



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

SANJAY PATEL, R.Ph.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,
RESPONDENT.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 12544-2016

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Both parties filed exceptions. Procedurally, the time period for the Agency Head to file a Final Decision is July 20, 2017 in accordance with an Order of Extension.

The matter arises regarding the Notice of Debarment issued by the Medicaid Fraud Division, Office of the State Comptroller (MFD) on April 26, 2016. Sanjay Patel, R.Ph. had previously been subject to licensing and suspension actions from New York and New Jersey Boards of Pharmacy stemming from his guilty plea for two counts of Criminal Sale of a Controlled Substance in the Fifth Degree and two counts of Forcible

Touching. ID at 2. The New Jersey action resulted in a May 14, 2008 consent order (identified as "First Consent Order") which suspended his license for the longer of six months or the length of the New York suspension. J-5. Petitioner was prohibited from being present in the prescription-filing area of any pharmacy and he had to surrender his license. The federal Department of Health and Human Services, Office of the Inspector General (OIG) also took action based on the New York convictions and excluded Petitioner from participating in the Medicaid program. OIG reinstated Petitioner in June 2011.

A collateral investigation by the New Jersey Board of Pharmacy regarding East Orange Pharmacy discovered that Petitioner was present in the prescription-filling area "on multiple occasions." J-7. This resulted in another consent order dated April 19, 2016 ("Second Consent Order"). J-7. In that order Petitioner acknowledged that he had violated the First Consent Order by being present in the prescription-filing area of East Orange Pharmacy. This Second Consent Order suspending Petitioner's pharmacy license indefinitely, repeated the prohibitions of the First Consent Order and assessed a civil penalty and the payment of costs. ID at 3. Subsequently, MFD learned of the Second Consent Order and issued a letter of debarment.

The parties met and Petitioner submitted additional information. However, MFD found no basis to amend the Notice of Debarment and the matter proceeded to fair hearing. Prior to the hearing MFD filed a Motion for Summary Decision. Petitioner then filed a Cross-Motion for Summary Decision as well a discovery motion and a Motion to Dismiss. The Initial Decision granted MFD's motion and found that the discovery motion was moot. Moreover, the Motion to Dismiss was premised on the doctrine of

laches which the Initial Decision determined did not apply as the debarment action was timely. ID at 5 -6.

As noted in the Initial Decision, summary disposition may be entered where there is no genuine issue as to any material fact and where the moving party is entitled to prevail as a matter of law. See Initial Decision at pages 2 and 3, citing N.J.A.C. 1:1-12.5 and Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). Once the moving party has shown competent evidence of the absence of any genuine issue of fact, the non-moving party must do more than simply create some doubts as to the material facts; it must raise a factual issue substantial enough to sustain a reasonable conclusion in the non-moving party's favor. In this matter, Respondent's motion for summary decision was granted.

By statute, the Director of DMAHS or MFD<sup>1</sup> may suspend, debar, or disqualify for good cause any provider presently participating in the Medicaid program. See N.J.S.A. 30:4D-17.1(a). The New Jersey Administrative Code provides DMAHS with measures to exclude or render ineligible persons from participation in contracts with New Jersey Medicaid or NJ FamilyCare programs . . . on the basis of a lack of responsibility. N.J.A.C. 10:49-11.1(b). In pertinent part, the regulation provides: the measures of suspension, debarment and disqualification shall be invoked by DMAHS "for the purpose of protecting the interest of the NJ Medicaid or FamilyCare programs and not for punishment." Ibid. It also explicitly provides that the measures "shall not be invoked for any time longer than deemed necessary to protect the interests of the NJ Medicaid or FamilyCare programs." Ibid.

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<sup>3</sup> The DMAHS Director has delegated her responsibility to the MFD Director through a Memorandum of Understanding.

The Medicaid regulations define "debarment" as an exclusion from State contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance. N.J.A.C. 10:49-11.1(c). The regulations set forth the circumstances in which DMAHS may exclude a provider from participating for the purpose of protecting the interest of the New Jersey Medicaid programs. N.J.A.C. 10:49-11.1(b). The regulation specifically provides that good cause exists when there has been a violation of laws or regulations governing the conduct of occupations or professions or regulated industries as well as any other cause affecting responsibility as a provider of such a serious and compelling nature as may be determined by DMAHS. See N.J.A.C. 10:49-11.1(d)(7) and (23). Prior to the imposition of debarment, all mitigating factors shall be considered. N.J.A.C. 10:49-11.1(e) 3.

Based on my review of the record and the documents presented below, I hereby ADOPT the Initial Decision in its entirety. Petitioner's debarment is warranted under his admitted violation of the First Consent Order that caused the entry of the Second Consent Order and Petitioner has not demonstrated any punitive effect. The Second Consent Order demonstrates Petitioner has engaged in professional misconduct that was prohibited by his licensing board and that it "demonstrates that he lacks the integrity, honesty and responsibility needed to hold the privilege of Medicaid participation." ID at 13.

I agree with the Initial Decision and do not find Petitioner's contention that the 2006 suspension from participating in Medicaid is germane to this matter. That action predates the facts and circumstances that caused MFD to issue the debarment in 2016.

The 2006 Medicaid suspension reaches back to the 2001 criminal actions. The 2016 Medicaid debarment is based on Petitioner's subsequent actions relating to his license suspension and the First and Second Consent Orders he entered with the New Jersey Board of Pharmacy.

In exceptions, Petitioner continued to raise arguments that he had not been able to provide mitigating factors to the debarment action.<sup>2</sup> There was a pre-hearing conference with MFD where after he provided documents. See Exhibit P2 to Petitioner's February 7, 2017 Cross-Motion for Summary Decision. However, the Second Consent Order is quite clear as to the circumstances that led to the indefinite suspension of his license as well as the imposition of specific prohibitions such as handling, ordering, inventorying, compounding, counting, filing, refilling or dispensing any drug. J-7. Nor has there been inaction by MFD. The April 26, 2016 debarment action is based on Second Consent Order entered on April 19, 2016 which was predicated on findings that Petitioner violated the First Consent Order. The debarment was extremely timely and nearly concurrent with the entry of the Second Consent Order.

Petitioner also argued in exceptions that the consent order entered into by East Orange Pharmacy as a result of his presence in that pharmacy could not be used to debar him. It wasn't. It is the terms of the Second Consent Order that set forth the reasons for debarment. Indeed, the exceptions state that Petitioner was in the prescription dispensing area of East Orange Pharmacy "on several Saturday mornings"

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<sup>2</sup> To that end, Petitioner improperly included documents labeled as Exhibits A, B, E, D and F which are not part of the record below. As such, they were not considered. N.J.A.C. 1:1-18.4 (c).


which he claims was both “entirely lawful” and in violation of the First Consent Order. Petitioner’s Exceptions at 5. He cannot have it both ways. Moreover, his contention that his presence “in the areas of East Orange Pharmacy where the prior Order prohibited him from being present” was “to put himself in good stead in New York [where he had also lost his license] by showing his interest and initiative, as a layperson” defies logic. Petitioner’s Exceptions at 4. Rather it demonstrates the opposite of good stead to try to appease one licensing board while violating the consent order with another licensing board.

Thus for the reasons set forth above and in the Initial Decision which is incorporated by reference, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this <sup>15<sup>th</sup></sup> day of JULY 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.

  
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Meghan Davey, Director  
Division of Medical Assistance  
and Health Services