

## **ISSUE**

Whether the Department properly issued an Order of Summary Suspension to Petitioners on September 1, 2023, effective September 5, 2023, following Petitioner Dr. REDACTED REDACTED's federal indictment on one count of Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. 1349 and 15 counts of Health Care Fraud, Aiding & Abetting in violation of 18 U.S.C. 1347 and 18 U.S.C. 2.

## **FINDINGS OF FACT**

1. Petitioner Dr. REDACTED REDACTED self-reported to Michigan Medicaid that he is the 100% owner of REDACTED PLLC. (Exhibit 2.)

<sup>1</sup> Attached to Motion for Summary Disposition

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2. On May 16, 2008 and May 9, 2023, Petitioner Dr. REDACTED REDACTED submitted a Medical Assistance Provider & Trading Partner Agreement, in which he agreed to abide by all the terms and conditions listed therein. (Exhibit 3.)
3. On May 16, 2008 and May 9, 2023, Petitioner Dr. REDACTED REDACTED submitted a Medical Assistance Provider & Trading Partner Agreement on behalf of REDACTED PLLC, in which he agreed that his practice would abide by all the terms and conditions listed therein. (Exhibit 3.)
4. On REDACTED 2023 Petitioner Dr. REDACTED REDACTED was indicted in the United States District Court, REDACTED District of Michigan, on one count of Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. 1349 and 15 counts of Health Care Fraud, Aiding & Abetting in violation of 18 U.S.C. 1347 and 18 U.S.C. 2. (Exhibit 1.)
5. On September 1, 2023, Respondent issued an Order of Summary Suspension to Petitioners, suspending Petitioners from participation in the Michigan Medicaid Program, based on the indictment, effective September 5, 2023. (Exhibit C; Testimony)
6. Allegations from the indictment contained in the Order of Summary Suspension include:
  1. On REDACTED 2023, REDACTED was indicted in the United States District Court — REDACTED District of Michigan for one count of Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. §1349 and fifteen counts of Health Care Fraud — Aiding and Abetting in violation of 18 U.S.C. §§ 1347 & 2. Allegations from the indictment include:
    - a. From in or around REDACTED 2016 and continuing through in or around REDACTED 2021, REDACTED and his co-conspirators, knowingly and intentionally conspired to defraud, and did defraud, Medicare and Blue Care Network (BCN) by submitting, and causing to be submitted, claims for payments for prescription drugs, including specialty medications and orphan drugs, that were medically unnecessary.
    - b. It was the purpose of the conspiracy for REDACTED and his co-conspirators to unlawfully enrich themselves and others by acquiring prescription medications through the submission, and causing the submission, of claims to Medicare and BCN for prescription medications that were not medically necessary, for Medicare and BCN to pay for prescription medications, including, for example,

Firazyr, Trikafta, and Augabio, and for the defendants to sell those prescription drugs at a substantial profit.

- i. Specialty" (*sic*) medications are prescription drugs that, for example, treat a less common health condition or have less common characteristics, such as requiring special handling, special administration, or additional monitoring, and at times can be high-cost medications. "Orphan drugs" are a type of "specialty" medication.
  - ii. An "orphan drug" is defined in the Orphan Drug Act as one intended to treat, prevent or diagnose a "rare disease or condition," which is one that "affects less than 200,000 persons in the United States" or that affects more than 200,000 in the United States and "there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug."
  - iii. Many manufacturers of specialty medications and orphan drugs choose just one or two specialty pharmacies to exclusively dispense a specialty medication or orphan drug for several reasons, including the limited patient population and to ensure quality control.
  - iv. Research and development companies and companies performing clinical trials were potential buyers of the specialty medications and orphan drugs. These companies purchased medications and orphan drugs for testing, studying, reverse engineering, and, potentially, counterfeit purposes, especially when the drugs were under Orphan Drug exclusivity.
  - v. Financial records revealed that the business entities owned by or associated with REDACTED's co-conspirators received millions of dollars from domestic and international companies.
- c. Upon identifying a specialty medication or orphan drug that they could sell, REDACTED's coconspirators worked with medical doctors in Wayne and Oakland

counties in Michigan, including but not limited to  
REDACTED, to write

medically unnecessary prescriptions for the specialty medication or orphan drug.

