

ISSUE

Whether the Department properly issued an Order of Summary Suspension to Petitioners on April 22, 2024, effective April 24, 2024, following Petitioner Dr. REDACTED REDACTED's bind over to Circuit Court on three counts of False Pretenses \$1,000 - \$20,000 in violation of MCL 750.2184A, one count of Conducting Criminal Enterprises in violation of MCL 750.159i(1), and three counts of Insurance — Fraudulent Acts in violation of MCL 500.4511(1).

FINDINGS OF FACT

1. Petitioner Dr. REDACTED REDACTED self-reported to Michigan Medicaid that she is the 100% owner of REDACTED for Pain Management, PLLC. (Exhibit A.)

¹ Attached to the parties' Motion and Response.

2. On July 11, 2017 and January 14, 2022, Petitioner Dr. REDACTED REDACTED or her designee submitted Medical Assistance Provider & Trading Partner Agreements, in which she agreed to abide by all the terms and conditions listed therein. (Exhibit B.)
3. On July 6, 2017, Petitioner Dr. REDACTED REDACTED or her designee submitted a Medical Assistance Provider & Trading Partner Agreement on behalf of REDACTED for Pain Management, PLLC, in which she agreed that the practice would abide by all the terms and conditions listed therein. (Exhibit C.)
4. On REDACTED, 2023, Petitioner Dr. REDACTED REDACTED was charged in the REDACTED County Circuit Court with three counts of False Pretenses \$1,000 - \$20,000 in violation of MCL 750.2184A, three counts of Controlled Substance Delivery/Manufacturing (Non-Narcotic) in violation of MCL 333.7401, one count of Conducting Criminal Enterprises in violation of MCL 750.159i(1), and three counts of Insurance — Fraudulent Acts in violation of MCL 500.4511(1). (Exhibit D.)
5. On REDACTED 2024 Petitioner Dr. REDACTED REDACTED was bound over to Circuit Court on three counts of False Pretenses \$1,000 - \$20,000 in violation of MCL 750.2184A, one count of Conducting Criminal Enterprises in violation of MCL 750.159i(1), and three counts of Insurance — Fraudulent Acts in violation of MCL 500.4511(1).² (Exhibit E.)
6. On April 22, 2024, Respondent issued an Order of Summary Suspension, effective April 24 2024, suspending Petitioners from participation in the Michigan Medicaid Program based on the bind over. (Exhibit F.)
7. Allegations from the indictment contained in the Order of Summary Suspension include:
 - a. REDACTED participated in an automobile insurance fraud scheme.
 - b. REDACTED's co-conspirator referred patients to her. REDACTED then took patients through the organization's predetermined protocol that included office visits, alleged injections, prescribing medications which were dispensed by another co-conspirator, and referrals to physical therapy and diagnostic imaging with another co-conspirator. REDACTED and her co-conspirators then billed no fault auto insurance or the Michigan Assigned Claims Plan for the uninsured accident victims.

(Exhibit F.)

² The three counts of Controlled Substance Delivery/Manufacturing (Non-Narcotic) in violation of MCL 333.7401 were dismissed.

8. On May 2, 2024, Petitioners requested a hearing, and a prehearing conference was held on May 9, 2024. At the prehearing conference, Respondent indicated an intent to file a Motion for Summary Disposition and the parties agreed to due dates for the filing and a response. On May 13, 2024, Respondent filed a Motion for Summary Disposition. On May 16, 2024, Petitioners filed a response.

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.

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.

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 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:

(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 bindover on charges under the Medicaid or Health Care False Claims Act or similar state/federal statute.

*Medicaid Provider Manual General
Information for Providers Chapter
April 1, 2024, p 18 Emphasis
added*

In order 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 bind over to circuit court is sufficient basis for formulation of the reasonable belief requirement under MCL 400.111f(1) because Petitioner Dr. REDACTED REDACTED's bind over on three counts of False Pretenses \$1,000 - \$20,000 in violation of MCL 750.2184A, one count of Conducting Criminal Enterprises in violation of MCL 750.159i(1), and three counts of Insurance — Fraudulent Acts in violation of MCL 500.4511(1), 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.

Petitioner Dr. REDACTED REDACTED argues that she is innocent until proven guilty of the charges in the bind over and, therefore, should not be subject to a summary suspension. Petitioner Dr. REDACTED REDACTED also argues that some of the charges have already been dismissed and she expects the remaining charges to be dismissed shortly. Petitioner Dr. REDACTED REDACTED argues that the suspension is unfair and unjust and will leave her patients in substantial hardship. Petitioner Dr. REDACTED REDACTED also points out that similar charges were brought by auto insurance companies in 2018 and those matters were all settled.

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 state statutes in the complaint 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 complaint would put medically indigent individuals at risk as well as risk the public funds of the Medicaid program. It is alleged that Petitioner and her co-conspirators participated in an automobile insurance fraud scheme, where a co-conspirator referred patients to Dr. REDACTED, who then took patients through the organization's predetermined protocol that included office visits, alleged injections, prescribing medications (which were dispensed by another co-conspirator), and referrals to physical therapy and diagnostic imaging with another co-conspirator, then billed no fault auto insurance or the Michigan Assigned Claims Plan for the uninsured accident victims.

Certainly, such actions would place all medically indigent individuals at risk as well as risk the public funds of the Medicaid program.

A bind over can form the basis of the reasonable belief requirement. A preliminary examination, like a federal indictment, 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 binding Dr. REDACTED over to circuit court in this case, the judge found that there was probable cause that a crime was committed by Petitioner Dr. REDACTED. *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 bind over. In other words, the bind over, 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 charges 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 April 22, 2024, effective April 24, 2024 is UPHELD.