

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Mara Lynne Hall Groth,
(OI File No. H-14-43054-9),

Petitioner,

v.

The Inspector General.

Docket No. C-15-2709

Decision No. CR4353

Date: October 21, 2015

DECISION

Petitioner, Mara Lynne Hall Groth, was licensed as a registered nurse in the State of Arizona until the Arizona State Board of Nursing (State Board) revoked her license. Pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (I.G.) has excluded her from participation in Medicare, Medicaid, and all federal health care programs until she regains her Arizona nursing license. Petitioner now appeals the exclusion.

For the reasons set forth below, I find that the Arizona licensing authority revoked Petitioner's nursing license for reasons bearing on her professional competence and performance, so the I.G. has appropriately excluded her from program participation.

I. Background

Petitioner, who is *pro se*, was first licensed as a registered nurse in 1998. I.G. (Exhibit) (Ex.) 2 at 2. On or about March 13, 2012, the State Board "received an anonymous complaint alleging that [Petitioner] 'drinks and uses drugs every day.'" I.G. Ex. 2 at 2.

The complainant also alleged that Petitioner had been arrested for driving under the influence (DUI). I.G. Ex. 2 at 2. On or about July 5, 2012, the Vice President of Clinical Operations at North Valley Surgical Center, Petitioner's employer, reported a suspicion that Petitioner had a drinking problem, and informed the State Board that Petitioner had multiple absences and did not follow company policy for reporting absences. I.G. Ex. 2 at 2. The State Board then undertook an investigation, which revealed the following information that was included in its findings of fact, as summarized below:

- Petitioner had been convicted of misdemeanor DUI on October 13, 2006, and did not report that she had been charged with DUI to the State Board within 10 days of her arrest;
- Petitioner was arrested on January 3, 2009, for assault and criminal damage, and did not report these charges to the State Board within 10 days of her arrest;¹
- Petitioner was charged with two felony counts relating to an alleged aggravated DUI on March 25, 2011, after being involved in an accident with personal injury. Petitioner's 11-year-old daughter was in Petitioner's vehicle during the accident, at which time Petitioner was found to have had a blood alcohol level of 0.199 g/dL. Petitioner did not report that she had been charged with aggravated DUI to the State Board;
- Petitioner, on or about April 26, 2012, answered "No" to a question on an employment application asking if she had been guilty of a misdemeanor or felony, and she failed to reveal a previously used last name on the same application. In that application, she denied having been terminated or asked to resign from previous employment, but the State Board found that at the time of the application, she had been terminated from at least three previous jobs;
- Petitioner was diagnosed with alcohol abuse by Banner Behavior Health, and was also diagnosed with alcohol dependence by Calvary Recovery Center. Petitioner had a history of several admissions for treatment and detoxification related to alcohol abuse;

¹ The State Board acknowledged that the assault charge was dismissed, and that a March 2009 conviction for criminal damage was set aside on August 15, 2012. I.G. Ex. 2 at 4.

- Petitioner admitted to a medical provider that she consumed two bottles of wine on a daily basis.

I.G. Ex. 2 at 3-6. The State Board, in its January 30, 2013 order, determined that Petitioner had committed “unprofessional conduct” and placed her on probation for a period of five years. I.G. Ex. 2. The State Board’s imposition of probation included numerous requirements, which as will be explained below, were not fulfilled. As a result, the State Board, citing “unprofessional conduct,” subsequently revoked Petitioner’s nursing license effective 30 days from service of its September 23, 2014 order. I.G. Ex. 3.

In an April 30, 2015 letter, the I.G. advised Petitioner that she was excluded from participation in Medicare, Medicaid, and all federal health care programs because her license to provide health care in the State of Arizona was revoked, suspended, or otherwise lost or was surrendered while a formal disciplinary proceeding, bearing on her professional competence, professional performance, or financial integrity, was pending before the state licensing authority. The letter explained that section 1128(b)(4) of the Act authorizes the exclusion. I.G. Ex. 1 at 1. Petitioner timely requested review.

