DEPARTMENT OF HEALTH AND HUMAN SERVICES

Departmental Appeals Board

Civil Remedies Division

In the Case of:	
Summit Health Limited, dba Marina Convalescent Hospital,	DATE: October 20, 1989
Petitioner,	
- v. -	Docket No. C-108 DECISION CR 50
The Inspector General.	

DECISION OF ADMINISTRATIVE LAW JUDGE ON MOTION FOR SUMMARY DISPOSITION

Petitioner requested a hearing to contest the Inspector General's (the I.G.'s) determination excluding it from participating in the Medicare program, and directing that it be excluded from participating in State health care programs.[1] Petitioner moved to add as an additional Petitioner a corporation, Summit Care-California, Inc. (Summit Care), and the I.G. opposed this motion. Both parties moved for summary disposition of this case. Based on the undisputed material facts and the law, I deny Petitioner's motion to add Summit Care as a party to the case. I conclude that the exclusion imposed and directed against Petitioner by the I.G. is mandatory. Therefore, I am deciding this case in favor of the I.G.

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[1] "State health care program" is defined by section 1128(h) of the Social Security Act to include any State Plan approved under Title XIX of the Act (such as Medicaid). I use the term "Medicaid" hereafter to represent all State health care programs from which Petitioner was excluded.

BACKGROUND

On January 5, 1989, the I.G. notified Petitioner that it was being excluded from participating in Medicare and State health care programs for five years. The I.G. told Petitioner that it was being excluded as a result of its conviction in a California court of a criminal offense relating to the neglect or abuse of patients in connection with the delivery of a health care item or service. Petitioner was advised that exclusions of individuals and entities convicted of such an offense are mandated by section 1128(a)(2) of the Social Security Act. The I.G. further advised Petitioner that the law required that the minimum period of such an exclusion be for not less than five years.

Shortly after Petitioner received this notice, Summit Care filed an action in United States District Court (Summit Care-California, Inc. v. Newman, Civil Action No. 89-0169 (D. D.C. 1989)), seeking to enjoin the Secretary of the Department of Health and Human Services (the Secretary) from enforcing the exclusion. On April 18, 1989, the court entered a decision in favor of the Secretary.

Petitioner timely requested an administrative hearing as to the exclusion, and the case was assigned to me for a hearing and decision. On September 7, 1989, I heard oral argument of the parties' motions in San Francisco, California.

ISSUES

The issues in this case are whether:

1. Petitioner is an "entity" within the meaning of section 1128(a)(2) of the Social Security Act.

2. Petitioner was "convicted" of a criminal offense within the meaning of section 1128 of the Social Security Act;

3. Petitioner was convicted of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner is an entity within the meaning of section 1128(a)(2) of the Social Security Act. Social Security Act, section 1128(a)(2).

2. On March 5, 1987 a criminal complaint was filed in the Municipal Court of the Glendale Judicial District, County of Los Angeles, California, against Petitioner and others, charging them with misdemeanor offenses. P. Ex. 4; I.G. Ex. 2.[2]

3. Count XIV of the complaint charged that Petitioner committed a criminal violation of the Health and Safety Code of California by unlawfully and repeatedly violating a rule promulgated pursuant to the Health and Safety Code. P. Ex. 4/15-16; I.G. Ex. 2/15-16.

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[2] The parties' exhibits and memoranda will be cited as follows:

Petitioner's Exhibit	P. Ex. (number)/(page)
I.G.'s Exhibit	I.G. Ex.(number)/(page)
Petitioner's Motion to Add Party	Motion to Add Party at (page)
Inpector General's Opposition to Petitioner's Motion to Add Party	Opposition to Motion to Add Party at (page)
Petitioner' Memorandum in Support of Motion for Summary Disposition	P.'s Memorandum at (page)
Memorandum in Support of Inspector General's Motion for Summary Disposition and Dismissal	I.G.'s Memorandum at (page)
Office of Inspector General's Reply to Petitioner's June 20, 1989 Memorandum	I.G.'s Reply at (page)
Inspector General's Supplemental Response	I.G.'s Response at (page)

4. Count XIV of the complaint accused Petitioner of failing to plan a patient's care, including failing to identify the patient's care needs based upon initial written and continuing assessments of needs with input, as necessary, from health professionals involved in the patient's care. P. Ex. 4/15-16; I.G. Ex. 2/15-16.

