

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Departmental Appeals Board

Civil Remedies Division

In the Case of:)	
)	
Walter J. Mikolinski, Jr.,)	DATE: August 8, 1989
)	
Petitioner,)	
)	
- v. -)	Docket No. C-83
)	
The Inspector General.)	DECISION CR 37
)	

DECISION OF ADMINISTRATIVE LAW JUDGE
ON MOTIONS FOR SUMMARY DISPOSITION

The Inspector General (the I.G.) notified Petitioner on December 9, 1988 that he was being excluded from participation in Medicare and State health care programs.¹ The I.G. told Petitioner that his exclusions were due to the fact that his license to practice pharmacy in the State of Massachusetts had been suspended by that State's Board of Registration in Pharmacy (Pharmacy Board). The I.G. asserted that the exclusions were authorized by section 1128(b)(4) of the Social Security Act, 42 U.S.C. 1320a-7(b)(4). Petitioner was advised that the exclusions would remain in effect until such time as Petitioner obtained a valid license to practice pharmacy in the State of Massachusetts. The I.G. told Petitioner that when he obtained a valid license, he had the right to apply for reinstatement to the Medicare and Medicaid programs.

Petitioner timely requested a hearing, and the matter was assigned to me for hearing and decision. I held a prehearing conference on February 9, 1989. The parties

¹ "State health care program" is defined by section 1128(h) of the Social Security Act, 42 U.S.C. 1320a-7(h), to include any State Plan approved under Title XIX of the Act (such as Medicaid). I use the term "Medicaid" hereafter to represent all State health care programs from which Petitioner was excluded.

advised me that they believed the case could be disposed of on a stipulated record, and on motions for summary disposition. I issued a prehearing Order on February 21, 1989, which established a schedule for the parties to agree to stipulations and file motions for summary disposition. Stipulations of fact were timely filed pursuant to this Order, and each party moved for summary disposition. I held oral argument on the motions in Washington, D.C., on June 6, 1989. I invited the parties to file postargument briefs and each party availed himself of this opportunity.

I have considered the parties' arguments, the stipulated facts, and applicable law. I conclude that the I.G. lawfully excluded Petitioner from participating in Medicare and lawfully directed that he be excluded from participating in Medicaid. 42 U.S.C. 1320a-7(b)(4)(A). I conclude further that the exclusions imposed and directed by the I.G. are unreasonable to the extent that they condition Petitioner's reinstatement as a participating nursing home proprietor on his passing a pharmacy law examination with a score of no less than 75 percent, or on maintaining continuing education credits in pharmacy. I conclude that I have authority pursuant to 42 U.S.C. 405(b) to modify the exclusions imposed and directed by the I.G. Therefore, I modify the exclusions in this case to permit Petitioner to apply for reinstatement as a participating nursing home proprietor after completion of an exclusion term of two years. I find the exclusions to be reasonable in all other respects.

ISSUES

The issues in this case are whether:

1. Petitioner's license to provide health care was revoked or suspended by a State licensing authority for reasons bearing on his professional competence, professional performance, or financial integrity;
2. the I.G. lawfully excluded Petitioner from participating in the Medicare program and lawfully directed that Petitioner be excluded from participating in Medicaid;
3. the length of the exclusions imposed and directed against Petitioner from participating in Medicare and Medicaid as a nursing home proprietor is unreasonable;

4. I have authority to modify the terms of the exclusions imposed and directed against Petitioner; and

5. the exclusions imposed and directed against Petitioner from participating in Medicare and Medicaid should be modified to permit Petitioner to apply for reinstatement as a participant after a two-year period.

APPLICABLE LAW

1. Section 1128(a) of the Social Security Act, 42 U.S.C. 1320a-7;

2. Section 205(b) of the Social Security Act, 42 U.S.C. 405(b).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner is a registered pharmacist in the State of Massachusetts. Stip Ex. 6.²

² The parties' stipulations, stipulated exhibits, memoranda, and the transcript of oral argument will be cited as follows:

Stipulation	Stip. (number)
Stipulated Exhibit	Stip. Ex. (number)
Memorandum in Support of the I.G.'s Motion for Summary Disposition	I.G.'s Memorandum at (page)
Petitioner's Memorandum in Support of Summary Disposition	P.'s Memorandum at (page)
I.G.'s Response to Petitioner's Motion	I.G.'s Response at (page)
Petitioner's Response to I.G.'s Motion	P.'s Response at (page)
I.G.'s Memorandum on Issues Raised in June 6, 1989 Prehearing Order	I.G.'s Supp. Memorandum at (page)
P.'s Supplemental Memorandum	P.'s Supp. Memorandum at (page)
Transcript	Tr. at (page)

2. On August 22, 1986, Petitioner was indicted in Massachusetts State court for receiving stolen property in the form of pharmaceuticals stolen from Massachusetts General Hospital. Stip. Ex. 1.

