

ISSUE

Whether the Department acted properly when it issued an Order of Summary Suspension to Petitioners on August 18, 2020.

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioners are enrolled providers in the State of Michigan's Medicaid program. Petitioner REDACTED is the sole member and employee of Petitioner REDACTED REDACTED REDACTED REDACTED. (Respondent's [R's] Exhibits A, B, C, D, E.)
2. On June 9, 2020, the Michigan Department of Licensing and Regulatory Affairs (LARA) summarily suspended Petitioner REDACTED's license to dispense controlled substances. (R's Exhibit G.)
3. On August 18, 2020, MDHHS issued an Order of Summary Suspension summarily suspending both Petitioner REDACTED's and Petitioner REDACTED REDACTED REDACTED REDACTED Medicaid enrollment effective August 18, 2020 based on LARA's Order of Summary Suspension and Administrative Complaint. (R's Exhibit F.)
4. LARA's Administrative Complaint contained the following allegations against Petitioner REDACTED:
 - [Petitioner REDACTED] failed to maintain effective controls against diversion of controlled substances to other than legitimate and professionally recognized therapeutic, scientific, or industrial uses, in violation of MCL 333.7311(l)(e).
 - [Petitioner REDACTED's] conduct constitutes a failure to prescribe in good faith contrary to MCL 333.7405(1)(a), in violation of MCL 333.7311(1)(f).

(R's Exhibit H, p 13 of 13)
5. In response to the LARA Order of Summary Suspension and Administrative Complaint, Petitioner REDACTED filed a Petition for Dissolution of Summary Suspension and requested an administrative hearing. As of the date of this hearing, Petitioner's case is still pending with LARA. (P's Exhibit 2.)
6. In preparation for the hearing with LARA, and in response to a criminal investigation involving Petitioner REDACTED, Petitioners asked another

doctor, Irvin J. Gastman, D.O., to review the patient files that LARA reviewed before suspending Petitioner REDACTED's controlled substance license. Dr. Gastman did not testify at the instant hearing. (P's Exhibit 3.)

7. On August 18, 2020, Petitioner filed a request for hearing. On August 27, 2020, a Notice of Hearing was issued, scheduling a Hearing for September 15, 2020. The September 15, 2020 hearing proceeded as scheduled.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

All Medicaid providers are required to enter into Medicaid Provider agreements:

- (4) A provider shall enter into an agreement of enrollment specified by the director.

MCL 400.111b(4)

The Social Welfare Act, MCL 400.1 *et seq.*, provides that as a condition of participation in the Medicaid program a provider must meet all the requirements listed in MCL 400.111b:

- (1) As a condition of participation, a provider shall meet all of the requirements specified in this section except as provided in subsections (25), (26), and (27).

MCL 400.111b(1)

Pursuant to the Social Welfare Act and the Petitioners' Medicaid Provider Agreements, the Petitioners are required to follow all applicable Medicaid policy. *MCL 400.111a(1)*

A Medicaid provider must comply with all Department policies and procedures related to the conditions of participation in the Medicaid program, requirements for Medicaid providers, and with all applicable federal laws and regulations. In particular the Social Welfare Act plainly states:

- (18) A provider shall comply with all requirements established under section 111a (1), (2), and (3).

MCL 400.111b(18)

The Social Welfare Act of 1939, 1939 PA 280, (Act) as amended, provides for the summary suspension of Medicaid providers.

MCL 400.111f provides, in pertinent part:

(1) The director may issue an order incorporating a finding that emergency action is required to protect the state's interest, as the state's interest is described in this subsection by the statement of circumstances warranting emergency action, in any of the following: the public health, welfare, or safety; medically indigent individuals; or public funds of the program of medical assistance. Circumstances that warrant emergency action include, but are not limited to, any of the following:

(a) A reasonable belief, determined in accordance with professionally accepted standards, that rendered services for which a provider has submitted claims were medically unnecessary, inappropriate, or of inferior quality, and therefore that the continued participation in the program by the provider or payments to the provider for services constitutes a threat to the public health, safety, or welfare or to the health, safety, or welfare of recipient medically indigent individuals.

(b) A reasonable belief that the provider has violated the Medicaid false claims act, Act No. 72 of the Public Acts of 1977, being sections 400.601 to 400.613 of the Michigan Compiled Laws, the health care false claims act, Act No. 323 of the Public Acts of 1984, being sections 752.1001 to 752.1011 of the Michigan Compiled Laws, or a substantially similar statute of another state or the federal government.

