Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Calvin Ramsey, M.D.,
(OI File Number 4-09-40469-9),

Petitioner

v.

The Inspector General.

Docket No. C-10-475

Decision No. CR2237

Date: September 7, 2010

DECISION

This matter is before me in review of the determination by the Inspector General (I.G.) to exclude Petitioner *pro se* Calvin Ramsey, M.D., from participation in Medicare, Medicaid, and all other federal health care programs. The I.G. relies on the discretionary authority to do so conveyed to him by section 1128(b)(4)(A) of the Social Security Act (Act), 42 U.S.C. § 1320a-7(b)(4)(A). The predicate for the I.G.'s action is the suspension of Petitioner's license to practice medicine in Mississippi. The I.G. has filed a Motion for Summary Disposition.

The undisputed material facts in this case support the I.G.'s imposition of the exclusion. The I.G. has set the period of exclusion to be concurrent with the period during which Petitioner's license to practice medicine in Mississippi remains suspended, the minimum period of exclusion required by law. For those reasons, I grant the I.G.'s Motion for Summary Disposition.

I. Procedural Background

Petitioner *pro se* Calvin Ramsey, M.D., is a physician. He was first licensed to practice medicine in the State of Mississippi in 1977. On November 7, 2007, the Federal Grand Jury sitting for the United States District Court for the Southern District of Mississippi charged Petitioner with two counts of Filing a False Tax Return in violation of 26 U.S.C. § 7206(1). Petitioner stood trial on those charges and was convicted as charged: on March 16, 2009, the District Court entered its Judgment of Conviction, sentenced Petitioner to a 27-month term of imprisonment to be followed by a year's term of probation, assessed costs against him, and ordered him to pay restitution of $232,117 to the Internal Revenue Service (IRS). On May 8, 2009, the Mississippi State Board of Medical Licensure (MSBML) entered its Consent Order indefinitely suspending Petitioner's license to practice medicine in Mississippi.

On January 29, 2010, the I.G. notified Petitioner that he was to be excluded from participation in Medicare, Medicaid, and all other federal health care programs until he should regain his license to practice medicine in Mississippi, based on the authority set out in section 1128(b)(4) of the Act. Petitioner perfected his appeal of the I.G.'s action by his *pro se* letter of February 14, 2010.

I held the prehearing conference required by 42 C.F.R. § 1005.6(a) by telephone on April 6, 2010. Petitioner participated from the facility where he is incarcerated. The Order of April 7, 2010 summarized the discussions held in the conference, and my Ruling of March 31, 2010 explained the activity in this case immediately prior to it. The conference and my Order of April 7, 2010 contemplated that this case could be resolved by summary disposition on the parties' briefs and documentary exhibits. The briefing schedule established by that Order has been revised several times, for reasons discussed below, before this record closed for purposes of 42 C.F.R. § 1005.20(c) on August 30, 2010.

As noted above, the schedule for the development of this case contemplated in the Order of April 7, 2010 has been revised several times. Most of the revisions have been in response to pleadings filed by Petitioner. It seems useful to review those pleadings very briefly here, and to summarize my rulings or other dispositions in response to them.

Petitioner filed his "Judicial Notice of Adjudicative Facts" on April 8, 2010, and filed his "Petitioner's Objection to Order and Schedule for Filing Briefs and Documentary Evidence" on April 13, 2010. The latter referred to the Order of April 7, 2010. I addressed those two pleadings in my Order of May 11, 2010, where they are discussed in detail. There was nothing in Petitioner's April 8, 2010 pleading of which I might properly take judicial notice pursuant to 42 C.F.R. § 1005.4(b)(11). Accordingly, I denied the relief Petitioner sought in that pleading. Insofar as it reflected Petitioner's continued efforts to gain a stay of these proceedings and for appointment of counsel, I

noted those efforts for purposes of Petitioner's preservation of his position in the record, but otherwise denied them. Petitioner's April 13, 2010 pleading continued to assert his right to the appointment of counsel, objected to being characterized as a *pro se* litigant, and objected generally to virtually all of the procedural and substantive content of the Order of April 7, 2010. Those objections were noted for purposes of Petitioner's preservation of his position in the record, but were otherwise overruled.

