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

OSCAR PADILLA BUSTAMANTE

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

NEW JERSEY MEDICAID

FRAUD DIVISION

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 06336-23

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 9, 2024.

Petitioner appeals the New Jersey Medicaid Fraud Division's (Division) decision

disqualifying him from participation in the New Jersey Medicaid Program. Petitioner's disqualification is based on the permanent revocation of his Registered Nurse (RN) license by the New Jersey Division of Consumer Affairs, Board of Nursing (BON) due to his conviction of crimes involving moral turpitude. The matter was referred to the Office of Administrative Law (OAL) for a hearing, where the Administrative Law Judge (ALJ) issued a Summary Decision upholding the Division's action. Given the undisputed facts, I concur with the ALJ's decision to grant the Division's motion for Summary Decision concluding that the Division appropriately disqualified Petitioner from participation in the New Jersey Medicaid program.

As per the Medicaid Program Integrity and Protection Act, N.J.S.A 30:4D-53 to - 63, The Office of the State Comptroller, Medicaid Fraud Division oversees the integrity of the New Jersey Medicaid Program in part by excluding providers and individuals from the program for good cause. The Division has the authority to disqualify individuals from Medicaid participation based on certain criteria outlined in N.J.A.C. 10:49-11.1. This criteria include violations related to criminal convictions involving moral turpitude and other conduct that undermines the integrity of the Medicaid program. Specifically, N.J.A.C. 10:49-11.1 (d) provides:

Any of the following, among other things, shall constitute a good cause for exclusion of a person by the Medicaid Agent or DMAHS;

7. Violations of any laws, regulations or code of ethics governing the conduct of occupations or professions or regulated industries;

21. Conviction of any crime involving moral turpitude;

23. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be

determined by the Medicaid Agent or DMAHS to warrant exclusion, including such conduct as may be proscribed by the laws or contracts enumerated in this subsection, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

24. Suspension, debarment or disqualification by some other department or agency in the executive branch.

See Patel, R.Ph. v. DMAHS, OAL DKT. NO. HMA 12544-2016, 2017 N.J. AGEN LEXIS 1341, Final Agency Determination (July 18, 2017) where the Director of DMAHS adopted the report and recommendation of an ALJ who found that a pharmacist who had signed consent orders surrendering his license and prohibiting him from certain conduct was properly debarred from participation in the Medicaid program.

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. 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 the present matter, Petitioner's RN license was permanently revoked by the BON on February 1, 2023, following a Consent Order, which included Petitioner's agreement to not seek reinstatement of his RN license in New Jersey. (R-1, Exhibit D at 1). Specifically, the Consent Order stated, in pertinent part:

Respondent has read the term of the within Consent Order and understands their meaning and effect and consents to be found by same and agrees to voluntarily enter into an

agreement permanently revoking his nursing license, waiving any right to a hearing, and the Board finding with within disposition adequately protective of the public health, safety and welfare and other good cause been shown...The single state nursing license of Respondent Oscar Padilla a/k/a Oscar Padilla Bustamente, R.N. shall immediately be revoked. Such revocation is permanent and Respondent agrees to never again seek a license to practice nursing in the State of New Jersey.

(R-1, Exhibit A)

The Consent Order followed Petitioner's September 17, 2019 conviction for sexually assaulting a minor, which led to his incarceration and mandatory sex offender registration. Specifically, Petitioner was convicted in Middlesex County Superior Court of two counts of criminal sexual contact in the fourth degree and one count of endangering the welfare of a child by a non-caretaker. (R-1, Exhibit A, B, & C). The BON found that Petitioner's criminal conduct was of such a nature that it disqualified him from holding a nursing license due to issues of moral turpitude. Subsequently, the Division issued a Notice of Disqualification against Petitioner based on this revocation. Petitioner failed to appear for multiple prehearing conferences, including those held on September 12, 2023, January 31, 2024 and May 28, 2024. Respondent's motion for Summary Disposition proceeded unopposed. Initial Decision at 2.

Based upon my review of the record, I agree with the ALJ that Petitioner has failed to raise any genuine issue of material fact that would require a hearing in this matter and that Respondent is entitled to prevail as a matter of law. The ALJ properly concluded that the Division acted appropriately in disqualifying Petitioner from the Medicaid Program and that it is undisputed Petitioner consented to the permanent revocation of his R.N. license by the BON. Additionally, Petitioner's criminal convictions-two counts of criminal sexual

contact and one count of endangering the welfare of a child-constitute crimes of moral turpitude which provides good cause to exclude Petitioner from the Medicaid Program. While not defined in N.J.A.C. 10:49-11.1, New Jersey courts have described moral turpitude as any "act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, to society in general, contrary to the accepted and customary rule of right and duty between man and man." State Bd. of Med. Exam'rs v. Weiner, 68 N.J. Super. 468, 483 (App. Div. 1961). The Appellate Division has repeatedly upheld findings of moral turpitude involving criminal sexual conduct with minors. Thompson v. Bd. of Trs., Judicial Ret. Sys., 2019 N.J. Super. Unpub. LEXIS 1258 (App. Div. 2019); Lalley v. Bd. of Trs., Police & Firemen's Ret. Sys., 2019 N.J. Super. Unpub. LEXIS 2645 (App. Div. 2019).

In the present matter it is undisputed Petitioner consented to the permanent revocation of his RN license with BON, and he cannot seek reinstatement. Further, Petitioner's conviction constitutes a crime of moral turpitude supporting the Division's decision to permanently disqualify Petitioner from participation in the Medicaid Program. THEREFORE, it is on this 6th day of SEPTEMBER 2024,

ORDERED:

That the Initial Decision granting Respondent's motion for Summary Decision is hereby ADOPTED.

  
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Gregory Woods, Assistant Commissioner  
Division of Medical Assistance and Health Services