

# OIG exclusions list: Sounding alarm for awareness

## *Stiff penalties can threaten affected parties*

Pharmacists, pharmacy technicians, and pharmacy owners should be keenly aware of the List of Excluded Individuals/Entities ([www.oig.hhs.gov/fraud/exclusions.html](http://www.oig.hhs.gov/fraud/exclusions.html))—also known as the OIG exclusions list—as federal law requires the U.S. Office of Inspector General (OIG) to exclude certain individuals and entities who have engaged in fraudulent or abusive behavior from participating in federally funded health care programs.

Causes for landing on the OIG exclusions list vary greatly, from defaulting on a student loan to stealing medication. Other reasons for exclusion include substance abuse, overprescribing or self-prescribing medications, and physical or mental impairment. A broad spectrum of health care professionals are affected; for example, as of mid-September, the OIG exclusions list contained 2,282 pharmacies, pharmacists, and pharmacy technicians; 10,720 nurses and nurses aides; and 4,736 individuals and organizations under the category “Medical Practice, MD.”

The federal government will not pay for any items furnished, ordered, or prescribed by an individual or business included on the OIG exclusions list. APhA members therefore are encouraged to check the list regularly, as hiring a pharmacist who has been excluded from participating in any federal program can also result in stiff penalties—a fine of \$10,000 for “each item” (e.g., each prescription dispensed by an excluded pharmacist or technician).

### Owners beware

In 2003, Stan Smith, BPharm, owner of Stan’s Pharmacy in Baxley, GA, was approached by a pharmacist with a revoked license asking for a second chance. To reinstate his license, the Georgia Board of Pharmacy required the pharmacist to work as an intern for 1,000 hours and to perform community service. After consulting with the state board of

pharmacy, Smith agreed to bring on the pharmacist, who worked for him for about 1 year to complete the technician hours required to reinstate his license.

In February 2004, Smith received a letter from the state Medicaid agency requesting the name and Social Security number of the pharmacist. Smith asked the agency if there was a problem—he had been sending regular reports about the pharmacist to the state board of pharmacy and was wondering if he was also supposed to send the same information to the state Medicaid agency. When Smith did not receive a response, he contacted the Georgia Pharmacy Association, which found that the pharmacist was on the OIG exclusions list, and employment of the pharmacist was terminated shortly thereafter.

In July 2004, the state Medicaid agency obtained records related to the pharmacist’s prescription activity, but Smith didn’t hear anything further until May 2006, when he received a letter from the agency stating that the pharmacist employee was on the OIG exclusions list and that Smith owed \$400,000 for the prescriptions that his employee helped to dispense. (This represented the entire cost of the medications as well as the dispensing fee.)

Smith fought to reduce the payment to the state Medicaid agency to \$159,000, which he has been paying back at \$4,400 per month since November 2006. If this was an action by OIG, the federal agency could have also imposed an additional

\$10,000 fine for each medication dispensed by the excluded pharmacist.

### Lack of flexibility

In addition to ramifications from hiring pharmacists affected by the OIG exclusion list, APhA has concerns regarding the lack of discretion that OIG often has in determining who should be included on the list, and for how long. When Congress was looking to strengthen the privacy protections in HIPAA, it decided to eliminate much of OIG’s flexibility by requiring the agency to exclude any individual from participating in a federal program for 5 years following a felony conviction. However, the definition of a felony varies widely from state to state, leading to an unequal application of justice. Such stiff penalties may discourage individuals from taking accountability for their actions (e.g., a pharmacist with a substance abuse problem). Also of note, the 5-year exclusion does not start until OIG is informed. Finally, such mandatory exclusions prohibit OIG from deferring to (or working with) state boards of pharmacy or other state licensure boards to determine the most appropriate punishment for the health professional in question.

### Moving forward

As APhA works with Congress to identify opportunities to address this issue, it may call on you for your grassroots support to help ensure that (1) employers are not hit with exorbitant fines as a way to help states close their budget shortfalls and (2) when a board of pharmacy determines that a pharmacist is fit to practice once again, OIG has the discretion to allow that pharmacist to earn a living. Meanwhile, individuals are encouraged to remain aware of the OIG exclusions list and periodically check to see if any of their employees have been added.

—Joe Sheffer

