Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Anthony Lynn Hester,
(O.I. No. 6-93-40136-9),

Petitioner,

v.

The Inspector General.

Docket No. C-11-671

Decision No. CR2529

Date: April 19, 2012

DECISION

This matter is before me on the Inspector General's (I.G.'s) Motion for Summary Disposition affirming the I.G.'s determination to exclude Petitioner *pro se* Anthony Lynn Hester from participation in Medicare, Medicaid, and all other federal health care programs for a period of 15 years. The I.G.'s Motion and determination to exclude Petitioner are based on section 1128(a)(1) of the Social Security Act (Act), 42 U.S.C. § 1320a-7(a)(1). The undisputed material facts of this case demonstrate that the minimum five-year exclusion must be imposed, and that the I.G.'s determination to enhance that period to 15 years based on the aggravating factors found at 42 C.F.R. § 1001.102(b)(1), (2), and (5) is reasonable. Accordingly, I grant the I.G.'s Motion for Summary Disposition.

I. Procedural Background

On December 3, 1996, the Federal Grand Jury sitting for the United States District Court for the Southern District of Texas handed up an Indictment charging Petitioner Anthony Lynn Hester with 20 counts of Mail Fraud, in violation of 18 U.S.C. §§ 1341 and 2. Each Count of the Indictment was based on a lengthy and detailed recitation of Petitioner's scheme to defraud Medicare, Medicaid, and private insurers by submitting false claims for ambulance services and related items.

Four months later, on April 11, 1997, Petitioner appeared with counsel in the District Court and pleaded guilty to Counts 1, 8, 10, and 16 of that Indictment. On August 15, 1997 Petitioner returned to the District Court and was sentenced to three concurrent 60-month terms of imprisonment on Counts 1, 8, and 10, and a three-month term of imprisonment on Count 16 to be served consecutively to the 60-month concurrent terms, for a total prison term of 63 months. He was ordered to serve a three-year term of supervised probation following his release from prison, and was ordered to pay restitution of $1,326,217.73 to Medicare, $332,780.00 to Medicaid, and $38,467.61 to private insurers and individuals — a total of $1,697,465.34 — and an assessment of $200.00.

On July 31, 1998 the I.G. wrote to Petitioner giving notice that he was to be excluded pursuant to the terms of section 1128(a)(1) of the Act for a period of 15 years, beginning on or about August 20, 1998.[1] The I.G.'s letter told Petitioner that the mandatory minimum five-year period of exclusion would be enhanced based on the presence of three aggravating factors. Acting *pro se*, Petitioner sought review of the I.G.'s determination in a request for hearing dated August 5, 2011.

I convened a prehearing conference by telephone on August 29, 2011, pursuant to 42 C.F.R. § 1005.6, in order to discuss procedures for addressing the issues presented by this case. By order of August 30, 2011 I established a schedule for the submission of documents and briefs on the question of the timeliness of Petitioner's request for hearing.

The dates of the I.G.'s notice-of-exclusion letter and Petitioner's request for hearing presented an obvious jurisdictional issue requiring resolution as a threshold matter. 42 C.F.R. § 1005.2(e)(1). Following the parties' briefing and the I.G.'s proffer of certain exhibits, I found that Petitioner had made a "reasonable showing" sufficient to overcome the presumption that the I.G.'s notice-of-exclusion letter had been delivered in due course. My Ruling and Order of December 14, 2011 explained how the very specific facts surrounding that mailing and Petitioner's incarceration left the presumption unreliable, denied the I.G.'s Motion to Dismiss, and established a schedule for the briefing of this case on its merits.

The evidentiary record on which I decide the issues before me contains eight exhibits. The I.G. proffered six exhibits with the Motion to Dismiss, marked I.G. Exhibits 1-6 (I.G.

[1] Petitioner's Answer Brief asserts, without further explanation, that the "Petitioner's exclusion began in October 1993 long before his conviction, and the 15 year period was to end October 2008." P. Ans. Br. at 1. The I.G.'s July 31, 1998 notice-of-exclusion letter announced the effective date of exclusion to be "20 days from the date of this letter." That effective date is prescribed by section 1128(c)(1) of the Act and 42 C.F.R. § 1001.2002(b). The period of Petitioner's exclusion will end on or about August 20, 2013.

