Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	
Behrooz Bassim, M.D.,	DATE: December 16, 1991
Petitioner,	Docket No. C-388
- v -	Decision CR168
The Inspector General.	

DECISION

By letter dated May 17, 1991, the Inspector General (I.G.) notified Petitioner that he was being excluded from participation in the Medicare and State health care programs until he obtained a valid license to provide health care in the State of New York.[1] Petitioner was advised that his exclusion resulted from the revocation of his license to practice medicine in the State of New York by the Commissioner of Education. Petitioner was further advised that his exclusion was authorized by section 1128(b)(4)(A) of the Social Security Act (Act).

By letter of May 24, 1991, Petitioner requested a hearing before an administrative law judge (ALJ) and the case was assigned to me for hearing and decision.

I held a prehearing conference in this case on June 24, 1991. During this conference, Petitioner admitted that his license to practice medicine in the State of New York had been revoked. Petitioner also stated that he was in the process of appealing that revocation.

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[1] "State health care program" is defined by section 1128(h) of the Social Security Act to cover three types of federally-assisted programs, including State plans approved under Title XIX (Medicaid) of the Act. I use the term "Medicaid" hereafter to represent all State health care programs from which Petitioner was excluded.

On August 22, 1991, I conducted an evidentiary in-person hearing in this case in New York, New York. Based on the record as developed by both parties and on the applicable law, I conclude that the I.G. had authority to exclude Petitioner and that the exclusion imposed and directed against Petitioner by the I.G. is reasonable under the circumstances of this case.

ISSUES

1. Whether the I.G. had a basis upon which to exclude Petitioner under section 1128(b)(4)(A) of the Act.

2. Whether the exclusion directed and imposed against Petitioner by the I.G. is reasonable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all relevant times, Petitioner was a physician in the general practice of medicine in Potsdam, New York. Tr. 65 - 67.[2]

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[2] Citations to the record and to Board cases in this decision are as follows:

I.G. Exhibits	I.G. Ex. (number/page)
I.G. Brief	I.G. Br. (page)
I.G. Reply Brief	I.G. R. Br. (page)
Petitioner's Exhibits	P. Ex. (number/page)
Petitioner's Brief	P. Br. (page)
Petitioner's Reply Brief	P. R. Br. (page)
Findings of Fact and Conclusions of Law	FFCL (number)
Departmental Appeals Board ALJ Decisions	DAB CR(decision no.) (date)
Departmental Appeals Board Appellate Panel Decisions	DAB (decision no.)(date)

2. Petitioner was licensed to practice as a physician by the New York State Department of Education. I.G. Ex. 1/1.

3. On March 14, 1989, Petitioner was charged by the New York Department of Health, State Board for Professional Medical Conduct, with several counts of conduct evidencing moral unfitness and several counts of physical abuse of patients. I.G. Ex. 1/A.

4. Specifically, these charges dealt with Petitioner's care and treatment of three female patients ("A", "B", and "C") between the years 1985 - 1988. The charges stated that Petitioner engaged in inappropriate and improper physical and/or sexual contact with these patients, including intercourse, and that he inappropriately fondled and caressed these patients. I.G. Ex. 1/A(1-4); B(3).

5. A Hearing Committee of the New York State Department of Health, State Board for Professional Medical Conduct (Hearing Committee), following an in-person evidentiary hearing, unanimously concluded on December 19, 1989 that all the factual allegations set forth in the Statement of Charges were sustained by a preponderance of the evidence. I.G. Ex. 1/B(18).

6. The Hearing Committee recommended that Petitioner's license to practice medicine in the State of New York be revoked. The Hearing Committee concluded:

> . . . [Petitioner's] conduct [is] a very serious violation of his responsibility to patients and in gross contravention of his ethical obligations. Inherent in the practice of medicine is the fact that patients come to a physician seeking help and, based on trust, place themselves in extremely vulnerable circumstances. In the opinion of the Committee, a physician who takes advantage of this trust acts in a reprehensible manner. [Petitioner] has abused three patients for his own gratification.

I.G. Ex. 1/B(19 - 20).

7. On May 18, 1989, the New York State Commissioner of Health (Health Commissioner), recommended to the New York State Board of Regents (Board of Regents), that the Board of Regents adopt and incorporate the Hearing Committee's findings of fact, conclusions of law, and its recommendation to revoke Petitioner's license. I.G. Ex. 1/C(1 - 2).

