[* 1]

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EDMEAD Justice

PART 35

PEDRO ESPADA

- v -

NIRAV SHAH, M.D

INDEX NO. 105461/11

MOTION DATE

MOTION SEQ. NO.

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

In accordance with the annexed Memorandum Decision and upon the parties' oral argument, it is hereby

ORDERED and ADJUDGED that the application of petitioners Pedro Espada Jr. and Gautier Espada a/k/a Pedro G. Espada seeking an annulment of the determination of the respondents Nirav R. Shah, M.D., M.P.H., Commissioner, New York State Department of Health, and the New York State Office of the Medicaid Inspector General, is denied and the proceeding is hereby dismissed; and it is further

ORDERED that petitioners shall serve a copy of this order with notice of entry upon all parties within 5 days of entry.

This constitutes the decision and order of the Court.

Dated: 8/3/11

HON. CAROL EDMEAD J.S.C.

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

----------X

In the Matter of PEDRO ESPADA, JR. and
GAUTIER ESPADA a/k/a PEDRO G. ESPADA,
Petitioners,

Index No. : 105461/2011

For a Judgement/Order pursuant to
Article 78 of the Civil Practice Law and Rule,

-against-

NIRAV R. SHAH, M.D., M.P.H.,
Commissioner, New York State Department of Health,
New York State Office of the Medicaid Inspector General,
Respondents.

----------X

HON. CAROL R. EDMEAD, J.S.C.

MEMORANDUM DECISION

In this Article 78 proceeding, petitioners Pedro Espada Jr. ("Pedro Espada") and Gautier Espada a/k/a Pedro G. Espada ("Gautier Espada") (collectively, "petitioners") seek an order annulling the determination of the respondents Nirav R. Shah, M.D., M.P.H., Commissioner, New York State Department of Health (the "Commissioner") ("DOH"), and the New York State Office of the Medicaid Inspector General ("OMIG") (collectively, "respondents"), which excluded petitioners from participating in New York State's Medical Assistance ("Medicaid") program following their federal indictments for embezzlement, theft and misapplication of federal funds.[1]

For the reasons set forth below, petitioners' application is denied.

Background Facts

Petitioner Pedro Espada, a former member and majority leader of the New York State

[1]In December 2010, Pedro Espada and Gautier Espada pleaded not guilty to five charges of siphoning more than half a million dollars in federal money from the nonprofit health care network they operated in the Bronx.

Senate, is a CEO of the Soundview HealthCare Network ("Soundview"), a nonprofit healthcare network in the Bronx which provides services to the poor and medically underserviced community. Pedro Espada has served in his capacity as CEO pursuant to an employment contract with Soundview. His son Gautier Espada is employed by Soundview as the Director of Environmental Care, in charge of the facility's maintenance, security and operations. OMIG is an independent entity within the New York State Department of Health (the "Department"),[2] which audits and investigates Medicaid providers, such as Soundview, and other persons to ensure that only qualified individuals are involved in the rendering of services to Medicaid recipients.

On or about December 14, 2010, petitioners were indicted by the United States District Court, Eastern District of New York, on the charges of conspiracy to commit theft, embezzlement and misapplication of federal funds received by Soundview, by diverting them for their own personal use.[3] Following the indictments, OMIG took action,[4] pursuant to 18 NYCRR §515.7 of the Regulations of the Department of Social Services (the "Regulations"), entitled "Immediate Sanctions," to exclude petitioners "from participation in the Medicaid program" insofar as they were indicted for acts related to management and administration of medical care and services at Soundview, a Medicaid-reimbursed facility.

Upon petitioners' appeal, OMIG upheld its earlier determination (see letters to petitioners dated April 8, 2011, exhibit A). Petitioners now bring this Article 78 proceeding challenging that

---

[2] On July 26, 2006, New York established OMIG as an independent, formal state agency in the New York State Department of Health, for combating Medicaid fraud (NY Public Health Law §30; Michael A. Morse, Protecting the Empire: a Practitioner's Primer on the New York False Claims Act, New York State Bar Journal, February, 2010).

