Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Janet R. Constantino
Docket No. A-15-82
Decision No. 2666
November 6, 2015

FINAL DECISION ON REVIEW OF ADMINISTRATIVE LAW JUDGE DECISION

Janet R. Constantino (Petitioner) has appealed the decision by an administrative law judge (ALJ) which sustained her five-year exclusion from the Medicare, Medicaid, and other federal health care programs pursuant to section 1128(a)(2) of the Social Security Act (Act). *See Janet R. Constantino*, DAB CR3949 (2015) (ALJ Decision). For the reasons discussed below, we affirm the ALJ Decision.

Legal Background

Section 1128(a)(2) of the Act requires the Department of Health and Human Services (HHS) to exclude an individual from participation in all federal health care programs if the individual "has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service." 42 U.S.C. § 1320a-7(a)(2).[1] An exclusion imposed under section 1128(a)(2) must be for a minimum period of five years. *Id.* § 1320a-7(c)(3)(B). Section 1128(i) of the Act states that for purposes of section 1128(a), an individual is considered to have been "convicted" of a criminal offense "when a plea of guilty or nolo contendere by the individual . . . has been accepted by a Federal, State, or local court" or when the individual has "entered into participation in a first offender, deferred adjudication, or other program or arrangement where judgment of conviction has been withheld." *Id.* § 1320a-7(i)(3)-(4).

[1] The regulation which implements section 1128(a)(2) states that the HHS Inspector General (I.G.) will exclude "any individual or entity that "[h]as been convicted, under Federal or State law, of a criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service, including any offense that the [I.G.] concludes entailed, or resulted in, neglect or abuse of patients[.]" 42 C.F.R. § 1001.101(b). Those regulations define the term "patient" to mean "any individual who is receiving health care items or services, including any item or service provided to meet his or her physical, mental or emotional needs or well-being . . ., whether or not reimbursed under Medicare, Medicaid and any other Federal health care program and regardless of the location in which such item or service is provided." *Id.* § 1001.2.

An individual who is excluded from federal health care programs under section 1128 of the Act may request a hearing before an ALJ to challenge the exclusion. 42 C.F.R. § 1001.2007(a). "[I]f the exclusion is mandatory and is imposed for the statutory minimum five-year period" (as it is in this case), "the individual may request a hearing only on whether the basis for imposing the exclusion exists." *Nenice Marie Andrews*, DAB No. 2656, at 2 (2015) (*citing* 42 C.F.R. § 1001.2007(a)); *see also Henry L. Gupton*, DAB No. 2058, at 13 (2007) (holding that the ALJ "was required to uphold the mandatory minimum exclusion once he found that [the HHS Inspector General] had a basis to impose the exclusion under the Act"), *aff'd, Henry L. Gupton v. Leavitt*, 575 F. Supp. 2d 874 (E.D. Ill. 2008). The Board reviews an ALJ's decision to determine if it is supported by substantial evidence and free of legal errors. 42 C.F.R. § 1005.21(h).

Case Background

Relying on section 1128(a)(2), the HHS Inspector General (I.G.) notified Petitioner by letter dated November 28, 2014 that she was being excluded from all federal health care programs for five years. *See* I.G. Ex. 1. Petitioner, represented by counsel, appealed the exclusion to the ALJ, who, in a pre-hearing order, established a schedule for the submission of legal briefs, documentary evidence, and written direct testimony of proposed witnesses. Prehearing Order (Dec. 31, 2014); ALJ Decision at 2. In response, Petitioner filed a single brief (titled "Reply Brief") but no evidence (documentary or testimonial). *Id.* The I.G. submitted documentary evidence but no written direct testimony. *Id.* Because neither party submitted written direct testimony, ALJ decided the case based on the documentary evidence and written legal argument without conducting an in-person hearing.

Consistent with section 1128(a)(2)'s text, the ALJ held that Petitioner's exclusion is lawful if three criteria are met: (1) she was convicted of a criminal offense under federal or state law, (2) the offense was related to neglect or abuse of patients, and (3) the offense was committed in connection with the delivery of a health care item or service. ALJ Decision at 2.

Regarding the first statutory criterion, the ALJ made the following undisputed findings of fact:

- In April 2012, Petitioner, a registered nurse who in 2010 and 2011 was employed by a state-licensed Case Management Agency, was charged in a state criminal

complaint with "endangering the welfare of an incompetent person" in violation of section 709-905 of the Hawaii Revised Statutes.[2] ALJ Decision at 3.

