

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Lindsay Marie (Wall) Wolfe,
(OI File No. H-16-41108-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-655

Decision No. CR4712

Date: September 27, 2016

DECISION

Petitioner, Lindsay Marie Wolfe, was a licensed pharmacist in the State of Florida. She created fictitious patient profiles in her pharmacy's computer database and then filled the fraudulent drug prescriptions. She gave the ill-gotten drugs to a friend and colleague in exchange for other drugs. She was convicted of furnishing false or fraudulent information regarding a controlled substance, a felony. Pursuant to section 1128(a)(3) of the Social Security Act (Act), the Inspector General (IG) has excluded her from participating in the Medicare, Medicaid, and all federal health care programs for a period of five years.

For the reasons discussed below, I find that the IG is authorized to exclude Petitioner, and that the statute mandates a minimum five-year exclusion.

Background

In a letter dated May 31, 2016, the IG advised Petitioner Wolfe that, because she had been convicted of a felony offense related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of

a health care item or service, the IG was excluding her from participating in Medicare, Medicaid, and all federal health care programs for a period of five years. IG Exhibit (Ex.) 1. Petitioner requested review.

The parties have submitted their written arguments (IG Br.; P. Br.). With his brief, the IG submitted seven exhibits (IG Exs. 1-7). In the absence of any objections, I admit into evidence IG Exs. 1-7.

The parties agree that this case does not require an in-person hearing. IG Br. at 11; P. Br. at 2.

Discussion

Petitioner must be excluded from program participation for a minimum of five years because she was convicted of a felony relating to fraud and theft in connection with the delivery of a health care item or service.¹

Section 1128(a)(3) provides that an individual or entity convicted of felony fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service must be excluded from participating in federal health care programs for a minimum of five years. *See* 42 C.F.R. § 1001.101(c).

Petitioner Wolfe was a licensed pharmacist, working at a CVS pharmacy. Colluding with a friend and colleague, she created a fictitious patient profile in the pharmacy's computer database. Based on that profile, she filled prescriptions for narcotics (Oxycodone and Morphine), which she supplied to her friend. In return, her friend gave her barbiturates (Fioricet) and narcotics (Percocet). IG Ex. 3.

In an information dated February 12, 2013, she was charged with one felony count of furnishing false or fraudulent information regarding a controlled substance, in violation of Florida law, Fla. Stat. § 893.13. IG Ex. 4. On March 4, 2013, Petitioner Wolfe pled guilty to the felony count. IG Ex. 5. The Florida Circuit Court sentenced her to five years probation but withheld an adjudication of guilt. IG Ex. 7. The court warned that if she violated the conditions of her probation, she could be adjudicated guilty and sentenced accordingly. IG Ex. 7 at 5.

Petitioner concedes that she was convicted of a felony but points out that her crime did not involve reimbursement claims to state or federal programs; the resulting transactions

¹ I make this one finding of fact/conclusion of law.

