

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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In the Case of:)	
)	
Mary Louise Chrostowski, M.D.,)	Date: July 20, 2009
)	
Petitioner,)	
)	
- v. -)	Docket No. C-09-225
)	Decision No. CR1975
The Inspector General.)	
_____)	

DECISION

Petitioner, Mary Louise Chrostowski, M.D., appeals her exclusion from participation in Medicare, Medicaid, and all other federal health care programs pursuant to section 1128(b)(4) of the Social Security Act (Act) (42 U.S.C. § 1320a-7(b)(4)) for as long as her medical license in Tennessee is revoked. I find a basis for the exclusion. I further find that the Act and regulations mandate the length of the exclusion.

I. Background

The Inspector General for the Department of Health and Human Services (I.G.) notified Petitioner by letter dated November 28, 2008 , that she was being excluded from participation in Medicare, Medicaid, and all federal health care programs pursuant to section 1128(b)(4) of the Act because she lost her license to practice medicine or provide health care as a medical doctor in the State of Tennessee while a formal disciplinary proceeding was pending before the Tennessee Board of Medical Examiners for reasons bearing on her professional competence, professional performance, or financial integrity. Her exclusion, if upheld, became effective December 18, 2008 and remains in effect until such time as she regains her license as a medical doctor in Tennessee. Petitioner timely requested review. Her case was assigned to me for resolution.

On April 3, 2009, I convened a telephone prehearing conference with the parties, the substance of which is memorialized in my Order dated April 3, 2009. During the call, the parties agreed to disposition of this matter based on the parties' written submissions together with any supporting documentary evidence. The I.G. submitted briefing and three exhibits (I.G. Exs. 1-3); those three I.G. Exhibits are admitted. Petitioner submitted briefing, but proffered no exhibits of her own. The I.G. submitted a reply and Petitioner submitted a sur-reply.

II. Discussion

A. Issues

The Secretary of Health and Human Services (the Secretary) has by regulation limited my scope of review to two issues:

Whether there is a basis for the imposition of the exclusion; and,

Whether the length of the exclusion is unreasonable.

42 C.F.R. § 1001.2007(a)(1).

B. Applicable Law

Petitioner's right to a hearing by an administrative law judge (ALJ) and judicial review of the final action of the Secretary is provided by section 1128(f) of the Act (42 U.S.C. § 1320a-7(f)).

Pursuant to section 1128(b)(4)(A) of the Act, the Secretary may exclude from participation in Medicare, Medicaid, and all federal health care programs, any individual whose license to provide health care is revoked or suspended by any state licensing authority for reasons bearing upon the individual's professional competence, professional performance, or financial integrity. *See also*, 42 C.F.R. § 1001.501(a)(1). Any exclusion taken under section 1128(b)(4) must remain in effect for as long as the license is revoked, suspended or lost in the State taking action. Act, § 1128(c)(3)(E); 42 C.F.R. § 1001.501(b).

C. Analysis

My conclusions of law are in bold followed by my findings of fact and analysis.

1. Because Petitioner agreed to revocation of her license to practice medicine by the Tennessee Board of Medical Examiners while a formal disciplinary action related to her professional competence and professional performance was pending, the I.G. may exclude her from participation in Medicare, Medicaid, and other federally funded health care programs.

The statute authorizes the Secretary to exclude from participation in any federal health care program an individual whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license for reasons bearing on the individual's professional competence, professional performance, or financial integrity. Act, § 1128(b)(4); *see also* 42 C.F.R. § 1001.501.

The uncontroverted record establishes that on March 19, 2008, the Tennessee Board of Medical Examiners (TBME) issued an Agreed Order revoking Petitioner's license to practice as a medical doctor.¹ I.G. Ex. 3. The TBME found that Petitioner's conduct violated several statutes and rules of the Tennessee Medical Examiners Practice Act.² I.G. Ex. 3, at 7. Therefore, the TBME took action to revoke Petitioner's license "in order to protect the health, safety and welfare of the citizens of the State of Tennessee." I.G. Ex. 3, at 11.

Petitioner admits that her license was revoked: she admits that she signed the Agreed Order to revoke her license while formal disciplinary action pended against her for reasons bearing on her professional competence and professional performance. She contends that, "If I had knowledge, whatsoever of my Attorney['s] . . . lack of professional competence and lack of professional ethical performance, I would never would have hired him to represent me . . . I never would have signed my livelihood away." Petitioner's Brief at 3.

Unfortunately, Petitioner's contentions are no defense to the proposed exclusion. The sole issue before me is whether a basis exists for the I.G.'s exclusion action.

¹ Although she had a right to contest the charges, Petitioner agreed in writing to the imposition of the Order. I.G. Ex. 3, at 2, and 11-13.

² The Board found among other things that Petitioner failed to perform an appropriate history or physical examination and failed to document any exam in order to justify the prescribing and dispensing of narcotics and other medications and controlled substances for over 150 patients.

Clearly there is, and Petitioner admits that there is. Petitioner is an educated and articulate individual, and her signature on the document acknowledges that she read and understood the Agreed Order, and approved its entry by the TBME. I.G. Ex. 3, at 13. That Order sets forth explicitly that she was aware of her rights and that she would be giving up those rights if she agreed to the Order without further process. Finally, Petitioner's collateral attack against her attorney is simply irrelevant; the example she cites for his lack of professional competence or ethical performance is in all respects unrelated to his representation of her before the Tennessee Board of Medical Examiners. Therefore, I conclude that Petitioner's license to practice as a medical doctor was revoked and the revocation was for reasons related to Petitioner's professional competence and performance. Thus, I conclude that a basis exists for the I.G.'s exclusion of Petitioner.

2. The period of exclusion is reasonable as a matter of law.

The duration of the exclusion under section 1128(b)(4) is set by statute. Section 1128(c)(3)(E) of the Act specifies that the exclusion shall not be less than the period during which Petitioner's state license to provide health care is revoked, suspended, or surrendered. *See also*, 42 C.F.R. § 1001.501(b)(1). The Secretary's regulations provide that the I.G. will consider a request for reinstatement only after the individual obtains a valid license in the state where the individual's license was originally suspended or revoked. 42 C.F.R. § 1001.501(b)(4).

III. Conclusion

For the foregoing reasons, Petitioner is excluded from participation in Medicare, Medicaid, and all federal health care programs effective December 18, 2008, 20 days after the November 28, 2008 I.G. notice of exclusion, and for a period coterminous with her license revocation.

/s/

Richard J. Smith
Administrative Law Judge