

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Paul Matthew Muratta, D.O.,
(OI File No. H-14-41015-9),

Petitioner,

v.

The Inspector General.

Docket No. C-15-1495

Decision No. CR4346

Date: October 20, 2015

DECISION

Petitioner, Paul Matthew Muratta, was a doctor of osteopathy, licensed to practice in the State of Alabama. After the Alabama Board of Medical Examiners charged him with multiple counts of unprofessional conduct and medical malpractice, he did not contest the charges, but voluntarily surrendered his license. Pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (IG) has excluded him from participation in Medicare, Medicaid, and all other federal health care programs until he regains his Alabama license. Petitioner now appeals the exclusion.

For the reasons set forth below, I find that Petitioner Muratta surrendered his medical license while formal disciplinary proceedings were pending against him before the Alabama licensing authority. The licensing authority brought those proceedings against him for reasons bearing on his professional competence and performance. The IG has therefore appropriately excluded him from program participation.

I. Background

In a letter dated December 31, 2014, the IG advised Petitioner Muratta that he was excluded from participation in Medicare, Medicaid, and all federal health care programs because his license to practice medicine in the State of Alabama was revoked, suspended, or otherwise lost or was surrendered while a formal disciplinary proceeding, bearing on his professional competence, professional performance, or financial integrity, was pending before the state licensing authority. The letter explained that section 1128(b)(4) of the Act authorizes the exclusion. IG Ex. 1. Petitioner Muratta requested review.

The IG submitted its brief (IG Br.) and four exhibits (IG Exs. 1-4). Petitioner filed a brief (P. Br.) with two exhibits (P. Exs. 1 and 2).¹ The IG filed a reply.

In the absence of any objection, I admit into evidence IG Exs. 1-4 and P. Exs. 1-2. The parties agree that an in-person hearing is not necessary in order to decide this case. IG Br. at 4; P. Br. at 3.

II. Discussion

*Because Petitioner Muratta surrendered his license to practice medicine while a formal disciplinary proceeding bearing on his professional competence, professional performance, and financial integrity was pending, the I.G. may appropriately exclude him from participation in Medicare, Medicaid, and other federally funded health care programs.*²

The Act authorizes the Secretary of Health and Human Services to exclude from program participation an individual who surrendered his license to provide health care “while a formal disciplinary proceeding was pending” before a state licensing authority and the proceeding concerned the individual’s “professional competence, professional performance, or financial integrity.” Act § 1128(b)(4)(B); *see also* 42 C.F.R. § 1001.501.

Following an investigation of Petitioner’s medical practice, on December 11, 2013, the Alabama State Board of Medical Examiners filed an administrative complaint against him with the Medical Licensure Commission of Alabama. The complaint alleged multiple violations of Alabama law: immoral, unprofessional, or dishonorable conduct;

¹ Petitioner did not mark his exhibits. P. Ex. 1 is a five-page letter, dated June 9, 2014, from Petitioner to the Office of the Inspector General. P. Ex. 2 is the first page of a September 25, 2014 letter from Blue Cross Blue Shield of Alabama to Petitioner.

² I make this one finding of fact/conclusion of law.

endangering the health of patients; gross or repeated malpractice; providing unnecessary medical services; inability to practice medicine with reasonable skill and safety and lack of basic medical knowledge or clinical competence; and failing to maintain medical records. IG Ex. 3. Petitioner Muratta concedes that he voluntarily surrendered his medical license while a formal disciplinary proceeding bearing on his professional competence, professional performance, or financial integrity was pending. P. Br. at 1.

Petitioner, however, maintains that he probably would have prevailed had he defended himself against the charges brought against him. He argues that he should not be excluded because: 1) he was not forced to surrender his license based on a “final, non-appealable finding of malfeasance bearing on [his] professional competence, professional performance, or financial integrity”; rather he “accepted a temporary surrender of [his] license” in order to avoid the expense of litigation; 2) the Board of Medical Examiners allowed him to continue practicing medicine for over eight months before his “Stipulation and Consent Order” went into effect; 3) his practice serves a medically underserved community; and 4) a peer reviewer from Blue Cross Blue Shield of Alabama determined that, for July and August 2014, his documentation had “improved” and the insurer agreed to cover procedures that he performed. P. Br. at 4; P. Ex. 2.

Petitioner’s arguments fail. First, the statute does not require a final adjudication of professional incompetence, poor performance, or financial irregularities. It specifically authorizes exclusion in situations such as these – where the practitioner surrenders his license while proceedings bearing on his professional competence, professional performance, or financial integrity are pending.

Second, that the Board of Medical Examiners allowed him to continue practicing medicine while the charges were pending is irrelevant. He ultimately surrendered his license, triggering the exclusion.

Third, waiving an exclusion that imposes hardship on a medically-underserved community is available under very limited circumstances, but not those presented here. First, waiver is not available for exclusions brought under section 1128(b)(4). *See* Act § 1128(c)(3)(B). And even for those section 1128(a) exclusions for which waiver is possible, the IG may grant a *state health care program’s request* to waive an exclusion only “if the individual or entity is the sole community physician or the sole source of essential specialized services in a community.” Moreover, “[t]he decision to grant, deny, or rescind a request for a waiver is not subject to administrative or judicial review.” 42 C.F.R. § 1001.1801(f); Act § 1128(c)(3)(B). Thus, any such request for waiver must be made directly to the IG by the state health care program, not by Petitioner, and the IG’s determination with respect to any waiver is not reviewable in this or any other forum.

Finally, that Blue Cross may have agreed that his performance “improved” does not change the hard facts surrounding his license surrender. Moreover, the insurer’s findings were hardly a ringing endorsement of his competence, performance, or financial integrity. To the contrary, the peer reviewer “noted continued overutilization of quantitative drug/alcohol assay lab tests.” P. Ex. 2. Blue Cross also admonished Petitioner because he continued to submit new claims even though he no longer had an active license and had assured the insurer that all claims were previously submitted. Thus, even if I found Blue Cross’s determinations relevant (which I do not), the findings included in its letter seem to support the charges brought against him.

The statute requires that Petitioner Muratta’s period of exclusion “shall not be less than the period during which his . . . license . . . is . . . revoked.” Act § 1128(c)(3)(E); *see also* 42 C.F.R. § 1001.501(b)(1).

III. Conclusion

For the above reasons, I conclude that the IG properly excluded Petitioner Muratta from participation in Medicare, Medicaid, and all other federal health care programs for so long as his medical license is revoked.

/s/
Carolyn Cozad Hughes
Administrative Law Judge