

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Alexander Leonov, D.D.S.  
(O.I. File No. H-14-40702-9),

Petitioner,

v.

The Inspector General.

Docket No. C-14-1620

Decision No. CR3651

Date: February 13, 2015

**DECISION**

The Inspector General (IG) of the U.S. Department of Health and Human Services (HHS) notified Petitioner, Alexander Leonov, D.D.S., that he was being excluded from participation in Medicare, Medicaid, and all other federal health care programs for a minimum period of five years under 42 U.S.C. § 1320a-7(a)(1). Petitioner requested a hearing before an administrative law judge (ALJ) to dispute the exclusion. For the reasons stated below, I conclude that the IG has a basis for excluding Petitioner from program participation and that the five-year exclusion is mandated by law.

**I. Background**

By letter dated May 30, 2014, the IG notified Petitioner that he was being excluded from Medicare, Medicaid, and all other federal health care programs for a period of five years, pursuant to 42 U.S.C. § 1320a-7(a)(1). The IG advised Petitioner that the exclusion was based on his conviction in the “Superior Court of California, County of Los Angeles, of a

criminal offense related to the delivery of an item or service under the Medicare or a State health care program, including the performance of management or administrative services relating to the delivery of items or services, under any such program.” IG Exhibit (Ex.) 5.

Petitioner timely filed a request for hearing (RFH) and this case was assigned to me for hearing and decision. On September 3, 2014, I convened a prehearing conference by telephone, the substance of which is summarized in my Order and Schedule for Filing Briefs and Documentary Evidence (Order), dated September 8, 2014. *See* 42 C.F.R. § 1005.6. Pursuant to the Order, the IG filed a brief (IG Br.) and five exhibits (IG Exs. 1-5). Petitioner filed a response brief (P. Br.) with one exhibit (P. Ex. 1). The IG filed a reply brief (IG Reply Br.).

## **II. Decision on the Record**

Neither party objected to any of the proposed exhibits. Therefore, I admit them all into the record. *See* Order ¶ 5.

Because both parties indicated that a hearing is not necessary in this case and that they did not have any witnesses to offer, I decide this case on the basis of the written record. IG Br. at 6; P. Br. at 4-5.

## **III. Issue**

Whether the IG has a basis for excluding Petitioner from participating in Medicare, Medicaid, and all other federal health care programs for five years pursuant to 42 U.S.C. § 1320a-7(a)(1). *See* 42 C.F.R. § 1001.2007(a)(1)-(2).

## **IV. Findings of Fact, Conclusions of Law, and Analysis<sup>1</sup>**

HHS must exclude an individual from participation in Medicare, Medicaid, and all other federally-funded health care programs if that individual “has been convicted of a criminal offense related to the delivery of an item or service under title XVIII or under any State health care program.” 42 U.S.C. § 1320a-7(a)(1).

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<sup>1</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

***A. Petitioner pled no contest in a California court to one count of Paying Unlawful Medi-Cal Remuneration, and the court adjudged him guilty of that crime and ordered Petitioner to pay \$150,000 in restitution to the California Health Care Deposit Fund.***

Petitioner is a dentist licensed to practice in the state of California. IG Ex. 1. On May 2, 2011, the California Attorney General charged Petitioner with a one count felony offense of Paying Unlawful Medi-Cal Remuneration, in violation of section 14107.2(b) of California's Welfare and Institutions code. The felony complaint alleged that Petitioner "did willfully and unlawfully offer and pay remuneration to [two named individuals] in return for the referral of patients for which payment may be made under the Medi-Cal Act . . . ." IG Ex. 2.

On May 10, 2011, Petitioner signed a plea agreement in which he agreed to either plead guilty or no contest to the charge in the felony complaint and to pay restitution in the amount of \$150,000 to the California Health Care Deposit Fund. The California Attorney General agreed to permit Petitioner's crime to be reduced to a misdemeanor if Petitioner complied with all of the terms of the plea agreement. IG Ex. 3.