- The complaint alleged that "[o]n or about November 1, 2010 to and including February 3, 2011, . . . [Petitioner] did knowingly act in a manner likely to be injurious to the physical and mental welfare of . . . a person unable to care for himself, because of physical and/or mental disease, disorder or defect . . . ." *Id.* (*quoting* I.G. Ex. 2).
- The incompetent person to whom the complaint refers, known here by his initials F.H., was a Medicaid and Social Security recipient who lived in a community care foster family home.[3] *Id.*
- On May 15, 2012, Petitioner pled *nolo contendere* (no contest) to the endangerment charge. *Id.*
- The state court deferred its acceptance of Petitioner's plea for one year subject to her compliance with certain conditions of probation, payment of a $1,000 fine, and contribution of $30 to Hawaii's Crime Victim Compensation Funds. *Id.*; I.G. Ex. 3.

Based on these facts and the definition of "convicted" in section 1128(i) of the Act, the ALJ concluded that Petitioner's entry of a no-contest plea under Hawaii's deferred adjudication process meant that Petitioner had been convicted of a criminal offense within the meaning of section 1128(a)(2). *Id.* at 4.

With respect to the second statutory criterion – that the criminal offense was "relat[ed] to neglect or abuse of patients" – the ALJ observed that the criminal complaint against Petitioner was based on findings of an investigation report prepared by Hawaii's Medicaid Fraud Control Unit (I.G. Ex. 4), findings which the ALJ summarized as follows:

---

[2] Section 709-905 of the Hawaii Revised Statutes states:

> (1) A person commits the offense of endangering the welfare of an incompetent person if he knowingly acts in a manner likely to be injurious to the physical or mental welfare of a person who is unable to care for himself because of physical or mental disease, disorder, or defect.
> (2) Endangering the welfare of an incompetent person is a misdemeanor.

[3] Community care foster family homes are licensed by the state of Hawaii to house and care for individuals who would otherwise need to live in a nursing home or other institutional setting. *See* Haw. Code R. § 17-1454-37 *et seq*. The client of a community care foster family home must receive "ongoing case management services" from a state-licensed Case Management Agency. *Id.* §§ 17-1454-6, 17-1454-18, 17-1454-24, 17-1454-42(5), 17-1454-43. A "case manager" is a licensed social worker or registered nurse employed by a Case Management Agency who "locates, coordinates, and monitors comprehensive services to meet a client's needs." *Id.* §§ 17-1454-2, 17-1454-18(c).

> . . . Petitioner, a registered nurse, was the case manager for F.H., a 92 year-old female patient residing in a community care foster home. Petitioner was responsible for visiting and checking on the care and condition of F.H. monthly while she resided in the family foster home. During the time that F.H. was under Petitioner's care, she developed a late stage decubitus ulcer in the sacral area that was so severe it prompted a referring hospital's staff to contact the Hawaii Department of Human Services Adult Protective Services. The Department of Human Services Adult Protective Services' investigation concluded that there was evidence of neglect to F.H. As a result, the community care family foster home where F.H. resided and the case management company, Harvest Care Management, for whom Petitioner worked, both had their licenses revoked due to the finding of neglect.

ALJ Decision at 5 (record citations omitted).

The ALJ concluded that Petitioner's criminal offense satisfied the second statutory criterion because it was "directly related to neglect of her patient" (F. H.). *Id.* He based that conclusion on "the conduct underlying her conviction as set forth" in the Medicaid Fraud Control Unit's investigation report and on "the nature of Petitioner's employment, especially her obligations with respect to" F.H. *Id.*

Finally, for the following reasons, the ALJ concluded that the third statutory criterion – that the offense was committed "in connection with the delivery of a health care item or service" – was satisfied:

> . . . Petitioner was charged with her criminal offense because of her employment as a registered nurse and case manager responsible for checking monthly on the care and condition of F.H., a patient. It was her failure to provide the expected and proper care and services to F.H. that resulted in the findings of neglect and Petitioner's subsequent conviction of the criminal offense. Petitioner's employer, Harvest Care Management, also had its license revoked by the State of Hawaii Adult Protective Services due to findings of neglect found during their investigation of the care provided F.H. I find, therefore, the existence of the nurse/case manager-patient relationship with F.H. establishes the nexus that the neglect of F.H was in connection with the delivery of a health care item or service.