5. Count XIV of the complaint additionally charged that Petitioner had repeatedly engaged in the same criminal conduct with respect to another patient. P. Ex. 4/15-16; I.G. Ex. 2-15/16.

6. Count XIX of the complaint charged that Petitioner committed a criminal violation of the Health and Safety Code of California by unlawfully and repeatedly violating a rule promulgated pursuant to the Health and Safety Code. P. Ex. 4/19; I.G. Ex. 2/19.

7. Count XIX of the complaint accused Petitioner of repeatedly failing to administer to a patient medications and treatments as prescribed. P. Ex. 4/19; I.G. Ex. 2/19.

8. Count XIX of the complaint additionally charged that Petitioner had repeatedly engaged in the same criminal conduct with respect to other patients. P. Ex. 4/19; I.G. Ex. 2/19.

9. On October 6, 1987, Petitioner pleaded nolo contendere to Counts XIV and XIX of the complaint. P. Ex. 6; I.G. Ex. 4.

10. Petitioner was sentenced to pay a fine, a penalty, and to comply with conditions imposed by the Court. P. Ex. 6/3-5; I.G. Ex. 4/3-5.

11. Petitioner was convicted of a criminal offense within the meaning of section 1128 of the Social Security Act. Findings 2-10; Social Security Act, section 1128(a)(2); 1128(i).

12. Petitioner was convicted under California law of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service. Findings 2-10.

13. The Secretary delegated to the I.G. the authority to determine, impose, and direct exclusions pursuant to section 1128 of the Social Security Act. 48 Fed. Reg. 21662 (May 13, 1983).

14. On January 5, 1989, the I.G. excluded Petitioner from participating in the Medicare program and directed that it be excluded from participating in Medicaid for five years, pursuant to section 1128(a)(2) of the Social Security Act. I.G. Ex. 8.

15. The exclusion imposed and directed against Petitioner is mandated by law. Findings 2-12; Social Security Act, section 1128(a)(2).

ANALYSIS

There are no disputed material facts in this case. The parties have, for the most part, relied on identical documents to support their respective positions. The evidence establishes that Petitioner was charged under California criminal statutes with offenses concerning the operation of two nursing homes. Petitioner was charged with failing to plan patient care and with failing to administer medications and treatments as prescribed. Petitioner pleaded nolo contendere to these charges and was sentenced to pay a fine, a penalty, and to comply with court-imposed conditions.

The I.G. determined that these facts established that Petitioner was an entity which had been convicted of a criminal offense related to neglect or abuse of patients in connection with the delivery of a health care item or service. The I.G. excluded Petitioner from participating in Medicare and directed that Petitioner be excluded from participating in Medicaid, for five years.

The Social Security Act mandates such an exclusion of:

> Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

Social Security Act, section 1128(a)(2). The law further requires, at section 1128(c)(3)(B), that in the case of an exclusion imposed and directed pursuant to section (a)(2), the minimum term of such an exclusion shall be at least five years. The I.G. contends that the exclusion imposed and directed against Petitioner was mandated by law.

Petitioner raises four principal arguments to contest the exclusion. First, Petitioner asserts that it was not the operator of the facility at which the offenses to which

it pleaded nolo contendere occurred. Petitioner argues that the exclusion was intended to apply to the corporation which actually operates the facility, Summit Care. Petitioner claims that the exclusion is an unlawful de facto exclusion of Summit Care.

Second, Petitioner argues that it was not "convicted" of a criminal offense within the meaning of section 1128 of the Social Security Act. It premises this argument on its claim that, as of the date it entered its nolo contendere plea to criminal charges, the statutory definition of "conviction" in section 1128(i) of the Social Security Act applied to individuals but not to corporations or other entities.

Third, Petitioner contends that it was not convicted of a criminal offense related to neglect or abuse of patients. It asserts that it was convicted of "regulatory deficiencies" which do not amount to patient neglect or abuse within the meaning of section 1128(a)(2). Petitioner also asserts that the offense of which it was convicted would not justify suspending or revoking its license under California law. Therefore, according to Petitioner, it is unreasonable to exclude Petitioner pursuant to section 1128.

Finally, Petitioner asserts that it has been victimized by the law's failure to define the terms "neglect" and "abuse," and the Secretary's failure to adopt regulations clarifying the meaning of these terms. Petitioner claims that, in the absence of definitions, these terms are ambiguous. It argues that, given the alleged ambiguity of these terms, it was not given fair notice that its nolo contendere plea would result in the imposition and direction of an exclusion against it.