[3] *See United States of America v Pedro Espada, Jr. and Pedro Gautier Espada*, Indictment, case no: CR 10 -985 [EDNY 2010]. The matter is set down for criminal trial in October, 2011.

[4] See Notice of Immediate Agency Action dated January 4, 2011 ("the Notice").

determination.[5]

Petitioners challenge the determination by OMIG as arbitrary and capricious on the following grounds: (1) OMIG lacks authority to sanction petitioners as they are not "providers" for purposes of the statute; (2) the severe sanction of exclusion is excessive in light of the presumption of innocence associated with criminal indictments; (3) other agencies (*i.e.*, Federal Inspector General), and OMIG's own ongoing audit have "not yet" found any wrongdoing; and (4) OMIG failed to set forth rational bases for the exclusion.

It is argued that petitioners are not "providers," but rather, management employees of a provider, *i.e.*, Soundview. Since Part 515 of the statute, which includes section 515.7 (b), is entitled "Provider Sanctions," only those who are "providers" may be "excluded." Further, according to section 515.1 (6) within the same chapter, "exclusion" means "that items of medical care, services or supplies furnished by the *provider* or ordered or prescribed by the *provider* will not be reimbursed under the medical assistance program." However, petitioners had never enrolled or had a contractual relationship with Medicaid, and no Medicaid funds were directly paid to them (Nathan Dembin Affirmation, ¶9). And finally, the application of the statute does not extend to all "persons," but only to persons related to the Medicaid program.

Further, OMIG can only terminate participation in Medicaid pursuant to 18 NYCRR §504.7 based on two grounds: contractual and for cause, neither of which is present here. And, since Soundview has not been sanctioned, neither can petitioners be sanctioned as "affiliates of a provider."

---

[5] The court notes that after the New York Attorney General filed an opposition on behalf of respondents herein, at the petitioners' request, this court granted an adjournment of the oral argument to August 3, 2011, provided all the papers were submitted by July 27, 2011.

Next, even if the statute were applicable to petitioners, OMIG failed to set forth a rational basis for the exclusion. OMIG's determination is irrational since OMIG "automatically imposed the most severe sanctions of "exclusion" when the allegations and charges against petitioners remain unproven until they result in conviction. OMIG could have applied a less strict punishment, set forth in section 515.3 (3), *i.e.,* conditional participation under certain safeguards secured by the Federal Inspector General's office, and reserving an option to reassess the situation after the completion of the criminal trial.

Furthermore, publication of petitioners' names on the "excluded provider list" subjected them to "ignominy" and "defamed their [. . .] achievements and accomplishments" (Affirmation, ¶18) and damaged petitioners' "standing in the community and their reputation (*id.*). And, such preemptive exclusion interferes with petitioners' economic relationship with their employer Soundview, *i.e.*, it "deprives Soundview of its essential and necessary employees, integral to [its] growth," and petitioners of their employment and compensation.

In opposition, respondents argue that the court should uphold OMIG's determination and dismiss petitioners' proceeding because OMIG's determination was supported by facts, had a rational basis and was expressly permitted if not mandated by the applicable regulation. Under the broad language of 18 NYCRR § 515.7(b), OMIG is authorized to take an action for an *immediate* sanction against petitioners, based on the facts that petitioners were indicted for multiple acts of diverting funds properly belonging to Soundview, which should have been used for the benefit and care of its patients, including schemes involving misuse of corporate credit cards, personal conversion of rental payments belonging to Soundview, and use of corporate subsidiaries of Soundview for personal benefit (see Indictment, exhibit 2). Thus, it was rational for OMIG to conclude that petitioners were not reliable persons and should not be providing

administrative or management services to a facility operating under the Medicaid program.

Further, the title of the applicable regulation Part 515, "Provider sanctions," does not trump the actual provisions of the regulation (*e.g.*, § 515.7(b)), since the text of a statute takes precedence over its title. The regulations contemplate that some providers are institutions, and that certain persons, including administrators, a category that includes petitioners herein, may be excluded from Medicaid independently of the institutions, if those persons are found to be unreliable or untrustworthy. The charges in the indictment refer to the criminal acts, related to petitioners' management and administrative services relating to furnishing medical care. Thus, the notice of indictment was a sufficient basis for OMIG to conclude that petitioners are not reliable persons and should not be providing administrative or managerial services to a facility operating under the Medicaid program.

