

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
	)	
Mary E. Holt, R.N.,	)	DATE: April 21, 1998
	)	
Petitioner,	)	
	)	
-v.-	)	Docket No. C-98-008
	)	Decision No. CR530
The Inspector General.	)	
	)	

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Mary E. Holt, R.N.,<sup>1</sup> from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grant to States for Social Services programs,<sup>2</sup> until such time as she obtains a valid license to practice nursing or provide health care in the State of Illinois. I base my decision on evidence which proves that Petitioner surrendered her nursing license during the pendency in that State of a formal disciplinary proceeding related to her professional competence, professional performance, or financial integrity. I further base my decision on evidence which proves that Petitioner lost her license, and the right to apply for or renew it, for reasons bearing on her professional competence, professional performance, or financial integrity. Finally, I find that when, as here, an exclusion imposed by the I.G. is concurrent with the remedy imposed by a State licensing authority, then no issue of reasonableness exists and such an exclusion is mandated by law.

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<sup>1</sup> Petitioner has also used the name Mary Holt Butts in various documents related to these proceedings.

<sup>2</sup> In this decision, I use the term "Medicaid" to refer to all State health care programs from which Petitioner was excluded.

### BACKGROUND

By letter dated August 7, 1997, the Inspector General (I.G.), United States Department of Health and Human Services, notified Petitioner that she would be excluded from participation in the Medicare and Medicaid programs until such time as she obtained a valid license to practice medicine or provide health care in the State of Illinois. In that letter, the I.G. explained that Petitioner's exclusion was authorized under section 1128(b)(4) of the Social Security Act (Act), because her license to practice medicine or provide health care in the State of Illinois had been revoked, suspended, or otherwise lost or surrendered during the pendency of formal disciplinary proceedings before the State licensing authority for reasons bearing on her professional competency, professional performance, or financial integrity.

Petitioner filed a request for hearing to contest the I.G.'s action. The parties agreed that the case could be decided based on written submissions, and that an in-person hearing was not necessary. Because I have determined that there are no material and relevant factual issues in dispute (the only matter to be decided is the legal significance of the undisputed facts), I have decided the case on the basis of the parties' written submissions in lieu of an in-person hearing.

Both parties submitted written briefs (I.G. Br. and P. Br.). The I.G. submitted three proposed exhibits (I.G. Ex. 1-3). Petitioner did not object to these exhibits. Petitioner submitted nine exhibits with her December 16, 1997 submission. I have redesignated these exhibits as P. Ex. 1-9. The I.G. did not object to Petitioner's exhibits. In the absence of objection from the parties, I am admitting I.G. Ex. 1-3 and P. Ex. 1-9 into evidence in this case. I base my decision in this case on the applicable law, and the parties' arguments and related exhibits.

### APPLICABLE LAW

Pursuant to section 1128(b)(4) of the Act, the I.G. may exclude:

[a]ny individual or entity - (A) whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity, or (B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned the individual's or

entity's professional competence, professional performance, or financial integrity.

Pursuant to section 1128(c)(3)(E) of the Act, as amended by section 212 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, § 212 (August 21, 1996) (to be codified at 42 U.S.C. § 1320a-7(c)(3)(E)), the length of an exclusion under section 1128(b)(4) "shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or entity is excluded or suspended from a Federal or State health care program." The HIPAA provisions affecting the length of exclusions became effective on January 1, 1997.

