

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Christina B. Paylan, M.D.,
(O.I. File No.: H-16-40916-9),

Petitioner,

v.

The Inspector General.

Docket No. C-17-147

Decision No. CR4901

Date: August 1, 2017

DECISION

Petitioner, Christina B. Paylan, M.D., was a medical doctor licensed in the State of Florida. The State of Florida Board of Medicine (Board of Medicine) suspended Petitioner's medical license based on two convictions that the Board of Medicine determined were related to Petitioner's practice of medicine. Now, pursuant to section 1128(b)(4) of the Social Security Act (Act),¹ the Inspector General (I.G.) has excluded Petitioner from participation in Medicare, Medicaid, and all federal health care programs until she regains her license to practice medicine.

For the reasons set forth below, I find that Petitioner's medical license was suspended for reasons bearing on her professional competence or professional performance. The I.G. therefore had a legal basis to exclude her from program participation. The duration of the

¹ The current version of the Social Security Act can be found at https://www.ssa.gov/OP_Home/ssact/ssact-toc.htm. Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Also, a cross-reference table for the Act and the United States Code can be found at 42 U.S.C.A. Ch. 7, Disp. Table.

exclusion is the minimum period required by section 1128(c)(3)(e) of the Act; accordingly, it is reasonable as a matter of law.

I. Background

Petitioner was licensed to practice as a medical doctor in the State of Florida. I.G. Exhibit (Ex.) 3 at 3. On July 29, 2015, the State of Florida Department of Health filed an amended administrative complaint in which it asked the Board of Medicine to suspend or revoke Petitioner's medical license because she had been convicted or found guilty of one or more crimes which relate to the practice of medicine or to the ability to practice medicine. I.G. Ex. 2 at 1, 3-4. On September 1-2, 2015, Petitioner participated in a hearing by video teleconference before a state administrative law judge. *See* I.G. Ex. 3 at 1. Following the hearing, the state administrative law judge issued a recommended order in which he made the following findings of fact, among others:

2. [Petitioner] was charged with obtaining or attempting to obtain a controlled substance, Pethidine/Meperidine (known by the brand name Demerol), by fraud, forgery, deception or subterfuge in violation of section 893.13(7)(a)9., Florida Statutes; and with fraudulently using the personal identification information of a patient, C.M., without first obtaining the patient's consent, in violation of section 817.568(2)(a), Florida Statutes. . . .

3. [Petitioner] was tried by jury in the circuit court in Hillsborough County . . . and was found guilty. . . . [Petitioner] appealed the convictions. The appeal is pending.

* * *

5. [Petitioner's] convictions related to her practice of medicine. She was convicted of fraudulently writing a prescription for Demerol for a patient, C.M., and using the patient's personal identification information (driver license and insurance card) without the patient's consent to present the prescription to a pharmacy to be filled [Petitioner's] status as a medical doctor gave her the ability to obtain the patient's personal identification information and write the prescription. A medical license carries with it a high level of public trust and requires good judgment, integrity, and high morals. Licensure carries a duty to safeguard patients' personal information and use it only for legitimate purposes. [Petitioner] was convicted of crimes that violate the public trust, demonstrate warped judgment and a lack of integrity, involve misuse of patient information, and undermine public confidence in [Petitioner's] ability to practice medicine.

I.G. Ex. 3 at 3-4. The administrative law judge recommended that the Board of Medicine suspend Petitioner's medical license. I.G. Ex. 4 at 15. In a Final Order issued December 22, 2015, the Board of Medicine found that the administrative law judge's findings of fact were supported by substantial evidence and approved them. I.G. Ex. 4 at 3. The Board of Medicine also adopted the administrative law judge's recommended disciplinary action and suspended Petitioner's license to practice medicine for a period of two years, to be followed by a one-year period of probation. I.G. Ex. 4 at 4.

In a letter dated September 30, 2016, the I.G. advised Petitioner that she was excluded from participation in Medicare, Medicaid, and all federal health care programs because her license to practice medicine or provide health care as a medical doctor in the State of Florida was revoked, suspended, or otherwise lost for reasons bearing on her professional competence, professional performance, or financial integrity. I.G. Ex. 1. The letter explained that section 1128(b)(4) of the Act authorizes the exclusion. *Id.* Petitioner timely requested review. I convened a telephone prehearing conference and issued an Order and Schedule for Filing Briefs and Documentary Evidence (Briefing Order).

Pursuant to that order, the I.G. submitted a brief and five proposed exhibits (I.G. Br.; I.G. Exs. 1-5). Petitioner filed a brief and five proposed exhibits (P. Br.; P. Exs. 1-5). Neither party objected to the exhibits offered by the opposing party. Therefore, in the absence of objection, I admit into evidence I.G. Exs. 1-5 and P. Exs. 1-5.

I directed the parties to indicate in their briefs whether an in-person hearing would be necessary, and if so, to submit the testimony of any proposed witness as "written direct testimony in the form of an affidavit or declaration." Briefing Order ¶ 7.c.ii. I also explained that I would hold a hearing only if a party offered witness testimony that is relevant and non-cumulative and the opposing party requested cross-examination. *Id.* The I.G. indicated that an in-person hearing is not necessary and submitted no testimony from any proposed witness. I.G. Br. at 4. Petitioner requested a hearing to present her own testimony, as well as that of two additional witnesses. P. Br. at 4-5. Petitioner submitted the testimony of one proposed witness in the form of an affidavit. *See* P. Ex. 5. However, Petitioner failed to submit her own written direct testimony or that of her other proposed witness as required by my Briefing Order. Moreover, as explained more fully below, even if Petitioner had offered the written direct testimony of each of her proposed witnesses, I would not find that she had established the need for a hearing, as the facts which she seeks to establish by the proffered testimony are not material to any issue before me. I therefore decline to convene a hearing and I decide this case based on the written record.

