Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Michael T. Parra, M.D.,
(OI File No.: H-11-4-3105-9),

Petitioner,

v.

The Inspector General.

Docket No. C-13-442

Decision No. CR2852

Date: July 12, 2013

DECISION

This matter is before me on the Inspector General's (I.G.'s) Motion for Summary Disposition affirming the I.G.'s determination to exclude Petitioner Michael T. Parra, M.D., from participation in Medicare, Medicaid, and all other federal health care programs until he regains his license to practice medicine as a physician in the State of Colorado. The I.G.'s Motion and determination are based on sections 1128(b)(4)(A) and 1128(b)(4)(B) of the Social Security Act (Act), 42 U.S.C. §§ 1320a-7(b)(4)(A) and (B).

The undisputed material facts of this case show that the I.G. is authorized to impose the exclusion against Petitioner, and that the length of that period of exclusion is not unreasonable. Accordingly, I grant the I.G.'s Motion for Summary Disposition.

I. Procedural Background

Petitioner Michael T. Parra, M.D., was first licensed to practice medicine as a physician in the State of Colorado in August 1988. In 2010, the Colorado Medical Board (CMB) was engaged in a review of Petitioner's professional activity, and on December 16, 2010 notified him that it "had reasonable grounds to believe that the public health, safety, or

welfare imperatively required emergency action" and that it had voted to suspend Petitioner's license summarily. Petitioner and the CMB subsequently agreed that in lieu of the summary suspension of his license, Petitioner would cease practicing medicine pending CMB's further investigation and evaluation of his practice; this agreement was formalized in an Interim Cessation of Practice Agreement signed by Petitioner and his attorney on December 21, 2010. I.G. Ex. 2.

In mid-February 2011 the CMB learned that Petitioner had "performed acts requiring a license" while the Interim Cessation of Practice Agreement was in effect, and had "falsified or repeatedly made incorrect essential entries on patient records." In its February 18, 2011 Order of Suspension Pursuant to § 24-4-104(4), C.R.S., the CMB found that "Petitioner has deliberately and willfully violated the Colorado Medical Practice Act and/or that the public health, safety, or welfare imperatively requires emergency action." The CMB acted on its finding by suspending Petitioner's license to practice medicine effective February 24, 2011. I.G. Ex. 3, at 1-2.

The Order of Suspension was subject to administrative appeal. I.G. Ex. 3, at 4-10. While that appeal was pending and while the summary suspension of Petitioner's license was still in effect, Petitioner and the CMB agreed to resolve all proceedings against Petitioner in a Stipulation and Final Agency Order signed by Petitioner on January 10, 2012 and effective immediately on the CMB's execution of it on January 13, 2012. I.G. Ex. 4. By the language employed in that document, Petitioner's "license to practice medicine in the State of Colorado issued by the Board is deemed relinquished." By another provision of that document, Petitioner agreed "not to apply for reactivation of his license, reinstatement of his license, or to apply for a new license issued by the Board at any time in the future." I.G. Ex. 4, at 3.

On January 31, 2013 the I.G. sent a notice-of-exclusion letter to Petitioner, relying on the terms of section 1128(b)(4) of the Act, 42 U.S.C. § 1320a-7(b)(4). I.G. Ex. 1. Acting through counsel Petitioner sought review of the I.G.'s determination in a request for hearing in a letter dated February 6, 2013.

I convened a prehearing conference by telephone on March 20, 2013, pursuant to 42 C.F.R. § 1005.6, in order to discuss procedures and a schedule for addressing the issues presented by this case. The details of that conference and the schedule established appear my Amended Order of March 21, 2013. The record in this case closed for purposes of 42 C.F.R. § 1005.20(c) on June 28, 2013.

The evidentiary record on which I decide the issues before me contains 15 exhibits. The I.G. proffered four exhibits marked I.G. Exhibits 1 through 4 (I.G. Exs. 1-4). Petitioner proffered 11 exhibits marked Petitioner's Exhibits 1 though 5 and 7 through 12 (P. Exs. 1-5, 7-12). Petitioner's proffer did not include an exhibit marked P. Ex. 6. The I.G.

objected to the relevance of P. Exs. 1, 2, 4, and 7 through 12; although those objections are sound and those proffered exhibits are in fact irrelevant to the issues before me, I discuss some of them briefly below. Accordingly, I have admitted all proffered exhibits. I have admitted no pleadings or evidentiary proffers filed after June 28, 2013.