The I.G. submitted his brief (I.G. Br.) and three exhibits (I.G. Exs. 1-3). Petitioner filed a brief (P. Br.) which included three attachments. The I.G. also filed a Reply Brief. In the absence of any objection, I admit into evidence I.G. Exs. 1-3.

Administrative Law Judge Joseph Grow directed the parties to indicate in their briefs whether an in-person hearing would be necessary, and, if so, to “describe the testimony” it wishes to present, the names of the witnesses it would call, and a summary of each witness’ proposed testimony.² Neither party indicates that an in-person hearing is necessary, and neither party has listed any witnesses. This case was subsequently assigned to me on September 23, 2015.

II. Controlling Statutes and Regulations

The Act authorizes the Secretary of Health and Human Services to exclude from program participation an individual whose license to provide health care “has been revoked or suspended by any State licensing authority” for reasons bearing on the individual’s “professional competence, professional performance, or financial integrity.” Act § 1128(b)(4)(A); *see also* 42 C.F.R. § 1001.501.

² Judge Grow also directed the parties to each complete and submit a “short form brief.” Order and Schedule for Filing Briefs and Documentary Evidence (July 9, 2015).

An exclusion based on section 1128(b)(4) 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) 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 § 1128(c)(3)(E) (42 U.S.C. § 1320a-7(c)(3)(E)). Regulatory language at 42 C.F.R. § 1001.501(b)(1) implements the statutory provision. Although an exclusion based on section 1128(b)(4) of the Act is discretionary, the I.G.’s decision to exercise his discretion and proceed with the sanction is not subject to review. *Donna Rogers*, DAB No. 2381 (2011); *Keith Michael Everman, D.C.*, DAB No. 1880 (2003); *Sheldon Stein, M.D.*, DAB No. 1301 (1992); 42 C.F.R. § 1005.4(c)(5).

The State Board has the authority to regulate and control the practice of nursing in that state pursuant to A.R.S. §§ 32-1606, 1663, and 1664. The State Board has authority to impose disciplinary sanctions when a registered nurse violates the Nurse Practice Act, A.R.S. §§ 32-1601 through 1667.

III. Discussion

1. The I.G. had a legal basis to exclude Petitioner from participation in Medicare, Medicaid, and all federal health care programs because the Arizona State Board of Nursing revoked Petitioner’s nursing license for reasons bearing on her professional competence or performance.³

In its initial Findings of Fact, Conclusions of Law, and Order, the State Board adopted the findings of its administrative law judge, who concluded that, under state law, Petitioner had committed unprofessional conduct. I.G. Ex. 2 at 7-8. In its Order, the State Board imposed numerous conditions of probation that were tailored to address Petitioner’s alcohol abuse. I.G. Ex. 2. The conditions of probation required the following, in pertinent part:

- Schedule an evaluation with a State Board-approved psychologist (Ph.D.) with expertise in substance abuse and complete the evaluation within 60 days of the effective date of the order;
- Enroll in a State Board-acceptable Nurse Recovery Group within seven days of the effective date of the order;

³ I make this one finding of fact/conclusion of law.

- Participate at least two/three times weekly in Alcoholics Anonymous/Narcotics Anonymous meetings within seven days of the effective date of the order;
- Enroll in a program that meets State Board criteria for random drug testing within seven days of the effective date of the order;
- Abstain from the personal use of alcoholic beverages and the personal use or possession of controlled drugs requiring a prescription unless lawfully prescribed to Petitioner for a bona fide illness or condition by a medical provider;
- Sign all release of information forms required by the State Board or its designee and return within ten days;
- Appear in person or telephone for interviews with the State Board;
- Apply for renewal of license, pay the applicable fee, and otherwise maintain qualifications to practice nursing in Arizona.

I.G. Ex. 2 at 9-17. On September 19, 2014, the State Board issued new Findings of Fact and Conclusions of Law and revoked Petitioner's license because she failed to complete the requirements of her probation. I.G. Ex. 3 at 1. The State Board explained, in detail, the specific probation requirements that were not completed. I.G. Ex. 3 at 1-3.

It is not disputed that Petitioner's nursing license has been revoked by her state licensing authority. Thus, the first element of section 1128(b)(4) is satisfied.

