

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Stefan Murza, D.C.,
(OI File No. H-17-40784-9),

Petitioner,

v.

The Inspector General.

Docket No. C-17-920

Decision No. CR4985

Date: December 13, 2017

DECISION

Petitioner, Stefan Murza, was a chiropractor, licensed to practice in the Commonwealth of Virginia. Following his felony conviction for manufacturing marijuana, the Virginia Board of Medicine suspended indefinitely his license to practice chiropractic. Thereafter, pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (IG) excluded him from participating in Medicare, Medicaid, and all federal health care programs at least until he regains his license. Petitioner appeals the IG exclusion.

For the reasons discussed below, I sustain the IG's determination.

Background

In a letter dated June 30, 2017, the IG advised Petitioner Murza that, because the Virginia Board of Medicine revoked his chiropractic license "for reasons bearing on [his] professional competence, professional performance or financial integrity," the IG was excluding him from participating in Medicare, Medicaid, and all federal health care

programs. He would not be eligible for reinstatement until he regained his license. The letter explained that section 1128(b)(4) of the Act authorizes the exclusion. IG Ex. 1.¹

Petitioner timely requested review.

The parties have submitted written arguments. (IG Br.; P. Br.). With his brief, the IG submitted six exhibits (IG Exs. 1-6). The IG also submitted a reply brief. In the absence of any objections, I admit into evidence IG Exs. 1-6.

Petitioner submitted multiple documents at various stages of these proceedings, generally disregarding my order and Civil Remedies Division procedures. With his written argument, which he submitted at the wrong time, he attached one document, marked P. Ex. 1. This document consists of a copy of his North Carolina chiropractic license bearing an expiration date of December 31, 2017, and an informal settlement agreement with the North Carolina Board of Chiropractic Examiners. Petitioner's North Carolina chiropractic license is irrelevant, while the informal settlement agreement duplicated IG Ex. 4, so I decline to admit either.

Thereafter, responding to the IG's submissions, Petitioner submitted a letter dated October 6, 2017, and seven additional documents, marked P. Exs. 1-6, plus one unlabeled document, which consists of a copy of his North Carolina chiropractic license, a certificate showing that he completed a 15 hour program in vertebral subluxation, and a certificate showing that he completed an 8-hour on-line course.² In the absence of any objections, I admit P. Exs. 1-7.

After the record closed, Petitioner submitted some additional documents, which he did not mark. They include letters attesting to his competence and a copy of his North Carolina chiropractic license bearing an expiration date of December 31, 2018. Not only were they submitted out of time, I consider them irrelevant and decline to admit them. *See* discussion below.

Neither party asserts that an in-person hearing is necessary, and neither has presented the written testimony of any witness. I.G. Br. at 5; P. Br. at 3.

¹ While this matter was pending, the IG issued a second exclusion notice. In a letter dated August 31, 2017, the IG advised Petitioner that, pursuant to section 1128(a)(4) of the Act, he was excluded from program participation for five years. The IG based the exclusion on Petitioner's felony conviction of a criminal offense related to the manufacture, distribution, prescription, or dispensing of a controlled substance. IG Ex. 2. Petitioner apparently did not appeal the five-year exclusion.

² Petitioner submitted hard copies of these documents, which include a marked copy of P. Ex. 7.

Discussion

*Because the Virginia Board of Medicine revoked Petitioner Murza's chiropractic license for reasons bearing on his professional competence or performance, the IG appropriately excluded him from participating in Medicare, Medicaid, and other federal health care programs.*³

The Act authorizes the Secretary of Health and Human Services to exclude from program participation an individual whose license to provide health care has been revoked for reasons bearing on his professional competence, professional performance, or financial integrity. Act § 1128(b)(4); *accord* 42 C.F.R. § 1001.501(a).

Here, after Petitioner Murza was convicted on one felony count of manufacturing marijuana, the Virginia Board of Medicine suspended indefinitely his license to practice chiropractic. The suspension was effective October 5, 2016. IG Ex. 3 at 1. Thereafter, Petitioner Murza applied for reinstatement of his license. In an order dated February 24, 2017, the Board of Medicine denied his application and ordered that his license suspension continue indefinitely. Among the Board's findings:

- On September 15, 2016, Petitioner Murza pled guilty to one count of manufacturing marijuana, a felony. The court sentenced him to 5 years of incarceration (4 years and 11 months suspended) and ordered him to pay a \$2,500 fine. IG Ex. 3 at 1.
- In his testimony before the Board, Petitioner Murza denied using, growing, or manufacturing marijuana. He admitted that: 1) the drug was grown in his attic; 2) the attic was accessible only by means of a ladder placed in the locked closet of his bedroom; 3) Petitioner testified that "he did not find it strange" that his bedroom closet was locked, and he was not aware of the marijuana growing in his attic; 4) of the many people living in his house, he claimed that he did not know who had access to his closet; and 5) Petitioner claimed that he was not aware of the multiple pieces of drug paraphernalia, including "an eight-foot smoking device," that police found in the house's common area. IG Ex. 3 at 2.
- Dr. Murza's testimony was "improbable, inconsistent, and not credible." IG Ex. 3 at 2.
- Petitioner Murza "has not demonstrated that he is safe and competent to return to the practice of chiropractic." CMS Ex. 3 at 2.

³ I make this one finding of fact/conclusion of law.

The Board concluded that Petitioner's felony conviction is a violation of the Virginia Code provisions governing unprofessional conduct, § 54.1-2915(A)(10), (17), and (20). IG Ex. 3 at 2. Under those sections, the Board may suspend a license indefinitely for "acts of unprofessional conduct," which include "knowingly and willfully" committing a felony; violating any statute or regulation relating to the manufacture, distribution, dispensing, or administration of drugs; and conviction of a felony.

Thus the Virginia Board of Medicine suspended Petitioner Murza's license for reasons that, as a matter of law, bear on his professional competence or professional performance.

Besides simply denying that the Board suspended his license for reasons bearing on his professional competence or performance, Petitioner points out that he has no patient or malpractice complaints and that the State of North Carolina has granted him an unrestricted license. He submits letters from patients and colleagues attesting to his good character. But these arguments do not alter the undisputed facts underlying his license suspension. My authority is limited by the regulations, and I may not review the IG's decision to exclude an individual "on the ground that [he] is a good person or well-thought-of in the profession" *Donna Rogers*, DAB No. 2381 at 6 (2011).

Finally, Petitioner attacks the licensing board's decision, arguing that no "information, facts, or evidence . . . support it." October 6, 2017 letter. Federal regulations preclude such a collateral attack:

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).

The statute and regulations also require that Petitioner's period of exclusion "shall not be less than the period during which [his] license is . . . suspended. . . ." Act § 1128(c)(3)(E); 42 C.F.R. § 1001.501(b)(1).

Conclusion

Because his chiropractic license was suspended indefinitely for reasons bearing on his professional competence and professional performance, the IG is authorized to exclude

Petitioner Murza from participating in Medicare, Medicaid, and other federal health care programs. I therefore sustain the exclusion.

/s/

Carolyn Cozad Hughes
Administrative Law Judge