Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Mark K. Harward, Pharm.D.,
(O.I. File Number H-13-40028-9),
Petitioner,

v.

Inspector General,
Department of Health and Human Services,
Respondent.

Docket No. C-13-1077
Decision No. CR3135
Date: February 28, 2014

DECISION

Petitioner, Mark K. Harward, Pharm.D., is excluded from participation in Medicare, Medicaid, and all federal health care programs pursuant to section 1128(a)(3) of the Social Security Act (Act) (42 U.S.C. § 1320a-7(a)(3)), effective June 20, 2013. There is a proper basis for exclusion. Petitioner's exclusion for the minimum period of five years is mandatory pursuant to section 1128(c)(3)(B) of the Act (42 U.S.C. § 1320a-7(c)(3)(B)).[1]

I. Background

The Inspector General of the Department of Health and Human Services (I.G.) notified Petitioner by letter dated May 31, 2013, that he was being excluded from participation in Medicare, Medicaid, and all federal health care programs for the minimum statutory period of five years pursuant to section 1128(a)(3) of the Act. The basis for Petitioner's

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[1] Pursuant to 42 C.F.R. § 1001.3001, Petitioner may apply for reinstatement only after the period of exclusion expires. Reinstatement is not automatic upon completion of the period of exclusion. References to the Code of Federal Regulations (C.F.R.) are to the 2012 revision, unless otherwise stated.

exclusion was his felony conviction in the Sixth Judicial Circuit Court, Pinellas County, Florida, of offenses related to theft in connection with the delivery of a health care item or service. I.G. Exhibit (Ex.) 1.

Petitioner timely requested a hearing (RFH) on July 25, 2013. Petitioner filed with his RFH 45 pages of documents marked P1 through P45. The case was assigned to me on July 30, 2013 for hearing and decision. On August 22, 2013, I convened a prehearing conference by telephone, the substance of which is memorialized in my Prehearing Conference Order and Schedule for Filing Briefs and Documentary Evidence (Prehearing Order) issued on August 23, 2013. Petitioner did not waive an oral hearing. The I.G. requested to file a motion for summary judgment prior to further development of the case for hearing and I set a briefing schedule.

On September 21, 2013, the I.G. filed a motion for summary judgment and supporting brief with 15 exhibits that were incorrectly marked. On September 25, 2013, the I.G. requested leave to file a substitute memorandum in support of its motion for summary judgment (I.G. Br.) with substitute exhibits marked correctly as I.G. Exs. 1 through 9.[2] On November 21, 2013, Petitioner filed a response in opposition to the I.G.'s motion for summary judgment (P. Response) with a supporting memorandum (P. Br.) and Petitioner's exhibits (P. Exs.) A through P.[3] The I.G. filed a reply brief (I.G. Reply) on December 5, 2013.

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[2] The exhibits the I.G. originally filed on September 21, 2013, and cited in his memorandum in support of summary judgment were the documents that Petitioner filed with his request for hearing marked as P1 through P45. The I.G. remarked the documents attached to the RFH as "Pet'r Ex." 1 through 14 and, with an additional document marked as I.G. Ex. 1, the I.G. filed those documents on September 21. On September 27, 2013, I granted the I.G.'s motion to substitute the memorandum and correctly marked I.G. exhibits. The original I.G. memorandum and incorrectly marked exhibits remain part of the record, but they are not considered for purposes of this decision. Similarly, the pages marked P1 through P45 filed with Petitioner's request for hearing are not admitted or considered as evidence as those documents have been remarked and submitted by the parties as exhibits for my consideration.

[3] Petitioner's exhibits are not marked in accordance with the Prehearing Order ¶ 8, which incorporates by reference the Civil Remedies Division Procedures. Because there is little likelihood of confusion due to the incorrect marking of Petitioner's exhibits, the Petitioner has not been required to file correctly marked exhibits. Counsel for both parties are encouraged to review and comply with procedural orders and local rules to avoid possible sanctions in the future.

