

**DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES,**  
Petitioner,  
v.  
**GERALD B. REDNOR, INDIVIDUALLY  
AND D/B/A SCHNORBUS PHARMACY,**  
Respondent.

Decided February 5, 1981

**Initial Decision**

**SYNOPSIS**

The Division of Medical Assistance and Health Services suspended Gerald B Rednor, R.P. and Schnorbus Pharmacy from participation as providers in the N.J Medical Assistance and Health Services Program and the Pharmaceutical Assistance to the Aged Program pending resolution of a criminal indictment for distribution of narcotics and other drugs. The suspension was based on *N.J.S.A* 30:4D-17.1 and *N.J.A.C* 10:49-1.17 which permit suspension of provider privileges based upon return of a criminal indictment involving moral turpitude.

The administrative law judge determined that it was well settled that the unlawful distribution of narcotics involves moral turpitude and that the return of an indictment on such a charge (despite the provider's protestations of innocence) was sufficient to warrant a suspension. The judge noted, however, that the authority to suspend provider status in such an instance is specifically set forth in *N.J.A.C* 10:49-1.17(j) and requires the approval of the Attorney General. Finding that evidence of such approval was lacking in this case, the judge concluded that the Division's proposed suspension was void.

Accordingly, the administrative law judge ordered the suspension rescinded.

---

**Karen Suter**, Legal Assistant, for petitioner (Irwin I Kimmelman, Attorney General of New Jersey, attorney)

**John H. Petito**, Esq., for respondent (Pellettieri, Rebstein & Altman, attorneys)

---

---

Div. of Medical Assistance v. Rednor  
Cite as 5 *N.J.A.R.* 430

---

**MONYEK, ALJ:**

The Division of Medical Assistance and Health Services on September 18, 1981, gave notice to Gerald B. Rednor, R.P., and Schnorbus Pharmacy, Medicaid Providers, that they were forthwith suspended from participation in any capacity in the New Jersey Medical Assistance and Health Services Program (Medicaid) and the Pharmaceutical Assistance to the Aged Program (PAA), pending resolution of a criminal indictment returned against Mr. Rednor by a Mercer County Grand Jury and filed in the Superior Court of New Jersey on May 11, 1981. The agency based the suspension upon the provisions of *N.J.S.A.* 30:4D-17.1 and *N.J.A.C.* 10:49-1.17. Provider made timely request for a hearing to contest the suspension and accordingly, the matter was transmitted by the agency to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A.* 52:14B-1, *et seq.*, and *N.J.S.A.* 52:14F-1, *et seq.*

The Prehearing Order stipulated that there had, in fact, been returned against Gerald B. Rednor a four-count indictment for alleged violations of *N.J.S.A.* 24:21-9, 15a, 19(a)1 and 21(a). The Prehearing Order further defined the issues to be resolved as follows:

- a. Whether the crimes alleged in the Indictment returned against provider involved moral turpitude?
- b. Whether the Director of the agency abused his discretion in suspending provider's privileges?

At the hearing the agency's initial evidentiary proffer was a certified copy of the Indictment returned against the provider, wherein, "the Grand Jurors of the State of New Jersey, for the County of Mercer, upon their oaths," alleged that "Gerald B. Rednor, R.P., between on or about March 1, 1979, and on or about February 3, 1981, at Schnorbus Pharmacy, at the City of Trenton, in the County of Mercer, and within the jurisdiction of this Court unlawfully, knowingly, and intentionally did distribute and dispense" Schedule II narcotic drugs and a controlled dangerous substance (Dilaudid, Percocet and Quaalude), without the written prescription of a practitioner, contrary to law. Linda Seems, a medical review analyst employed by the agency, testified that a copy of the aforesaid Indictment was delivered to her, and based upon the content of the Indictment she prepared letters to both Gerald B. Rednor, R.P., and Schnorbus Pharmacy for signature by Thomas M. Russo, Director of the Division of Medical Assistance and Health Services. Both letters were dated September 18, 1981, were signed by Mr. Russo and sent certified mail, return receipt requested. Both contained the following language:

---

Div. of Medical Assistance v. Rednor  
Cite as 5 *N.J.A.R.* 430

---

The Division of Medical Assistance and Health Services hereby gives notice that effective immediately, you are suspended from participation in any capacity in the New Jersey Medical Assistance and Health Services (Medicaid) Program and the Pharmaceutical Assistance to the Aged (PAA) Program pending resolution of the indictment returned against you.

This action is based upon the indictment of Gerald B. Rednor, owner and pharmacist in charge, by the Grand Jury Superior Court of New Jersey, Indictment Number 686-81, and is in accordance with *N.J.S.A.* 30:4D-17.1 and *N.J.A.C.* 10:49-1.17.

