

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Scott S. Reuben, M.D.,
(O.I. File No.: 1-09-40105-9),

Petitioner,

v.

The Inspector General.

Docket No. C-11-664

Decision No. CR2481

Date: January 6, 2012

DECISION

Petitioner, Scott S. Reuben, M.D., asks review of the Inspector General's (I.G.'s) determination to exclude him for five years from participation in the Medicare, Medicaid, and all federal health care programs under section 1128(a)(3) of the Social Security Act (Act). For the reasons discussed below, I find that the I.G. is authorized to exclude Petitioner and that the statute mandates a minimum five-year exclusion.

Discussion

The sole issue before me is whether the I.G. has a basis for excluding Petitioner from program participation. Because an exclusion under section 1128(a)(3) of the Act must be for a minimum period of five years, the reasonableness of the length of the exclusion is not an issue. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

The parties have submitted their written arguments (I.G. Br.; P. Br.), and the I.G. filed a reply. With his brief, the I.G. submitted four exhibits (I.G. Exs. 1-4). In the absence of any objections, I admit into evidence I.G. Exs. 1-4.

I directed the parties to indicate in their briefs whether an in-person hearing would be necessary and, if so, to describe the testimony it wishes to present, the names of the witnesses it would call, and a summary of each witnesses' proposed testimony. I specifically directed the parties to explain why the testimony would be relevant. Order and Schedule for Filing Briefs and Documentary Evidence, Attachment 1 (Informal Brief of Petitioner ¶ III) and Attachment 2 (Informal Brief of I.G. ¶ III) (Sept. 9, 2011). The I.G. indicates that an in-person hearing is not necessary. Although Petitioner does not directly respond to the question, he does not contend that an in-person hearing is necessary and lists no potential witnesses. I therefore conclude that an in-person hearing is not required.

Petitioner must be excluded for five years because he was convicted of felony fraud in connection with the delivery of a healthcare item or service.¹

Petitioner was a Massachusetts anesthesiologist who contracted with the drug manufacturer, Pfizer, Inc., to conduct clinical studies on patients to determine the efficacy of a certain drug in treating post-operative pain. Pfizer paid for the studies. Petitioner subsequently claimed to have conducted the studies, administering the tested drug to 100 post-surgical patients and a placebo to another 100 post-surgical patients. He published papers in a scientific journal claiming to have achieved success with the tested drug. In fact, he had not enrolled any patients in any study, and he fabricated the "results." I.G. Ex. 3 at 12-16.

On June 24, 2010, Petitioner pled guilty in federal district court for the District of Massachusetts to one count of felony health care fraud, 18 U.S.C. § 1347. Under that provision, a person commits health care fraud if, "in connection with the delivery of or payment for health care benefits, items, or services," he "knowingly and willfully executes, or attempts to execute" a scheme 1) to defraud a health benefit program or 2) to obtain, "by means of false or fraudulent pretenses, representations, or promises," money or property owned by a health benefit program.

The court accepted Petitioner's plea and entered judgment against him. I.G. Exs. 2, 4.

In a letter dated June 30, 2011, the I.G. advised Petitioner 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 I.G. was excluding him from participation in Medicare, Medicaid, and all federal health care programs for a period of five years. I.G. Ex. 1.

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

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 participation in federal health care programs for a minimum of five years. *See* 42 C.F.R. 1001.101(c). Because Petitioner was convicted of felony health care fraud, he is subject to exclusion.

Petitioner does not deny that he was convicted of felony fraud in connection with the delivery of a health care item or service. Instead, he attributes his misconduct to mental illness, points out that his practice as a clinician is unblemished, argues that he has paid his debt to society, and maintains that he is ready to resume his medical career. These are simply not bases for overturning a mandatory exclusion.

Conclusion

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

/s/
Carolyn Cozad Hughes
Administrative Law Judge