- i. REDACTED wrote medically unnecessary prescriptions for specialty medication or orphan drugs in the names of "patients." The "patients" in whose names the prescriptions were written included (1) family and/or friends of REDACTED and his co-conspirators, (2) existing patients of REDACTED and other medical doctors, and (3) the co-conspirators themselves.
  - ii. REDACTED typically wrote the medically unnecessary prescriptions without the "patients" knowledge or understanding of the scheme.
- d. REDACTED worked with his co-conspirators to complete the necessary paperwork and send the medically unnecessary prescriptions to a specialty pharmacy that filled the prescription and billed Medicare or BCN to dispense the specialty medication or orphan drug.
- i. In that documentation, REDACTED and his co-conspirators conspired to include a purported patient address that caused the specialty pharmacy to send the specialty medication or orphan drug to an address controlled by REDACTED or his co-conspirators, rather than the actual patient address.
  - ii. Also, in the documentation submitted to the specialty pharmacy, at times and as necessary, REDACTED and his co-conspirators conspired to include a purported telephone number or other contact information that caused the specialty pharmacy to communicate with the co-conspirators about the prescription, and not communicate with the patient in whose name the prescription was written.
  - iii. Rather than including their personal telephone numbers on the paperwork submitted to the specialty pharmacies, at times the co-conspirators used web-based applications through which they acquired several alternative or "burner" telephone numbers that they included on medical documentation submitted to the specialty

pharmacy and then used to make and receive phone calls with a specialty pharmacy.

- iv. In so doing, REDACTED and his co-conspirators devised and executed a scheme to defraud Medicare and BCN by causing the submission of claims for prescription medications that were not needed and, in many cases, never delivered to the patient in whose name the prescription was issued.
- e. When the specialty medications and orphan drugs arrived at addresses associated with REDACTED's co-conspirators, they arranged to ship the medications to their customers, who were domestic and international companies.

(Exhibit 5.)

- 7. The Department's Order of Summary Suspension notified Petitioners of their right to a hearing to contest the Order of Summary Suspension. On September 7, 2023, Petitioners requested a hearing, and a Notice of Hearing was issued, scheduling a hearing for September 20, 2023.
- 8. On September 14, 2023, Respondent filed a Motion for Summary Disposition. A prehearing conference was held on September 20, 2023 in lieu of a hearing and Petitioners' representative indicated that he would not be filing a separate Response to Respondent's Motion for Summary Disposition but would rely on the pleadings as filed.

### CONCLUSIONS OF LAW

The Administrative Procedures Act (APA) allows parties "an opportunity to present oral and written arguments on issues of law and policy[.]" MCL 24.272(3). Pursuant to MCL 24.272(3), a party may pursue a motion for summary disposition to address questions of law that do not involve factual disputes. *Smith v Lansing Sch Dist*, 428 Mich 248, 256-257; 406 NW2d 825 (1987).

MCR 2.116(3) serves as a guide for summary disposition motions under MCL 24.272(3). See *e.g. American Community Mutual Ins Co v Commr of Ins*, 195 Mich App 351, 361-363; 491 NW2d 597 (1992). Pursuant to MCR 2.116(c)(10), summary disposition is appropriate when there is no genuine dispute of material fact among parties to an action. Pursuant to MCR 2.116(c)(10), summary disposition is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Furthermore, the Michigan Administrative Code allows for summary disposition under Rule 792.10129, which provides, in pertinent part:

(1) A party may make a motion for summary disposition of all or part of a proceeding. When an administrative law judge does not have final decision authority, he or she may issue a proposal for decision granting summary disposition on all or part of a proceeding if he or she determines that that any of the following exists:

- (a) There is no genuine issue of material fact.
- (b) There is a failure to state a claim for which relief may be granted.
- (c) There is a lack of jurisdiction or standing.

(2) If the administrative law judge has final decision authority, he or she may determine the motion for summary decision without first issuing a proposal for decision.

(3) If the motion for summary disposition is denied, or if the decision on the motion does not dispose of the entire action, then the action shall proceed to hearing.

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As such, this Administrative Law Judge has the authority to hear and decide preliminary dispositive motions and the authority to issue a decision for summary disposition.

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

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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:

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(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.

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(Emphasis added.)

The director may also issue an emergency suspension if there is a reasonable belief that the provider has violated the Medicaid False Claims Act or a similar statute. 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:

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(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.

(Emphasis added)

The *Michigan Medicaid Provider Manual* also allows for the suspension of Medicaid Provider enrollments. It states as follows:

## SECTION 6 - DENIAL OF ENROLLMENT, TERMINATION AND SUSPENSION

### 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 bind over on charges under the Medicaid or Health Care False Claims Act or similar state/federal statute.

