

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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In the Case of:)
Lakshmi N. Murty Achalla, M.D.,)
Petitioner,)
- v. -)
The Inspector General.)
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DATE: October 18, 1990

Docket No. C-146

Decision No. CR104

DECISION

Petitioner requested a hearing to contest a determination by the Inspector General (I.G.) to exclude Petitioner from participation in the Medicare program and certain federally-assisted State health care programs.¹ The I.G. alleged that the exclusion was authorized by section 1128(b)(4)(A) of the Social Security Act (Act).

On May 3, 1990, I conducted an evidentiary hearing in Albany, New York. Based on the evidence introduced by both parties at the hearing, and on the applicable law, I conclude that the I.G. had authority to exclude Petitioner and that a three-year period of exclusion is reasonable under the circumstances of this case. I note that at the end of that period, Petitioner may apply for reinstatement under section 1128(g)(1) of the Act.

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.

BACKGROUND

By letter dated July 25, 1989, the I.G. notified Petitioner that he was being excluded from participation in the Medicare and Medicaid programs as a result of the fact that the Florida Department of Professional Regulation, Board of Medicine (Florida Board of Medicine) had revoked Petitioner's license to practice medicine in the State of Florida. The I.G. advised Petitioner that he would be eligible to apply for reinstatement to the Medicare and Medicaid programs if he obtained a valid license to practice medicine in the State of Florida. By letter dated August 2, 1989, Petitioner timely requested a hearing and, thereafter, the case was assigned to me for a hearing and decision.

APPLICABLE STATUTES AND REGULATIONS

I. The Federal Statute.

Section 1128 of the Act is codified at 42 U.S.C. 1320a-7 (West U.S.C.A., 1989 Supp.). Section 1128(b)(4)(A) of the Act permits the I.G. to exclude from Medicare and Medicaid participation:

any individual or entity whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity.

II. The Federal Regulations.

The applicable federal regulations are codified in 42 C.F.R., Parts 498, 1001, and 1002 (1989). Part 498 governs the procedural aspects of this exclusion case; Parts 1001 and 1002 govern the substantive aspects.

ISSUES

The issues are whether:

1. Petitioner's license to provide health care was revoked for reasons bearing on his professional competence, professional performance, or financial integrity, within the meaning of section 1128(b)(4)(A) of the Act;
2. Section 1128(b)(4)(A) of the Act permits an exclusion under the circumstances of this case;

3. An indefinite exclusion is required in this case as a matter of law; and
4. The period of Petitioner's exclusion is reasonable and appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW²

1. Petitioner is a physician specializing in physical medicine and rehabilitation (physiatry) and held a valid license to practice in the State of Florida prior to December, 1988. I.G. Ex. 1/1.³
2. On March 24, 1987, in the State of Pennsylvania, Petitioner delivered to another individual 100 tablets of oxycodone hydrochloride (generic Percocet) obtained by telephoning a false prescription to a local pharmacy. Percocet is a Schedule II narcotic controlled substance. I.G. Ex. 2, I.G. Ex. 8/3-4.
3. On March 24, 1987, a criminal information was filed against Petitioner in a Juniata County, Pennsylvania, court charging him with one count of delivering a controlled substance: 1) not in good faith within the scope of his professional practice; 2) outside of the patient relationship; and 3) not in accordance with treatment principles accepted by a responsible segment of the medical profession. I.G. Ex. 8/5; 35 Penn. Stat. Ann. section 780-113(a)(14).
4. On August 3, 1987, in the Pennsylvania Court of Common Pleas, Petitioner pled guilty to, and was convicted of, the criminal offense alleged in the March 24, 1987 criminal information.

² Some of my statements in the sections preceding these formal findings and conclusions are also findings of fact and conclusions of law. To the extent that they are not repeated here, they were not in controversy.

³ The citations to the record in this Decision and Order are designated as follows:

Petitioner's Brief	P. Br. (page)
Petitioner's Exhibit	P. Ex. (number)/(page)
I.G.'s Brief	I.G. Br. (page)
I.G.'s Exhibit	I.G. Ex. (number)/(page)
Transcript	Tr. (page)

5. In December, 1988, the Florida Board of Medicine revoked Petitioner's license to practice medicine based on the events of March 24, 1987, including telephoning a false prescription for a controlled substance, and on Petitioner's subsequent conviction. I.G. Ex. 1.

