Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Angela R. Styles, M.D.
Docket No. A-18-28
Decision No. 2882
July 24, 2018

FINAL DECISION ON REVIEW OF ADMINISTRATIVE LAW JUDGE DECISION

Angela R. Styles, M.D. (Petitioner), appeals a November 29, 2017, decision by an administrative law judge (ALJ), *Angela R. Styles, M.D.*, DAB CR4977 (2017) (ALJ Decision). The ALJ sustained on the written record the determination of the Centers for Medicare & Medicaid Services (CMS) to revoke Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(1), based on the suspension of Petitioner's license to practice medicine in Arkansas, and pursuant to 42 C.F.R. § 424.535(a)(9), based on Petitioner's failure to report the suspension within 30 days thereof. The ALJ also changed the effective date of revocation from March 31, 2016, to March 14, 2016, the date Petitioner's license suspension took effect.

For the reasons set out below, we affirm the ALJ Decision.

Legal Background

The Medicare program provides health insurance benefits to persons 65 years and older and to certain disabled persons. Social Security Act (Act) §§ 1811, 1833.[1] CMS administers the Medicare program, in part through contracts with private contractors – in this case Novitas Solutions (Novitas) – who perform certain program functions on CMS's behalf; these functions include enrollment of providers and suppliers in the Medicare program. Act §§ 1816, 1842, 1874A; 42 C.F.R. §§ 421.5(b); 421.404(c).[2] A "supplier" of Medicare services – a term that includes a physician or a physician practice – must be

[1] The current version of the Act can be found at https://www.ssa.gov/OP_Home/ssact/ssact-toc.htm. Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Also, a cross-reference table for the Act and the United States Code can be found at https://www.ssa.gov/OP_Home/comp2/G-APP-H.html.

[2] We cite to, and apply, the version of section 42 C.F.R. Part 424 that was in effect on October 7, 2016, the date that CMS's contractor issued the initial revocation determinations. *John P. McDonough III, Ph.D., et al.*, DAB No. 2728, at 2 n.1 (2016).

enrolled, and maintain enrollment, in the Medicare program in order to receive payment for items and services covered by Medicare. 42 C.F.R. § 424.505. "Enrollment" is the process that CMS uses to: (1) identify a prospective supplier; (2) validate the supplier's eligibility to provide items or services to Medicare beneficiaries; (3) identify and confirm a supplier's owners and "practice location"; and (4) grant the supplier "Medicare billing privileges." *Id.* §§ 424.505, 424.510.

CMS may revoke a supplier's Medicare enrollment for any of the reasons specified in paragraphs 1 through 14 of 42 C.F.R. § 424.535(a). Section 424.535(a)(1) permits revocation if a supplier is determined not to be in compliance with the enrollment requirements, and has not submitted a corrective action plan (CAP).[3] These "enrollment requirements" include section 424.516, which requires, in relevant part, that a supplier comply with "Federal and State licensure, certification, and regulatory requirements, as required, based on the type of services or supplies the . . . supplier type will furnish and bill Medicare." *Id.* § 424.516(a)(2). Part 410 lists the types of services for which a provider or supplier may bill Medicare. Relevant here is section 410.20, which provides that "physicians' services" must be provided by a practitioner "legally authorized to practice by the State in which he or she performs the functions or actions, and who is acting within the scope of his or her license." *Id.* § 410.20(b). Failure to comply with the reporting requirements in sections 424.516(d)(1)(ii) and (iii) is also a basis for revocation. *Id.* § 424.535(a)(9). Relevant here is the requirement that a physician report certain changes, including "[a]ny adverse legal action" within 30 days. *Id.* § 424.516(d)(1)(ii).