II. Issues

The legal issues before me are limited to those set out at 42 C.F.R. § 1001.2007(a)(1). In the context of this record, they are:

a. Whether the I.G. has a basis for excluding Petitioner from participating in Medicare, Medicaid, and all other federal health care programs pursuant to sections 1128(b)(4)(A) and (B) of the Act; and

b. Whether the length of the proposed period of exclusion is unreasonable.

I decide these issues in favor of the I.G.'s position. Section 1128(b)(4)(A) of the Act supports Petitioner's exclusion from all federal health care programs, for his license to practice medicine as a physician was suspended by the CMB, the State licensing authority, for reasons bearing on his professional competence and professional performance, and he may not renew that license. Section 1128(b)(4)(B) of the Act supports Petitioner's exclusion as well, for his license to practice medicine as a physician was surrendered to the CMB while a formal disciplinary proceeding was pending concerning the same issues. The length of this proposed period of exclusion is reasonable as a matter of law.

III. Controlling Statutes and Regulations

Section 1128(b)(4)(A) of the Act, 42 U.S.C. § 1320a-7(b)(4)(A), authorizes the exclusion from participation in Medicare, Medicaid, and all other federal health care programs of any individual or entity "whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity."

Section 1128(b)(4)(B) of the Act, 42 U.S.C. § 1320a-7(b)(4)(B), authorizes the exclusion from participation in Medicare, Medicaid, and all other federal health care programs of any individual or entity "who surrendered [a license to provide health care] while a formal disciplinary proceeding was pending before [a State licensing authority] and the proceeding concerned the individual's or entity's professional competence, professional performance, or financial integrity."

The terms of sections 1128(b)(4)(A) and (B) are restated in similar regulatory language at 42 C.F.R. §§ 1001.501(a)(1) and (2).

The terms of 42 C.F.R. § 1001.2007(d) provide that in exclusion appeals to this forum:

> When the exclusion is based on the existence of a criminal conviction or a civil judgment imposing liability by (a) Federal, State or local court, a determination by another Government agency, or any other prior determination where the facts were adjudicated and a final decision was made, the basis for the underlying conviction, civil judgment, or determination is not reviewable and the individual or entity may not collaterally attack it either on substantive or procedural grounds in this appeal.

An exclusion based on section 1128(b)(4) of the Act is discretionary. If the I.G. exercises his discretion to proceed with the sanction, then the mandatory minimum period of exclusion to be imposed under section 1128(b)(4) of the Act "shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered . . . ." Act § 1128(c)(3)(E), 42 U.S.C. § 1320a-7(c)(3)(E). Regulatory language at 42 C.F.R. § 1001.501(b)(1) affirms the statutory provision.

Although an exclusion based on section 1128(b)(4) of the Act is discretionary, the I.G.'s decision to exercise his discretion and proceed with the sanction is not subject to review. *Donna Rogers*, DAB No. 2381 (2011); *Keith Michael Everman, D.C.*, DAB No. 1880 (2003); *Sheldon Stein, M.D.*, DAB No. 1301 (1992); 42 C.F.R. § 1005.4(c)(5).

The CMB is Colorado's licensing authority for the practice of medicine by physicians. COLO. REV. STAT. §§ 12-36-103,104 and 24-4-104.

IV. Findings and Conclusions

I find and conclude as follows:

1. Petitioner was first licensed to practice medicine as a physician in the State of Colorado in 1988. I.G. Exs. 2, 3.

2. On December 16, 2010 the CMB notified Petitioner of some results of its formal investigation into Petitioner's professional conduct. I.G. Exs. 2, 3.

3. The CMB proceeding against Petitioner was begun for reasons bearing on, and concerned, Petitioner's professional competence and professional performance. I.G. Exs. 2, 3, 4.

4. The CMB proceeding against Petitioner resulted in the summary suspension of his license to practice medicine effective February 24, 2011. I.G. Ex. 3.