6. The Florida Board of Medicine is a state licensing agency within the meaning of 1128(b)(4)(A) of the Act.

7. Telephoning a prescription to a pharmacy is a professional activity and is related to Petitioner's professional competence and professional performance.

8. Petitioner's license was revoked by the Florida Board of Medicine for reasons bearing on his professional competence and professional performance with the meaning of section 1128(b)(4)(A) of the Act.

9. By letter dated July 25, 1989, the I.G. notified Petitioner that he would be excluded from the Medicare and Medicaid programs until he obtained a valid license to practice medicine in Florida. I.G. Ex. 4.

10. Section 1128(b)(4)(A) authorizes the Secretary of Health and Human Services (and his delegate, the I.G.), to impose and direct exclusions of individuals whose license to provide health care has been revoked by any State licensing authority for reasons bearing on professional competence or professional performance. 42 U.S.C.A. 1320a-7(b)(4)(A).

11. The I.G. had authority to exclude Petitioner under section 1128(b)(4)(A) of the Act.

12. An indefinite exclusion is not required by section 1128(b)(4)(A) of the Act.

13. A purpose of section 1128(b)(4) of the Act is to protect beneficiaries and program funds by excluding individuals or entities, who by their conduct have demonstrated a risk that they may engage in fraud, substandard services, abuse, or unsafe practices, until such time as those excluded can demonstrate that such risk no longer exists. S. Rep. No. 109, 100th Cong., 1st Sess. 2, reprinted in 1987 U.S. Code Cong. & Admin. News 682.

14. An additional purpose of section 1128(b)(4) is to prevent individuals or entities from evading sanctions by moving from their home jurisdiction to avoid sanctions imposed there, and thus protect the integrity of State

regulation of medical professional standards. Id., pp. 3-4.

15. The legislative history of the Act illustrates that Congress intended that, in setting the period of exclusion in this type of case, such factors as the seriousness of the offense, the impact of both the offense and the exclusion on beneficiaries, and any mitigating circumstances, such as the availability of alternate providers of needed health care services, be considered. S. Rep. No. 109, 100th Cong., 1st Sess. 3, reprinted in 1987 U.S. Code Cong. & Admin. News 682, 693.

16. The criminal offense of which Petitioner was convicted was a serious offense involving an abuse of physicians' privileges to prescribe controlled substances. I.G. Exs. 1 and 8.

17. Petitioner was sentenced to a three-year term of probation, which was subsequently reduced to sixteen months. I.G. Ex. 8; Tr. 106-07.

18. Petitioner's criminal conduct did not have an adverse impact on program beneficiaries or recipients, or involve the Medicare or Medicaid programs.

19. Petitioner has never been the subject of formal complaints by either patients or other health care providers, other than one patient whose narcotic drugs were taken away by Petitioner. Tr. 91.

20. Petitioner had attempted to limit distribution of controlled substances at the Altoona Veterans Administration (VA) Medical Center. Tr. 92-96.

21. Petitioner was suffering from a depressive illness which affected his judgment during the period in which he engaged in criminal conduct. Tr. 104-05.

22. Petitioner fulfilled the terms of his probation. Tr. 106-07.

23. Since his conviction, Petitioner has participated in the impaired physician program in both Pennsylvania and New York, and continues to participate in the New York impaired physician program. Tr. 105-07; P. Ex. 1.

24. Since his conviction, Petitioner has continued psychotherapy and has demonstrated substantial improvement. P. Ex. 1; Tr. 62-69.

25. Petitioner has been satisfactorily employed since December 1987 at the Harlem Valley Psychiatric Center and has also been working with physically disabled prisoners at the Green Haven Correctional Facility in New York. I.G. Ex. 3; P. Ex. 2. Green Haven has the only unit for disabled and handicapped inmates in the New York correctional system. P. Ex. 2; Tr. 115.

26. Petitioner's conduct subsequent to his conviction demonstrates that he is unlikely to again abuse his privileges as a physician.

27. Petitioner does not pose a substantial risk of harm to beneficiaries or recipients or to the integrity of the Medicare and Medicaid programs.

28. Petitioner was not practicing medicine or residing in Florida at the time his license was revoked in that State, nor does he intend to practice medicine or reside in Florida in the future.

