

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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In the Case of:)	
)	
William G. Dotzman, D.O.,)	Date: January 29, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-06-488
)	Decision No. CR1560
Centers for Medicare & Medicaid)	
Services.)	
_____)	

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude William G. Dotzman (Petitioner), from participating in the Medicare, Medicaid, and all other federal health care programs until he regains his license to practice osteopathic medicine in the state of Florida. I base my decision on the applicable law and regulations, the documentary evidence of record, and the arguments presented before me.

PROCEDURAL BACKGROUND

By letter dated February 28, 2006, the I.G. notified Petitioner that he was being excluded from participation in the Medicare, Medicaid, and all federal health care programs as defined in section 1128B(f) of the Social Security Act (Act). The I.G. informed Petitioner that his exclusion was imposed under section 1128(b)(4) of the Act, because his license to practice medicine or provide health care as an osteopathic physician was suspended or otherwise lost, or was surrendered while a formal disciplinary proceeding was pending before the Florida Board of Osteopathic Medicine, for reasons bearing on his professional competence, professional performance, or financial integrity. I.G. Exhibit 1.

Following a telephone prehearing conference held on August 8, 2006, I issued an Order establishing briefing deadlines. Pursuant to that Order, the I.G. filed his brief on September 8, 2006, accompanied by two proposed exhibits. These have been entered into the record as I.G. Exhibits (Exs.) 1-2, without objection. Petitioner's response brief was due on or before October 10, 2006. Petitioner failed to file his brief. Consequently, I issued an Order on November 30, 2006, advising Petitioner that if he failed to submit a response brief within 10 days of the date of my Order I would close the record and issue a decision without the benefit of his argument. Petitioner failed to respond to my Order by filing a response brief or request additional time to do so. Thus, I am closing the record and issuing my decision without the benefit of his argument. Furthermore, inasmuch as there are no issues of material fact in controversy summary judgment is appropriate. See *Edmund B. Eisnaugle, D.O.*, DAB CR1010, (2003); *Michele R. Rodney*, DAB CR1332, (2004); *Ramona K. Alexander*, DAB CR1334, (2005)

ISSUE

Whether the I.G. had a basis upon which to exclude Petitioner from participation in the Medicare, Medicaid, and all federal health care programs, as defined in section 1128B(f) of the Act.

APPLICABLE LAW AND REGULATIONS

Section 1128(b)(4)(A) of the Act authorizes the Secretary of Health and Human Services (Secretary) to exclude an individual whose license to provide health care has been revoked or suspended by a State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on that individual's professional competence, professional performance, or financial integrity. According to section 1128(c)(3)(E) of the Act, the minimum term of exclusion of an individual who is excluded pursuant to section 1128(b)(4) must be coterminous with the term of loss, suspension, or revocation of that individual's license to provide health care.

Under Section 1128(b) of the Act, the Secretary may exclude individuals from receiving payment for services that would otherwise be reimbursable under Medicare, Medicaid, or other federal health care programs.

The Act defines "[f]ederal health care program" as "any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government . . .; or any State health care program, as defined in section 1128(h)." Act, section 1128B(f).

The regulations promulgated at 42 C.F.R. §§ 1001.501 and 1001.1901(b) mirror the statutory measures set forth in the Act. Pursuant to 42 C.F.R. § 1001.2007, an individual or entity excluded under section 1128(b)(4) of the Act may file a request for a hearing before an administrative law judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. By letter dated February 28, 2006, the I.G. notified Petitioner that he was being excluded from participation in Medicare, Medicaid, and all other federal health care programs pursuant to section 1128(b)(4) of the Act, based on the suspension of his license to practice medicine by the Florida Board of Osteopathic Medicine, for reasons bearing on his professional competence, professional performance, or financial integrity, until he regained his license as a medical doctor in the state of Florida. I.G. Ex. 1.
2. Petitioner is an osteopathic physician who received a Florida license to practice medicine on February 1, 2000. I.G. Ex. 2, at 5.
3. On April 13, 2005, the Florida Department of Health issued an Administrative Complaint requesting that the Florida Board of Osteopathic Medicine discipline Petitioner, after the Florida Department of Health determined that he was unable to practice medicine with reasonable skill and safety due to alcohol and cocaine dependence. I.G. Ex. 2, at 12.
4. Although served with the Florida Department of Health Administrative Complaint, Petitioner failed to respond or otherwise dispute the facts therein alleged, thereby waiving his right to a hearing. I.G. Ex. 2, at 1.
5. On September 20, 2005, the Florida Board of Osteopathic Medicine considered the findings and recommendations of the Florida Department of Health. I.G. Ex. 2, at 2.
6. The following undisputed facts related to Petitioner's alcohol and cocaine dependence supported the Florida Board of Osteopathic Medicine's decision to suspend his license:
 - (a) Petitioner was convicted of driving under the influence of alcohol and failed to report the judgment of guilt as required by section 456.072(1)(w), Florida Statutes (2004). I.G. Ex. 2, at 13.