5. While the CMB proceeding against him was pending and the summary suspension of his license was in effect, Petitioner and his attorney signed a Stipulation and Final Agency Order on January 10, 2012, by which he relinquished his license to practice medicine as a physician in Colorado and agreed that he would not seek reactivation or reinstatement of his license, or apply for a new license, from the CMB. The Stipulation and Final Agency Order became effective January 13, 2012. I.G. Ex. 4.

6. At all times between December 16, 2010 and January 13, 2012, the CMB proceedings against Petitioner were for reasons bearing on, and concerned, Petitioner's professional competence and professional performance. I.G. Exs. 2, 3, 4.

7. Because the CMB suspended Petitioner's license to practice medicine effective February 24, 2011, and Petitioner later lost the right to apply for or renew such a license, a basis exists for the I.G.'s exercise of authority to exclude Petitioner from participation in Medicare, Medicaid, and all other federal health care programs. Act § 1128(b)(4)(A).

8. Because Petitioner relinquished his license to practice medicine effective January 13, 2012, a basis exists for the I.G.'s exercise of authority to exclude Petitioner from participation in Medicare, Medicaid, and all other federal health care programs. Act § 1128(b)(4)(B).

9. The I.G.'s exclusion of Petitioner until such time as he regains his license to practice medicine as a physician in the State of Colorado is not unreasonable. Act § 1128(c)(3)(E); 42 C.F.R. § 1001.501(b)(1).

10. There are no disputed issues of material fact and summary disposition is appropriate in this matter. *Marvin L. Gibbs, Jr., M.D.*, DAB No. 2279 (2009); *Michael J. Rosen, M.D.*, DAB No. 2096 (2007); *Thelma Walley*, DAB No. 1367 (1992); 42 C.F.R. § 1005.4(b)(12).

V. Discussion

The exclusion of an individual based on section 1128(b)(4) of the Act, 42 U.S.C. § 1320a-7(b)(4) is a derivative action, based on an action previously taken by a court, licensing board, or other agency. In this case the I.G. relies on the actions of the CMB to support two theories that would authorize Petitioner's exclusion: the first theory invokes section 1128(b)(4)(A), and the second rests on section 1128(b)(4)(B). As I shall explain

below, the I.G. has demonstrated the essential elements of both theories.

There are two essential elements necessary to support an exclusion based on section 1128(b)(4)(A). First, the I.G. must prove that the license of the individual to be excluded to provide health care, or the right to apply for or renew such a license, has been lost, revoked or suspended by a state licensing authority. Second, the I.G. must prove that the license was revoked or suspended for reasons bearing on the individual's professional competence, professional performance, or financial integrity. *Leonard R. Friedman, M.D.*, DAB No. 1281 (1991); *Thomas I. DeVol, Ph.D.*, DAB CR1652 (2007); *Sherry J. Cross*, DAB CR1575 (2007); *Michele R. Rodney*, DAB CR1332 (2005); *Edmund B. Eisnaugle, D.O.*, DAB CR1010 (2003); *Marcos U. Ramos, M.D.*, DAB CR788 (2001); *Allison Purtell, M.D.*, DAB CR781 (2001).

Three essential elements must be proven in order to support an exclusion based on section 1128(b)(4)(B). First, the I.G. must prove that the individual to be excluded has surrendered her or his license to provide health care to a State licensing authority. Second, the I.G. must prove that the license was surrendered while a formal disciplinary proceeding against the individual was pending before the State authority. Third, the I.G. must prove that the pending proceeding concerned the individual's professional competence, professional performance, or financial integrity. *Jane Espejo Norton, M.D.*, DAB CR1627 (2007); *James Latimer, M.D.*, DAB CR1578 (2007); *Julia Maria Nash*, DAB CR1277 (2005); *Maureen Felker*, DAB CR1110 (2003); *April Ann May, P.A.*, DAB CR1089 (2003); *Djuana Matthews Beruk, D.D.S.*, DAB CR950 (2002).

The I.G. has made the first showing required by each statutory provision. This record shows that Petitioner was first licensed to practice medicine as a physician in Colorado in 1988. I. G. Exs. 2, 3. The first element required to be shown by section 1128(b)(4)(A) is established by uncontroverted evidence that Petitioner's license was summarily suspended by the CMB on February 24, 2011, and is further established by unchallenged evidence that Petitioner abandoned any right to apply for or renew that license on January 13, 2012. I. G. Exs. 3, 4. The first element required to sustain an exclusion based on section 1128(b)(4)(B) is demonstrated by uncontradicted evidence that Petitioner relinquished his license on January 13, 2012.

