

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Josh Hill, P.A.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-4205

Decision No. CR4526

Date: February 9, 2016

DECISION

The Centers for Medicare & Medicaid Services (CMS), acting through its administrative contractor, CGS Administrators, LLC (CGS), denied the enrollment application that Petitioner, Josh Hill, P.A. (herein “Petitioner”) submitted in February 2015. CGS’s denial of enrollment was based on Petitioner’s felony convictions that arose from a domestic violence incident in which he pointed a loaded firearm at several people. Petitioner timely requested a hearing before an administrative law judge (ALJ). For the reasons stated below, I affirm CMS’s denial of Petitioner’s enrollment application on this basis.

I. Background and Procedural History

Petitioner is a physician’s assistant who reported on his Medicare enrollment application that he is licensed to practice in Kentucky. CMS Exhibit (Ex.) 2 at 2. According to a May 13, 2009, Florence Police Department Uniform Citation (herein “police report”), Petitioner was arrested that same evening on charges of burglary in the first degree, wanton endangerment in the first degree, and assault in the fourth degree with minor injury. The police report documents that the following events transpired that evening at the residence of Petitioner’s ex-wife:

[Petitioner] went to his ex-wife's residence to discuss a relationship she was having with another man. When he arrived at the residence the victim opened the door and [Petitioner] entered the house. He grabbed the victim and threw her to the floor, causing minor injuries. He got on top of the victim with his hands around her neck and started to choke her. The victim started yelling for help. At this time, [Petitioner] went back out to his vehicle and retrieved a loaded semi-automatic handgun. He came back into the house and brandished the weapon. At this time he pointed the gun at three separate individuals.¹

CMS Ex. 4 at 7. In testimony before the State Medical Board of Ohio, Petitioner reported that "he cannot remember engaging in the conduct described in the police report" and that "he had blacked out because of rage."² CMS Ex. 4 at 38. He testified that he had a permit to carry the handgun that was used to commit the offense, and that his ex-wife and her mother and boyfriend, along with three children, were in the house during the incident. CMS Ex. 4 at 38.

On January 6, 2010, Petitioner pleaded guilty to the following offenses: one count of burglary in the third degree pursuant to the Kentucky Revised Statutes (K.R.S.) § 511.040, which is a Class D felony punishable by one to five years of incarceration; three counts of wanton endangerment in the first degree pursuant to K.R.S. § 508.060, which is a Class D felony with each count punishable by one to five years of incarceration; and assault in the fourth degree pursuant to K.R.S. § 508.030, which is a class A misdemeanor punishable by up to one year of incarceration. CMS Ex. 4 at 8. Based on Petitioner's guilty plea, the Commonwealth of Kentucky Unified Court, Boone Circuit Court, entered a judgment of guilt on January 16, 2010. CMS Ex. 4 at 8-9. In a

¹ This summary is contained in the section of the police report entitled "Charges and Post-Arrest Complaint." CMS discussed this excerpt in its brief, and Petitioner did not dispute CMS's summary of the incident. Petitioner, in his testimony before the State Medical Board of Ohio, stated that "he does not deny" that he engaged in the conduct discussed in the police report. CMS Ex. 4 at 38.

² Petitioner listed only his eligibility to practice in Kentucky on his enrollment application. The State Medical Board of Ohio stated that it "would be well justified in permanently revoking [Petitioner's] certificate," but ultimately determined that Petitioner's license would be suspended indefinitely, but for a minimum period of twelve months, and ordered that he complete numerous requirements prior to reinstatement of his license. CMS Ex. 4 at 27-52. The Kentucky Board of Medical Licensure took no action against Petitioner's physician's assistant license. CMS Ex. 4 at 18.

separate order, the Boone Circuit Court granted a motion for pretrial diversion for a Class D felony and imposed numerous requirements for Petitioner's participation in the pretrial diversion program; the order directed that if Petitioner completed the pretrial diversion program, the charges would be "designated as dismissed-diverted" and that Petitioner could petition for expungement of his record. CMS Ex. 4 at 11. The pretrial diversion order directed that Petitioner could have no contact with the four individuals named in the order and that he must "remain in intensive counseling." Additionally, the order directed that Petitioner "shall serve 365 days in jail." At the time of the medical board proceedings, Petitioner was serving his 365-day prison sentence in Burlington, Kentucky, and was allowed to leave his place of confinement for work release for up to 12 hours each day, six days per week. CMS Ex. 4 at 39. Petitioner acknowledged in his testimony that if he violated his probation, he would go to prison "for at least five years." CMS Ex. 4 at 40.