(d) A reasonable belief that 10% or \$10,000.00, whichever is less, for a noninstitutional provider, or 10% or \$50,000.00, whichever is less, for an institutional provider, of the provider's total program dollar amount for claims submitted at any time during the most recent 12-month period was unsubstantiated or was for services that were noncovered.

(e) A reasonable belief that 10% or \$10,000.00, whichever is less, for a noninstitutional provider, or 10% or \$50,000.00, whichever is less, for an institutional provider, of the provider's total program dollar amount for claims submitted at any time during the most recent 12-month period were medically unnecessary, inappropriate, or of inferior quality.

(f) A reasonable belief that 15% or \$15,000.00, whichever is less, for a noninstitutional provider, or 15% or \$75,000.00, whichever is less, for an institutional provider, of the provider's total program dollar

amount for claims submitted at any time during a consecutive 12-month period, and that 5% or \$5,000.00, whichever is less, for a noninstitutional provider, or 5% or \$25,000.00, whichever is less, for an institutional provider, of the provider's total program dollar amount for claims submitted during the most recent 12-month period, was for services that were noncovered.

(g) A reasonable belief that 15% or \$15,000.00, whichever is less, for a noninstitutional provider, or 15% or \$75,000.00, whichever is less, for an institutional provider, of the provider's claims submitted at any time during a consecutive 12-month period, and that 5% or \$5,000.00, whichever is less, for a noninstitutional provider, or 5% or \$25,000.00, whichever is less, for an institutional provider, of the provider's total program dollar amount for claims submitted during the most recent 12-month period, was for services that were medically unnecessary, inappropriate, or of inferior quality.

(h) A reasonable belief that the provider is refusing to comply with section 111b(7), (19), or (25).

(5) Upon a determination that circumstances described in subsection (1) exist, the director may issue an order for the summary suspension of payments on pending or subsequent claims, in whole or in part, or for the summary suspension of a provider from participation in the program of medical assistance. The summary suspension shall be effective on the date specified in the order or on service of a certified copy of the order on the provider, whichever occurs later, and shall remain in effect during administrative or judicial proceedings on the suspension. Upon request of a provider, a contested case hearing pursuant to chapter 4 and chapter 6 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 and 24.301 to 24.306 of the Michigan Compiled Laws, shall be commenced not later than 15 days after the summary suspension. If a contested case hearing is requested by a provider relative to an emergency suspension under this section, a hearing shall be held to determine whether the emergency suspension is supported by competent, material, and substantial evidence on the whole record. Under appropriate circumstances, the state department may hold or institute a hearing under section 111c(1), or take an action under section 111d at the same time an action is taken under this section, while an action under this section is pending, or after a decision on an action is made. The presiding officer may consolidate the 2 hearings into a single proceeding in the interest of economy. However, the director shall not make a final decision in a contested case under section 111c(1) or 111d arising from or related to an emergency action or the circumstances upon which an emergency action was taken.

(MCL 400.111f(1)(a)-(h), (5), Emphasis added)

MCL 400.111d provides, in pertinent part:

(1) Participation as a provider in the program is subject to denial, suspension, termination, or probation on the grounds specified by section 111e. The director may take 1 or more of the following actions:

(a) Refuse to enroll an applicant.

(b) Suspend a provider indefinitely or for a term certain.

MCL 400.111e provides, in pertinent part:

(1) The grounds for action by the director under section 111d(1) and the actions to which they may be applied shall be as follows:

(5) In addition to or in place of the grounds specified in subsection (1), (2), or (3), the director may base an action provided for in section 111d(1)(a), (b), (c), (d), (e), or (f) on his or her judgment that the action is necessary to protect the health of medically indigent individuals, the welfare of the public, and the funds appropriated for the program. (Emphasis added.)

The *Michigan Medicaid Provider Manual* governs termination of Medicaid Providers enrollments, including summary suspensions. It states as follows:

SECTION 6 – DENIAL OF ENROLLMENT, TERMINATION AND SUSPENSION

6.1 TERMINATION OR DENIAL OF ENROLLMENT

MDHHS may terminate or deny enrollment in the Michigan Medicaid program. Termination of enrollment means a provider's billing privileges have been revoked and all appeal rights have been exhausted or the timeline for appeal has expired. Denial of enrollment means the provider's application will not be approved for participation in the Medicaid program.