The I.G. has made the second showing required by an action brought pursuant to section 1128(b)(4)(B) as well. The CMB proceeding began not later than December 2010. I.G. Ex. 2. In March 2011, CMB referred the results of its investigative proceeding to the Attorney General of the State of Colorado. Petitioner and his attorney determined to relinquish his license as a means of settling all matters charged in that investigative proceeding, and by agreement with CMB, the relinquishment of Petitioner's license became final with the entry of the CMB's Stipulation and Final Agency Order on January 13, 2012. I.G. Exs. 3, 4. That sequence of events demonstrates that Petitioner

surrendered his license while the CMB proceeding was pending against him, and thus proves the second essential element required in an 1128(b)(4)(B) exclusion.

The nexus between the CMB proceeding and Petitioner's professional performance and professional competence — the second essential element of the I.G.'s 1128(b)(4)(A) theory and the third of his 1128(b)(4)(B) theory — has been contested, but the I.G. has proven it, and Petitioner's effort to suggest otherwise approaches an intentional distortion of the record before me and the CMB. As I shall point out presently, that effort to deny the nexus is remarkable in many ways, but particularly because it is impeached by Petitioner's own words to the CMB.

The record of the CMB proceeding between December 2010 and February 2011 shows that the CMB found the public health, welfare, or safety sufficiently threatened to "imperatively require" the cessation of Petitioner's medical practice. I.G. Ex. 2. Although the December 21, 2010 cessation agreement does not specify the individual bases for the CMB's action, the February 18, 2011 Order of Suspension goes into some detail: it specifies that Petitioner flouted the cessation agreement, persisted in his active practice of medicine, and "falsified or repeatedly made incorrect essential entries on patient records." I.G. Ex. 3, at 2. That Order asserts the CMB's belief that Petitioner was in willfull and deliberate violation of the Colorado Medical Practice Act, and reasserts the charge that Petitioner's conduct jeopardized the public health, safety, or welfare.

But the final resolution of the CMB proceeding leaves no room for speculation about the exact relationship between that proceeding and Petitioner's professional performance and competence. The Stipulation and Final Agency Order of January 13, 2012 identified by their initials eight of Petitioner's individual patients whom the CMB alleged were mistreated by Petitioner — over a period "from approximately 2003 to 2010" — when he "did not appropriately use medications, did not confirm medical diagnoses before initiating treatment, and did not fully document patient visits or medical justification for his treatment approaches." The CMB alleged that Petitioner "attempted to create medical notes for patients that were not contemporaneously made with patient care." I.G. Ex. 4, at 2. Perhaps most significantly, Petitioner acknowledged that if proven, the allegations would constitute unprofessional conduct as defined by law. I.G. Ex. 4, at 2-3.

To this record Petitioner responds that "his license was relinquished as a business decision, entered specifically without any findings of fact against him, and in contemplation of his inactive licenses and continued practicing in two other states." P. Ans. Br. at 2. He insists that relinquishing his license was "a relatively simply business decision," (P. Ans. Br. at 8), and elaborates that "Parra simply desired, due to the costs of litigation and the disappoint [sic] with the Colorado board's unreasonableness, to transfer his practice to another state. It was a business decision, not an admission of guilt." P. Ans. Br. at 9. Whether a business decision or something else entirely, it is very clear that Petitioner was eager to place himself beyond the jurisdiction of the CMB as quickly as he

could by taking "a business decision, due to the costs of discovery . . . in contemplation of his continued practice and licenses [in] two other states . . . to simply cut his ties with the medical community in Colorado with stipulation by both parties that there was not any wrongdoing . . . ." P. Resp. Br. at 1-2.

