice of its determination. But, and assuming for purposes of this decision, that there may have been irregularities, Petitioner has identified nothing which deprived him of the opportunity to be heard in full on all of the issues that I am authorized to hear and decide. He has not been precluded from challenging CMS's determination and from raising any issue over which I have authority to adjudicate. He has not alleged that, by virtue of some notice irregularity, he was deprived of information necessary for him to raise and state a defense to the determination to revoke his billing privileges.

/s/

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Steven T. Kessel  
Administrative Law Judge