I disagree with Petitioner's contentions. I conclude that if Petitioner was an entity convicted of a criminal offense as described in section 1128(a)(2), then the I.G. was required by law to impose and direct an exclusion against it. I find that Petitioner was an entity "convicted" of a criminal offense within the meaning of section 1128, and that the conviction was for an offense related to the neglect or abuse of patients in connection with the delivery of a health care item or service. I conclude that the statutory terms "neglect" and "abuse" are not ambiguous, and that Petitioner was not prejudiced by the Secretary's not having adopted regulations explaining the meaning of these terms.

1. Petitioner is an "entity" within the meaning of section 1128(a)(2) of the Social Security Act.

Petitioner claims that the I.G. is without authority to exclude it because the offenses of which it was convicted were in fact committed by its subsidiary, Summit Care. Petitioner bases this argument on its contention that Marina Convalescent Hospital is operated by Summit Care, and not by Petitioner. Petitioner supports its assertions by offering documents filed with or generated by California's Medicaid program which show Summit Care as the owner of the facility in question. P. Ex. 2, 3. Petitioner asserts that this corporate relationship should shield Petitioner from the reach of the exclusion law. Petitioner further argues that, as the subsidiary corporation (Summit Care) was not convicted of an offense within the meaning of section 1128(a)(2), then no exclusions may apply to it or to facilities operated by it. P.'s Brief at 5-8.

Petitioner also contends that the exclusion law contains a provision at section 1128(b)(8) which gives the Secretary discretion to impose and direct exclusions against subsidiaries of excluded entities. According to Petitioner, if the I.G. intended to exclude a facility owned by a subsidiary of Petitioner, the I.G.'s only option was to proceed against the subsidiary pursuant to section 1128(b)(8).

The I.G. disputes these contentions. The thrust of the I.G.'s argument is that prior to the imposition and direction of exclusions against it, Petitioner never denied that it operated Marina Convalescent Hospital. According to the I.G., Petitioner was convicted as the operator of Marina Convalescent Hospital, and it was in that capacity that Petitioner was excluded pursuant to section 1128(a)(2).

The I.G. offers an exhibit to show that Petitioner has operated Marina Convalescent Hospital. I.G. Ex. 5. The I.G. notes that The criminal complaint against Petitioner named Petitioner as "SUMMIT HEALTH, LTD., a Corporation, doing business as 'Canyon Convalescent' and 'Marina Convalescent.'" Petitioner did not dispute at the time that it was charged with criminal offenses, or at the time that it entered its nolo contendere plea, that it was the operator of Marina Convalescent Hospital. The I.G. also asserts that, in rejecting Summit Care's suit for a temporary restraining order against the Secretary, the United States District Court found that Summit Care had represented that Petitioner was the corporation doing business as Marina Convalescent

Hospital. Opposition to Motion to Add Party at 2; Summit Care-California, Inc. v. Newman, supra, at 4.

I conclude that, assuming that Petitioner was convicted of an offense within the meaning of section 1128(a)(2), the I.G. was required by law to impose and direct exclusions against it. Petitioner's assertion that an entity other than Petitioner actually operates Marina Convalescent Hospital is not relevant to the issue of whether the I.G. was required by law to exclude Petitioner.

The mandatory exclusion requirements of section 1128(a)(2) apply to individuals and entities. The term "entity" is not defined in the law, but its presence, rather than the presence of less inclusive terms such as "corporation," means that Congress intended that the exclusion law apply to corporations and to other forms of business organization and operation. It is evident from Petitioner's nolo contendere plea that Petitioner is an entity convicted of a criminal offense. That document establishes that Petitioner entered a nolo contendere plea as a corporation, doing business as Marina Convalescent Hospital. P. Ex. 6; I.G. Ex. 4. It is not relevant for Petitioner to argue that some other entity was actually responsible for the conduct which resulted in the conviction. The event which triggers the I.G.'s duty to impose and direct an exclusion pursuant to section 1128(a)(2) is a conviction as described in that section. The law instructs the Secretary to act on the conviction and to impose and direct exclusions. The law does not permit the Secretary to examine the facts of the case which resulted in the conviction in order to determine whether the party which was convicted actually committed the criminal offense that resulted in the conviction. The proper means of redress for such an alleged error would be an appeal from the conviction or some authorized collateral attack on the conviction itself.