Should you request a hearing in this matter, it must be sent in writing to Robert M. Liwacz, Esq., Chief Hearing Coordinator, Division of Medical Assistance and Health Services, 318 East State Street, Trenton, New Jersey 08625, and received no later than twenty (20) days from the date of receipt of this letter. If not received within the time specified, your suspension will be automatically continued, and this notice will become a self-executing order to that effect. The hearing, if requested, will be before an Administrative Law Judge from the Office of Administrative Law.

The executed return receipts were offered into evidence. It was the agency's position that the provider had been indicted for the alleged violations of crimes involving moral turpitude, and therefore, pursuant to *N.J.A.C.* 10:49-1.17(d) 21 and (j)5, the Director was authorized to suspend provider's privileges, in accordance with *N.J.A.C.* 10:49-1.17(j)1. The agency further claimed that unlawfully, knowingly and intentionally distributing and dispensing narcotic drugs and controlled dangerous substances without the written prescription of a practitioner, contrary to law, were crimes involving moral turpitude. Accordingly, it rested.

Mr. Rednor, the owner and operator of Schnorbus Pharmacy and the provider, testified on his own behalf and presented witnesses associated with the Mercer County Prosecutor's Office and the New Jersey Department of Health, customers of the pharmacy, an employee of the pharmacy and a citizen of the City of Trenton who claimed to know and be aware of the unsavory reputation of the individual to whom the provider allegedly distributed and dispensed the drugs in question. Although Mr. Rednor readily and candidly acknowledged that he did, in fact, improperly distribute both Dilaudid and Quaalude to one Leroy Jackie Ellis, it was his contention that he did so out of fear, intimidation and coercion. In short, he claimed that he had a viable defense to the indictment founded upon *N.J.S.A.*

---

Div. of Medical Assistance v. Rednor  
Cite as 5 *N.J.A.R.* 430

---

2C:2-9—the affirmative defense of coercion. He further claimed that the interests of the community and of the indigent patrons of the pharmacy in question would be adversely affected by the suspension because of the inconvenience of those customers having to go elsewhere to satisfy their Medicaid needs. It was further the provider's position that an indictment, alone, is insufficient to support a reasonable suspicion of the existence of a cause for suspension, pursuant to *N.J.A.C.* 10:49-1.17(d).

By way of rebuttal, the agency countered with the testimony of the Coordinator of Pharmaceutical Services for the Division of Medical Assistance, who claimed that not a single complaint had been received from the time of provider's temporary suspension in September to the date of the hearing in December, wherein any of the customers of the Schnorbus Pharmacy would have complained that they were not receiving Medicaid services by virtue of provider's inability to serve them as a result of the suspension.

With respect to the issue of whether the crimes alleged in the Indictment returned against the provider involve moral turpitude, our Appellate Division, in *State Bd. of Medical Examiners v. Weiner*, 68 *N.J. Super.* 468 (App. Div. 1961), held that the concept of moral turpitude is adaptive and reflective at all times of the common moral sense prevailing throughout the community. An examination of the decisional authorities throughout the country seems to indicate, without exception, that the unlawful distribution of narcotics and controlled dangerous substances involves moral turpitude. See, *DuVall v. Bd. of Medical Examiners of Arizona*, 49 *Ariz.* 329, 66 *P. 2d* 1026 (Sup. Ct. 1937); *White v. Andrew*, 70 *Col.* 50, 197 *P.* 564 (Sup. Ct. 1921); *Speer v. State*, 109 *S.W.* 2d 1150 (Tex. Civ. App. 1937); *Garlington v. Smith*, 63 *Ariz.* 460, 163 *P. 2d* 685 (Sup. Ct. 1945); *Meyer v. Bd. of Medical Examiners*, 34 *Cal.* 2d 62, 206 *P. 2d* 1085 (Sup. Ct. 1949).

In *DuVall*, *supra*, Judge Ross, speaking for a unanimous court, said:

Just what crimes involve moral turpitude is not always easy to say. Generally speaking, those crimes that are *malum in se* involve moral turpitude while those that are *malum prohibitum* do not. But this is not always so. For instance assault and battery is *malum in se* but rarely involves moral turpitude, while the sale or dispensing or prescribing narcotic drugs, except for medicinal use and under strict surveillance, does involve, as we think, moral turpitude, although *malum prohibitum* only. One of the great evils of the day is the consumption of narcotic drugs. Because so many

---

Div. of Medical Assistance v. Rednor  
Cite as 5 N.J.A.R. 430

---

persons become addicts, most of the States, if not all of them, have enacted laws restricting the right to dispense or prescribe such drugs to registered pharmacists and physicians for medicinal purposes only and inflicting very severe penalties for their violation. While the United States under the principals of police power cannot take control of narcotic drugs and regulate their disposition and use, it has under the taxing power made the traffic in such drugs more difficult.