Further, petitioners' presumption of innocence argument has been consistently rejected by the courts when argued with respect to 18 NYCRR §517. Similarly, the pendency of audits of non-party Soundview by other agencies, *i.e.*, the Federal Inspector General, or auditors from OMIG itself is not a basis in regulation or law to preclude exclusion.

Finally, respondents were not required to set forth their reasoning for the exclusion of petitioners, as long as it was rational. And the exercise of such discretion was neither arbitrary nor capricious since OMIG acted reasonably and responsibly in fulfilling its statutory responsibilities to protect the citizens of New York and the integrity of the Medicaid program by excluding the petitioners.

As to irreparable harm to Soundview, petitioners' management positions at Soundview can be substituted, and Soundview can continue as an enrolled Medicaid provider, rendering services to recipients and billing Medicaid for such services. And, with respect to damage to

their livelihoods based on any alleged unlawful acts of OMIG, petitioners may seek relief through the State Court of Claims. In any event, projected damage to their livelihoods is insufficient reason to reverse their lawful exclusions from the Medicaid program.

In reply, petitioners again argue that they are not providers within the meaning of the statute and, since they never directly received Medicaid payments, they cannot be "excluded" from receiving such payments in the future. The "plain and ordinary meaning" of the words "provider" and "exclusion" in the statute, does not allow for such broad exclusion to apply to petitioners who are non-providers. If the legislature so intended, it would have specifically included the language permitting the exclusion of private citizens who are non-providers.

Further, to the extent that the parties herein disagree as to the statutory meaning of the "provider," the language of the statute is ambiguous, and thus, the rule that the text of the statute takes precedence over its title *if the text is precise and unambiguous*, does not apply.

Finally, since Soundview has not been sanctioned, OMIG cannot sanction petitioners as "affiliates" of a "person" as provided for by §515.3 (c), which states that "whenever the Department sanctions a person," it may also sanction any affiliate of that person on a case-by-case basis.

Discussion

On judicial review of an agency determination under CPLR Article 78, the courts must uphold the agency's exercise of discretion unless it has no rational basis or the action is arbitrary and capricious (*Pell v Bd. of Ed. Union Free School District,* 34 NY2d 222, 230-231[1974]). An

action is arbitrary and capricious, or an abuse of discretion, when the action is taken "without sound basis in reason and ... without regard to the facts" *(id.)*. Further, where, as here, the agency's determination involves factual evaluation within an area of the agency's expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference (*Flacke v Onondaga Landfill Systems, Inc.*, 69 NY2d 355, 363, 514 NYS2d 689, 693 [1987]; *Pell*, 34 NY2d at 231, 356 NYS2d at 839; *see also Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417, 503 NYS2d 298, 305 [1986]).

Further, an agency's interpretation of the statutes it administers is entitled to deference, if the interpretation is not unreasonable or irrational (*Partnership 92 LP v State Div. of Housing and Community Renewal*, 46 AD3d 425, 428 [1st Dept 2007]; *Rudin Management Co., Inc. v New York State Div. of Housing and Community Renewal*, 215 AD2d 243 [1st Dept 1995]; *Matter of Salvati v Eimicke*, 72 NY2d 784 [1988], *rearg denied* 73 NY2d 995 [1989]). Thus, where the agency's interpretation is founded on a rational basis, that interpretation should be affirmed even if the court might have come to a different conclusion (*Mid-State Management Corp. v New York City Conciliation and Appeals Board*, 112 AD2d 72 [1st Dept 1985], *affd* 66 NY2d 1032 [1985]).

OMIG's authority over petitioners' exclusion from the Medicaid program must be upheld as it is consistent with the applicable DOH's regulations 18 NYCRR 515.3[6] and 18 NYCRR 515.7 (b)(2).