Based on the nolo contendere plea entered by Petitioner, the I.G. could have determined to exclude the corporation Summit Health Ltd, rather than the entity Summit Health Ltd. d/b/a Marina Convalescent Hospital. However, the I.G. chose to define the excluded entity as "Summit Health Ltd. d/b/a Marina Convalescent Hospital." By doing so, the I.G. determined to narrowly apply the exclusions imposed and directed in this case only to the entity convicted as operator of Marina Convalescent Hospital.

I conclude that the I.G. was justified in making this determination. Summit Health Ltd. doing business as Marina Convalescent Hospital is an "entity" within the meaning of section 1128(a)(2). The possibility that the I.G. could have more broadly applied the exclusion provisions than he did does not derogate from his decision to apply them only to Petitioner.

I am not persuaded that the I.G. should have proceeded against Summit Care pursuant to section 1128(b)(8) of the Social Security Act in lieu of this mandatory exclusion of Petitioner. Section 1128(b)(8) permits the Secretary to exclude entities that are owned by an excluded individual. This section does not require the Secretary or the I.G. to exclude entities other than those which have been convicted of offenses which mandate exclusions under section 1128(a)(2). Petitioner, not Summit Care, is the convicted entity.

I deny Petitioner's motion to add Summit Care as a party to this case. Summit Care has no right to a hearing under section 1128(f), because it is not an entity that has been excluded or directed to be excluded from participation in Medicare or Medicaid.

2. Petitioner was "convicted" of a criminal offense within the meaning of section 1128 of the Social Security Act.

Petitioner argues that on October 6, 1987, the date when it entered its nolo contendere plea to state criminal charges, the definition of "conviction" in section 1128 of the Social Security Act applied only to physicians or other individuals. Petitioner contends that, because it is an entity and not a physician or other individual, it was not "convicted" of an offense within the meaning of section 1128(a)(2), and any exclusions imposed or directed against it are invalid.

The I.G. asserts that the purpose of section 1128(a)(2) was to mandate the exclusion of both individuals and entities that were convicted of criminal offenses relating to patient neglect or abuse. The I.G. concedes that as of October 6, 1987, the definition of "conviction" contained in section 1128(i) expressly applied only to physicians or other individuals. The I.G. argues that this was merely a legislative oversight which was corrected by enactment of clarifying language. The I.G. contends that when Congress enacted amendments to the exclusion law in August, 1987, it intended the definition of "conviction" to encompass entities.

Prior to August, 1987, the exclusion law applied only to physicians or other individuals. The law in effect prior to August, 1987 required the Secretary to exclude from participation in Medicare, and to direct the exclusion from participation in Medicaid of, any physician or other individual who was convicted of a criminal offense related to such individual's participation in the delivery of medical care or services under federally financed health care programs, including Medicare and Medicaid.

The August 1987 amendments comprehensively revised the law. The law's application was expanded from "physicians" and other "individuals" to "individuals" and "entities." The categories of offenses for which exclusion was mandated were enlarged to include convictions for criminal offenses related to the delivery of an item or service under the Medicare or Medicaid program (section 1128(a)(1)) and convictions for criminal offenses related to patient neglect or abuse (section 1128(a)(2)). A minimum exclusion period of at least five years was prescribed for those individuals or entities who were convicted of criminal offenses as described in sections 1128(a)(1) and (2). Social Security Act, section 1128(c)(3)(B). Sections were added which permitted the Secretary to exclude individuals or entities convicted of a range of offenses other than those described in section 1128(a). Social Security Act, section 1128(b).

The exclusion law in effect prior to August 1987 contained a definition of "conviction" at section 1128(f). As with the remainder of the law then in effect, that definition applied to physicians and other individuals. The August 1987 amendments essentially incorporated this section at section 1128(i). Although the exclusion law was comprehensively amended to apply to entities as well as to individuals, the conviction definition continued to be phrased in terms of physicians or other individuals. Both the predecessor section 1128(f)(3) and section 1128(i)(3) defined "conviction" to include acceptance by a federal, state or local court of a plea of nolo contendere.

The language of section 1128(i) was revised by Congress with enactment of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360). Section 411, entitled "Technical Corrections to Certain Health Care Provisions in the Omnibus Budget Reconciliation Act of 1987," revised section 1128(i) by deleting the words "physician or other individual" and inserting the words "individual or entity," to conform with the language of section 1128(a) and (b). Section 411(a)(2) provided that the

revision "shall be effective as if . . . [it was] included in the enactment of that provision in OBRA [the Omnibus Budget Reconciliation Act of 1987]." The effective date of OBRA was December 22, 1987.

