

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of the Appeal of	:	
	:	
Owen Golden, M.D.,	:	Decision
and Owen Golden, M.D., P.C.,	:	After
Provider ID# 01246033 and 03013903,	:	Hearing
Appellant,	:	
	:	Case # 08-F-3711
from charges of unacceptable practices.	:	
	:	

Before: Ann H. Gayle
Administrative Law Judge

Held at: Office of the Medicaid Inspector General
90 Church Street
New York, New York 10007

Hearing Dates: November 15, 2017, June 13, 2018,
and September 13, 2018
Record closed March 18, 2019

Parties: Office of the Medicaid Inspector General
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Jurisdiction and Relevant Statutes and Regulations

The New York State Department of Health (Department or DOH) acts as the single state agency to supervise the administration of the Medicaid Program in New York State. Public Health Law (PHL) §201(1)(v); Social Services Law (SSL) §363-a. The New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department, has the authority to pursue administrative enforcement actions against any individual or entity that engages in fraud, abuse or unacceptable practices in the Medicaid Program, and to recover improperly expended Medicaid funds. PHL §§30, 31, 32.

Regulations of the former Department of Social Services (DSS) most pertinent to this matter are found at Title 18 of the New York Code of Rules and Regulations (NYCRR) Parts 504 (enrollment of providers), 515 (provider sanctions), 519 (provider hearings), 487 (standards for adult homes), and 494 (assisted living programs).

An unacceptable practice in the Medicaid Program is conduct contrary to the official rules, regulations, claiming instructions or procedures of the Department. 18 NYCRR 515.2(a). Upon a determination that a person has engaged in an unacceptable practice, the Department may impose one or more sanctions, including exclusion from the program or a censure. 18 NYCRR 515.3(a)(1) and (2). When the Department sanctions a person, it may also sanction any affiliate of that person, provided, however, that in imposing a sanction upon an affiliate, the determination must be made on a case-by-case basis giving due regard to all the relevant facts and circumstances leading to the original sanction. 18 NYCRR 515.3(c). Affiliate means any person having an overt, covert or conspiratorial relationship with another such that they are under common

control or ownership, as in persons with an ownership or control interest in a provider. 18 NYCRR 504.1(d)(1). In determining whether to sanction a person, the Department may hold that person responsible for the conduct of another person. However, conduct may only be imputed to another when the persons are affiliates of each other, and the conduct was accomplished within the course of the duties of the person to be sanctioned and the other person knew or should have known of the conduct, or the conduct was effected with the knowledge and consent of the other. 18 NYCRR 515.3(d).

Medicaid program participation is a voluntary, contractual relationship between the provider of service and the State. SSL §365(a); 18 NYCRR 504.1; *Schaubman v. Blum*, 49 NY2d 375 (1980); *Lang v. Berger*, 427 F.Supp. 2d 204 (S.D.N.Y. 1977). A Medicaid provider agrees to comply with all program requirements as a prerequisite to continued participation in the program. 18 NYCRR 504, 515, 518.

A person is entitled to a hearing to have the Department's determination reviewed if the Department imposes a sanction or requires repayment of an overpayment. 18 NYCRR 519.4. At the hearing, Appellant has the burden of showing by substantial evidence that the determination of the Department was incorrect and of proving any mitigating factors affecting the severity of any sanction imposed. 18 NYCRR 519.18(d) and (h).

This case stemmed from the Department's determination to exclude Owen Golden, M.D. and Owen Golden, M.D., P.C. (collectively, Golden Care and/or Appellant) from the Medicaid Program. Appellant requested a hearing pursuant to SSL §22 and 18 NYCRR 519.4 to review this determination, and a hearing was held.

Witnesses testified, a transcript (T) pages 1-368 of the hearing was made, and exhibits (Ex) were admitted into evidence as OMIG's/Department's 1-18¹ and Appellant's A-E.

Findings of Fact

1. At all times relevant hereto Owen Golden, M.D. (Dr. Golden), Owen Golden, M.D., P.C., Owen Golden, M.D. D/B/A Golden Care Medical Center and Golden Care Doctors (Golden Care) (collectively, Appellant) were enrolled as providers in the New York State Medicaid Program. Golden Care, located in Bronx, New York, is owned by Owen Golden, M.D. (Ex 2; Ex 3)

2. By notice of proposed agency action (NOPAA) dated February 19, 2016, OMIG notified Appellant and others that OMIG proposed to exclude Appellant, along with [REDACTED], M.D., [REDACTED], M.D., and [REDACTED] M.D., from the Medicaid Program for a period of three years because they had engaged in unacceptable practices. (Ex 2)

3. On April 22, 2016, Appellant, through its attorneys, Ruskin Moscou Faltischek, P.C., submitted a written response to the NOPAA. (Ex 5)

