

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

William J. Casto, D.O.,  
(OI File No. 3-10-40007-9)

Petitioner,

v.

The Inspector General.

Docket No. C-14-68

Decision No. CR3132

Date: February 28, 2014

**DECISION**

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, William J. Casto, D.O., from participating in Medicare, Medicaid, and all other federally funded health care programs for a minimum period of five years.

**I. Background**

Petitioner is a physician. The I.G. excluded Petitioner from participating in Medicare, Medicaid, and all other federally funded health care programs for a period of at least five years based on the I.G.'s determination that Petitioner was convicted of a felony within the meaning of section 1128(a)(4) of the Social Security Act (Act). This section mandates the exclusion of anyone who is convicted of a felony related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. The minimum period of exclusion that the I.G. must impose pursuant to section 1128(a)(4) is at least five years. Act § 1128(c)(3)(B).

Petitioner requested a hearing and the case was assigned to me. I ordered the parties to file briefs and their proposed exhibits including the written direct

testimony of any proposed witnesses. The I.G. filed a brief and three exhibits that are identified as I.G. Ex. 1 – I.G. Ex. 3. Petitioner filed a brief and three exhibits that are identified as P. Ex. A, P. Ex. B, and P. Ex. C. I receive all of the exhibits into the record.

Petitioner also requested that I convene an in-person hearing so that I could hear the testimony of Petitioner and a witness whose affidavit is in the record as P. Ex. C. I deny that request. Petitioner has offered no facts through the affidavits he submitted that are material to the outcome of this case.

## **II. Issue, Findings of Fact and Conclusions of Law**

### **A. Issue**

The issue in this case is whether the I.G. is required to exclude Petitioner for a minimum period of five years.

### **B. Findings of Fact and Conclusions of Law**

The essential facts of this case are undisputed. On December 18, 2011, Petitioner pled guilty to a single felony offense in the United States District Court of the Western District of Virginia. I.G. Ex. 3 at 1, 6. The court subsequently accepted that plea. I.G. Ex. 2 at 1. Petitioner pled guilty to violating 21 U.S.C. § 846, which makes it a felony to conspire to acquire or obtain controlled substances by misrepresentation, fraud, forgery, deception and subterfuge. Petitioner's conviction was based on numerous acts in which Petitioner wrote prescriptions for controlled substances (Hydrocodone, Oxycodone, and Alprazolam) on behalf of individuals who were not his patients. *Id.* at 9-13.

Petitioner's conviction was for an offense related to the unlawful dispensing of controlled substances and it fell squarely within the reach of section 1128(a)(4) of the Act. Exclusion is mandatory in this case. Furthermore, there is no issue as to the reasonableness of the exclusion because the I.G. opted to exclude Petitioner for five years, the minimum period mandated by law. Act § 1128(c)(3)(B).

Petitioner makes arguments that are essentially equitable. He argues that his practice is located in an area that is underserved by physicians and he contends that his services are needed in order to provide care to the residents of his community. He argues also that he wrote his unlawful prescriptions to help out an individual who he thought was a friend, suggesting that his desire to lend a helping hand to a friend compromised his judgment. He avers that none of his unlawful activity affected a federally funded health care program.

