

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Eastern Massachusetts Professional Standards Review Organization, Inc.
Docket No. 81-105
Decision No. 237

DATE: December 8, 1981

DECISION

I. Introduction

Eastern Massachusetts Professional Standards Review Organization, Inc., (EMPSRO, appellant) appealed the determination of the Health Care Financing Administration of the Department of Health and Human Services (Agency) that its Grant No. 97-P-99672/1 be terminated September 30, 1981. The determination provided that the grant be extended, if necessary, to permit this Board to make a final decision. In its appeal letter dated July 16, 1981, EMPSRO requested a formal hearing pursuant to Section 1152(d)(2) of the Social Security Act (42 U.S.C. 1320c-1(d)(2)). A hearing was held before the Presiding Board Member in Boston on September 16 and 17, 1981. This decision is based on the Record in this case, which includes all the written submissions of the parties and the evidence presented at the hearing, as recorded in the transcript (Tr.) of the hearing, and the prepared statements of EMPSRO's witnesses. For convenience, the combined appeal and Memorandum of EMPSRO dated July 16, 1981, together with the clarification letter of August 21, 1981, is referred to as Appellant's Brief. The "Response of the Health Care Financing Administration" of August 21, 1981 is referred to as the Agency Response.

II. General Background

A. Information on the Professional Standards Review Organization (PSRO) Program

The 1972 Amendments to the Social Security Act provide for the creation of PSROs, administered and controlled by local physicians and designed to involve local practicing physicians in the review and evaluation of health care services covered under Medicare, Medicaid, and the Maternal and Child Health programs. (Title XI, Part B, of the Act, 42 U.S.C. 1320c.) PSROs are responsible, in specifically designated geographic areas, for assuring that the health care paid for under these programs is medically necessary and consistent with professionally recognized standards of care. The PSROs also review whether the health services are provided at the level of care which is most economical, consistent with the patient's medical care needs. The major focus of the PSRO program has been on review of inpatient hospital services. While PSROs are also charged with review responsibilities in other health care settings, budget restrictions have limited review outside the hospital setting.

The Act, and regulations governing the program, provide that a PSRO is "conditionally designated" for a period of time, and that there will be an agreement between the Secretary and the PSRO "fully designating" the PSRO after it has satisfactorily performed PSRO functions during its trial period as a conditional PSRO. After a maximum of six years, a conditional PSRO must be fully designated or it can no longer participate in the program. (Section 1154(b) and (c), 42 U.S.C. 1320c-3(b) and (c).) A fully designated PSRO may be terminated only after an opportunity for a hearing, upon a finding by the Secretary that the PSRO "is not substantially complying with or effectively carrying out the provisions of such agreement." (Section 1152(d), 42 U.S.C. 1320c-1(d).)

B. The Nationwide Evaluation of PSROs

The Agency stated that it implemented a nationwide evaluation of the performance of PSROs in response to proposals by the President, in February and March, 1981, to phase out the PSRO program within three years, and to reduce funding for fiscal year 1981. In June 1981 Congress approved a rescission of \$28,701,000 from the PSRO program. (Pub. L. No. 97-12, Title I, Chapter VIII; 94 Stat. 3166.) The Agency maintained that the legislative history of the rescission bill indicates that the Agency was to accomplish the rescission by terminating ineffective PSROs. (Agency Response, pp. 3-4.)

The Agency stated that in order to identify ineffective PSROs, it developed evaluation criteria to measure performance, and asserted:

These criteria were based on the requirements for PSROs imposed by the PSRO statute and regulations, and further interpreted through the PSRO Program Manual and Transmittals. Many of the criteria were based on those used to convert PSROs from conditional to fully designated status.... Because of the Presidential and Congressional mandates to terminate ineffective PSROs, however, more emphasis was placed in this most recent evaluation on the effectiveness and the actual impact of a PSRO's activities. Although the weight attached to certain areas changed, these criteria imposed no new responsibilities on the PSROs.

The proposed criteria were sent to all PSROs for review and comment on March 20, 1981, and, after considering the comments and implementing some of the suggestions, the final version of the criteria was distributed to all PSROs on April 15, 1981. The criteria were not promulgated as a regulation nor published in the Federal Register.

The final version of the criteria was sent to the Agency's regional offices to be completed for each PSRO, along with instructions for marking the evaluation. The instructions included the following:

Performance described in the indicators must be sustained throughout calendar year 1980 or the most recent grant period (period should cover 12 months). If another time period is to be considered, it is specified in the instructions for that item within the criteria set.