8. On September 17, 1990, the Board of Regents' Review Committee (Regents' Review Committee) unanimously recommended to the Board of Regents that the Hearing Committee's and Commissioner's findings of fact, conclusions of law, and recommendation be accepted and that Petitioner's license to practice be revoked. I.G. Ex. 1/3 - 4.

9. The Regents' Review Committee specifically rejected Petitioner's contention that the hearing be reopened to allow for a physical demonstration concerning the misconduct charged. The Regents' Review Committee stated that Petitioner had a full and fair opportunity to present his case and that the record contained more than adequate evidence from which to assess his conduct. I.G. Ex. 1/3.

10. On October 19, 1990, the Board of Regents voted to accept the Recommendation of the Regents' Review Committee regarding the Hearing Committee's findings of fact, conclusions and recommendation, and voted to revoke Petitioner's license to practice medicine. I.G. Ex. 2/1.

11. On October 26, 1990, Petitioner's license to practice as a physician in the State of New York was revoked by the State of New York's Commissioner of Education (Education Commissioner). I.G. Ex. 2/1 - 2.

12. Petitioner is eligible to apply for restoration of his license one year from the effective date of the revocation. Such application is not automatically granted. I.G. Ex. 3; Tr. 7 - 8.

13. A temporary stay of Petitioner's license revocation was granted on November 7, 1990. That stay was vacated on January 25, 1991. I.G. Ex. 4.

14. Petitioner is now appealing his license revocation in the New York Supreme Court, Appellate Division, Third Department. P. Ex. 12.

15. On September 11, 1991, the New Jersey Board of Medical Examiners revoked Petitioner's license to practice medicine. P. Br. 1; Tr. 10.

16. The Secretary of DHHS (the Secretary) delegated to the I.G. the authority to determine, impose, and direct exclusions of individuals whose license to provide health care has been revoked or suspended by any State licensing authority, for reasons bearing on the individual's professional competence, professional performance, or financial integrity.

17. On May 17, 1991, the I.G. excluded Petitioner from participation in the Medicare program and directed that he be excluded from participation in the Medicaid program, pursuant to section 1128(b)(4)(A) of the Act.

18. The I.G. had authority to impose and direct an exclusion against Petitioner. FFCL 11.

19. The I.G. excluded Petitioner until such time as he received a license to practice medicine in New York.

20. Prior to his State license revocation, Petitioner, based on alleged incompetency, lost hospital privileges at the Canton-Potsdam Hospital, the only hospital in which he could practice. Tr. 89 - 99.

21. Petitioner does not believe he needs any rehabilitation and has not gone for counseling. Tr. 82 - 83, 87 - 88.

22. Petitioner has expressed no intention to practice anywhere other than in the State of New York.

23. Petitioner currently is not licensed to practice medicine in any State. P. Br. 9.

24. The exclusion imposed and directed against Petitioner by the I.G. is reasonable, i.e., it is neither extreme or excessive. FFCL 1 - 23.

RATIONALE

Petitioner, a former physician in family practice, had his license to practice medicine revoked, based on findings that Petitioner had engaged in inappropriate physical or sexual contact with three of his patients. FFCL 3 - 11. The I.G., pursuant to section 1128(b)(4)(A) of the Act, then excluded Petitioner from participation in the Medicare and Medicaid programs until Petitioner regains his license to practice medicine in the State of New York. FFCL 17.

Petitioner vigorously denies that he is guilty of the charges upon which his license was revoked, and has stated in his defense to this action that he is innocent of all the charges against him. Petitioner is now appealing his license revocation in the New York courts, and also is contesting the reasonableness of the I.G.'s exclusion of him in this forum.

1. Petitioner's license to practice medicine in New York was revoked by a State licensing authority for reasons bearing on his professional competence, professional performance, or financial integrity, within the meaning of section 1128(b)(4)(A) of the Act.

The I.G.'s authority to exclude Petitioner emanates from section 1128(b)(4)(A), which states that a permissive exclusion applies when an individual's license has been revoked by a State licensing authority, for reasons bearing on his professional competence, professional performance, or financial integrity. Petitioner's license was revoked by the Education Commissioner, a State licensing authority, for reasons bearing on his professional competence/performance (the finding of inappropriate and improper physical or sexual contact with patients). Petitioner does not dispute this and admits that the I.G. has authority to exclude him. P. R. Br. 3; Tr. 77.