Revocation effectively terminates any provider agreement and bars the provider or supplier from participating in Medicare from the effective date of the revocation until the end of the re-enrollment bar. *Id.* § 424.535(b),(c). The effective date for a revocation based on a license suspension is the date the suspension took effect. *Id*. § 424.535(g). CMS sets the re-enrollment bar for between one year and three years, depending on the severity of the basis for revocation. *Id.* § 424.535(c). A provider or supplier whose Medicare enrollment has been revoked may request reconsideration by CMS or its contractor and appeal a reconsideration determination with which it disagrees to an ALJ and the Board in accordance with the procedures at 42 C.F.R. Part 498. *Id.* §§ 424.545(a), 498.3(b)(17), 498.5(*l*)(1)-(3), 498.22(a).

[3] On December 5, 2014, CMS issued a final rule, promulgating the regulation at 42 C.F.R. § 405.809(a)(1) that limits the ability of a provider or supplier to submit a CAP to situations in which the provider or supplier was revoked under section 424.535(a)(1). *See* 79 Fed. Reg. 72,500, 72,523, 72,530-31 (Dec. 5, 2014). In the same final rule, the Secretary amended section 424.535(a)(1) so that it no longer contains the following language "All providers and suppliers are granted an opportunity to correct the deficient compliance requirement before a final determination to revoke billing privileges, except for those imposed under paragraph (a)(2), (a)(3), or (a)(5) of this section[,]" language to which CMS refers on page 8 of its Response to Petitioner's Request for Review. *See id*. at 72,523-24, 72,532.

Case Background[4]

The license suspension and revocation determination

Petitioner is an Arkansas dermatologist who was enrolled as a supplier in the Medicare program. ALJ Decision at 1; Petitioner's Request for Review (RR) at 4. On March 14, 2016, the Arkansas State Medical Board (ASMB) suspended Petitioner's license on an emergency basis pending a hearing. ALJ Decision at 1 (citing CMS Exhibit (Ex.) 11, at 2-3). On October 7, 2016, Novitas notified Petitioner that her Medicare billing privileges were being revoked effective March 31, 2016, due to noncompliance with the Medicare requirements at 42 C.F.R. § 424.535(a)(1) and 424.535(a)(9) based on the suspension of Petitioner's medical license and her failure to timely report that suspension. *Id*. at 1-2 (citing CMS Ex. 6, at 1). Novitas's notice letter further informed Petitioner that she would be barred from re-enrolling in the Medicare program for a period of three years, effective 30 days from the postmark date of the letter. *Id*. (citing CMS Ex. 6, at 2). On October 13, 2016, the ASMB issued an order lifting the suspension of Petitioner's medical license.[5] *Id*. at 2 (citing CMS Ex. 7).

On November 7, 2016, Novitas informed Petitioner that it would not accept the corrective action plan (CAP) Petitioner had submitted on October 24, 2016. *Id*. at 2, 7 (citing CMS Exs. 7, 8). Novitas explained that CAPs could not be considered for revocations based on grounds other than noncompliance with section 424.535(a)(1).[6] *Id*. at 2 n.2 (citing CMS Ex. 8, at 1).

Petitioner submitted a request for reconsideration on December 7, 2016. *Id*. at 3 (citing CMS Exs. 9, 12). On February 2, 2017, Novitas issued a reconsidered determination upholding the revocation under sections 424.535(a)(1) and 424.535(a)(9). *Id*. (citing CMS Ex. 1).

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[4] The facts stated are from the ALJ decision and the record and are undisputed unless otherwise noted. We make no new findings of fact.

[5] Petitioner does not dispute that ASMB issued the reinstatement order on October 13, 2016, but, as we discuss later, asserts that October 7, 2016, the date of the meeting leading to that issuance, should be considered the date her license was reinstated. The distinction, as we indicate in our discussion, is not material to our decision.

[6] Novitas also stated "We have affirmed our revocation due to the fact that you continued to bill for Medicare services after your Arkansas License was suspended." ALJ Decision at 2 n.2 (citing CMS Ex. 8, at 1). The ALJ concluded that "[a]lthough Petitioner disputes this basis, it is irrelevant to the instant decision. Petitioner's Medicare enrollment and billing privileges were revoked pursuant to 42 C.F.R. § 424.535(a)(1) and (9)." *Id*. As we discuss later, the ALJ was correct.