Petitioner filed three pleadings on May 21, 2010. They were "Petitioner's Affidavit Opposing Inspector General's Motion for Summary Disposition;" "Petitioner's Motion and Affidavit to Stay Consideration of Inspector General's Motion for Summary Disposition;" and "Motion to Strike Inspector General's Exhibits 1-5 Pursuant to Rule 56(e)." Petitioner's three pleadings contained very little of substance and a great volume of meaningless verbiage. I addressed them in my Order of June 21, 2010. For the reasons set out in detail there, I found and concluded that the pleadings advanced no arguments of merit and that their only purpose had been to delay the progress of this case. Having so found and so concluded, I denied the relief Petitioner sought in his three May 21, 2010 pleadings. I also reminded him of the importance of filing his Answer Brief and extended by approximately five weeks the deadline for his doing so.

Petitioner filed three pleadings between July 8 and July 12, 2010. They were Petitioner's "Motion to Recuse," dated July 8, 2010; "Petitioner's Motion in Response to the Inspector General's Brief-in-Chief," dated July 11, 2010; and "Petitioner's Affidavit of the Court's Bias and Prejudice Pursuant to 28 USCS § 144." I addressed and resolved them in my Ruling and Order of July 26, 2010. I received Petitioner's "Motion in Response to the Inspector General's Brief-in-Chief" as his Answer Brief on the merits of this case, and discussed in detail his "Motion to Recuse" and his Affidavit in support of it. As that discussion pointed out, the standard by which allegations of bias on the part of an Administrative Law Judge are to be evaluated is clear, and Petitioner's Motion and Affidavit fell short of it. I noted then, and I here repeat my observation, that Petitioner's "Motion to Recuse" and Affidavit appeared to be based solely on his dissatisfaction with procedures, rulings and orders that have frustrated his efforts to impede the speedy, orderly, and fair progress of this case. Accordingly, I denied his "Motion to Recuse."

In addition to the numerous pleadings Petitioner has filed in this case, he has also undertaken, in the United States Court of Appeals for the District of Columbia, a parallel action intended to bring this case to a halt. On or about April 16, 2010, he filed his "Emergency Motion for Stay of ALJ Proceedings, Appointment of Counsel and Issuance of Writ of Habeas Corpus" in that court, where it was docketed as No. 10-1084. Although "Petitioner's Response Brief" in this case, filed on August 22, 2010, asserts that the "Appellate Court has ordered that these proceedings be held in abeyance," that assertion is incorrect. By its Order *per curiam* of June 21, 2010 (which Petitioner attached to his Response Brief), that court on its own motion dismissed without prejudice Petitioner's petition for habeas corpus relief, construed Petitioner's motions for a stay and

for appointment of counsel as a petition for a writ of mandamus, and ordered that *they* be held in abeyance pending resolution of another matter before that court involving 28 U.S.C. § 1915(b). The second operant paragraph of that Order clearly contemplates that this case will proceed to initial decision by me, may proceed to final decision by the Departmental Appeals Board pursuant to 42 C.F.R. § 1005.21, and may ultimately proceed to judicial review in the appropriate federal district court as provided by 42 U.S.C. §§ 405(g) and 1320a-7(f)(1).

The evidentiary record on which I decide this case contains five exhibits. The I.G. has proffered I.G.'s Exhibits 1-5 (I.G. Exs. 1-5). Petitioner objected to the admission of these exhibits, but for the reasons set out in my Order of June 21, 2010, they have been admitted as designated. Petitioner has proffered no exhibits of his own *per se*, but I note the inclusion in the record before me, as I.G. Exs. 2 and 5, of copies of correspondence to which Petitioner refers in his pleading of April 8, 2010.

II. Issues

The issues before me are limited to those noted at 42 C.F.R. § 1001.2007(a)(1). In the specific context of this record, they are:

1. Whether the I.G. has a basis for excluding Petitioner from participating in Medicare, Medicaid, and all other federal health care programs pursuant to section 1128(b)(4)(A) of the Act; and

2. Whether the length of the exclusion is unreasonable.

The I.G.'s position on both issues is correct. Section 1128(b)(4)(A) of the Act supports Petitioner's exclusion from all federal health care programs, for his license to practice medicine in Mississippi has been suspended for reasons bearing on his financial integrity. Petitioner's exclusion during the period that his license to practice medicine in Mississippi remains suspended is the minimum period established by section 1128(c)(3)(E) of the Act, 42 U.S.C. § 1320a-7(c)(3)(E), and is therefore reasonable as a matter of law.

