

Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

In the Case of:	)	
	)	
Samuel T. Houston, M.D.,	)	Date: February 22, 2010
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-10-69
	)	Decision No. CR2071
Centers for Medicare & Medicaid	)	
Services.	)	
	)	

**DECISION**

I sustain the determination of the Centers for Medicare & Medicaid Services (CMS) to revoke the provider enrollment of Petitioner, Samuel T. Houston, M.D.

**I. Background**

Petitioner is a physician. CMS, through its intermediary, Pinnacle Business Solutions (Pinnacle), determined to revoke Petitioner's enrollment as a participating Medicare provider. CMS revoked Petitioner's participation because it determined that his license to practice medicine was suspended. Petitioner requested reconsideration of CMS's determination and that was eventually denied. Then, he requested a hearing and the case was assigned to me for a hearing and a decision.

Both CMS and Petitioner have moved for summary disposition of this case. In support of its motion CMS filed 10 proposed exhibits which it identified as CMS Ex. 1 – CMS Ex. 10. Petitioner filed five proposed exhibits which he identified as P. Ex. 1 – P Ex. 5. I receive the parties' proposed exhibits into the record.

## **II. Issue, findings of fact and conclusions of law**

### **A. Issue**

The issue in this case is whether a basis exists for CMS to revoke Petitioner's enrollment as a participating provider in Medicare.

### **B. Findings of fact and conclusions of law**

I make the following findings of fact and conclusions of law (Findings).

#### ***1. A basis exists for CMS to revoke Petitioner's enrollment in Medicare.***

There is no dispute that Petitioner's license to practice medicine in the State of Arkansas was suspended effective December 5, 2008. *See* CMS Ex. 1, at 2. CMS determined to revoke Petitioner's enrollment as a participating Medicare provider based on that suspension and also based on its determination that Petitioner failed to report timely to CMS that his license had been suspended.

The undisputed facts establish that CMS was authorized to revoke Petitioner's enrollment because they show that Petitioner ceased to comply with enrollment requirements as the consequence of the suspension of his license to practice medicine. CMS may revoke the billing privileges (enrollment) of a participating Medicare provider for noncompliance with Medicare enrollment requirements. 42 C.F.R. § 424.535(a)(1). Such noncompliance includes suspension or revocation of a physician's license to practice medicine. Medicare will pay for a physician's services to its beneficiaries *only* where the physician is licensed to practice medicine in the State where he is providing them. 42 C.F.R. § 410.20(b). Thus, a physician who has had his license to practice suspended or revoked, such as Petitioner, is by definition unqualified to provide services to Medicare beneficiaries and, as a consequence, not in compliance with Medicare enrollment requirements.

An additional ground exists for revoking Petitioner's enrollment. Regulations require a participating physician to report to Medicare within 90 days any changes to information that was furnished on his or her enrollment application. 42 C.F.R. § 424.520(b) (2008). Failure by a physician to do so is a basis for revocation of his or her Medicare enrollment. *Id.* Petitioner failed timely to report to Medicare the fact of his license suspension.

## *2. Petitioner was not denied due process*

Petitioner asserts that CMS denied him due process because it failed to apprise him of the reasons for revoking his Medicare enrollment. He argues from this asserted failure of notice that CMS's determination to revoke his enrollment is invalid. I find this argument to be without merit.

Petitioner argues that the notice that Pinnacle sent to him informing him of the enrollment revocation was defective in that it failed to state a reason for Pinnacle's (and CMS's) action. *See* CMS Ex. 2. Petitioner reasons that this notice shortcoming invalidates all actions taken by CMS including the determination to revoke Petitioner's enrollment.

I disagree. It is true, as Petitioner contends, that the notice that Pinnacle sent to him cites only the regulatory basis for revoking Petitioner's enrollment without explaining why the cited regulations applied to his case. That was a defect. But, the defect was not prejudicial in this case because CMS subsequently provided Petitioner with ample notice of the reasons for revoking his enrollment and I gave Petitioner the opportunity to defend himself against CMS's determination. My decision in this case is not an appellate review of CMS's actions, it is *de novo*. In its brief supporting the revocation CMS gave Petitioner a detailed statement of why CMS had determined to revoke his enrollment and I afforded Petitioner the opportunity to respond to that determination, both with evidence and with argument that I received *de novo*. Consequently, Petitioner has not been prejudiced in any respect.

Petitioner argues additionally that Pinnacle incorrectly asserted that he was obliged to report a change in his enrollment application within 30 days as opposed to the 90-day reporting period that is stated at 42 C.F.R. § 424.520(b) (2008). But, Petitioner suffered no harm even assuming that assertion to be correct. Whatever standard Pinnacle may have applied is irrelevant because I judge Petitioner only on the basis of whether he complied with the 90-day reporting requirement.

Petitioner asserts that he was "informed" that notice was provided to all third party payors of his suspension and he presumes that notice included a notice to CMS. Petitioner's brief at 8-9. But, Petitioner has provided no facts showing that he actually provided such notice. He has not offered, for example, any copies of correspondence between him and CMS or Pinnacle establishing that he gave CMS the required information within 90 days.

Petitioner also argues that his failure to give CMS notice is irrelevant because CMS, in fact, knew that his license to practice medicine had been suspended and that CMS became aware of that within 90 days. However, the fact that CMS may have learned about the suspension from a source other than Petitioner did not relieve Petitioner of his

duty to inform CMS of the change in his circumstances. He was explicitly required to inform CMS and his failure to do so is a basis for revocation of his enrollment even if CMS may have learned about the license suspension from another source.

Finally, Petitioner seems to argue that CMS may not prevail here unless it is established that Petitioner's license was suspended *and* that he failed to inform CMS of that fact within 90 days. That is not so. License suspension and failure to inform CMS of a change in circumstances are independent grounds for revocation of enrollment. Either basis, standing alone, is sufficient authority for CMS to revoke Petitioner's enrollment. Thus, CMS may revoke Petitioner's enrollment based on the suspension of his license to practice medicine even if Petitioner gave timely notice to CMS of that suspension.

/s/

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Steven T. Kessel  
Administrative Law Judge