Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Mark Koch, D.O.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1364

Decision No. CR3161

Date: March 18, 2014

DECISION

Wisconsin Physicians Service Insurance Corporation (WPS), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), revoked the Medicare billing privileges of Petitioner, Mark Koch, D.O., because Petitioner was convicted of a felony offense that CMS determined to be detrimental to the best interests of the Medicare program and its beneficiaries, provided false or misleading information in a Medicare revalidation enrollment application, and failed to report an adverse legal action to CMS within 30 days. Petitioner disputed the revocation and requested a hearing. For the reasons stated below, I affirm CMS's determination.

I. Background and Procedural History

On July 1, 2010, Petitioner signed a Form CMS-855I in which he applied for enrollment in the Medicare program as a physician. CMS Exhibit (Ex.) 1. Petitioner asserted that he did not have any final adverse legal actions taken against him. CMS Ex. 1, at 2, 5. WPS received the enrollment application on July 12, 2010, and on September 2, 2010, WPS approved Petitioner's application. CMS Ex. 1, at 12, 14.

On December 3, 2012, Petitioner signed a Form CMS-855I in which he sought to revalidate his enrollment in the Medicare program. CMS Ex. 2, at 1, 10. Petitioner again asserted that he was not subject to a final adverse legal action. CMS Ex. 2, at 6.

WPS issued an initial determination on March 13, 2013, revoking Petitioner's Medicare billing privileges effective February 24, 2012. CMS Ex. 3. WPS stated that it discovered that Petitioner pled guilty on February 24, 2012, to a felony offense of conspiracy to dispense and possess with intent to distribute anabolic steroids and that Petitioner's license to practice in Alabama had been suspended by the Alabama Board of Medical Examiners on April 18, 2012. CMS Ex. 3. WPS based the revocation on 42 C.F.R. §§ 424.535(a)(3) (Petitioner was convicted on February 24, 2012, of a felony detrimental to the Medicare program and its beneficiaries), 424.535(a)(4) (Petitioner certified on his 2010 and 2012 Medicare enrollment applications that he was not subject to a final adverse legal action when he was: convicted of a felony in February 2012; subject to various orders of revocation, suspension, and probation regarding his medical licenses in Pennsylvania and Alabama before and after 2010; and subject to revocation of his Medicare billing privileges in April 2012 by Cahaba GBA, a CMS administrative contractor serving Alabama), 424.535(a)(9) (Petitioner failed to report to CMS, within 30 days, his February 24, 2012 felony conviction, April, 18, 2012 license suspension in Alabama, and his April 18, 2012 revocation of Medicare billing privileges by Cahaba GBA). CMS Ex. 3, at 1-2. WPS established a three-year reenrollment bar for Petitioner. CMS Ex. 3, at 2. Further, in a March 15, 2013 letter, WPS informed Petitioner that it could not process his 2012 revalidation enrollment application because WPS revoked his billing privileges. CMS Ex. 4.

On May 13, 2013, WPS received Petitioner's request that it reconsider the initial determination. CMS Ex. 5. On July 25, 2013, a WPS hearing officer issued a reconsidered determination upholding the revocation on all three regulatory bases stated in the initial determination. However, the hearing officer's evaluation of the evidence was limited to Petitioner's February 24, 2012 felony guilty plea. CMS Ex. 6.[1]

On September 23, 2013, Petitioner filed a timely request for a hearing (RFH). In his RFH, Petitioner denied that he intentionally provided false or misleading information in

[1] In the case before me, CMS refers to the state disciplinary actions taken by various medical licensing authorities discussed in WPS's initial determination and submits documents from those disciplinary proceedings. CMS Motion for Summary Judgment and Prehearing Brief (CMS Br.) at 8-9; CMS Exs. 13, 14. However, just as the reconsidered determination only relies on the evidence of the February 24, 2012 conviction, CMS does not actually argue that the Petitioner's medical licensing issues support revocation. *See* CMS Br. at 16-18. Therefore, I consider Petitioner's February 24, 2012 criminal conviction and Petitioner's 2012 Medicare revalidation enrollment application as the primary evidence supporting WPS's revocation.

his Medicare revalidation application, acknowledged that he failed to timely report his guilty plea within 30 days, but stated that he was unaware of this reporting requirement and believed that he must report a final adverse legal action "only in the next year's Medicare billing renewal application." Petitioner also denied that his conviction was related to the practice of medicine. RFH at 1-3.