On March 21, 2013, the Boone Circuit Court determined that Petitioner had satisfactorily completed the terms of his diversion agreement and ordered and adjudged that Petitioner's diversion was dismissed. CMS Ex. 4 at 14. The following month, in April 2013, the Commonwealth of Kentucky Court of Justice ordered that Petitioner's offenses were dismissed with prejudice and that the offenses were expunged from court records. CMS Ex. 4 at 15. The expungement order directed that Petitioner "shall not have to disclose the fact of the record or any matter relating to it on an application for employment, credit, or other purpose." CMS Ex 4 at 15.

On or about February 20, 2015, Petitioner submitted a Medicare enrollment application, at which time he indicated that he had a final adverse legal action taken by the State Medical Board of Ohio as a result of a "Domestic Altercation."³ CMS Ex. 2 at 3, 8.

On March 3, 2015, CGS requested that Petitioner re-submit his application in order to document separately each final adverse action. In addition, CGS requested copies of relevant records pertaining to the final adverse actions. CMS Ex. 3 at 1. Petitioner submitted documentation on March 4, 2015. CMS Ex. 4 at 1-52. On March 26, 2015, CGS issued an initial determination in which it denied Petitioner's application, explaining

³ I observe that Petitioner's statement that was appended to the application contains an error and an omission. Petitioner reported that he "pled guilty to a felony and several misdemeanors with a 5 year probation sentence." As previously discussed, Petitioner pleaded guilty to *four* felonies and a misdemeanor. Petitioner, while he correctly reported that he was sentenced to a period of probation, omitted any reference to the fact that he had served one year in prison for the offenses.

that he was within 10 years of his 2010 felony conviction. CMS Ex. 1 at 4.⁴ Petitioner, through counsel, requested reconsideration in May 2015, arguing that the convictions were expunged and that his record “no longer contains a felony conviction.” Petitioner argued that CMS is “an agency of the federal government” and “is required to give full faith and credit to the decision of the Boone Circuit Court to completely dismiss and expunge [Petitioner’s] prior offenses and may not act contrary to the Court’s order that said offenses shall be deemed never to have occurred.” CMS Ex. 5 at 2. In a July 29, 2015 letter, CGS denied Petitioner’s request for reconsideration, again explaining that Petitioner was within 10 years of his 2010 felony conviction. CMS Ex. 1 at 1.

Petitioner, through his current counsel, filed a request for hearing (RFH) on September 29, 2015. On October 1, 2015, I issued an Acknowledgement and Pre-Hearing Order (Order) directing the parties to file pre-hearing exchanges, consisting of a brief by CMS and a response brief by Petitioner, along with supporting evidence, in accordance with specific requirements and deadlines.

CMS filed a Pre-Hearing Brief and Motion for Summary Disposition⁵ (CMS Br.), along with five exhibits (CMS Exs. 1-5). Petitioner submitted a pre-hearing brief (P. Br.) and three exhibits (P. Exs. 1-3). Although my Order did not direct that the parties could file briefs other than an opening brief and a response brief, CMS filed a reply brief (CMS Reply). I afforded Petitioner an opportunity to respond to CMS’s reply brief, and he declined to file a sur-reply. I admit the briefs, along with CMS Exs. 1-5 and P. Exs. 1-3, into the record.

Petitioner has submitted his own written direct testimony. P. Ex. 3. However, CMS has not requested the opportunity to cross-examine Petitioner. CMS. Reply; Order ¶ 8. Consequently, there are no witnesses for the parties to cross-examine at a live hearing. Order ¶¶ 9-10. The record is closed, and the case is ready for a decision on the merits.

II. Issue

Whether CMS has a legitimate basis to deny Petitioner’s enrollment application seeking billing privileges under 42 C.F.R. § 424.530(a)(3) based on Petitioner’s October 2010 felony conviction.

⁴ This document was also submitted as P. Ex. 2.