- (b) On at least one occasion, Petitioner smelled of alcohol at work, an incident which coupled with the driving under the influence of alcohol conviction, prompted his supervisor to notify the Professionals Resource Network. I.G. Ex. 2, at 6.
 - (c) Petitioner was diagnosed with alcohol and cocaine dependence by the Health Care Connection of Tampa. I.G. Ex. 2, at 8-9.
 - (d) Petitioner was diagnosed with alcohol abuse and anxiety disorder by Turning Point of Tampa, Inc., residential treatment program. I.G. Ex. 2, at 9-10.
 - (e) Petitioner was diagnosed with cocaine dependence by the Professionals Resource Network. I.G. Ex. 2, at 8-9.
 - (f) Petitioner admitted to alcohol and cocaine abuse. I.G. Ex. 2, at 12.
 - (g) Petitioner returned to work at a different location without notifying the Department of Health that he had changed his place of practice, and without clearance from the Professionals Resource Network. I.G. Ex. 2, at 14.
 - (h) Professionals Resource Network found that Petitioner was unfit to practice his profession with reasonable skill and safety as a result of his failure to comply with treatment recommendations, his continuing to ingest alcohol, and his refusal to sign a contract to be monitored by the Professionals Resource Network. I.G. Ex. 2, at 12.
7. On September 20, 2005, the Florida Board of Osteopathic Medicine approved and adopted the findings of the Florida Department of Health. I.G. Ex. 2, at 2.
 8. On September 20, 2005, the Florida Board of Osteopathic Medicine reprimanded Petitioner, and suspended his license to practice osteopathic medicine for a period of two years, to be reinstated upon showing the ability to practice medicine safely, followed by a five-year period of probation. I.G. Ex. 2, at 1-3.
 9. The Florida Board of Osteopathic Medicine is a state licensing authority within the meaning of section 1128(b)(4)(A) of the Act.

10. Petitioner's exclusion under section 1128(b)(4)(A) of the Act is based on a state licensing authority's suspension of Petitioner's license for reasons bearing on his professional competence and professional performance.
11. The I.G. has the authority to exclude Petitioner from participation in Medicare, Medicaid, and all federal health care programs based on the circumstances of this case.
12. An individual excluded under section 1128(b)(4) of the Act must be excluded for no less than the period during which the individual's license to provide health care has been revoked, suspended, or surrendered. Act, section 1128(c)(3)(E); 42 C.F.R. § 1001.501(b)(1).
13. Where the I.G. imposes an exclusion for a period that is concurrent with a sanction imposed by a state licensing authority, there is no issue as to the reasonableness of the length of the exclusion as it is the minimum period permitted by law.
14. The I.G. has no discretion to impose an exclusion that is shorter than the period for which Petitioner's license is suspended by a state licensing authority.
15. Because Petitioner lost his license to practice medicine in Florida, the Act requires that the period of exclusion will not be less than the period during which the license to practice medicine *in that State* was lost. Therefore, Petitioner is required to obtain from the Florida licensing authority the same type of license that he lost before he can be considered for reinstatement as a participant in Medicare, Medicaid, and other federal health care programs. The period of exclusion will not be affected by obtaining a license to practice medicine in another state.

CONCLUSION

It is my decision that the I.G. was authorized to exclude Petitioner pursuant to section 1128(b)(4) of the Act. Additionally, I conclude that the indefinite period of exclusion imposed by the I.G. is the minimum period mandated by section 1128(c)(3)(E) of the Act

/s/

Jose A. Anglada
Administrative Law Judge



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

JAN 29 2007

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Civil Remedies Division
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CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

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and

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Re: William G. Dotzman, D.O., Petitioner, v, The
Inspector General.
Docket No. C-06-488
Decision No. CR1560

Dear Mr. Dotzman and Ms. Callender:

Enclosed is your copy of the decision of Administrative Law Judge José A. Anglada in the above case. If the decision is adverse to you, and you wish to appeal, your appeal should be sent to the Appellate Division of the Departmental Appeals Board.

In your notice of appeal, you should identify (by number) each finding of fact and conclusion of law with which you take exception and state why you think the administrative law judge was wrong, or any other reasons for your appeal. Where your reasons are supported by the record, you must cite each part of the record that you want the Board to consider, identifying the document and page number. Also, you must cite the particular sections or subsections of statutes, regulations, or other authorities on which you rely. If you are presenting arguments previously relied upon, set them out again in your brief; it is not enough to incorporate by reference your brief(s) before the judge. Do not submit exhibits which were submitted to the judge; the record contains all exhibits which were offered, even if the judge rejected them.

FILE COPY

You will find the procedures for appeal at 42 C.F.R. § 1005.21 (1992). The form, filing and service of such an appeal should follow the criteria established at 42 C.F.R. § 1005.21 as reflected in the Board's guidelines (copy enclosed for Petitioner, available also online at www.hhs.gov/dab/guidelines/procedures.html). If you have any questions, please call Carolyn Reines-Graubard (her number is (202) 565-0116).

The Appellate Division will notify you that it has received an appeal.

If you are the party filing an appeal, it is your obligation to serve the other party with a copy of the appeal. 42 C.F.R. § 1005.21(b). If you are the other party, you have 30 days from receipt of an appeal to submit a brief in opposition. 42 C.F.R. § 1005.21(c).

By direction of the Administrative
Law Judge.



Oliver A. Potts
Chief, Civil Remedies Division

Enclosures

cc: Exclusion Staff
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