29. Based on the events of March 24, 1987, and Petitioner's subsequent conviction, the Pennsylvania Board of Medicine revoked Petitioner's license to practice medicine in the State of Pennsylvania and the Georgia Board of Medical Examiners placed Petitioner's license to practice medicine in the State of Georgia on "inactive status" subject to revocation on certain conditions. I.G. Exs. 6 and 9.

30. Petitioner has been practicing medicine and residing in the State of New York since December 1987 and did not move to New York to avoid sanction proceedings or sanctions. Tr. 106.

31. Petitioner did not seek to evade sanctions by State licensing authorities, nor did he challenge the integrity of the State regulation of medical professionals.

32. The Act establishes neither minimum nor maximum periods for exclusions based on section 1128(b)(4)(A).

33. I have authority to modify the terms of the exclusion imposed by the I.G. against Petitioner. 42 U.S.C. 405(b).

34. It is a mitigating factor that Petitioner: (1) was suffering from a depressive illness which affected his judgment during the time in which he engaged in criminal conduct; (2) is continuing to seek treatment for his depression and has made progress with his psychiatric treatment; and (3) is providing a needed

specialty to the New York correctional system. Tr. 67, P. Ex. 2.

35. The exclusion of Petitioner until he obtains a valid license to practice medicine in the State of Florida is excessive in light of: (1) the absence of substantial risk of harm to patients or the integrity of the Medicare and Medicaid programs; (2) the absence of any intent to evade sanctions or challenge the integrity of State regulation of medical professionals; and (3) the mitigating circumstances listed above.

36. The remedial considerations of section 1128(b)(4)(A) of the Act will be served in this case by a three-year exclusion from the Medicare and Medicaid programs.

DISCUSSION

I. The Board of Medicine revoked Petitioner's license to practice medicine in Florida for reasons bearing on Petitioner's professional competence and performance.

It is undisputed that Petitioner's license to provide health care in Florida was revoked by the Florida Board of Medicine and that this Board is a State licensing authority within the meaning of section 1128(b)(4)(A) of the Act. There is also no dispute that his license revocation was based on Petitioner's conviction in Pennsylvania, as well as the underlying conduct which resulted in his conviction.

Petitioner's conviction was for dispensing a controlled substance outside of a patient relationship. He had obtained these drugs by telephoning a false prescription in his wife's name to a pharmacy. This act constituted an abuse of Petitioner's privileges as a physician and was related to both his competence and performance as a physician. Accordingly, the revocation of Petitioner's license by the Florida Board of Medicine was for "reasons bearing on his professional competence and professional performance," within the meaning of section 1128(b)(4)(A) of the Act.

II. The I.G. is authorized to exclude Petitioner by section 1128(b)(4)(A) of the Act.

Section 1128(b)(4)(A) of the Act provides that the Secretary (or his delegate, the I.G.) may exclude from participation in the Medicare and Medicaid programs:

Any individual or entity whose license to provide health care has been revoked or suspended by any State licensing authority, ...for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity.

I have already determined that Petitioner's license was revoked by a state licensing authority for reasons bearing on his professional performance and competence within the meaning of section 1128(b)(4)(A) of the Act. Accordingly, I find that Petitioner's exclusion by the I.G. was authorized.

III. An indefinite exclusion until Petitioner regains his license in Florida is not required by section 1128(b)(4)(A) of the Act.

The I.G. argues that since Petitioner's license was revoked by the State of Florida, it is reasonable to impose an indefinite period of exclusion, until Petitioner obtains a license to practice medicine in Florida before he is eligible for reinstatement in the Medicare and Medicaid programs.

The I.G. relied on the Departmental Appeals Board's decision in John W. Foderick, M.D., DAB App. 1125 (1990), to support this position and also cited the legislative history of section 1128(b)(4)(A) of the Act.

The I.G. asserted that section 1128(b)(4)(A) of the Act was enacted to expand federal authority to exclude practitioners who lose their license in one state, but continue to treat program beneficiaries by moving to another state. The I.G. concludes that the indefinite period of exclusion which he imposed here would insure that the intent of Congress in authorizing such exclusions was realized. I.G. Br. 7.

Petitioner argues, in essence, that an indefinite period of exclusion is unreasonable and that the length of an exclusion under section 1128(b)(4)(A) is a question of fact. P. Br. 6.