3. On April 13, 1988, Petitioner pleaded guilty to receiving stolen property. Stip. Ex. 3.

4. In his guilty plea Petitioner admitted that he had paid cash to employees of Massachusetts General Hospital to receive stolen pharmaceuticals from them. Stip. Ex. 3.

5. In his guilty plea Petitioner admitted that he regularly received stolen pharmaceuticals. Stip. Ex. 3.

6. Petitioner agreed to pay restitution to Massachusetts General Hospital in the amount of \$25,000.00. Stip. Ex. 3.

7. As a consequence of his guilty plea, Petitioner received a suspended prison sentence and was placed on probation for two years. Stip. Ex. 4.

8. Petitioner was also sentenced to pay \$15,000.00 as costs for investigation of his case. Stip. Ex. 4.

9. On September 20, 1988, the Pharmacy Board issued an Order to Show Cause against Petitioner. Stip. Ex. 6.

10. On September 26, 1988, the Pharmacy Board issued a Decision and Order in Petitioner's case. Stip. Ex. 6.

11. The Pharmacy Board found that Petitioner had violated a state law by knowingly possessing, with intent to distribute, a Class E Controlled Substance. Stip. Ex. 6.

12. The Pharmacy Board found that Petitioner had conspired to divert drugs from the Massachusetts General Hospital. Stip. Ex. 6.

13. The Pharmacy Board found that Petitioner had not at all times conducted his professional activities in conformity with federal, state, and municipal laws, ordinances and regulations. Stip. Ex. 6.

14. The Pharmacy Board found that its findings, as enumerated in Findings 11-13, established that Petitioner had committed gross misconduct in the practice of pharmacy. Stip. Ex. 6.

15. The Pharmacy Board suspended Petitioner's pharmacy license for a two year period, effective beginning September 26, 1988. Stip. Ex. 6.

16. The Pharmacy Board directed Petitioner to maintain his continuing education requirements as a pharmacist during the suspension period. Stip. Ex. 6.

17. The Pharmacy Board conditioned reinstatement of Petitioner's pharmacy license on his taking a pharmacy law examination and passing with a grade of no less than 75 percent. Stip. Ex. 6.

18. Petitioner did not appeal the Board's Order. Stip. 21.

19. Petitioner is a stockholder in corporations which own and operate nursing homes. Stip. Ex. 3.

20. Petitioner's license to provide health care was revoked or suspended by a State licensing authority for reasons bearing on his professional competence, professional performance, or financial integrity. Stip. Ex. 6; Findings 10-17; 42 U.S.C. 1320a-7(b)(4)(A).

21. On December 9, 1988, the I.G. excluded Petitioner from participating in Medicare and directed that he be excluded from participating in Medicaid. Stip. Ex. 13.

22. The Secretary of Health and Human Services (the Secretary) delegated to the I.G. the authority to determine, impose, and direct exclusions pursuant to section 1128 of the Social Security Act. 48 Fed. Reg. 21662, May 13, 1983.

23. The I.G. had discretion to exclude Petitioner from participating in Medicare and to direct his exclusion from participation in Medicaid for all items or services for which he may have claimed reimbursement pursuant to these programs. 42 U.S.C. 1320a-7(b)(4)(A).

24. The I.G.'s discretion to exclude Petitioner from participating in Medicare and to direct his exclusion from participating in Medicaid is not limited to his participation as a pharmacist. 42 U.S.C. 1320a-7(b).

25. The length of the exclusions imposed and directed by the I.G. against Petitioner is reasonable insofar as it applies to Petitioner's participation as a

pharmacist in the Medicare and State health care programs. 42 U.S.C. 1320a-7(b)(4)(A).

