

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Frederick W. Bomonti III D.C.  
(PTAN: G8891775; NPI: 1851468144),

Petitioner,

v.

Centers for Medicare & Medicaid Services,

Respondent.

Docket No. C-17-320

Decision No. CR4837

Date: April 27, 2017

**DECISION**

I sustain the determination of a Medicare contractor, as affirmed on reconsideration, to revoke the Medicare billing privileges of Frederick W. Bomonti III, D.C., and to bar his re-enrollment in Medicare for a period of three years.

**I. Background**

Petitioner requested a hearing to challenge the revocation determination. CMS filed a motion for summary judgment, a supporting brief, and six exhibits, identified as CMS Ex. 1-CMS Ex. 6. Petitioner filed a brief in response and no exhibits. Petitioner did not object to my receiving CMS's exhibits into the record, and I receive them.

It is unnecessary that I evaluate CMS's motion under the recognized criteria for summary judgment. Neither CMS nor Petitioner offered the testimony of a witness. Consequently, I decide the case based on the written record.

## II. Issue, Findings of Fact and Conclusions of Law

### A. Issue

The issue is whether a Medicare contractor, acting on behalf of CMS, is authorized to revoke Petitioner's Medicare billing privileges and impose a bar on Petitioner's re-enrollment in Medicare.

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

These are the operative facts. Petitioner, a chiropractor, had a license to practice in the State of Washington. His license to practice expired beginning March 9, 2016. The license remained expired until June 9, 2016, when Petitioner renewed it. CMS Ex. 2; CMS Ex. 4. Petitioner submitted Medicare reimbursement claims for services that he rendered during the period of expiration. CMS Ex. 3.

These facts authorize the contractor to revoke Petitioner's Medicare billing privileges. A supplier such as Petitioner must comply with applicable enrollment requirements as a condition for participating in Medicare. 42 C.F.R. § 424.535(a)(1). Compliance with State licensing requirements at all times is a mandatory participation requirement for a supplier. 42 C.F.R. §§ 410.20(b); 424.516(a)(2). Petitioner's failure to be licensed during a period of three months in 2016 meant that he was not complying with a basic requirement of enrollment, even as he continued to provide and claim reimbursement for Medicare items and services, and provided legal authority for the contractor to revoke his enrollment and billing privileges.

Petitioner argues that his failure to be licensed was inadvertent, a matter of oversight on his part. However, the regulation does not distinguish between inadvertent and intentional noncompliance.

The revocation of Petitioner's enrollment for reasons of noncompliance authorized the contractor to impose a re-enrollment bar against Petitioner. 42 C.F.R. § 424.535(c). The regulation gives the contractor discretionary authority to impose a bar of from one to three years. *Id.* In this case the contractor elected to impose a maximum bar of three years.

Petitioner argues that the length of the re-enrollment bar is unreasonable in light of his contention that his failure to be licensed was inadvertent. I do not have authority to

consider this argument because the length of a re-enrollment bar is not an initial determination that gives rise to hearing rights. *Vijendra Dave, M.D.*, DAB No. 2672 at 8-12 (2016); *see* 42 C.F.R. § 498.3.

/s/

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Steven T. Kessel  
Administrative Law Judge