In response to my September 27, 2013 Acknowledgment and Pre-hearing Order (Order), CMS filed a Motion for Summary Judgment and Prehearing Brief (CMS Br.) together with 14 exhibits (CMS Exs. 1-14). Petitioner filed a Pre-hearing Brief (P. Br.) and six exhibits (P. Exs. 1-6), as well as a response to CMS's Motion for Summary Judgment (P. Resp.)

II. Decision on the Record

Petitioner objects to the admission of CMS Ex. 9, which is a July 28, 2011 Indictment. Petitioner argues that he neither pled guilty to nor was convicted of Counts Two through Four of the Indictment. CMS Ex. 9, at 1-3. Because, as discussed below, I must determine if Petitioner's conviction is one that would require exclusion under section 1128(a)(4) of the Social Security Act (the Act), 42 C.F.R. § 424.535(a)(3)(i)(D), review of the Indictment is necessary because Petitioner pled guilty to Count One. *Emem Dominic Ukpong*, DAB No. 2220, at 2-3 (2008) (extrinsic evidence, such as information found in an indictment or a plea agreement, is probative to determine the circumstances that form the basis for the criminal offense underlying a conviction). Therefore, I admit CMS Ex. 9 into the record. However, the information contained in Counts Two through Four (on CMS Ex. 9, at 2-3) is not relevant and is not relied upon for any of my findings or conclusions in this case.

In the absence of any other objection, I admit the remaining proposed exhibits (CMS Exs. 1-8, 10-14 and P. Exs. 1-6) into the record.

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would only be necessary if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8-10; *Vandalia Park*, DAB No. 1940 (2004); *Pacific Regency Arvin*, DAB No. 1823, at 8 (2002) (holding that the use of written direct testimony for witnesses is permissible so long as the opposing party has the opportunity to cross-examine those witnesses).[2] CMS did not submit written direct testimony for any proposed witnesses. Petitioner submitted a

[2] Administrative decisions cited in this decision are accessible on the internet at: http://www.hhs.gov/dab/decisions/index.html.

witness list and written direct testimony from several individuals; however, CMS did not seek to cross-examine these individuals. Consequently, I will not hold an in-person hearing in this matter, *see Kate E. Paylo, D.O.*, DAB CR2232, at 9 (2010), and will issue a decision on the record. Order ¶ 11.

III. Issue

Whether CMS had a legitimate basis for revoking Petitioner's Medicare enrollment and billing privileges under 42 C.F.R. §§ 424.535(a)(3) (conviction of a felony that is detrimental to the Medicare program and its beneficiaries), 424.535(a)(4) (submitting false or misleading information in a Medicare enrollment application), and 424.535(a)(9) (failure to comply with reporting requirements). I have jurisdiction to decide this issue. 42 C.F.R. §§ 498.3(b)(17), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

IV. Findings of Fact, Conclusions of Law, and Analysis[3]

As a physician, Petitioner was 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, individuals must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. CMS may revoke enrollment and billing privileges for any reason stated in 42 C.F.R. § 424.535.

1. Petitioner pled guilty to violating 21 U.S.C. § 846 and, on February 24, 2012, the United States District Court for the Southern District of Alabama issued a Judgment in Criminal Case adjudging Petitioner guilty of that offense.

On July 28, 2011, a grand jury convened by the United States District Court for the Southern District of Alabama (District Court) issued a multi-count Indictment charging Petitioner and others with several offenses. CMS Ex. 9. Relevant to this case, Count One of the Indictment charged Petitioner with conspiracy to "possess with intent to distribute and dispense testosterone and primobolan depot Schedule III controlled substances" in violation of 21 U.S.C. § 846. CMS Ex. 9, at 1.