III. The Rescission Act and the Impoundment Control Act

The Agency pointed out that the authority for the action by the President in proposing rescission of substantial funding for the PSRO program was the Impoundment Control Act of 1974 (ICA), Pub. L. 93-344. (Agency Response, p. 2.) EMPSRO attacked this basis in its Post-Hearing Brief, pp. 64-65, citing the exclusion clause in 31 U.S.C. §1400(4), which provides that nothing contained in the Impoundment Control Act should be construed as "superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder." EMPSRO cited as such a statutory provision 42 U.S.C. §1320c-4(f)(2), which states that any agreement entered into by the Secretary with a PSRO --

...shall provide that the Secretary make payments to such organization equal to the amount of expenses reasonably and necessarily incurred, as determined by the Secretary, by such organization in carrying out or preparing to carry out the duties and functions required by such agreement.

This statutory provision does not actually require or mandate that the Secretary expend any particular sum of money on the PSRO program. All it does is provide that a PSRO shall be paid for expenses incurred by it in carrying out (or preparing to carry out) its proper functions.

Appellant in this argument is losing sight of what the Agency in fact did in its national evaluation. The Agency did not say to EMPSRO that it would simply cut off appellant's funding in midstream and not permit it to spend funds already provided for in its grant.^{1/} The Agency in fact said that since the Rescission

^{1/} A recent District Court case has in fact upheld defunding of part of a PSRO's functions without any fault of the PSRO. In Region X Peer Review Systems, Inc., v. Schweiker, (S.D. Ohio) No. C-2-81-1067, decided October 1, 1981, the Court upheld HCFA's action in discontinuing funding of plaintiff's long term care (LTC) review program after September 30, 1981, although the funding for such review under its grant was to extend through December 31, 1981. (LTC review is a part of the activities conducted by a PSRO.) This PSRO, being conditionally designated, did not come under the provision for termination only for cause in the Social Security Act. It claimed, however, that its funding could not be terminated during its grant except for cause, under the general grants provisions of 45 CFR Part 74. The Court said that the approval by Congress of the Supplemental Appropriations and Rescission Act of 1981, Pub. L. 97-12, "provides superceding authority for the defunding of LTC programs." It also went on to say that:

In the absence of detailed legislative history ... it is both reasonable and desirable to construe the Act as a ratification of the presidential and departmental proposals for eliminating ineffective PSROs and LTC review.... (p. 11)

It is not necessary to go this far to uphold the termination action here, since no attempt has been made to defund EMPSRO until after it has been terminated for cause.

Act means the Agency has less funds to go around this fiscal year, the Agency would terminate EMPSRO's grant and the grants of other PSROs that were not performing effectively. After a PSRO is properly terminated it can of course not spend any more of its grant money.

IV. The Evaluation of EMPSRO

A. Background Information on EMPSRO

EMPSRO is the designated PSRO for Massachusetts Region IV, which covers part of Eastern Massachusetts, including the Boston Metropolitan area. It is responsible for review of health care in about 60 acute care hospitals in Region IV. EMPSRO was formerly named Bay State Professional Standards Review Organization, but all references to it in this decision will be to EMPSRO.

EMPSRO began as a PSRO in 1974. Its history was uneventful until November 1978 when it received an unfavorable assessment from the Agency. After a lengthy dispute, the Agency issued a termination notice on March 25, 1980. Eventually an arrangement was worked out whereby the termination notice was withdrawn, but EMPSRO was required to make drastic changes in its structure as well as in its performance. This arrangement was set out in detail in a written agreement, known as the May 30 agreement, which will be referred to at some length in the analysis below.

The PSRO was able to achieve compliance with all the provisions of the May 30, 1980 agreement and in April 1981 this agreement was deleted from the Special Conditions on EMPSRO's grant. On May 23, 1981, EMPSRO became a fully designated PSRO. The Agency contended (Agency Response, p. 20) that achievement of full designation status was due partly to the use of false or misleading data submitted by EMPSRO. The testimony at the hearing was that it was possibly "inadvertent error" (Tr. p. 266), but in any case the Agency conceded that there was no deliberate falsification of data by the PSRO. (Tr. p. 268.) The pendency of the national evaluation led the Agency to do nothing about a possible recall of the full designation.