Exs. 1-6) and two additional exhibits with subsequent briefing, marked I.G. Exhibits 7-8 (I.G. Exs. 7-8). Petitioner has proffered no exhibits of his own. In the absence of objection, I have admitted all proffered exhibits.

By the terms of the Ruling and Order of December 14, 2011, the record in this case closed for purposes of 42 C.F.R. § 1005.20(c) on March 26, 2012.

II. Issues

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

> a. 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(a)(1) of the Act; and
>
> b. Whether the length of the proposed period of exclusion is unreasonable.

These issues must be resolved in favor of the I.G.'s position. Because his predicate conviction is established in the record before me, section 1128(a)(1) of the Act mandates Petitioner's exclusion. A five-year period of exclusion is the minimum period established by section 1128(c)(3)(B) of the Act, 42 U.S.C. § 1320a-7(c)(3)(B). The enhancement of that period to 15 years is not unreasonable because the three aggravating factors relied on by the I.G. and found at 42 C.F.R. § 1001.102(b)(1), (2), and (5) are established in the record, and because Petitioner has not demonstrated any mitigating factor that would reduce the proposed period of exclusion.

III. Controlling Statutes and Regulations

Section 1128(a)(1) of the Act, 42 U.S.C. § 1320a-7(a)(1), requires the exclusion from participation in Medicare, Medicaid, and all other federal health care programs of any individual or entity convicted of a criminal offense related to the delivery of an item or service under title XVIII of the Act (the Medicare program) or any state health care program (the Medicaid program). The terms of section 1128(a)(1) are restated in similar language at 42 C.F.R. § 1001.101(a). Section 1128(a)(1) does not distinguish between felonies and misdemeanors as predicates for exclusion.

The Act defines "conviction" as including those circumstances "when a judgment of conviction has been entered against the individual . . . by a Federal . . . court," Act § 1128(i)(1); "when there has been a finding of guilt against the individual . . . by a Federal . . . court," Act § 1128(i)(2); or "when a plea of guilty . . . by the individual . . . has been accepted by a Federal . . . court," Act § 1128(i)(3). These definitions are repeated at 42 C.F.R. § 1001.2.

An exclusion based on section 1128(a)(1) is mandatory and the I.G. must impose it for a minimum period of five years. Act § 1128(c)(3)(B), 42 U.S.C. § 1320a-7(c)(3)(B). The regulatory language of 42 C.F.R. § 1001.102(a) affirms the statutory provision. The mandatory minimum period of exclusion may be enhanced in some limited circumstances and on the I.G.'s proof of certain narrowly-defined aggravating factors listed at 42 C.F.R. § 1001.102(b). In this case, the I.G. relies on the three aggravating factors set out at 42 C.F.R. § 1001.102(b)(1), (2) and (5) in seeking to enhance the period of Petitioner's exclusion to 15 years.

In cases such as this, when the I.G. proposes to enhance the period of exclusion by relying on one or more aggravating factors, a petitioner may attempt to limit or nullify the proposed enhancement through proof of certain mitigating factors, carefully defined at 42 C.F.R. § 1001.102(c)(1)-(3).

The standard of proof is a preponderance of the evidence and there may be no collateral attack on the conviction that is the basis for the exclusion. 42 C.F.R. § 1001.2007(c) and (d). Petitioner bears the burden of proof and persuasion on any affirmative defenses or mitigating factors and the I.G. bears the burden on all other issues. 42 C.F.R. § 1005.15(b) and (c).

IV. Findings and Conclusions

I find and conclude as follows:

1. On his accepted pleas of guilty on April 11, 1997, in the United States District Court for the Southern District of Texas, Petitioner Anthony Lynn Hester was found guilty of four counts of Mail Fraud, in violation of 18 U.S.C. §§ 1341 and 2. I.G. Exs. 7, 8.

2. Petitioner was sentenced on his guilty pleas, and a judgment of conviction was entered against him, in the United States District Court on August 15, 1997. As part of his sentence, Petitioner was ordered to serve a 63-month term of imprisonment, and was ordered to pay restitution to the Medicare and Medicaid programs in the sum of $1,658,997.73. I.G. Ex. 8.

3. The judgment of conviction, finding of guilt, and accepted pleas of guilty described above in Findings 1 and 2 constitute a "conviction" within the meaning of sections 1128(a)(1) and 1128(i)(1), (2), and (3) of the Act, and 42 C.F.R. § 1001.2.

