

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Eugene Goldman, M.D.,  
(OI File No.: 3-06-40317-9),

Petitioner,

v.

The Inspector General

Docket No. C-14-1223

Decision No. CR3504

Date: December 9, 2014

**DECISION**

Petitioner, Eugene Goldman, M.D., was a physician, licensed to practice in the State of Pennsylvania. He was convicted on one felony count of conspiracy to receive kickbacks for Medicare referrals and four felony counts of receiving kickbacks for Medicare referrals. Based on his conviction, the Inspector General (I.G.) has excluded him for fifteen years from participating in Medicare, Medicaid, and all federal health care programs, as authorized by section 1128(a)(1) of the Social Security Act (Act). Petitioner concedes that he is subject to exclusion but challenges its length. For the reasons discussed below, I find that the I.G. properly excluded Petitioner Goldman and that the fifteen-year exclusion falls within a reasonable range.

**I. Background**

Section 1128(a)(1) of the Act mandates that the Secretary of Health and Human Services exclude an individual who has been convicted under federal or state law of a criminal offense related to the delivery of an item or service under Medicare or a state health care program (which includes Medicaid). 42 C.F.R. § 1001.101(a).

In a letter dated March 31, 2014, the I.G. notified Petitioner that he was excluded from participation in Medicare, Medicaid, and all federal health care programs for a period of fifteen years because he had been convicted of a criminal offense related to the delivery of an item or service under the Medicare or state health care program. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. I.G. Ex. 1. Petitioner requested review, and the matter is before me for resolution.

Neither party lists any witnesses or claims that this case requires an in-person hearing. I.G. Br. at 7; *see* Order and Schedule for Filing Briefs and Documentary Evidence at 2 (June 26, 2014) (Order). Each party submitted an initial brief (I.G. Br.; P. Br.). The I.G. submitted three exhibits (I.G. Exs. 1-3) and a reply brief (I.G. Reply). In the absence of an objection, I admit into evidence I.G. Exs. 1-3.

## **II. Issue**

Petitioner concedes that he was convicted and is subject to exclusion under section 1128(a)(1). P. Br. at 2; *see* Order at 1. Because the parties agree that the I.G. has a basis upon which to exclude Petitioner from program participation, the sole issue before me is whether the length of the exclusion (fifteen years) is reasonable.

## **III. Discussion**

Petitioner Goldman had a medical practice in Philadelphia and served as the medical director for Home Care Hospice, Inc., a for-profit hospice provider that participated in the Medicare and Medicaid programs. For almost eight years, he referred Medicare and Medicaid patients to the hospice in return for kickbacks and bribes. I.G. Ex. 3.

Petitioner was charged in a six-count criminal indictment, and, following a trial, was convicted on five of the six counts: one felony count of conspiracy to receive kickbacks for Medicare referrals and four felony counts of receiving kickbacks for Medicare referrals. I.G. Exs. 2, 3. On October 23, 2013, the Federal District Court for the Eastern District of Pennsylvania entered judgment against him. I.G. Ex. 2. The court sentenced him to 51 months in prison, and ordered him to pay an assessment of \$500 and a fine of \$300,000.00. I.G. Ex. 2 at 2, 5.

***Based on the aggravating factors in this case and the absence of any mitigating factor, the fifteen-year exclusion falls within a reasonable range.<sup>1</sup>***

An exclusion under section 1128(a)(1) must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. §§ 1001.102(a), 1001.2007(a)(2). Federal regulations set

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<sup>1</sup> I make this one finding of fact/conclusion of law.

forth criteria for lengthening exclusions beyond the five-year minimum. 42 C.F.R. § 1001.102(b).

Among the factors that may serve as bases for lengthening the period of exclusion are the two that the I.G. cites to justify the period of exclusion in this case: 1) the acts that resulted in the conviction, or similar acts, were committed over a period of one year or more; and 2) the sentence imposed by the court included incarceration. 42 C.F.R. § 1001.102(b)(2), and(5). The presence of an aggravating factor or factors not offset by any mitigating factor or factors justifies lengthening the mandatory period of exclusion. Evidence that does not pertain to one of the aggravating or mitigating factors listed in the regulations may not be used to decide whether an exclusion of a particular length is reasonable.

