

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
	)	DATE: September 6, 1994
Sudarshan K. Singla, M.D.,	)	
	)	
Petitioner,	)	Docket No. C-94-296
	)	Decision No. CR332
- v. -	)	
	)	
The Inspector General.	)	
	)	

DECISION

By letter dated December 14, 1993, Sudarshan K. Singla, M.D., Petitioner herein, was notified by the Inspector General (I.G.), U.S. Department of Health & Human Services (HHS), that it had been decided to exclude him for a period of five years from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. (I use the term "Medicaid" in this Decision when referring to programs other than Medicare.) The I.G. explained that the five-year exclusion was mandatory under sections 1128(a)(1) and 1128(c)(3)(B) of the Social Security Act (Act) because Petitioner had been convicted of a criminal offense related to the delivery of an item or service under Medicaid.

Petitioner filed a timely request for a hearing. The I.G. moved for the case to be decided on the basis of written submissions without an in-person hearing. Because I have determined that there are no material and relevant factual issues in dispute (i.e., the only matter to be decided is the legal significance of the undisputed facts), I have granted the I.G.'s motion. I conclude that the I.G. correctly determined to exclude Petitioner from participation in the Medicare and Medicaid programs for a period of five years.

APPLICABLE LAW

Sections 1128(a)(1) and 1128(c)(3)(B) of the Act make it mandatory for any individual who has been convicted of a

criminal offense related to the delivery of an item or service under Medicare or Medicaid to be excluded from participation in such programs, for a period of at least five years.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During the period relevant to this case, Petitioner was a physician practicing in the State of New York.

2. Petitioner was a member of a group practice incorporated as M. M. Management Services, Inc. (MM), which operated under the name Midwood Medical Clinic, in Brooklyn, New York. I.G. Ex. 3 at p. 4; I.G. Brief (I.G. Br.) at 2; Petitioner's Brief (P. Br.) at 4.<sup>1</sup>

3. On September 27, 1991, Petitioner was indicted by a grand jury in Brooklyn. He was charged under New York Penal Law with one count of grand larceny and five counts of offering a false instrument for filing. I.G. Ex. 2.

4. On or about February 5, 1993, Petitioner was convicted in the New York Supreme Court, Kings County, on his plea of guilty to offering a false instrument for filing, second degree, a lesser included misdemeanor offense under the second count of the indictment. I.G. Ex. 3, 4.

5. Petitioner admitted to the court that, although he was not qualified to read an echocardiogram and had not read echocardiograms for MM, he signed forms MM used to bill Medicaid, knowing that his signature conveyed the impression that he had read echocardiograms and that Medicaid would thus be induced to pay the claims, which included compensation to him for signing the forms. I.G. Ex. 3 at 8.

6. The court required Petitioner to pay a fine and gave him a conditional discharge. I.G. Ex. 4.

7. The Secretary of HHS has delegated to the I.G. the authority to determine and impose exclusions pursuant to section 1128 of the Act. 48 Fed. Reg. 21662 (May 13, 1983).

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<sup>1</sup>Petitioner offered one exhibit, which he designated "A." The I.G. offered four exhibits. I admit all of the exhibits. I re-marked Petitioner's exhibit simply as "P. Ex.," although I do not refer to it in the Decision. I refer to the I.G.'s exhibits as "I.G. Ex. (number) at (page)."

8. Filing false Medicaid claims constitutes clear program-related misconduct, sufficient to mandate exclusion.

9. Petitioner's alleged lack of criminal intent is not relevant.

10. It is not unlawful for the same exclusionary period to be imposed upon individuals who commit crimes of varying degrees of severity.

#### PETITIONER'S ARGUMENT

Petitioner alleged that he never received any money for signing the echocardiogram reports on which the false billing was based which led to his conviction. Request for Hearing. He alleged that he entered a plea of guilty without knowledge of the consequences it would have on his practice of medicine. Id. Petitioner contended that the offense to which he pled guilty was not related to the delivery of an item or service under Medicare or Medicaid and thus should have been subject only to a permissive, not a mandatory, exclusion. P. Br. He contended that, inasmuch as he was convicted of only a misdemeanor and not convicted of having acted with fraudulent intent, his exclusion should be less than five years. Id.

#### DISCUSSION

The first statutory requirement for mandatory exclusion pursuant to section 1128(a)(1) of the Act is that the individual in question was convicted of a criminal offense under federal or State law.