The ALJ proceedings and decision

Petitioner timely requested an ALJ hearing. ALJ Decision at 3. CMS submitted a prehearing brief, moved for summary judgment and filed twelve exhibits; Petitioner filed a prehearing brief and ten exhibits. *Id*. The ALJ admitted all of the exhibits without objection. *Id*. Although Petitioner submitted a witness list, she did not file written direct testimony for those witnesses as directed by the ALJ's prehearing order. *Id*. Accordingly, the ALJ concluded that no hearing was necessary and decided the case on the written record. *Id*. at 3, 4.

The ALJ concluded that CMS was authorized to revoke Petitioner's billing privileges under sections 424.535(a)(1) and 424.535(a)(9) based, respectively, on the suspension of her Medical license and her failure to report that suspension within 30 days. *Id*. at 5-8. The ALJ rejected Petitioner's argument that CMS had no basis to revoke her billing privileges since by the date of Novitas's initial determination to revoke, October 7, 2016, her license had been reinstated. *Id*. at 6. The October 7, 2016, date, Petitioner asserted, was the same date her license was reinstated because that was the date the ASMB met and, according to minutes of that meeting, agreed to the reinstatement.[7] The ALJ acknowledged the ASMB meeting and vote but also noted that the ASMB did not issue an order reinstating Petitioner's license until October 13, 2016. *Id*. The ALJ concluded that regardless of the date Petitioner's license was reinstated, CMS had a basis for the revocation because Petitioner's license was suspended "for a period of more than six months, and[,] therefore, during that period she did not comply with Medicare requirements." *Id*. The ALJ rejected Petitioner's argument that CMS cannot revoke a supplier's enrollment based on a license suspension if the suspension has ended before the determination to revoke. In doing so, the ALJ stated that Petitioner's reliance on *Akram A. Ismail, M.D.*, DAB No. 2429 (2011) was "misplaced" and, "[i]n fact . . . contrary to the plain language contained therein, as the [DAB] agreed with the ALJ's finding that a temporary suspension of a license rendered a supplier noncompliant with Medicare supplier requirements." *Id*. (citing DAB No. 2429, at 8 ("stating: 'CMS may determine a supplier is out of compliance with [the] Medicare enrollment requirements at any time' and that it is appropriate to look 'at the immediate effect of [the] suspension rather than the possibility that the suspension may be lifted at some point.'")). The ALJ also noted that the regulations "do not distinguish whether a physician's license is suspended for a day, weeks, or even months," and that the interpretation urged by Petitioner "would undoubtedly lead to an absurd result." The ALJ stated, as an example, that Petitioner's interpretation would preclude a revocation for failure to maintain licensure even where CMS did not learn of a license suspension or revocation soon enough to complete the revocation action prior to reinstatement of the license. *Id*.

[7] Petitioner reiterates that argument here. RR at 4-5, 11-12. We address it later in our decision.

The ALJ declined to address Petitioner's argument that Novitas erred in rejecting its CAP, concluding that rejection of a CAP is not subject to appeal and noting that the opportunity to submit a CAP did not exist, in any event, for the noncompliance with section 424.535(a)(9). *Id*. at 7. The ALJ further noted that Petitioner did not allege that she timely reported the suspension to CMS and found nothing in the record to support such a claim. The ALJ acknowledged Petitioner's assertion that she had assumed her billing company made the report for her but concluded that even if that assumption had merit, Petitioner could not avoid liability under section 424.535(a)(9) by shifting her reporting obligation to someone else. *Id*. at 8.

The ALJ changed the effective date of the revocation to March 14, 2016, the date ASMB suspended Petitioner's license because that was the date, the ALJ concluded, required by 42 C.F.R. § 424.535(g).[8] *Id*. at 9. Finally, the ALJ concluded that she had no authority to disturb the length of the enrollment bar, which CMS in this case set at three years.