Where, as here, the statutory language is "clear and unambiguous, it should be construed

---

[6] Section 515.3 entitled "Authority to sanction," provides that:

(a) Upon a determination that a person has engaged in an unacceptable practice, the department may impose one or more of the following sanctions:

(1) exclusion from the program for a reasonable time.

so as to give effect to the plain meaning of [the] words used" (*People v Witthuhn*, 172 Misc 2d 749, 658 NYS2d 830 [Ct Cl 1997], *citing People v Finnegan*, 85 NY2d 53, 58, 623 NYS2d 546 [1995]; *see also*, McKinney's Cons Laws of NY, Book 1, Statutes, §§ 76 and 92 [a], [b]).

Section 515.3, entitled "Authority to sanction," provides that:

> (a) Upon a determination that a person has engaged in an unacceptable practice, the department may impose one or more of the following sanctions:
> (1) exclusion from the program for a reasonable time.

Further,
Section 515.7, entitled "Immediate sanctions," provides in relevant part:

> (a) Notwithstanding any provision of this Title to the contrary, the department,[7] upon notice to the person, may take immediate action under this section,
> (b) Upon receiving notice of an indictment which charges a person with committing an act which would be a felony under the laws of New York and which *relates to or results from*: (1) the furnishing or billing for medical care, services or supplies; or (2) *participation in the performance of management or administrative services relating to furnishing medical care, services or supplies, the department may immediately exclude the person and any affiliates.*
> [emphasis added].

Thus, the language of these sections is both clear and unambiguous in specifically authorizing OMIG to impose an immediate sanction against a person who has been indicted for a criminal act which "relates to or results from" participation in the management or administrative services relating to medical care or services.

Here, petitioners were indicted for multiple felonious acts of embezzlement, theft and misapplication of federal funds by siphoning more than half a million dollars in federal money from Soundview (*see* Indictment, exhibit 2). These charges refer to criminal acts, "related to"

---

[7] As amended in 1996, section 363-a (1) of the Social Services Law provides that, "The [DOH] shall ... act as the single [S]tate agency to supervise the administration of [Medicaid] in this [S]tate ...." and that all of the statute's references to "the department" should be understood to mean the Department of Health (see Social Services Law §363-a (1); L. 1996, c. 474).

petitioners' management or administrative services at Soundview, an enrolled Medicaid provider. By virtue of their executive positions as the CEO (Pedro Espada) and the Director of Environmental Care (Gautier Espada) at Soundview, petitioners "participated in the performance of *management or administrative services relating to* furnishing medical care, services or supplies," as contemplated by §515.7(b) (2). According to Pedro Espada's employment agreement with Soundview, his responsibilities as CEO included "supervision of all phases of operation and maintenance of any and all facilities, programs or corporations operated, owned, maintained or supervised by [Soundview] including, but not limited to, diagnostic and treatment health care centers for the prevention, diagnosis or treatment of human diseases, pain, injury, deformity or physical conditions" (see Pedro Espada's employment agreement, respondents exhibit 1). And, in addition to his responsibilities as the Director of Environmental Care, Gautier Espada managed a company providing janitorial services to Soundview, which was solely owned by Pedro Espada (*see* Indictment, ¶11).

These facts support OMIG's determination that the purported criminal acts, for which petitioners were charged, was a sufficient basis to conclude that petitioners were not reliable persons and should not be providing administrative or management services to a facility operating under the Medicaid program.

And, while the court "need not look to legislative history if the statutory language is clear and unambiguous" (*Kirsh v U.S*, 131 FSupp2d 389 [SDNY 2000], *citing Robinson v Shell Oil Co.*, 519 US 337, 340, 117 SCt 843 [1997]), since as of this date, the court finds no New York cases on point, the court looked to the legislative intent behind the Regulations for further support of its conclusion.

The review of the legislative history reveals that the regulations at issue were written and

last amended in 1996, well before OMIG was created within the DOH (*see Mihailescu v Sheehan*, 25 Misc 3d 258, 885 NYS2d 386 [Sup Ct, New York County 2009]). In 1996, the legislature reposed in the DOH the responsibility for administering Medicaid, in place of the Department of Social Services ("DSS") (L. 1996, c. 474). As a result, the DOH became subject to Medicaid regulations previously promulgated by the DSS, *including provisions governing sanctions of providers* (18 NYCRR, part 515)(*see Mihailescu v Sheehan*, 25 Misc 3d 258, 885 NYS2d 386 [Sup Ct, New York County 2009]).