In Foderick, the petitioner surrendered his license to practice medicine while a formal disciplinary proceeding was pending against him before the Minnesota Board of Medical Examiners. He was not licensed to practice in any other state. The I.G. excluded the petitioner until such time as he obtained a valid license to practice

medicine in Minnesota. The ALJ decided the case in favor of the I.G. on a motion for summary disposition. A panel of the Departmental Appeals Board affirmed, holding that "[t]he ALJ properly concluded that the I.G.'s exclusion determination was consistent with Congressional intent" (p. 11).⁴

In another, more recent, case, that of Walter J. Mikolinski, Jr., DAB App. 1156 (1990), the petitioner's pharmacy license had been suspended by the Massachusetts Board of Regulation in Pharmacy for reasons bearing on petitioner's professional competence, professional performance, or financial integrity. The I.G. excluded the petitioner until such time as he obtained a valid license as a pharmacist in Massachusetts. The ALJ decided that the I.G. reasonably excluded the petitioner in his capacity as a pharmacist provider, but not in the petitioner's other capacity as a nursing home operator. The ALJ imposed an exclusion of two years on the petitioner in that capacity.

The Board held that the ALJ erred in setting different time periods for different kinds of services, rejected the I.G.'s argument that the ALJ was required to exclude the petitioner until he regained his pharmacy license in Massachusetts, and remanded the case to the ALJ to consider the appropriate length of exclusion. The Board did not mention the earlier decision in Foderick. The Board stated that a legitimate factor to be considered in setting a period of exclusion was the concern that a petitioner "might never satisfy the conditions for regaining his license, even though he had overcome the lack of trustworthiness arising from the activities based on which his license had been suspended." Mikolinski, p. 16. The Board went on to note that both the language and purpose of the Act can be given effect through the simpler remedy of setting one definite period of exclusion.

⁴ The Board also stated:

The legislative history demonstrated that the Act was designed to ensure that health care providers who lose their licenses for reasons related to their professional competence be prohibited from participating in Medicare and Medicaid in all states until they reacquire their licenses and demonstrate their trustworthiness.

In addition, the I.G. appears to have recognized that an indefinite exclusion is not always required, since he has not imposed such an exclusion in all cases under section 1128(b)(4)(A) of the Act. See Vincent Baratta, M.D., DAB Civ. Rem. C-144 (1990), aff'd DAB App. 1172 (1990).

Accordingly, I must decide whether the I.G. in this case acted reasonably in excluding Petitioner indefinitely, until such time as Petitioner would regain his license to practice medicine in Florida. Then, if I find that the facts warrant it, I must exclude Petitioner for a set period of time in lieu of the indefinite exclusion imposed and directed by the I.G. Thus, I find and conclude that an exclusion until such time as Petitioner regains his license in the State of Florida is not required by section 1128(b)(4)(A) of the Act and, in accordance with the facts in the record, pursuant to 42 U.S.C. 405(b), I must modify the terms of the exclusion imposed by the I.G. against Petitioner.

IV. A three-year exclusion is reasonable and appropriate under the circumstances of this case.

A purpose of section 1128(b)(4) of the Act is to protect beneficiaries and program funds by excluding individuals or entities who by their conduct have demonstrated a risk that they may engage in fraud, substandard services, abuse, or unsafe practices, until such time as those excluded can demonstrate that such risk no longer exists. S. Rep. No. 109, 100th Cong., 1st Sess. 2, reprinted in 1987 U.S. Code Cong. & Admin. News 682.

The legislative history of the Act indicates that Congress intended that, in setting the period of an exclusion in this type of permissive exclusion case, such factors as the seriousness of the offense, the impact of both the offense and the exclusion on beneficiaries, and any mitigating circumstances, such as the availability of alternate providers of needed health care services, be considered. S. Rep. No. 109, 100th Cong., 1st Sess. 3, reprinted in 1987 U.S. Code Cong. & Admin. News 682, 693. Furthermore, the regulations at 42 C.F.R. 1001.125, and the proposed regulations in 55 Fed. Reg. 12205 (April 2, 1990), provide guidance in determining the period of exclusion to be imposed in an 1128(b)(4)(A) case.

In order to decide the appropriate period of an exclusion in this case, I made a de novo determination and considered all of the purposes designated by Congress for the enactment of section 1128 of the Act. In making that de novo determination, I considered whether the

indefinite period of exclusion, imposed by the I.G., is reasonable under the circumstances of this case.

