

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

John Yacoub, M.D.,  
(OI File No. 3-13-40215-9),

Petitioner,

v.

The Inspector General,  
U.S. Department of Health and Human Services.

Docket No. C-15-1859

Decision No. CR4359

Date: October 26, 2015

**DECISION**

The request for hearing of Petitioner, John Yacoub, M.D., is dismissed pursuant to 42 C.F.R. § 1005.2(e)(4),\* for failure to raise any issue that may properly be addressed in a hearing.

**I. Background**

The Inspector General for the Department of Health and Human Services (I.G.) notified Petitioner by letter dated February 27, 2015, that he was being excluded from participation in Medicare, Medicaid, and all federal health care programs for the minimum statutory period of five years pursuant to section 1128(a)(4) of the Social Security Act (the Act) (42 U.S.C. § 1320a-7(a)(4)), effective 20 days from the date of the letter. The basis cited for Petitioner's exclusion was his felony conviction in the United

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\* References are to the 2015 revision of the Code of Federal Regulations (C.F.R.) in effect at the time of the agency action, unless otherwise stated.

States District Court, District of Maryland, of a criminal offense related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

Act § 1128(a)(4); 42 C.F.R. § 1001.101(d). I.G. Exhibit (Ex.) 1. Petitioner requested a hearing pursuant to 42 C.F.R. § 1005.2, by letter dated March 10, 2015, but filed on March 30, 2015. The case was assigned to me for hearing and decision on April 24, 2015.

I convened a prehearing conference on May 13, 2015, the substance of which is memorialized in the Prehearing Conference Order and Schedule for Filing Briefing on the Inspector General's Motion to Dismiss (Prehearing Order) dated May 14, 2015. The I.G. stated during the prehearing conference that dismissal is required because Petitioner has identified no issue that may be properly addressed by me. I set a briefing schedule for a motion to dismiss by the I.G. Prehearing Order ¶ 5.

The I.G. timely filed a motion to dismiss on June 29, 2015 with I.G. Ex. 1. On September 2, 2015, Petitioner filed a response to the I.G. motion (P. Response). Petitioner has not objected to my consideration of I.G. Ex. 1 and the document is admitted as evidence.

## **II. Findings of Fact, Conclusions of Law, and Analysis**

My conclusions of law are set forth in bold, followed by the pertinent facts and analysis.

### **1. Petitioner has not raised an issue that I may address.**

### **2. Petitioner's request for hearing must be dismissed pursuant to 42 C.F.R. § 1005.2(e)(4).**

Pursuant to 42 C.F.R. § 1001.2007(a)(4), an individual excluded by the I.G. may request review by an administrative law judge on the issues of whether: (1) there is a basis for exclusion; and (2) the period of exclusion is reasonable. However, when the I.G. imposes the minimum period of exclusion authorized by Congress, the regulation provides that there is no issue of the reasonableness of the period of exclusion. 42 C.F.R.

§ 1001.2007(a)(2). Pursuant to 42 C.F.R. § 1005.2(e)(4), I must dismiss a request for hearing that does not raise an issue that may be properly addressed in a hearing. I am bound to comply with the regulations. 42 C.F.R. § 1005.4(c)(1).

Petitioner does not dispute that he was convicted in the United States District Court of Maryland based on a guilty plea to one count of distribution of narcotics to his former girlfriend. Request for Hearing. Petitioner argues that although he understood he was pleading to a federal crime, he did not consider that he would be excluded for such a long period of time. P. Response. He argues that the five-year exclusion is a "[h]arsh punishment" and "does not fit" his crime. He asserts that prohibiting him from treating

patients that possess federal or state health insurance is unfairly “harming [his] patients.”  
P. Response; Request for Hearing.

Congress mandated the exclusion of any individual who has been convicted of a felony criminal offense related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance under federal or state law. Act § 1128(a)(4). Petitioner admits that he has such a conviction. Request for Hearing; P. Response. Therefore, the I.G. has no choice but to exclude Petitioner, and Petitioner has identified no issue for me to decide related to whether or not there is a basis for exclusion.

Further, the I.G. imposed an exclusion for five years, the minimum period authorized by Congress. The I.G. has no discretion to impose a lesser period, and I may not reduce the period of exclusion below five years. Petitioner’s arguments cannot be considered to reduce the period of his exclusion. The Departmental Appeals Board observed in *Joann Fletcher Cash*, DAB No. 1725 (2000) that the point of exclusion is to prevent untrustworthy individuals from involvement with protected health care programs. The fact that an exclusion will have a limiting effect on an excluded individual’s future employment is a natural and predictable consequence of an exclusion and is not a bar to the mandatory imposition of this exclusion. *Salvacion Lee, M.D.*, DAB No. 1850 at 4 (2002). Pursuant to 42 C.F.R. § 1001.2007(a)(2), whether or not the period of exclusion is reasonable is not an issue for which review may be requested or granted when the minimum authorized period of exclusion is imposed.

Accordingly, I conclude that Petitioner has raised no issue that may be properly reviewed by me and dismissal is required by 42 C.F.R. § 1005.2(e)(4).

### **III. Conclusion**

For the foregoing reasons, Petitioner’s request for hearing must be dismissed.

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/s/  
Keith W. Sickendick  
Administrative Law Judge