In August 2005, in the wake of a series of newspaper articles reporting that widespread Medicaid fraud and waste had cost the State of New York billions of dollars annually, the Governor by its Executive Order (No. 140), as amended by the Executive Order (No. 140.1), created OMIG within the State's Executive Department (Lytle, *Meet the State's Brand New Medicaid Fraud Legislation*, NYLJ, July 10, 2006, at 9, col. 1), whose central mission was to "prevent [. . .] Medicaid fraud, waste and abuse" (9 NYCRR § 5.14). A few months later, the legislature enacted Title III of the Public Health Law (effective as of July 26, 2006) which established anti-fraud controls for *all aspects* of the operation of health care centers and clinics (*see Mihailescu v Sheehan*, 25 Misc 3d 258, 885 NYS2d 386 [Sup Ct, New York County 2009]; Office of the Medicaid Inspector General Medicaid Work Plan SFY: 2009-2010, 353 PLI/Est 259, 3/22/2010).

The new statute authorized the Inspector General, among other things, to "solicit, receive and investigate complaints related to fraud and abuse within [Medicaid]" (Public Health Law § 32 [4]), and "to pursue civil and administrative enforcement actions against *any individual or entity* that engages in fraud, abuse or illegal or improper acts or unacceptable practices perpetrated within the medical assistance program, including but not limited to [. . .] *in*

accordance with state and federal laws and regulations, exclusion of providers, vendors and contractors from participation in the program" (Public Health Law § 32[6][c] and [d], as amended by 2009 New York Assembly Bill No. 9708, New York Two Hundred Thirty-Third Legislative Session, March 24, 2010 [emphasis added]). Thus, in view of the concern about the spread of the Medicaid fraud, the Legislature clearly intended that the sanctioning provisions of the statute apply to *individuals* like petitioners herein who have been indicted for "fraud, abuse or illegal or improper acts or unacceptable practices perpetrated within the medical assistance program."

Petitioners' contentions Part 515 of the Regulations does not apply to them because they are not providers but rather, the "affiliates" of a provider, and that Part 515 applies only to *providers*,[8] based on its title ("Provider Sanctions") and the language of the individual sections,[9] are unpersuasive and contrary to the existing canons of statutory interpretation.

"While the title of a statute might in some cases aid in its interpretation, it is the language of the actual statutory provisions which determines the meaning of the act" (*People ex rel. Arcara v Cloud Books, Inc.*, 65 NY2d 324, 491 NYS2d 307 [1985]). "The title of a statute may be resorted to ... *only in case of ambiguity* in meaning, and it may not alter or limit the effect of unambiguous language in the body of the statute itself" (*People v Taylor*, 42 AD3d 13, 835 NYS2d 241 [2d Dept 2007], *citing People ex rel. Arcara v Cloud Books,* 65 NY2d 324, 329, 491 NYS2d 307, *revd on other grounds* 478 US 697, 106 SCt 3172 [emphasis added]; *Squadrito v*

---

[8] "Provider is defined in relevant part as "[a]ny person who has enrolled under the medical assistance program to furnish medical care, services or supplies, or to arrange for the furnishing of such care, services or supplies; or to submit claims for such care, services or supplies for or on behalf of another person" (18 NYCRR § 504.1 (d) (19)).

[9] As noted, petitioners also point to the definition of "exclusion" in section 515.1 (6), containing references to "providers," and section 515.3 (c).

Griebsch, 1 NY2d 471, 475, 154 NYS2d 37 [1956]; McKinney's Cons Laws of NY, Book 1, Statutes §123).