Prior to 1996, the Act provided no criteria for establishing the length of exclusions for individuals or entities excluded pursuant section 1128(b)(4). The 1996 amendments require, at section 1128(c)(3)(E), that an individual or entity who is excluded under section 1128(b)(4) be excluded for not less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered. Under the 1996 amendments, no issue of reasonableness exists where the exclusion imposed by the I.G. is concurrent with the loss, suspension, or revocation of a State license. By law, the minimum period for the exclusion is concurrent with the loss, suspension, or revocation of a State license, as in Petitioner's case.<sup>3</sup>

#### PETITIONER'S ARGUMENTS

Petitioner does not dispute the I.G.'s authority to exclude her under section 1128(b)(4) of the Act. Rather, Petitioner maintains that exclusion is unfair in her case because she was forced to default on her student loans when she suffered an injury while employed as a registered nurse at a nursing home. She asserts that she was unable to work as a result of such injury and suffered severe financial hardship and the inability to promptly repay her loans. Petitioner also argued that she had appealed the decision by the Department of Professional

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<sup>3</sup> An issue of reasonableness will arise only if the I.G. imposes an exclusion for a longer period than the sanction the State licensing authority has imposed. In that event, the administrative law judge will hear and decide the issue of whether the period of exclusion which extends beyond the concurrent exclusion is reasonable.

Regulation, State of Illinois, to "revoke" her nursing license.<sup>4</sup>  
P. Br. at 7; P. Ex. 9.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW (FFCL)

1. Petitioner was licensed by the State of Illinois to practice as a registered nurse. I.G. Ex. 1.
2. On August 15, 1994, Petitioner entered into a Consent Order with the State of Illinois, Department of Professional Regulation (IDPR). I.G. Ex. 1.
3. In the Consent Order, Petitioner acknowledged the validity of the February 22, 1994 Order Refusing to Renew Petitioner's license issued by the Director, IDPR, pursuant to Illinois Revised Statutes, Chapter 127, paragraph 60(5), based upon Petitioner's default on her Illinois educational loan. I.G. Ex. 1.
4. In the Consent Order, Petitioner agreed to certain conditions for renewal of her registered nurse license. Specifically, Petitioner agreed: (a) to have her license placed on probation until such time as she satisfactorily completed repayment of her Illinois educational loan in accordance with a payment schedule set forth in the Order; (b) to have her license suspended immediately upon notice to the Director, IDPR, and certification by the Illinois Student Assistance Commission that Petitioner had defaulted on the payment of her Illinois educational loan; and (c) to waive any administrative review of a suspension order. I.G. Ex. 1.
5. In the Consent Order, Petitioner was advised of her right to have a hearing on the matter and the right to administrative review of any Order resulting from a hearing and Petitioner waived these rights, as well as her right to an administrative review of the Consent Order. I.G. Ex. 1.
6. Petitioner defaulted on her educational loan for a second time, and the Director, IDPR, issued an Order of Suspension on August 9, 1996, suspending indefinitely Petitioner's registered nurse license in the State of Illinois. I.G. Ex. 2.
7. On August 7, 1997, the I.G. notified Petitioner of her exclusion from participation in Medicare and Medicaid, until such

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<sup>4</sup> I note that Petitioner appealed the IDPR Order of Suspension, even though she expressly waived such right in the Consent Order. See I.G. Ex. 1 at 3.

time as as she obtained a valid license to practice medicine or provide health care in the State of Illinois. I.G. Ex. 3.

8. Under section 1128(b)(4)(A) of the Act, the I.G. is authorized to exclude an individual whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's professional competence, professional performance, or financial integrity.

9. Under section 1128(b)(4)(B) of the Act, the I.G. is authorized to exclude an individual who surrenders his or her license to provide health care during the pendency of formal disciplinary proceedings before a State licensing authority which concern the individual's professional competence, professional performance, or financial integrity.

10. Petitioner, as a registered nurse, possessed a license to provide health care within the scope of section 1128(b)(4) of the Act.

11. The Order of Suspension that the Director, IDPR, issued on August 9, 1996, bore on Petitioner's financial integrity.

12. As a result of the Director, IDPR, issuing an Order of Suspension on August 9, 1996, Petitioner lost her right to practice as a registered nurse and the right to apply for or to renew her registered nursing license within the scope of section 1128(b)(4)(A) of the Act.