4. On January 19, 2017, OMIG issued its notice of agency action (NOAA) (Ex 3). Paragraph 12 of the NOAA reads, "...in accordance with 18 NYCRR Parts 515 and 518, OMIG will take the following actions:

- to exclude Owen Golden, MD, and Owen Golden, MD, DBA Golden Care Medical Center & Golden Care Doctors (Provider #01246033, #03013903) for three years, individually as a provider and as a provider group in the Medicaid program, pursuant to 18 NYCRR 515.3; and
- to exclude [REDACTED], MD, (Provider # ---), for three years, individually as a provider in the Medicaid program and as an affiliate of Owen Golden, MD, DBA

¹ Three exhibits were marked for identification as Department's 11, 13, and 14; they remained with OMIG, and no consideration was given to any reference to them.

- Golden Care Medical Center and Golden Care Doctors, pursuant to 18 NYCRR 515.3; and
- to exclude [REDACTED] (Provider # ---), for three years, individually as a provider in the Medicaid program and as an affiliate of Owen Golden, MD, DBA Golden Care Medical Center and Golden Care Doctors, 5.3.” (Ex 3, pages 5-6)

5. OMIG’s determinations in the NOAA were based upon the following:

OMIG, in a revised draft audit report, Audit #08-1900, issued to Bronxwood Home for the Aged (Bronxwood), sought to recoup \$6,903,305 from Bronxwood based on findings against Bronxwood that included missing/invalid signature on medical evaluations and interim assessments (Bronxwood Audit). The Bronxwood Audit findings were based primarily on Dr. Golden’s signature appearing on these forms although Dr. Golden did not see the patients at Bronxwood and/or sign the forms. Golden Care physicians, but not Dr. Golden, treated patients/residents at Bronxwood. Dr. [REDACTED] Dr. [REDACTED] and Dr. [REDACTED] admitted signing Dr. Golden’s name on the Bronxwood forms. (Ex 3; Ex A; Ex D; T 207, 210, 320)

6. By letter dated January 27, 2017, Appellant requested an administrative hearing to challenge OMIG’s determination, and a hearing was held on November 15, 2017, June 13, 2018, and September 13, 2018. (Ex 6)

Issues

Did OMIG properly determine to impose Medicaid program sanctions against Appellant?

Discussion

OMIG is seeking a three-year exclusion of Appellant on the grounds that Appellant’s affiliates admitted to having committed unacceptable practices in the

Medicaid program, the conduct occurred within the course of their duties, and that Appellant knew or should have known of the conduct. (OMIG's brief, pages 5, 19). In its brief and reply brief, Appellant seeks a direction that the exclusion be withdrawn. (Appellant's brief, pages 2, 40; Appellant's reply brief, page 4).

Sarah Dasenbrock, Esq., represented OMIG, summarized the case at hearing, and presented exhibits and four witnesses: OMIG audit manager, Eugene Greco; OMIG supervising investigator, Christopher Bedell; Robert S. Bressner, M.D.; and Wilbert Maniego, M.D. Alexander G. Bateman, Jr., Esq., and Andrew T. Garbarino, Esq., represented Appellant and presented exhibits and one witness, Owen Golden, M.D. OMIG and Appellant each submitted a post-hearing brief and a reply brief.

OMIG's investigation of Appellant arose from an audit OMIG conducted on Bronxwood that commenced on May 6, 2008, for audit period January 1, 2006 to December 31, 2007. OMIG's Bronxwood Audit team discovered documents (at Bronxwood) with numerous renditions of what was purported to be Dr. Golden's signature; these documents were used by Bronxwood as a basis for Bronxwood to be reimbursed by the Medicaid program for claims Bronxwood submitted to the Medicaid program. Appellant was interviewed by OMIG in November 2008.

More than seven years later, in its February 19, 2016 NOPAA, OMIG proposed to exclude Appellant as well as three of Appellant's employee physicians/affiliates, [REDACTED], M.D., [REDACTED], M.D., and [REDACTED] M.D. In its January 19, 2017 NOAA, OMIG notified Appellant that Appellant, Dr. [REDACTED] and Dr. [REDACTED] would be excluded from the Medicaid Program for a period of three years, effective twenty days from January 19, 2017.

Dr. [REDACTED] who was notified in the NOPAA that OMIG proposed to exclude him, was not excluded from participation in the Medicaid program in OMIG's NOAA. In his September 20, 2016 statement/late response to the NOPAA, Dr. [REDACTED] had indicated that Dr. Golden "stated clearly to me 'just sign my name.'" (Ex 16). Despite his strong language in his written statement, Dr. [REDACTED] admitted that his statement evolved over time (T 221-222, 236).