On September 20, 2011, Petitioner entered into a plea agreement in which he pled guilty to Count One. CMS Ex. 10, at 1. Also on September 20, 2012, Petitioner agreed to a "Factual Resume" of the offense. CMS Ex. 10, at 14-16. On February 24, 2012, the District Court entered a Judgment in Criminal Case in which the court acknowledged Petitioner's guilty plea to Count One of the Indictment and "adjudicated [Petitioner]

[3] My numbered findings of fact and conclusions of law are set forth in italics and bold font.

guilty of" violating 21 U.S.C. § 846 ("Conspiracy to dispense and possess with intent to distribute anabolic steroids"). CMS Ex. 8, at 1. The District Court sentenced Petitioner to five years of probation and 200 hours of community service, and ordered Petitioner to pay a $10,000 fine. CMS Ex. 8, at 2-4. Petitioner does not dispute his criminal conviction. P. Br. at 3.

2. WPS had a legitimate basis to revoke Petitioner's Medicare billing privileges pursuant to 42 C.F.R. § 424.535(a)(3)(i)(D) based on Petitioner's February 24, 2012 felony conviction for conspiracy to dispense and possess with the intent to distribute anabolic steroids (21 U.S.C. § 846), a felony that would require exclusion under section 1128(a)(4) of the Act (42 U.S.C. § 1320a-7(a)(4)).

The regulation at 42 C.F.R. § 424.535(a)(3) authorizes revocation of billing privileges based on a conviction of a felony offense that CMS has determined to be detrimental to the best interests of the Medicare program and its beneficiaries. That regulation provides:

> (3) *Felonies.* The provider, supplier, or any owner of the provider or supplier, within the 10 years preceding enrollment or revalidation of enrollment, was convicted of a Federal or State felony offense that CMS has determined to be detrimental to the best interests of the program and its beneficiaries.
> (i) Offenses include—
> …
> (D) Any felonies that would result in mandatory exclusion under section 1128(a) of the Act.

42 C.F.R. § 424.535(a)(3)(i)(D).

The record supports the conclusion that WPS had a legitimate basis for revoking Petitioner's Medicare billing privileges under 42 C.F.R. § 424.535(a)(3).

Petitioner was convicted of a felony. Based on Petitioner's plea agreement, on February 24, 2012, the District Court entered a Judgment in Criminal case adjudging Petitioner guilty of a violation of 21 U.S.C. § 846. CMS Ex. 8. By entering a guilty plea to one count of conspiracy to dispense and possess with the intent to distribute anabolic steroids in violation of 21 U.S.C. § 846, Petitioner pled guilty to a Class C felony. That statute states that "any person who attempts to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object or attempt of the conspiracy." Possession with intent to deliver anabolic steroids (Class III controlled substances) carries a maximum term of imprisonment of 10 years if death or serious bodily injury does not result from the use of the substances. 21 U.S.C. §§ 841(a)(1), 841(b)(1)(E)(i). Offenses which carry a

maximum term of imprisonment of "less than twenty-five, but ten or more years" are considered Class C felonies. 18 U.S.C. § 3559(a); *see also* 18 U.S.C. § 3581(b)(3).

The record also reflects that Petitioner's February 24, 2012 conviction occurred within 10 years preceding his December 2012 application for revalidation of enrollment in the Medicare program. CMS Ex. 2.

Finally, the felony for which Petitioner was convicted is one that CMS has determined is detrimental to the Medicare program and its beneficiaries. 42 C.F.R. § 424.535(a)(3). As explained below, Petitioner was convicted of a crime that requires mandatory exclusion under section 1128(a)(4) of the Act. Because 42 C.F.R. § 424.535(c)(3)(i)(D) expressly provides that a conviction that would result in an exclusion under section 1128(a) of the Act is a conviction that is detrimental to the Medicare program and its beneficiaries, such a conviction is deemed to be detrimental per se to the Medicare program and its beneficiaries. *See Letantia Bussell, M.D.*, DAB No. 2196, at 9 (2008).

Section 1128(a)(4) of the Act, requires the mandatory exclusion from participation in Medicare, Medicaid, and all other federal health care programs of "[a]ny individual or entity that has been convicted for an offense which occurred . . . [after August 21, 1996] . . . under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance." 42 U.S.C. § 1320a-7(a)(4).