26. The length of the exclusions imposed and directed by the I.G. against Petitioner is not reasonable insofar as it applies to Petitioner's participation as a nursing home operator, administrator, or employee. See 42 U.S.C. 1320a-7(b)(4)(A).

27. I have authority to modify the terms of the exclusions imposed and directed by the I.G. against Petitioner. 42 U.S.C. 405(b).

28. Two-year exclusions against Petitioner from participating in Medicare and Medicaid as a nursing home operator, administrator, or employee are reasonable in this case. See Finding 24; see 42 U.S.C. 1320a-7(b)(4)(A).

ANALYSIS

There are no disputed issues of material fact in this case, the parties having entered stipulations as to those facts which they believe to be relevant to their respective positions. Therefore, the issues to be resolved involve applications of law to the facts of the case.

The I.G. contends that he is entitled to summary disposition on all issues. He asserts that Petitioner had his license to practice pharmacy suspended by a state licensing board for reasons having to do with Petitioner's professional competence, professional performance, or financial integrity. Therefore, according to the I.G., he had discretion to exclude Petitioner from participating in the Medicare program and to direct his exclusion from participation in Medicaid, pursuant to 42 U.S.C. 1320a-7(b)(4)(A).

The I.G. argues that the length of Petitioner's exclusions, which coincide with the terms of his pharmacy license suspension, is reasonable because it takes into account the behavior engaged in by Petitioner which occasioned his license suspension, and other relevant facts.

Petitioner argues that the Pharmacy Board failed to articulate reasons for Petitioner's license suspension which establish that Petitioner was suspended for reasons having to do with Petitioner's professional competence, professional performance, or financial integrity. Tr. at

29-30. Therefore, according to Petitioner, there exists no lawful basis to exclude him under 42 U.S.C. 1320a-7.

Petitioner also contends that if the I.G. does have discretion to exclude him pursuant to 42 U.S.C. 1320a-7(b)(4)(A), such discretion extends only to reimbursement claims which Petitioner may submit as a pharmacist. Petitioner asserts that it is unreasonable to exclude him for services rendered in connection with his nursing home business based on suspension of Petitioner's license to practice pharmacy.

Finally, Petitioner argues that even if the I.G. may exclude Petitioner for reimbursement for all items or services under Medicare and Medicaid, the length of the exclusions imposed and directed against Petitioner by the I.G. are unreasonable as they apply to claims he may submit in connection with his nursing home business. Petitioner notes that his pharmacy license suspension will be effective until he completes certain continuing education courses and passes an examination in pharmacy law with a score of at least 75 percent. According to Petitioner, these conditions effectively make the license suspension an indefinite suspension, and thus have the effect of making indefinite Petitioner's exclusions from participation in Medicare and Medicaid. According to Petitioner, it is unfair to condition his exclusion as a nursing home operator on his satisfying requirements which he may never satisfy, and which are not related to his performance as a nursing home operator.

Both parties contend that, should I conclude that the exclusions imposed and directed against Petitioner are unreasonable in any respect, I have authority pursuant to 42 U.S.C. 405(b) to modify the terms of the exclusions.

1. Petitioner's license to provide health care was revoked or suspended by a State licensing authority for reasons bearing on his professional competence, professional performance, or financial integrity.

I disagree with Petitioner's contention that the I.G.'s determination to exclude Petitioner pursuant to 42 U.S.C. 1320a-7(b)(4) is not supported by the Pharmacy Board's Decision and Order. The Pharmacy Board's Decision and Order provides ample support for the conclusion that Petitioner's pharmacy license was suspended for reasons bearing on Petitioner's professional competence,

professional performance, or financial integrity.
Findings 10-17; Stip. Ex. 6.³

The Pharmacy Board concluded that Petitioner committed "gross misconduct" in the practice of pharmacy, and based this conclusion on three findings. They were that Petitioner had: (1) knowingly possessed, with intent to distribute, a class E controlled substance; (2) conspired to divert drugs from the Massachusetts General Hospital; and (3) failed to conduct his professional activities at all times in conformity with federal, state, and municipal laws, ordinances and/or regulations. Findings 11-13; Stip. Ex. 6. These findings constitute reasons for suspending Petitioner's pharmacy license which relate to Petitioner's professional performance. Therefore, the I.G. had discretion to exclude Petitioner pursuant to 42 U.S.C. 1320a-7(b)(4)(A).

