

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Munish Lal, M.D.
(PTANs: 00A851792, 00A851792, ZZZ02889Z;
NPI: 1427090539),
Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-79

Decision No. CR4864

Date: June 9, 2017

DECISION

The Centers for Medicare & Medicaid Services (CMS), through its Medicare administrative contractor, revoked the Medicare enrollment and billing privileges of Petitioner, Munish Lal, M.D., because Petitioner's medical license had been suspended for 15 days in July and August of 2016. For the reasons stated herein, I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges.

I. Background and Procedural History

Petitioner is a physician. *See* CMS Exhibit (Ex.) 3 at 11. On December 9, 2014, the Medical Board of California (Medical Board) filed an amended accusation alleging numerous causes for discipline, to include conviction of a crime (driving under the influence), dishonesty, excessive use of alcohol, and failure to maintain adequate and accurate medical records. CMS Ex. 3 at 33-37. On May 13, 2016, Petitioner, with the advice of counsel, entered into a Stipulated Settlement and Disciplinary Order (Order) with the Medical Board in which he admitted the aforementioned accusations. CMS Ex. 3 at 11. The Order stated, in pertinent part:

IT IS HEREBY ORDERED that Physician's and Surgeon's certificate No. A81579 issued to Respondent Munish Lal, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years"

* * *

ACTUAL SUSPENSION. As part of probation, [Petitioner] is suspended from the practice of medicine for fifteen (15) days beginning the sixteenth day (16th) day after the effective date of this decision.

CMS Ex. 3 at 12-13 (emphasis in original). In a decision dated June 8, 2016, the Medical Board adopted the Order as its decision, effective July 8, 2016. CMS Ex. at 9.

On July 20, 2016, Noridian Healthcare Solutions (Noridian), a Medicare administrative contractor, issued a letter notifying Petitioner that his Medicare privileges were being revoked, effective July 24, 2016, based on noncompliance with Medicare requirements pursuant to 42 C.F.R. § 424.535(a)(1). CMS Ex. 3 at 3-4. Noridian also informed Petitioner that he was barred from re-enrolling in the Medicare program for a period of one year, effective 30 days from the postmark date of the letter. CMS Ex. 3 at 4. Petitioner submitted a corrective action plan (CAP) on July 23, 2016 (CMS Ex. 3 at 5-8), and Noridian construed Petitioner's submission as a request for reconsideration.¹ CMS Ex. 1 at 1.

Noridian upheld Petitioner's revocation in a September 21, 2016 reconsidered determination. CMS Ex. 1 at 1. Noridian explained that "[t]he provider's medical license was suspended from July 26, 2016 through August 7, 2016. Due to the provider's license being suspended, the provider is no longer in compliance with Medicare rules and regulations."² CMS Ex. 1 at 1.

Petitioner submitted a timely request for hearing by an administrative law judge that was dated October 14, 2016, and received on October 31, 2016. I issued an Acknowledgment and Pre-Hearing Order on November 8, 2016, in which I directed the parties to submit

¹ CMS contends, in its brief, that "it is clear that Dr. Lal intended to submit a request for reconsideration, which provided appeal rights as the result of the unfavorable decision, rather than a CAP, which does not provide appeal rights in the event of a rejection of a CAP." CMS Brief (CMS Br.). While Petitioner does not disagree that he intended to request reconsideration, he also contends that he "intended his submission to include a Corrective Action Plan as well." Petitioner Brief (P. Br.). As Petitioner did not outline a plan to correct the deficiency of his 15-day license suspension, his CAP did not squarely address the cited basis for his revocation of 42 C.F.R. § 424.535(a)(1).

² The beginning date of the suspension is incorrect and should have been listed as July 24, 2016. CMS Ex. 3 at 9, 13. I also observe that Noridian's letter cited to two bases for discipline that were not included in the Order that formed the basis for the Medical Board's July 8, 2016 decision.

pre-hearing briefs addressing all issues of law and fact, including any motions for summary judgment, along with any proposed exhibits, including written direct testimony in the form of an affidavit or declaration, of any proposed witness. Acknowledgment and Pre-Hearing Order, §§ 4-8. The order advised the parties that a hearing for the purpose of cross-examining witnesses “will be necessary only if a party files admissible, written direct testimony, and the opposing party asks to cross-examine.” Acknowledgment and Pre-Hearing Order, § 10 (emphasis omitted).

