

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
Jagdish Mangla, M.D.,)	DATE: April 15, 1997
Petitioner,)	
- v. -)	Docket No. C-96-440
The Inspector General.)	Decision No. CR470

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Jagdish Mangla, M.D., from participating in Medicare and State health care programs, including Medicaid, until Petitioner obtains a valid license to practice medicine or to provide health care in the State of California. I base my decision on evidence which proves that a State licensing authority revoked Petitioner's medical license for reasons bearing on Petitioner's professional competence and professional performance within the meaning of section 1128(b)(4)(A) of the Social Security Act (Act). Petitioner has not offered any evidence which would support a finding that the I.G. does not have the authority to exclude Petitioner or that the length of the exclusion should be modified.

BACKGROUND

On July 24, 1996, the I.G. notified Petitioner that he was being excluded from participation in Medicare and State health care programs, including Medicaid, until Petitioner obtained a valid license to practice medicine or provide health care in the State of California. The I.G. advised Petitioner that she was excluding him pursuant to section 1128(b)(4) of the Act because his license to practice medicine or provide health care was revoked by the State of California.

Petitioner requested a hearing and the case was assigned to Administrative Law Judge Edward Steinman for a hearing and a decision. On February 12, 1997, the Chief of the Civil Remedies Division reassigned this case to me.

The parties agreed that this case could be heard and decided based on written submissions, including briefs and documentary evidence, and without the need for an in-person hearing.

The I.G. submitted a brief, with one proposed exhibit (I.G. Ex. 1). Petitioner submitted a brief, with ten proposed unnumbered exhibits. The I.G. declined the opportunity to file a reply brief. For the purposes of maintaining a uniform record in this case, I have numbered Petitioner's exhibits (P. Ex. 1 - 10). There having been no objections to any of the offered exhibits, I hereby receive into evidence I.G. Ex. 1 and P. Ex. 1 - 10.

APPLICABLE LAW

Section 1128(b)(4)(A) of the Act, 42 U.S.C. § 1320a-7(b)(4)(A), authorizes the Secretary of the United States Department of Health and Human Services (or her delegate, the I.G.) to exclude from participation in the Medicare program any individual "whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's . . . professional competence, professional performance, or financial integrity."

The Secretary has published regulations which establish criteria for determining the length of any exclusion that is imposed pursuant to section 1128(b)(4) of the Act. An exclusion imposed pursuant to section 1128(b)(4) ordinarily shall be for the same duration as the period during which an individual's license is lost as a result of a State disciplinary proceeding. 42 C.F.R. § 1001.501(b)(1). An exclusion may be for a longer duration than a period that is coterminous with a loss of a State license to provide health care if there exist aggravating factors that are not offset by any mitigating factors. 42 C.F.R. § 1001.501(b)(2), (3). An exclusion may be for a shorter duration than a period that is coterminous with the loss of a State license to provide health care, if prior to the date of the notice of exclusion, the licensing authority of a State (other than the one in which the individual's license had been revoked, suspended, surrendered, or otherwise lost), being fully apprised of all of the circumstances surrounding the prior action by the licensing board of the first State, grants the individual a license or takes no significant adverse action as to a currently held license. 42 C.F.R. § 1001.501(c)(1). In addition, subsection (2) of 42 C.F.R. § 1001.501(c) provides that the I.G. will consider a request for early reinstatement

if an excluded provider fully and accurately discloses the circumstances surrounding the license revocation to another State and that State either grants the provider a new license or takes no adverse action against an existing license.