On January 22, 2014, Petitioner filed a motion seeking leave to file an additional exhibit, P. Ex. Q. P. Ex. Q is a copy of a December 16, 2013 order sealing the trial court records, the state attorney records, and the police department records related to Petitioner's June 16, 2012 arrest. The I.G. filed a response on January 23, 2014, objecting to Petitioner's request and to the admission of P. Ex. Q, arguing that the order sealing Petitioner's criminal record pursuant to Fla. Stat. Ann. § 943.059 is not relevant or material to any issue before me. The I.G.'s objection is overruled. P. Ex. Q is relevant to Petitioner's theory and will be considered even though I conclude that Petitioner's theory is without merit for the reasons discussed hereafter. Although the records related to Petitioner's conviction have now been sealed, Petitioner does not argue that the order precludes my consideration of evidence filed by the I.G. prior to the date of the order. Petitioner cites no authority that a state court order to seal a criminal record can prevent the I.G. from executing the duty to exclude as mandated by Congress. No objections have been made to my consideration of the other exhibits filed by the parties, and I.G. Exs. 1 through 9, and P. Exs. A through Q, are admitted.

II. Discussion

A. Applicable Law

Section 1128(f) of the Act (42 U.S.C. § 1320a-7(f)) establishes Petitioner's rights to a hearing by an administrative law judge (ALJ) and judicial review of the final action of the Secretary of Health and Human Services (the Secretary).

Pursuant to section 1128(a)(3) of the Act, the Secretary must exclude from participation in any federal health care program:

> Any individual or entity that has been convicted for an offense which occurred after . . . [August 21, 1996], under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in [section 1128(a)(1)]) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

The Secretary has promulgated regulations implementing these provisions of the Act. 42 C.F.R. § 1001.101(c).

Pursuant to section 1128(i) of the Act, an individual is "convicted" of a criminal offense when a judgment of conviction has been entered by a federal, state, or local court whether

or not an appeal is pending or the record has been expunged; or when there has been a finding of guilt in a federal, state, or local court; or when a plea of guilty or no contest has been accepted in a federal, state, or local court; or when an accused individual enters a first offender program, deferred adjudication program, or other arrangement where a judgment of conviction has been withheld. 42 U.S.C. § 1320a-7(i)(1)-(4). These definitions can also be found at 42 C.F.R. § 1001.2.

An exclusion imposed under section 1128(a) will be for a period of not less than five years. Act § 1128(c)(3)(B). The period of exclusion may be extended based on the presence of specified aggravating factors. 42 C.F.R. § 1001.102(b). Only if the aggravating factors justify an exclusion of longer than five years are mitigating factors considered as a basis for reducing the period of exclusion to no less than five years. 42 C.F.R. § 1001.102(c).

The standard of proof in a hearing before an ALJ is a preponderance of the evidence. 42 C.F.R. § 1001.2007(c). Petitioner may not collaterally attack the conviction that provides the basis for the exclusion. 42 C.F.R. § 1001.2007(d). Petitioner bears the burden of proof and the burden of persuasion on any affirmative defenses or mitigating factors, and the I.G. bears the burden on all other issues. 42 C.F.R. § 1005.15(b).

B. Issues

The Secretary has by regulation limited my scope of review to two issues:

Whether there is a basis for the imposition of the exclusion; and

Whether the length of the exclusion is unreasonable.

42 C.F.R. § 1001.2007(a)(1). When the I.G. imposes only the minimum authorized five-year period of exclusion pursuant to section 1128(a) of the Act, whether or not the period of exclusion is unreasonable is not at issue before me. 42 C.F.R. § 1001.2007(a)(2).

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

My conclusions of law are set forth in bold followed by the pertinent findings of fact and analysis.

1. Petitioner's request for hearing was timely, and I have jurisdiction.

2. Summary judgment is appropriate in this case.

There is no dispute that Petitioner timely requested a hearing and that I have jurisdiction pursuant to section 1128(f) of the Act and 42 C.F.R. pt. 1005.

Pursuant to section 1128(f) of the Act, a person subject to exclusion has a right to reasonable notice and an opportunity for a hearing. The Secretary has provided by regulation that a sanctioned party has the right to hearing before an ALJ, and both the sanctioned party and the I.G. have a right to participate in the hearing. 42 C.F.R. §§ 1005.2-3. Either or both parties may choose to waive appearance at an oral hearing and to submit only documentary evidence and written argument for my consideration. 42 C.F.R. § 1005.6(b)(5). An ALJ may also resolve a case, in whole or in part, by summary judgment. 42 C.F.R. § 1005.4(b)(12).

