

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Vijendra Dave, M.D.,  
(NPI: 1669565305; PTAN: 110179005),

Petitioner,

v.

Centers for Medicare & Medicaid Services,

Respondent.

Docket No. C-15-723

Decision No. CR3871

Date: May 20, 2015

**DECISION**

Wisconsin Physicians Service Insurance Corporation (WPS), an administrative contractor acting for the Centers for Medicare & Medicaid Services (CMS), revoked Petitioner's Medicare enrollment and billing privileges for no longer meeting Medicare enrollment requirements because a Kansas state licensing board suspended Petitioner's license to practice medicine. I sustain CMS's determination and find that WPS had a legal basis to revoke Petitioner's Medicare enrollment. I do not have authority to review the re-enrollment bar that WPS imposed on Petitioner based on the revocation.

**I. Background**

Petitioner was enrolled in Medicare and had a Kansas medical license. *P. Br., passim*; P. Ex. 6, at 2. On May 30, 2014, the Kansas State Board of Healing Arts (State Licensing Board), a state medical licensing board, entered an *Ex Parte Emergency Order of Suspension and Protective Order* in which it suspended Petitioner's license to practice

medicine. CMS Exhibit (Ex.) 3. In a letter dated June 24, 2014, WPS informed Petitioner that it was revoking his Medicare enrollment and billing privileges because Medicare enrollment requirements require physicians to be legally authorized to practice by the state in which the physician performs services. The notice revoked Petitioner's enrollment effective May 30, 2014, the date that Petitioner's license to practice in Kansas was suspended. WPS also imposed a three-year re-enrollment bar on Petitioner. CMS Ex. 1. Petitioner timely requested a reconsidered determination on August 25, 2014. CMS Ex. 6.

WPS issued a reconsidered determination on October 7, 2014. WPS concluded Petitioner failed to comply with the Medicare enrollment requirement that he was authorized to practice in the state where he practiced, and accordingly it was authorized to revoke Petitioner's enrollment. WPS also upheld the three-year re-enrollment bar. CMS Ex. 8.

Petitioner requested review of the reconsidered determination before an administrative law judge. The matter was assigned to me for hearing and decision, and I issued an Acknowledgment and Prehearing Order (Prehearing Order) that established a briefing schedule requiring the parties to submit all of their arguments and proposed exhibits in a prehearing exchange that included any witness direct testimony as a sworn exhibit and any motions for summary judgment. CMS timely filed its prehearing exchange including a motion for summary judgment (CMS Br.) and CMS Exs. 1-9. Petitioner timely filed his prehearing exchange including a brief in opposition to the motion for summary judgment (P. Br.) and Petitioner's Exhibits (P. Exs.) 1-6.

Neither party objected to the opposing party's exhibits, therefore I admit CMS Exs. 1-9 and P. Exs. 1-6. Petitioner submitted affidavits of direct testimony from two proposed witnesses as P. Exs. 4 and 5. CMS did not request to cross-examine either witness. CMS did not propose any witness testimony. I informed the parties that I would only conduct a hearing if either party submitted affidavits of direct testimony from a witness, and the opposing party wished to cross-examine that witness. Prehearing Order ¶10. Because CMS did not seek to cross-examine Petitioner's witnesses, an in-person hearing is not necessary, and I will decide this matter on the written record. Prehearing Order ¶11; *Marcus Singel, D.P.M.*, DAB No. 2609, at 5-6 (2014).

## **II. Issues**

1. Whether CMS had a legal basis to revoke Petitioner's Medicare enrollment and billing privileges; and, if so,
2. Whether I have the authority to consider the three year re-enrollment bar CMS imposed on Petitioner.

