

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Sitaramakrishna Kothalanka, M.D.
(OI File No. H-16-41783-9),

Petitioner,

v.

The Inspector General.

Docket No. C-17-138

Decision No. CR4818

Date: March 27, 2017

DECISION

Petitioner, Sitaramakrishna Kothalanka, was a physician, licensed to practice in the State of New Mexico. The New Mexico Medical Board revoked his license after finding him guilty of a long list of serious infractions, including “unprofessional or dishonorable conduct.” Thereafter, pursuant to section 1128(b)(4) of the Social Security Act, the Inspector General (IG) excluded him from participating in Medicare, Medicaid, and all federal health care programs at least until he regains his license. Petitioner appeals the IG exclusion.

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

Background

In a letter dated September 30, 2016, the IG advised Petitioner Kothalanka that, because the New Mexico Medical Board revoked his license to practice medicine “for reasons bearing on [his] professional competence, professional performance, or financial

integrity,” the IG was excluding him from participating in Medicare, Medicaid, and all federal health care programs. He would not be eligible for reinstatement until he regained his medical 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.). With his brief, the IG submitted twelve exhibits (IG Exs. 1-12). The IG also submitted a reply brief. In the absence of any objections, I admit into evidence IG Exs. 1-12.

Neither party asserts that an in-person hearing is necessary, and neither has presented the written testimony of any witness. IG Br. at 10; P. Br.

Discussion

*Because the New Mexico medical board revoked Petitioner Kothalanka’s license to practice medicine for reasons bearing on his professional competence or performance, the IG appropriately excluded him 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Health and Human Services to exclude from program participation an individual whose license to provide health care has been revoked for reasons bearing on his professional competence, professional performance, or financial integrity. Act § 1128(b)(4); *accord* 42 C.F.R. § 1001.501(a).

Here, the New Mexico Medical Board revoked Petitioner Kothalanka’s medical license effective August 7, 2014, incorporating its hearing officer’s findings. IG Ex. 7. Among those findings:

- In 2010, Petitioner’s employer, a medical center in New Mexico, investigated him and suspended his surgical privileges for his repeated failure to provide sufficient post-operative care to his patients. IG Ex. 6 at 7 (¶ 37).
- A second New Mexico employer, a hospital, restricted Petitioner’s surgical privileges based on concerns about the care he provided a surgical patient who died post-surgery. The hospital found that Petitioner Kothalanka fabricated the patient’s history and physical. IG Ex. 6 at 7-8 (¶¶ 39, 40).

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

- Another New Mexico hospital revoked Petitioner’s surgical privileges after a fair hearing panel determined that his performance did not meet the standard of care in four of the cases it reviewed. The panel cited a “complete lack” of pre-surgical history and physical for some of the patients. It found that Petitioner did not perform thorough assessments, lacked insight into the standard of care, and lacked insight into the critical care management of patients. IG Ex. 6 at 9 (¶¶ 44-47).
- Petitioner Kothalanka reported five medical malpractice settlements, including three involving patient fatalities. IG Ex. 6 at 9 (¶ 48).
- Petitioner Kothalanka did not, as a practice, read nurses’ notes nor inquire about his patient’s pre-operative condition. IG Ex. 6 at 10 (¶ 51).
- Petitioner Kothalanka provided inaccurate information to a medical group assessing his competence and to his hospital employers. IG Ex. 6 at 11-12 (¶¶ 52-60).
- Petitioner did not report restrictions on his clinical privileges by his second New Mexico employer and delayed reporting suspension of his privileges by the third employer. CMS Ex. 6 at 13 (¶¶ 62-64).

The hearing officer (and therefore the licensing board) concluded that Petitioner violated various provisions of New Mexico’s Medical Practice Act. IG Ex. 6 at 13-15.

The parties agree that the licensing board suspended Petitioner Kothalanka’s license for reasons bearing on his professional competence or professional performance. IG Br. at 4-8; P. Br. at 1.

Petitioner Kothalanka has no defense. He concedes that the IG has the authority to exclude him but claims that the New Mexico Board might reinstate his license. He anticipates that a hearing could occur as early as April 2017 and argues that “based on principles of judicial economy,” I should withhold judgment in this matter. P. Br. at 1-2. In Petitioner’s view, the IG must reinstate his program participation if his license is returned.

That Petitioner’s license may be reinstated is not a legitimate reason for any delay in resolving this case. The statute and regulations are straight-forward. Because Petitioner’s medical license was revoked for reasons bearing on his professional competence or professional performance, I must affirm the exclusion. And I am bound to issue my decision within sixty days after final briefing has been completed. 42 C.F.R. § 1005.20(c).

Moreover, Petitioner is wrong in thinking that the return of his license guarantees his reinstatement. The regulations provide the IG may exclude him for *at least* the period during which his license is revoked. 42 C.F.R. § 1001.501(b)(1). The IG may lengthen the period of exclusion where:

- the acts that resulted in an individual’s license revocation had or could have had “a significant adverse physical, emotional or financial impact on one or more program beneficiaries or other individuals”;
- the individual has a documented history of criminal, civil, or administrative wrongdoing;
- the individual’s acts or similar acts have had a significant adverse impact on program financial integrity; or
- the individual has been subject to any other adverse action by any other federal, state, or local governmental agency or board, if the adverse action is based on the same set of circumstances that serve as the basis for imposing the exclusion.

42 C.F.R. § 1001.501(b)(2). Based on the factors underlying Petitioner’s license revocation and other factors, the IG may reasonably determine that Petitioner’s period of exclusion should be extended.² His reinstatement is therefore far from assured, no matter what the New Mexico licensing Board does.

² On June 13, 2016, the State of Florida revoked Petitioner’s license to practice medicine, citing the New Mexico Board’s actions. IG Exs. 8, 12. Further, Petitioner Kothalanka was licensed in New Jersey until 1999, when he pled “no contest” to allegations of “dishonesty, deception, fraud, and misrepresentation” related to billing issues with Medicare and Medicaid. He agreed not to renew his license nor to practice in New Jersey at any time. IG Ex. 6 at 4 (¶ 15).

Conclusion

Because his medical license was revoked for reasons bearing on his professional competence and professional performance, the IG is authorized to exclude Petitioner from participating in Medicare, Medicaid, and other federal health care programs. I therefore sustain the exclusion.

/s/
Carolyn Cozad Hughes
Administrative Law Judge