4. A nexus and a common-sense connection exist between the criminal offenses of which Petitioner was convicted, as noted above in Findings 1, 2 and 3, and the delivery of an item or service under the Medicare and Medicaid programs. I.G. Exs. 7, 8; *Berton Siegel, D.O.*, DAB No. 1467 (1994).

5. By reason of Petitioner's conviction, a basis exists for the I.G.'s exercise of authority, pursuant to section 1128(a)(1) of the Act, 42 U.S.C. § 1320a-7(a)(1), to exclude Petitioner from participation in Medicare, Medicaid, and all other federal health care programs.

6. Because the acts resulting in Petitioner's conviction caused a financial loss to the Medicare and Medicaid programs of more than $5000, the aggravating factor set out at 42 C.F.R. § 1001.102(b)(1) is present.

7. Because the acts resulting in Petitioner's conviction were committed over a period of one year or more, the aggravating factor set out at 42 C.F.R. § 1001.102(b)(2) is present.

8. Because Petitioner was sentenced to a term of imprisonment, the aggravating factor set out at 42 C.F.R. § 1001.102(b)(5) is present.

9. None of the mitigating factors set out at 42 C.F.R. § 1001.102(c)(1)-(3) are present.

10. The I.G.'s exclusion of Petitioner for a period of 15 years is supported by fact and law. It is within a reasonable range and is therefore not unreasonable. Findings 1-10 above.

11. There are no disputed issues of material fact and summary disposition is therefore 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

The essential elements necessary to support an exclusion based on section 1128(a)(1) of the Act are: (1) the individual to be excluded must have been convicted of a criminal offense; and (2) the criminal offense must have been related to the delivery of an item or service under title XVIII of the Act (Medicare) or any state health care program (Medicaid). *Tamara Brown*, DAB No. 2195 (2008); *Thelma Walley*, DAB No. 1367; *Boris Lipovsky, M.D.*, DAB No. 1363 (1992); *Lyle Kai, R.Ph.*, DAB CR1262 (2004), *rev'd on other grounds*, DAB No. 1979 (2005), *aff'd sub nom. Kai v. Leavitt*, Civ. No. 05-00514 (D. Haw. July 17, 2006); *see also Russell Mark Posner*, DAB No. 2033, at 5-6 (2006). Those two essential elements are fully demonstrated in the evidence before me. Although the two elements essential to the basic exclusion are not the points on which Petitioner rests his opposition to the I.G.'s exclusion, it is helpful to point out briefly the evidence of those two essential elements.

Petitioner's conviction is shown by I.G. Ex. 8. The District Court's acceptance of Petitioner's four guilty pleas on April 11, 1997, and its Judgment of Conviction on

August 15, 1997 satisfied the definitions of "conviction" set out at sections 1128(i)(1), 1128(i)(2), and 1128(i)(3) of the Act. The first essential element is established by the record.

The evidence also shows that Petitioner's conviction is related to the delivery of an item or service under the Medicare program. Petitioner admitted that he submitted fraudulent claims to Medicare for ambulance services and related items by mail on May 5, 1992, January 18, 1994, January 31, 1994, and April 19, 1994. I.G. Exs. 7, 8. The submission of false claims to the Medicaid or Medicare programs has consistently been held to be a program-related crime within the reach of section 1128(a)(1). *Douglas Schram, R.Ph.*, DAB No. 1372 (1992); *Dewayne Franzen*, DAB No. 1165 (1990); *Jack W. Greene*, DAB No. 1078 (1989), *aff'd sub nom. Greene v. Sullivan*, 731 F. Supp. 835 (E.D. Tenn. 1990). I find the facts of Petitioner's offenses demonstrate the required nexus and common-sense connection between the criminal acts and the Medicare and Medicaid programs. *Berton Siegel, D.O.*, DAB No. 1467. The second essential element is established by the record.

The I.G. relies on three aggravating factors set out at 42 C.F.R. § 1001.102(b)(1), (2) and (5) in seeking to enhance the period of Petitioner's exclusion to 15 years. Although Petitioner's Answer Brief is not always clear, it does obviously object to the length of the period, and so must first be construed to challenge the aggravating factors on which the I.G. relies.