Id. (record citations omitted).

Based on these conclusions regarding section 1128(a)(2)'s criteria, the ALJ sustained Petitioner's five-year exclusion from federal health care programs.[4] *Id.* at 6. He also declined to review Petitioner's challenge to the constitutionality of the applicable statute and regulations, stating that "my jurisdiction in an exclusion case is limited by statute and regulation, and in the case of a mandatory five-year exclusion, I am limited to determining only whether there is a legal basis for the I.G.'s exclusion action." *Id.*

Petitioner then filed a notice of appeal, represented by the same lawyer who represented her before the ALJ. Along with her notice of appeal and appeal brief, Petitioner filed eight exhibits that she says consist of "recently discovered evidence." Petitioner's Opening Brief (P. Br.) ¶ 2.

Discussion

The ALJ correctly held that Petitioner's mandatory five-year exclusion must be sustained if section 1128(a)(2)'s three criteria are met. *See* 42 C.F.R. § 1001.2007(a); *Nenice Marie Andrews* at 2. In this appeal, Petitioner focuses on the second criterion – the requirement that her criminal offense be "relat[ed] to the neglect or abuse of patients." 42 U.S.C. § 1320a-7(a)(2). She contends that this criterion is not met because the evidence submitted with her appeal shows that she did not "neglect or abuse" F.H., the victim of the crime to which she entered her no-contest plea. P. Br. ¶¶ 2, 4, 5(g). More specifically, says Petitioner, her evidence shows that Harvest Care Management (the Case Management Agency which employed her) and the community care foster family home where F.H. lived – and not she – were responsible for F.H.'s care and that, in any event, she "maintained rigorous oversight" and provided competent and timely care to F.H. *Id.* ¶ 5(a)-5(e). Petitioner also suggests that it is appropriate for the Board to decide whether she neglected or abused F.H. because that issue has never been adjudicated in an "adversarial proceeding" and because the issue recently "came to light" in a pending disciplinary proceeding that was filed against her by the Hawaii Department of Commerce and Consumer Affairs, which regulates the nursing profession in that state. *Id.* ¶¶ 1, 2.

Petitioner's argument that the second statutory criterion is not met because she did not neglect or abuse F.H is (1) procedurally barred because she failed to present it to the ALJ and (2) supported by evidence that we decline to consider, or to direct the ALJ to consider, because she did not seek to introduce it at the hearing level. Furthermore, the argument is a collateral attack on the basis for her 2012 conviction that is not permitted in these proceedings.

[4] The ALJ also found that the exclusion's effective date was November 28, 2014. ALJ Decision at 6. The effective date is not at issue in this appeal.

As she concedes in her reply brief, Petitioner did not argue before the ALJ that her offense is unrelated to patient neglect or abuse. Instead, Petitioner argued that the exclusion should be vacated because (1) a plea of *nolo contendere* is not tantamount to being "convicted" of a criminal offense, (2) the criminal charge to which she entered her no-contest plea did not implicate federal health care programs, and (3) she was denied due process because she received no notice when she entered the plea that it might be used later to exclude her from those programs. *See* Pet.'s Request for Hearing (Dec. 17, 2014); Reply Brief of Petitioner (dated April 1, 2015).

Section 1005.21(e) of the regulations which govern hearings and appeals of exclusion determinations states that the Board "will not consider any issue raised in the [appeal] briefs that *could have been raised* before the ALJ but was not." 42 C.F.R. § 1005.21(e) (italics added). Because Petitioner did not raise the issue of whether her offense is related to patient neglect or abuse before the ALJ, the pertinent question is whether the issue "could have been" raised at that point. Responding to that question, Petitioner asserts that her attorney had "never practiced in this area of the law" prior to requesting the ALJ hearing and therefore "was not fully aware of the [applicable] standards[.]" Reply Br. at 2. Petitioner also suggests that her lawyer's "review of the information provided to her by the [I.G.] . . . gave no indication" of an issue concerning the relationship of her offense to patient neglect or abuse and that her lawyer "has not been able to provide effective assistance of counsel in his lack of awareness, training, and experience." *Id.* at 2-3.