2. Exclusion of Petitioner until such time as he regains his license to practice medicine in the State of New York is reasonable and appropriate.

Petitioner vehemently objects to the reasonableness of that exclusion. The essence of his objection is that the State licensing authority did not provide him due process and committed numerous errors in rendering an adverse decision against him.

In deciding whether or not an exclusion under section 1128(b)(4)(A) is reasonable, I must review the evidence with regard to the purpose of section 1128 of the Act. Joel Davids, DAB CR137 (1991); Roderick L. Jones, DAB CR98 (1990); Frank J. Haney, DAB CR81 (1990).

Congress enacted the exclusion law to protect the integrity of federally funded health care programs. Among other things, the law was designed to protect program recipients and beneficiaries from individuals who have demonstrated by their behavior that they threaten the integrity of federally funded health care programs or that they could not be entrusted with the well-being and safety of beneficiaries and recipients. See S. Rep. No. 109, 100th Cong., 1st Sess., reprinted in 1987 U.S. Code Cong. and Admin. News 682.

An exclusion imposed and directed pursuant to section 1128 of the Act advances this remedial purpose. The principal purpose is to protect programs and their beneficiaries and recipients from untrustworthy providers until the providers demonstrate that they can be trusted

to deal with program funds and to properly serve beneficiaries and recipients. As an ancillary benefit, the exclusion deters other providers of items or services from engaging in conduct which threatens the integrity of programs or the well-being and safety of beneficiaries and recipients. See H. R. Rep. No. 393, Part II, 95th Cong. 1st Sess., reprinted in 1977 U.S. Code Cong. & Admin. News 3072.

Deterrence cannot be a primary purpose of imposing an exclusion. Where deterrence becomes the primary purpose, section 1128 no longer accomplishes a civil remedial purpose, but punishment becomes the end result. Such a result has been determined by the Supreme Court to contravene the Constitution and beyond the purpose of a civil remedy statute. See, United States v. Halper, 490 U.S. 448 (1989). Here, deterrence is at best a remote objective of the I.G.'s exclusion of Petitioner.

An exclusion imposed and directed pursuant to section 1128 will likely have an adverse financial impact on the person against whom the exclusion is imposed. However, the law places program integrity and the well-being of beneficiaries and recipients ahead of the pecuniary interests of providers. An exclusion is not punitive if it reasonably serves the law's remedial objectives, even if the exclusion has a severe adverse financial impact on the person against whom it is imposed.

No statutory minimum mandatory exclusion period exists in cases where the I.G.'s authority arises from section 1128(b)(4)(A), nor is there a requirement that a petitioner be excluded until he or she obtains a license from the State where their license was revoked. Walter J. Mikolinski, Jr., DAB 1156 at 20 (1990). However, an exclusion until a petitioner obtains a license from the State where his or her license was revoked is not per se unreasonable. See Lakshmi N. Murty Achalla, M.D., DAB 1231 at 9 (1991); Richard L. Pflepsen, D.C., DAB CR132 (1991); John W. Foderick, M.D., DAB 1125 (1990).

By not mandating that exclusions from participation in the programs be permanent, however, Congress has allowed the I.G. the opportunity to give individuals a "second chance." An excluded individual or entity has the opportunity to demonstrate that he or she can and should be trusted to participate in the Medicare and Medicaid programs as a provider. See Achalla, supra.

This hearing is, by reason of section 205(b)(1) of the Act, de novo. Evidence which is relevant to the reasonableness of an exclusion is admissible whether or

not that evidence was available to the I.G. at the time the I.G. made his exclusion determination. I do not, however, substitute my judgment for that of the I.G. An exclusion determination will be held to be reasonable where, given the evidence in the case, it is shown to fairly comport with legislative intent. "The word 'reasonable' conveys the meaning that . . . [the I.G.] is required at the hearing only to show that the length of the [exclusion] determined . . . was not extreme or excessive." (Emphasis added.) 48 Fed. Reg. 3744 (1983).

The determination of when an individual should be trusted and allowed to reapply to the I.G. for reinstatement as a provider in the Medicare and Medicaid programs is a difficult issue. It is subject to discretion without application of any mechanical formula. The federal regulations at 42 C.F.R. 1001.125(b) provide some guidance in making this determination. See Vincent Barratta, M.D., DAB CR62 (1990), aff'd DAB 1172 (1990); Leonard N. Schwartz, DAB CR36 (1989).