*Medicaid Provider Manual General  
Information for Providers Chapter  
July 1, 2023, p 18 Emphasis  
added*

To support a summary suspension, the Department must show by competent, material and substantial evidence on the record that there was a reasonable belief that Petitioner's actions placed the public health, welfare, or safety of medically indigent individuals or public funds of the program of medical assistance at risk as contemplated in MCL 400.111f(1).

The Department argues that its Motion for Summary Disposition should be granted, and the summary suspension should be upheld because there is no genuine issue of material fact, and the Department is entitled to judgment as a matter of law. The Department argues that the indictment is sufficient basis for formulation of the reasonable belief requirement under MCL 400.111f(1) because Petitioner Dr. REDACTED REDACTED's federal indictment on one count of Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. 1349 and 15 counts of Health Care Fraud, Aiding & Abetting in violation of 18 U.S.C. 1347 and 18 U.S.C. 2 places the public health, welfare, or safety; of medically indigent individuals; or public funds of the program of medical assistance in danger and are similar to the Medicaid False Claims Act and Healthcare False Claims Act.

In their request for hearing, Petitioners argue generally that Dr. REDACTED is innocent until proven guilty of the charges in the indictment and, therefore, should not be subject to a summary suspension.

Having considered the parties' arguments in full, it is determined that the Department has met its burden of proof to show that there was a reasonable belief that emergency action was required to protect the public health, welfare, or safety of medically indigent

individuals or public funds of the program of medical assistance as contemplated in MCL 400.111e(5). Further, the federal statutes in the indictment are substantially similar to the Medicaid False Claims Act or Healthcare False Claims Act as contemplated in MCL 400.111f(1)(b). All these statutes criminalize the same underlying behavior of knowingly presenting a false claim or request for reimbursement to a health care benefit program or insurer.

Here, given the nature of the charges alleged, Petitioner's actions as outlined in the indictment would put medically indigent individuals at risk as well as risk the public funds of the Medicaid program. It is alleged that Petitioner and his co-conspirators submitted claims for payments of prescription drugs, including specialty medications, that were medically unnecessary. It is further alleged that Petitioner and his co-conspirators then sold those prescription drugs at a substantial profit. Certainly, such actions would place all medically indigent individuals at risk as well as risk the public funds of the Medicaid program.

An indictment can form the basis of the reasonable belief requirement. A grand jury serves the function of determining if there is probable cause to believe that a crime has been committed. *United States v Sells Eng'g, Inc.*, 463 U.S. 418, 423, 103 S. Ct. 3133, 3137, 77 L. Ed. 2d 743 (1983). By returning an indictment in this case, the federal grand jury found that there was probable cause that a crime was committed by Petitioner Dr. REDACTED. In this manner, the grand jury serves the same purpose as the preliminary examination under state law. *People v Yost*, 468 Mich. 122, 125-26, 659 N.W.2d 604, 606 (2003) (the preliminary examination has a dual function, *i.e.*, to determine whether a felony was committed and whether there is probable cause to believe the defendant committed it). The Michigan Supreme Court has stated that a finding of probable cause "requires a quantum of evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt." *Id.* (emphasis added). As such, the Department has met the reasonable belief standard solely by relying on the indictment. In other words, the indictment, on its face, is competent, material and substantial evidence on the record that there was a reasonable belief that Petitioner engaged in activities that placed the public health, welfare, or safety of medically indigent individuals or public funds of the program of medical assistance at risk as contemplated in MCL 400.111f(1).

It would not be feasible for the Department to investigate and litigate the underlying grounds for every ongoing criminal prosecution when deciding whether to issue a summary suspension.

If the Department were required to duplicate the criminal investigation, it would vitiate the Emergency Action section of the Social Welfare Act, the purpose of which is to allow the Department to act quickly and take temporary action at a lower standard of proof to protect the Medicaid program while awaiting the definitive proceeding on the underlying criminal proceedings. Should Petitioner ultimately be cleared of these charges, the summary suspension will be removed. And, while the Department must meet the reasonable belief standard by putting forth competent, material and substantial evidence on the whole record, that requirement does not increase the burden of proof on the Department. That burden is only a reasonable belief, a very low standard.

Given that the indictment will continue to exist even if an evidentiary hearing is held on the summary suspension, there is no genuine issue of material fact, and the Department is entitled to judgment as a matter of law.

**IT IS THEREFORE ORDERED** that:

The Order of Summary Suspension issued by the Department to Petitioners on September 1, 2023, effective September 5, 2023 is **UPHELD**.

The administrative hearing scheduled for October 25, 2023 at 9:00 a.m. is **CANCELLED**.