The second element of section 1128(b)(4) requires that the license was revoked "for reasons bearing on the individual's . . . professional competence [or] professional performance." Petitioner argues that this prong is not met and contends that she has never been unprofessional or had an issue with professional performance. Petitioner further contends that she could not fulfill the probation requirements because she had financial difficulties. P. Br. at 5.

The State Board placed Petitioner on probation due, in large part, to her alcohol abuse. At the time probation was imposed, Petitioner had one previous DUI conviction and there were pending felony charges for a second and aggravated DUI. I.G. Ex. 2 at 3-5. Evidence discussed by the State Board included diagnoses of alcohol abuse and alcohol dependence, and the State Board cited several hospital admissions for detoxification. I.G. Ex. 2 at 5-6. Additionally, medical evidence cited by the State Board indicated that Petitioner "admitted to drinking two bottles of wine daily for years." I.G. Ex. 2 at 6.

Although Petitioner was given the opportunity to continue working and to retain her nursing license pursuant to the conditions of probation, she failed to complete numerous probation requirements.

When a license is revoked due to violations of previous conditions placed on that license, it is appropriate to look at the underlying reasons why the license was in a probationary status. *Tracy Gates, R.N.*, DAB No. 1768, at 6-7 (2001), *citing Roy Crosby Stark*, DAB No. 1746 (2000). The circumstances that led the State Board to previously impose the conditions of probation can reasonably be viewed as the reasons the State Board ultimately revoked Petitioner's license. *Stark*, DAB No. 1746, at 4.

Although the State Board revoked Petitioner's license for failing to complete the requirements of probation, the underlying basis for the probation was heavily premised on Petitioner's alcohol abuse. I.G. Ex. 2 at 7-8. Substance abuse directly affects professional competence as those terms are used in section 1128(b)(4). *Gates*, DAB No. 1768; *Stark*, DAB No. 1746. Furthermore, the State Board made a conclusion of law that Petitioner had committed unprofessional conduct, which it noted "specifically" included a "pattern of using or being under the influence of alcohol, drugs, or similar substance to the extent that judgment may be impaired and nursing practice detrimentally affected." I.G. Ex. 2 at 7-8, *citing* A.A.C. R4-19-403(B)(17) (2005). The Board also specifically found that Petitioner had engaged in a "pattern of failure to maintain minimum standards of acceptable and prevailing nursing practice." I.G. Ex. 2 at 7-8, *citing* A.A.C. R4-19-403(1) (2009). While Petitioner disagrees and believes that her use of alcohol had no bearing on her professional competence and performance, she is mistaken. I conclude as a matter of law that the revocation of Petitioner's nursing license was for reasons related to her professional competence and professional performance. This is supported by the State Board's findings of fact and conclusions of law, along with the violations of nursing standards contained in the Arizona Revised Statutes and Arizona Administrative Code that were referenced by the State Board.

While Petitioner appears to disagree with the underlying basis for the revocation of her nursing license, the basis for that determination is not reviewable, as it is a final adjudicated decision by another government agency. 42 C.F.R. § 1001.2007(d). I reiterate that my authority is limited to determining whether there is a basis for exclusion, and I have no authority to review the I.G.'s exercise of discretion. 42 C.F.R. § 1005.4(c)(5). The I.G. appropriately excluded Petitioner from program participation under section 1128(b)(4)(A) of the Act.

Petitioner indicated that "[o]nce I get my DUI issues resolved I plan to get my Nursing License reinstated." P. Br. at 6. The statute requires that Petitioner's period of exclusion "shall not be less than the period during which [her] . . . license . . . is . . . revoked." Act § 1128(c)(3)(E); *see also* 42 C.F.R. § 1001.501(b)(1). If Petitioner regains her Arizona nursing license, she may be eligible for reinstatement at such time. I.G. Ex. 1 at 1.

IV. Conclusion

For the above reasons, I conclude that the I.G. properly excluded Petitioner from participation in Medicare, Medicaid, and all federal health care programs for so long as her Arizona nursing license is revoked.

/s/

Leslie C. Rogall
Administrative Law Judge