MDHHS must terminate or deny a provider's enrollment in Michigan's Medicaid program for the following reasons:

- Termination on or after January 1, 2011 under Medicare or the Medicaid program, or the Children's Health Insurance Program (CHIP) of any other state.

- Convicted of a relevant crime described under 42 USC 1320a-7(a):
 - Conviction of program-related crimes Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII or under any State health care program.
 - Conviction relating to patient abuse Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.
 - Felony conviction relating to health care fraud Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph [1]) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.
 - Felony conviction relating to controlled substance

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

Providers who have been excluded due to one of the federal mandatory exclusions listed above will remain on the MDHHS Sanctioned Provider List until the minimum period for their exclusion has been completed and the provider has requested a lifting of their sanction from the sanctioning body.

- Failure to comply with the enrollment requirements of the Social Welfare Act, Public Act 280 of 1939 (MCL 400.111b -111e) and the provider screening and enrollment requirements pursuant to 42 CFR 455.416. The basis for termination or denial of enrollment under this section includes, but is not limited to, the provider's:
 - failure to submit timely and accurate information;
 - failure to cooperate with MDHHS screening methods;

- failure to submit sets of fingerprints as required within 30 days of a CMS or MDHHS request;
 - failure to permit access to provider locations for site visits;
 - falsification of information provided on the enrollment application or subsequent information requests;
 - inability to verify their identity; or
 - failure to comply with Medicaid policies regarding submission of claims and billing Medicaid beneficiaries.
- The provider is excluded from participating in a provider capacity in Medicare, Medicaid or any other Federal health care programs.
 - The provider is convicted of violating the Medicaid False Claims Act, the Health Care False Claims Act, a substantially similar statute, or a similar statute by another state or the federal government.
 - The provider has a federal or state felony conviction within the preceding 10 years of their provider enrollment application, including but not limited to, any criminal offense related to:
 - murder, rape, abuse or neglect, assault, or other similar crimes against persons;
 - extortion, embezzlement, income tax evasion, insurance fraud, and other similar financial crimes;
 - the use of firearms or dangerous weapons; or
 - any felony that placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.
 - The provider has a federal or state misdemeanor conviction within the preceding five years of their provider enrollment application, including but not limited to, any criminal offense related to:
 - any misdemeanor crime listed as a permissive exclusion in 42 USC 1320a-7(b);
 - rape, abuse or neglect, assault, or other similar crimes against persons;
 - extortion, embezzlement, income tax evasion, insurance fraud, or other similar financial crimes; or

- any misdemeanor that placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.

For the purposes of the excluded offenses mentioned above, an individual or entity is considered to have been convicted of a criminal offense when:

- a judgment of conviction has been entered against the individual or entity by a federal, state, tribal or local court regardless of whether there is an appeal pending;
- there has been a finding of guilt against the individual or entity by a federal, state, tribal or local court; or
- a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, tribal, or local court.

The criminal history screening will be conducted by MDHHS through reputable and reliable data sources. Screenings for providers will be done as required by law and as deemed necessary by MDHHS for the protection of the Medicaid program and beneficiaries. For criminal offenses that fall under the mandatory exclusions of 42 USC 1320a-7(a), the definition of conviction will conform with 42 USC 1320a-7(i), which may include, but is not limited to, a record relating to criminal conduct that has been expunged.

Any entity that offers, in writing or verbally, discounts on co-pay amounts, fax machines, computers, gift cards, store discounts and other free items, or discounts/waives the cost of medication orders if an entity uses their services:

- may violate the Medicaid False Claim Act and Medicaid/MDHHS policy, which may result in disenrollment from Medicaid/MDHHS programs.
- may violate the Michigan Public Health Code's prohibition against unethical business practices by a licensed health professional, which may subject a licensee to investigation and possible disciplinary action.

Pursuant to MCL 400.111e, the Medicaid Director may terminate or deny enrollment if that action is necessary to protect the health of medically indigent individuals, the welfare of the public, and/or the funds appropriated for the Medicaid program. Additionally, the Medicaid Director may reduce or extend a provider's exclusion from the Medicaid program if, in the Medicaid Director's judgment, the continuation or reduction of the exclusion period is necessary to protect beneficiaries or the Medicaid program.