Dr. [REDACTED] testified that when he was asked by OMIG in 2008 if he had signed Dr. Golden's name, he responded "Yes. This is just to expedite the patients [sic] medical care" (T 210).

On September 12, 2016, eight years after that first meeting, Dr. [REDACTED] met with OMIG again to "clear" himself as he believed that he would be excluded, and he was worried about being excluded because it would have impacted his life, his practice, and his ability to practice medicine. At this meeting, Dr. [REDACTED] informed OMIG investigators that he, Dr. [REDACTED] and Dr. [REDACTED] independently signed Dr. Golden's name on the forms. Dr. [REDACTED] understanding at the end of this meeting was that his potential exclusion had not yet been cleared (T 223, 226-227, 229, 230-231, 233, 234, 235).

Dr. [REDACTED] met with OMIG a week later on September 20, 2016, and he informed the investigators that Dr. Golden said "just sign it." OMIG Supervising Investigator, Christopher Bedell, was present at this meeting; when he was asked, "At that meeting, Dr. [REDACTED] never told OMIG that Dr. Golden said, 'sign my name,' correct?" Mr. Bedell responded, "No. He said, 'sign it, just sign it.'" (T 304).

Subsequent to the September 20, 2016 meeting, Dr. [REDACTED] provided OMIG with the aforesaid statement, wherein he wrote that Dr. Golden “stated clearly to me ‘just sign my name.’ Dr. [REDACTED] settled his case with OMIG one month later, in October 2016, and he was not named in the January 19, 2017 NOAA. (Ex 3; T 233, 304-305)

Mr. Bedell confirmed that the quote in the September 20, 2016 statement “just sign my name” was not contained in any of the previous interviews of Dr. [REDACTED] (T 303-305). Mr. Bedell’s testimony concluded as follows:

- Q: If Dr. [REDACTED] had not entered into this settlement with OMIG, he would have been left to either be excluded from Medicaid or have to participate and defend himself in a hearing like this, is that fair to say?
- A: Yes. (T 305)

[REDACTED], M.D., entered into a Stipulation of Settlement with OMIG on November 13, 2017 ([REDACTED] Stipulation) (Ex A) and two days later he testified on behalf of OMIG. The [REDACTED] Stipulation reads in part:

7. [Dr. [REDACTED] has acknowledged signing Dr. Owen Golden’s name on medical forms and has acknowledged that he erred in doing so... [Dr. [REDACTED] also agrees to make himself available, upon request by OMIG, to provide testimony at administrative hearing relating to the conduct underlying the NOAA...
8. As a result of the above discussions and agreements between OMIG and [Dr. [REDACTED] OMIG agrees to end the exclusion of [Dr. [REDACTED] (Ex A)

Dr. [REDACTED] testified that when a Bronxwood administrator informed him that he “was not qualified to sign [the forms]; Dr. Golden had to sign them ...He would not accept my signature” (T 89), Dr. [REDACTED] brought the forms to Dr. Golden. Dr. Golden told Dr. [REDACTED] to “take care of it” (T 91,137, 141-142), but Dr. Golden did not say

“sign my name” (T 92) or “you must sign it” (T113) or “sign my name on those forms” (T 113, 143).

On September 20, 2017, [REDACTED], M.D., entered into a Stipulation of Settlement with OMIG ([REDACTED] Stipulation) (Ex D). The [REDACTED] Stipulation reads in part:

9. [Dr. [REDACTED] has acknowledged signing Dr. Owen Golden’s name on medical forms, acknowledged that he erred in doing so, and provided to OMIG a written statement outlining facts and circumstances surrounding the conduct underlying the NOAA. [Dr. [REDACTED] also agrees to make himself available, upon request by OMIG, to provide testimony at administrative hearing relating to the conduct underlying the NOAA.
10. As a result of the above discussions and agreements between OMIG and [Dr. [REDACTED] OMIG agrees to reverse the exclusion of [Dr. [REDACTED] and instead impose a censure. (Ex D)

Dr. [REDACTED] was not called to testify by OMIG, but Dr. [REDACTED] April 7, 2016 and September 1, 2017 letters to OMIG were accepted into evidence. In his April 7, 2016 letter, Dr. [REDACTED] wrote, in part,

When the medical forms were first presented to me, I signed my own signature. Later, I was approached by a Bronxwood staff member, saying that it’s necessary for the signature to read Owen Golden, since the Bronxwood patients are under him. I initially felt it was wrong to sign another individual’s name and asked the Bronxwood staff member why it has to be this way. I was then told that a signature reading Owen Golden is necessary in order for patients to continue receiving various types of care and that traditionally, the other doctors in Owen Golden’s group had been signing the name Owen Golden.