The revised definition of "conviction" contained in section 1128(i) was not contained in the statute on the date that Petitioner entered its nolo contendere plea. Petitioner premises its argument that it was not convicted of an offense within the meaning of section 1128(a)(2) on the absence of this statutory definition as of the date its plea was entered, arguing, in effect, that because there was no definition of "conviction" expressly applicable to entities, the provisions of section 1128(a)(2) did not apply to entities.

However, Petitioner's nolo contendere plea is a "conviction" within the meaning of section 1128. Congress intended that section 1128(a)(2) apply equally to individuals and entities. In order to effectuate that intent, the definition of "conviction" must also apply equally to individuals and entities. That was Congress' purpose, even if the 1987 amendment to the exclusion law failed to specifically include entities within the definition of "conviction." Congress' omission of "entities" from the statutory definition of "conviction" in the 1987 revisions was a technical oversight which Congress subsequently corrected.

Congress' intent is evident from the structure and language of the 1987 amendments. The law states, throughout, that it shall apply to entities as well as to individuals.[3] Initial omission of the term "entities" from the statutory definition of "conviction" was an anomaly. This inadvertent omission did not suggest that Congress intended to exempt entities from the reach of the law.[4]

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[3] References to individuals and entities are present in section 1128(a), (a)(1), and (a)(2); in section 1128(b), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(11), and (b)(12); section 1128(c); section 1128(d); section 1128(e); section 1128(f); and section 1128(g).

[4] The District Court held in Summit Care-California, Inc. v. Newman, supra, that Congress intended that the 1987 amendments apply equally to individuals and entities. It held that the 1988 revision of the definition was intended to conform the definition section with the remainder of the law, not to expand the reach of

Congress' purpose to apply section 1128(a)(2) both to individuals and entities is also apparent in the legislative history of the 1987 amendments to the exclusion law:

> The Secretary would be required to exclude from participation any individual or entity convicted of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service . . . .

S. Rep. No. 109, 100th Cong., 1st Sess. 6, reprinted in 1987 U.S. Code Cong. & Admin. News 682, 686 (emphasis added).

Furthermore, the fact that the definition of "conviction" enacted in August 1987 does not expressly explain the meaning of the term as applied to entities does not suggest that Congress intended to exempt entities from the reach of the substantive provisions of the exclusion law. The definitions are intended to clarify and explain the substantive provisions of the law. The fact that a term may not be defined does not mean that Congress intended it to be meaningless, or that it be applied in so limited a way as to vitiate the substantive provisions of the law.

3. Petitioner was convicted of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

Petitioner contends that its conviction under California law is not a conviction of neglect or abuse of patients within the meaning of section 1128(a)(2). Petitioner asserts that it was convicted of failure to comply with state regulatory procedures. Petitioner notes that, under California law, it could not be subject to license suspension or revocation based on its conviction. It argues that the exclusion law was not intended to supplant State criminal penalties. Petitioner asserts that the purpose of the law is to prevent practitioners, "convicted in one state of serious non-program related crimes involving patient abuse or neglect, to move to

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the statute. Id. at 6. The I.G. asserts that this decision is a final decision by a court in this case and binding on all parties. I note that Petitioner was not a party to the case. In any event, the decision is persuasive, and I agree with the court's analysis.

another state and to continue to treat Medicare and Medicaid patients." P.'s Memornadum at 12.

Petitioner's argument essentially reduces to the contention that a state criminal conviction will relate to patient neglect or abuse under section 1128(a)(2) only in those circumstances where the state law which the individual or entity was convicted of violating carries severe penalties. I disagree with this contention and with the premises on which it is based. A conviction of an offense under state law may carry minimal or even no state penalty and still constitute a conviction relating to patient neglect or abuse under section 1128(a)(2).

The purpose of section 1128 is different from state criminal law. The laws of the states are designed to punish wrongdoers for their transgressions. The exclusion law was enacted to protect the Medicare and Medicaid programs from individuals and entities who have demonstrated by their conduct that they cannot be trusted to treat program beneficiaries and recipients. The exclusion law's purpose is remedial, not punitive. The law is intended to provide remedies (designed to protect Medicare and Medicaid beneficiaries and recipients) which operate independently from whatever penalties might be imposed as the result of state or federal convictions. This purpose was evident in the original enactment of the law in 1977. Successive amendments and revisions of the law have continued to express this legislative purpose in progressively stronger language. Leonard N. Schwartz, R. Ph. v. The Inspector General, Docket No. C-62, (1989).