Analysis

A. The ALJ correctly concluded that CMS had a basis for revoking Petitioner's Medicare enrollment and billing privileges under 42 C.F.R. § 424.535(a)(1).

1. *Petitioner's license was not, in fact, reinstated before CMS's initial determination to revoke; nor is the timing material to CMS's authority to revoke.*

Petitioner does not dispute that the ASMB suspended her medical license or that she did not timely report the suspension but nonetheless argues that the ALJ erred in concluding that CMS had a basis to revoke her Medicare enrollment and billing privileges. RR at 10-14. Petitioner alleges that the ALJ erred in reaching this conclusion "because she failed to adequately address the procedural inadequacies of the case and because she failed to appreciate the timeline of the events in this case." *Id*. We find no merit in these arguments.

[8] Petitioner does not dispute the ALJ's determination that the proper effective date is March 14, 2016, and the ALJ was correct that this is the effective date required by section 424.535(g) under the facts of this case. Accordingly, we affirm the effective date determined by the ALJ without further discussion.

On the issue of the suspension, Petitioner's primary argument is that CMS could not legally revoke her Medicare enrollment and billing privileges under section 424.535(a)(1) because, she contends, the ASMB had reinstated her license by the date of CMS's initial determination to revoke. RR at 13. Petitioner asserts that this distinguishes her case from that of the supplier in the *Ismail* decision, in which the Board upheld a revocation determination made by CMS while the supplier's license suspension remained in effect. The ALJ found no such distinction, and neither do we.

As a preliminary matter, Petitioner's assertion that her license was reinstated by the time of CMS's initial determination (October 7, 2016) is not supported by the record or by her own statements during the contractor proceedings. Petitioner cites minutes of an ASMB meeting in which it voted to lift the suspension pursuant to a Consent Order. RR at 4, 13; P. Ex. 1, at 2. However, as Petitioner does not dispute, the ASMB Board Chair and Petitioner herself did not sign the Consent Order until October 13, 2016. *See* CMS Ex. 7, at 6-7. During the contractor proceedings, Petitioner submitted the Consent Order as evidence that her "medical license was reinstated October 13, 2016." CMS Ex. 7, at 11 (Petitioner's CAP submission); CMS Ex. 9, at 4 (Petitioner's Request for Reconsideration).

But even assuming Petitioner's license suspension had ended by the time of CMS's initial determination to revoke, *Ismail* would not help Petitioner. The Board's decision in that case did not turn on the fact that the physician's license remained suspended when CMS made its determination to revoke. Rather, the Board held that the ALJ correctly concluded that the revocation was lawful because the suspension left Dr. Ismail without legal authority to practice medicine, regardless of whether the suspension was temporary or permanent. The Board held that "the ALJ correctly looked at the immediate effect of Dr. Ismail's suspension rather than the possibility that the suspension may be lifted at some point." DAB No. 2429 at 8. The Board further stated that it was "Dr. Ismail's inability to practice medicine for any length of time due to the disciplinary actions imposed against him [that] triggered his noncompliance with the Medicare enrollment requirements and authorized revocation of his billing privileges." *Id*.

In a recent case, *Meindert Niemeyer, M.D.*, DAB No. 2865 (2018), the Board confirmed the applicability of its holding in *Ismail* to a case in which the license suspension ends before CMS issues its initial or reconsidered determination. In *Niemeyer*, there was no dispute that the state's suspension of the supplier's medical license had ended before CMS made its initial and reconsidered determinations to revoke his Medicare enrollment and billing privileges. The ALJ upheld the revocation, and the Board affirmed. The Board expressly rejected Dr. Niemeyer's argument that the lifting of his suspension prior

to CMS's revocation determination made that determination unlawful. After reviewing the language of section 424.535(a)(1) and its regulatory history,[9] the Board concluded "that CMS's interpretation of its authority under 42 C.F.R. § 424.535(a)(1) to revoke for noncompliance that existed, regardless of whether the noncompliance continues to exist, is reasonable and consistent with CMS's policy goals and the rulemaking history." DAB No. 2865, at 9. The Board explained,

