Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Angela R. Styles, M.D.,
(NPI No. 1760429039,
PTAN No. 5J776C609)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-513

Decision No. CR4977

Date: November 29, 2017

DECISION

Novitas Solutions (Novitas 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, Angela R. Styles, M.D., effective March 31, 2016. The revocation was based on the suspension of Petitioner's medical license by the Arkansas State Medical Board from March 14, 2016 through October 13, 2016, and Petitioner's failure to timely report her license suspension. For the reasons stated below, I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges. I also modify the effective date of Petitioner's revocation to March 14, 2016, the date her medical license was suspended.

I. Background and Procedural History

Petitioner, a physician, was enrolled as a supplier in the Medicare program. On March 14, 2016, the Arkansas State Medical Board ordered that Petitioner's medical license be suspended on an emergency basis, pending a disciplinary hearing. CMS Exhibit (CMS Ex.) 11 at 2-3. On October 7, 2016, Novitas sent Petitioner a letter informing her that her

Medicare privileges were being revoked, effective March 31, 2016, based on her noncompliance with Medicare requirements and because she did not provide timely notice of her license suspension. CMS Ex. 6 at 1. Specifically, Novitas provided the following explanation in its letter:

> 42 CFR [§]424.535(a)(1) – Not in Compliance with Medicare Requirements
>
> The Arkansas State Medical Board placed your license in a suspended status on March 31, 2016. By reason of this status, you are in noncompliance with the enrollment requirements for not being properly licensed.
>
> 42 CFR [§]424.535(a)(9) – Failure to Report Changes
>
> You failed to comply with the reporting requirement specified in 42 CFR [§] 424.516(d)(1)(ii), which pertains to the reporting of change in adverse actions, within 30 days of the reportable event.

CMS Ex. 6 at 1 (emphasis omitted). Novitas informed Petitioner that she would be barred from re-enrolling in the Medicare program for a period of three years, effective 30 days from the date of postmark of the letter. CMS Ex. 6 at 2. On October 13, 2016, the Arkansas State Medical Board issued an order lifting the suspension of Petitioner's medical license.[1] CMS Ex. 7.

On October 24, 2016, Petitioner submitted a letter, along with attachments, that Novitas treated as a corrective action plan (CAP) submission. CMS Exs. 7, 8. Novitas did not accept the CAP.[2] CMS Ex. 8 at 1.

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[1] Petitioner asserts that her medical license was reinstated on October 7, 2016. Petitioner Brief (P. Br.) at 2. In support, Petitioner submitted a "Detailed License Verification," which reports that meeting minutes documented that the Arkansas State Medical Board voted to lift the suspension of Petitioner's medical license at an October 7, 2016 hearing. P. Ex. 1 at 2. However, the Order lifting the suspension was not issued until October 13, 2016. CMS Ex. 7 at 6.

[2] Novitas correctly explained that "CAPs for revocations based on grounds other than § 424.535(a)(1) shall not be accepted." Novitas further stated that "[w]e have affirmed our revocation due to the fact that you continued to bill for Medicare services after your Arkansas License was suspended," yet it did not elaborate on this statement or cite to supporting evidence. CMS Ex. 8 at 1. Although Petitioner disputes this basis, it is irrelevant to the instant decision. Petitioner's Medicare enrollment and billing privileges were revoked pursuant to 42 C.F.R. § 424.535(a)(1) and (9). Novitas could not accept a

On December 7, 2016, Petitioner submitted a request for reconsideration. CMS Exs. 9, 12. On February 2, 2017, Novitas issued a reconsidered determination upholding the revocation of Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(1). CMS Ex. 1. Novitas explained that it was "unable to remove the revocation since [Petitioner's] Arkansas license had an emergency order of suspension . . . ." CMS Ex. 1 at 2. Novitas also explained that Petitioner did not report the emergency order of suspension within 30 days as required by 42 C.F.R. § 424.516(d)(1)(ii), and therefore, revocation was warranted pursuant to 42 C.F.R. § 424.535(a)(9). CMS Ex. 1 at 2.