However, these regulations were adopted by the Secretary to implement the law as it existed prior to adoption of the 1987 revisions to section 1128, which revisions included section 1128(b)(4)(A). They specifically apply only to exclusions for program-related offenses (convictions for criminal offenses related to the Medicare and Medicaid programs). This case involves the revocation of a license for reasons which are not concerned with program violations and where there has been no immediate program impact, no program damages, no incarceration, and no previous record of sanctions against Petitioner. Thus, these regulations are largely inapplicable.

The I.G. argues that proposed regulatory changes would require exclusions for section 1128(b)(4) revocations or suspensions to be for a period of time not less than the period during which an individual's license is revoked, suspended or otherwise not in effect as a result of, or in connection with a State licensing action. I.G. Br. at 2, 3; 55 Fed. Reg. 12,205 and 12,218 (1990). However, until the final version of the proposed regulations implementing the permissive exclusionary authority of section 1128(b) is promulgated, I am not limited to imposing an exclusion period at least coterminous with that imposed by the State licensing authority. Mikolinski supra. However, such proposed regulations can be used to provide "some indication about the Secretary's preliminary interpretation of how the section 205(b)(1) provisions apply in permissive exclusion cases". Vincent Baratta, M.D., DAB 1172 (1990) at 8.

The reasonableness of the exclusion is determined by considering the circumstances which indicate the extent of an individual's or entity's trustworthiness to be a program provider of services. Essentially, I evaluate the evidence to determine whether the exclusion comports with the legislative purposes outlined above. Thus, a determination of an individual's trustworthiness in a section 1128(b)(4)(A) case necessitates an examination of the following considerations: 1) the nature of the license revocation and the circumstances surrounding it; 2) the impact of the revocation on the Medicare and Medicaid programs; 3) whether and when the individual whose license was revoked recognized the gravity of the conduct that initiated the disciplinary proceeding; 4) the type and quality of help sought to correct the behavior leading to the license revocation; and 5) the extent to which the individual has succeeded in rehabilitation.[3] See Thomas J. DePietro, R.Ph., DAB CR117 (1991); Myron R. Wilson, Jr., M.D., DAB CR146 (1991); Dillard P. Enright, DAB CR138 (1991); Sheldon Stein, M.D., DAB CR144 (1991).

In argument in support of his trustworthiness and against the reasonableness of his exclusion, Petitioner states that: 1) the I.G. should have verified Petitioner's guilt before taking an adverse action against him (P. Br. 7 - 8); 2) Petitioner's brief to the New York State Appellate Court (P. Ex. 12) demonstrates Petitioner's innocence of the charges against him (P. Br. 8); 3) Petitioner has provided evidence of his trustworthiness through statements of his patients and colleagues (P. Br. 9, P. Ex. 1 - 6); and 4) Petitioner is unlicensed in any State and will not practice medicine again until he is licensed, so that any decision by the I.G. should be postponed until the New York courts decide the outcome of his case (P. Br. 9).

Petitioner argues that the I.G. should have made an independent assessment of his guilt, and he offers evidence in an attempt to prove that the decision to revoke his license was erroneous and was lacking in due

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[3] As indicated previously, the criteria used to evaluate the reasonableness of a permissive exclusion absent the promulgation of final regulations are taken from the regulations currently in place for "program related" offenses arising under section 1128(a) of the Act as set forth in 42 C.F.R. 1001.125(b). The factors used to evaluate the Petitioner's trustworthiness have been modified to make them applicable to a license revocation action.

process. In essence, Petitioner is attempting to establish his trustworthiness by collaterally attacking the action taken by the Education Commissioner.

Appellate panels of the Departmental Appeals Board have determined that claims of impropriety in State license revocation proceedings are not relevant to deciding whether the I.G. acted improperly to impose and direct exclusions pursuant to section 1128(b)(4)(A). See John W. Foderick, M.D., DAB 1125 (1990); Andy E. Bailey, C.T., DAB 1131 (1990); Leonard R. Friedman, M.D., DAB 1281 (1991). There is an excellent explication of the rationale prohibiting collateral challenges in section 1128(b)(4)(A) exclusion actions based on alleged failings of State licensing revocation proceedings in Friedman, supra. The appellate panel relied on the following rationale:

