

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Dinesh R. Patel, M.D.,
(OI File No. 2-11-40392-9),

Petitioner,

v.

The Inspector General.

Docket No. C-14-847

Decision No. CR3355

Date: September 4, 2014

DECISION

Petitioner, Dinesh R. Patel, M.D., is a physician, licensed to practice in the State of New Jersey. He was convicted of violating the federal anti-kickback statute. Based on his conviction, the Inspector General (I.G.) has excluded him for five years from participating in Medicare, Medicaid, and all federal health care programs, as provided for in section 1128(a)(1) of the Social Security Act (Act). Petitioner appeals the exclusion. For the reasons discussed below, I find that the I.G. properly excluded Petitioner and that the statute mandates a minimum five-year exclusion.

Background

By letter dated January 31, 2014, the I.G. notified Petitioner that he was excluded from participating in Medicare, Medicaid, and all federal health care programs for a period of five years, because he had been convicted of criminal offenses related to the delivery of an item or service under the Medicare or state health care program. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. I.G. Ex. 1.

Each party submitted a written argument (I.G. Br.; P. Br.). The I.G. submitted ten exhibits (I.G. Exs. 1-10) and a reply brief (I.G. Reply). Petitioner submitted 96 exhibits (P. Exs. 1-96). In the absence of any objection, I admit into evidence I.G. Exs. 1-10 and P. Exs. 1-96.

I directed the parties to indicate in their briefs whether an in-person hearing would be necessary. If so, I directed the party requesting an in-person hearing to: describe the testimony it wants to present; provide the name of each witness and a summary of the witness's proposed testimony; explain why the testimony is relevant; and show that the testimony does not duplicate written evidence submitted by either party. Order and Schedule for Filing Briefs and Documentary Evidence at 2 (May 1, 2014).

The I.G. indicates that an in-person hearing is not necessary and submits no declarations from proposed witnesses. I.G. Br. at 9. Petitioner, on the other hand, asserts that an in-person hearing is necessary, and lists two witnesses who will testify about the community's need for Petitioner Patel's medical services. He does not submit written declarations from the proposed witnesses but provides letters from them. P. Exs. 94, 95; P. Br. at 7-8. As discussed below, the proposed testimony of these witnesses is simply not relevant to the narrow issues before me. By regulation, I must exclude that testimony. 42 C.F.R. § 1005.17(c). I therefore decline to schedule a hearing that would serve no purpose.

Discussion

Petitioner must be excluded from program participation because he was convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program, within the meaning of section 1128(a)(1).¹

Under section 1128(a)(1) of the Act, the Secretary of Health and Human Services must exclude an individual who has been convicted under federal or state law of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. 42 C.F.R. § 1001.101(a). Petitioner concedes that he was convicted of a criminal offense involving the delivery of Medicare or Medicaid services. P. Br. at 2. On September 19, 2012, he pled guilty to one count of soliciting and receiving illegal remuneration in violation of the federal Anti-Kickback statute, 42 U.S.C. § 1320a-7b(b)(1)(A). He accepted payments for referring Medicare, Medicaid, and privately insured patients to a supplier of diagnostic imaging services. On April 15, 2013, the district court judge adjudicated him guilty. I.G. Exs. 4, 8, 9.

¹ I make this one finding of fact/conclusion of law.

This should end the discussion, because the statute mandates exclusion for a minimum period of five years and provides me no discretion to alter either the exclusion itself or the period of exclusion. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.102(a). Where, as here, the I.G. imposes an exclusion of five years, the length of the exclusion is not reviewable. 42 C.F.R. § 1001.2007(a)(2).

Petitioner nevertheless argues that he need not be excluded and that the period of exclusion is disproportionate to his crime. He argues that his exclusion should be waived pursuant to 42 C.F.R. § 1001.1801(b). P. Br. at 2. Section 1001.1801(b) authorizes the I.G. to grant or deny a state health care program's request that exclusion be waived "if the individual . . . is . . . the sole source of essential specialized services in a community." Thus, a state health care official – not the practitioner himself – must present the request to the I.G., and the I.G.'s "decision to grant, deny, or rescind a request for a waiver is not subject to administrative or judicial review." 42 C.F.R. § 1001.1801(f); Act § 1128(c)(3)(B).

Petitioner also points out that the Centers for Medicare & Medicaid Services (CMS), which oversees the Medicare and Medicaid programs, has revoked his Medicare Part B billing privileges for between one and three years, pursuant to 42 C.F.R. § 424.535(a)(3). He characterizes the differing periods as "anomalous and inconsistent," and argues that if the shorter period is sufficient to protect the integrity of the Part B program, "it should be wholly sufficient to protect the integrity of all other Federal healthcare programs, as well. . . ." P. Br. at 3. The Departmental Appeals Board has rejected such reasoning, pointing out that CMS acts pursuant to a separate grant of authority, and its determination has no bearing on the I.G.'s exclusion authority. *Gregory J. Salko, M.D.*, DAB No. 2437 at 6 (2012). Having concluded that the I.G. has a basis to exclude Petitioner under section 1128(a)(1), I must uphold the five-year exclusion.

Finally, Petitioner raises some constitutional challenges that I have no authority to review. *Donna Rogers*, DAB No. 2381 at 5 (2011); *see* 42 C.F.R. § 1005.4(c)(1).

Conclusion

Because he was convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program, Petitioner Patel must be excluded from program participation for a minimum period of five years.

_____/s/
Carolyn Cozad Hughes
Administrative Law Judge