B. The Scoring of EMPSRO on the Nationwide Evaluation

EMPSRO was evaluated based on its performance during calendar year 1980. EMPSRO received a score of 159 points on Part I of the national evaluation, out of a total possible score of 300; on Part II it received 440 out of a possible 850; and on Part III it received 175 out of a possible 1,200 points. Overall its total score was therefore 774 out of a possible 2,350.

Its 440 on Part II met the minimum 400. However, on Part I, its 159 did not meet the minimum of 190; its 175 on Part III did not meet the minimum of 515; and its total base score of 774 did not attain the minimum of 1,105. It therefore failed to pass the evaluation, which required a PSRO to attain a total score of 1,105, as well as meeting the minimum requirements for two out of the three parts.

V. The Assessment Period

A. Introduction

The hearing of two full days was devoted almost entirely to evidentiary matters pertaining directly to the various criteria of the national evaluation. The Board, however, believes that the underlying legal objections by EMPSRO should be considered first. For reasons given below, we agree with the appellant that the time period the Agency used for the assessment of EMPSRO's performance was not the correct one. The assessment must therefore be declared invalid, and the matter remanded to the Agency for a new evaluation of EMPSRO for a different period. For this reason it would be an exercise in futility for the Board to review the scoring of the PSRO's performance on each criterion.

B. The Use of 1980 Performance Data to Terminate a 1981 Grant

EMPSRO was operating under a grant for the calendar year 1981 at the time of the national assessment in April 1981. The assessment was based on EMPSRO's performance in the calendar year 1980. The Agency conceded that EMPSRO was carrying out the terms and conditions of its 1981 grant at the time of the assessment. (Tr. p. 7.) Therefore, the appellant argued, this grant could not properly be terminated. The grant year of 1980 is over. If the PSRO did not perform well in that year, it makes no difference, as long as it performed satisfactorily in 1981.

EMPSRO bolstered this argument by reference to the underlying statute and a regulation.^{2/} As a fully designated PSRO any agreement between it and the Secretary of HHS could by statute be terminated prior to the expiration of the term:

by the Secretary...but only after the Secretary has determined (after providing such organization with an opportunity for a formal hearing on the matter) that such organization is not substantially complying

^{2/} In its post-hearing brief EMPSRO contended (at p. 64) that:

Applicable regulations of the Agency provide that grants may be terminated for cause only if the grantee has committed a material breach of the grant.

As authority for this argument it set out 45 CFR §74.115(a). Part 74 contains general principles for the administration of HHS grants, and is specifically not applicable where "inconsistent with Federal statutes, regulations, or other terms of a grant." 45 CFR §74.4(a). Therefore the language of §74.115(a) requiring a material breach of the grant for termination for cause cannot apply to this appeal since it is inconsistent with the PSRO statute. The Board will therefore refer only to the statute in considering the requirements for termination of the grant.

with or effectively carrying out the provisions of such agreement.
(Sec. 1152(d)(2), Social Security Act, 42 U.S.C. §1320c-1(d)(2).)

The termination notice from the Agency does not use the statutory language. It states that the current grant for calendar 1981 should be terminated because EMPSRO "is not substantially complying with and effectively carrying out its duties and functions as a PSRO" (Attachment 1 to EMPSRO Appeal).

The Board concludes that the difference in language between the statute and the termination notice is not significant under the circumstances here. The two are substantially the same. If a PSRO "is not substantially complying with and effectively carrying out its duties and functions as a PSRO," it can hardly be said that it is "substantially complying with or effectively carrying out" the provisions of its agreement or grant.^{3/} The reverse should be equally as true.

The only reason a problem arises here is that the grant term (1981) and the term used for the assessment (1980) are not the same. It is conceded that during the period of the current (1981) grant this particular PSRO did not do anything that could be termed a violation of that grant itself. On September 2, 1981, counsel for EMPSRO submitted written interrogatories and asked the Board to obtain responses to them from the Agency. The second question was:

State the manner in which Eastern Massachusetts PSRO, Inc., has breached the terms of its Grant Award No. 97-P-99672/1-02 dated December 9, 1980.

In the preliminary discussions at the hearing the Agency stated that, in answer to this interrogatory, it "is willing to stipulate that the PSRO did not breach the terms of that Grant Award." (Tr. p. 7.) Therefore, argued EMPSRO, that grant could not be terminated, no matter what score it received on the national assessment.