Summary judgment is appropriate, and no hearing is required where either: there are no disputed issues of material fact and the only questions that must be decided involve application of law to the undisputed facts; or the moving party prevails as a matter of law even if all disputed facts are resolved in favor of the party against whom the motion is made. A party opposing summary judgment must allege facts which, if true, would refute the facts relied upon by the moving party. *See, e.g.*, Fed. R. Civ. P. 56(c); *Garden City Med. Clinic*, DAB No. 1763 (2001); *Everett Rehab. and Med. Ctr.*, DAB No. 1628, at 3 (1997) (holding an in-person hearing is required where non-movant shows there are material facts in dispute that require testimony); *Thelma Walley*, DAB No. 1367 (1992); *see also New Millennium CMHC*, DAB CR672 (2000); *New Life Plus Ctr.*, DAB CR700 (2000).

Petitioner does not dispute that he was convicted within the meaning of section 1128(i) of the Act, that he was convicted of felony theft, or that his conviction occurred after August 21, 1996. P. Response at 11; P. Br. at 1-2, 15. Petitioner opposes summary judgment and his exclusion arguing that there are material facts in dispute regarding whether or not his conviction was related to the delivery of a health care item or service. P. Response at 4-5, 11-12; P. Br. at 4, 11-15. I conclude that summary judgment is appropriate as there are no genuine disputes as to any material facts and the I.G. prevails as a matter of law on the issue of whether there is a basis for exclusion based on the facts conceded by Petitioner. The five-year period of exclusion is reasonable as a matter of law because there is a basis for exclusion pursuant to section 1128(a) of the Act.

3. Petitioner's exclusion is required by section 1128(a)(3) of the Act.

a. Facts

Petitioner does not dispute that on November 5, 2012, he appeared with counsel in the Sixth Judicial Circuit Court of Florida, Pinellas County, and pled guilty to three felony counts of grand theft in violation of Fla. Stat. Ann. § 812.014(2)(c)(1) and one misdemeanor count of petit theft in violation of Fla. Stat. Ann. § 812.014(2)(e). Petitioner does not dispute that the court accepted his guilty plea; ordered him to pay restitution to Kmart in the amount of $3,186.38; and entered an order withholding

adjudication of guilt and placing him on probation for 12 months. RFH at 1-2; P. Br. at 6-7; P. Response at 1, 11; I.G. Ex. 2, at 1-2, 5-8; I.G. Ex. 4.

Petitioner held pharmacy licenses in both Florida and Utah. RFH at 1; P. Br. at 6. From June 2010 to June 2012, he was employed as a traveling pharmacist for Kmart. I.G. Ex. 3. Petitioner admits he was arrested on June 19, 2012 after taking money from the Kmart pharmacy cash register. P. Br. at 6. Petitioner admits that:

> While working at the cash register in the store pharmacy, [he] would not ring in the full amount the customers handed him for their medications and other items purchased at the store pharmacy. This would result in a cash overage. At the end of the day, the resulting cash overage in the till was removed by [him] and kept by him.

RFH at 2; P. Br. at 8; I.G. Ex. 2, at 1-2. Petitioner concedes that it is likely that some of the transactions involved sales of medication and other pharmacy items. P. Br. at 10.

I accept as true for purposes of ruling on summary judgment Petitioner's assertions that: Petitioner did not obtain the money he was convicted of taking by submission of false or fraudulent claims to any healthcare program; Petitioner stole no medications; customers received the items for which they paid; no health plan member was deprived of a benefit; and no health plan or beneficiary of a plan suffered harm as a result of Petitioner's conduct. Petitioner's operation of the cash register was not part of dispensing medications. Dispensing and delivery of medications was part of Petitioner's job duties. RFH at 2-3; P. Br. at 8-9.

b. Analysis

The elements necessary for an exclusion pursuant to section 1128(a)(3) of the Act are derived from the language of that section. The I.G. is required to exclude an individual or entity pursuant to section 1128(a)(3) of the Act when the following elements are satisfied:

> 1. The individual or entity was convicted for an offense under federal or state law;
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> 2. The offense occurred after August 21, 1996 (the date of enactment of the Health Insurance Portability and Accountability Act of 1996);

