

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Carlos A. Blanco, M.D. and Surgical Services of Florida, Inc.,  
(PTANs: FU159A/32084U)  
(NPIs: 1043413727/1699716670),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-137

Decision No. CR3629

Date: February 6, 2015

**DECISION**

Petitioner, Carlos A. Blanco, M.D., is a Florida-based physician who was enrolled in the Medicare program and doing business as Surgical Services of Florida, Inc. (Surgical Services), a professional corporation of which he is the sole owner. First Coast Service Options (FCSO), a Medicare contractor, revoked Petitioner's Medicare enrollment and billing privileges and barred him from re-enrollment for three years because Dr. Blanco certified that he had no adverse actions when Petitioner had been previously revoked with a two-year enrollment bar. Petitioner appeals the revocation, and I find that CMS properly revoked Petitioner's Medicare enrollment and billing privileges.

**I. Procedural Background**

FCSO notified Dr. Blanco by letter dated June 17, 2013, that pursuant to 42 C.F.R. § 424.535(a)(4) and effective July 17, 2013, it was revoking his Medicare enrollment and billing privileges and those of Surgical Services, the corporation he solely owns and which he established to bill for his Medicare Part B services. CMS Ex. 3. FCSO barred Petitioner from re-enrollment for a period of three years for his failure to comply with Medicare enrollment requirements because he certified as "true" misleading or false

information on his enrollment application. CMS Ex. 3. Petitioner submitted a timely request for reconsideration. CMS Ex. 2. On August 21, 2013, FCSO upheld the revocation and notified Petitioner that the action was in accordance with Medicare rules and regulations. CMS Ex. 1.

Petitioner requested a hearing before an Administrative Law Judge (ALJ). *See* Request for Hearing (RFH). This case was assigned to me for hearing and decision. I issued an Acknowledgment and Pre-hearing Order on November 4, 2013. CMS filed a Prehearing Brief and Motion for Summary Judgment (CMS Br.) with CMS Exhibits (Exs.) 1-8. Petitioner filed a response (P. Br.) but did not submit any exhibits. On June 2, 2014, CMS filed CMS Exs. 9 and 10 in response to my order to supplement the record. Petitioner did not object, and I admit all of CMS's exhibits to the record.

Neither party submitted a list of proposed witnesses nor filed written direct-testimony for any proposed witness. Therefore, as explained in my pre-hearing order, there is no need for cross-examination, an in-person hearing is not necessary, and I will decide this matter on the written record.

## II. Analysis

### A. Issue

The sole issue before me is whether CMS had a legitimate basis to revoke Petitioner's Medicare enrollment and billing privileges.

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

- 1. Dr. Blanco certified as "true" that he did not have an adverse legal action against him on his January 2013 Medicare enrollment application even though he was the legally authorized official for Hialeah Medical Corp., which FCSO previously revoked from the Medicare program in September 2011.*

Section 1831 of the Social Security Act (the Act) (42 U.S.C. § 1395j) establishes the supplementary medical insurance benefits program for the aged and disabled known as Medicare Part B. Payment under the program for services rendered to Medicare-eligible beneficiaries may only be made to eligible providers of services and suppliers.<sup>1</sup> Act

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<sup>1</sup> A "supplier" can furnish items or services under Medicare, and the term applies to physicians, other non-physician practitioners, and facilities that are not included within the definition of the phrase "provider of services." Act §1861(d) (42 U.S.C. § 1395x(d)).

§§ 1835(a) (42 U.S.C. § 1395n(a)); 1842(h)(1) (42 U.S.C. § 1395u(h)(1)). The Act requires the Secretary of Health and Human Services to issue regulations that establish a process for the enrollment of providers and suppliers, including the right to a hearing and judicial review of certain enrollment determinations. Act § 1866(j) (42 U.S.C. § 1395cc(j)).