III. Controlling Statutes and Regulations

Section 1128(b)(4)(A) of the Act, 42 U.S.C. § 1320a-7(b)(4)(A), authorizes the exclusion from participation in Medicare, Medicaid, and all other federal health care programs of any individual or entity "whose license to provide health care has been revoked or suspended by any State licensing authority . . . for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity." The terms of section 1128(b)(4)(A) are restated in similar regulatory language at 42 C.F.R. § 1001.501(a)(1).

The terms of 42 C.F.R. § 1001.2007(d) provide that in exclusion appeals in this forum:

> When the exclusion is based on the existence of a criminal conviction or a civil judgment imposing liability by [a] Federal, State or local court, 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 conviction, civil judgment, or determination is not reviewable and the individual or entity may not collaterally attack it either on substantive or procedural grounds in this appeal.

An exclusion based on section 1128(b)(4)(A) of the Act is discretionary. If the I.G. exercises his discretion to proceed with the sanction, then the mandatory minimum period of exclusion to be imposed under section 1128(b)(4)(A) of the Act "shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered . . . ." Act, section 1128(c)(3)(E), 42 U.S.C. § 1320a-7(c)(3)(E). Regulatory language at 42 C.F.R. § 1001.501(b)(1) affirms the statutory provision.

IV. Findings and Conclusions

I find and conclude as follows:

1. On November 7, 2007, Petitioner was charged in the United States District Court for the Southern District of Mississippi with two counts of Filing a False Tax Return in violation of 26 U.S.C. § 7206(1). Petitioner stood trial on those charges and was convicted on both counts. I.G. Ex. 4.

2. On March 16, 2009, the District Court entered its Judgment of Conviction, sentenced Petitioner to a term of imprisonment to be followed by a term of probation, assessed costs against him, and ordered him to pay restitution of $232,117 to the IRS. I.G. Ex. 4.

3. On May 8, 2009, the MSBML entered its Consent Order indefinitely suspending Petitioner's license to practice medicine in Mississippi for reasons bearing on his financial integrity. The MSBML's Consent Order explicitly relied on Petitioner's conviction as the basis for its action. I.G. Ex. 3.

4. On January 29, 2010, the I.G. notified Petitioner that he was to be excluded from participation in Medicare, Medicaid, and all other federal health care programs until he should regain his license to practice medicine in Mississippi, based on the authority set out in section 1128(b)(4) of the Act. I.G. Ex. 1.

5. Petitioner timely perfected this appeal from the I.G.'s action by filing his *pro se* hearing request on February 14, 2010.

6. Because Petitioner's license to practice medicine in Mississippi was suspended for reasons bearing on his financial integrity, as set out in Findings 1-3 above, a basis exists for the I.G.'s exercise of his discretionary authority, pursuant to section 1128(b)(4)(A) of the Act, to exclude Petitioner from participation in Medicare, Medicaid, and all other federal health care programs.

7. The exclusion of Petitioner during the period that his license to practice medicine in Mississippi remains suspended is for the minimum period prescribed by law and is therefore as a matter of law not unreasonable. Act, section 1128(c)(3)(E); 42 C.F.R. § 1001.501(b)(1).

8. There are no remaining disputed issues of material fact and summary disposition is appropriate in this matter. *Michael J. Rosen, M.D.*, DAB No. 2096 (2007); *Thelma Walley*, DAB No. 1367 (1992); 42 C.F.R. § 1005.4(b)(12).