> 3. The offense was committed in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in section 1128(a)(1) of the Act, i.e. Medicare and Medicaid) operated by or financed in whole or in part by any federal, state, or local government agency;
>
> 4. The criminal offense was a felony; and
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> 5. The offense was related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

All the elements are satisfied in this case. Petitioner does not dispute that he was convicted of offenses under state law within the meaning of section 1128(i) of the Act when his guilty pleas were accepted. Petitioner does not dispute that the offenses of which he was convicted were committed after August 21, 1996. Petitioner does not dispute that he was convicted of felony offenses. Petitioner does not dispute that he was convicted of offenses that involved theft. The only element that Petitioner disputes is whether or not his offenses were connected with the delivery of a health care item or service or were based on an act or omission in a health care program, other than Medicare or Medicaid, financed in whole or in part by any government agency. P. Br. at 1-2, 4. I conclude that the undisputed facts establish the required connection, rational link, or nexus between Petitioner's criminal offenses and the delivery of a health care item or service, in a health care program other than Medicare or Medicaid.

My decision is guided by the decision of the Departmental Appeals Board (the Board) in *W. Scott Harkonen, M.D.*, DAB No. 2485 (2012), *aff'd, Harkonen v. Sebelius* No. C13-0071 PJH, 2013 WL 5734918 (N.D. Cal. Oct. 22, 2013). In *Harkonen* an appellate panel of the Board discussed in detail the element of section 1128(a)(3) of the Act, which requires that the offense of which one is convicted have been committed in connection with the delivery of a health care item or service. The Board discusses that in prior cases it has interpreted the language "in connection with" to require a common sense connection or nexus, also characterized as a "rational link," between the criminal offense and the delivery of a health care item or service. *Harkonen* at 7. The Board notes that in *Erik D. DeSimone, R.Ph.*, DAB No. 1932 (2004) it found the required nexus in a case where a pharmacist, in the guise of performing his professional duties, took controlled substances for his own use. *Harkonen* at 7. In *Kenneth M. Behr*, DAB No. 1997 (2005) the Board found the nexus where a pharmacist who had access to drugs due to his position attempted to embezzle those drugs, rejecting the argument that the underlying criminal offense must involve actual delivery of a health care item or service. *Harkonen* at 8. In *Ellen L. Morand*, DAB No. 2436 (2012), the Board concluded that the Petitioner's theft from the evening deposit of the pharmacy that employed her had the

requisite nexus considering that the evening deposit included revenue from the sale of health care items and that the Petitioner diverted those funds to her use. The Board summarized its prior holdings to be that "frauds or thefts that are linked in a rational way to the delivery of a health care item or service do fall within the ambit" of section 1128(a)(3). *Harkonen* at 8. The Board further notes that its interpretation is consistent with the interpretation of similar language found in section 1128(a)(1). The Board points out that its interpretations of the language of 1128(a) "effectuate the twin purposes of section 1128(a): 1) to protect federal health care programs and their beneficiaries from individuals who have been shown to be untrustworthy; and 2) to deter health care fraud. *Id.* at 9 (citations omitted). In *Harkonen* the Board states that section 1128(a)(3) does not require proof of an actual impact or effect upon the delivery of a health care item or service, rather the ALJ must consider all the evidence of circumstances underlying the criminal offense, including evidence extrinsic to the criminal proceedings if reliable and credible, to find the rational link between the criminal offense and the delivery of a health care item or service. *Id*. at 10.

In this case the undisputed facts, indeed facts admitted by Petitioner, related to the circumstances of Petitioner's criminal offenses establish the rational link between Petitioner's criminal offenses and the delivery of a health care item or service – the required nexus. The facts admitted by Petitioner that establish the nexus between Petitioner's offenses of theft from his employer and the delivery of a health care item or service are:

1. Petitioner was a licensed pharmacist. RFH at 1; P. Br. at 2, 6.

2. At the time of his offenses in June 2012, Petitioner was employed as a traveling pharmacist for Kmart. I.G. Exs. 2; P. Br. at 2, 6.