As an initial matter, Petitioner was a Medicare supplier at the time of his February 24, 2012 conviction of the felony offense of conspiracy to dispense and possess with the intent to distribute anabolic steroids in violation of 21 U.S.C. § 846. *See* CMS Ex. 1, at 14 (WPS approved Petitioner's enrollment as a Medicare supplier in 2010); CMS Ex. 2 (Petitioner's application for revalidation of his enrollment as a Medicare supplier in December 2012). Therefore, he meets the regulatory requirement to be potentially subject to mandatory exclusion under section 1128(a)(4). 42 C.F.R. § 1001.101(d)(1).

Further, Petitioner was convicted of a felony offense after August 21, 1996. As already discussed above, the District Court issued a Judgment in Criminal Case on February 24, 2012, in which the District Court adjudged Petitioner guilty of violating 21 U.S.C. § 846 based on Petitioner's guilty plea. CMS Ex. 8, at 1. Section 1128(i) of the Act defines being "convicted" as including those circumstances: "(1) when a judgment of conviction has been entered against the individual . . . by a Federal . . . court;" or "(2) when there has been a finding of guilt against the individual . . . by a Federal . . . court;" or "(3) when a plea of guilty or nolo contendere by the individual . . . has been accepted by a Federal . . . court. . . ." 42 U.S.C. § 1320a-7(i). Thus, for the purposes of section 1128, Petitioner is considered to have been convicted of a criminal offense under all three definitions for

that term as quoted above. In addition, as already established above, Petitioner's criminal conduct in violation of 21 U.S.C. § 846 is a felony.

The final element as to whether Petitioner's conviction is one that would require mandatory exclusion under section 1128(a)(4) is whether the crime for which he was convicted "relates to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance." 42 U.S.C. § 1320a-7(a)(4). For the reasons stated below, I conclude that it does.

Petitioner disputes that his February 24, 2012 guilty plea to conspiracy to dispense and possess with the intent to distribute anabolic steroids is not one of the enumerated offenses that CMS has determined to be detrimental to the best interests of the Medicare program, specifically stating that it is not a mandatory exclusion offense under section 1128(a). P. Br. at 2-3 n.2. Petitioner argues that he did not admit to actually possessing the controlled substance in question. P. Resp. at 5.

However, Petitioner agreed to a factual resume when he pled guilty. According to that document, Petitioner was a physician practicing in Alabama and "purchased, consumed, and trafficked anabolic steroids." CMS Ex. 10, at 14. The factual resume also indicates that anabolic steroids are Schedule III Controlled Substances, restricted to distribution by a physician by prescription. CMS Ex. 10, at 14-15. According to the factual resume, on or about June 24, 2011, a consensual video and audio recording of Petitioner showed him "discussing the pending purchase of anabolic steroids from defendant Rivers in north Alabama with a cooperating individual." CMS Ex. 10, at 15. Then, on or about June 28, 2011, the cooperating individual traveled to Cullman, Alabama and met defendant Rivers, who sold the cooperating individual vials of anabolic steroids. CMS Ex. 10, at 15. The cooperating individual paid defendant Rivers "approximately $2000 which was given to him/her by [Petitioner], and co-defendants Faulk, and Wiggins to purchase the steroids." CMS Ex. 10, at 15. The factual resume states that the vials of anabolic steroids sold by defendant Rivers to the cooperating individual were labeled "Roper's Labs, Memphis, Tennessee" and that anabolic steroids are commonly manufactured in "underground labs" which operate without a license. CMS Ex. 10, at 15. The anabolic steroids sold by defendant Rivers appeared to be from such an underground lab. CMS Ex. 10, at 15. Finally, the factual resume indicates that the amount of anabolic steroids involved was more than 300 grams. CMS Ex. 10, at 15. Significantly, during sentencing, the District Court explained Petitioner's criminal conduct as follows: "So, your role in the offense is essentially an abuser of the drugs, acquiring them for your own personal use and for <u>distribution</u> among individuals . . . you worked out with and knew personally." CMS Ex. 11, at 14 (emphasis added).

Although the text of 21 U.S.C. § 846 indicates that it is a conspiracy offense, there is no doubt that Petitioner's conduct related to the distribution of controlled substances. The term "related to" has long been interpreted in section 1128 of the Act to mean a "nexus."