II. Discussion

A. The I.G. is authorized to exclude Petitioner because the Board of Medicine suspended Petitioner's medical license for reasons bearing on her professional competence or professional performance.²

The Act authorizes the Secretary of Health and Human Services to exclude from program participation an individual whose license to provide health care is revoked, suspended, or otherwise lost for reasons bearing on her professional competence, professional performance, or financial integrity. Act § 1128(b)(4)(A); *accord* 42 C.F.R. § 1001.501(a)(1).

Petitioner concedes that the I.G. is authorized to exclude her pursuant to section 1128(b)(4) of the Act. P. Br. at 1. There can be no doubt that Petitioner's medical license was suspended for reasons bearing on her professional competence or professional performance, within the meaning of section 1128(b)(4) of the Act. The state administrative law judge who presided at Petitioner's license suspension hearing found that Petitioner was convicted of criminal offenses that related to her practice of medicine. The administrative law judge further found that the offenses for which Petitioner was convicted "undermine public confidence in [Petitioner's] ability to practice medicine." I.G. Ex. 4 at 4. In its order suspending Petitioner's license, the Board of Medicine adopted and approved the administrative law judge's findings of fact. This establishes that Petitioner's license was suspended for reasons that bear on her professional performance.

Petitioner does not deny that her license was suspended, nor does she argue that the license suspension was for reasons unrelated to her professional performance. Instead, she argues that I should overturn her exclusion because the convictions on which her license suspension is based are invalid. Petitioner argues additionally that the Board of Medicine's order suspending her license is invalid because the Board was not impartial. As I explain in the following section, these arguments are without merit.

B. Petitioner's challenges to her convictions and to the impartiality of the Board of Medicine represent impermissible collateral attacks and are not a basis to set aside her exclusion.

The regulations provide that when appealing an exclusion, an excluded party may not collaterally attack the conviction or civil judgment underlying the exclusion:

When the exclusion is based on the existence of a criminal conviction or a civil judgment imposing liability by Federal, State or local court, a determination by another Government agency, or any other prior

² My findings of fact and conclusions of law appear as headings in bold italic type.

determination where the facts were adjudicated and a final decision was made, the basis for the underlying conviction, civil judgment or determination is not reviewable and the individual or entity may not collaterally attack it either on substantive or procedural grounds in this appeal.

42 C.F.R. § 1001.2007(d). In the present case, Petitioner argues that the Board of Medicine's order suspending her license is invalid because her motion to disqualify the Board is currently pending before a state court of appeal in Florida. P. Br. at 1-2. Petitioner similarly argues that the convictions on which the Board of Medicine relied as grounds for her suspension are invalid because she has moved for post-conviction relief. P. Br. at 2-3.

Petitioner's convictions and her license suspension are "prior determinations where the facts were adjudicated and a final decision was made" within the meaning of 42 C.F.R. § 1001.2007(d). Therefore, Petitioner may not pursue her attacks on these prior proceedings in this forum. Unless and until a court of competent jurisdiction overturns the order suspending Petitioner's medical license, that determination is final under the regulations and may be a basis for Petitioner's exclusion.

Petitioner has requested to present testimonial evidence at a hearing. P. Br. at 4-5. However, the testimony Petitioner wishes to offer is exclusively related to her contentions that her convictions and license suspension are invalid. *Id.* Therefore, the proffered testimony relates entirely to issues that the regulations declare to be irrelevant as a matter of law. Accordingly, I will not convene a hearing in this case.

C. As a matter of law, Petitioner must be excluded until she regains her medical license in Florida.

The Act requires that Petitioner's period of exclusion "shall not be less than the period during which the individual's . . . license . . . is revoked, suspended, or surrendered" Act § 1128(c)(3)(E); *see also* 42 C.F.R. § 1001.501(b). Thus, Petitioner must be excluded until she regains her medical license in Florida.³ As Petitioner's submissions make clear, she is pursuing multiple legal challenges to her convictions and to her license

³ Effective February 13, 2017, 42 C.F.R. § 1001.501 was amended by adding a new subsection (c). *See* 82 Fed. Reg. 4100, 4113 (January 12, 2017). Subsection 1001.501(c) authorizes the I.G. to consider early reinstatement of an individual if, after being fully informed of the circumstances leading to the exclusion, a state licensing authority (other than the one that originally suspended or revoked the individual's license) grants the individual a new health care license or takes no adverse action against an existing health care license. *Id.* at 4113. However, because the I.G. has discretion to grant or deny early reinstatement, it is not necessary for me to consider whether this provision may be applicable to Petitioner's case. *See* 42 C.F.R. §§ 1001.3002(f); 1001.3004(c).

suspension in Florida courts. If, in the future, Petitioner is successful in convincing Florida authorities to reinstate her medical license, Petitioner may then request that the I.G. reinstate her participation in Medicare, Medicaid, and other federal health care programs. *See* 42 C.F.R. §§ 1001.501(b)(4), 1001.3001. In any event, my role is to determine whether the I.G. had a legal basis to exclude Petitioner. Once I have concluded that there is such a basis, I may not reduce Petitioner's exclusion to zero, nor may I direct the I.G. to reinstate Petitioner to program participation. *See* 42 C.F.R. § 1005.4(c)(6); *see also* 42 C.F.R. § 1001.3002(f).

III. Conclusion

For the above reasons, I conclude that the I.G. had a legal basis to exclude Petitioner from participation in Medicare, Medicaid, and all other federal health care programs. Petitioner must be excluded until she regains her license to practice medicine in Florida.

/s/
Leslie A. Weyn
Administrative Law Judge