Petitioner filed a timely request for hearing on March 24, 2017, that the Civil Remedies Division received on March 27, 2017. On April 6, 2017, 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 Br.), along with twelve exhibits (CMS Exs. 1-12). Petitioner submitted a pre-hearing brief (P. Br.) and ten exhibits (P. Exs. 1-10). As neither party has objected to any of the proposed exhibits, I admit all submitted exhibits.

Petitioner submitted a witness list in which she identified two witnesses and summarized their expected testimony. However, Petitioner did not submit written direct testimony, as directed in section 8 of my Order. In my Order, I informed the parties of the following with respect to direct testimony:

> A party must exchange as a proposed exhibit the complete, written direct testimony of any proposed witness. A witness statement must be submitted in the form of an affidavit made under oath or as a written declaration that the witness signs under penalty of perjury for false testimony. Written direct testimony may be used to establish the qualifications of a witness, offer evidence that is relevant, explain the contents of other exhibits, and render opinions. I will accept that witness' written direct testimony as a statement in lieu of in-person testimony.

Order, § 8. Although Petitioner has identified two witnesses and their expected testimony, she has not submitted written direct testimony of either witness as required by my Order. Order § 8; *see, e.g.*, *Lena Lasher, aka Lena Contang, aka Lena Congtang*,

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CAP for a revocation based on 42 C.F.R. § 424.535(a)(9) because it can only accept a CAP for a revocation based on 42 C.F.R. § 424.535(a)(1). *See* 42 C.F.R. § 405.809(a)(1). Regardless, and as I will discuss below, Petitioner is not entitled to review of the rejection of its CAP. *See* 42 C.F.R. §§ 498.3(b)(17), 498.5(*l*).

DAB No. 2800 at 4 (2017) (discussing that when neither party submits written direct testimony as directed, "no purpose would be served by holding an in-person hearing."). Consequently, 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.[3]

II. Issue

Whether CMS has a legal basis to revoke Petitioner's Medicare enrollment pursuant to 42 C.F.R. § 424.535(a)(1) and (9) based on Petitioner's noncompliance with Medicare requirements and her 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 Analysis[4]

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 or its contractor may revoke an enrolled supplier's enrollment and billing privileges for any reason listed in 42 C.F.R. § 424.535.

Pursuant to 42 C.F.R. § 424.535(a)(1), CMS is authorized to revoke a currently enrolled supplier's billing privileges if the supplier is determined to no longer meet the requirements for enrollment. Among the applicable requirements for a supplier to maintain enrollment is compliance with the applicable federal and state licensure requirements. 42 C.F.R. § 424.516(a)(2). A supplier who is a physician must be "legally authorized to practice by the State in which he or she performs the functions or actions, and . . . acting within the scope of his or her license." 42 C.F.R. § 410.20(b).

Pursuant to 42 C.F.R. § 424.535(a)(9), CMS may revoke Medicare enrollment and billing privileges when a supplier fails to comply with the reporting requirements in 42 C.F.R.

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

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

§ 424.516(d)(1)(ii), which requires that physicians report any adverse legal action within 30 days. Adverse legal actions include a "[s]uspension or revocation of a license to provide health care by any State licensing authority." 42 C.F.R. § 424.502.

If CMS revokes a supplier's Medicare billing privileges based on a license suspension, the revocation becomes effective on the date of the license suspension. 42 C.F.R. § 424.535(g). After a supplier's Medicare enrollment and billing privileges are revoked, the supplier is barred from re-enrolling in the Medicare program for one to three years. 42 C.F.R. § 424.535(c).