Since one of the main purposes of an exclusion from the Medicare and Medicaid programs is to allow for a period of time in which to ensure that Petitioner is trustworthy, I examined such relevant factors as the nature of the crime for which Petitioner was convicted and which formed the basis of the revocation of his license, the length of the sentence imposed by the court in Petitioner's criminal case, and Petitioner's subsequent conduct. To ensure the protection of the beneficiaries of the Medicare and Medicaid programs, I also considered Petitioner's previous sanction record, whether his criminal conviction involved program violations or other related offenses, and whether Petitioner's conduct resulted in damages to the Medicare or Medicaid programs.

The I.G. argued that Petitioner's present and past mental states were not relevant to these proceedings and that there were aggravating circumstances to be considered in Petitioner's case. The I.G. also asserted that neither Petitioner's nor his witness' testimony were credible. During the hearing, the I.G. introduced evidence of Petitioner's license revocation in the States of Georgia and Pennsylvania and argued, in essence, that these were aggravating circumstances. Since these other states barred Petitioner on the basis of the same underlying facts, however, I find that this is neither aggravating nor mitigating.

Petitioner contended that under the circumstances of his case it is appropriate that no exclusion be imposed. He argued that an exclusion in his case would be unduly harsh and not in keeping with the goals or objectives of section 1128(b)(4)(A). Petitioner also argued that if an exclusion is warranted, the indefinite exclusion imposed by the I.G. is unreasonable, since Petitioner will not be returning to, nor seeking a license to practice in, the State of Florida.

In support of his arguments, Petitioner cited as mitigating circumstances that: (1) there was no adverse impact on beneficiaries; (2) Medicare, Medicaid, and the social services programs were not damaged; (3) he has no prior Medicare or Medicaid sanctions; (4) there were no program violations, and, as a result, no related offenses; (5) he is the only psychiatrist presently employed by both the Harlem Valley Psychiatric Center and the Green Haven Correctional Facility; and (6) his

criminal conduct was the result of a psychological problem that has been and continues to be treated.

The absence of prior offenses by Petitioner is not a mitigating factor. Furthermore, Petitioner's lack of a sanction record under Medicare or Medicaid, the I.G.'s lack of proof that there was any adverse impact on program beneficiaries, and the fact that Petitioner's convictions did not involve program violations, are not mitigating in nature. Rather, their presence would be aggravating factors that might justify an increased sanction.

However, Petitioner's mental state, both at the time he engaged in his criminal conduct and now, and his conduct subsequent to his conviction are relevant to determining the period of exclusion to be imposed. Moreover, the availability of alternate health care services is a mitigating circumstance which the legislative history of the Act indicates should be considered in determining a period of exclusion.

Trustworthiness is not something that is subject to exact measurement or determination. However, in attempting to measure Petitioner's trustworthiness, I gave great weight to the credibility of his testimony during the May 3, 1990 hearing. I evaluated Petitioner's credibility based on the following factors. First, I compared Petitioner's testimony to the other evidence introduced at the May 3, 1990 hearing. Such evidence included testimony of other witnesses and documents. Petitioner's testimony was unequivocal and did not contradict other evidence offered against him. Moreover, much of Petitioner's testimony was corroborated by other witnesses. Second, my personal observation of Petitioner was that he testified in a forthright manner and did not appear to try to avoid questions. For these reasons, I conclude that Petitioner's testimony was credible and that this reflects favorably on his trustworthiness.

Petitioner's testimony revealed that Petitioner had attempted to limit the distribution of controlled substances at the Altoona Veterans Administration Medical Center (VA Hospital) while he was employed at that facility. Petitioner attempted to do this by reporting incidents of excessive prescription of narcotic drugs at the VA Hospital to the VA central office in Washington, D.C. It was after making his report to the VA central office that Petitioner's difficulties began.

Shortly after Petitioner's report to Washington, a patient at the VA Hospital lodged a complaint against

him. The complaint alleged that Petitioner had supplied narcotic drugs to the patient in return for the patient's procuring female companionship for Petitioner. Petitioner testified that he did not attempt to obtain female companionship in return for drugs. I accept Petitioner's version of the incident. I conclude that the complaint was most likely motivated by the fact that Petitioner had reduced the complainant's supply of narcotic drugs. Thus, Petitioner's subsequent act, of bringing narcotic drugs to this individual, though illegal, was induced by someone with a selfish and improper motive. Tr. 43. While these circumstances do not change the fact that Petitioner committed a serious criminal offense, they are mitigating. More importantly, Petitioner's forthrightness in testifying as to these matters reflects favorably on his trustworthiness.