Providers who are already enrolled at the time of a finding by MDHHS will have their enrollment ended as of the date MDHHS was notified of the excluded offense. Claims with dates of service on and after the provider's enrollment termination date will be denied.

6.2 ENROLLMENT AND REINSTATEMENT AFTER TERMINATION OR DENIAL

Providers who are excluded from participation in the Medicaid program due to conviction of a crime listed in the previous subsection may request enrollment or reinstatement upon a showing that the provider's participation is in the best interest of the Medicaid program and of Medicaid beneficiaries. Factors that may be considered when determining whether enrollment or reinstatement in the Medicaid program is in the best interest of the Medicaid program and beneficiaries includes, but is not limited to:

- whether the exclusion poses an undue hardship to beneficiaries;
- whether the provider is the sole community physician or sole source of specialized services in the community;
- subsequent offenses of the provider;
- amount of time that has lapsed since the excluded offense;
- whether all conditions, terms of probation or parole, penalties, fines, etc. of the felony or misdemeanor offenses that resulted in exclusion have been fully completed;
- provider's participation in Medicare or other state Medicaid programs; or
- other factors that demonstrate the provider does not otherwise pose a risk to the Medicaid program or beneficiaries.

Requests for reinstatement must be sent in writing to the Medicaid Provider Enrollment Unit. (Refer to the Directory Appendix for contact information.)

MDHHS will address requests for enrollment and reinstatement within 30 days after all requested information has been provided.

6.3 SUSPENSION

Summary suspension prevents further payment after a specified date, regardless of the date of service (DOS).

If an indication of fraud or Medicaid misuse/abuse is discovered during any of the following, MDHHS considers it as a basis for summary suspension:

- An evaluation of billing practices.
- The prior authorization (PA) process.
- An on-site review of financial and medical records and a written report of this review is filed.
- The construction of a profile to evaluate patterns of utilization of Medicaid beneficiaries served by the provider.
- A peer review of services or practices.
- A hearing or conference between MDHHS and the provider (and counsel, if so requested).
- Indictment or bindover on charges under the Medicaid or Health Care False Claims Act or similar state/federal statute.

6.4 LOSS OF LICENSURE/LIMITED LICENSES

For providers who must be licensed to practice their profession, continued enrollment in Medicaid is dependent upon maintaining licensure. Failure to renew a provider's license results in disenrollment from Medicaid effective the date of final lapse of the provider's license.

Limited or suspended licenses may result in disenrollment or denial of enrollment if MDHHS determines the basis of the action to be detrimental to the health or safety of medically indigent individuals, the welfare of the public, and/or the funds appropriated for the Medicaid program.

Suspension or revocation of a provider's license by the appropriate standard setting authority results in termination of Medicaid participation effective on the date the provider is no longer licensed. In the case of a provider not located in Michigan, suspension or revocation would be administered by the appropriate state licensing board.

If a provider is no longer licensed to practice (e.g., the license was suspended, lapsed, or revoked), MDHHS does not reimburse for services ordered, prescribed, referred or rendered by that provider after the termination of the license. Medicaid payments obtained for services rendered during a period when the provider was unlicensed must be refunded to the State.

A provider may submit an on-line application to MDHHS to request re-enrollment as a Medicaid provider when his license is reinstated. Refer to the Provider Enrollment Section of this Chapter for information on the enrollment process.

As such, in order to support a summary suspension, the Department must show by competent, material and substantial evidence on the record that the action is “necessary to protect the health of medically indigent individuals, the welfare of the public, and the funds appropriated for the program.” *MCL 400.111e(5)*.

The record establishes that Petitioners are enrolled Medicaid Providers and executed application agreements in which they agreed to adhere to all the terms and conditions listed therein. Petitioner REDACTED is the sole member and employee of REDACTED REDACTED REDACTED REDACTED so it was appropriate for the Department to suspend REDACTED REDACTED REDACTED REDACTED Medicaid provider agreement as well as Petitioner REDACTED’s. *42 CFR 1001(a)(1)(3)*.

In this case, the Department argues that the evidence presented supports its summary suspension action. In support, the Department relies on the LARA Order of Summary Suspension and accompanying Administrative Complaint dated June 9, 2020 as evidence that its Order of Summary Suspension was necessary “to protect the health of medically indigent individuals, the welfare of the public, and the funds appropriated for the program,” as contemplated in *MCL 400.111e(5)* and *MCL 400.111f(1)*. Specifically, the Department relies on the following allegations contained in the LARA Administrative Complaint, which remains active:

- [Petitioner] failed to maintain effective controls against diversion of controlled substances to other than legitimate and professionally recognized therapeutic, scientific, or industrial uses, in violation of *MCL 333.7311(l)(e)*.
- [Petitioner’s] conduct constitutes a failure to prescribe in good faith contrary to *MCL 333.7405(1)(a)*, in violation of *MCL 333.7311(1)(f)*.

