

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Edna Tunis,
(OI File No. H-15-4-2989-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-441

Decision No. CR4687

Date: August 18, 2016

DECISION

For a short time, Petitioner, Edna Tunis, was licensed as a registered nurse in Massachusetts. She surrendered her license after the state licensing authority charged her with obtaining her license by fraud. Thereafter, pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (IG) excluded her from participating in Medicare, Medicaid, and all federal health care programs at least until she regained her license. Petitioner appeals the IG exclusion.

For the reasons discussed below, I sustain the IG's determination.

Background

In a letter dated January 29, 2016, the IG advised Petitioner Tunis that, because she surrendered her license to provide health care as a registered nurse while a formal disciplinary proceeding was pending before the Massachusetts Board of Registration in Nursing "for reasons bearing on [her] professional competence, professional performance, or financial integrity," the IG was excluding her from participating in Medicare, Medicaid, and all federal health care programs. She would not be eligible for

reinstatement until she regained her nursing license. The letter explained that section 1128(b)(4) of the Act authorizes the exclusion. IG Ex. 1.

Petitioner timely requested review.

The parties have submitted written arguments. (IG Br.; P. Br.; IG Reply). With his brief, the IG submitted four exhibits (IG Exs. 1-4). With her brief, Petitioner submitted two exhibits (P. Exs. 1-2). In the absence of any objections, I admit into evidence IG Exs. 1-4 and P. Exs. 1-2.

Neither party has indicated that an in-person hearing is necessary.

Discussion

*Because Petitioner surrendered her license to provide health care as a registered nurse while a formal disciplinary proceeding was pending for reasons bearing on her professional competence or performance, the IG may appropriately exclude her from participating in Medicare, Medicaid, and other federal health care programs.*¹

The Act authorizes the Secretary of Health and Human Services to exclude from program participation an individual who surrenders her license to provide health care while a formal disciplinary proceeding concerning her professional competence, professional performance, or financial integrity is pending before any state licensing authority. Act § 1128(b)(4); *accord* 42 C.F.R. § 1001.501(a).

In a disciplinary proceeding, the Massachusetts Board of Registration in Nursing charged that Petitioner Tunis obtained her state license to practice as a registered nurse by fraud. In response, she voluntarily surrendered her license. In a consent agreement signed August 4, 2015, she conceded that she applied for licensure by reciprocity, falsely representing that she was a registered nurse in the State of Alabama. She admitted that her claims were untrue and that she had engaged in the practice of nursing in Massachusetts. She also conceded that, in doing so, she displayed a lack of “good moral character” and failed to comply with the Massachusetts nursing board’s standards of conduct. IG Ex. 2 at 1.²

¹ I make this one finding of fact/conclusion of law.

² The charges brought against Petitioner Tunis also refer to irregularities before the Oregon State Board of Nursing. IG Ex. 3. It seems that Petitioner applied for an LPN (licensed practical nurse) license in Oregon, using a wrong social security number and birth date. The licensing board could not verify her claims about her nursing education

Petitioner now maintains that her license was not truly revoked because it was issued by trickery, and she characterizes herself as the innocent victim of a complicated scheme purportedly engineered by an online nursing school that falsely obtained the license on her behalf without her knowledge or consent (although she admits that she received the license and was subsequently hired as a registered nurse).

Federal regulations preclude such a collateral attack on the underlying adjudication:

When the exclusion is based on the existence of a . . . determination by another Government agency, or any other prior determination where the facts were adjudicated and a final decision was made, the basis for the underlying . . . determination is not reviewable and the individual or entity may not collaterally attack it either on substantive or procedural grounds in this appeal.

42 C.F.R. § 1001.2007(d); *Marvin L. Gibbs, Jr., M.D.*, DAB No. 2279 at 8-10 (2009); *Roy Cosby Stark*, DAB No. 1746 (2000).

Petitioner thus surrendered her license during a formal disciplinary proceeding bearing on her professional competence and professional performance: she submitted false information in order to obtain a license and used that license to get a job. The IG may therefore exclude her from program participation under section 1128(a)(4). The statute requires that her 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); 42 C.F.R. § 1001.501(b).

Conclusion

The IG is authorized to exclude Petitioner from participating in Medicare, Medicaid, and other federal health care programs for as long as her state nursing license is surrendered.

/s/
Carolyn Cozad Hughes
Administrative Law Judge

and licensing, and it denied the application. IG Ex. 4. These charges were not incorporated into the consent agreement, however.