### III. Findings of Fact and Conclusions of Law

#### 1. *CMS properly revoked Petitioner's Medicare enrollment and billing privileges because Petitioner's medical license was suspended.*

A provider or supplier must be enrolled in the Medicare program and have a billing number in order to be eligible to receive payment for services rendered to a Medicare-eligible beneficiary. 42 C.F.R. § 424.505. “Suppliers” include physicians, other practitioners, and “entities (other than providers of services) that furnish[] items or services . . . .”<sup>1</sup> 42 U.S.C. § 1395x(d). In order for physicians to enroll as Medicare suppliers, they must comply with relevant state licensing requirements and be legally authorized to practice in the state in which they perform services. 42 C.F.R. §§ 410.20(b), 424.516(a)(2). CMS may revoke a supplier’s enrollment in the Medicare program if it finds a supplier not to be in compliance with enrollment requirements. 42 C.F.R. § 424.535(a)(1).

There is no dispute that the State Licensing Board issued an emergency suspension of Petitioner’s medical license that became effective immediately, on May 30, 2014. CMS Ex. 3 at 5, 7. Because his license was suspended, CMS properly revoked Petitioner’s enrollment and billing privileges. A physician’s “inability to practice medicine for any length of time due to the disciplinary actions imposed against him trigger[s] his noncompliance with the Medicare enrollment requirements and authorize[s] revocation of his billing privileges.” *See Akram A. Ismail, M.D.*, DAB No. 2429, at 8 (2011).

#### 2. *CMS properly identified May 30, 2014 as the effective date to revoke Petitioner's enrollment because the Licensing Board suspended his medical license on that date.*

Petitioner requests that his effective date of revocation be May 31, 2014, the date he received a mailed suspension notification, because he did not become aware of the May 30, 2014 suspension until he received an email notification at 3:13 p.m. on May 30, after he had already treated multiple Medicare beneficiaries during the day. P. Br. at 6-8; P. Ex. 4; CMS Ex. 4 at 1. Petitioner also asks me to apply the effective date relating to a revocation based on a non-operational finding. P. Br. at 8. However, the relevant regulation is unequivocal that “[w]hen a revocation is based on a . . . license suspension . . . , the revocation is effective with the date of . . . license suspension . . . .” *See* 42 C.F.R. § 424.535(g). The State Licensing Board issued the emergency suspension of

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<sup>1</sup> “Providers” include hospitals, critical access hospitals, skilled nursing facilities, comprehensive outpatient rehabilitation facilities, home health agencies, and hospice programs. 42 U.S.C. § 1395x(u); 42 C.F.R. § 400.202.

Petitioner's license on May 30, 2014, effective the same date. CMS Ex. 3 at 5, 7. Because Petitioner's license was suspended on May 30, 2014, CMS correctly revoked Petitioner's enrollment on that same date. I am aware of no authority that would allow me to waive that regulatory requirement.

***3. CMS is authorized to bar Petitioner from re-enrolling for a three-year period.***

CMS must bar a revoked supplier from re-enrollment for a one to three-year period, depending on the severity of the basis for the revocation. 42 C.F.R. § 424.535(c). Petitioner argues that the three-year re-enrollment bar is excessive and contrary to regulation and Medicare guidelines. P. Br. at 9-11, 14-15. Instead of the three year re-enrollment bar that CMS imposed, Petitioner argues that a one year bar would be more appropriate because “[a]part from his failure to maintain Medicare enrollment due to license suspension, Dave’s only violation in the instant proceeding was his failure to timely report to contractor WPS within 30 days. . . .” P. Br. at 5.

My review authority in this matter is limited to certain enumerated initial determinations listed at 42 C.F.R. § 498.3(b). CMS’s selection of a re-enrollment bar is not a determination subject to ALJ review because it is not a reviewable initial determination under 42 C.F.R. § 498.3(b)(17), which only enumerates the revocation action. *See David Tolliver, D.O.*, DAB CR2281, at 10 (2010). Therefore, I am not authorized to adjust the re-enrollment bar that CMS determined to impose.

#### **IV. Conclusion**

I find CMS and its contractor had a legal basis to revoke Petitioner’s Medicare enrollment and billing privileges because he was noncompliant with Medicare requirements due to his medical license suspension in Kansas. CMS acted within its authority to institute a three-year re-enrollment bar, which became effective as of the date of Petitioner’s license suspension on May 30, 2014.

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/s/  
Joseph Grow  
Administrative Law Judge