When applying for enrollment in the Medicare program, a supplier is required to provide complete, accurate, and truthful responses to all information requested within each section on the enrollment application applicable to the supplier type. 42 C.F.R. § 424.510(d)(2)(i). However, Petitioner's enrollment history shows Petitioner did not always provide accurate information to the CMS contractor.

On April 24, 2009, Dr. Blanco submitted a CMS 855I enrollment application to FCSO to reactivate his Medicare enrollment. CMS Ex. 10. In section 4A of his application, Dr. Blanco stated that he was the sole owner of a professional corporation, Surgical Services, and that he would bill Medicare through this business entity. CMS Ex. 10 at 14. The application identified Dr. Blanco as the managing employee. CMS Ex. 10 at 20. Dr. Blanco also listed himself as the contact person, and he provided 11341 NW 42 Terrace, Miami, Florida 33178 as his address for correspondence related to the application. FCSO approved the application and issued him provider transaction numbers (PTANs).

On August 13, 2009, FCSO received an application from Dr. Blanco to add, as of August 12, 2009, a practice location to his previous PTAN for himself and Surgical Services. CMS Ex. 9 at 7. He listed the additional practice location as Hialeah Medical Corp., 3750 W. 17 Ave., Suite 110, Hialeah, Florida 33012. His application requested that all special payments be sent to P.O. Box 527432, Miami, Florida 33152. CMS Ex. 9 at 8. Dr. Blanco signed the certification statement as the authorized official. CMS Ex. 9 at 9. FCSO approved the addition of the new practice location. CMS Ex. 1 at 2.

On September 8, 2011, FCSO conducted an unannounced site verification for Hialeah Medical Corp., Petitioner's added practice location. CMS Ex. 6. The location was vacant and for rent. CMS Ex. 6 at 1; CMS Ex. 7. FCSO stated that Petitioner's application for this practice location was never updated or changed to reflect that it was closed. CMS Ex. 6. Consequently, FCSO revoked the Medicare billing number associated with Petitioner and Hialeah Medical Corp., effective September 8, 2011, as well as imposed a two-year enrollment bar. CMS Ex. 6; CMS Ex. 4 at 16. The revocation became final because no one filed a request for a reconsidered decision.

On January 13, 2012, FCSO received another CMS 855I application from Dr. Blanco. CMS Ex. 4 at 6, 42. The stated reason for the application was to change Dr. Blanco's Medicare information. CMS Ex. 4 at 4. He provided the same Medicare identification number, NPI, and correspondence address as in his April and August 2009 855I applications and correspondence with FCSO. CMS Ex. 4 at 4, 6, 21; CMS Ex. 9 at 4;

CMS Ex. 10 at 5, 10, 24. Section 3 on page 12 of the application required Dr. Blanco to provide all information on any final adverse actions including any Medicare revocation of any Medicare billing number. CMS Ex. 4 at 13 (page 12 of the CMS 855I). In response to the question, “Have you, under any current or former name or business identity, ever had a final adverse legal action listed on page 12 of this application imposed against you?” Petitioner indicated “No” and did not include information regarding his September 2011 revocation involving Hialeah Medical Corp. CMS Ex. 4 at 14.

In section 4 of the application, Dr. Blanco, indicated that he was the sole owner of a professional corporation, Surgical Services, and that he would bill Medicare through this business entity. He indicated “No” when asked if the organization, Surgical Services, under any current or former name or business identity, ever had any of the final adverse legal actions listed on page 12 of the application imposed against it. CMS Ex. 4 at 15. Dr. Blanco again did not include any information regarding the September 2011 revocation involving Hialeah Medical Corp., the additional practice location Dr. Blanco associated with Surgical Services on his August 2009 application. Dr. Blanco indicated that all remittance notices and special payments for services rendered at the practice locations he listed should be sent to P.O. Box 527432, Miami, Florida 33152-7432, the same address he listed on his August 2009 855I adding Hialeah Medical Corp. as a practice location. CMS Ex. 4 at 20; CMS Ex. 9 at 8.