This argument may be an effort to divert attention from a crucial concession Petitioner made early in the CMB proceeding. The nexus between that proceeding and Petitioner's professional competence and performance — which is, of course, the real matter to be proven — is confirmed in letters Petitioner himself wrote to the CMB during that proceeding. He first wrote on March 15, 2010: that letter appears in this record as P. Ex. 9. In it, Petitioner acknowledged CMB's investigation into his keeping of patient records, and attempted to justify his practices "regarding the issues that have been raised in the Board complaints" by blaming computer programs, office equipment, and his own employees. He wrote to the CMB again on May 10, 2010. P. Ex. 5. In this letter of 10 pages he mounted an extended *apologia* for his treatment of eight patients he identified by name. Those eight names correspond exactly with the initials of patients CMB alleged it could prove had been mistreated by Petitioner. P. Ex. 5; I.G. Ex. 4, at 2. The CMB investigative file number Petitioner noted in the second line of P. Ex. 5 (2009-001822-B) was one of several noted and settled in the Stipulation and Final Agency Order. I. G. Ex. 4, at 1. Those letters are before me proffered by Petitioner, and they serve as well as anything else in this record to tie the CMB investigation into Dr. Michael T. Parra's professional performance and competence to the fact that Dr. Michael T. Parra no longer has — and will never regain — a license to practice medicine as a physician in the State of Colorado.

Quite apart from the gratuitous fling at the CMB, whose Interim Cessation of Practice Agreement Petitioner deliberately defied, Petitioner's present argument depends on its studied distortion of a central point in any 1128(b)(4) exclusion: that no admission or finding of "guilt" need be shown as long as the proceeding was "for reasons bearing on" or "concerned" a licensee's professional competence, professional performance, or financial integrity. *Chang Goo Yoon*, DAB CR1852 (2008). It is perfectly true that no final findings of misconduct were entered by the CMB in the Stipulation and Final Agency Order, but it is also perfectly true that their absence is immaterial to this discussion. The material point is simply this: the entire process that was well-advanced in December 2010, that led to the Order of Suspension in 2011, and that culminated in that January 2012 Stipulation and Final Agency Order was an inquiry into Dr. Michael T. Parra's professional competence and performance. The rule on this point as articulated by the Departmental Appeals Board (Board) is clear:

> This Board has previously held that a state licensing authority is not required to make findings with respect to an individual's professional competence, professional performance, or financial integrity, or to use those words, in order for the I.G. to exclude an individual. *Brian Bacardi*,

> *D.P.M.*, DAB No. 1724 (2000); *Olufemi Okonuren, M.D.*, DAB No. 1319 (1992). The wording of the provision merely requires that the reasons for the revocation have "bearing on" these concerns. A contrary interpretation would subject federal programs and patients to risks simply because of the state licensing authority's choice of words.

Tracey Gates, R.N., DAB No. 1768 (2001). See *Narinder Saini, M.D.*, DAB No. 1371 (1992).

When Petitioner and his attorney signed the Stipulation and Final Agency Order they were aware beyond misunderstanding that the CMB felt itself able and prepared to prove Petitioner's serious specific lapses in those professional standards, and that those allegations supported the CMB's authority to "order conditions upon [Petitioner's] practice that it deems appropriate." I.G. Ex. 4, at 3, paragraphs 8-10. The nexus between the CMB proceeding and Petitioner's professional performance and professional competence, the second essential element of the I.G.'s 1128(b)(4)(A) theory and the third of his theory based on 1128(b)(4)(B), has been proven.

With the proof of that nexus accomplished, the I.G. has proven all of the elements essential to both theories, and Petitioner's exclusion pursuant to sections 1128(b)(4)(A) and (B) of the Act is authorized.

In resisting the I.G.'s action, Petitioner has denied any misconduct whatsoever while he practiced medicine between 2003 and 2010. His description of events colors him as the victim of malicious and unfounded accusations motivated by the animus of his former employees and colleagues, accusations that he claims the CMB parlayed into an "unreasonable and baseless" investigation. P. Ans. Br. at 2-5. Petitioner offered a similar narrative in a document singular for its fervid self-justification. P. Ex. 8. That exhibit is a letter dated March 12, 2012 and addressed to the Dean of Creighton University's School of Medicine. The I.G. properly objected to the admission of P. Ex. 8, but although it is irrelevant because it constitutes an attack on the allegations that led to the loss of his license, I have admitted it because it illustrates Petitioner's continued refusal to acknowledge — or even to describe frankly — the context, goal, and effect of the CMB's Interim Cessation of Practice Agreement and Stipulation and Final Agency Order. That context was a CMB investigation by which CMB accused Petitioner of unprofessional conduct and sought to bar him from the practice of medicine in Colorado. That goal was the protection of the Colorado public's "health, safety, and welfare." That effect was to close the investigation with a *quid pro quo*: in return for the CMB's forbearance in reaching and announcing final findings and conclusions, Petitioner agreed to be forever barred from the practice of medicine in Colorado.[1]

