

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Nicola I. Riley, M.D.,  
(PTAN: 000058035)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-443

Decision No. CR4664

Date: July 26, 2016

**DECISION**

Noridian Healthcare Solutions (Noridian), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), revoked the Medicare enrollment and billing privileges of Petitioner, Nicola I. Riley, M.D., because she provided false or misleading information on a Medicare enrollment application. For the reasons stated below, I affirm CMS's determination.

**I. Background and Procedural History**

On August 20, 2014, Petitioner submitted an enrollment application (Form CMS-855I) through the internet-based Provider Enrollment Chain and Ownership System (PECOS) in response to a revalidation request. CMS Exhibits (Exs.) 1, 1A; Petitioner Exhibit (P. Ex.) 4. In revalidating her enrollment information in PECOS, Petitioner did not report

that any final adverse legal actions had been taken against her.<sup>1</sup> CMS Exs. 1, 4; P. Ex. 4. On September 9, 2014, Noridian approved Petitioner's revalidation application (CMS Ex. 2), but Noridian subsequently informed Petitioner on October 29, 2015 that it had revoked her Medicare enrollment and billing privileges. CMS Ex. 3. In its October 2015 revocation letter, Noridian explained that Petitioner's enrollment had been revoked and that it had established a re-enrollment bar for a period of two years effective 30 days after the postmark date of the letter. CMS Ex. 3 at 2. CMS further explained that the revocation was pursuant to 42 C.F.R. § 424.535(a)(4) based on Petitioner's report of false or misleading information on her application. CMS Ex. 3 at 1.

On November 19, 2015, Petitioner submitted a letter that was construed as a request for reconsideration. CMS Ex. 6. Petitioner stated the following, in pertinent part:

Dr. Riley inadvertently excluded her explanation of license revocation in her 2014 Individual Medicare revalidation. (855I). The revocation letter and explanation was included in the revalidation of her group contract (855B) in 2014. A copy of section 3 and the explanation of license revocation that was included in the 2014 revalidation is included in this correspondence.

We ask that Dr. Riley's Individual Medicare revocation be stayed as this was an accidental clerical error when completing the revalidation of her 855I rather than an intentional hiding of information.

CMS Ex. 6 at 1. On February 9, 2016, Noridian denied Petitioner's request for reconsideration. CMS Ex. 7. Noridian explained the following in support of its determination:

Revocation, Denial, or Effective date reason: 42 CFR §424.535(a)(4)  
**False or Misleading Information on Application**  
**On her CMS 855I enrollment application submitted on August 23m [sic], 2014, Nicola Riley answered "no" in section three of the application indicating that she did not have any previous adverse legal history[.] However, based on information obtained from the Maryland Board of Medicine, her license was revoked**

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<sup>1</sup> By submitting her application through PECOS, Petitioner did not complete a hard copy of an enrollment application. Rather, Petitioner used an internet-based program to enter her enrollment information. The document submitted by CMS as CMS Ex. 1 is an Application Record Data Report, which is essentially a print-out of the information that Petitioner entered into PECOS.

**effective May 6, 2013. Revocation of a license to provide health care by any state licensing authority is specifically listed as an adverse legal even[t] that must be reported in section three.**

CMS Ex. 7 at 1. Noridian further explained that Petitioner “did not mark ‘yes’ in section three of her 855I enrollment application” and “reportable adverse actions against the provider must be disclosed in this section in order to be considered for enrollment in the Medicare program.” CMS Ex. 7 at 1.

Petitioner filed a timely request for a hearing (RFH) on March 29, 2016.<sup>2</sup> Petitioner explained that she had reported adverse legal actions in a separate Medicare enrollment application that she submitted for her practice, SMP Family Medicine, in April 2014. RFH Ex. 1. Petitioner further contended in her RFH that if she “inadvertently marked the ‘no’ box in Section 3 of her application, this was simply a clerical error.” RFH Ex. 1 at 1.