> If we accept Petitioner's interpretation, CMS would not have the authority to revoke a supplier under 42 C.F.R. § 424.535(a)(1) for any period of noncompliance (regardless of length or seriousness) that ends prior to the issuance of an initial determination. The time constraint imposed on a CMS contractor to identify the noncompliance, develop a case, and issue an initial determination would undoubtedly lead to instances such as the current case where CMS would be barred from seeking revocation action under section 424.535(a)(1). It would place an undue burden on the contractor, and disincentivize a supplier from reporting short-term license suspensions before the period of noncompliance ends. [footnote omitted] In effect, the regulation would be rendered unworkable in instances of short-term periods of noncompliance. Given the absence of explicit language binding CMS's authority to noncompliance at the time of the revocation action, CMS's interpretation of the regulation is reasonable and aligns with the stated goal of protecting the Medicare Trust Funds and beneficiaries, including from suppliers that do not comply with the enrollment requirements for short-term periods.

Id.

Although *Niemeyer* postdates the ALJ Decision here, the ALJ here articulated a rationale similar to the Board's rationale in *Niemeyer* for not reading into section 424.535(a)(1) a restriction that would preclude revoking a supplier's Medicare enrollment and billing privileges for a license suspension or revocation if the license had been reinstated prior to CMS's action. The ALJ here stated:

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[9] The preamble to the 2006 final rule implementing the enrollment regulations, including the regulations for revocations, summarized the purpose of the final rule as follows:

> [T]his final rule implements provisions in the statute that require us to ensure that all Medicare providers and suppliers are qualified to provide the appropriate health care services. These statutory provisions include requirements meant to protect beneficiaries and the Medicare Trust Funds by preventing unqualified, fraudulent, or excluded providers and suppliers from providing items or services to Medicare beneficiaries or billing the Medicare program or its beneficiaries.

71 Fed. Reg. 20,754 (Apr. 21, 2006).

> Petitioner's erroneous belief that Medicare enrollment cannot be revoked so long as a medical license is reinstated prior to commencement of a revocation action would undoubtedly lead to an absurd result. For example, CMS or its contractor may not learn of a license suspension immediately, and it may take a significant number of weeks, or even months, to develop the case and issue an initial determination, let alone proceed through the entire administrative appeals process. Under Petitioner's flawed interpretation of 42 C.F.R. § 424.535(a)(1), any license suspension that resolves prior to the issuance of an initial determination, even many months later, cannot result in revocation.

ALJ Decision at 6.

For the foregoing reasons, we conclude that the timing of the reinstatement of Petitioner's medical license relative to CMS's revocation action is not material and that the ALJ correctly concluded that the suspension of Petitioner's license gave CMS a basis under section 424.535(a)(1) for revoking Petitioner's Medicare enrollment and billing privileges.

2. The "procedural inadequacies" Petitioner alleges do not exist.

Petitioner argues that "in concluding that CMS has a legal basis to revoke Petitioner's Medicare enrollment and billing privileges . . . [the ALJ] failed to adequately address the procedural inadequacies of the case . . . ." RR at 10. Petitioner cites the November 7, 2016, letter from Novitas that rejected Petitioner's CAP. Petitioner claims the letter "*introduced an entirely new basis for revocation* and one which Dr. Styles had never before had the opportunity to dispute or present explanatory information regarding . . . ." RR at 11 (emphasis in original). Petitioner misreads the letter and attributes to it relevance which it does not have. Novitas did not send the November 7 letter to notify Petitioner of CMS's determination to revoke her billing privileges or the basis for that determination; rather, Novitas sent the letter to notify Petitioner that it was rejecting her CAP. The letter informed Petitioner that "[u]nder § 405.809, CAPs for revocations based on grounds other than § 424.535(a)(1) shall not be accepted." CMS Ex. 8, at 1. In other words, Novitas was informing Petitioner that, by law, it could not accept a CAP since her billing privileges had been revoked based on section 424.535(a)(9) as well as on section 424.535(a)(1). *See* ALJ Decision at 2 n.2. Petitioner points to the fact that Novitas's letter went on to state, "We have affirmed our revocation due to the fact that you continued to bill for Medicare services after your Arkansas License was suspended." *Id*. The ALJ noted that the meaning of that statement was not explained but concluded it was "irrelevant to the instant decision." *Id*.