> 1. There is no requirement in section 1128(b)(4)(A) that the I.G. go behind the State proceeding to review the state process and standards used in the revocation process.
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> 2. The legislative history provides that the only qualification of the I.G.'s authority to exclude practitioners based on actions of State licensing authorities concerns "minor infractions not relating to quality of care, such as failure to pay licensing fees or violations of strict advertising requirements." S. Rep. No. 109, 100th Cong., 1st Sess. 7, reprinted in 1987 U.S. Code Cong. & Admin. News 682, 688.
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> 3. A division of responsibility between State and federal governments is reasonable since State licensing authorities have a compelling interest in the practice of professions within their boundaries and in insuring that practitioners operating pursuant to State licenses are qualified and honest. The licensing authorities are appropriately in the best position to determine whether a license should be revoked because they have a fundamental interest in the practitioner's fitness, better access to the evidence concerning fitness, and more experience and expertise in applying the relevant State licensing standards.
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> 4. A preclusion of collateral attacks on State licensing authorities' revocations does not infringe on the constitutional rights of practitioners. Such practitioners have ample opportunity to raise such

> issues in appeals taken directly from the State license revocation determinations.
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> 5. Allowing collateral challenges would result in a duplication of the State proceeding and would be wasteful. Patients of practitioners would be required to appear in two proceedings to provide evidence of alleged offenses.
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> 6. Considering the size of and cost for administering the Medicare and Medicaid programs, congressional reliance on derivative actions as a means to police such programs is reasonable and appropriate, particularly in light of State authorities' primary jurisdiction over, and interest in, the conduct of their own licensees.
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> 7. When Petitioners believe there are serious flaws in the actions of the State licensing authorities, rather than mounting collateral attacks in exclusion proceedings, they should initiate appeals in the appropriate State forums.

Friedman, supra, at 6 - 9.

Thus, in my review of the exclusion imposed by the I.G., I need not make a finding whether Petitioner is innocent or guilty of the charges alleged in the State licensing board action. The appropriate forum for such review is the appellate court in New York. Petitioner has undertaken an appeal of the license revocation in the New York Supreme Court.[4] FFCL 15. Petitioner has had ample opportunity through: 1) testimony at hearings (where he was represented by counsel); 2) review and adoption of the recommendations of the Hearing Committee and the Regents' Review Committee by the Board of Regents; and 3) judicial review of such actions by the State licensing authority to prove that he is innocent of the charges leveled at him. The rationale cited by the appellate panel in Friedman, supra, for prohibiting a collateral

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[4] I have carefully read the transcript of Petitioner's hearing before the Hearing Committee (I.G. Ex. 10) and Petitioner's analysis of that hearing in his brief to the New York Supreme Court (P. Ex. 12). Petitioner has raised many issues concerning due process violations and other problems having to do with his hearing before the Hearing Committee. None of these issues, which go to Petitioner's innocence of the charges upon which his license was revoked, are properly before me.

attack on the license revocation proceeding in the section 1128(b)(4)(A) exclusion action is equally applicable here.

All of the alleged flaws in the license proceeding asserted by Petitioner will be fully considered by the New York Supreme Court. Repeating such a review in this proceeding is unnecessary, particularly where Petitioner's exclusion is coterminous with the New York license revocation and he seeks no alternative form of exclusion, such as a term of years. Likewise, neither the I.G. nor I have an obligation in the instant case to independently review the evidence contained in the New York license revocation proceeding or to consider new evidence relating to whether Petitioner committed the alleged misconduct.[5]

Unlike the case at bar, there will be exceptional situations where petitioners in section 1128(b)(4)(A) actions should be given an opportunity to present evidence relating to the factual allegations contained in the license revocation/suspension proceeding. In short, application of the Friedman rationale would lead to an unreasonable exclusion and prevent a proper evaluation of a petitioner's trustworthiness to be a program provider.[6] Among the factors used to determine a

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[5] Also unpersuasive is Petitioner's assertion that Joseph Lowry, the I.G.'s program analyst, was required to review the transcript of the hearing before the Hearing Committee and thus independently assess Petitioner's guilt prior to his recommendation that Petitioner be excluded from Medicare and Medicaid. P. Br. at 7 - 8. Petitioner's coterminous exclusion is based on a derivative action. The I.G. needs only to establish the existence of the factual elements contained in section 1128(b)(4)(A), unless there are circumstances which place in doubt the reasonableness of the imposed exclusion. As I have indicated, there are none in this case.

