

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

_____)	
In the Case of:)	
)	
David Matthew Lanning,)	Date: December 3, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-07-488
)	Decision No. CR1704
The Inspector General.)	
_____)	

DECISION

Pursuant to Section 1128(b)(4) of the Social Security Act (Act), the Inspector General (I.G.) has excluded Petitioner, David Matthew Lanning, from participation in Medicare, Medicaid, and all federal health care programs so long as his California emergency medical technician-paramedic (EMT-P) license is suspended. Petitioner appeals. I find that Petitioner's EMT-P license was revoked for reasons bearing on his professional competence and performance, so the I.G. appropriately excluded him from program participation.

Discussion

In a letter dated March 30, 2007, the I.G. advised Petitioner that he was excluded from participation in Medicare, Medicaid, and all federal health care programs because his license to provide health care as an EMT-P in the State of California had been revoked, suspended or otherwise lost or was surrendered while a formal disciplinary proceeding was pending before a state licensing authority for reasons bearing on his professional competence, professional performance, or financial integrity. I.G. Ex. 3. Petitioner timely requested review and the matter has been assigned to me for resolution.

I held a telephone prehearing conference on July 9, 2007, during which Petitioner conceded that he surrendered his license while a formal disciplinary hearing was pending. Order and Schedule for Filing Briefs (Order) at 2 (July 12, 2007). During that conference I noted that, based on the documentation and the representations of the parties, it appeared that the dispute here is legal, not factual, so the matter could be resolved based on the written record, without need for an in-person hearing. I directed the parties to include with their submissions a request for an in-person hearing if they believed that material facts are in dispute, and such testimony is necessary. Order at 2. Neither party has suggested that an in-person hearing is necessary.

The I.G. has submitted three exhibits (I.G. Exs. 1-3). Petitioner has submitted four exhibits, marked exhibits A-D. To conform to Civil Remedies procedures, we have re-marked those documents P. Exs. 1-4. In the absence of any objections, I admit into evidence I.G. Exs. 1-3 and P. Exs. 1-4.

1. Because the state licensing authority suspended Petitioner's EMT-P license for reasons bearing on his professional competence or performance, the I.G. may appropriately exclude him from participation in Medicare, Medicaid, and other federally funded health care programs.*

The statute authorizes the Secretary to exclude from participation in any federal health care program an individual 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.” Act, § 1128(b)(4)(A); *see also* 42 C.F.R. § 1001.501.

The uncontroverted record establishes that, in a decision and order dated June 13, 2006, the Director of the Emergency Medical Services Authority for the State of California revoked Petitioner’s EMT-P license because Petitioner had purposely submitted fraudulent clinical rotation forms. He claimed clinical experience that he did not have. I.G. Ex. 1. The decision characterizes his action as “a fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions and duties of prehospital personnel.” I.G. Ex. 1, at 3.

* My findings of fact and conclusions of law are set forth, in italics and bold, in the discussion captions of this opinion.

Petitioner admits that his license was revoked because he falsified approximately 40 hours of clinical experience. P. Br. at 1. Nor does he dispute the I.G.'s conclusion that his license was lost for reasons bearing on his professional competence and performance. The I.G. is thus authorized to exclude him.

2. The exclusion period may not be less than the period during which Petitioner's medical license is revoked.

Although acknowledging that he must be excluded, Petitioner complains about certain ambiguities as to the length of his exclusion. He points out that he is not and will not be eligible for an EMT-P license because he does not and will not be able to obtain the experience required to achieve that grade. However, he may be able to obtain a lower-graded EMT license. Petitioner's concern is that the I.G. may require reinstatement of the higher graded license, which is impossible, and would amount to a permanent exclusion.

Whether Petitioner's obtaining a lower-graded EMT license would allow his renewed program participation is within the discretion of the I.G. The I.G. would necessarily make that determination when Petitioner applies for reinstatement, and is thus probably not reviewable by me, (but arguably reviewable in another forum if the I.G. abuses that discretion). However, I see nothing in the statute or regulations that would necessarily preclude Petitioner's participation in the program so long as he obtains an EMT license of some sort. The statute simply requires that the period of exclusion "shall not be less than the period during which the individual's or entity's license . . . is . . . revoked . . ." Act, § 1128(c)(3)(E); *see also* 42 C.F.R. § 1001.501(b)(1). It does not necessarily require that the license be at exactly the same grade.

Conclusion

For the above reasons, I conclude that the I.G. properly excluded Petitioner from participation in Medicare, Medicaid, and all other federal health care programs so long as his EMT license is revoked. I make no comment on his eligibility for reinstatement should he obtain an EMT license that is graded lower than the one he relinquished.

/s/

Carolyn Cozad Hughes
Administrative Law Judge