⁵ As an in-person hearing to cross-examine witnesses is not necessary, it is unnecessary to further address CMS’s motion for summary disposition.

III. Jurisdiction

I have jurisdiction to decide this issue. 42 C.F.R. §§ 498.3(b)(17), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

IV. Findings of Fact, Conclusions of Law, and Analysis⁶

As a physician's assistant, Petitioner is a supplier of health care services for purposes of the Medicare program. *See* 42 U.S.C. § 1395x(d); 42 C.F.R. §§ 400.202, 410.20(b)(1). In order to participate in the Medicare program as a supplier, an individual must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. CMS may deny a supplier's enrollment for any reason stated in, *inter alia*, 42 C.F.R. § 424.530.

A supplier's enrollment application for Medicare billing privileges can be denied based on the existence of a felony conviction, as is set forth in 42 C.F.R. § 424.530(a)(3):

(3) *Felonies.* The provider, supplier, or any owner or managing employee of the provider or supplier was, within the preceding 10 years, convicted (as that term is defined in 42 CFR 1001.2) of a Federal or State felony offense that CMS determines is detrimental to the best interests of the Medicare program and its beneficiaries.

(i) Offenses include, but are not limited in scope and severity to—

(A) Felony crimes against persons, such as murder, rape, assault, and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions.

42 C.F.R. § 424.530(a)(3).

Suppliers of health care services who have been denied enrollment have a statutory right to a hearing to dispute the denial. 42 U.S.C. § 1395cc(j)(8). A supplier who has been denied enrollment has a right to an ALJ hearing and Departmental Appeals Board (DAB) review of the denial of its enrollment in the Medicare program. 42 C.F.R. §§ 498.3(b)(17), 498.5(l)(2)-(3). An ALJ may review CMS's exercise of its discretion to

⁶ My findings of fact and conclusions of law are in bold and italics.

deny enrollment based on a determination that a felony offense committed by a supplier is detrimental to the best interests of the program and its beneficiaries. *See Fady Fayad, M.D.*, DAB No. 2266 at 16 (2009), *aff'd*, *Fayad v. Sebelius*, 803 F.Supp. 2d. 699, 704 (E.D. Mich. 2011).

1. ***On or about January 6, 2010, Petitioner pleaded guilty to one felony count of burglary in the third degree and three felony counts of wanton endangerment in the first degree.***
2. ***Petitioner was convicted of four separate felony offenses for purposes of 42 C.F.R. § 424.530(a)(3).***
3. ***Petitioner's felony convictions are for "crimes against persons" as enumerated in 42 C.F.R. § 424.530(a)(3)(i)(A).***

According to K.R.S. § 511.040, "a person is guilty of burglary in the third degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a building." K.R.S. § 511.040(1). Third degree burglary is a Class D felony under Kentucky law. K.R.S. § 511.040(2). Pursuant to K.R.S. § 508.060, wanton endangerment in the first degree occurs "when, under circumstances manifesting extreme indifference to the value of human life, [a person] wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person. K.R.S. § 508.060(2). A conviction for wanton endangerment in the first degree is a Class D felony under Kentucky law. K.R.S. § 508.060(2). A Class D felony, under Kentucky law, is punishable by "not less than one (1) year nor more than five (5) years" of imprisonment." K.R.S. § 532.060(2)(d). While Petitioner minimizes the severity of his actions in his brief and highlights that he "was placed on non-reporting status by his parole officer within six months," he omits any reference to the fact that he served a full year in prison, which is a significant period of incarceration considering that he was referred into a pretrial diversion program. CMS Ex. 4 at 11.

Petitioner, in his brief, makes the preposterous assertion that he "was arrested in May 2009 following a brief and *non-violent* dispute with his ex-wife regarding the equal custody of their children." P. Br. at 6 (emphasis added). Petitioner seemingly forgets that he pleaded guilty to assaulting his ex-wife during that incident, which was described in the police report as him putting his hands around her neck and choking her after throwing her to the floor. CMS Ex. 4 at 7, 8. The police report also documents that Petitioner had a "loaded semi-automatic handgun" and "pointed the gun at three separate individuals." CMS Ex. 4 at 7. Furthermore, while Petitioner may feel that pointing a loaded firearm at three individuals is not a violent act or a crime against persons, I entirely disagree. There were three individual *victims* of his actions on May 13, 2009; three people faced a man, who by his own admission "had blacked out because of rage"

(CMS Ex. 4 at 38), and each almost certainly feared that Petitioner would squeeze the trigger of the loaded handgun. Petitioner's assertion that the incident was "non-violent" is patently wrong.