CMS submitted a brief and motion for summary judgment (CMS Br.), along with four proposed exhibits (CMS Exs.1-4). Petitioner submitted his brief and a cross-motion for summary judgment (P. Br.).³ In the absence of any objections, I admit into evidence CMS Exs. 1-4.

Neither party has submitted written direct testimony, and therefore there is no need to convene a hearing for purposes of cross-examination of any witnesses. I consider the record in this case to be closed, and the matter is ready for a decision on the merits.⁴

II. Issue

Whether CMS has a legal basis to revoke Petitioner’s Medicare enrollment and billing privileges because Petitioner was not in compliance with Medicare requirements.

III. Jurisdiction

I have jurisdiction to decide this case. *See* 42 C.F.R. §§ 498.3(b)(15), 498.5(l)(2).

IV. Findings of Fact, Conclusions of Law, and Analysis.

Petitioner is a “supplier” for purposes of the Medicare program. *See* 42 U.S.C. § 1395x(d); 42 C.F.R. §§ 400.202 (definition of supplier), 410.20(b)(1). In order to participate in the Medicare program as a supplier, entities must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. CMS may revoke the enrollment and billing privileges of a supplier for any reason stated in 42 C.F.R. § 424.535. When CMS revokes a supplier’s Medicare billing privileges, CMS establishes a reenrollment bar for a period ranging from one to three years. 42 C.F.R.

³ Neither party submitted a paginated brief. While not explicitly required by the Civil Remedies Division Procedures or my November 8, 2016 Order, I note that pagination of briefs and other submissions facilitates references to those filings. Since the parties have not paginated their briefs, I have not provided pinpoint citations to the parties’ briefs.

⁴ As an in-person hearing to cross examine witnesses is not necessary, it is unnecessary to further address CMS’s motion for summary judgment.

§ 424.535(c). When a revocation is based on a license suspension, the revocation becomes effective on the date of the license suspension. 42 C.F.R. § 424.535(g).

1. *On May 13, 2016, Petitioner entered into a Stipulated Settlement and Disciplinary Order with the Medical Board of California, at which time he agreed that his license would be suspended for a period of 15 days beginning the 16th day after the effective date of the decision.*
2. *On June 8, 2016, the Medical Board of California adopted the Stipulated Settlement and Disciplinary Order as its decision, effective July 8, 2016.*
3. *Petitioner's medical license was suspended for 15 days, from July 24, 2016 through August 7, 2016.*

Petitioner admits that “[o]n May 13, 2016 [he] entered into a Stipulated Settlement and Disciplinary Order with the Medical Board of California, which included a 15-day suspension from the practice of medicine, which was to be effective the 16th day after the effective date of the decision” P. Br. Petitioner further acknowledges that his “15-day suspension went into effect” on July 24, 2016, and the “15-day suspension was no longer in effect and he was able to lawfully practice medicine in the State of California” on August 8, 2016. P. Br. Petitioner argues: “Dr. Lal does not dispute that he experienced a 15-day medical license suspension, during which he was unable to practice medicine. However, it is undisputed that Dr. Lal’s medical license was not suspended, and he was legally able to practice medicine, at the time CMS issued the final determination.” P. Br. Petitioner therefore concedes that the Medical Board suspended him from the practice of medicine from July 24, 2016 through August 7, 2016.

4. *CMS has a legal basis to revoke Petitioner’s Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(1).*

Noridian was authorized to revoke Petitioner’s Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(1), which states that CMS may revoke a supplier’s Medicare billing privileges and any corresponding supplier agreement for noncompliance with enrollment requirements. Pursuant to 42 C.F.R. § 424.516(a)(2) (Additional provider and supplier requirements for enrolling and maintaining active enrollment status in the Medicare program), a supplier must comply with federal and state licensure requirements. Petitioner does not dispute that he was not compliant with the Medicare requirement to be a licensed physician between July 24 and August 7, 2016.

Petitioner primarily argues that his enrollment should not have been revoked because his license was restored during the course of administrative proceedings, and therefore, his

“medical license was not suspended, and he was legally able to practice medicine, at the time CMS issued the final determination.” P. Br. Petitioner contends, citing to *Akram A. Ismail, M.D.*, DAB No 2429 at 3 (2011), that “the Board has found . . . that enrollment requirements are violated if the Provider fails to achieve compliance before a final determination to revoke billing privileges.” P. Br. Petitioner argues that he achieved compliance with Medicare enrollment requirements “at the time of the final determination” and that the suspension was “so short that the Petitioner was in compliance by the time the Corrective Action Plan/Request for Redetermination was even received.”⁵ P. Br.