PETITIONER'S POSITION

Petitioner contends that the New York State proceedings which resulted in the initial revocation of his license to practice medicine were biased against him and were conducted by his enemies.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner was licensed to practice medicine in the States of California and New York. I.G. Ex. 1, at 3 and 10.
2. On March 3, 1993, the State of New York Board for Professional Medical Conduct suspended Petitioner's license to practice medicine in that State because it determined that he suffered from a psychiatric condition, bipolar disorder. I.G. Ex. 1, at 8 - 15.
3. On June 8, 1995, the California Medical Board, citing the March 3, 1993, order of the New York State Board of Professional Medical Conduct, entered an order revoking Petitioner's physician and surgeon certificate, effective July 8, 1995, based on a finding of unprofessional conduct. I.G. Ex. 1, at 4 - 5.
4. The June 8, 1995 action of the California Medical Board was based on sections 2234 and 2305 of the California Business and Professional Code, which provide that the revocation, suspension, or other discipline by another State of a license or certificate to practice medicine issued by that State shall constitute unprofessional conduct in California. I.G. Ex. 1, at 3.
5. By letter dated July 24, 1996, the I.G. notified Petitioner that, pursuant to section 1128(b)(4) of the Act, the Department of Health and Human Services was excluding him from participation in the Medicare program and directing his exclusion from State health care programs based on the revocation of his California physician and surgeon certificate for reasons bearing on his professional competence, professional performance, or financial integrity.
6. Section 1128(b)(4)(A) of the Act authorizes the I.G. to exclude an individual whose license to provide health care in a State has been revoked or suspended as a result of formal disciplinary proceedings by the State's

licensing authority for reasons bearing on the individual's professional competence, professional performance, or financial integrity.

7. Where an exclusion is imposed pursuant to section 1128(b)(4) of the Act, and there exist no aggravating factors or exceptional circumstances, the length of the exclusion will be coterminous with the State license revocation on which the exclusion was based. 42 C.F.R. § 1001.501(b).

8. The I.G. was authorized to exclude Petitioner pursuant to section 1128(b)(4)(A) of the Act.

9. The I.G. neither alleged nor proved the presence of aggravating factors.

10. Petitioner did not prove the presence of any exceptions which would justify reducing the exclusion which the I.G. imposed to one which was less than coterminous with Petitioner's loss of his license to practice medicine in California.

11. The exclusion imposed by the I.G. against Petitioner was reasonable.

DISCUSSION

The undisputed facts establish that Petitioner's license to practice medicine in the State of California was revoked by the State of California, effective July 8, 1995, due to unprofessional conduct. The California Medical Board's action was based on the suspension of Petitioner's license to practice medicine in the State of New York. The suspension of Petitioner's New York license was based upon a determination by the New York Board that Petitioner suffered from a psychiatric condition which impaired his occupational functioning. The action of the California Medical Board was authorized by California law that provides that the revocation, suspension, or other discipline by another State of a license or certificate to practice medicine issued by that State shall constitute unprofessional conduct in California. California Business and Professional Code section 2305.

The exclusion in Petitioner's case is based on section 1128(b)(4) of the Act which authorizes the exclusion from participation in the Medicare program of any individual whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's professional competence, professional

performance, or financial integrity. The Act further authorizes the Secretary to direct that an individual be excluded under section 1128(b)(4) of the Act from participation in the State health care programs defined by section 1128(h) of the Act.

The imposition of Petitioner's exclusion coterminous with the license revocation in California is consistent with the criteria set forth in the regulations at 42 C.F.R. § 1001.501. Petitioner has not alleged or demonstrated that, prior to the notice of exclusion, he obtained a license to practice medicine in another State after the licensing authority of that State had been fully apprised of all of the circumstances surrounding the prior action by the California Medical Board. The I. G. has not alleged any aggravating factors in Petitioner's case. Furthermore, the record does not show that the exceptions in 42 C.F.R. § 1001.501(c) for shortening the length of the exclusion are applicable to this case.

Petitioner's contends that the action of the New York licensing authority was unfair. His allegations on this issue, however, are wholly unsupported by any evidence. Moreover, it has been held that in proceedings under section 1128(b)(4) collateral attacks on the actions of the State licensing authorities are not permitted. John Foderick, _____, DAB 1125 (1990). Even if I could review the actions of the New York Medical Board, the record establishes that Petitioner was afforded the opportunity, either personally or through counsel, to present his case to those authorities. There was ample basis on the record in that proceeding for concluding that Petitioner suffered from a serious psychiatric disturbance which impaired his occupational functioning.

CONCLUSION

I conclude that the I.G. was authorized to exclude Petitioner pursuant to section 1128(b)(4)(A) of the Act. I conclude also that the term of exclusion imposed by the I.G. was lawful.

/s/

Joseph K. Riotto
Administrative Law Judge