Pursuant to subsection (A), CMS has determined that offenses involving "[f]elony crimes against persons, *such as* murder, rape, assault, and other similar crimes" warrant a denial of enrollment for a period of 10 years from the date of the conviction. 42 C.F.R. § 424.530(a)(3)(i)(A) (emphasis added). While Petitioner contends that his offenses were "non-violent" and that "[t]his instance cannot possibly be categorized as the type of offense for which CMS bars a Medicare application," he is certainly mistaken. P. Br. at 6. Subsection (A) pertains to "crimes against persons." 42 C.F.R. § 424.530(a)(3)(i)(A). The list of examples in subsection (A), which is preceded by the phrase "such as" and clearly indicates non-exclusivity, points to examples of felony crimes against persons. For purposes of subsection (A), Petitioner need only have committed a felony crime against a person; in this instance, he committed four felony offenses against three persons.⁷ Petitioner argues that his actions are not tantamount to the enumerated examples, which he notes include assault. However, he fails to recognize that the felony crimes listed are not all-inclusive. Rather, they are examples of felonious crimes against persons. Furthermore, he fails to appreciate that his crimes were not victimless; rather, three separate people were victimized by his pointing of a loaded firearm at them and his felonious entry into the home with the "intent to commit a crime." K.R.S. § 511.040. Although Petitioner argues that a crime such as assault is of greater severity than the act committed, he is once again mistaken. Petitioner "wantonly engage[d] in conduct [that created] a substantial danger of death or serious physical injury to another person."

⁷ While CMS's brief focuses on Petitioner's actions in pointing a loaded firearm at the individuals and the resulting felony convictions as constituting the crimes against persons, I also note that the offense of felony burglary can likewise be considered a violent crime against a person. The evidence shows that Petitioner's act of felony burglary was committed when he entered his ex-wife's home while carrying a loaded semi-automatic handgun. The Supreme Court has discussed that burglary is a violent crime, particularly when a weapon is involved. *See James v. United States*, 550 U.S. 192 (2007); *Taylor v. United States*, 495 U.S. 575 (1990). I also observe that the definition of "violent felony" in Title 18 of the United States Code includes "burglary." 18 U.S.C. § 924(e)(2)(B)(ii).

K.R.S. § 508.060; *see* CMS Ex. 4 at 8.⁸ Even with a referral to pre-trial diversion, he nonetheless served one year in prison for his crimes against these three individuals and it is unquestionable that the offenses to which he pleaded guilty were felony crimes against persons as set forth in subsection (A).

4. Even though Petitioner’s convictions were expunged by the Kentucky court system, CMS correctly considered them to be convictions for purposes of denying enrollment in the Medicare program.

Petitioner argues that CMS erred by determining that he had felony convictions. He argues that because the convictions were expunged by the Kentucky Court of Justice (CMS Ex. 4 at 15), CMS is bound by Kentucky law and that “the proceedings in the matter ‘were deemed never to have occurred.’” P. Br. at 5 (citing K.R.S. § 431.076(5)).

A conviction, for purposes of 42 C.F.R. § 424.530(a)(3), is defined by 42 C.F.R. § 1001.2. “Convicted” is defined as the following:

- (a) A judgment of conviction has been entered against an individual or entity by a Federal, State, or local court, regardless of whether:

* * *

- (2) The judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise been removed.

