

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Kevin T. McGinnis, M.D.
(O.I. File No. H-14-43012-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-5

Decision No. CR4551

Date: March 22, 2016

DECISION

Petitioner, Kevin T. McGinnis, was a physician specializing in obstetrics and gynecology, licensed to practice in the Commonwealth of Kentucky. Following his arrest for “using electronic means to induce a minor to engage in sexual activities,” a felony, the Kentucky Board of Medical Licensure charged him with violating state licensing rules and suspended his license. While a hearing on the license suspension was pending, Petitioner McGinnis pled guilty to misdemeanor indecent exposure. Thereafter, he voluntarily surrendered his medical license. Pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (IG) has excluded him from participating in Medicare, Medicaid, and all other federal health care programs until he regains that license. Petitioner now appeals the exclusion.

For the reasons set forth below, I find that Petitioner McGinnis surrendered his medical license while formal disciplinary proceedings were pending against him before the Kentucky 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.

Background

In a letter dated July 31, 2015, the IG advised Petitioner McGinnis that he was excluded from participating in Medicare, Medicaid, and all federal health care programs because his license to practice medicine in the Commonwealth of Kentucky was revoked, suspended, or otherwise lost or was surrendered while a formal disciplinary proceeding, bearing on his professional competence, professional performance, or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) authorizes the exclusion. IG Ex. 1. Petitioner McGinnis requested review.

The IG submitted its brief (IG Br.) and four exhibits (IG Exs. 1-4). Petitioner filed a brief (P. Br.) with one exhibit (P. Ex. 1).¹

In the absence of any objection, I admit into evidence IG Exs. 1-4 and P. Ex. 1. The parties agree that an in-person hearing is not necessary in order to decide this case. IG Br. at 7; P. Br. at 3.

Discussion

*Because Petitioner McGinnis surrendered his license to practice medicine while a formal disciplinary proceeding bearing on his professional competence or performance was pending, the IG may appropriately exclude him from participating 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 any state licensing authority if the proceeding concerned the individual's professional competence, professional performance, or financial integrity. Act § 1128(b)(4); *accord* 42 C.F.R. § 1001.501(a).

¹ Petitioner marked his exhibit as "Exhibit A." To conform to Civil Remedies procedures, I refer to it as P. Ex. 1.

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

The parties agree that Petitioner McGinnis voluntarily surrendered his license to practice medicine while formal disciplinary proceedings were pending against him. I.G. Br. at 2-4; P. Br. at 2-3; I.G. Exs. 3, 4. Petitioner also concedes that his “misdemeanor conviction adversely affects his character to hold a medical license under Kentucky law.” P. Br. at 2. Nevertheless, he denies that he surrendered his license for reasons bearing on his professional competence or performance. Petitioner argues that 1) his underlying conduct did not include “any direct actions or conduct associated with patient care”; and 2) he did not violate any law or regulation related to federal or state reimbursement programs. P. Br. at 2.

Section 1128(b)(4) mandates that the disciplinary proceeding be for reasons “bearing on” the physician’s professional competence, professional performance, or financial integrity. This does not mean that the conduct underlying the licensure proceeding must have occurred as part of the physician’s practice or involve one of his patients. *See Steven C. Wein, D.O., DAB No. 2473 at 5-6 (2012).*

Here, the state licensing board initiated its action when it suspended, on an emergency basis, Petitioner McGinnis’s license. The suspension order asserts that Petitioner was arrested for engaging in online sexual contact (including exposing himself and “self-stimulating”) with someone he thought was a 14-year-old girl. Based on his conduct and arrest, the licensing board found probable cause to believe that allowing him to continue practicing medicine “constitutes a danger to the health, welfare and safety of his patients or the general public.” IG Ex. 2 at 2-3. The licensing board followed up its emergency suspension by issuing a formal complaint, which was pending against Petitioner as of June 2013. IG Ex. 3. After he pled guilty to a misdemeanor charge, Petitioner McGinnis surrendered his license in order to “fully and finally resolve [the] pending Complaint.” IG Ex. 4 at 1. In doing so, he conceded that his criminal conduct violated section 311.595(9) of the Kentucky Revised Statutes. That provision authorizes the state board to revoke or suspend a license where the licensee has “[e]ngaged in dishonorable, *unethical, or unprofessional conduct* of a character likely to deceive, defraud, or harm the public or any member thereof.” IG Ex. 4 at 3 (emphasis added). Thus, the licensing proceedings were brought for reasons “bearing on” Petitioner McGinnis’s professional competence or performance, and the IG may exclude him from program participation under section 1128(b)(4) of the Act.

The statute requires that Petitioner McGinnis’s period of exclusion “shall not be less than the period during which the individual’s . . . license . . . is . . . revoked, suspended, or surrendered . . .” Act § 1128(c)(3)(E).