3. Petitioner took money from the Kmart pharmacy cash register. P. Br. at 2, 6.

4. Petitioner admits that he committed his offenses using the cash register in the store pharmacy by not ringing the full amount the customers paid him for their medications and other items purchased at the store pharmacy, resulting in more cash in the cash register at the end of the day than actually recorded by the register, and Petitioner took the cash overage for himself. RFH at 2; P. Response at 11; P. Br. at 8, 11-12; I.G. Ex. 2, at 1-2.

5. Petitioner concedes that it is likely that some of the transactions from which he skimmed money involved sales of medication and other pharmacy items. P. Br. at 10-12.

The foregoing facts not only establish the rational link between Petitioner's criminal offenses and the delivery of a health care item or service, they also show that Petitioner

used his position as a licensed pharmacist and participant in Medicare and Medicaid to perpetrate his crimes. Thus, it is consistent with the purposes of section 1128(a)(3) to apply that section to exclude Petitioner to protect federal health care programs and their beneficiaries from Petitioner, who is shown to be untrustworthy based on the abuse of his position to commit theft from his employer.

Petitioner asserts that his crimes did not cause direct harm to any health care program (RFH at 2-3, 5; P. Br. at 8); his crimes did not involve the submission of any false or fraudulent claims (RFH at 2, 5; P. Response at 11; P. Br. at 5, 8); he did not steal any medications (RFH at 2-3; P. Br. at 8); customers received the merchandise they paid for and were not deprived of any benefit (RFH at 3; P. Br. at 8); and the thefts occurred after items or services were delivered (RFH at 4; P. Br. at 8-9). Even if I accepted these assertions as true for purposes of summary judgment, these facts do not rebut or negate the nexus between Petitioner's crimes and the delivery of a health care item or service, which is established by the admitted facts set forth above.

Petitioner argues that the criminal charges did not allege that his crimes were: in connection with the delivery of a health care item or service; related to the sale of pharmacy items or services; in connection with Petitioner's employment as a pharmacist; related to drug violations under state law; or related to fraudulent transactions related to the sale of prescription medication (P. Response at 2-3, 6-7; P. Br. at 5). He argues that sale of a pharmacy item is not a duty of a pharmacist under Florida law; that his criminal conduct did not involve dispensing or delivery of a controlled substance under state or federal law; and that the sales transactions during which he skimmed money could have been handled by any Kmart employee, including one who was not a pharmacist. P. Response at 4-7; P. Br. at 9-10, 12; P. Exs. J, K, O. Petitioner's arguments are without merit in this case. The determination of whether the required nexus exists is not dependent upon the language of the charging document based on which Petitioner was convicted. The existence of the nexus is also not dependent upon how a pharmacist's duties are defined or described under state laws. The nexus is also not dependent upon whether only a pharmacist could have handled the sales transaction or whether non-pharmacy sales may have been processed on the cash register that Petitioner used to perpetrate his crime. The ALJ must consider all the evidence of circumstances underlying the criminal offense, including evidence extrinsic to the criminal proceedings if reliable and credible, to find the rational link between the criminal offense and the delivery of a health care item or service. *Harkonen*, DAB No. 2485 at 10. While Petitioner's arguments point-out the absence of some evidence that might help establish the required nexus or that may be construed to show the absence of a nexus, the other evidence of record, specifically the admissions of Petitioner, is more than sufficient to show the required nexus in this case.

Petitioner argues that his case is not unlike the case of *Hong Lu, a.k.a. Hong Lu Henry, a.k.a. Lu Hong*, DAB No. CR1483 (2006) in which the ALJ concluded that the I.G. failed

to establish a basis for exclusion pursuant to section 1128(a)(3) of the Act. P. Response at 7-10; P. Br. at 13-14; P. Ex. P. In that case, the petitioner was convicted of money laundering; she worked as the receptionist and bookkeeper for her husband's medical practice; and the money laundering related to alleged bank deposits and transactions that she made with funds from her husband's medical practice. The ALJ in *Hong* was unwilling to find the nexus between the offense of money laundering and the delivery of a health care item or service because he had insufficient evidence of the actual source of the laundered funds, i.e. whether the funds derived from the husband's medical practice or not; the reasons for laundering the funds; or any impact of the laundering activity on a health care program. The ALJ commented that he had insufficient evidence from which to draw inferences and that he was unwilling to simply guess. Petitioner's case is distinguishable from the *Hong* case because Petitioner was the licensed professional who participated in Medicare and Medicaid and had access to the funds due to his license and participation. Petitioner concedes that he took funds from the pharmacy cash register and some of those funds were payments for pharmacy items and services, some of which were connected to governmental health care plans or programs.