42 C.F.R. § 1001.2. The DAB has previously acknowledged that the definition of conviction used by CMS may be different than under states’ laws. In a case involving exclusions from participation in federal health care programs under section 1128 of the Act, which uses the same definition in 42 C.F.R. § 1001.2, the DAB explained that the term “conviction” includes “diverted, deferred and expunged convictions” without regard to whether state law treats such actions as a conviction.” *Henry L. Gupton*, DAB No. 2058 at 8 (2007). In *Gupton*, the DAB further explained that “the rationale for the

⁸ Interestingly, the offense of wanton endangerment in the first degree is included in the same chapter, Chapter 508, of the Kentucky Revised Statutes that also contains the assault offenses. The lowest felony level of assault, assault in the third degree, is a Class D felony. K.R.S. § 508.025. The elements for assault in the third degree include that a person “[r]ecklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury.” Based on the elements of the offense of assault, a person can be convicted of felony assault in Kentucky even if no actual physical injury is inflicted.

different meanings of ‘conviction’ for state criminal law versus federal exclusion law purposes follows from the distinct goals involved in the two systems, and that the federal goal of protecting the public fisc and the beneficiaries of federal health care program is not necessarily the same as the goals of state criminal justice systems.” *Id.*

Petitioner contends that “clearly both the Kentucky court system and the Kentucky Board of Medical Licensure feel that [Petitioner] poses no threat to the general public or potential patients, as they have granted him, respectively, a complete expungement of his records and licensure as a physician assistant.”⁹ P. Br. at 7. Petitioner further argues that his parole status demonstrated that “he was neither a threat to his own children or the general public,” and his relationship with his ex-wife is “a very positive one.” P. Br. at 6.

As explained above, the purposes for a ten-year prohibition of enrollment in the Medicare program, and the resulting denial of billing privileges, are not necessarily the same as the purposes of the criminal justice system and a medical licensing board. In this case, while the Kentucky Board of Medical Licensure took no action against Petitioner’s license, it is clear that the Ohio Medical Board suspended Petitioner “indefinitely” and even explained that it “would be well justified in permanently revoking his certificate.” CMS Ex. 4 at 43, 44. This case illustrates that based on identical facts but different state laws, policies, and adjudicators, one medical board, but not another, may decide to suspend a medical license, and likewise one state, but not another, may grant expungement of a felony criminal conviction. CMS’s regulations provide clear and consistent guidance regarding the treatment of felony convictions, regardless of the jurisdiction where they occur. In fact, CMS addressed this issue during the rulemaking process for the current version of 42 C.F.R. § 424.530(a)(3), as reported in the Federal Register:

Comment: A commenter contended that our proposed expansions of §§ 424.530(a)(3) and 424.535(a)(3) violate the principles of federalism established in Executive Order 13132 3(b), 3(c) and 3(d) and diminishes the role of state licensing boards across the country. The commenter requested that CMS furnish justification for expanding the role of the federal government into matters best resolved by state licensing boards.

Response: We disagree with the commenter. As mentioned earlier, section 4302 of the BBA [Balanced Budget Act] (which amended section 1866 of the Act) gave CMS broad authority to refuse to enter into Medicare agreements with individuals or entities convicted of felonies that the

⁹ I observe that the parties have not submitted documentation addressing whether Petitioner’s license has been reinstated by the State Medical Board of Ohio, and Petitioner does not address the current status of this license in his brief.

Secretary determines to be detrimental to the best interests of the program or program beneficiaries. Additionally, our changes to §§ 424.530(a)(3) and 424.535(a)(3) in no way impair or infringe upon a state licensing agency's ability to take or not take action on a provider's licensure status in the event of a criminal conviction. Such a decision will—as it should—remain within the purview of the state.

79 Fed.Reg. at 72500, 72510-11 (Dec. 5, 2014).

While I recognize that Petitioner's conviction was expunged after he completed the rigorous requirements of the pretrial diversion program, including serving a year in prison, the determination by the Kentucky criminal justice system that his conviction has been expunged does not dictate that an agency of the federal government must ignore his felonious and violent conduct in the preceding ten years. While the expungement essentially erases the state's legal determination that Petitioner committed the felonies described herein, the expungement does not show that the felonious acts never occurred. Unlike the mercy shown to Petitioner by the criminal justice system, CMS's regulations mandate a denial of enrollment in such an instance and do not afford CMS any discretion. 42 C.F.R. §§ 424.530(a)(3)(i)(A) and 1001.2. CMS's goals include protecting its beneficiaries, and CMS has determined that certain offenses, even if diverted or expunged by the criminal justice system, are nonetheless *per se* detrimental to the Medicare program and its beneficiaries. 42 C.F.R. §§ 424.530(a)(3)(i) and 1001.2; *see Gupton, supra*. While the Commonwealth of Kentucky's laws allow someone who was convicted of acts involving "extreme indifference to the value of human life" to have his convictions expunged, CMS is not required to afford that same individual the privilege of billing Medicare for treating its beneficiaries until at least 10 years have passed from the date of the conviction.

