

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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In the Case of:)	
)	
Hoang T. Tran, D.D.S., Inc.,)	Date: February 22, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-06-635
)	Decision No. CR1567
The Inspector General.)	
_____)	

DECISION

Hoang T. Tran, D.D.S., Inc. (Petitioner) appeals the decision of the Inspector General (I.G.), made pursuant to section 1128(b)(8) of the Social Security Act (Act), to exclude it from participation in Medicare, Medicaid, and all federal health care programs for a period of five years. For the reasons discussed below, I find that the I.G. is authorized to exclude Petitioner, and I find that the regulations mandate the five-year exclusion.

I. Background

No facts are in dispute here. Dr. Hoang T. Tran, the individual (Dr. Tran), was a licensed dentist and the owner of her dental practice, Hoang T. Tran, D.D.S., Inc. (Petitioner). I.G. Ex. 4, at 2. On February 16, 2006, in California Superior Court, Dr. Tran entered a plea of nolo contendere to charges of filing false Medicaid claims, insurance fraud, and grand theft of \$9,854.00 from the State of California. I.G. Exs. 5, 6.

In a notice dated May 31, 2006, the I.G. advised Dr. Tran that she, individually, would be excluded from program participation for five years. The letter explained that the exclusion action was taken pursuant to section 1128(a)(1) of the Act because she had been convicted of a criminal offense related to the delivery of an item or service under the Medicare or a state health care program. I.G. Ex. 7. Petitioner did not request review, so the I.G.'s determination is final.

Shortly thereafter, in a notice dated June 30, 2006, the I.G. advised Petitioner that it (the dental practice) was also excluded from program participation for a period of five years, pursuant to section 1128(b)(8) of the Act. I.G. Ex. 1. Petitioner appealed and the matter has been assigned to me for resolution.

Pursuant to my scheduling order, the I.G. has submitted his brief (I.G. Br.) with eight exhibits attached, I.G. Exhibits (I.G. Exs.) 1 - 8.¹ Petitioner filed its opposition brief (P. Br.) with one group exhibit attached, Petitioner Exhibit (P. Ex.) 1. The I.G. submitted a reply brief (I.G. Reply). There being no objections, I.G. Exs. 1 - 8 and P. Ex. 1 are admitted into evidence.

II. Issues

The issue before me is whether the I.G. had a basis upon which to exclude Petitioner from participation in the Medicare, Medicaid, and all federal health care programs. If so, the five-year exclusion is mandatory.

III. Discussion

*A. Because Dr. Tran, the individual, was convicted of a crime related to the delivery of an item or service under the Medicare or a state health care program, and has been excluded from program participation for the statutorily-prescribed period of five years under section 1128(a)(1), the I.G. is authorized to exclude her medical practice for the same period.*²

Section 1128(b)(8) of the Act authorizes the Secretary to exclude from program participation any entity that is owned, controlled, or managed by a person who has been convicted of an offense described in section 1128(a) or who has been excluded from

¹ The I.G. characterizes its brief as in support of a “motion for summary affirmance.” In fact, the parties have waived appearance at an oral hearing and agreed to submit only documentary evidence and written argument. 42 C.F.R. § 1005.6(b)(5); Order (Oct. 12, 2006). The distinction may be significant because in summary affirmance, all disputed facts and inferences must be drawn in favor of the nonmoving party. Where the parties agree to resolve the case on the written record, the judge is free to weigh the evidence and draw whatever inferences are most reasonable.

² I make this one finding of fact/conclusion of law.

program participation. Except under circumstances not applicable here,³ the regulations provide that the exclusion “will be for the same period as that of the individual whose relationship with the entity is the basis for this exclusion.” 42 C.F.R. § 1001.1001(b)(1).

Petitioner does not dispute that Dr. Tran, the individual, was convicted of a program-related crime, and excluded for five years pursuant to section 1128(a)(1). Petitioner also concedes that Dr. Tran is the owner of Petitioner, Hoang T. Tran, D.D.S., Inc. The I.G. is therefore authorized to exclude it from program participation, and its period of exclusion must be for the same period as Dr. Tran’s.

Without distinguishing between Dr. Tran, the individual, and Dr. Tran, Inc., the dental practice, Petitioner argues that equitable principles justify reducing the period of Dr. Tran’s exclusion. I am bound by the regulations, however, and have no authority to consider equity in reaching my decision. *Salvacion Lee, M.D.*, DAB No. 1850 (2002).

IV. Conclusion

For these reasons, I conclude that the I.G. properly excluded Petitioner from participation in the Medicare, Medicaid, and other federal health care programs, and I sustain the five-year exclusion.

/s/

Carolyn Cozad Hughes
Administrative Law Judge

³ See 42 C.F.R. § 1001.3002(c).