

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Dr. William Montiel  
(NPI: 1134332539)

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-14-544

Decision No. CR3258

Date: June 10, 2014

**DECISION**

Petitioner, Dr. William Montiel, is a physician, licensed to practice in the State of Alabama. Until recently, he participated in the Medicare program as a supplier of services. The Medical Licensure Commission of Alabama suspended his medical license from February 27, 2013 until July 12, 2013. Because of the license suspension, the Centers for Medicare & Medicaid Services (CMS) revoked his Medicare billing privileges, and Petitioner appeals.

For the reasons explained below, I find that CMS properly revoked Dr. Montiel's billing privileges.

**Background**

Because of issues related to his chemical dependency, Dr. Montiel has been practicing medicine under a restricted license since June 28, 2005. P. Ex. 2 at 4-9 ("Exhibit A"); P. Ex. 2 at 1. Among other conditions, he was required to abstain from using all mood-altering chemicals, including alcohol, and was subject to periodic drug screening. On

February 13, 2013, he failed his drug screen, and then would not comply with the medical commission's order that he undergo immediate testing. P. Ex. 2 at 1-2. In an order dated February 27, 2013, the Medical Licensure Commission of Alabama suspended his license pending a hearing. P. Ex. 1 at 1-3; CMS Ex. 2. Following the hearing, the licensure commission suspended indefinitely his license to practice medicine. P. Ex. 2 at 2-3 (Order dated May 3, 2013). In an order dated July 12, 2013, the licensure commission modified its earlier order and permitted Dr. Montiel to resume practicing medicine, subject to supervision, his participation in a treatment program, and other requirements. P. Ex. 6; CMS Ex. 4.

Dr. Montiel did not advise CMS or the Medicare contractor that his license had been suspended. The Medicare contractor, Cahaba Government Benefit Administrators, LLC, apparently learned of it during a routine check of the state board's licensing information. CMS Ex. 2.

In a letter dated June 15, 2013, the Medicare contractor advised Dr. Montiel that his Medicare billing privileges were revoked, effective February 27, 2013, because he lost or surrendered his medical license, or was otherwise "not authorized by the federal, state, or local government to perform the services he intends to render." CMS Ex. 1. The letter did not cite the regulation that authorizes such a revocation, but (apparently in error) then quoted the language of 42 C.F.R. § 424.535(a)(2)(ii), which says that CMS may revoke a supplier's Medicare billing privileges, if the supplier has been "debarred, suspended, or otherwise excluded from participating in any other Federal procurement or nonprocurement program or activity in accordance with the FASA implementing regulations and the Department of [Health and] Human Services nonprocurement common rule at 45 C.F.R. part 76." CMS Ex. 1.

Petitioner requested reconsideration.<sup>1</sup> In a reconsidered determination, dated November 22, 2013, a CMS health insurance specialist upheld the determination to revoke Dr. Montiel's billing privileges. That determination cites 42 C.F.R. § 424.535(a)(1), but also

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<sup>1</sup> It appears that Petitioner's request for reconsideration was not timely. He requested reconsideration in a letter dated September 18, 2013, more than 90 days after the initial determination. On reconsideration, the CMS reviewer seems to have confused the date of the initial notice letter (June 15) with the date of the reconsideration request (September 18). Although Petitioner complains about this error, he seems to have benefitted from it. The regulations mandate that a request for reconsideration be filed within 60 days from receipt of the notice of initial determination. 42 C.F.R. § 498.22(b)(3). Petitioner also complains that the notice was not sent to his practice or billing locations. P. Br. at 3. But, inasmuch as CMS sent it to his home, it hardly explains the untimely filing, or his complaints. *See* P. Ex. 5.

quotes the language of section 424.535(a)(2)(ii), without citation to that section. CMS Ex. 5.

Petitioner timely appealed. CMS moves for summary judgment and asks that I sustain the revocation pursuant to 42 C.F.R. § 424.535(a)(1), because Petitioner's license was suspended and 42 C.F.R. § 424.535(a)(9), because he did not report the suspension. With its motion and brief (CMS Br.), CMS filed five exhibits (CMS Exs. 1-5). Petitioner has filed a Response (P. Br.) and nine exhibits (P. Exs. 1-9).

In the absence of any objection, I admit into evidence CMS Exs. 1-5 and P. Exs. 1-9.

In my prehearing order, I directed the parties to exchange, as a proposed exhibit, the written direct testimony of any proposed witness. The order explains that I accept the written direct testimony as a statement in lieu of in-person testimony. Acknowledgment and Pre-hearing Order at 3 (¶ 4(c)(iv)), 5 (¶ 8) (January 14, 2014). The order also provides that an "in-person hearing to cross-examine witnesses will be necessary only if a party files admissible, written direct testimony, and the opposing party asks to cross-examine." *Id.* at 6 (¶ 10). CMS proposes no witnesses. Petitioner lists two witnesses (himself and another physician), but provides no witness declarations. He is therefore precluded from calling these witnesses. Even if I allowed a witness's unauthenticated statement (*see, e.g.*, P. Ex. 7) to substitute for the written declaration, CMS expresses no desire to cross-examine either individual. *See* Pre-hearing Order at 5 (¶ 9). Because there are no witnesses to cross-examine, an in-person hearing would serve no purpose. This matter may therefore be decided on the written record, without considering whether the standards for summary judgment are satisfied.

## Discussion

***Because Petitioner's medical license was suspended, CMS properly revoked his billing privileges under 42 C.F.R. § 424.535(a)(1).***<sup>2</sup>

Section 424.535(a)(1) allows CMS to revoke a Medicare supplier's billing privileges, if the supplier no longer meets the enrollment requirements for a supplier of its type. Those requirements include complying with federal and state licensure provisions. 42 C.F.R. § 424.516(a)(2). A physician, such as Dr. Montiel, must obviously be licensed by the state in which he practices medicine. 42 C.F.R. § 410.20(b). Because his license was suspended, CMS properly revoked his billing privileges.

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

That the suspension of his license was temporary does not alter this result. Once the suspension is in place, CMS is authorized to revoke billing privileges. The physician's "inability to practice medicine *for any length of time* due to the disciplinary actions imposed against him trigger[s] his noncompliance with the Medicare enrollment requirements and authorize[s] revocation of his billing privileges." *Akram A. Ismail, M.D.*, DAB No. 2429 at 8 (2011).

Petitioner complains that the reconsideration determination is riddled with errors. I recognize that the quality of that determination in this case is, at best, sub-par. It refers to documents, issues, and even to an individual, having nothing to do with Dr. Montiel's situation. However, it includes two critical provisions: first, the determination cites 42 C.F.R. § 424.535(a)(1); and, second, it explains that Petitioner's Medicare billing privileges are revoked because his medical license was suspended. Petitioner's hearing request reflects that he recognized this finding, and he challenged it, arguing that his license had been reinstated. Hearing Request at 1-2. Further, CMS's brief, which was filed well before Petitioner's brief was due, reiterated that Petitioner's billing privileges were revoked because his medical license had been suspended. Petitioner has thus had ample notice of the reasons for the revocation.<sup>3</sup>

### **Conclusion**

Because Petitioner's medical license was suspended, CMS properly revoked his billing privileges under 42 C.F.R. § 424.535(a)(1).

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/s/  
Carolyn Cozad Hughes  
Administrative Law Judge

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<sup>3</sup> Because his license revocation, by itself, justifies revoking his billing privileges, I need not consider CMS's proposal to amend its basis for revoking Petitioner's billing privileges to add 42 C.F.R. § 424.535(a)(9) – failure to report his suspension.