These assertions are insufficient to avoid the procedural bar in section 1005.21(e). That regulation implicitly demands reasonable diligence by a party to identify and raise material issues at the hearing level. Petitioner's allegations do not demonstrate that she or her lawyer (who represented her from the inception of the ALJ proceeding) exercised such diligence. Petitioner asserts that certain facts "came to [her lawyer's] attention only as a result of the adversarial [disciplinary] proceeding held before the Department of Commerce and Consumer Affairs." Reply Br. at 2. Petitioner does not, however, specify what those facts are, how they came to her lawyer's attention, or why they could not have been learned earlier. Her lawyer's "lack of awareness, training, and experience" is no excuse given his professional obligation to investigate the relevant facts and applicable law. Furthermore, it appears that all that was needed to spot the potential issue was an inspection of the relevant statutory language and regulations (which the ALJ's pre-hearing order urged Petitioner and her lawyer to "familiarize" themselves with) in light of facts, circumstances, and evidence that – judging from her appeal briefs – were known or discoverable by her from the outset of the ALJ proceeding. In short, we find that Petitioner could have presented (but failed to present) at the hearing level her argument that the second statutory criterion was not met. The Board is therefore barred from considering that argument in this appeal.

In addition, the evidence Petitioner proffered to support her argument is not properly before us. That evidence includes: her affidavit (P. Ex. 2); the affidavit of her husband, who was owner of the state-licensed Case Management Agency that employed Petitioner (P. Ex. 3); nursing and client case records apparently created or maintained by Petitioner or her employer between and 2009 and 2011 (P. Exs. 4, 5, & 6); and a Hawaii Department of Human Services contact log concerning F.H.'s clinical condition and medical treatment during February 2011 (P. Ex. 8).[5] None of this evidence was submitted to the ALJ.

In general, a party that appeals an exclusion must present its evidence to the ALJ, who is expressly authorized to rule on its admissibility. 42 C.F.R. §§ 1005.8, 1005.15, 1005.17(a). Section 1005.21(f) of the applicable appeal regulations addresses the circumstance in which a party asks the Board to consider evidence that was not presented at the hearing level. Section 1005.21(f) states that if that party "demonstrates to the satisfaction of the [Board] that additional evidence not presented at [the ALJ] hearing is relevant and material and that there were *reasonable grounds for the failure to adduce such evidence at such hearing*, the [Board] may remand the matter to the ALJ for consideration of such additional evidence." 42 C.F.R. § 1005.21(f) (italics added).

Petitioner has alleged no "reasonable grounds" for failing to submit her evidence to the ALJ. She says only (and cryptically) that her evidence was not "made available" to her lawyer until the time for filing her notice of appeal. Reply Br. at 3. Petitioner does not allege that she lacked custody of – or access to – any of her documentary evidence while this matter was pending before the ALJ. And there is no apparent reason why her lawyer could not have prepared the affidavits at that point given that they appear to be based largely on the affiants' personal knowledge and recollection of events in 2010 and 2011 or on documents – such as nursing and other records created or maintained by Petitioner or the Case Management Agency owned by her husband – to which they apparently had ready access.

Even if there were reasonable grounds for Petitioner's failure to produce her evidence earlier, we would not remand the case for consideration of that evidence because the allegation which that evidence purportedly supports is indistinguishable from a collateral attack on her conviction. Title 42 C.F.R. § 1001.2007(d) states that "[w]hen the exclusion is based on the existence of a criminal conviction . . . by Federal, State or local court, . . . *the basis for the underlying conviction* . . . is not reviewable and the [excluded] individual . . . may not collaterally attack it either on substantive or procedural grounds in this appeal." The "basis for the underlying conviction" may be established by judicial

[5] The other two exhibits submitted by Petitioner were a copy of the April 15, 2015 Notice of Hearing issued by the Department of Commerce and Consumer Affairs concerning its "Petition for Disciplinary Action" against Petitioner (P. Ex. 1) and a copy of certain Hawaii regulations governing the nursing profession (P. Ex. 7).

records or other probative evidence. *See Narendra M. Patel, M.D.*, DAB No. 1736 (2000) (stating that "the Board has repeatedly held that the basis for the federal exclusion authority need not appear in the charges or associated court documents, but may be demonstrated by extrinsic evidence of the underlying facts and circumstances of the offense"), *aff'd*, *Patel v. Thompson*, 319 F.3d 1317 (11th Cir. 2003); *Tanya A. Chuoke, R.N.*, DAB No. 1721 (2000) (emphasizing that the "extrinsic" evidence must show that the excluded individual's conduct "resulted in the conviction on which the I.G. then relied").