In addition to Petitioner's credibility, I also considered Petitioner's past exercise of judgment in determining his trustworthiness. I considered Petitioner's judgment relevant to his trustworthiness because a mistake in judgment can be as harmful as an intentional wrong to program beneficiaries and recipients. Although I do not believe that Petitioner intentionally committed a wrong against program beneficiaries and recipients, Petitioner has demonstrated naivete and lack of judgment. Petitioner's resignation from the VA Hospital, based upon the promises of the hospital's administrator that he would receive a good reference, was naive. Furthermore, Petitioner's actions in contacting the complainant and agreeing to bring him narcotics in exchange for the retraction of his earlier accusations demonstrated a total lack of good judgment on Petitioner's part. This past lack of judgment gives me some concern as to his present trustworthiness.

The period of exclusion I am imposing is based on whether Petitioner is likely to exhibit this kind of conduct in the future if placed under similar extreme circumstances or pressure. My goal is to determine how much time is needed for Petitioner to again be trustworthy. I determined the time needed to accomplish that goal by reviewing Petitioner's past actions and the nature of those actions, as well as his subsequent conduct and reputation in the community.

Petitioner was convicted of providing controlled substances to an individual outside of the physician-patient relationship. He had obtained these drugs by telephoning a false prescription in his wife's name to a pharmacy, thus abusing his privileges as a physician. Petitioner pled guilty to the offense and was sentenced

to three years probation. As a condition of his probation, Petitioner was also ordered to continue psychiatric treatment and to participate in a program for impaired physicians. Petitioner's probation was reduced to sixteen months. Petitioner fulfilled the terms of his probation, and continues to receive psychotherapy.

Petitioner's psychiatrist testified that during the time of his criminal conduct, Petitioner was under extreme depression that severely affected his judgment. He further testified that, although he has some reservations about Petitioner's ability to handle certain situations, Petitioner has made good progress and is continuing to receive professional counseling. He pointed out that Petitioner's credulity has been tempered by the circumstances surrounding his resignation and conviction and that Petitioner is dependable, reliable and consistent. Tr. 67 - 69.

Other evidence gleaned from the testimony of witnesses indicated that Petitioner was well-respected in his professional community and that he is providing a needed specialty at both the Green Haven Correctional Facility and the Harlem Valley Psychiatric Center. The evidence reflected that Petitioner evaluates all of the physically disabled inmates at Green Haven, a facility which contains the only physically disabled unit for the entire New York correctional system. P. Ex. 2.; P. Br. 2.⁵

I give a great deal of weight to this testimony in determining Petitioner's trustworthiness and setting an appropriate period of exclusion in his case. I conclude that Petitioner is unlikely to again abuse his privileges as a physician and does not pose a substantial risk of harm to beneficiaries, recipients, or to the integrity of the Medicare and Medicaid programs.

The I.G. argued that, although the Act establishes neither minimum nor maximum periods of exclusions based on section 1128(b)(4)(A), an indefinite exclusion should be imposed. In support of his position, he argued that an additional purpose of section 1128(b)(4) is to prevent individuals from evading sanctions by moving from their home jurisdiction to avoid sanctions imposed there, and

⁵ Section 1128(d)(3)(B)(i) provides that the Secretary may waive an individual or entity's exclusion under a State health care program if the Secretary receives and approves a request for a waiver from the State agency administering the program.

thus protect the integrity of State regulation of medical professional standards. I.G. Br. 8-10.

The evidence indicated that Petitioner has been practicing medicine in the State of New York since December 1987, and, thus, was not residing in Florida at the time of his license revocation. He, therefore, did not move to New York to avoid sanctions or sanction proceedings, and the integrity of Florida's regulation of its medical profession has been protected. Furthermore, Petitioner indicated that he does not intend to return to Florida in the foreseeable future. Accordingly, I conclude that the exclusion of Petitioner until he obtains a valid license to practice medicine in the State of Florida is excessive and unreasonable. I further conclude that the remedial considerations of section 1128(b)(4)(A) of the Act will be served in this case by a three-year exclusion.

CONCLUSION

Based on the material facts and the law, I conclude that the I.G.'s determination to exclude Petitioner from participation in the Medicare and Medicaid programs was authorized by law. I further conclude that a three-year exclusion is reasonable and appropriate in this case.

IT IS SO ORDERED.

/s/

Charles E. Stratton
Administrative Law Judge