

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Grady R. Fort, M.D.,
(NPI No. 1982765582,
PTAN No. CA134802)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-643

Decision No. CR4709

Date: September 21, 2016

DECISION

Noridian Government Solutions (Noridian or “the contractor”), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), revoked the Medicare enrollment and billing privileges of Petitioner, Grady R. Fort, M.D., effective December 31, 2015. The revocation was based on Petitioner’s failure to report a 30-day license suspension by the Medical Board of California (“state medical board”). For the reasons stated below, I affirm CMS’s revocation of Petitioner’s Medicare enrollment and billing privileges.

I. Background and Procedural History

Petitioner, a physician, was enrolled as a supplier in the Medicare program. On December 1, 2015, pursuant to a settlement agreement entered into by Petitioner, the state medical board ordered that Petitioner be suspended from the practice of medicine for a period of 30 days. The effective date listed on the decision was December 31, 2015, but the period of license suspension was from October 1 through October 31, 2015. *See* CMS Exhibit (CMS Ex.) 4 at 5.

On February 8, 2016, Noridian sent Petitioner a letter informing him that his Medicare privileges were being revoked, effective December 31, 2015, because he did not provide timely notice of his license suspension. CMS Ex. 3 at 1. Noridian informed Petitioner that it had established a re-enrollment bar for a period of one year, effective 30 days from the postmark date of the letter. CMS Ex. 3 at 2. Noridian provided the following explanation in its letter:

42 CFR §424.535(a)(9) – Failure to Report Changes

Your California Medical License was suspended by the California Medical Board for 30 days from October 1, 2015 to October 31, 2015. This was not reported to Medicare.

CMS Ex. 3 at 1 (emphasis in original).

In an undated letter, Petitioner requested reconsideration of the February 8, 2016 determination. CMS Ex. 2. In his request for reconsideration, Petitioner did not deny that his medical license had been suspended by the state medical board. Rather, Petitioner explained that he was unaware of the requirement to report his license suspension. Petitioner conceded that he knew that “ignorance of the law is no excuse” and stated that “making such a report is a legal requirement, but please know there was no intent to deceive or do anything fraudulent.” CMS Ex. 2.

In a May 13, 2016 reconsidered determination, Noridian informed Petitioner that his Medicare enrollment had been revoked pursuant to 42 C.F.R. § 424.535(a)(9) based on his failure to report his October 1-31, 2015 license suspension within 30 days. CMS Ex. 1 at 1. The letter notified Petitioner that he may request further review by an administrative law judge. CMS Ex. 1 at 3.

Petitioner filed a request for hearing dated June 6, 2016, that the Civil Remedies Division received on June 15, 2016. On June 30, 2016, I issued an Acknowledgment and Pre-Hearing Order (Order) directing the parties to file pre-hearing exchanges, consisting of a brief by CMS and a response brief by Petitioner, along with supporting evidence, in accordance with specific requirements and deadlines.

CMS filed a pre-hearing brief and motion for summary judgment (CMS Brief), along with five exhibits (CMS Exs. 1-5). Petitioner submitted a pre-hearing brief (P. Brief) and three exhibits.¹ (P. Exs. 1-3). I admit the parties’ briefs, along with CMS Exs. 1-5 and P. Exs. 1-3 into the record.

¹ Petitioner’s exhibits are not compliant with the identification, marking, and pagination requirements set forth in the Order. I have admitted Petitioner’s exhibits as follows: Exhibit 1 - blank Form CMS-460 (Medicare Participating Physician or Supplier

Neither party has submitted written direct testimony, and it is therefore unnecessary to convene a hearing for the purpose of cross-examination of any witnesses. *See* Order §§ 8-10. The record is closed, and the case is ready for a decision on the merits.²

II. Issue

Whether CMS has a legal basis to revoke Petitioner’s Medicare enrollment pursuant to 42 C.F.R. § 424.535 (a)(9) based on his failure to comply with reporting requirements.

III. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 498.3(b)(17), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

IV. Findings of Fact, Conclusions of Law, and Analysis³

As a physician, Petitioner is 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, a supplier must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. CMS may revoke a supplier’s enrollment and billing privileges for any reason stated in 42 C.F.R. § 424.535(a).

CMS may revoke a supplier’s enrollment based on the supplier’s failure to timely report a final adverse action, as is set forth in 42 C.F.R. § 424.535(a)(9):

(9) Failure to report. The provider or supplier did not comply with the reporting requirements specified in §424.516(d)(1)(ii) and (iii) of this subpart.

Pursuant to 42 C.F.R. § 424.516(d)(1)(ii), physicians *must* report “[a]ny adverse legal action” within 30 days of the reportable event, and 42 C.F.R. § 424.502 (Definitions) defines a final adverse action to include “[s]uspension or revocation of a license to provide health care by any State licensing authority.”

Agreement); Exhibit 2 - CMS fact sheet for physicians regarding open payments; and Exhibit 3 - blank sample Medicare private contract.

² As an in-person hearing to cross-examine witnesses is not necessary, it is unnecessary to further address CMS’s motion for summary disposition.