Petitioner contends that it was unreasonable for the I.G. to base his exclusion determination on the Pharmacy Board's Decision and Order. According to Petitioner, the

³ The section of 42 U.S.C. 1320a-7 pursuant to which the I.G. excluded Petitioner from participation in the Medicare program and directed his exclusion from participation in any State health care program provides in relevant part:

(b) Permissive exclusion

The Secretary may exclude the following individuals and entities from participation in any program under subchapter XVIII of this chapter and may direct that the following individuals and entities be excluded from participation in any State health care program: . . .

(4) License revocation or suspension

Any individual or entity--

(A) whose license to provide health care has been revoked or suspended by any State licensing authority,
or who otherwise lost such a license, for reasons

bearing on the individual's or entity's professional competence, professional performance, or financial integrity,

I.G. was obligated to review the record underlying the Pharmacy Board's Decision and Order in order to determine whether the Pharmacy Board's decision was supported by that record. Tr. at 30.

The I.G.'s authority to impose and direct exclusions pursuant to 42 U.S.C. 1320a-7(b)(4)(A) is triggered by a state licensing board's revocation or suspension of a petitioner's license to provide health care. It is not a relevant argument that the Pharmacy Board's decision, on which the I.G.'s exclusion authority rests, is legally or factually deficient.⁴

Petitioner also contends that the I.G.'s exclusion determination amounts to an unlawful retroactive application of 42 U.S.C. 1320a-7(b)(4)(A) to the facts of his case. P.'s Memorandum at II. Petitioner premises this argument on his assertion that the conduct on which his license suspension was based "relates back" to January, 1983, and the fact that the exclusion law was revised by Congress to include section (b) in 1987. Petitioner also contends that, if the law is applied retroactively to his case, there are "grave due process" implications which would arise from that retroactive application. P.'s Memorandum at II.

It is unnecessary for me to decide whether the exclusion law may be applied retroactively in particular cases, because it is evident that it was not retroactively applied in this case. The Pharmacy Board issued its Decision and Order suspending Petitioner's pharmacy license on September 15, 1988, more than a year after Congress adopted the discretionary exclusion provisions contained in 42 U.S.C. 1320a-7(b). The I.G.'s authority to impose and direct exclusions against Petitioner arises from the Pharmacy Board's act of suspending Petitioner. Therefore, the act which gave the I.G. grounds to exclude Petitioner occurred after the date that Congress enacted statutory revisions.

⁴ That is not to suggest that the facts on which the suspension is based are irrelevant to the question of the reasonableness of the length of the exclusions imposed and directed by the I.G. It is certainly reasonable for the I.G., in determining the appropriate length of exclusions, to consider all facts which would establish a petitioner's trustworthiness as a participating provider of health care. Moreover, either party to an exclusion hearing may offer evidence on this issue. 42 U.S.C. 405(b); see 42 C.F.R. 1001.125, 1001.128.

2. The I.G. lawfully excluded Petitioner from participating in the Medicare program and lawfully directed that Petitioner be excluded from participating in Medicaid programs.

Petitioner's central argument is that the I.G. unreasonably imposed and directed exclusions against Petitioner in his capacity as a nursing home operator, based on the Board's suspending Petitioner's pharmacy license. Petitioner asserts that there exists no legal authority which permits the I.G. to take this action. See P.'s Memorandum at IA-C. Implicit in this contention is the argument that, at most, the I.G. only has authority to exclude Petitioner from receiving reimbursement for his services as a pharmacist. Petitioner also argues that evidence of Petitioner's misconduct in the practice of pharmacy provides no rational basis for the I.G. to impose and direct exclusions against Petitioner from receiving reimbursement as a nursing home operator. Id.