1. ***On March 14, 2016, the Arkansas State Medical Board issued an Emergency Order of Suspension of Petitioner's medical license, pending a disciplinary hearing.***

On March 14, 2016, the Arkansas State Medical Board issued an Emergency Order of Suspension of Petitioner's medical license, charging Petitioner with violations of the Medical Practices Act (Ark. Code Ann. § 17-95-409(a)(2)(j)). CMS Ex. 11 at 1. The suspension order indicated that Petitioner's medical license would be suspended, pending a disciplinary hearing. CMS Ex. 11 at 2-3.

2. ***Petitioner's medical license was suspended from March 14, 2016, through October 13, 2016.***

On October 13, 2016, the Arkansas State Medical Board issued a consent order lifting the suspension of Petitioner's medical license. CMS Ex. 7 at 4-6.

In her brief, Petitioner admits that she was suspended from the practice of medicine "for a period of approximately 6 months in 2016." P. Br. at 2. Petitioner therefore concedes that the Medical Board suspended her from the practice of medicine.

3. ***CMS has a legal basis to revoke Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(1) because Petitioner did not comply with the enrollment requirement of meeting the federal and state licensure provisions of 42 C.F.R. § 424.516(a)(2) due to not being licensed by her state as required by 42 C.F.R. § 410.20(b).***

Novitas was authorized to revoke Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(1), which states that CMS may revoke a supplier's Medicare billing privileges and any corresponding supplier agreement for noncompliance with enrollment requirements. Pursuant to 42 C.F.R. § 424.516(a)(2), a supplier must comply with federal and state licensure requirements, and a physician must be licensed by his or her state as required by 42 C.F.R. § 410.20(b). Petitioner does not dispute that she was not licensed to practice medicine between March 14, 2016 and October 13, 2016.

P. Br. at 2-3. Once Petitioner failed to meet the licensing requirement, a legitimate basis arose for CMS to revoke Petitioner's billing privileges for noncompliance with Medicare enrollment requirements. 42 C.F.R. § 424.535(a)(1).

Petitioner argues that her enrollment should not have been revoked because "by the time the initial notification letter from Novitas was sent, [her] license had already been ordered reinstated per [the Arkansas State Medical Board] minutes," citing *Akram A. Ismail, M.D.*, DAB No. 2429 (2011). P. Br. at 10. I acknowledge that at an October 7, 2016 hearing, the Medical Board voted to lift the suspension of Petitioner's medical license and issued a consent order to that effect on October 13, 2016. CMS Ex. 7 at 4-6. Novitas issued the revocation determination on October 7, 2016, the same day as the Medical Board hearing. CMS Ex. 6.

Regardless of the date that Petitioner's medical license was restored, she fails to recognize that her medical license was suspended for a period of more than six months, and therefore, during that period she did not comply with Medicare requirements. *See* 42 C.F.R. §§ 424.516(a)(2), 424.535(a)(1). Petitioner's reliance on *Akram A. Ismail, M.D.*, DAB No. 2429, is misplaced, as the *Ismail* decision does not stand for the proposition that a supplier's enrollment cannot be revoked as long as his or her license is reinstated prior to the issuance of a notice of revocation. In fact, Petitioner's interpretation of the *Ismail* decision is contrary to the plain language contained therein, as the Departmental Appeals Board (DAB) agreed with the ALJ's finding that a temporary suspension of a license rendered a supplier noncompliant with Medicare supplier requirements. *Akram A. Ismail, M.D.*, DAB No. 2429 at 8 (stating: "CMS may determine a supplier is out of compliance with Medicare enrollment requirements at any time" and that it is appropriate to look "at the immediate effect of [the] suspension rather than the possibility that the suspension may be lifted at some point.").

