

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Rebecca J. Pesta,

Petitioner,

v.

The Inspector General.

Docket No. C-10-372

Decision No. CR2132

Date: May 14, 2010

**DECISION**

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Rebecca J. Pesta, from participating in Medicare and other federally-funded health care programs for a term that is for not less than the period that Petitioner's State license to provide health care is suspended.

**I. Background**

Petitioner is a certified nursing assistant (CNA) in the State of Washington. The I.G. notified Petitioner that she was being excluded from participating in Medicare and other federally-funded health care programs, because her license to practice as a CNA in Washington had been suspended for reasons bearing on her professional competence or performance. Petitioner requested a hearing, and the case was assigned to me for a hearing and a decision.

The I.G. submitted a brief and two proposed exhibits, which are identified as I.G. Ex. 1 and I.G. Ex. 2. Petitioner advised my office that she was not filing a reply to the I.G.'s submission. I receive into evidence I.G. Ex. 1 and I.G. Ex. 2.

## 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 for a period that is at least coterminous with the suspension of her State license to provide health care.

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

I make the following findings of fact and conclusions of law.

- 1. The I.G. may exclude any individual whose license to provide health care has been revoked or suspended for reasons bearing on that individual's professional competence or performance. The minimum period for such exclusion is the length of time during which the license is revoked or suspended.*

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of the Social Security Act (Act) authorizes the I.G. to exclude any individual whose license to provide health care has been revoked, suspended, or otherwise lost for reasons bearing on, among other things, that individual's professional competence or performance. Exclusion is permitted by this section when an individual surrenders his or her license while a formal disciplinary proceeding is pending before a State licensing authority, and the proceeding concerns the individual's professional competence or performance. Act § 1128(b)(4)(B). The minimum term of an exclusion imposed pursuant to section 1128(b)(4) shall be for the same period as the license is revoked, suspended, or otherwise lost. 42 C.F.R. § 1001.501(b)(1).

- 2. Petitioner's license to provide health care was suspended for reasons bearing on her professional competence or performance.*

The unchallenged facts of this case establish that Petitioner was licensed as a CNA in the State of Washington. The State of Washington Department of Health, Secretary of Health (State Licensing Agency), initiated a formal disciplinary proceeding against Petitioner's license, charging Petitioner with improper sexual relations with a patient. I.G. Ex. 1; I.G. Ex. 2. Petitioner settled the matter by stipulating that she had engaged in an improper sexual relationship with a patient and by agreeing to a suspension of her license for a period of at least two years. I.G. Ex. 1.

There can be no question that Petitioner's license was suspended for reasons bearing on her professional competence and performance. The State Licensing Agency found that Petitioner had committed unprofessional conduct. I.G. Ex. 1.

***3. The I.G. is authorized to exclude Petitioner at least until Petitioner's State license suspension is ended.***

The unchallenged facts that I describe above meet all of the criteria for exclusion pursuant to section 1128(b)(4) of the Act. The State Licensing Agency suspended Petitioner's license to practice health care for reasons bearing on her professional competence or performance. That suspension was pursuant to an agreement made to settle a formal disciplinary proceeding. Act § 1128(b)(4)(B).

The I.G. excluded Petitioner at least until the suspension of her license to provide health care is ended. That is entirely consistent with the I.G.'s authority pursuant to 42 C.F.R. § 1001.501(b)(1).

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/s/  
Steven T. Kessel  
Administrative Law Judge