13. Petitioner surrendered her nursing license during the pendency of a formal disciplinary proceeding before a State licensing authority, within the scope of section 1128(b)(4)(B) of the Act.

14. Petitioner's loss or surrender of her nursing license was for reasons bearing on or concerning her professional competence, professional performance, or financial integrity, within the scope of section 1128(b)(4) of the Act. FFCL 1-13.

15. The I.G. was authorized to exclude Petitioner pursuant to section 1128(b)(4) of the Act. FFCL 1-14.

16. Under section 1128(c)(3)(E) of the Act, where an exclusion is imposed pursuant to section 1128(b)(4) of the Act, the period of exclusion shall not be less than the period during which the individual's license to provide health care is revoked, suspended, or surrendered.

17. When an exclusion is imposed pursuant to section 1128(b)(4) of the Act and the period of exclusion is coterminous with the loss, revocation, suspension, or surrender of a State license, then no issue of reasonableness concerning the length of the exclusion exists.

18. The exclusion imposed by the I.G. against Petitioner is for the minimum period mandated by section 1128(c)(3)(E) of the Act.

### DISCUSSION

The record reflects that the IDPR initiated a disciplinary proceeding against Petitioner in 1994, when it was informed that Petitioner had defaulted in repayment of her educational loan. Petitioner was advised of her rights in that proceeding and agreed to waive them. By agreeing to enter into the Consent Order, Petitioner clearly relinquished the permission conferred on her by the State licensing authorities to be a registered nurse if she failed to repay her educational loans. The record shows that Petitioner defaulted on her obligation to the State of Illinois a second time. Clearly, the IDPR's findings in the 1996 disciplinary proceeding involving Petitioner relate to her financial integrity.

I find that the loss of Petitioner's nursing license as a result of the August 9, 1996 Order of Suspension was a direct consequence of the 1994 IDPR proceeding, and thus within the scope of section 1128(b)(4)(B) of the Act. Maurice Labbe, DAB CR488 (1997); Dillard P. Enright, DAB CR138 (1991); John W. Foderick, M.D., DAB CR43 (1989). I find also that the circumstances of this case constitute a surrender of her license within the scope of section 1128(b)(4)(B) of the Act. John W. Crews, DAB CR509 (1997); William I. Cooper, M.D., DAB No. 1534 (1995). In the alternative, I find that the Order of Suspension issued by the Director, IDPR, with respect to Petitioner, constitutes suspension of her license within the scope of section 1128(b)(4)(A) of the Act. See Maurice Labbe, *supra*; William I. Cooper, M.D., *supra*.

To the extent Petitioner asserts that the Order of Suspension is unfair and did not consider her situation, I find that her contention constitutes a collateral attack on the action of the State licensing authority. In this case, the I.G.'s authority to exclude Petitioner was based upon the State of Illinois' formal disciplinary proceedings against Petitioner for reasons bearing upon her professional competence, professional performance, or financial integrity, and Petitioner's surrender of her nursing license during the pendency of those proceedings. Petitioner may not challenge the basis for the I.G.'s authority to exclude her

by asking the administrative law judge to review the State of Illinois' action and determine the validity of that action. The Departmental Appeals Board has held that a collateral attack on the actions of the State licensing authority is not permitted in the context of an exclusion proceeding under section 1128(b)(4). John W. Foderick, M.D., DAB 1125 (1990); see also, Jagdish Mangla, M.D., DAB CR470 (1997).

#### CONCLUSION

I conclude that the I.G. was authorized to exclude Petitioner pursuant to section 1128(b)(4) of the Act. I conclude also that the period of exclusion imposed by the I.G. is for the minimum period mandated by section 1128(c)(3)(E) of the Act. Accordingly, I affirm the I.G.'s determination to exclude Petitioner from participation in the Medicare and Medicaid programs until such time as she obtains a valid license to practice nursing or provide health care in the State of Illinois.

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**Joseph K. Riotto**  
**Administrative Law Judge**