To prove the factual basis of Petitioner's conviction, the I.G. submitted the Medicaid Fraud Unit's investigation report. I.G. Ex. 4. That report describes documentary evidence of F.H.'s care between November 2010 and February 2011. It also summarizes interview statements of several individuals, including Petitioner, the operator of the community care foster family home where F.H. lived during 2010 and 2011, and the employee of the Hawaii Adult Protective Services office who investigated a complaint that triggered the criminal investigation of Petitioner. Based on the facts and findings contained in the investigation report, the ALJ concluded that the offense to which Petitioner pled no contest was "directly related" to patient neglect.

Petitioner does not deny that the investigation report set out the factual basis for her conviction.[6] Nor does she dispute that the facts and witness statements reflected in the report establish that her offense is related to the neglect of a patient. Instead, Petitioner seeks to discredit the investigation report's findings, contending that she was not (as the report indicates) R.H.'s "case manager" or otherwise responsible for F.H.'s care, and that state authorities "failed to properly investigate" and drew erroneous conclusions based on incomplete evidence. P. Br. ¶¶ 5(a), 5(b), 5(e), 5(f)(vii), 5(i) (stating that the criminal charge was "without merit" and that her own documentary evidence "reflects appropriate care for the patient"); *but see* I.G. Ex. 4 (Medicaid Fraud Unit investigation report), at 9, 16, 18, 19 (identifying Petitioner as a "case manager" responsible for or involved with the care of R.H.). Petitioner's attempt in this proceeding to create doubt about the merits of the investigative findings and demonstrate her lack of culpability is clearly a challenge to the basis for her conviction. Petitioner asserts that "[t]here is no conviction to collaterally attack" because "as far as the State of Hawaii is concerned, there was no conviction[.]" Reply Br. at 3. However, federal law (in particular section 1128(i) of the Act) – not Hawaii law – provides the applicable definition of a conviction in this case. *Kim J. Rayborn*, DAB No. 2248, at 6-7 (2009), *citing and quoting Travers v. Shalala*, 20 F.3d 993, 996 (9th Cir. 1994).

[6] There can be no reasonable dispute on this record that the Medicaid Fraud Unit's findings, as set forth in its investigation report, resulted in the criminal charge to which Petitioner pled no contest. The report states that its findings were presented to the Hawaii Attorney General, who, upon reviewing them, decided to charge Petitioner with endangering the welfare of an incompetent person. I.G. Ex. 4, at 23.

For the procedural and substantive reasons just discussed, we reject Petitioner's challenge to the ALJ's conclusion that her criminal offense was related to neglect or abuse of patients within the meaning of section 1128(a)(2) of the Act.

Petitioner makes various other contentions in this appeal, none of which merit lengthy discussion. First, she contends that we should review the ALJ's conclusion that she committed the offense in connection with the delivery of a health care item or service "in light of" her "newly discovered" evidence. P. Br. ¶ 5(f). This contention, like her allegation that she did not neglect or abuse F.H., is a collateral attack on investigative findings – including, most notably, the finding that she was a "case manager" responsible for monitoring and meeting F.H.'s health care needs – that constitute the basis for her conviction. In addition, we agree with the ALJ, for the reasons he gave, that there is a "common sense connection or nexus" between Petitioner's offense, as described in the Medicaid Fraud Unit's investigation report, and the delivery of health care services. ALJ Decision at 5, *quoting Kevin J. Bowers*, DAB No. 2143 (2008), *aff'd*, *Bowers v. Inspector Gen. of the Dep't of Health & Human Servs.*, No. 1:08-CV-159, 2008 WL 5378338 (S.D Ohio, Dec. 19, 2008); *see also Bruce Lindberg, D.C.*, DAB No. 1386, at 8 (1993) (holding that the statutory phrase "in connection with" requires only a "minimal nexus" between the offense and the delivery of a health care item or service).