The aggravating factor set out at 42 C.F.R. § 1001.102(b)(1) is present when there is a showing of financial loss to a government program or certain other entities of more than $5000. After 1998, this loss threshold was revised upward from $1500 to $5000. The District Court records show that Petitioner was required to pay restitution to the Medicare and Medicaid programs in the sum of $1,658,997.73. I.G. Ex. 8. The record before me does not disclose how much of the ordered restitution has been paid, but restitution has long been considered a reasonable measure of program losses. *See Jason Hollady, M.D.*, DAB No. 1855 (2002). Petitioner's crimes caused the Medicare and Medicaid programs financial losses vastly in excess of the $5000 threshold for aggravation. The Departmental Appeals Board (Board) has characterized amounts substantially greater than the statutory standard as an "exceptionally aggravating factor" entitled to significant weight. *Jeremy Robinson*, DAB No. 1905 (2004); *Donald A. Burstein, Ph.D.*, DAB No. 1865 (2003). I explicitly observe that the massive plundering of the protected programs shown here — even in the absence of any other aggravating factors — more than justifies a significant increase in the period of exclusion.

The aggravating factor set out at 42 C.F.R. § 1001.102(b)(2) is present when "[t]he acts that resulted in the conviction, or similar acts, were committed over a period of one year or more." The Counts of the Indictment to which Petitioner pleaded guilty and the Judgment of Conviction itself all note that the conduct directly resulting in Petitioner's

convictions lasted from May 5, 1992 through April 19, 1994. I.G. Exs. 7, 8. The "duration of offense" factor is therefore present here, and it demonstrates something far more sinister than the "short-lived lapse of integrity" to which the Board alluded in *Burstein*, at 8. When the regulation's "similar acts" language is recalled, then the Indictment's specification that the "duration of offense" factor might be as long as the period between January 1991 and October 1994 renders it even clearer that the need to protect the programs from Petitioner would — even in the absence of any other aggravating factors — amply support a substantial enhancement of the period of exclusion.

The aggravating factor set out at 42 C.F.R. § 1001.102(b)(5) is present when the "sentence imposed by the court included incarceration." In this case, Petitioner was sent to prison for a total of 63 months. I.G. Ex. 8. The "incarceration" aggravating factor is present here, but there is more to this matter than the simple observation that Petitioner was imprisoned over five years for his crimes. It is important to note that the structure of the 63-month sentence was obviously intended to enhance the sentence's effect: three *concurrent* terms of 60 months' confinement were imposed on the first three violations, but a *consecutive term* of 3 months was "stacked" on the concurrent 60-month sentences. I.G. Ex. 8, at 2. Plainly, both the total length of Petitioner's confinement and the consecutive nature of the second part of his sentence underscore the serious view of Petitioner's crimes taken by the District Court. I adopt that serious view. The length of Petitioner's prison term is sufficient, in and of itself, to warrant a considerable increase in the period of exclusion.

Evidence relating to aggravating factors may be countered by evidence relating to any of the mitigating factors set forth at 42 C.F.R. § 1001.102(c)(1)-(3). Since any petitioner's invocation of a mitigating factor is in the nature of an affirmative defense, the petitioner who claims the factor bears the burden of proving it. This allocation of the burden of proof is set out at 42 C.F.R. § 1005.15(b)(1) and is acknowledged in Board decisions. *Russell Mark Posner*, DAB No. 2033; *Stacey R. Gale*, DAB No. 1941 (2004); *Dr. Darren James, D.P.M.*, DAB No. 1828, at 7-8 (2002); *Barry D. Garfinkel, M.D.*, DAB No. 1572 (1996).

As I have written above, Petitioner objects to the length of his exclusion. Although he does not explicitly rely on any of the factors defined by regulation, he does assert that "mitigating factors" or "mitigating circumstances" are present. He offers the suggestion that he "took responsibility" for what he now hints were his own ignorance of billing procedures and the failings of his employees and staff. P. Ans. Br. at 2-3. Next, Petitioner asserts that the effects of his exclusion have extended into his real estate practice and his personal life, and that those effects should be treated as a mitigating factor. P. Ans. Br. at 4-6. These claims do not invoke any of the mitigating factors defined and enumerated at 42 C.F.R. § 1001.102(c)(1)-(3). Nothing in this record hints at

the presence of any of those enumerated and defined mitigating factors, and Petitioner is entitled to claim no mitigating factor set out at 42 C.F.R. § 1001.102(c)(1)-(3).