The ALJ correctly concluded that the statement about Petitioner's continued billing (whether true or not) was irrelevant. CMS's notice of its reconsideration determination, not any prior or subsequent CMS letter, triggers a supplier's right to appeal a revocation to an ALJ, and in determining whether CMS had a legal basis for a revocation, an ALJ may look only to the reasons stated in the reconsideration decision letter. 42 C.F.R. § 498.5(*l*)(2); *Better Health Ambulanc*e, DAB No. 2475, at 4 (2012); *Denise A. Hardy, D.P.M.*, DAB No. 2464, at 4 (2012). Petitioner herself acknowledges that the notice of initial determination she received from Novitas "did not in any way mention or indicate that the basis for revocation included an allegation that Dr. Styles had billed for Medicare services while not in compliance." RR at 10-11. The record unambiguously shows that the reconsideration notice stated as the bases for the revocation sections 424.535(a)(1) and 424.535(a)(9). We concluded above that revocation under section 424.535(a)(1) was authorized, and we conclude below that revocation also was authorized under section 424.535(a)(9). Accordingly, we find no basis in fact or law for Petitioner's allegation that "[t]he notification that [she] received regarding the allegations against her was procedurally flawed so as to rise to the level of a prejudicial error of procedure." RR at 10.

To the extent Petitioner is asserting that CMS improperly rejected her CAP, that assertion is incorrect as a matter of law since, as the letter notifying her of that rejection stated, section 405.809(a)(1) expressly provides that CAPs can only be accepted where section 424.535(a)(1) alone is the basis for a revocation. Moreover, CMS's rejection of a CAP is not subject to review. *E.g*. C*onchita Jackson, M.D.*, DAB No. 2495, at 6-8 (2013).

B. The ALJ correctly concluded that section 424.535(a)(9) provided an additional basis for the revocation.

Section 424.535(a)(9) requires a provider or supplier to follow the "reporting requirements specified in § 424.516(d)(1)(ii) and (iii) of this subpart." Relevant here is the requirement that physicians and other practitioners and practitioner organizations report "[w]ithin 30 days" . . . [a]ny adverse legal action[.]" 42 C.F.R. § 424.516(d)(1)(ii). Section 424.502 specifically provides that the term "Final adverse action" includes "[s]uspension or revocation of a license to provide health care by any State licensing authority[.]" *Id*. § 424.502. A suspension is considered "final" when imposed, despite any pending appeals. *Ismail*, DAB No. 2429, at 10-11. Petitioner does not dispute that the suspension of her medical license was an adverse legal action or deny that she did not report the suspension to CMS within 30 days of its onset. Accordingly, CMS had a second – alternative – basis for revoking her billing privileges.[10]

[10] An ALJ or the Board need only conclude that CMS had one legal basis for a revocation in order to sustain the revocation. *Jason R. Bailey, M.D., P.A.*, DAB No. 2855, at 15 (2018).

Petitioner argues that CMS should not have revoked her billing privileges because she made a "good faith effort" to report the suspension to CMS by relying on her billing company to make the report, which they did not do. Here, as before the ALJ, Petitioner points to copies of messages generated by her billing company that she claims evidence the billing company's awareness that they were responsible for making this report. RR at 14-15. Petitioner argues that the ALJ "erred in not giving the unique facts and circumstances of this case due weight and consideration in her opinion." *Id*. at 15. We need not determine whether the documents cited by Petitioner support her assertion of a "good faith" effort to report the license suspension because the ALJ correctly determined that a "good faith effort" to comply with the reporting requirement does not constitute compliance with the reporting requirement. As the ALJ stated, "Petitioner was obligated to report her license suspension, and she cannot escape responsibility for her failure to report the suspension within the 30-day period by shifting responsibility and liability by contracting with a billing agent."[11] ALJ Decision at 8.