[6] For example, when: 1) the I.G. seeks a period of exclusion which is longer than the period of the license revocation or suspension; or 2) an indefinite exclusion may in fact be an exclusion for life (or for a patently unreasonable period of time) due to the terms of license revocation itself or the petitioner's ability to practice in another state and the petitioner's lack of intention to seek restoration of the revoked license, such circumstances would warrant an evaluation of the evidence of the petitioner's challenged conduct to determine the reasonableness of the exclusion imposed.

petitioner's trustworthiness would be the extent of the petitioner's culpability for the conduct which formed the basis of the license revocation decision. See, Christino Enriquez, M.D., DAB CR119 (1991); Eric Kranz, M.D., DAB CR148 (1991).

When I evaluate the evidence in this case as it regards Petitioner's trustworthiness, I find that the nature of the charges upon which Petitioner's license revocation was based are very grave. The State of New York, from the Hearing Committee to the Board of Regents, all found that Petitioner had committed particularly serious acts of inappropriate and improper physical or sexual contact with patients, breaching the trust between physician and patient in "gross contravention of his ethical obligations". I.G. Ex. 1/B (19).

A physician who might take advantage of his patients for his own sexual gratification would pose a very great danger to Medicare and Medicaid beneficiaries and recipients. Petitioner's only reaction to these charges has been to state his complete innocence. Petitioner has not sought counseling and denies he is in need of any rehabilitation.

In support of his trustworthiness, Petitioner has submitted numerous letters and petitions from patients and colleagues attesting to his good character (P. Ex. 1 - 6). I have carefully read and considered all of this evidence, as well as Petitioner's statement that he has no other medical licenses and will not practice medicine in any State until his name is cleared. P. Br. 9. However, Petitioner is not precluded from attempting to get a license in another jurisdiction. Where the danger of harm to patients is great, exclusion is justified to insure that program recipients and beneficiaries are protected from even a slight possibility that they will be exposed to such danger. Bernard Lerner, M.D., DAB CR60 at 9 (1989); Michael D. Reiner, R.M.D., DAB CR90 (1990); Norman C. Barber, D.D.S., DAB CR123 (1991).

In this case, the I.G. has excluded Petitioner until he regains his license to practice medicine in New York. He may seek reinstatement of his license to practice medicine in New York after the expiration of one year from the date of his license revocation. FFCL 12. Moreover, Petitioner is vigorously pursuing appeal of his license revocation in the New York Supreme Court, the proper forum in which Petitioner's guilt or innocence of his alleged misconduct will ultimately be decided. I need not find that Petitioner did commit the actions for

which his license was revoked. Equally, I am unable to conclude that he did not commit those actions.

Petitioner has not stated that he intends to leave New York or that he now has a license in another jurisdiction. Neither is he forever precluded from regaining his New York license. In assessing his trustworthiness, Petitioner's presentation of testimonial letters attesting to his competency and good moral character is counterbalanced by his own admission that he lost his sole hospital privileges to practice medicine prior to his license revocation.

Giving Petitioner the benefit of the doubt, I give no weight to his present absence of admission of guilt or lack of rehabilitation or treatment. Petitioner's position is that he is innocent and that he is not in need of rehabilitation while he awaits the results of his appeal of the license revocation. Petitioner's lack of rehabilitation should only be considered if his license revocation is upheld on appeal.

Petitioner does not contest the authority of the I.G. under section 1128(b)(4)(A) to exclude him. His sole reason for challenging the imposed coterminous exclusion is his contention that he is innocent of the facts found by the New York licensing authority as supporting his license revocation. He is presently pursuing an appeal of that action. The I.G.'s exclusion of Petitioner is based on a derivative action. All of the relevant factors pertaining to Petitioner's trustworthiness and his ability to be a responsible Medicare and Medicaid provider in the future emanate from his New York license revocation and his pending appeal. Under these circumstances, it is reasonable that Petitioner be excluded until such time as New York determines that he is trustworthy to practice medicine again.

In sum, I do not find that Petitioner has demonstrated his trustworthiness to me in such a way that I can find that the exclusion directed and imposed against Petitioner by the I.G. is so extreme or excessive as to be unreasonable.

CONCLUSION

Based on the evidence in this case and the law, I conclude that the exclusion imposed against Petitioner from participating in the Medicare and Medicaid programs until he obtains a valid license to practice medicine in the State of New York is reasonable. Therefore, I sustain the exclusion imposed against Petitioner, and I enter a decision in favor of the I.G.

/s/

Edward D. Steinman
Administrative Law Judge