See, e.g., James O. Boothe, DAB No. 2530, at 5 (2013); *Cf. Friedman v. Sebelius*, 686 F.3d 813, 820 (D.C. Cir. 2012) (describing the phrase "relating to" in another part of section 1320a-7 as a "deliberately expansive" phrase, "the ordinary meaning of [which] is a broad one," and one that is not subject to "crabbed and formalistic interpretation") (internal quotes omitted). Therefore, while 21 U.S.C. § 846 is a conspiracy offense, it is also one "relating to" the actual possession and distribution of controlled substances. *Karl Eric Swanson, MD*, DAB CR1002 (2003); *see Albelardo Lecompte-Torres, MD*, DAB CR2379 (2011); *Melissa Ruth Hubbard a/k/a Melissa Ruth Walters*, DAB CR2055 (2010); *Russell A. Johnson*, DAB CR1378 (2005).

Based on the evidence of record, I conclude that Petitioner has been convicted of a felony, within 10 years preceding revalidation of his enrollment, which would require exclusion under section 1128(a)(4) of the Act. Therefore, WPS had a legitimate pursuant to 42 C.F.R. § 424.535(a)(3)(i)(D) to revoke Petitioner's Medicare billing privileges.

3. Petitioner did not notify CMS or WPS of the February 24, 2012 Judgment in a Criminal Case issued by the United States District Court for the Southern District of Alabama and indicated on the Medicare revalidation enrollment application Petitioner signed on December 3, 2012, that he was not subject to a final adverse legal action imposed against him.

Following Petitioner's guilty plea and the Judgment in a Criminal Case that the District Court entered against him, Petitioner did not inform CMS or WPS of either his guilty plea or judgment. RFH at 2; P. Br. at 5; P. Resp. at 7.

On December 7, 2012, WPS received a Medicare enrollment application (Form CMS-855I) to revalidate Petitioner's Medicare enrollment. CMS Ex. 2. Section 3 of the revalidation application contained the following question: "Have you, under any current or former name or business identity, ever had a final adverse legal action listed on page 12 of this application imposed against you?" CMS Ex. 2, at 6. Page 12 of Petitioner's revalidation application lists various final adverse actions including felony convictions within the last 10 years that CMS has determined to be detrimental to the best interests of the Medicare program and any felony conviction under federal or state law relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. CMS Ex. 2 at 5. Petitioner's application reveals that there is an "X" marked next to a negative response to the question concerning any final adverse legal actions. CMS Ex. 2, at 6. In Section 15 of the application, Petitioner signed the certification statement, certifying that he read the contents of the application and that the information contained in the document was true, correct, and complete. CMS Ex. 2, at 9-10.

4. WPS had a legitimate basis to revoke Petitioner's Medicare billing privileges pursuant to 42 C.F.R. § 424.535(a)(4) because Petitioner certified on a revalidation enrollment application received by WPS on December 7, 2012, that he was not subject to a final adverse legal action when this information was false.

It is undisputed that on the Medicare revalidation application received by WPS on December 7, 2012, Petitioner checked "No" when asked if he had ever had a final adverse legal action imposed against him. CMS Ex. 2, at 6. The application indicates that final adverse actions (to be listed in Section 3) include all felony convictions within the last 10 years that CMS has determined to be detrimental to the best interests of the Medicare program and any felony conviction under federal or state law relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. CMS Ex. 2, at 5; *see* 42 C.F.R. § 424.502 (defining the term *Final adverse action* to include a "conviction of a Federal or State felony offense (as defined in § 424.535(a)(3)(i)) within the last 10 years preceding enrollment, revalidation, or re-enrollment."). It is also undisputed that Petitioner signed the certification statement contained in Section 15 of the application, certifying that he read the contents of the revalidation application and that all information contained in the document was true, correct, and complete. CMS Ex. 2, at 9-10.

