Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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| In the Case of: | ) | |
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| Angela Lorain Beatty, | ) | Date: December 8, 2008 |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| - v. - | ) | Docket No. C-08-556 |
| | ) | Decision No. CR1872 |
| The Inspector General. | ) | |
| | ) | |

# DECISION

In this case we again consider whether an individual whose criminal conviction has been expunged is nevertheless subject to exclusion from the Medicare, Medicaid, and all other federal health care programs pursuant to section 1128(a)(2) of the Social Security Act (Act).

Petitioner, Angela Lorain Beatty, appeals a determination by the Inspector General (I.G.) to exclude her from program participation for a period of five years. For the reasons discussed below, I find that the I.G. is authorized to exclude Petitioner, and that the regulations mandate a five-year exclusion.[1]

## I. Background

By letter dated April 30, 2008, the I.G. notified Petitioner that she was being excluded from participation in Medicare, Medicaid, and all federal health care programs for a

[1] Petitioner may misunderstand the breadth of her exclusion, in that she refers to the I.G.'s action as "deny[ing] her benefits," "disqualifying [her] from healthcare benefits," and as a "disenfranchisement of the healthcare benefits." P. Br. at 4, 8, 12. While Petitioner's exclusion precludes her from claiming program payment for items or services that she might render, it does *not* affect her personal right to collect individual benefits to which she might be entitled. *See*, I.G. Ex. 1, at 1.

period of 5 years. I.G. Ex. 1. The I.G. advised Petitioner that she was being excluded pursuant to section 1128(a)(2) of the Act because of her conviction in the Circuit Court of Knox County, Tennessee of a criminal offense related to the neglect or abuse of patients in connection with the delivery of a health care item or service. I.G. Ex. 1. Petitioner timely requested a hearing.

The I.G. submitted a brief (I.G. Br.) accompanied by four exhibits (I.G. Exs. 1-4). Petitioner submitted a brief (P. Br.) with three exhibits (P. Exs. 1-3). The I.G. then filed a reply brief. In the absence of any objections, I admit I.G. Exs. 1-4 and P. Exs. 1-3 into the record. The parties agree that this matter can be decided based on the written record, without an in-person hearing. I.G. Br. at 6; P. Br. at 2.

## II. Issue

The sole issue before me is whether Petitioner was convicted of a criminal offense relating to the neglect or abuse of patients in connection with the delivery of a health care item or service within the meaning of section 1128(a)(2), which provides a basis for excluding her from participation in the Medicare, Medicaid, and all federal health care programs. If so, the five-year exclusion is mandatory.

## III. Discussion

> ***Petitioner was convicted of a criminal offense relating to the neglect or abuse of a patient in connection with the delivery of a health care item or service, and must be excluded from participation in federal health care programs for a minimum of five years.***[2]

Section 1128(a)(2) of the Act mandates that an individual or entity convicted of "a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service" be excluded from participation in federal health care programs. Section 1128(i) of the Act defines the term "convicted" to include: (1) when a judgment of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged; (2) when there has been a finding of guilt against the individual or entity by a federal, state, or local court; (3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court; or (4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other

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[2] I make this one finding of fact/conclusion of law.

arrangement or program where judgment of conviction has been withheld. Act, section 1128(i)(1) - (4).

The facts in this case are not in dispute. Petitioner, a certified nurse assistant, was charged with assaulting a patient in her care. I.G. Ex. 4. On August 17, 2007, she entered a guilty plea in the Circuit Court of Knox County, Tennessee, to one count of misdemeanor assault, in violation of section 39-13-101 of the Tennessee criminal code. The Court accepted her plea, placed her in an unsupervised judicial diversion program for six months, and ordered her to pay certain costs and fines. I.G. Ex. 2. At the end of six months, the court determined that she had successfully completed her judicial diversion, and had paid the ordered costs. It dismissed the matter and expunged her criminal record. P. Exs. 1, 2.

Petitioner concedes that the charges against her were "healthcare related offenses," but argues that she was not "convicted," because her criminal record was expunged and the court entries relating to the matter were destroyed. P. Br. at 4-5. The Departmental Appeals Board (Board) has consistently rejected this and similar arguments, and characterizes as "well established" the principle that the term "conviction" includes "diverted, deferred and expunged convictions regardless of whether the state law treats such actions as convictions." *Henry L. Gupton*, DAB No. 2058 (2007), at 8.

*Gupton* also involved a Tennessee State Court conviction that was expunged following the petitioner's completing judicial diversion. In a thorough analysis, the Board explained that, in these proceedings, the federal definition of "conviction" must apply, and that it differs from state criminal law definitions. For exclusion purposes, Congress deliberately defined "conviction" broadly to ensure that exclusions would not hinge on state criminal justice policies. Quoting the legislative history, the Board explained:

> The rationale for the different meanings of "conviction" for state criminal law versus federal exclusion law purposes follows from the distinct goals involved. The goals of criminal law generally involve punishment and rehabilitation of the offender, possibly deterrence of future misconduct by the same or other persons, and various public policy goals. [footnote omitted] Exclusions imposed by the I.G., by contrast are civil sanctions, designed to protect the beneficiaries of health care programs and the federal fisc, and are thus remedial in nature rather than primarily punitive or deterrent. . . . In the effort to protect both beneficiaries and funds, Congress could logically conclude that it was better to exclude providers whose involvement in the criminal system

> raised serious concerns about their integrity and trustworthiness, even if they were not subjected to criminal sanctions for reasons of state policy.

*Gupton,* at 7-8.

I adopt the Board's analysis, and conclude that Petitioner was "convicted" within the meaning of the Act.

An exclusion under section 1128(a)(2) must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

**IV. Conclusion**

The I.G. has a basis for imposing an exclusion under section 1128(a)(2) because Petitioner was convicted of a criminal offense relating to the neglect or abuse of a patient in connection with the delivery of a health care item or service. I therefore sustain the five-year exclusion.

/s/

Carolyn Cozad Hughes
Administrative Law Judge