Further, Petitioner's erroneous belief that Medicare enrollment cannot be revoked so long as a medical license is reinstated prior to commencement of a revocation action would undoubtedly lead to an absurd result. For example, CMS or its contractor may not learn of a license suspension immediately, and it may take a significant number of weeks, or even months, to develop the case and issue an initial determination, let alone proceed through the entire administrative appeals process. Under Petitioner's flawed interpretation of 42 C.F.R. § 424.535(a)(1), any license suspension that resolves prior to the issuance of an initial determination, even many months later, cannot result in revocation. The regulations do not distinguish whether a physician's license is suspended for a day, weeks, or even months, but rather, give CMS, and in turn its contractors, the authority to revoke enrollment if a supplier fails to meet supplier requirements *at any time*. Petitioner did not meet enrollment requirements between March 14, 2016 and October 13, 2016, and the restoration of her medical license in October 2016 does not undo her more than six-month license suspension. Therefore, she was not in compliance with 42 C.F.R. §§ 424.516(a)(2), 410.20(b), and as a result, 42 C.F.R. § 424.535(a)(1).

Petitioner failed to meet the regulatory requirements, and revocation was appropriate. *See Akram A. Ismail*, DAB No. 2429 at 8; *see also Vijendra Dave*, DAB No. 2672 at 6 (2016) (noting that the petitioner had not disputed that CMS had legally sufficient grounds to revoke enrollment following issuance of an emergency order temporarily suspending a medical license).

Petitioner further asserts that Novitas erred in rejecting her CAP submission because her "CAP submission thus provided sufficient evidence that she was in compliance with the 424.535(a)(1) Medicare requirements." P. Br. at 3-4. Novitas did provide Petitioner with the opportunity to submit a CAP, despite the fact that her Medicare enrollment had been based on both 42 C.F.R. § 424.535(a)(1) and (9). CMS Ex. 6 at 1; 42 C.F.R. § 405.874(e); *but see* 42 C.F.R. § 405.809(a)(1) (stating a supplier may only submit a CAP for noncompliance with 42 C.F.R. § 424.535(a)(1)). Novitas informed Petitioner, on November 7, 2016, that it did not accept the CAP because the revocation was based on grounds other than 42 C.F.R. § 424.535(a)(1). CMS Ex. 8 at 1. Even though, as previously explained, Novitas did not elaborate on its rationale, it was correct that revocation was based on grounds other than 42 C.F.R. § 424.535(a)(1). The contractor's determination not to accept a CAP is not subject to appeal. 42 C.F.R. § 498.3(b)(listing matters that are initial determinations); 42 C.F.R. § 498.5(*l*) (limiting appeals to initial determinations); *DMS Imaging, Inc.*, DAB No. 2313 at 8 (2010) (DAB determination that "the ALJ correctly found that, under section 405.874(e), a contractor's refusal to reinstate a supplier's billing privileges on the basis of its CAP is not an initial determination, as that term is used in Part 498, and, therefore, the sole issue before him was 'whether a basis existed to terminate [DMS's] enrollment as of the point in time when [WPS] determined it to be deficient.'").

4. Petitioner was required to report her 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).

5. 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 allege that she reported her license suspension within 30 days, nor does she point to evidence that she did so. However, Petitioner asserts that her staff

contacted a Medicare representative to advise Medicare about the suspension of her medical license "within the timeframe allowed by regulation." P. Br. at 5. Petitioner's office manager was directed by the Medicare representative to complete a Form CMS-855I, which was delegated to a third party billing company. P. Br. at 5. Petitioner asserts that although she "honestly believed that [the billing company] timely submitted the form to Novitas," the billing company failed to do so. P. Br. at 5.

Petitioner's flawed assumption that her billing company would notify Novitas on her behalf does not relieve her of the duty to report under the regulation. Petitioner cites to no statute, regulation, or CMS policy that permits an enrolled supplier to avoid enforcement of enrollment requirements based on the purported failure of an employee or an agent. Petitioner was obligated to report her license suspension, and she cannot escape responsibility for her failure to report the suspension within the 30-day period by shifting responsibility and liability by contracting with a billing agent. Further, Petitioner would have signed the aforementioned Form CMS-855I form informing Novitas and CMS of the license suspension, so she should have been aware of the status of this application. *See* Form CMS-855I (Section 15, Certification Statement ("As an individual practitioner, you are the only person who can sign this application. The authority to sign the application on your behalf may not be delegated to any other person."), *https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms855i.pdf* (last visited November 16, 2017).