5. An offense listed in 42 C.F.R. § 424.530(a)(3)(i)(A) has been determined by CMS to be per se detrimental to the best interests of the Medicare program or its beneficiaries.

The current version of this regulation has been in effect since February 3, 2015. 42 C.F.R. § 424.530(a)(3); *see* 79 Fed. Reg. 72500. In subsections (A) through (D), the regulation provides a list of the types of felony offenses that CMS considers to be detrimental to the best interests of the program and its beneficiaries, and the aforementioned subsection (A) addresses adjudicated felony crimes against persons. 42 C.F.R. §§ 424.530(a)(3)(i)(A)-(D). Subsection (A) specifies that felony crimes against persons are considered, *per se*, to be detrimental to the best interests of the program and its beneficiaries. The DAB has held that CMS "may revoke . . . a supplier's billing privileges based solely on a qualifying felony conviction without regard to equitable or other factors." *Stanley Beekman, D.P.M.*, DAB No. 2650 at 3 (2015). The DAB has also explained that CMS may revoke billing privileges "based solely on a qualifying felony

conviction” it has determined in a regulation to be detrimental to the best interests of the Medicare program and its beneficiaries. *See Fady Fayad, M.D.*, DAB No. 2266 at 15. Although these earlier DAB cases focused on revocation of enrollment pursuant to a parallel regulation, 42 C.F.R. § 424.535(a)(3), the DAB recently extended this analysis to enrollment denial cases adjudicated under 42 C.F.R. § 424.530(a)(3). *Brian K. Ellefsen, D.O.*, DAB No. 2626 at 9 (2015).

As previously discussed, Petitioner’s felony offense is a crime against a person. In its proposed rule addressing the intended revision of 42 C.F.R. § 424.530(a)(3), CMS explained that it would “modify the list of felonies in each section such that any felony conviction—including guilty pleas and adjudicated pretrial diversions—that *we have determined to be detrimental* to the best interests of the Medicare program and its beneficiaries would constitute a basis for denial or revocation.” 78 Fed. Reg. 25021 (April 9, 2013) (emphasis added). CMS further stated that this amendment “would give us the discretion to deny or revoke enrollment based on any felony conviction that we believe to be detrimental to the best interests of Medicare and its beneficiaries.” *Id.*

The DAB, in addressing the prior version of the regulation which was substantively similar, upheld CMS’s rulemaking authority to determine that certain offenses are considered to be *per se* detrimental to the best interests of the Medicare program and its beneficiaries. *See Fayad, Ellefsen, Gupton, supra.*

6. CMS properly denied Petitioner’s enrollment in the Medicare program because a felony offense against a person is *per se* detrimental to the best interests of the Medicare program.

Petitioner committed four felony offenses on May 13, 2009. He pleaded guilty to felony burglary in the third degree and admitted that he knowingly entered a building with the intent to commit a crime. CMS Ex. 4 at 8; *see* K.R.S. § 511.040. The evidence shows that at the time he committed the burglary, there were six people in the building, a residence, and he brandished a loaded firearm. CMS Ex. 4 at 7. Petitioner also pleaded guilty to felony wanton endangerment in the first degree, in that he pointed a loaded firearm at three individuals, admitting that the offense occurred in “circumstances manifesting extreme indifference to the value of human life [and] create[d] substantial danger of death or serious physical injury to human life.” CMS Ex. 4 at 7, 8; *see* K.R.S. § 508.060. These were felony crimes against persons, and CMS has determined that such offenses, *per se*, warrant the denial of enrollment in the Medicare program for a period of ten years from the date of conviction. 42 C.F.R. § 424.530(a)(3). CMS properly denied Petitioner’s enrollment application.

V. Conclusion

I affirm CMS's denial of Petitioner's enrollment application for Medicare billing privileges.

/s/

Leslie C. Rogall
Administrative Law Judge