Duration of the crime (42 C.F.R. § 1001.102(b)(2)). Petitioner was part of a conspiracy that lasted over ten years, “from December 2000 until approximately July 2011.” I.G. Ex. 3 at 3, 5. His personal involvement lasted from December 2000 until October 2008, significantly longer than the one-year threshold for aggravation. I.G. Ex. 3 at 6 (Indictment ¶¶ 17, 18).

Petitioner argues that I may consider only the judgment of conviction in assessing the duration of his crimes. Because the judgment refers only to one date, October 2008, he reasons that the duration of his crimes is not an aggravating factor. P. Br. at 7. Petitioner’s argument fails for two reasons. First, the regulation directs me to consider “the acts that resulted in the conviction *or similar acts*,” so I may look beyond the judgment in assessing this factor. Second, Petitioner misreads the judgment. It indicates that the offenses *ended* in October 2008. The counts on which he was convicted are set out in the indictment and describe conduct beginning in December 2000 and ending in October 2008.

Incarceration (42 C.F.R. § 1001.102(b)(5)). The criminal court sentenced Petitioner to a substantial period of incarceration – 51 months – which underscores the seriousness of his crimes. I.G. Ex. 2 at 2.

Any period of incarceration, no matter how short, justifies increasing the period of exclusion. Fifty-one months is a substantial period of incarceration, which reflects the sentencing court’s assessment of Petitioner’s trustworthiness (or lack thereof). *See Raymond Lamont Shoemaker*, DAB No. 2560 at 8 (2014) (“In light of the high degree of untrustworthiness reflected in the length of Petitioner’s term of incarceration, a five-year extension of the mandatory minimum five-year exclusion based on this factor alone would not be unreasonable.”); *Jeremy Robinson*, DAB No. 1905 at 12 (2004) (characterizing a nine-month incarceration as “relatively substantial.”); *Jason Hollady, M.D.*, DAB No. 1855 at 12 (2002); *Stacy Ann Battle, DDS.*, DAB No. 1843 (2002) (finding that four months in a halfway house, followed by four months home confinement

justifies lengthening the period of exclusion); *Brenda Mills, M.D.*, DAB CR1461, *aff'd* DAB No. 2061 (2007) (finding that six months home confinement justifies increasing the length of exclusion).

No mitigating factors. The regulations consider mitigating just three factors: 1) a petitioner was convicted of three or fewer misdemeanor offenses and the resulting financial loss to the program was less than \$1,500; 2) the record in the criminal proceedings demonstrates that a petitioner had a mental, physical, or emotional condition that reduced his culpability; and 3) a petitioner's cooperation with federal or state officials resulted in others being convicted or excluded, or additional cases being investigated, or a civil money penalty being imposed. 42 C.F.R. § 1001.102(c).

Obviously, because he was convicted of felonies, the first factor does not apply here. Nor does Petitioner claim any mental, physical, or emotional condition that reduced his culpability. He does not claim to have cooperated with federal or state officials. Thus, no mitigating factor offsets the aggravating factors here.

Petitioner suggests that he was not nearly as culpable as his co-conspirators, whose criminal conduct caused the Medicare and Medicaid programs significant financial losses. This is not a mitigating factor and does not justify any decrease in his period of exclusion.

So long as the period of exclusion is within a reasonable range, based on demonstrated criteria, I have no authority to change it. *Jeremy Robinson*, DAB No. 1905 at 5; *Joann Fletcher Cash*, DAB No. 1725 at 7, *citing* 57 Fed. Reg. 3298, 3321 (1992). In this case, Petitioner's crimes demonstrate that he presents significant risks to the integrity of health care programs. He engaged in illegal conduct that lasted a very long time. He has been sentenced to a lengthy period of time in prison. No mitigating factors offset these aggravating factors.

#### **IV. Conclusion**

For these reasons, I conclude that the I.G. properly excluded Petitioner from participation in Medicare, Medicaid, and all federal health care programs, and I sustain as reasonable the fifteen-year period of exclusion.

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/s/  
Carolyn Cozad Hughes  
Administrative Law Judge