(R’s Exhibit H, p 13 of 13)

The Department also relied on other factual allegations in the LARA Administrative Complaint, including:

- In November 2019, the Department (LARA) received information that [Petitioner REDACTED] was overprescribing controlled substances to patients. Based on this information, Department investigators spoke to area pharmacists regarding [Petitioner REDACTED’s] prescriptions. (R’s Exhibit H, p 4.)
- Pharmacists from two large pharmacy chains confirmed that their pharmacies were not filling [Petitioner REDACTED’s] controlled

substance prescriptions, primarily because they determined that [Petitioner REDACTED's] prescriptions were inappropriate. Examples where these pharmacists declined to fill [Petitioner REDACTED's] prescriptions included:

- [Petitioner REDACTED's] patients receiving the same controlled substances, the same dosages, and the same instructions.
- [Petitioner REDACTED] prescribed Xanax and promethazine with codeine syrup to members of the same family.
- [Petitioner REDACTED] prescribed the 'Holy Trinity' to multiple patients.
- Pharmacists from both of these chains contacted [Petitioner REDACTED] and discussed these concerns with her.

(R's Exhibit H, p 4.)

- The Department reviewed data from the Michigan Automated Prescription System (MAPS), the State of Michigan's prescription monitoring program, which gathers data regarding controlled substances dispensed in Michigan. MAPS data revealed that [Petitioner REDACTED] ranked among Michigan's highest-volume prescribers of commonly abused and diverted controlled substances in 2018 and 2019 . . . (R's Exhibit H, p 4.)
- Department investigators discovered that many of [Petitioner REDACTED's] patients were also receiving treatment for drug addiction. Investigators interviewed substance abuse treatment providers and found that many of them had concerns regarding [Petitioner REDACTED's] controlled substance prescribing. These concerns include, but are not limited to, the following examples:
 - [Petitioner REDACTED] had a reputation of ignoring the CDC warning regarding the prescribing of an opioid and a benzodiazepine. Additionally, [Petitioner REDACTED] ignored the FDA warnings regarding Xanax, Klonopin, and other benzodiazepines for treating anxiety.
 - [Petitioner REDACTED] prescribed benzodiazepines, opioids, and carisoprodol to patients with known drug addictions.
 - [Petitioner REDACTED] had a reputation for prescribing Klonopin to patients, "if they wanted it," and was "very liberal," in general, with her prescribing of benzodiazepines.

- These treatment providers sent [Petitioner REDACTED] coordination of care forms that included a release of information and a letter stating the patient is in treatment for drug addiction. Additionally, these forms contained warnings against prescribing opioids, benzodiazepines, and other addictive controlled substances. The treatment providers faxed these forms to [Petitioner REDACTED] and, in many instances, the treatment providers also contacted [Petitioner REDACTED] to follow up and inform her of specific concerns regarding patient care.
- Department investigators obtained copies of the coordination of care packets the treatment providers sent to [Petitioner REDACTED] regarding a total of 119 different patients. A review of the record and interviews with the treatment providers showed that [Petitioner REDACTED] failed to respond to any of these communications or attempt to coordinate care in any fashion. In some instances, drug treatment providers refused to accept patients that were receiving care from [Petitioner REDACTED].

(R's Exhibit H, pp 5-6.)