Congress concluded in 1987 that individuals and entities convicted of patient neglect or abuse were deemed to be untrustworthy. The mandatory exclusion provisions of section 1128(a)(2) embody the legislative conclusion that parties convicted of patient neglect or abuse cannot be trusted to treat program beneficiaries and recipients for at least five years.

Congress did not defer to state laws with respect to the meaning of the terms "neglect" and "abuse." It is not necessary that a party be convicted of patient neglect or abuse within the meaning of a state law for that conviction to relate to neglect or abuse of patients within the meaning of section 1128(a)(2). The criteria of section 1128(a)(2) are met so long as a conviction of a criminal offense falls within the meaning of the term "relating to neglect or abuse of patients" as that term is used in the federal exclusion law.

Therefore, the fact that Petitioner may have been convicted of an offense which could not, under California law, have resulted in suspension or loss of license to provide care is not relevant to the issue of whether Petitioner was convicted of an offense within the meaning of section 1128(a)(2). What is relevant is whether Petitioner was convicted of patient neglect or abuse within the meaning of the exclusion law. If that is so, then the mandatory exclusion provisions of section 1128(c)(2) apply to Petitioner.

Petitioner asserts that the terms "neglect" and "abuse" are not defined and are ambiguous. Although the law does not define these terms, they are not ambiguous. I conclude that in the absence of a definition, the words should be given their common and ordinary meaning.

"Neglect" is defined in Webster's Third New International Dictionary, 1976 Edition as "1: to give little or no attention or respect to:. . . 2: to carelessly omit doing (something that should be done) either altogether or almost altogether . . . ." "Abuse" is defined as "4: to use or treat so as to injure, hurt, or damage; MALTREAT . . . ." I conclude from these common definitions that Congress intended the statutory term "neglect" to include failure to attend to the needs of patients in circumstances where the treating individual or entity is under a duty to provide care. "Abuse" was intended to apply to those situations where there is a willful failure to provide care.

It is evident from applying these common meanings to the undisputed facts of this case that Petitioner was convicted of a criminal offense relating to neglect of patients. Petitioner was specifically charged with, and convicted of, repeatedly failing to plan patient care and repeatedly failing to administer to patients medications and treatments as prescribed. Findings 3-9.
There can be no argument that Petitioner was under a duty to provide such services. It was convicted of failing to perform that duty.[5]

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[5] The I.G. offered as an exhibit the investigative report upon which the criminal charges against Petitioner are premised. I.G. Ex. 3. The I.G. argues that the findings contained in this report establish that Petitioner was convicted of criminal offenses relating to neglect or abuse of patients. The I.G. noted that the report is incorporated by reference in the preamble to the criminal complaint against Petitioner. I.G. Ex. 2/1; P. Ex. 4/1. I have not made findings based on the

I do not agree with Petitioner's assertion that by not adopting regulations defining the terms "neglect" and "abuse", the Secretary deprived Petitioner of fair notice that its nolo contendere plea would result in exclusions being imposed and directed against it. These terms are not ambiguous, and the Secretary was not required to define unambiguous statutory language. See Jack W. Greene v. The Inspector General, Civil Remedies Docket No. C-56, (1989), appeal docketed, Appellate No. 89-59, Decision No. 1078 (1989).

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investigative report. Had Petitioner admitted to the allegations in the report, or had the court convicted Petitioner of these allegations, the report would have been relevant to establishing that Petitioner was convicted of patient neglect or abuse. However, while it is clear from Petitioner's nolo contendere plea that Petitioner was convicted of the specific charges contained in counts XIV and XIX of the complaint, it is not clear that Petitioner pleaded to or was convicted of the allegations in the report.

CONCLUSION

Based on the undisputed material facts and the law, I conclude that the I.G.'s determination to exclude Petitioner from Medicare, and to direct that Petitioner be excluded from participation in Medicaid, for five years was mandated by law. Therefore, I am entering a decision in favor of the I.G. in this case. The five-year exclusion imposed and directed against Petitioner is sustained.

/s/

Steven T. Kessel
Administrative Law Judge