The January 2012 application listed Carlos A. Blanco, M.D., President, as the managing employee. CMS Ex. 4 at 22. He again indicated “No” to the question of whether he, as an individual, or under any current or former name or business identity, ever had a final adverse legal action imposed against him. CMS Ex. 4 at 22. Dr. Blanco again did not include any information regarding the September 2011 revocation involving Hialeah Medical Corp. Dr. Blanco, as the individual practitioner, was the only person authorized to sign the CMS Form 855I. By signing the certification statement, Dr. Blanco certified, among other things, that he read the contents of the application, and the information contained in the application was true, correct, and complete. CMS Ex. 4 at 27-28. He also submitted a copy of the IRS Form W-9 indicating his name and the name of his business, Surgical Services of Florida, Inc., with an address of P.O. Box 527432, Miami, Florida, 33152-7432, again the same address Dr. Blanco associated with Hialeah Medical Corp. CMS Ex. 4 at 32.

***2. CMS legitimately revoked Petitioner’s enrollment and billing privileges because Petitioner certified to the truthfulness of false information on his January 2013 enrollment application.***

CMS is authorized to revoke a currently enrolled supplier’s Medicare billing privileges and any corresponding provider or supplier agreement when a supplier certifies as “true” misleading or false information on a Medicare enrollment application. 42 C.F.R.

§ 424.535(a)(4). As discussed, Petitioner certified to the truthfulness of false information on his January 2012 enrollment application when he did not report Petitioner's previous revocation involving the Hialeah practice location. Therefore CMS had a legitimate basis for revoking the billing privileges associated with Dr. Blanco and Surgical Services.

Dr. Blanco contends that he was only briefly involved in Hialeah Medical Corp., he acted only as its medical director before resigning, he would therefore not have received notice of Hialeah Medical Corp.'s revocation, and he previously notified CMS of the resignation by letter. Despite my pre-hearing order instructions, he filed no sworn affidavits as evidence, and I do not otherwise find those explanations persuasive.

Dr. Blanco specifically contends that he only served as a medical director for Hialeah Medical Corp., and he "never filed an application to obtain a Medicare provider number while working as Medical Director." CMS Ex. 2 at 1. He further contended in his February 4, 2014, response that "there are no clear connections between Surgical Services of Florida, Inc., and Hialeah Medical Corp." He argues that CMS confused the groups and revoked the wrong PTAN. However, the evidence of record shows that Dr. Blanco himself certified, as a legally authorized official, an application to FCSO in August 2009 to add Hialeah Medical Corp. to the PTAN for Surgical Services, the professional corporation he established to bill Medicare. CMS Exs. 9, 10. A copy of Dr. Blanco's picture I.D. (Florida Driver's License) was attached. CMS Ex. 9 at 4, 10. Further, Dr. Blanco certified that special payments regarding the Hialeah practice location should be sent to P.O. Box 527432, Miami Fl. 33152. CMS Ex. 9 at 8. Dr. Blanco used this same address in the application he later submitted to FCSO in January 2012 regarding his billing entity, Surgical Services of Florida, Inc. CMS Ex. 4 at 20.

The October 6, 2011 revocation notice letter indicated that FCSO was revoking Petitioner's Medicare billing number and billing privileges effective September 8, 2011, and FCSO imposed a re-enrollment bar for a period of two years because his Hialeah practice location was no longer operational. CMS Ex. 6; CMS Ex. 4 at 16.

I do not find credible Petitioner's explanation that he would not be aware of the revocation because he had resigned from Hialeah Medical Corp. P. Br. at 2. Petitioner lacks credibility because he provided inconsistent statements regarding his involvement in applying for Medicare billing privileges for the Hialeah practice location. Additionally, he claims he notified CMS of his resignation by letter; however, he never provided the hearing officer or me any proof of the letter such as a copy or any proof of mailing or receipt. Further, the October 6, 2011 notice letter to Hialeah Medical Corp., which Dr. Blanco contends he did not receive, was addressed to the same post office box,