V. Discussion

Two essential elements must be proven in order to support an exclusion based on section 1128(b)(4)(A) of the Act. First, the I.G. must prove that the license to provide health care of the individual to be excluded has been revoked or suspended by a State licensing authority. Second, the I.G. must prove that the license was revoked or suspended for reasons bearing on the individual's professional competence, professional performance, or financial integrity. *Leonard R. Friedman, M.D.*, DAB No. 1281 (1991); *Mark C. Sorensen, M.D.*, DAB CR1664 (2007); *Thomas I. DeVol, Ph.D.*, DAB CR1652 (2007); *Sherry J. Cross*, DAB CR1575 (2007); *Michele R. Rodney*, DAB CR1332 (2005); *Edmund B. Eisnaugle, D.O.*, DAB CR1010 (2003); *Marcos U. Ramos, M.D.*, DAB CR788 (2001); *Allison Purtell, M.D.*, DAB CR781 (2001). The I.G.'s evidence establishes both essential elements conclusively.

Petitioner's license to practice medicine was suspended by the MSBML on May 8, 2009. I.G. Ex. 3. Petitioner does not deny that the MSBML proceedings took place, or that they resulted in the suspension of his license. Nevertheless, Petitioner does not concede the existence of this first essential element.

Petitioner's defense to the I.G.'s proof of this element is an attack on the validity of the MSBML's action. He claims that "Petitioner's license was suspended after he through duress, ill-convoluted advice from his previous criminal attorney and duress voluntarily surrendered his license." Petitioner's Response Brief (P. R. Br.) at 2. He adds that he has undertaken civil litigation in a Mississippi court to invalidate the MSBML's action.

This is not the forum in which that defense may be raised. Petitioner's argument constitutes a collateral attack on the MSBML's action, and the settled rule is that collateral attacks on the soundness or the validity of a state action are impermissible in this forum. *Judy Pederson Rogers and William Ernest Rogers*, DAB No. 2009 (2006); *Hassan M. Ibrahim, M.D.*, DAB No. 1613 (1997); *George Iturralde, M.D.*, DAB No. 1374 (1992); *Olufemi Okonuren, M.D.*, DAB No. 1319 (1992). Those cases are supported by the controlling regulation, 42 C.F.R. § 1001.2007(d). Nor is any civil action Petitioner may have filed against MSBML relevant here: the fact that he may be seeking judicial review of the suspension of his license has "no bearing" on this exclusion proceeding. *Joann Fletcher Cash*, DAB No. 1725, at 7 n.2 (2000); *see also Francisco Pagana*, DAB CR1654 (2007). Should the suspension of Petitioner's license be set aside, 42 C.F.R. § 1001.3005(a)(2) provides his remedy, but the availability of that remedy does not negate the I.G.'s proof of the first essential element. That element has been established.

The second essential element has been established as well. The MSBML's Consent Order explicitly recites Petitioner's conviction for filing false tax returns as its predicate, and specifically notes the $232,117 he has been ordered to pay the IRS. The Consent Order includes a finding that Petitioner's conviction "constitutes conviction of a felony or misdemeanor involving moral turpitude." I.G. Ex. 3, at 2. The Indictment on which Petitioner was tried and convicted asserts that he filed tax returns that "he did not believe to be true and correct" in that "as he then and there well knew and believed, he had gross receipts substantially in excess of the amounts reported." I.G. Ex. 4, at 7, 8. If the non-criminal failure to pay back taxes has a bearing on an individual's financial integrity, as in *Mark Baldwin, D.O.*, DAB CR614 (1999), and if the non-criminal failure to repay student loans has a bearing on an individual's financial integrity, as in *Mary E. Holt, R.N.*, DAB CR530 (1998), then it is impossible to argue that Petitioner's *crimen falsi* conviction, involving the deliberate concealment of very large sums of money for the purpose of avoiding paying income taxes on those sums, does not.