Since, as the court indicated, the language of §515.7 is clear and unambiguous, the title of the chapter 515 ("Provider Sanctions") cannot be viewed as controlling so as to limit the application of §515.7 exclusively to enrolled "providers." Section 515.7, by its terms, applies to any "person" who has been indicted for a criminal act which "relates to or results from" participation in the management or administrative services relating to medical care. The regulations define a "person" as including "natural persons, corporations, partnerships, associations, clinics, groups and other entities" (18 NYCRR § 504.1(d)(17)). The statute, therefore, is unambiguously broader in its reach than the title would suggest, and, as noted above, there is no indication that the Legislature intended its application to be restricted only to enrolled "providers." Consequently, it applies to petitioners herein, who are clearly "natural persons" and who have been indicted for the acts enumerated in the statute (see §515.7 (b)(2), *supra*).

Furthermore, that petitioners had no contractual relationship with Medicaid and no Medicaid funds were *directly* paid to them, is of no moment, since petitioners do not argue that their activities were not connected or related in *any* way to Medicaid funds.[10] Moreover, petitioners' assertions of the magnitude of Pedro Espada's purportedly exclusive role in "raising funds and federal grants" and the extent of harm that will allegedly result from such exclusion, *i.e.*, the "loss of employment and income" by petitioners (Affirmation in support of petition ¶6; Pedro Espada's petition ¶6; Gautier Espada's petition, ¶¶8-9), further demonstrate that petitioners

[10] In this regard, the court notes, that petitioners' assertions that they had nothing to do with Medicaid funds appears to run counter to their strenuous objection to their exclusion from Medicaid, rendering it even less persuasive that such exclusion materially affects them, *i.e.*, that it "*deprives [petitioners] of [their] compensation*" (see the Letter of Appeal, 2/17/2011, exhibit 4 to opposition, at p. 6).

were persons, whose acts were *related to* medical care, services or supplies funded by the Medicaid.

Thus, OMIG's exclusion of petitioners from the Medicaid program is consistent with the applicable DOH's regulations (18 NYCRR 515.3 and 18 NYCRR 515.7 [b][2]), and petitioners cannot hide behind the semantics of the Regulations to operate the health clinic with little or no accountability, in challenging the action directed at preventing precisely the kinds of the abuse of the Medicaid funds, contemplated by the legislature.

Finally, the court sees no merit in petitioners' argument, that the sanction of exclusion imposed by the OMIG is excessive since petitioners have not been found guilty. Section 515.7 (b) (2), the constitutionality of which is not challenged here, does not require that the persons be convicted. It clearly authorizes the department [through OMIG] to take an immediate action under this section, "upon receiving notice of an *indictment*" (see 515.7 [b][2], *supra).*[11]

Neither does the exclusion deprive petitioners of due process since the Notice from OMIG afforded them the right to submit written arguments within 30 days challenging the suspension on a number of grounds. Courts have upheld similar regulatory schemes that provide for immediate suspensions with an opportunity to be heard later (*see*, *Federal Deposit Insurance Corp. v Mallen*, 486 US 230, 108 SCt 1780, 1787-92 [1988][suspension of an indicted bank officer without prior hearing did not violate due process where there was a post-suspension opportunity to present argument]; *see Plaza Health Laboratories, Inc. v Perales*, 878 F2d 577 [2d Cir 1989]).

The court has considered petitioners' remaining arguments and finds them unavailing.

---

[11] The court also notes that the facts in the instant proceeding do not compel the conclusion that the "penalty imposed was 'so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness'" (*Schaubman v Blum*, 49 NY2d 375, 379, 426 NYS2d 230 [1980]).

Based on the foregoing, the court concludes that the determination by OMIG excluding petitioners from participating in Medicaid, is not arbitrary or capricious and must be upheld. Accordingly, the petition is denied and dismissed in its entirety.

Conclusion

Based on the foregoing, it is hereby

ORDERED and ADJUDGED that the application of petitioners Pedro Espada Jr. and Gautier Espada a/k/a Pedro G. Espada seeking an annulment of the determination of the respondents Nirav R. Shah, M.D., M.P.H., Commissioner, New York State Department of Health, and the New York State Office of the Medicaid Inspector General, is denied and the proceeding is hereby dismissed; and it is further

ORDERED that petitioners shall serve a copy of this order with notice of entry upon all parties within 5 days of entry.

This constitutes the decision and order of the Court.

Dated: August 3, 2011

Hon. Carol R. Edmead, J.S.C.

HON. CAROL EDMEAD