This argument by the PSRO could be a plausible basis for overturning the termination if the Agency had on its own initiative conducted an evaluation of EMPSRO for calendar 1980, found it wanting, and taken steps to terminate the 1981 grant. But that is not what happened at all. The evaluation was for all PSROs in the country, not just this one. The Agency decided that, to judge sustained performance, a full 12 month period was to be used for

^{3/} The word "agreement," as used in the statute, includes grants. Originally PSROs were funded under contracts. With the passage of Pub. L. 95-142, the Social Security Act provided that an agreement between the government and a PSRO "may be in the form of a grant or an assistance agreement." 42 U.S.C. §1320c-4(f)(3). See PSRO Transmittal No. 70, p. 2, which provided for the changeover for all PSRO funding from contracts to grants.

the evaluation. It was, for most criteria, to be either calendar year 1980 or the most recent grant period. As the Agency stated in its Response, this was done "because grant funding cycles vary, and in order to evaluate for a 12 months period" (p. 5). The Board concludes that it was reasonable for the Agency to judge performance of all PSROs for a full 12 month period, to find out which PSROs performed consistently well over such a period, as distinguished from those PSROs which rushed to improve when they knew an evaluation was approaching. Using the current grant period would for this PSRO have covered only from January 1, 1981, to the end of April 1981, when the assessment documentation was requested. This four month period could not possibly be used for criteria which called for data on performance for a whole year, so 1980 data had to be considered in evaluating this PSRO.

The Board therefore finds that the stipulation by the Agency that EMPSRO is not violating the terms and conditions of its current grant does not in and of itself bar the Agency from terminating that grant, using 1980 performance data gathered as part of a national assessment.

VI. The Assessment Period and the May 30 Agreement

Under normal circumstances the calendar year 1980 would, as indicated in the criteria, be the proper time period to use for assessing the performance of EMPSRO. This year was, however, not one of normal circumstances for this particular PSRO. It is undisputed that EMPSRO's performance for the first part of 1980 left something to be desired. In late November 1978, the Agency gave EMPSRO an "unfavorable assessment report." From then until March 25, 1980 the PSRO and the Regional Office of the Agency engaged in a "lengthy dispute" over the 1978 assessment. Finally, on March 25, 1980, the Agency sent the termination notice which is Attachment 5 to EMPSRO's appeal. (See Post-Hearing Brief, pp. 5-6.) This identified "continuing deficiencies" at that time and "for at least the past several years," which indicated that the PSRO had failed to carry out properly several specific statutory requirements.

The PSRO blamed this action on there being a new Regional PSRO Director in January 1979. Appellant did not accuse her of outright bias against this PSRO, but stated that her efforts and those of her staff "had not been constructive," and that there had been considerable friction between Regional Office Staff and EMPSRO prior to the issuance of the termination notice. (Post-Hearing Brief, pp. 6-7.) However, even EMPSRO acknowledged "that problems existed which the PSRO wished to remedy." (Id., p. 6.)

In any event, after extended negotiations, appellant was able to work out an agreement with the Agency to permit it to continue, which resulted in the Agency withdrawing the termination notice. This is referred to as the May 30 agreement. (Attachment 6 to the Appeal.) This required substantial changes on the part of the PSRO to avoid termination. The Medical Director and the Executive Director were both removed. Dr. Baker, a Director of EMPSRO and head of its negotiating team, testified that the agreement involved "gutting" the administrative offices. Even the name of the PSRO was changed, although

it claimed that this was done only to avoid confusion with another organization. Appellant also agreed to waive almost all its rights to any administrative or judicial review of nonrenewal or termination if it failed to perform as agreed. Compliance with this agreement was written in as a condition of the PSRO's grant. (Tr. 34-49; Appellant's Exhibit 1.)

The dispute on the period to be covered by the assessment hinges on one sentence in this agreement:

The Regional Director, HSQB, agrees that upon the execution of this Agreement, the HSQB termination notice is withdrawn, and that the adoption of this Agreement resolves all issues raised in said notice.

Appellant argued that this language precludes the Agency from now using any evidence of EMPSRO's activities through March 21, 1980, which was the closing date considered in the March 25th termination notice. The reason given by Appellant is that:

...whatever deficiencies in EMPSRO's performance of its work which existed through March 21, 1980, have already been the subject of a termination action... (Appeal Brief, p. 5.)