³ My numbered findings of fact and conclusions of law are set forth in italics and bold font.

1. In a December 1, 2015 decision that became effective December 31, 2015, the Medical Board of California imposed on Petitioner a 30-day suspension from the practice of medicine.

Petitioner, with the assistance of counsel, entered into a stipulated settlement and disciplinary order with the state medical board in July 2015. CMS Ex. 4 at 14-15. The state medical board adopted the stipulated settlement and disciplinary order on December 1, 2015, and the decision and order became effective on December 31, 2015. CMS Ex. 4 at 1. Petitioner acknowledged that the charges and allegations against him, if proven at a hearing, would constitute cause for imposing discipline. CMS Ex. 4 at 3-4. The state medical board's accusation document, filed on May 13, 2013, charged that Petitioner committed gross negligence, repeatedly committed negligent acts, prescribed prescription drugs or controlled substances to addicts, and repeatedly prescribed excessive amounts of controlled substances to patients. CMS Ex. 4 at 17-38.

The disciplinary order directed the following, in pertinent part:

IT IS HEREBY ORDERED that [the] Physician's and Surgeon's Certificate . . . is revoked.⁴ However, the revocation is stayed and [Petitioner] is placed on probation for seven (7) years on the following terms and conditions.

1. **SUSPENSION**. As part of probation, Petitioner is suspended from the practice of medicine for 30 days beginning the sixteenth (16th) day after the effective date of this decision, but no sooner than October 1, 2015.

CMS Ex. 4 at 5. In his brief, Petitioner admits that he was suspended from the practice of medicine for 30 days. P. Brief. Petitioner further explained that his suspension "was for a one month period and was served in October 2015 but the final Medical Board of California decision was not rendered until December of last year." P. Brief.

2. Petitioner was required to report his license suspension to CMS, through its contractor, within 30 days.

Pursuant to 42 C.F.R. § 424.502, a suspension or revocation of a license to provide health care by a state licensing authority is a final adverse action. A physician must report any adverse legal action within 30 days. 42 C.F.R. § 424.516(d)(1)(ii).

⁴ The reconsidered determination does not address whether it was necessary for Petitioner to report that his medical license was revoked (with the revocation stayed while he continued practicing medicine in a probationary status).

3. *Petitioner did not provide notice to CMS or its contractor within 30 days of the adverse legal action.*

As previously explained, the regulations at 42 C.F.R. § 424.516(d)(1)(ii) require that a physician report, within 30 days, any adverse legal action to his or her Medicare contractor and that the failure to timely report an adverse legal action subjects a physician to revocation of his or her Medicare billing privileges. 42 C.F.R. § 424.535(a)(9). Petitioner does not contend that he informed Noridian of his license suspension within the required reporting period of 30 days.⁵

The evidence indicates that Noridian issued a determination revoking Petitioner's Medicare enrollment and billing privileges prior to receiving any notice from Petitioner of his license suspension. Petitioner contends in his brief and supporting exhibits that he was "completely unaware of the requirement to report any license suspension or it would have been done promptly." P. Brief. Petitioner further argues that his attorney had no knowledge of the Medicare reporting requirement and that the state medical board did not address this requirement in its order. Petitioner further contends that it is an "unfair practice to deny privileges to providers for violating a rule that is not common knowledge," and that the documents he submitted as exhibits demonstrate that he was not on notice of the reporting requirement. P. Brief.

While I need not assess the sincerity of Petitioner's explanation that he was unaware of the reporting requirement, Petitioner nonetheless was obligated to report his license suspension, and he cannot escape responsibility for his failure to report the suspension within the 30-day period.⁶ Petitioner is responsible for knowing the rules pertaining to Medicare suppliers, and the state medical board had no obligation to inform him that he would be required to report the license suspension. The regulation places the burden upon the Medicare participant to report "[a]ny adverse legal action," and there are no exceptions to this requirement provided in 42 C.F.R. § 424.516(d) based on a supplier's ignorance of his or her obligations. Further, section 424.516(d)(1)(ii) requires a supplier to report *any* adverse legal action, even if it is not a final adverse action. *Akram A. Ismail*, DAB No. 2429 at 10-11 (2011). Therefore, I conclude that Petitioner failed to notify Noridian of an adverse legal action within 30 days as required, and that this failure serves as a legitimate basis for Noridian to revoke his Medicare enrollment and billing privileges.

⁵ Petitioner also failed to report the 30-day license suspension within 30 days of the December 31, 2015 effective date of the December 1, 2015 order and decision.

⁶ The record contains a Form CMS-855I, submitted by Petitioner in June 2014, that documents he "agreed to notify the Medicare contractor of a change of ownership, practice location, and/or Final Adverse Action within 30 days of the reportable event." CMS Ex. 5 at 26.

Petitioner otherwise does not challenge the effective date of the revocation or the duration of the re-enrollment bar, and therefore, I need not address those issues.

V. Conclusion

For the reasons explained above, I affirm CMS's determination revoking Petitioner's Medicare enrollment and billing privileges.

_____/s/_____
Leslie C. Rogall
Administrative Law Judge