Petitioner further contends that her offense did not implicate a federally funded health care program. P. Br. ¶ 5(k). The record neither confirms nor refutes that assertion. In any event, the ALJ correctly observed that "[f]or purposes of exclusion under section 1128(a)(2), the existence of a connection between the offense and a Federal health care program is irrelevant." ALJ Decision at 6. Unlike section 1128(a)(1), which requires that a criminal offense be "related to the delivery of an item or service ***under title XVIII [Medicare] or under any State health care program***," 42 U.S.C. § 1320a-7(a)(1) (emphasis added), section 1128(a)(2) requires no link between "delivery" of a health care item or service and a federal or state health care program. *Kim J. Rayborn*, DAB No. 2248, at 9 (2009) (endorsing an ALJ's observation that section 1128(a)(2) "'does not include an element that the individual or entity to be excluded either received or claimed payment of funds from a federal source'"). That distinction is also expressly set out in the regulations, which state that for purposes of a mandatory exclusion relating to patient neglect or abuse, the "delivery of a health care item or service" may include "the provision of any item or service to an individual to meet his or her physical, mental or emotional needs or well-being, *whether or not reimbursed under Medicare, Medicaid or any other Federal health care program*." 42 C.F.R. § 1001.101 (italics added).

Petitioner also argues that a plea of *nolo contendere* is an improper basis upon which to find that she was "convicted" (for exclusion purposes) because it is not an admission of guilt and because defendants often feel pressured to enter the plea for reasons other than the strength of the prosecution's evidence. P. Br. ¶ 5(l)-(m). This is a policy argument foreclosed by the Act and regulations, which bind ALJs and the Board and which define a conviction to include the acceptance of a *nolo contendere* plea by a state court or a defendant's entry into a deferred adjudication program (such as the one that Petitioner entered). 42 U.S.C. § 1320a-7(i)(3)-(4).

In addition, Petitioner suggests, though without any legal analysis or citation to case law, that it is unconstitutional to treat her "non-conviction as defined by State law" as "a conviction for Federal law purposes." P. Br. ¶ 5(q). Accepting that claim would effectively render invalid section 1128(i)'s broad definition of "convicted" – a definition that Congress formulated to serve federal program objectives rather than state criminal justice policies. *Henry L. Gupton* at 7-8. Neither the Board nor an ALJ may "find invalid or refuse to follow" section 1128(i) in these circumstances. 42 C.F.R. § 1005.4(c)(1); *see also Ethan Edwin Bickelhaupt, M.D.*, DAB No. 2480, at 3 (2012), *aff'd*, *Bickelhaupt v. Sebelius*, No. 12 C 9598 (N.D. Ill. May 29, 2014).

Petitioner contends that her plea of *nolo contendere* was not knowing or voluntary due to fraud, prosecutorial misconduct, ineffective assistance of counsel, and deprivation of due process. *See* P. Br. ¶¶ 5(h)-(j), (n). These allegations constitute collateral attacks on her conviction that we are barred from considering. *Cf. Charles W. Wheeler and Joan K. Todd*, DAB No. 1123, at 9 (1990), *aff'd, Wheeler v. Sullivan*, No. 2:90-0266 (S.D. W. Va. Sept. 26, 1991) (stating that, since the record showed that the court accepted the excluded individual's guilty plea, the exclusion must be upheld regardless of whether the plea was "knowingly and willfully made").

Petitioner emphasizes that neither her criminal attorney nor the state court advised her before she entered her no-contest plea that it might lead to her exclusion from federal health care programs. P. Br. ¶¶ 5(j), (n), (p). However, the statutory and regulatory definitions of the term "convicted" do not require proof that a defendant was advised of all the potential consequences of a guilty or no-contest plea. "[I]t is well-established that once accepted by a state court" (as a basis for entering a judgment of conviction or for placing the defendant in a deferred adjudication program), "a plea constitutes a 'conviction' supporting exclusion under the Act, regardless of whether the individual was advised of all of the possible consequences of his plea." *Ioni D. Sisodia*, DAB No. 2224, at 7 (2008) (internal quotation marks omitted).

Conclusion

For the reasons discussed above, we affirm the ALJ's decision to sustain Petitioner's five-year exclusion from federal health care programs.

/s/
Sheila Ann Hegy

/s/
Constance B. Tobias

/s/
Leslie A. Sussan
Presiding Board Member