- On or about REDACTED 2019, an undercover police officer visited [Petitioner REDACTED's] clinic and saw [Petitioner REDACTED] for approximately eight (8) minutes. The officer requested Xanax to help him "get through the day" and "feel better." [Petitioner REDACTED] prescribed clonazepam.
- On or about REDACTED 2019, the officer returned to [Petitioner REDACTED's] clinic to obtain a refill on the clonazepam. [Petitioner REDACTED] met with the officer for approximately five (5) minutes and provided him with another prescription for clonazepam at an increased dose.
- On or about REDACTED 2019, the officer returned to [Petitioner REDACTED's] clinic a third time to obtain a refill on the clonazepam. [Petitioner REDACTED] met with the officer for approximately six (6) minutes and provided him with another prescription for clonazepam.
- On or about REDACTED, 2019, the officer returned to [Petitioner REDACTED's] clinic a fourth time to obtain a refill on the clonazepam. [Petitioner REDACTED] met with the officer for approximately three (3) minutes and provided him with another prescription for clonazepam.
- On or about REDACTED 2019, an undercover police officer visited [Petitioner REDACTED's] clinic and saw [Petitioner REDACTED] for approximately six (6) minutes. The officer requested that [Petitioner REDACTED] give him Xanax to help him with "focus" at work. [Petitioner REDACTED] provided him with a prescription for clonazepam.

- On or about REDACTED 2019, the officer returned to [Petitioner REDACTED's] clinic to obtain a refill on the clonazepam. [Petitioner REDACTED] met with the officer for approximately two (2) minutes and provided him with another prescription for clonazepam.

(R's Exhibit H, pp 6-7.)

- As part of an investigation of [Petitioner REDACTED's] prescribing practices, the Department received and analyzed medical records of fifteen (15) of [Petitioner REDACTED's] patients.
- An expert discovered deficiencies in the individual medical files [Petitioner REDACTED] produced.

(R's Exhibit H, pp 7-12.)

The Department argues that it properly relied on the LARA Summary Suspension and Administrative Complaint and that the allegations in that Complaint demonstrate that the Department's Order of Summary Suspension was necessary "to protect the health of medically indigent individuals, the welfare of the public, and the funds appropriated for the program," as contemplated in MCL 400.111e(5) and MCL 400.111f(1). The Department argues that Petitioner cannot litigate the underlying allegations in the LARA Complaint in an administrative hearing with the Department of Health and Human Services and that as long as the LARA Order of Summary Suspension is active, the Department's Order of Summary Suspension will remain active. The Department points out that if Petitioners are successful in dissolving the LARA Order of Summary Suspension, the Department will also lift its Summary Suspension.

The Department noted that while it was not required by law or policy to suspend Petitioners' Medicaid enrollment in a case where a limit is placed on a provider's license, it chose to do so in this case after weighing the evidence in the LARA Complaint against any harm that may befall Petitioners' patients from her suspension. The Department also noted that the portion of the Order of Summary Suspension that indicates Petitioners "dispensed" medications is a typo and should have indicated "prescribed" medications. The Department indicated that they did not dig into the details of the LARA Complaint but rather relied on the investigation conducted by LARA.

Petitioner argues that the LARA Order of Summary Suspension was improper so the Department's reliance on the LARA Suspension to issue its own Order of Summary Suspension was also improper. Petitioner also argues that even with the LARA Order of Summary Suspension in effect, the Department erred by suspending Petitioners' Medicaid enrollment because Petitioners were prevented by the LARA Suspension from prescribing controlled substances. As such, Petitioners argue that their patients were not in any danger going forward.

Petitioner REDACTED testified that she treats numerous patients as a primary care physician and many of those patients are not prescribed controlled substances, but still

rely on her services. Petitioner REDACTED pointed out that while her clinic was raided by the police in REDACTED 2019, no criminal charges were ultimately filed following an extensive investigation and the civil forfeiture case against her and her clinic were also dropped. Petitioner REDACTED also pointed out that she agreed not to prescribe any controlled substances from her clinic beginning in REDACTED 2019, although she continued to prescribe controlled substances at the nursing home and at Sparrow hospital until the LARA Summary Suspension was issued.

Petitioner REDACTED testified that she retained an expert to review the files that were reviewed by LARA prior to the Summary Suspension and that expert found that her treatment of patients was well within the standard of care for a medical professional. Petitioner REDACTED indicated that she understands that the Department is very concerned about the opioid epidemic, but she rarely prescribed any heavy opioids to her patients. Petitioner REDACTED testified that instead she prescribed Tramadol, which is a weaker opioid, as well as benzodiazepines. (See *Exhibits 4 and 5*). Petitioner REDACTED indicated that she treats many patients with mental health and substance abuse problems, and she did work with the methadone clinic in treating her patients. Petitioner REDACTED pointed out that while it does appear that she wrote a large number of prescriptions for Clonazepam, she wrote those prescriptions for only a two-week supply so that she could keep a close eye on her patients.