We further conclude that Petitioner's statement that "this appellate review should take into account her efforts and the unique circumstances of this case[] is essentially a request for equitable relief, which we may not entertain. ALJs and the Board are bound by all applicable statutes and regulations and have no authority to make exceptions to their applicability or grant equitable relief. *E.g*. *Fady Fayad, M.D.*, DAB No. 2266, at 14 (2009), *aff'd, Fayad v. Sebelius*, 803 F. Supp. 2d 699 (E.D. Mich. 2011); *Patrick Brueggeman, D.P.M.*, DAB No. 2725, at 15 (2016).

C. The ALJ did not err in concluding she had no authority to review the length of Petitioner's reenrollment bar.

When it revokes a provider or supplier's Medicare enrollment billing privileges, CMS imposes a reenrollment bar of from one to three years beginning with the effective date of the revocation. 42 C.F.R. 424.535(c). In this case, CMS imposed a three-year reenrollment bar. CMS Ex. 6, at 2. The ALJ concluded that she had no authority to review the duration of the reenrollment bar. ALJ Decision at 9 (citing *Vijendra Dave, M.D.*, DAB No. 2672 (2016)). Petitioner alleges the ALJ erred in failing to review that issue and states that if the Board does not reverse the revocation, it "should order the review of the period of prohibition for Dr. Styles' billing privileges." RR at 1, 16-18. The ALJ did not err; accordingly, the Board may not order review of the issue.

[11] The ALJ also noted that only Petitioner could sign the Form CMS-855I enrollment form used to report final adverse actions and, thus, "should have been aware of the status . . . ." *Id.*

In the case on which the ALJ relied, *Vijendra Dave*, the Board explained that the Secretary has limited ALJ and Board review to the "initial determinations" specified in section 498.3(b) and that CMS's decision as to the duration of a reenrollment bar is not listed there.[12] DAB No. 2672 at 10-12. Petitioner "acknowledges the ALJ's reliance on *Vijendra Dave* . . ." but then "respectfully requests that this Appeals Board reconsider that ruling at least to include an exception for a case, as here, where an overly harsh maximum penalty has been imposed upon a provider in the complete abyss of evidence of bad intent or knowledge and in fact a strong showing of mistake." RR at 17. Even if we were to conclude that the factors asserted by Petitioner exist (and we do not), we could not make the exception Petitioner urges, because, as the Board's *Vijendra Dave* decision recognized, the Board is bound by the regulations, in this instance the appeal limitations in section 498.3(b). *See supra* at 10 (citing *Fady Fayad* and *Patrick Brueggeman*); *see also Jersey City Med. Supplies, Inc.*, DAB No. 2766, at 8 (2017) (citing and applying Board decisions holding that the Board is bound by the regulations and may not choose to overturn CMS's lawful use of its regulatory authority based on principles of equity).

Conclusion

For the reasons stated above, we affirm the ALJ's conclusions that CMS had the authority to revoke Petitioner's Medicare billing privileges under 42 C.F.R. § 424.535(a)(1) and 42 C.F.R. § 424.525(a)(9). We also affirm the ALJ's conclusion that under 42 C.F.R. § 424.535(g), the effective date of the revocation is March 14, 2016.

/s/
Christopher S. Randolph

/s/
Constance B. Tobias

/s/
Sheila Ann Hegy
Presiding Board Member

[12] As we noted earlier, ALJ review in provider and supplier revocation cases is further limited by the requirement that the provider or supplier must have sought and received reconsideration of the initial determination, and it is the reconsideration determination, therefore, that is reviewed by an ALJ and, if there is a further appeal, by the Board. *See supra* at 9.