On May 13, 2011, Petitioner pled nolo contendere to the charge of violating section 14107.2(b) of California's Welfare and Institutions code, and the Superior Court of California, County of Los Angeles, found Petitioner guilty of that offense. The Superior Court ordered restitution to be paid to the California Attorney General with the check made payable to "California Health Care." On May 30, 2013, the California Attorney General agreed to reduce Petitioner's offense to a misdemeanor and the Superior Court ordered Petitioner to serve probation. The Superior Court noted that Petitioner had paid \$110,000 in restitution and ordered the remaining \$40,000 to be paid during Petitioner's probation. IG Ex. 4. By August 16, 2014, Petitioner had paid \$130,000 in restitution. P. Ex. 1.

***B. Petitioner was convicted of a felony for the purposes of 42 U.S.C. § 1320a-7(a)(1).***

Under 42 U.S.C. § 1320a-7(a)(1), Petitioner must be "convicted of a criminal offense" before he can be excluded. An individual is considered "convicted" when a judgment of conviction has been entered by a federal, state, or local court or a plea of guilty or no contest has been accepted in a federal, state, or local court. 42 U.S.C. § 1320a-7(i)(1), (3). In the present matter, Petitioner entered a plea of no contest to a charge of violating section 14107.2(b) of California's Welfare and Institutions code, and the Superior Court

found Petitioner “guilty.” IG Exs. 3-4. A court record indicates that as of May 13, 2011, the disposition of Petitioner’s case was “Convicted.” IG Ex. 4 at 1. Based on these facts and Petitioner’s admission that he was convicted of a criminal offense (P. Br. at 1), I conclude that Petitioner was convicted of a criminal offense.

***C. Petitioner’s criminal offense of paying for the referral of Medi-Cal-eligible patients is an offense related to the delivery of an item or service under Medicaid, a state health care program.***

An individual must be excluded from participation in any federal health care program if the individual was convicted under federal or state law of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. 42 U.S.C. § 1320a-7(a)(1); 42 C.F.R § 1001.101(a). A state health care program includes a state’s Medicaid program. 42 C.F.R. § 1001.2 (definition of *State health care program*). Medi-Cal is California’s Medicaid program. *See Jesusa N. Romero, M.D.*, DAB CR380, at 1 n.1 (1995).

The requirement that the conviction be “related to” the delivery of health care items or services means that there only needs to be a “nexus” or “common sense connection” between the offense and the delivery of an item or service under a relevant program. *See, e.g., James O. Boothe*, DAB No. 2530, at 3 (2013). Further, “[a]n offense may be ‘related to’ the delivery of an item or service even if the offense did not directly involve the delivery of items or services. In addition, the offense need not have actually harmed the program in any way.” *Id.* at 4 (citations omitted).

Petitioner was convicted of paying remuneration to individuals who referred patients to him for which Medi-Cal could be billed. *See* IG Exs. 2-4. The IG argues the following:

As indicated by the statute under which he was convicted, Petitioner committed the offense to obtain Medicaid patient referrals, i.e., to get patients for whom he could provide services and bill Medicaid. Petitioner’s offense therefore has a common-sense connection to or nexus with the delivery of services under Medicaid. Indeed, this forum has repeatedly upheld convictions under section 1128(a)(1) for violations of the Federal anti-kickback statute (42 U.S.C. § 1320a-7b(b), at section § 1128B(b) of the Act), which contains the same essential language as the state statute under which Petitioner was convicted. *See, e.g., Nimesh M. Patel, D.P.M.*, CR3251 (2014) (exclusion upheld when based on conviction of one count in violation of 42 U.S.C. § 1320a-7b(b)(1)(B) and 18 U.S.C. § 2 – no separate counts of violating any additional fraud statutes); *Andre Benony Celestin, M.D.*, CR1441

(2006) (exclusion upheld when based solely upon the conviction of one count of violating the Federal anti-kickback statute).