A review of Petitioner's remaining arguments shows no basis to overturn the I.G.'s exclusion or the I.G.'s enhancement of the exclusion period. Petitioner's argument that he "was not convicted of Health Care Fraud, but mail fraud" is unavailing, because the statute requires only that the conviction be for conduct "related to the delivery of an item or service" in a protected program. *James Randall Benham*, DAB No. 2042 (2006). The remainder of his challenges amount to collateral attacks on his conviction and sentence. They are irrelevant here, for the regulations explicitly preclude any collateral attack on Petitioner's conviction. "When the exclusion is based on the existence of a criminal conviction . . . where the facts were adjudicated and a final decision was made, the basis for the underlying conviction . . . is not reviewable and the individual or entity may not collaterally attack it either on substantive or procedural grounds, in this appeal." 42 C.F.R. § 1001.2007(d); *Joann Fletcher Cash*, DAB No. 1725 (2000); *Chander Kachoria, R.Ph.*, DAB No. 1380, at 8 (1993).

But even though the I.G. has proven the aggravating factors exactly as alleged, and even though Petitioner has failed to prove even a single mitigating factor, Petitioner's claim that the 15-year length of his exclusion is unreasonably long raises an issue that may be more complex than it has been heretofore.

Until recently, the Administrative Law Judge (ALJ) evaluating such a claim could rely on a clear and settled line of authority in doing so. According to that line of authority, the I.G.'s discretion when weighing the importance of aggravating and mitigating factors commanded great deference when reviewed by an ALJ. *Jeremy Robinson*, DAB No. 1905; *Keith Michael Everman, D.C.*, DAB No. 1880 (2003); *Stacy Ann Battle, D.D.S., et al.*, DAB No. 1843 (2002). The rationale of that doctrine was identified by the drafters of the regulations as the I.G.'s "vast experience" in implementing exclusions. 57 Fed. Reg. 3298-3321 (January 24, 1992). According to that line of authority, an ALJ might not substitute his or her own view of what period of exclusion might appear best in any given case for the view of the I.G. on the same evidence. So long as the period chosen by the I.G. was within a reasonable range and was based on demonstrated criteria, the ALJ was forbidden to alter it. *Jeremy Robinson*, DAB No. 1905; *Joann Fletcher Cash*, DAB No. 1725, at 20. According to that line of authority, an ALJ might reduce an exclusionary period only when the ALJ discovered some meaningful evidentiary failing in the aggravating factors upon which the I.G. relied, or when the ALJ was shown evidence reliably establishing a mitigating factor not considered by the I.G. in setting the enhanced period. *Jeremy Robinson*, DAB No. 1905.

That line of authority may have been modified in the recent decision of the Board in *Craig Richard Wilder, M.D.*, DAB No. 2416 (2011). Although the *Wilder* ALJ found that the I.G. had considered all proven aggravating and mitigating factors, and although

the Board acknowledged that there were no differences whatsoever between the record of those factors before it and the record before the ALJ and the I.G., the Board nevertheless departed from its own settled rule and revised the 35-year period of exclusion downward to 18 years, so that it might conform more satisfactorily to what the Board considered best. In doing so, the Board appears to have rejected the I.G.'s and the ALJ's assessment of the *value* of Wilder's cooperation with authorities and substituted its own assessment.

The Board has returned to this narrow issue only once since *Wilder*.[2] It may be too soon to tell whether *Wilder* signals new responsibility for the Board and ALJs in overseeing the I.G.'s application of his "vast experience," and whether *Wilder* vouchsafes the ALJ with discretion to alter — that is, to lengthen or to shorten — the period determined by the I.G. In my Ruling and Order of December 14, 2011, I asked the parties to comment on this question. The I.G. declined to address the question directly, and simply asserted that this proposed period is, even in light of *Wilder,* still within a reasonable range. Petitioner did not comment on the question, and it will be remembered that Petitioner appears here *pro se*.

