

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Dhanbir S. Saluja,
(OI File No. H-16-40434-9),

Petitioner,

v.

The Inspector General

Docket No. C-17-197

Decision No. CR4867

Date: June 14, 2017

DECISION

Petitioner, Dhanbir S. Saluja, was a New Jersey physician who continued to practice medicine after his license was suspended. He was convicted of the unlicensed practice of medicine, a felony. Based on this conviction, the Inspector General (IG) has excluded him from participating in the Medicare, Medicaid, and all federal health care programs for a period of five years, pursuant to section 1128(a)(3) of the Social Security Act (Act).

For the reasons discussed below, I find that the IG is authorized to exclude Petitioner and that the statute mandates a minimum five-year exclusion.

Background

In a letter dated April 29, 2016, the IG advised Petitioner Saluja that, because he had been convicted of a felony offense related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of

a healthcare item or service, the IG was excluding him from participating in Medicare, Medicaid, and all federal health care programs for a period of five years. IG Exhibit (Ex.) 1. Petitioner requested review.¹

The parties have submitted their written arguments. (IG Br.; P. Br.). The IG submitted nine exhibits (IG Exs. 1-9) and a reply. Petitioner submitted four exhibits (P. Exs. 1- 4). I admit into evidence IG Exs. 1-9 and P. Exs. 1-4.

The parties agree that this case does not require an in-person hearing. IG Br. at 7; P. Br. at 6.

Discussion

Petitioner must be excluded from program participation for a minimum of five years because he was convicted of a felony relating to fraud or theft in connection with the delivery of a healthcare item or service.²

Section 1128(a)(3) provides that an individual or entity convicted of felony fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service must be excluded from participating in federal health care programs for a minimum of five years. *See* 42 C.F.R. § 1001.101(c).

Petitioner Saluja was a New Jersey physician who continued to practice medicine after his license had been suspended. In an indictment dated October 18, 2013, he was charged with one felony count of the unlicensed practice of medicine, one count of theft by deception, and one count of forgery. IG Ex. 5. He pled guilty to the unlicensed practice of medicine, and, on March 6, 2015, the Superior Court of New Jersey entered judgment against him. CMS Exs. 6, 9.

The court sentenced him to one year probation and ordered him to pay fees and penalties of \$155. IG Exs. 8, 9.³

¹ Petitioner filed his hearing request more than seven months after the notice letter was mailed (in December 2016). I nevertheless determined that the appeal was timely because he did not, in fact, receive the notice until November 2016. Ruling (February 23, 2017).

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

³ I note that the State Board of Medical Examiners imposed much heavier fees and penalties (\$21,280.26 and \$70,000, respectively).

Petitioner concedes that he was convicted of a criminal offense, but argues that his conviction resulted from an innocent mistake and that he did not intend to defraud anyone. He admits that he practiced medicine without a valid license but maintains that he did not do so knowingly. P. Ex. 1 at 3 (Saluja Decl. ¶ 14).

In his guilty plea, Petitioner admitted knowing that his license had been suspended. He admitted that he “did knowingly practice medicine after the Board of Medical Examiners [o]rdered that [he] cease and desist.” CMS Ex. 5 at 1; *see* IG Ex. 6.

Federal regulations preclude any collateral attack on Petitioner’s underlying conviction:

When the exclusion is based on the existence of a . . .
determination by another Government agency, or any other
prior determination where the facts were adjudicated and a
final decision was made, the basis for the underlying . . .
determination . . . 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); *Marvin L. Gibbs, Jr., M.D.*, DAB No. 2279 at 8-10 (2009);
Roy Cosby Stark, DAB No. 1746 (2000).

Practicing medicine without a valid license is inherently fraudulent. The practitioner holds himself out as one who is authorized to provide medical care, when, in fact, he is not. Petitioner’s felony conviction was therefore related to fraud in connection with the delivery of a health care item or service, and he is subject to exclusion. An exclusion brought under section 1128(a)(3) must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

Conclusion

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

/s/
Carolyn Cozad Hughes
Administrative Law Judge