I issued an Acknowledgment and Pre-Hearing Order (Order) on April 8, 2016. Thereafter, on May 13, 2016, CMS filed a motion for summary judgment (CMS Br.) together with 13 exhibits (CMS Exs. 1, 1A, 2-12); *see* Order § 4(c)(i) (authorizing filing of motion for summary judgment). Following my issuance of an extension of time on June 10, 2016, Petitioner, through counsel, filed a response to CMS’s motion for summary judgment (P. Br.) and eight exhibits. (P. Exs. 1-8). In the absence of any objections, I admit CMS Exs. 1, 1A, 2-11 and P. Exs. 1-8 into the record. I do not admit CMS Ex. 12 into the record because CMS did not in any way reference the content of that exhibit in its motion for summary judgment and I am therefore unable to ascertain any basis for its submission as evidence in support of CMS’s arguments. In addition, I have admitted the RFH, which was submitted as RFH Ex. 1, along with a supporting exhibit for the RFH (RFH Ex. 14) that was not re-submitted with Petitioner’s pre-hearing exchange. While Petitioner did not specifically cite to RFH Ex. 14 in her response to CMS’s motion for summary judgment, Petitioner’s arguments are largely premised on the submission of the document found at RFH Ex. 14.<sup>3</sup>

My April 8, 2016 Order advised the parties that they must submit written direct testimony for any 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. Neither party has submitted written direct testimony or asked for the opportunity to cross-

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<sup>2</sup> Petitioner submitted 15 “exhibits” in support of her RFH, many of which were re-submitted with her pre-hearing exchange.

<sup>3</sup> Petitioner did not submit a list of proposed exhibits as required by my Order. Order § 4(c)(ii). Therefore, it is unclear whether she intended to submit exhibits that had been submitted prior to the submission of her pre-hearing exchange.

examine a witness. CMS has moved for summary judgment and Petitioner has responded accordingly; as a hearing for the purpose of cross-examination of any witnesses has not been requested, it is unnecessary for me to decide this case based on summary judgment. I will issue a decision on the merits.

## **II. Issue**

The issue is whether CMS had a legitimate basis for revoking Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(4) based on the submission of false or misleading information in a Medicare enrollment application. 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).

## **III. Findings of Fact, Conclusions of Law, and Analysis<sup>4</sup>**

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 has had an adverse legal action taken against her pursuant to 42 C.F.R. § 424.502.***

Pursuant to the definitions provided in 42 C.F.R. § 424.502, a final adverse action includes a “[s]uspension or revocation of a license to provide health care by any State licensing authority.” Petitioner admits that the Maryland State Board of Physicians revoked her medical license.<sup>5</sup> P. Br. at 9-10; CMS Ex. 6. CMS submitted a Final Decision and Order of the Maryland State Board of Physicians that ordered that Petitioner's medical license would be permanently revoked and that Petitioner “shall not ever apply for licensure or reinstatement of her medical license to the Board or any successor agency.” CMS Ex. 8 at 23. The Final Decision and Order also reported that,

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<sup>4</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

<sup>5</sup> CMS also contends that Petitioner failed to report actions taken by the Utah Division Occupational and Professional Licensing. CMS Br. at 6; *see* CMS Exs. 9, 10. As the reconsidered determination that is the basis for Petitioner's RFH was limited to Petitioner's failure to report a final adverse legal action taken by the Maryland State Board of Physicians and did not identify Petitioner's failure to disclose any other final adverse legal actions, I will limit the discussion herein to the final adverse legal action taken by the Maryland State Board of Physicians. CMS Ex. 7.

prior to the decision permanently revoking Petitioner's medical license, Petitioner's Maryland medical license had been summarily suspended since August 31, 2010. CMS Ex. 8 at 1. I conclude that Petitioner has had an adverse legal action taken against her pursuant to 42 C.F.R. § 424.502.