Appellant's legal conclusion is therefore that:

[b]y entering into the May 30, 1980, Agreement, DHHS expressly waived any rights which it may have had to terminate the existence of EMPSRO based on acts or omissions which occurred prior to that date. (Appeal Brief, p. 7.)

It should be noted that the above two contentions are not the same. The first is to exclude from the assessment period all deficiencies through March 21, 1980, the last date considered in the termination notice of March 25. The second is to exclude any deficiencies which occurred prior to May 30, 1980, the date of the agreement which caused the termination notice to be withdrawn.

The Board agrees with the PSRO that its performance from January 1, 1980 through March 21, 1980 should not have been used in the assessment. The three cases from the Armed Services Board of Contract Appeals cited by Appellant on page 8 of its Appeal Brief are analogous, even if not directly in point.^{4/} They support the general proposition that once a breach has been waived in a new agreement, that same breach cannot be used to claim a subsequent default if the new agreement has thereafter otherwise been performed.

^{4/} Shepard Division/Vogue Instrument Corporation, 74-1 BCA para. 10,498 at p. 49,723; Nanofast, Inc., 69-1 BCA para. 7,566 at p. 35,049; and C.T.M. Co., Inc., 65-1 BCA para. 4,757 at pp. 22,606-7.

The response of the Agency to this issue, when raised by questions of the Board, has been merely in conclusory statements:

From the Agency's action, it follows that the Agency would not consider withdrawal of a prior termination proposal as having the effect of foreclosing the re-use of deficiencies cited in the prior proposal at a later date. It would appear that the Agency's national evaluation methodology precludes consideration of whether or not any of the results ever appeared elsewhere. (Agency Response, p. 16.)

The Agency recognized that there is a problem:

It is true that by stating grounds for termination or non-renewal, the (May 30) agreement raises the question of whether such language embodies an implied agreement not to terminate for other reasons. (Agency Response, p. 17.)

Its answer was that:

[t]he language was intended to make clear that there were grounds for summary termination and not to limit the Agency's ground for termination overall. (Agency Response, p. 17.)

The Agency in its Response did not attempt to refute any of the authorities submitted by EMPSRO in its Appeal Brief.^{5/} In the absence of anything to the contrary except conclusions, the Board finds that the position of the PSRO on this issue should be sustained. To be specific, the Board finds that the performance of the PSRO through March 21, 1980 was improperly considered in assessing its performance.

EMPSRO is not satisfied with merely eliminating this period. It asks the Board to exclude consideration of its performance prior to May 30, 1980, the day of the agreement. Not even satisfied with this, it wants the period for its evaluation to begin July 1, 1980, primarily for purpose of convenience:

In order to cure this defect in the assessment process, EMPSRO recommends that the 12-month period from July 1, 1980, through June 30, 1981 be considered. (Appeal Brief, pp. 8-9.)

The reasons given by EMPSRO for using the May 30, or even July 1, date are that the PSRO was using all its efforts from the time it received the termination notice of March 25 until the agreement of May 30 to have the termination notice withdrawn. It claimed that its changes in management required by the May 30 agreement were such that it was not fully functioning until about the first of July.

The difficulty with this argument is that it is not what the agreement says. The language of Section 12 is that:

^{5/} The Agency elected not to file a Post-Hearing Brief.

[t]his agreement resolves all issues raised in said notice.

The "issues raised in said notice" must refer to deficiencies before the date referred to in the notice, which was March 21, or at the latest, before March 25, the date of the notice itself.

The language of the agreement seems clear, and therefore, as the Presiding Board Member indicated at the hearing, the agreement should speak for itself and not be interpreted by the parties. (Tr. pp. 45-46.) Nevertheless, almost a full single-spaced page of the Post-Hearing Brief (p. 55) is taken up with Dr. Baker's prepared written statement, leading up to his conclusion that he thought it was the intent of the parties that if EMPSRO performed the agreement, it would not be terminated "on account of anything that happened prior to the signing of the agreement [May 30]."

Dr. Baker's testimony in response to a Board question was quite different on what he thought was intended:

[i]t was our understanding and I certainly thought it was the Government's understanding that with the signing of this May 30th agreement, the deficiencies which the Government claimed in our operations up to their termination notice would essentially be moot from that point on; that we would not be faced with having to justify differences that we had with the Regional Office ... until the time that the termination notice came at the end of the month. (emphasis supplied). (Tr. p. 42.)