Mr. Newell, in his work, on Slander and Liable (4th Ed.) § 32, says: 'Moral turpitude may therefore be defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow-men or the society in general, contrary to the accepted and customary rule of right and duty between man and man.'

If there is anyone who is to be pitied, it is the addict of habit-forming drugs of the narcotic kind. He is usually a hopeless loss to society. Not only that, but he is a real menace. He will do most anything to secure the drug to satisfy his cravings and under its influence commit most desperate crimes. No one knows this better than the members of the medical profession, bound by their honor and the Hippocratic oath to the highest ideals in their relation to society and especially those seeking their advice and help. When one of these has been convicted of violating the Harrison Narcotic Act, we think its safe to say he is guilty of 'an act of baseness . . . contrary to the accepted and customary rule of right and duty between man and man' as manifested by Legislation by most of the states and the United States and by common consent.

In the case *sub judice*, Mr. Rednor testified that he was well aware of the dangerous, narcotic-type substances that he distributed and dispensed and further knew both the medical and non-medical effects that unauthorized use of controlled dangerous substances produced. He opined that narcotics contribute to 80 percent of the crime today in this country. That which was applicable to members of the medical profession in *DuVall, supra*, is equally applicable to the pharmacist herein.

Accordingly, I **FIND** that the crimes alleged in Counts 1, 2 and 3 of the Indictment returned against Gerald B. Rednor are such as involve moral turpitude. I further **FIND** that it is not necessary in a proceeding of this nature that the agency conclusively prove the truth of the charges beyond a reasonable doubt. Rather, pursuant to *N.J.A.C. 10:49-1.17*, suspension, preliminary to conviction, may be

---

Div. of Medical Assistance v. Rednor  
Cite as 5 *N.J.A.R.* 430

---

based upon evidence adequate to create a reasonable suspicion that cause exists, and reasonable suspicion of the existence of a cause described in sub-section (d) (conviction of a crime involving moral turpitude) may be established by the return of a Grand Jury Indictment. *See, N.J.A.C.* 10:49-1.17(j)5. Furthermore, whether or not Gerald Rednor will be convicted of the crimes charged in the Indictment returned against him is not an issue herein, unless it can be demonstrated that there is no reasonable possibility whatsoever that said charges will be sustained. *Bell v. Burson*, 402 *U.S.* 535 (1971). Since the provider does not dispute the factual or jurisdictional assertions set forth in the Indictment, but rather claims to have a legal defense thereto—that he was coerced by threats and intimidation—it is not for this tribunal to determine his guilt or innocence. That determination will be made by another court on another day. The issue here is rather whether reasonable suspicion of the existence of a cause of action involving moral turpitude exists. The un rebutted assertions set forth in the Indictment lead inescapably to the conclusion that reasonable suspicion does exist in accordance with *N.J.A.C.* 10:49-1.17(j)5.

With respect to whether the Director of the agency abused his discretion in suspending the provider's privileges pending the outcome of the trial of the indictment, provider's proofs were insubstantial and inconclusive as to the adverse effect upon the public interest with respect to the deprivation of provider's customers of the ability to obtain medicaid services elsewhere. Furthermore, the agency, through its Pharmaceutical Services Coordinator, alleged that no complaints or other indicia of service inadequacies were brought to its attention. Accordingly, it cannot be said that a preponderance of the evidence demonstrates that the decision to suspend adversely affected the public interest.

However, the authority of the Director to suspend is specifically and expressly set forth in *N.J.A.C.* 10:49-1.17(j) as follows:

Conditions for suspension are:

1. Suspension shall be imposed only upon approval of the director of the division and *upon approval of the Attorney General*, except as otherwise provided by law.
2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the director of the division *and of the Attorney General*, and shall be rendered in the best interests of the division.