Section 1128(i) of the Act states that there are essentially four possible dispositions of a criminal case which will be treated as convictions. These are: entry by the court of a judgment of conviction (it is immaterial whether there is an appeal pending or whether the judgment is ultimately expunged); a formal finding of guilt by the court; acceptance by the court of a plea of guilty or nolo contendere; and deferral of judgment by the court, wherein a guilty defendant who complies with certain court-imposed conditions is enabled to preserve a clean record.

In the case at hand, Petitioner appeared in court and pled guilty, and the court accepted his plea. Furthermore, Petitioner acknowledges that he was

convicted.

The other requirement of section 1128(a)(1) of the Act is that the conviction must be related to the delivery of an item or service under Medicare or Medicaid.

It is well-established in numerous, consistent, and longstanding DAB decisions (some of which have been appealed to federal court and been upheld) that a criminal conviction based on filing false claims for reimbursement from Medicaid or Medicare mandates exclusion under 1128(a)(1), even if such conviction did not itself involve the physical delivery of items or services. Jack W. Greene, DAB CR19, aff'd, DAB 1078 (1989), aff'd sub nom. Greene v. Sullivan, 731 F. Supp. 835, 838 (E.D. Tenn. 1990). I find that Petitioner's criminal activity which gave rise to the present case -- i.e., his part in MM's willfully submitting documents to Medicaid in support of claims for reimbursement for nonexistent services -- similarly constitutes financial misconduct related to the delivery of Medicaid services and also mandates exclusion.

To be sure, Petitioner's analysis of the statutory history of exclusion law reaches a different conclusion (i.e., that financial crimes, such as fraud, are to be punished only through the permissive exclusion process) but I find nothing in his reasoning that casts serious doubt on DAB precedent. In light of the extensive and consistent nature of the DAB precedent, and noting that the principles involved have been adopted by appellate panels of the DAB, whose decisions are binding on me, I feel constrained to follow such precedent.

As to Petitioner's alleged lack of intent to defraud, the law does not require proof of Petitioner's intent. Rather, proof that a criminal conviction has occurred, and that the offense is program-related, ends the inquiry as to whether mandatory exclusion is justified. DeWayne Franzen, DAB 1165 (1990). When the minimum mandatory period is at issue, the ALJ cannot look behind the fact of conviction or consider evidence intended to mitigate the exclusion. Peter J. Edmonson, DAB 1330 (1992).

However, I note that Petitioner admitted to the State court that he intentionally caused to be submitted to Medicaid at least one report which falsely represented that he had provided echocardiographic services to a particular Medicaid recipient. In his plea colloquy, Petitioner stated that he signed the report knowing that it would give the impression that he had read the echocardiogram for MM. He said also that he was aware

that such document would be relied upon by Medicaid to pay the submitted claims and that the claim included an amount for his compensation for having signed the report. Based on the above, I conclude that, regardless of whether Petitioner's intent satisfied some provision of State law, the undisputed facts show that he committed a financial crime against the Medicaid program.

Petitioner argues also that excluding him for five years would unconstitutionally subject him to exactly the same penalty as is imposed upon persons who committed far more serious offenses. However, I find that Petitioner's argument is without merit.

Although government imposition of fines or forfeitures arising out of civil or criminal charges can, indeed, be deemed unconstitutional if the fines are excessive<sup>2</sup>, Petitioner has not established that this principle is applicable to the facts of his case. First, he has not shown that his exclusion -- which amounts to nothing more than the government's refusal to do business with him -- is the equivalent of a fine or forfeiture (since, among other things, his existing property was not taken from him). Second, given that Congress has deemed it to be of special significance to society, I see no reason why the establishment by Congress of a minimum sanction as a consequence of having been convicted of a particular crime would be barred by the Constitution.

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<sup>2</sup> See Austin v. U.S., 113 S.Ct. 2801, 2806 (1994) (excessive fines clause of the Eighth Amendment to the Constitution, which limits the government's power to extract payments, applies to civil proceedings as well as criminal prosecutions).

## CONCLUSION

Sections 1128(a)(1) and 1128(c)(3)(B) of the Act require that Petitioner be excluded from the Medicare and Medicaid programs for a period of at least five years because of his conviction for a program-related criminal offense. The I.G.'s five-year exclusion is, therefore, sustained.

/s/

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Joseph K. Riotto  
Administrative Law Judge