In his Response Brief, Petitioner appears to argue that the I.G. abused his discretion in deciding to proceed against him: "The Petitioner is challenging NOT ONLY the validity of the MSBML's decision but the capricious nature of this decision. It is a fact that the I.G. has on record, cases that involve surrender or loss of license by physicians with no resultant exclusion." P. R. Br. at 3. Whatever the facts of Petitioner's assertion about other cases, the fact in this case is that his license was suspended for reasons bearing on his financial integrity. That is all that the I.G. needs as a predicate for the exercise of his discretion to exclude Petitioner under section 1128(b)(4) of the Act. Once the I.G. has proven that there is that nexus of fact and law by which Petitioner became subject to exclusion, an ALJ is without jurisdiction to evaluate on any basis whatsoever the

propriety of the I.G.'s exercise of discretion in deciding to proceed with imposition of the exclusion. *Michael J. Rosen, M.D.*, DAB No. 2096; *Keith Michael Everman, D.C.*, DAB No. 1880 (2003); *Tracey Gates, R.N.*, DAB No. 1768 (2001); *Wayne E. Imber, M.D.*, DAB No. 1740 (2000); *see also* 42 C.F.R. § 1005.4(c)(5).

Two other matters raised obliquely in Petitioner's Response Brief deserve some discussion here. The first is his reference to the status of his conviction: "Yes, filing false returns is a serious matter which the Petitioner does not condone. It however is an illogical conclusion to infer that because an appellate process has not been fully adjudicated, then the Petitioner must be guilty; even though he may be proven innocent later." P. R. Br. at 3. The Consent Order may indeed rely on the conviction, but Petitioner's conviction was upheld on appeal nearly two months before he wrote the sentences quoted above. *United States v. Ramsey*, No. 09-60196 (5th Cir. June 24, 2010).

The second obliquely-raised matter is Petitioner's effort to bring his situation within the waiver-of-exclusion provisions of 42 C.F.R. § 1001.1801. P. R. Br. at 2. That provision applies to mandatory exclusions required by section 1128(a) of the Act, 42 U.S.C. § 1320a-7(a). It is irrelevant in this discretionary exclusion action authorized by section 1128(b)(4)(A).

Section 1128(c)(3)(E) of the Act requires that any period of exclusion based on section 1128(b)(4) must not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered. If, as here, the I.G. is authorized to impose an exclusion pursuant to section 1128(b)(4), that exclusion is reasonable as a matter of law if it is concurrent with the period during which the individual's license to provide health care is revoked, suspended, or surrendered. *Tracey Gates, R.N.*, DAB No. 1768. That is the period of exclusion the I.G. proposes in this case, and it is reasonable as a matter of law.

Petitioner appears here *pro se*, and in doing so has repeatedly pointed out that he is untrained in the law. Because of that fact I have taken additional care in reading his two briefs and all his other pleadings. In doing so, I have been guided by the Board's reminders that *pro se* litigants should be offered "some extra measure of consideration" in developing their records and their cases. *Louis Mathews*, DAB No. 1574 (1996); *Edward J. Petrus, Jr., M.D., et al.*, DAB No. 1264 (1991). I have searched them all for any arguments or contentions that might go beyond a collateral attack on the United States District Court and MSBML proceedings and raise a valid, relevant defense to the proposed exclusion. That search has been unproductive. I have found nothing that could be so construed.

Resolution of a case by summary disposition is appropriate when there are no disputed issues of material fact and when the undisputed facts, clear and not subject to conflicting interpretation, demonstrate that one party is entitled to judgment as a matter of law.

Michael J. Rosen, M.D., DAB No. 2096; *Thelma Walley*, DAB No. 1367. Summary disposition is authorized by the terms of 42 C.F.R. § 1005.4(b)(12). This forum looks to FED. R. CIV. P. 56 for guidance in applying that regulation. *Robert C. Greenwood*, DAB No. 1423 (1993); *Thelma Walley*, DAB No. 1367. The material facts in this case are undisputed, clear, and unambiguous, and support summary disposition as a matter of law.

VI. Conclusion

For the reasons set out above, the I.G.'s Motion for Summary Disposition should be, and it is, GRANTED. The I.G.'s exclusion of Petitioner Calvin Ramsey, M.D., from participation in Medicare, Medicaid, and all other federal health care programs is SUSTAINED, pursuant to the terms of section 1128(b)(4)(A) of the Act, 42 U.S.C. § 1320a-7(b)(4)(A). That exclusion remains in effect, by operation of section 1128(c)(3)(E) of the Act, 42 U.S.C. § 1320a-7(c)(3)(E), while his license to practice medicine in Mississippi remains suspended.

/s/
Richard J. Smith
Administrative Law Judge