[1] Any suggestion that this *quid pro quo* does not mean that Petitioner's license was "surrendered" cannot survive the careful analysis and forceful rejection of a very similar

Petitioner's Exs. 1, 2, 4 and 7 are similarly irrelevant and just as unhelpful. Each in its way is an effort to argue that the CMB proceeding was somehow invalid, unsound, meaningless, or unfair. Each in its own way attempts to debate issues that are not valid defenses to the I.G.'s proposed exclusion action.

That P. Ex. 1 may show that Petitioner was able to renew his Nebraska medical license in June 2012 does not alter the finality of the CMB proceeding, and certainly does not mean that a valid Nebraska license can, for purposes of section 1128(b)(4), substitute for the one Petitioner lost permanently in Colorado. The reasonableness of an individual's *de facto* permanent exclusion based on the *de jure* permanent loss of the individual's license has been explicitly considered and approved:

> It is clear from the Act that, once the exclusion remedy is properly imposed . . . license reinstatement by the revoking authority is the only statutorily recognized way to lift the exclusion.

John C. Cheek, M.D., DAB No. 1738 (2000); see *Judy Pederson Rogers and William Ernest Rogers*, DAB No. 2009, n.5 (2006); *Kenneth M. Behr*, DAB No. 1997, n.7 (2005); *Jane Espejo Norton, M.D.*, DAB CR1627; *Armando G. Sanchez, M.D.*, DAB CR1309 (2005); *Michael D. Cerny, D.O.*, DAB CR1026 (2003); *Lori E. Miller*, DAB DR961 (2002).

P. Exs. 2 and 3 argue Petitioner's innocence of professional misconduct, but they are meaningless now, for P. Ex. 2 is a letter written in September 2011 and is obviously intended as part of Petitioner's defense in the CMB proceeding, while P. Ex. 3 is simply the *ipse dixit* statement of Petitioner's attorney before the CMB as to his view of that proceeding. That CMB proceeding is no longer subject to challenge or collateral attack, and its results speak for themselves without the need for expatiation by Petitioner's former advocate. Nor does P. Ex. 4 add to this discussion, for it is a letter written in March 2011, probably as part of Petitioner's defense in the CMB proceeding, describing the nature and function of Petitioner's electronic office record-keeping system. Petitioner's undated *curriculum vitae*, P. Ex. 7, is lengthy, and it would be longer still if it mentioned the history of Petitioner's Colorado license after 2010 through its suspension in 2011 and its relinquishment in 2012. It would be far more candid if it used some term other than "inactive" to describe the current status of that Colorado license. P. Ex. 7, at

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notion in *Djuana Matthews Beruk, D.D.S.*, DAB CR950 (2002), in which Administrative Law Judge José A. Anglada described the application of section 1128(b)(4)(B) to almost-identical facts as "inescapable."

4.[2] The arguments suggested by these irrelevant exhibits are made too late to aid Petitioner's cause here. I will not consider them, for such collateral attacks on the soundness or fairness of the CMB proceeding are explicitly barred in appeals based on section 1128(b)(4). *Donna Rogers*, DAB No. 2381, at 4-5; *Marvin L. Gibbs, Jr, M.D.*, DAB No. 2279; *Roy Cosby Stark*, DAB No. 1746 (2000); *George Iturralde, M.D.*, DAB No. 1374 (1992); *Leonard R. Friedman, M.D.*, DAB No. 1281; 42 C.F.R. § 1001.2007(d).