I disagree with both of these contentions. First, the exclusion law plainly permits the I.G. to impose and direct exclusions from reimbursement for any item or service that an excluded party may provide to a Medicare or Medicaid beneficiary. The first sentence of 42 U.S.C. 1320a-7(b) states that the Secretary has discretion in enumerated cases to impose exclusions from participation in "any program under subchapter XVIII" and to direct exclusions from participation in "Medicaid"

Moreover, the exclusion law's remedial purpose would be frustrated if the law were read to limit the I.G.'s authority to impose and direct exclusions under section (b)(4) to only those items or services which a party had been permitted to provide by his health care license, prior to the suspension or revocation of that license. The purpose of the exclusion law is to protect the Medicare and Medicaid funds, and individual beneficiaries of those funds, from individuals or entities who have been shown to be capable of either financial misconduct or mistreating beneficiaries. A party's propensity to engage in misconduct across the range of Medicare and Medicaid programs can, in appropriate cases, be inferred by evidence of his misconduct as to any one of those programs. Congress, therefore, intended the Secretary (and his delegate, the I.G.) to have discretion to fashion broad exclusions based on demonstrated misconduct under any program. Senate Report No. 100-109, at 6-8, July 14, 1987, reproduced in U.S. Code Cong. and Ad.

News, 100th Congress First Session 1987, Vol. 2, at 687-688.

That is not to suggest that the I.G. must exclude individuals or entities from participation in Medicare and Medicaid in all cases where exclusion is permitted by law. The I.G. has discretion to impose and direct broad exclusions in appropriate cases. The reasonableness of an exclusion depends on the facts of the case.

Second, I conclude that, based on the facts of this case, it was reasonable for the I.G. to impose and direct exclusions against Petitioner for reimbursement for all items or services he might provide under Medicare or Medicaid, including reimbursement for any services Petitioner might provide as a nursing home operator. The stipulated facts of this case establish that Petitioner's license suspension was based, in part, on Petitioner's conviction for receiving pharmaceuticals stolen from a hospital. Findings 3-5; 12. Petitioner's admitted unlawful conduct calls into question not only his honesty but his trustworthiness as a provider of services to Medicare and Medicaid beneficiaries -- not just as a pharmacist, but in any capacity.

3. The length of the exclusions imposed and directed against Petitioner from participating in Medicare and Medicaid as a nursing home proprietor is unreasonable.

The I.G. imposed and directed exclusions against Petitioner from participating in Medicare and Medicaid until such time as Petitioner's license to practice pharmacy in Massachusetts is restored. Finding 21. Restoration of Petitioner's pharmacy license is contingent on Petitioner satisfying the conditions of the Board's Decision and Order. These include requirements that Petitioner: (1) maintain his continuing pharmacy education requirements during the two-year suspension period; and (2) take and pass a pharmacy law examination with a grade of no less than 75 percent.

Petitioner does not dispute that it is rational for the I.G. to require him to regain his pharmacy license as a condition for restoring his participating status as a pharmacist. Tr. at 53. However, Petitioner contends that the State's conditions for Petitioner regaining his pharmacy license effectively render his suspension indefinite in term. And, according to Petitioner, it is unreasonable for the I.G. to condition Petitioner's reinstatement as a nursing home operator on an indefinite State suspension of Petitioner's pharmacy license-- particularly where the conditions for return of the

license have nothing to do with Petitioner's trustworthiness as a nursing home operator.

The I.G. does not directly refute these assertions. He tacitly concedes that the exclusions imposed and directed against Petitioner are of indefinite duration, but argues that Petitioner has not established that he will fail to comply with continuing education requirements, or fail to take the pharmacy law examination within the two year suspension period, and pass with a score of at least 75 percent. I.G.'s Supp. Memorandum at 8.

I conclude that the exclusions imposed and directed by the I.G. against Petitioner are of indefinite duration, and are unreasonable, insofar as they apply to Petitioner's participation in Medicare and Medicaid as a nursing home operator. Notwithstanding the I.G.'s assertions, there is no way to predict when, if at all, Petitioner might fulfill the continuing education and examination requirements of his license suspension.⁵ The continuing education and examination requirements have no rational relationship to the issue of when Petitioner might become trustworthy to operate nursing homes.

The evidence of this case establishes that Petitioner conspired to receive stolen pharmaceuticals. His conduct demonstrates intentional violation of State law. By his conduct, Petitioner established that he is an untrustworthy provider of Medicare and Medicaid services. It is reasonable for the I.G. to impose and direct exclusions against Petitioner for a sufficient period of time to assure that he will not engage in misconduct against trust funds or beneficiaries. Given the seriousness of Petitioner's misconduct, a two-year exclusion from participating as a nursing home operator is reasonable.