**2. *Petitioner did not notify CMS or Noridian of the revocation of her medical license by the Maryland State Board of Physicians at the time she submitted her individual revalidation application, Form CMS- 855I, via PECOS.***

Petitioner submitted a revalidation application for her individual Medicare enrollment through PECOS on August 20, 2014. CMS Exs. 1, 1A; P. Ex. 4. In that application, Petitioner did not indicate that she had been the subject of any final adverse legal actions. CMS Ex. 1 at 2 (Application Record Data Report showing "No Current Records Exist for Final Adverse Legal Action"); CMS Ex. 6 at 1 (Petitioner's statement that she "inadvertently excluded her explanation of license revocation in her 2014 [i]ndividual Medicare revalidation (855I)"). Petitioner contended that she failed to report the information due to "an accidental clerical error when completing the revalidation of her 855I." CMS Ex. 6 at 1.

Petitioner argued in her construed request for reconsideration, and also in her brief, that she had previously informed Noridian of the final adverse legal action when she submitted an enrollment application, Form CMS-855B, for her medical practice in April 2014. CMS Ex. 6 at 1; *see also* RFH Ex. 14 at 9; P. Ex. 1. Petitioner points to an excerpt from Section 3 of a Form CMS-855B that included her report of actions taken against her by licensing bodies in Maryland, Wyoming, and Utah, along with a memorandum authored by Petitioner that explained those actions.<sup>6</sup> P. Br. at 2-3; *see* P. Ex. 1. The issue here is not whether Petitioner has *ever* notified CMS or its contractor of the final adverse legal action by the Maryland State Board of Physicians; rather, the issue is whether she failed to report the final adverse legal action when she submitted a Form CMS-855I in August 2014. Petitioner has not demonstrated that she notified CMS or its contractor of a final adverse legal action against her at the time she filed her *individual* revalidation application via PECOS on August 20, 2014.

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<sup>6</sup> The copy of Section 3 furnished by Petitioner as P. Ex. 1 does not list the form number (Form CMS-855B). P. Ex. 1. However, with her RFH, Petitioner submitted a complete copy of the Form CMS-855B. RFH Ex. 14. Page 1 of P. Ex. 1 is identical to page 9 of RFH Ex. 14, including a unique identifying stamp on the lower left hand corner of the page.

3. ***Noridian had a legitimate basis to revoke Petitioner’s Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(4) because Petitioner certified on a revalidation enrollment application on August 20, 2014, that she had not been the subject of a final adverse legal action and this statement was false.***

In viewing Petitioner’s arguments in the most favorable light, Petitioner is under the misunderstanding that because she reported final adverse actions when submitting a Form CMS-855B for her *medical practice*, she did not fail to comply with section 424.535(a)(4) when she did not disclose any final adverse legal actions when she electronically submitted a Form CMS-855I to revalidate her *individual* billing privileges. Petitioner is mistaken. Section 3 of the Form CMS-855I asks an applicant if she has “under any current or former name or business identity, ever had a final adverse legal action . . . imposed against [her]?” Form CMS-855I (<https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/cms855i.pdf>, last visited July 21, 2016). In response to this question, Petitioner did not disclose any final adverse legal actions. Therefore Petitioner, in denying that she had been the subject of any final adverse legal actions, provided false information pursuant to 42 C.F.R. § 424.535(a)(4).

Petitioner contends that her failure to provide the required information in response to this question was a result of “accidental clerical error” and that it was not due to “an intentional hiding of information.” CMS Ex. 6 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 knowingly or intentionally fail to disclose final adverse legal actions in Section 3 of her August 20, 2014 Medicare revalidation enrollment application, this provides no defense to revocation. *See, e.g., Sandra Johnson, CRNA, DAB No. 2708 at 15 (2016)* (stating that “[b]y signing the certification statements . . . she attested to the truth, accuracy and completeness of their content as is” and that “Petitioner remained responsible for the contents of her application.”).

Petitioner electronically signed the certification statement of the application, certifying that she read the contents of the revalidation application and that the information contained therein was true, correct, and complete. CMS Exs. 1, 1A. As the information provided by Petitioner was not true, correct, and complete, the information provided in Section 3 was false. Therefore, I conclude that CMS had a legal basis to revoke Petitioner’s Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(4).