IG Reply Br. at 2.

Petitioner denies that there is a nexus between the crime he was convicted of committing and the delivery of items or services under the Medi-Cal program. Petitioner's argument focuses on an analysis that fraud or theft must be involved in the crime in order for it to mandate exclusion. P. Br. at 2-4. In regard to his particular crime, Petitioner asserts:

Although there is general harm by providing gratuities, it is not a harm to the Medicaid program as long as needed services would have been provided in the absence of the gratuity. This is exactly the case with Dr. Leonov.

Dr. Leonov has already paid \$130,000.00 out of the \$150,000.00. ([P.] Ex. 1). Dr. Leonov will be making the final payment on May 30, 2014 and his probation will be lifted.

P. Br. at 5-6.

I do not agree with Petitioner's argument because it does not take into account the fact that Petitioner's crime only has to be "related to" the delivery of items or services. In another case involving a conviction under section 14107.2(b) of California's Welfare and Institutions code, an ALJ responded thusly to arguments very similar to those Petitioner makes in this case:

It should be noted that the California Code's blanket prohibition of any remuneration (whether called a kickback, bribe, or rebate) which is paid for a Medicaid referral directly corresponds to section 1128B(b) of the Act, which also criminalizes soliciting or receiving payments for referrals that lead to the furnishing of goods or services payable by Medicaid or Medicare. This indicates that Congress, as well as the California legislature, chose to regard all irregular payments linked to transactions reimbursable by Medicaid/Medicare as inimical to the integrity of such programs.

Thus, in the instant case, there is a common-sense connection between a criminal offense and the Medicaid program. Clarence H. Olson, DAB CR46 (1989). I conclude that the delivery of items under Medicaid played an essential and integral role in Petitioner's criminal conduct and conviction.

*Asadollah Amrollahifar, Ph.D.*, DAB CR238, at 4 (1992).

I agree with the ALJ's reasoning in the *Amrollahifar* case. Petitioner's crime involved illegally obtaining patients for which he could bill Medi-Cal. Therefore, there is an obvious nexus to providing services under the Medi-Cal program and Petitioner's criminal conduct.

The nexus in this case is strengthened by the fact that the Superior Court ordered Petitioner to pay \$150,000 to the California Health Care Deposit Fund. IG Exs. 3-4; P. Ex. 1. Where an individual is convicted of a crime, "proof that any sentence based on that conviction included the payment of restitution to a protected program creates a rebuttable presumption of a nexus or common-sense connection between the conviction and the delivery of an item or service under [that] program." *Johnnelle Johnson Bing*, DAB CR1938 at 6 (2009) (citing *Alexander Nepomuceno Jamias*, DAB CR1480 (2006)). Similar to the present case, the petitioner in the *Bing* case had been ordered to pay restitution to a state Medicaid program. *Id.* The restitution Petitioner was ordered to pay California's Medi-Cal program strongly supports the conclusion of a nexus between Petitioner's crime and the delivery of items or services involving the Medicaid program.

***D. Petitioner must be excluded for the statutory minimum of five years under 42 U.S.C. § 1320a-7(c)(3)(B).***

Because I have concluded that a basis exists to exclude Petitioner pursuant to 42 U.S.C. § 1320a-7(a)(1), Petitioner must be excluded for a minimum period of five years. 42 U.S.C. § 1320a-7(c)(3)(B); 42 C.F.R. §§ 1001.102(a), 1001.2007(a)(2).

**V. Conclusion**

For the foregoing reasons, I affirm the IG's determination to exclude Petitioner from participating in Medicare, Medicaid, and all other federal health care programs for the statutory five-year minimum period pursuant to 42 U.S.C. § 1320a-7(a)(3), (c)(3)(B).

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/s/  
Scott Anderson  
Administrative Law Judge