Petitioner contends that he did not intentionally provide false or misleading information in his Medicare revalidation application and states that prior to sending his revalidation application, he informed his office assistant completing the form on his behalf "that he would need to answer 'Yes' to the question asking about adverse legal actions, and would have to provide additional information with the form before it could be submitted." P. Resp. at 3; P. Ex. 5. Petitioner states that "due to the form being completed on the deadline date for the application, [Petitioner] hurriedly signed the application without reading it on the assumption that it had been completed according to his prior instructions." P. Resp. at 3. Petitioner argues that any omissions in Section 3 of his Medicare revalidation application were accidental and, after being informed of the error, he provided all documentation regarding his adverse legal actions to CMS. P. Resp. at 3; RFH at 1.

In order to revoke a supplier's Medicare billing privileges, the supplier only needs to "certif[y] as 'true' misleading or false information . . . ." 42 C.F.R. § 424.535(a)(4). Therefore, even if Petitioner did not read the application before signing it, or did not knowingly or intentionally omit adverse legal actions in Section 3 of his December 7, 2012 Medicare revalidation enrollment application, this provides no defense to revocation. *See Leigh Gilburn, D.O.*, DAB CR1890, at 19 (2009). This is true even if Petitioner informed his office assistant to provide certain information in his revalidation application and she failed to provide the information or incorrectly checked "No" in response to the question regarding adverse legal actions. Petitioner cannot avoid

responsibility for violating the regulations by blaming someone else. *See Integrated Home Care Servs. Chicago Corp.*, DAB CR3070, at 8 (2014); *see also Louis J. Gaefke, DPM*, DAB No. 2554, at 5-6 (2013) (holding a supplier responsible for improper claims filed by others on his behalf).

Petitioner signed the certification statement in Section 15 of the application, certifying that he read the contents of the revalidation application and that the information contained therein was true, correct, and complete. CMS Ex. 2, at 9-10. It is undisputed that the information provided in the December 7, 2012 application was not true, correct, and complete. Further, as the record before me establishes, the information provided in Section 3 was false. Therefore, I conclude that CMS had a legal basis to revoke Petitioner's Medicare billing privileges pursuant to 42 C.F.R. § 424.535(a)(4).

5. There is a legitimate basis for WPS to revoke Petitioner's Medicare billing privileges pursuant to 42 C.F.R. § 424.535(a)(9) based on Petitioner's failure to timely notify CMS or WPS of his felony.

Petitioner admits that he did not inform WPS, within 30 days of February 24, 2012, of his felony conviction under 21 U.S.C. § 846. RFH at 2. Instead, Petitioner asserts that he did not know of the requirement to report this information. RFH at 2.

The regulations at 42 C.F.R. § 424.516(d)(1)(ii) require that physicians report, within 30 days, "[a]ny adverse legal action" to their Medicare contractor. Failure to timely report subjects a physician to revocation of Medicare billing privileges. 42 C.F.R. § 424.535(a)(9). The phrase "[a]ny adverse legal action," includes all final adverse actions, *see* 42 C.F.R. § 424.502 (definition of *Final adverse action*); therefore, it includes felony convictions that could result in revocation under 42 C.F.R. § 424.535(a)(3). *See Akram A. Ismail*, DAB No. 2429, at 10-11 (2011).

Petitioner's ignorance of his reporting obligations as a Medicare supplier does not provide a legal excuse for not timely reporting his felony conviction. As stated in another case, "Petitioner's pleas of ignorance [to the reporting requirement] are no defense. The regulation places the burden upon the Medicare participant to report '[a]ny adverse legal action.' 42 C.F.R. § 424.516(d)(1)(ii). There are no exceptions to the requirement to report." *Phyllis Barson, M.D.*, DAB CR2510, at 7 (2012). If there were exceptions, it would undermine the purpose of 42 C.F.R. § 424.516(d), which is "to provide CMS with information about adverse legal actions that CMS has determined are relevant to evaluating whether a supplier should continue to participate in Medicare." *Gulf South Med. & Surgical Inst. & Kenner Dermatology Clinic, Inc.*, DAB No. 2400, at 8 (2011).

Therefore, I conclude that Petitioner failed to notify WPS of an adverse legal action imposed against him within 30 days as required, and that this failure serves as a legitimate basis to revoke his Medicare billing privileges.

V. Conclusion

For the reasons explained above, I affirm CMS's determination to revoke Petitioner's enrollment as a supplier in the Medicare program.

/s/
Scott Anderson
Administrative Law Judge