I conclude that the elements of section 1128(a)(3) of the Act are satisfied including the required connection, rational link, or nexus between Petitioner's criminal offenses and the delivery of a health care item or service, in a health care program other than Medicare or Medicaid. Accordingly, I conclude that there is a basis for Petitioner's exclusion pursuant to section 1128(a)(3) of the Act.

4. The I.G. had no discretion to exclude Petitioner under the permissive exclusion provisions of section 1128(b) of the Act rather than the mandatory exclusion provisions of section 1128(a) of the Act.

Petitioner argues that if any exclusion is imposed it should be pursuant to the permissive exclusion provisions found at section 1128(b) of the Act, which requires a three-year exclusion for a conviction relating to theft. Act § 1128(b)(1)(B); (42 U.S.C. § 1320-7(b)(1)(B)). RFH at 5, 8. Petitioner argues that if he is subject to permissive exclusion under section 1128(b) of the Act, there are sufficient mitigating factors to warrant reducing the period of exclusion to only six months effective May 31, 2013. RFH at 8. Petitioner alleges mitigating factors in his various pleadings, including that his theft occurred when he was under extreme financial stress and was out of character; he pled guilty; adjudication of guilt was withheld; he was placed on probation; he promptly complied with all terms of probation including restitution; and his probation was terminated early. He states that he continued to work as a pharmacist after his arrest, while on probation, and until his exclusion became effective on June 20, 2013; completed additional continuing education; promptly notified the state licensing authorities; and the period of exclusion exceeds the period of probation imposed for the criminal offenses. Petitioner asserts that a practical effect of his exclusion is that he will be unable to apply for a license in Florida until after May 31, 2018, and the exclusion has a disproportionate

effect upon Petitioner as a pharmacist. RFH at 2-3, 6-8; P. Response at 2; P. Br. at 7. His former employers have provided letters indicating their support for Petitioner. P. Exs. C, D, E. Petitioner has also presented evidence that the records of his arrest were subsequently sealed. P. Ex. Q.

Petitioner's argument for permissive exclusion is without merit. The I.G. has no discretion to impose a permissive exclusion where an individual's conviction satisfies the elements of section 1128(a)(3) of the Act. The "courts have repeatedly held that the I.G. is . . . required to impose a mandatory exclusion even if an individual's conduct also falls within the scope of a permissive exclusion provision." *Gregory J. Salko, M.D.*, DAB No. 2437, at 4 (2012), citing *Timothy Wayne Hensley*, DAB No. 2044, at 16 (2006) (and cases cited therein); *Craig Richard Wilder*, DAB No. 2416, at 7 (2011); *Lorna Fay Gardner*, DAB No. 1733, at 6 (2000).

5. Petitioner's exclusion for five years is not unreasonable as a matter of law.

Petitioner does not dispute that if his exclusion is mandatory, the five-year exclusion period imposed is the minimum period specified by Congress. RFH at 6; P. Br. at 3-4, 15; Act § 1128(c)(3)(B); 42 C.F.R. § 1001.102(a). I have concluded that there is a basis for Petitioner's exclusion pursuant to section 1128(a)(3) of the Act, and the five-year exclusion is not unreasonable as a matter of law.

Exclusion is effective 20 days from the date of the I.G.'s written notice of exclusion to the affected individual or entity. 42 C.F.R. § 1001.2002(b). The Secretary's regulations do not give me discretion to change the effective date of Petitioner's exclusion and I may not refuse to follow the Secretary's regulations. 42 C.F.R. § 1005.4(c)(1); *Thomas Edward Musial, R.Ph.*, DAB No. 1991 (2005). Consequently, the effective date of Petitioner's exclusion is June 20, 2013, twenty days after the I.G.'s May 31, 2013 notice of exclusion.

III. Conclusion

For all of the foregoing reasons, Petitioner is excluded from participation in Medicare, Medicaid, and all federal health care programs for the minimum statutory period of five years, effective June 20, 2013.

/s/
Keith W. Sickendick
Administrative Law Judge