Accordingly, I conclude that Petitioner failed to report within 30 days the suspension of her Arkansas medical license in violation of 42 C.F.R. § 424.516(d)(1)(ii), which is a basis for revocation pursuant to 42 C.F.R. § 424.535(a)(9).

My determination is not premised on whether CMS's action was required, but rather, whether CMS or its contractor has a "legal basis" for the revocation action. Based on Petitioner's license suspension and failure to timely report the license suspension, CMS has a legal basis for revocation. *Letantia Bussell, M.D.*, DAB No. 2196 at 10 (2008); *see Abdul Razzaque Ahmed, M.D.*, DAB No. 2261 at 19 (2008), *aff'd*, *Ahmed v. Sebelius*, 710 F. Supp. 2nd 167 (D. Mass. 2010) (stating if CMS establishes that the regulatory elements necessary for revocation are satisfied, an ALJ may not substitute his or her "discretion for that of CMS in determining whether revocation is appropriate under the circumstances.").

6. The effective date of revocation is March 14, 2016.

The effective date of revocation is determined pursuant to 42 C.F.R. § 424.535(g), which provides:

> (g) *Effective date of revocation.* Revocation becomes effective 30 days after CMS or the CMS contractor mails notice of its determination to the

> provider or supplier, except if the revocation is based on Federal exclusion or debarment, felony conviction, license suspension or revocation, or the practice location is determined by CMS or its contract not to be operational. When a revocation is based on a Federal exclusion or debarment, felony conviction, license suspension or revocation, or the practice location is determined by CMS or its contractor not to be operations, the revocation is effective with the date of exclusion or debarment, felony conviction, license suspension or revocation, or the date that CMS or its contractor determined that the provider or supplier was no longer operational.

42 C.F.R. § 424.535(g). The evidence demonstrates that Petitioner's medical license was suspended effective March 14, 2016.[5] CMS Ex. 11. Although Novitas determined that the effective date of revocation should be March 31, 2016, the effective date of revocation is properly March 14, 2016. CMS Exs. 1, 6; 42 C.F.R. § 424.535(g).

7. The three year length of the re-enrollment bar is not reviewable.

The DAB has explained that "CMS's determination regarding the duration of the re-enrollment bar is not reviewable." *Vijendra Dave, M.D.*, DAB No. 2672 at 11. The DAB explained that "the only CMS actions subject to appeal under Part 498 are the types of initial determinations specified in section 498.3(b)." *Id.* The DAB further explained that "[t]he determinations specified in section 498.3(b) do not, under any reasonable interpretation of the regulation's text, include CMS decisions regarding the severity of the basis for revocation or the duration of a revoked supplier's re-enrollment bar." *Id.* The DAB discussed that a review of the rulemaking history showed that CMS did not intend to "permit administrative appeals of the length of a re-enrollment bar." *Id.* I have no authority to review this issue, and I do not disturb the three-year re-enrollment bar.

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[5] As previously discussed, the initial determination and the reconsidered determination established the revocation date as March 31, 2016. CMS Ex. 1 at 1; CMS Ex. 6 at 1. CMS contended in its brief that the date of the license suspension was March 14, 2016. CMS Br. at 2, 5; *see* CMS Ex. 7 at 4 (Order lifting suspension noting that suspension went into effect on March 14, 2016); CMS Ex. 11 (Order imposing suspension, dated March 14, 2016, and providing no other effective date). While Petitioner disputed CMS's characterization of the Medical Board's order, she did not dispute CMS's assertion that the effective date of her license suspension was March 14, 2016.

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