It therefore appears clear from the language of the agreement, and what EMPSRO said it thought it meant, that it was to exclude deficiencies only prior to the date of the termination notice. This was recognized to some extent in the Post-Hearing Brief, at pp. 54-55, where it is argued that by the language of the agreement --

[T]he Agency gave up its right to take a subsequent action against EMPSRO due to any failure of the PSRO to substantially comply with and effectively carry out its responsibilities which occurred prior to the adoption of the Agreement (or, at the very least, prior to the issuance of the notice).

VII. The Relief to be Granted

The Board having found that the period before March 21, 1980 was improperly included in the evaluation of EMPSRO, there remains the question of what to do about it. The first problem is to determine whether the assessment for calendar year 1980 can still be valid by excluding the first three months.^{6/}

^{6/} It appears that whether March 21 or March 25, 1980 is taken as the end of the exclusionary period, it should as a practical matter be extended through March 31, in order to involve a complete calendar quarter. (See Tr. p. 26.)

This would contradict the underlying basis for the national assessment, that certain factors, particularly impact, can be measured only over a complete 12 month period. Therefore to take only the last nine months of calendar year 1980 is not carrying out the purpose of the assessment.

The next question is whether to void the termination notice completely, because of the invalid 1980 assessment, or take some other period. The PSRO of course contends, as discussed in Section V. above, that no other assessment is called for since the Agency stipulated that it did not violate the conditions of its current (1981) grant. This has already been answered by the Board.

The PSRO has based much of its presentation, primarily in its written submissions, on an alternative scoring for the period from July 1, 1980 through June 30, 1981. (See Part II of the Appeal, Attachment 10.) It is the Board's position that another 12 month period should be used, but based upon the analysis in Section VI. above, this would be for the period from April 1, 1980 through March 31, 1981.

There is clearly not available to the Board the necessary data for evaluating the PSRO for this particular time frame. Even for the July 1, 1980 to July 1, 1981 period, where the PSRO submitted documentation for scoring (Attachment 10), there was considerable discussion about remand to the Agency under a stipulation. (Tr. pp. 14-22.)^{7/} It seems to the Board that evaluation is peculiarly a matter suited for Agency expertise.

The Board would therefore ordinarily order that the matter be remanded to the Agency, with instructions to evaluate the performance of EMPSRO, using the same criteria, for the 12 month period from April 1, 1980 through March 31, 1981. That is the only period for which the Board believes it can properly direct an alternative evaluation. The Board will, however, urge the Agency to consider that at least the months of April and May of 1981 were difficult ones for the PSRO, while it fought to avoid termination. The Agency may, if it wishes to do so, use the twelve month period from June 1, 1980 through May 31, 1981 as the alternative evaluation period. It may even believe that the PSRO's claim for excluding all performance before July 1, 1980 is a meritorious one. If so, it may, if it sees fit, use the July 1, 1980 through June 30, 1981 period for assessing EMPSRO's performance. The PSRO has already addressed this period in its alternate evaluation (Attachment 10), which may make it more practical to use this period.^{8/}

^{7/} The parties were unable to come to any agreement on a stipulation by the end of the hearing (Tr. p. 413), and nothing further has been presented to the Board on this possibility.

^{8/} The PSRO seems to be going too far when it assumes "that no points granted on account of the January 1 - December 31, 1980 period would be lost as a result of the change in the time period of the assessment." It must take the bitter with the sweet, and must face the risk of loss of points, as well as gain, in a new evaluation for a different period.

It is ordered that this matter be remanded to the Agency to make an assessment of EMPSRO's performance for a twelve month period which shall exclude any time prior to April 1, 1980. The same criteria shall be used as were used in the assessment under appeal, and the PSRO shall have a reasonable opportunity to supplement the data now in the Agency's possession for the alternate period selected. The PSRO shall supply any such data within a time fixed by the Agency. Since the statute permits the Secretary to terminate a PSRO only "after providing such organization with an opportunity for a formal hearing on the matter," the grant to EMPSRO will continue in effect pending the new evaluation. If that evaluation results in a termination of the grant, the PSRO shall have the right to appeal that termination as provided by statute.

/s/ Cecilia Sparks Ford

/s/ Norval D. (John) Settle

/s/ Alexander G. Teitz
Presiding Board Member