Petitioner REDACTED testified that she is not aware of any of her patients “diverting” medications as alleged in the LARA Order of Summary Suspension and that she did not prescribe controlled substances in doses large enough to be worth diverting. Petitioner REDACTED indicated that she was very conservative in her prescribing of controlled substances, indicating that she could have prescribed up to four Tramadol per day but only prescribed one per day in most cases.

Petitioner REDACTED testified that her Medicaid patients, which make up 80% of her clinic practice, are having many issues since her suspension. Petitioner REDACTED indicated that those patients do not want to go to the emergency room because of COVID-19 and it is very difficult for them to find another physician. Petitioner REDACTED testified that as a result, many of her patients are simply going without primary care since her suspension. Petitioner REDACTED also noted that her patients have difficulty with transportation, and her clinic worked for them because it was in their neighborhood. Petitioner REDACTED testified that six of her patients have overdosed since her suspension and she had not lost a patient to overdose before her suspension.

Petitioner REDACTED indicated that she knows what drug seeking behavior is and she has turned away patients seeking controlled substances in the past. Petitioner REDACTED indicated that she never prescribed the “holy trinity” of medications as alleged in the LARA Administrative Complaint. Petitioner REDACTED testified that she is not running a pill mill, that her prescribing patterns are very appropriate for her patients, and she is very cautious in prescribing controlled substances. Petitioner REDACTED indicated that she never prescribed opioids as the first line of treatment and she never in her life has prescribed THC as alleged in the LARA Administrative Complaint. Petitioner

REDACTED also explained why she prescribed a medication with codeine syrup to a patient over four years.

In summary, Petitioners argued that this is a very unusual case. Petitioners argued that the harm that may befall Petitioners' Medicaid patients is considerable and that they believe they will ultimately prevail in the LARA case. Petitioners argue that this is not the usual pill mill case and that if the Department knew all that it knows now it would not have issued the Summary Suspension.

Having considered the parties' arguments in full, the Department has established by a preponderance of the evidence, that its summary suspension was proper under MCL 400.111d(1), MCL 400.111e(5), and MCL 400.111f(1). Based on the investigation by LARA, there were credible allegations against Petitioner requiring summary suspension "to protect the health of medically indigent individuals, the welfare of the public, and the funds appropriated for the program," as contemplated in MCL 400.111e(5) and MCL 400.111f(1). Taken at face value, the allegations in the LARA administrative complaint are serious and the undersigned can take judicial notice of them. *Johnson v Dep't of Natural Resources*, 310 Mich App 635, 648-649 (2015); see also MCL 24.277. As the Department correctly points out, Petitioner has the opportunity to petition for dissolution of LARA's order, and has done so, but that case is still pending to date. See *Mich Admin Code, R 792.10702(1)*.

Petitioners' arguments to the contrary are without merit. Generally, Petitioner argues that the MDHHS Order of Summary Suspension should not stand because the underlying LARA Order of Summary Suspension and Administrative Complaint lack merit. However, Petitioner cannot attack the legitimacy of the factual allegations in the LARA Administrative Complaint through these proceedings. Petitioner has requested a hearing with LARA and hopefully that hearing will occur soon. And, while Petitioners did an admirable job of attacking the LARA findings here, those attacks in this setting are, of course, one sided. In other words, LARA and its witnesses were not present to dispute or counter the arguments made by Petitioner. LARA's expert did not testify in this case, the pharmacists who made complaints about Petitioners did not testify, the undercover officer who obtained controlled substances from Petitioners did not testify, nor did any representatives from the methadone clinics that raised concerns regarding Petitioners prescribing patterns. In addition, the undersigned cannot give much weight to Petitioners' expert's report because that expert also did not testify and was not subject to cross-examination. The parties will have an opportunity to fully litigate the LARA Order of Summary Suspension, but until or unless the action by LARA is overturned, the Department's Order of Summary Suspension is proper and should remain in place.

Furthermore, to the extent that Petitioners are requesting that they only be subject to a partial disenrollment from Medicaid for prescribing controlled substances, the undersigned is not aware of any provision allowing for such an action by the Department. The undersigned also lacks equitable authority to grant Petitioners the relief they seeks. *Behavioral Health v Dep't of Community Health*, 293 Mich App 491, 497-498 (2011).

IT IS THEREFORE ORDERED that:

The Order of Summary Suspension issued by the Department on August 18, 2020
June 13, 2018, is **AFFIRMED/UPHELD**.