

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Steven Mark Buckminster
(O.I. File Number 9-09-40262-9),

Petitioner

v.

The Inspector General.

Docket No. C-10-963

Decision No. CR2296

Date: December 21, 2010

DECISION

I sustain the exclusion of Petitioner, Steven Mark Buckminster, for a period that is at least coterminous with the revocation of his license to provide health care in the State of Washington.

I. Background

The Inspector General (I.G.) determined to exclude Petitioner, alleging that his license to provide health care in the State of Washington had been revoked for reasons bearing on his professional competence or performance. Petitioner requested a hearing, and the case was assigned to me for a hearing and a decision. The parties each filed briefs. The I.G. filed three proposed exhibits that are identified as I.G. Ex. 1 – I.G. Ex. 3. Petitioner filed no exhibits. Neither Petitioner nor the I.G. requested that I convene a hearing in person.

I receive I.G. Ex. 1 – IG. Ex. 3 into evidence.

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

A. Issue

The issue in this case is whether the I.G. is authorized to exclude Petitioner from participating in Medicare and other federally funded health care programs coterminous with the revocation of Petitioner's license to provide health care in the State of Washington.

B. Findings of Fact and Conclusions of Law

Petitioner was licensed in the State of Washington as a health care assistant. He allowed his license to expire in 2004. On May 18, 2009, the State of Washington Department of Health (Department of Health) filed charges against Petitioner, alleging that he had committed unprofessional conduct. I.G. Ex. 2. On February 26, 2010, after a hearing at which Petitioner contested the charges, the Department of Health issued Findings of Fact, Conclusions of Law, and a Final Order (Order). I.G. Ex. 3.

The Department of Health found that Petitioner had engaged in unprofessional conduct and permanently revoked his license. It defined unprofessional conduct to include:

The commission of any act involving moral turpitude, dishonesty, or corruption, relating to the practice of the person's profession

I.G. Ex. 3 at 3 (citing RCW 18.130.180). The Department of Health found that Petitioner was convicted of a crime involving moral turpitude in that Petitioner was convicted of raping a four-year old child. *Id.* at 2, 3, 4. It held that the conviction, and Petitioner's act of moral turpitude, was related to his practice as a health care assistant in two ways. First, it cast doubt on his ability to practice safely; second, it lowered the standing of the health care assistant credential in the eyes of the public. *Id.* at 3.

Section 1128(b)(4) of the Social Security Act (Act) authorizes the I.G. to exclude any individual whose license to provide health care has been revoked, suspended, or otherwise lost for reasons bearing on that individual's professional competence, professional performance, or financial integrity. The revocation of Petitioner's license by the Department of Health plainly was for reasons bearing on his professional competence and performance. Indeed, the Order expressly links Petitioner's rape of a child to his ability to practice health care safely. Consequently, the I.G. is authorized to exclude Petitioner on the authority of section 1128(b)(4) of the Act.

Petitioner argues that his license could not have been revoked, because he had allowed it to expire in 2004. As he puts it: "I *voluntarily* let my license expire." Informal Brief of Petitioner at 1. Thus, according to him, his license could not have been revoked,

suspended, or otherwise lost, because there was no license against which action could be taken by the Department of Health. *Id.* at 2.

I find this argument to be without merit. First, the Department of Health explicitly characterizes its action as a permanent revocation of Petitioner's license. The agency's characterization of its action is sufficient to qualify that action as a revocation of Petitioner's license within the meaning of section 1128(b)(4) of the Act. The Act does not define what is meant by a revocation of a license. However, a State's characterization of its own action as a revocation is sufficient to comprise a revocation for purposes of section 1128(b)(4), inasmuch as this section derives the authority to exclude from the action of a State agency.

Second, under Washington law, a State licensing agency may revoke an expired license to extinguish whatever statutory renewal rights that may exist. Under Washington State law, a holder of an expired license is entitled to renew that license, provided he or she complies with certain statutory requirements. WASH. ADMIN. CODE 246-12-040. By contrast, when a license is revoked, the former license holder loses all renewal rights. Revocation may occur even where a license has previously expired, if only to extinguish the renewal rights that the license holder might otherwise exercise. *Brown v. State of Wash., Dep't of Health, Chiropractic Quality Assurance Comm'n*, 110 Wash. App. 778 (2002). In *Brown*, the court held that a State licensing agency had jurisdiction to revoke an expired license so as to extinguish the "inchoate right" of the license holder to reestablish his or her status as a licensed professional "simply by completing the renewal process." *Id.* at 785-86.

The exclusion that the I.G. imposed against Petitioner is coterminous with his license revocation. He may not be reinstated, so long as his State license is revoked. This term is reasonable as a matter of law. Act § 1128(c)(3)(E).

/s/
Steven T. Kessel
Administrative Law Judge