At this point in the history of *Wilder* as precedent, it is impossible for me not to conclude that the *Robinson-Everman-Battle-Cash* line of authority has been in large measure vitiated by *Wilder*. I have suggested as much in *Edward Alexander Birts*, DAB CR2516, at 9, n.1 (2012) and *Marcellius Jhekwuoba Anunobi*, DAB CR2480, at 10 (2012), cases in which, as here, each Petitioner appeared *pro se*. Neither of those decisions has been reviewed by the Board, and no further gloss on *Wilder* is available in any other appeal to date. But I cannot see a reason why, if the *Robinson-Everman-Battle-Cash* rule no longer restricts an ALJ's considering what term of exclusion might be best on the facts of record, an ALJ lacks the authority to lengthen as well as to shorten the term proposed by the I.G.[3]

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[2] The Board's very recent decision in *Vinod Chandrashekhar Patwardhan, M.D.*, DAB No. 2454 (April 10, 2012) does not mention *Wilder*, and seems to acknowledge the *Robinson-Everman-Battle-Cash* line of authority. But it also affirms — on proof of the same three aggravating factors here proven, and in the absence of any mitigating factors — the ALJ's reduction of the I.G.'s proposed 23-year period of exclusion to 12 years. Dr. Patwardhan bilked the programs of $1.313 million, did so over approximately three years, and was sentenced to nine months of unmonitored home detention.

[3] Were it not for two considerations — first, the fact that this exercise of the I.G.'s expertise and discretion took place 14 years ago, and second, the fact that this Petitioner appears *pro se* — this case might present an attractive opportunity to exercise that authority and lengthen the period of this exclusion. An array of cases including *Mark A. Maher*, DAB CR678 (2000); *Golden G. Higgwe, D.P.M.*, DAB CR1229 (2004); *Peggy A. Bisig, a/k/a Peggy A. Fritz*, DAB CR1416 (2006); *Dinesh Dayabhai Shah*, DAB CR2143 (2010); and *Edward Alexander Birts*, DAB CR2516 suggests that this 15-year exclusion

But here it will suffice to repeat that all three of the aggravating factors relied on by the I.G. have been established as pleaded and Petitioner has established none of the mitigating factors defined in 42 C.F.R. § 1001.102(c)(1)-(3). Overall, the record in this case establishes that Petitioner is untrustworthy and a danger to the protected health care programs. He is a felon convicted of crimes based on fraud. His crimes constituted a 1.658-million-dollar attack on the financial resources of Medicare and Medicaid. He demonstrated a constancy of purpose and method in doing so: his scheme spanned approximately two years. His crimes were serious enough to earn a sentence of 63 months in prison. Given these considerations, the 15-year term of Petitioner's exclusion is not unreasonably long. Comparison with other cases is of limited utility and is certainly not controlling, but it can illustrate what a reasonable range has been understood to mean when the ALJ examines a lengthy exclusion. *Paul D. Goldenheim, M.D., et al.*, DAB No. 2268, at 29 (2009). The length of this exclusion is commensurate with the range established as reasonable in *Russell Mark Posner*, DAB No. 2033; *Stacey R. Gale*, DAB No. 1941; *Jeremy Robinson*, DAB No. 1905; *Thomas D. Harris*, DAB No. 1881 (2003); *Fereydoon Abir, M.D.*, DAB No. 1764 (2001); and *Joann Fletcher Cash*, DAB No. 1725.

I note once more that Petitioner appears here *pro se*. Because of that I have adhered to the Board's admonition 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 all of Petitioner's pleadings for any arguments or contentions that might raise a valid, relevant defense to the I.G.'s Motion, but have found nothing that could be so construed.

Resolution of a case by summary disposition is particularly fitting when settled law can be applied to undisputed material facts. *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). The material facts in this case are undisputed and unambiguous. They support summary disposition as a matter of settled law. This Decision issues accordingly.

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falls short of a "reasonable range" and would be best lengthened. The Board's decision in *Patwardhan* contains nothing to argue otherwise.

VI. Conclusion

For the reasons set forth above, the I.G.'s Motion for Summary Disposition should be, and it is, GRANTED. The I.G.'s exclusion of Petitioner Anthony Lynn Hester from participation in Medicare, Medicaid, and all other federal health care programs for a period of 15 years pursuant to the terms of section 1128(a)(1) of the Act, 42 U.S.C. § 1320a-7(a)(1), is sustained.

_____/s/_____
Richard J. Smith
Administrative Law Judge