While Petitioner’s medical license was restored on August 8, 2016, prior to the date of issuance of the reconsidered determination, he fails to appreciate that his medical license was suspended for a period of 15 days, and therefore, during that 15-day period he did not comply with Medicare requirements. *See* 42 C.F.R. §§ 424.516(a)(2), 424.535(a)(1). Further, Petitioner’s revocation became effective on July 24, 2016, the date of his license suspension, and as such, he had not corrected his license suspension prior to the July 24, 2016 date of noncompliance pursuant to 42 C.F.R. § 424.535(a)(1). Petitioner’s reliance on *Akram A. Ismail, M.D.*, DAB No 2429, is misplaced, as the *Ismail* decision does not stand for the proposition that a supplier’s enrollment cannot be revoked as long as his license is reinstated prior to the issuance of a reconsidered determination.⁶ In fact, Petitioner’s interpretation of the *Ismail* decision is contrary to the plain language contained therein, as the Board agreed with the ALJ’s finding that a temporary suspension of a license rendered a supplier noncompliant with Medicare supplier requirements. *Akram A. Ismail, M.D.*, DAB No. 2429 at 8 (stating: “CMS may determine a supplier is out of compliance with Medicare enrollment requirements at any time” and that it is appropriate to look “at the immediate effect of [the] suspension rather than the possibility that the suspension may be lifted at some point.”)

Further, Petitioner’s erroneous belief that a license suspension that is lifted during the course of the administrative appeal process cannot result in revocation can undoubtedly lead to an absurd result. For example, CMS or its contractor may not learn of a license suspension for 30 days, and it may then take a significant number of weeks, or even months, to develop the case, issue an initial determination, await receipt of a request for reconsideration, and then issue a reconsidered determination. Under Petitioner’s flawed interpretation of 42 C.F.R. § 424.535(a)(1), any license suspension that resolves prior to

⁵ Petitioner refers to a “final determination.” However, CMS and/or Noridian did not issue a “final determination.” Rather, Noridian issued an initial determination and a reconsidered determination, both of which were appealed.

⁶ Both parties also rely on administrative law judge decisions in support of their arguments. As I am not bound by those decisions, I need not address them.

the issuance of a reconsidered determination, even many months later, cannot result in revocation. The regulations do not distinguish whether a physician's license is suspended for days, weeks, or even months, but rather, give CMS, and in turn its contractors, the authority to revoke enrollment if a supplier fails to meet supplier requirements *at any time*.⁷ Petitioner did not meet enrollment requirements between July 24 and August 7, 2016, and the restoration of his medical license in August 2016 does not negate that he had been suspended for 15 days, therefore rendering him out of compliance with 42 C.F.R. § 424.516(a)(2), and in turn, 42 C.F.R. § 424.535(a)(1). While Petitioner argues in his brief that he “was and is authorized to practice medicine at all relevant times” he is mistaken: The period from July 24 through August 7, 2016 was a relevant time, and Petitioner was not authorized to practice medicine during that time. Petitioner failed to meet the regulatory requirements in July and August 2016, and revocation was appropriate. *See Akram A. Ismail*, DAB No. 2429 at 8 (2011); *see also Vijendra Dave*, DAB No. 2672 at 6 (2016) (noting that the petitioner had not disputed that CMS had legally sufficient grounds to revoke enrollment following issuance of an emergency order temporarily suspending a medical license).

Petitioner was not compliant with 42 C.F.R. § 424.535(a)(1) at the time of his license suspension. Therefore, revocation of Petitioner's Medicare enrollment and billing privileges is authorized pursuant to 42 C.F.R. § 424.535(a)(1).

V. Conclusion

I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges.

_____/s/_____
 Leslie C. Rogall
 Administrative Law Judge

⁷ Noridian provided notice that Petitioner could submit a CAP if it is “able to correct the deficiencies and establish your eligibility to participate in the Medicare program” CMS Ex. 4 at 1. However, it is unclear *how* Petitioner could submit a successful CAP in this instance, and it appears that Petitioner's appeals have been based in significant part, on a false belief that he could somehow correct the deficiency that stemmed from his license suspension.