Petitioner's protestations that he did not understand this consequence of his license relinquishment, or that he was not adequately informed about it, are no defenses to the exclusion. *Erica L. Pedersen*, DAB CR1700 (2007); *Stella Remedies Lively*, DAB CR1369 (2005); *Steven Caplan, R.Ph.*, DAB CR1112 (2003); *aff'd sub nom. Steven Caplan v. Thompson*, CIV No. 04-00251 (D. Haw. Dec. 17, 2004). And Petitioner's constitutional challenges are beyond the scope of this appeal and this forum in general: I simply cannot consider them. *Rogers*, DAB No. 2381; *Kenneth M. Behr*, DAB No. 1997; *Keith Michael Everman, D.C.*, DAB No. 1880; *Susan Malady, R.N.*, DAB No. 1816 (2002). However, it may be worth noting that it is a firmly-established principle that no health care practitioner, including this Petitioner, has a constitutionally-protected interest in continued participation in the Medicare program. *Kahn v. I.G.* 484 F. Supp. 423 (S.D.N.Y. 1994); *Hillman Rehabilitation Center*, DAB No. 1611 (1997); *Norton*, DAB CR1627; *Edmund D. Eisnaugle, D.O.*, DAB CR1010; *Martin Markoff, D.O.*, DAB CR538 (1998).

Because the I.G. has established a basis for the exclusion of Petitioner pursuant to sections 1128(b)(4)(A) and (B) of the Act, his exclusion until such time as he regains his license to practice medicine as a physician in the State of Colorado is required by section 1128(c)(3)(E) of the Act, 42 U.S.C. § 1320a7(c)(3)(E) and 42 C.F.R. § 1001.501(b)(1). That period is reasonable as a matter of law, based as it is on that statute and regulation. Petitioner's complaint that the period is "grossly disproportionate" and "unreasonable" is

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[2] It may be possible to infer the approximate date of P. Ex. 7. At page 4 of that exhibit, there is a reference to activity in August 2011. That is the most recent date in the document. The document does not reflect the apparent renewal of Petitioner's Nebraska license in June 2012. Thus, the *curriculum vitae* can be assumed to have been prepared after August 2011 and before June 2012. Remarkably, it describes his Colorado license as "inactive" at that time, a plainly untruthful reflection of the CMB's action of February 2011, and of January 2012 as well, if prepared after that latter date. On the other hand, the *curriculum vitae* does show — without explanation — that Petitioner's association with at least three Denver-area hospitals ended in December 2010, the month in which the CMB ordered him to cease performing "any act requiring a license by the Board." P. Ex. 7, at 4-6; I.G. Ex. 2, at 1-3.

simply wrong: in fact, the period of exclusion is the precise result desired by Congress in 1987, when it enacted section 1128(b)(4) as part of the Medicare and Medicaid Patient and Program Protection Act of 1987, Pub. L. No. 100-93. His demand that I alter the period and effect of his exclusion is explicitly beyond my authority to address. 42 C.F.R. §§ 1005.4(c)(5) and (6). And it may be well to summarize here what I have written above: because Petitioner has agreed never to seek a license to practice medicine as a physician in Colorado, his exclusion from the protected programs is, for all practical purposes, permanent. The effects of this exclusion on Dr. Parra's future are concededly stark, but they are not recognized defenses or mitigating factors in this appeal, and they are amply justified by the facts and the law of this case. *Jeremy Robinson*, DAB No. 1905 (2004); *Donald A. Burstein, Ph.D.*, DAB No. 1865 (2003).

Summary disposition is authorized by the terms of 42 C.F.R. § 1005.4(b)(12). Resolution of a case by summary disposition is particularly fitting when settled law can be applied to undisputed material facts. *Gibbs*, DAB No. 2279; *Michael J. Rosen, M.D.*, DAB No. 2096. This Decision issues accordingly, for the material facts in this case are undisputed, unambiguous, and support summary disposition as a matter of settled law.

VI. Conclusion

For the reasons set forth above, the I.G.'s Motion for Summary Disposition should be, and it is, GRANTED. The I.G.'s exclusion of Petitioner Michael T. Parra, M.D., from participation in Medicare, Medicaid, and all other federal health care programs pursuant to the terms of sections 1128(b)(4)(A) and 1128(b)(4)(B) of the Act, 42 U.S.C. § 1320a-7(b)(4)(A) and (B), until such time as he regains his license to practice medicine as a physician in the State of Colorado is SUSTAINED.

/s/
Richard J. Smith
Administrative Law Judge