However, it is not reasonable for the I.G. to condition Petitioner's reinstatement as a provider of a particular service on Petitioner fulfilling conditions that are unrelated to his trustworthiness as a provider of that service. There is no evidence in the record of this proceeding to show that Petitioner will be a more

⁵ Any number of circumstances might make suspension extend past the two-year term. Petitioner might fail to attain a score of 75 percent on the pharmacy law examination. He might be prevented from completing continuing education requirements by accident or illness. Or, he might simply opt not to comply with these requirements.

trustworthy provider of nursing home services, by virtue of his having completed continuing education courses in pharmacy, and having passed a pharmacy law examination with a score of at least 75 percent. It is within the realm of reasonable possibility that Petitioner might never satisfy these conditions, and yet become a trustworthy individual.

4. I have authority to modify the length of the exclusions imposed and directed against Petitioner.

The exclusion law provides that an excluded party is entitled to a hearing as to his exclusions "to the same extent as is provided by" 42 U.S.C. 405(b). 42 U.S.C. 1320a-7(f)(1). Section 405(b) states that, in those cases where the Secretary provides a hearing with respect to a decision the Secretary has rendered, the Secretary:

"(S)hall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision." (Emphasis added.)

The Secretary delegated to Administrative Law Judges assigned to the Departmental Appeals Board the authority to conduct hearings and render decisions with respect to the imposition of civil remedies, including exclusions imposed and directed under 42 U.S.C. 1320a-7. 55 Fed. Reg. 25544, July 7, 1988. I conclude that my delegated authority includes authority to modify the term of exclusions in those cases where I decide that the exclusions are appropriate, but the I.G.'s determination is in some respect unreasonable.

5. The exclusions imposed and directed against Petitioner from participating in Medicare and Medicaid are modified to permit Petitioner to apply for reinstatement as a participant after a two-year period.

Given the seriousness of Petitioner's misconduct, it is reasonable to impose and direct exclusions against him from participating in Medicare and Medicaid for a substantial period of time. The only unreasonable aspect of the exclusions imposed and directed by the I.G., as they apply to Petitioner's participation as a nursing home operator, is that they are indefinite in duration and tie his reinstatement as a nursing home operator to his fulfilling conditions which are unrelated to the issue of his trustworthiness to operate nursing homes. Therefore, I modify the exclusions imposed and directed against Petitioner as follows.

Petitioner is excluded from participating as a nursing home operator in the Medicare and Medicaid for a two year period, beginning September 26, 1988. No payment may be made to Petitioner for any service for which he claims reimbursement as an employee, administrator, operator, or in any other capacity in connection with the operation of nursing homes. No payment may be made to any nursing home in which Petitioner serves as an employee, administrator, operator, or in any other capacity for any services that Petitioner furnishes on or after the effective date of the exclusions. No payment will be made to any nursing home wholly owned by Petitioner during the exclusion period. At the completion of the two year exclusion period, Petitioner may apply for reinstatement as a participating nursing home operator.

The exclusions originally imposed and directed by the I.G. against Petitioner are sustained insofar as they apply to any reimbursement Petitioner may seek for pharmacy services. They will remain in effect until Petitioner obtains a valid license to practice pharmacy in the State of Massachusetts. At such time, Petitioner may apply for reinstatement as a participating pharmacist.

The I.G. asserts that two nursing homes owned by Petitioner were convicted of criminal offenses related to the delivery of items or services under the Massachusetts Medicaid program. I.G.'s Supp. Memorandum at 9; Stip. Ex. 3. This decision does not preclude the I.G. from imposing and directing exclusions against these entities as may be mandated or permitted by law.

CONCLUSION

Based on the stipulated facts and the law, I conclude that the I.G. had authority to exclude Petitioner from participation in the Medicare program, and to direct his exclusion from participation in Medicaid, pursuant to 42 U.S.C. 1320a-7(b)(4)(A). I conclude further that the I.G. reasonably imposed exclusions against Petitioner from participating in all programs under Medicare and Medicaid.

I conclude that the term of the exclusions imposed and directed against Petitioner is reasonable as it applies to his participation as a pharmacist. However, I conclude that it is unreasonable as it applies to his participation as a nursing home operator, because it ties Petitioner's reinstatement to his fulfilling conditions

which are not reasonably related to his trustworthiness as a nursing home operator.

Therefore, I sustain the exclusions imposed and directed against Petitioner, except as modified in Part 5 of the Analysis section of this Decision.

/s/

Steven T. Kessel
Administrative Law Judge