---

Div. of Medical Assistance v. Rednor  
Cite as 5 *N.J.A.R.* 430

---

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.
4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence of [*sic*] absence of affirmative facts.
5. Reasonable suspicion of the existence of a cause described in subsection (d) of this section may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, *by grand jury indictment*, or by evidence that such violations of civil or criminal law did in fact occur.
6. A suspension invoked by the division for any of the causes described in subsection (d) of this section may be the basis for the imposition of a concurrent suspension by another agency, which may impose such suspension *without the approval of the Attorney General*. [Emphasis added]

It is interesting to note that the conditions for debarment, as contrasted with those for suspension, are set forth immediately preceding the conditions for suspension as follows:

- (e) Conditions for debarment are:
1. Debarment shall be made *only upon approval of the Director of the Division*, except as otherwise provided by law. [Emphasis added]

Significantly, the decision to debar may be made by the Director alone. Furthermore, debarment may not occur until after conviction of a crime involving moral turpitude, whereas suspension is authorized prior thereto. Accordingly in such cases, where suspension is sought prior to conviction, the regulations specifically provide for the express approval of the Attorney General, in addition to that of the Director. In the present matter, the record is completely devoid of any proofs demonstrating that the provider's proposed suspension was approved by the Attorney General. The proofs demonstrate the contrary. Linda Seems, who prepared the Notices of Suspension for the agency, testified that the only document in provider's agency file was the copy of the Indictment. Such approval is a jurisdictional prerequisite for suspension. Therefore, the absence of the Attorney General's approval renders the suspension unauthorized, nugatory, null and void. Accordingly, I so **FIND**.

---

Div. of Medical Assistance v. Rednor  
Cite as 5 *N.J.A.R.* 430

---

It is, therefore, **ADJUDGED** that the suspensions of September 18, 1981, of Gerald B. Rednor, R.P., and Schnorbus Pharmacy from participation in any capacity in the New Jersey Medical Assistance and Health Services (Medicaid) Program and the Pharmaceutical Assistance to the Aged (PAA) Program pending resolution of the indictment returned, pursuant to Notice thereof from Thomas M. Russo, Director, Division of Medical Assistance and Health Services, be and are hereby **RESCINDED**.

**After reviewing this Initial Decision, the  
Director, Division of Medical Assistance and Health  
Services on March 22, 1982, issued the following Final Decision:**

The Director finds that the record concerning the issue of the Attorney General's approval of the Notices of Suspension was incompletely developed.

After reviewing the record, the Director has determined that the judge failed to advise the parties that the matter of the Attorney General's approval had become an issue in this case.

The Attorney General's approval of the Notices of Suspension were not addressed in the Prehearing Order and this issue was never raised by either the litigants or the judge during the conduct of the hearing.

Therefore, it is apparent that the parties were unaware of the significance placed on this issue by the judge until he rendered his initial decision.

Under our current system of jurisprudence it cannot be disputed that during the course of a trial, the judge has the authority and the obligation to raise any additional issues which he may consider necessary for a just decision in the case.

However, the authority of the judge to raise significant issues on his own initiative is coupled with the responsibility to advise the litigants in order to assure a full and fair submission of evidence upon which he may render his decision.

Unfortunately, the judge failed to advise the parties of his concern about the absence of the Attorney General's approval of the Notices of Suspension consequently, this resulted in the creation of an incomplete record on this issue.

Furthermore, the testimony upon which the judge based his finding that the suspension was not approved by the Attorney General, is at best, inconclusive.

In essence, Ms. Seems testified that she was given a case file which contained only a copy of the indictment and was requested to prepare the Notices of Suspension which she then submitted to her superiors.

---

Div. of Medical Assistance v. Rednor  
Cite as 5 *N.J.A.R.* 430

---

The inferences necessary to form a basis of proof that the suspensions lacked the Attorney General's approval, cannot be drawn from such limited testimony. This testimony is insubstantial and inconclusive because it does not prove the existence or non-existence of either written or oral approval of suspensions based upon indictments that the Attorney General may have given to Ms. Seem's superiors and about which she had no personal knowledge.

Furthermore, the Director must reject the Deputy Attorney General's assertion that her representation of the Agency at the hearing constitutes proof that the suspension was authorized by the Attorney General. To accept this proposition, would require the Director to make a speculative finding of fact based on an incomplete record resulting from an unrevealed issue.

For the reasons set forth herein, the Director concludes that the record concerning the issue of the Attorney General's approval of the Notices of Suspension is incomplete and does not substantiate a finding that the suspensions were unauthorized, nugatory, null and void.

Therefore, it is on this 22nd day of March, 1982, ordered

That the judge's recommended decision that the suspensions be rescinded, is hereby rejected; and

It is further ordered:

That this matter be remanded to the Office of Administrative Law for the taking of additional testimony on the issue of the Attorney General's approval of the Notices of Suspension; and

It is further ordered:

That the Providers will remain suspended from the Medicaid Program pending the completion of the remanded proceedings and the issuance of a Final Agency Decision in this matter; and

It is further ordered:

That the Office of Administrative Law schedule all necessary proceedings to implement the terms and conditions of this Order.