...
My belief at the time, was that this was a type of “internal” Bronxwood form/document ...the thought that it could be used for a billing or monetary purpose did not occur to me. The form described patient care needs ...With these thoughts and factors to consider at the time, I chose to carry on the tradition of signing the name Owen Golden, with the intent of continuing the proper care for these patients. (Ex B).

In his September 1, 2017 letter, Dr. [REDACTED] wrote, in part,

I remember my first encounter with the medical forms very clearly. When the first medical form was presented to me, I looked in the medical chart to verify an examination had taken place by a doctor in the group (myself, Dr. Maniego, or Dr. Bressner). I verified that the date of the exam correlated with the date on the form and then I signed my own signature.

I was approached on a subsequent day by a Bronxwood staff member, I believe ...she was the head R.N. at Bronxwood. [She] mentioned that my own signature on the form would not suffice and that it's necessary for the signature to read Owen Golden since technically he is the PCP for all the Bronxwood residents. She also showed me similar forms where Owen Golden's name was signed by the other doctors and mentioned traditionally the doctors would see the patients and sign their own name in the medical chart while signing Dr. Golden's name on the forms.

...
My intent in signing Dr. Golden's name was to not disrupt an existing healthcare system where patient needs are being met by appropriate care services.

Dr. Golden never asked me to sign his name. I did not feel the need to discuss this issue with Dr. Golden because the tradition of signing his name was already in place prior [to] my hiring. (Ex C).

Dr. Golden testified that the three physicians (Dr. [REDACTED] Dr. [REDACTED] and Dr. [REDACTED] never "asked me for permission, nor did I give them permission to sign my name" (T 333), and that Bronxwood administration did not ask him to have his physicians sign the forms or inform him that they were signing his name on the forms (T 356-357). The evidence shows that the physicians "took it upon" themselves (T 138) and instructed and discussed with each other, "without talking to Dr. Golden" (T 91), signing Dr. Golden's name. (Ex C; T 137-138, 144-146). All three physicians reported to OMIG auditors and investigators that Bronxwood personnel, particularly a receptionist named

“██████████” and/or a nurse named “██████████” gave them the forms and/or instructed them to sign Dr. Golden’s names on the forms, yet it appears that OMIG did not follow up on this. (Ex C; T 146-147, 230, 238-239, 240, 272-275, 300-301, 303, 329-330, 332-333, 337-338, 346, 350, 356-357).

I find that Appellant has met its burden of establishing that Appellant should not be held accountable for what occurred at Bronxwood, and that Appellant should not be sanctioned. Appellant has demonstrated that Dr. Golden should not be held to have known or should have known that these licensed physicians were signing his name on Bronxwood forms. Dr. Golden did not treat patients/residents at Bronxwood, and the three employee physicians admitted signing Dr. Golden’s name on the Bronxwood forms which were maintained by and kept at Bronxwood. These three physicians, who are clearly affiliates of Appellant, did engage in unacceptable practices, but I find that it is not appropriate to sanction Appellant as an affiliate under the particular circumstances of this case. Bronxwood personnel, not Dr. Golden, directed the physicians to sign Dr. Golden’s name on the forms. The documentary evidence regarding the three employee physicians together with the testimony of Dr. ██████████ and Dr. ██████████ did not disprove this. Dr. ██████████ established in his September 1, 2017 letter that Dr. Golden never asked him to sign Dr. Golden’s name (Ex C and D). Dr. Maniego (whom OMIG did not exclude from participation as a Medicaid provider) admitted that his written statement that Dr. Golden “stated clearly to me ‘just sign my name’ (Ex 16) had evolved over time and was made at the time he and his attorney were meeting with OMIG when he was seeking to not be excluded. Dr. ██████████ (whose exclusion OMIG ended) testified that Dr. Golden did not tell him to sign Dr. Golden’s name (T 92, 113, 143).

Conclusion

Dr. Golden did not treat patients/residents at Bronxwood. Bronxwood personnel, not Dr. Golden, instructed Dr. Golden’s employees/affiliates, Dr. [REDACTED] Dr. [REDACTED] and Dr. [REDACTED] to sign Dr. Golden’s name on the forms, and these three licensed physicians signed Dr. Golden’s name on the forms. Dr. [REDACTED] the only affiliate sanctioned by OMIG, stated very clearly in his September 1, 2017 letter to OMIG that “Dr. Golden never asked me to sign his name” and that he did not discuss this issue with Dr. Golden.

Decision

OMIG’s determination to exclude Appellant from participation in the Medicaid program, is reversed.

This decision is made by Ann H. Gayle, Bureau of Adjudication, who has been designated to make such decisions.

DATED: New York, New York
September 12, 2019

Ann H. Gayle
Administrative Law Judge

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