

In the Matter of the Request of

**Rx Now Inc., d/b/a Procure Pharmacy,**  
Medicaid ID # 0307827,  
**Patrick Edward Alcindor, RPh.,**  
Medicaid ID # 01993791,  
**Sourette Alcindor, President, Rx Now, Inc.**

For a hearing pursuant to Part 519 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR) to review the Determination of the Office of the Medicaid Inspector General to exclude those named above from the Medicaid Program and to recover \$1,836,847.64 in Medicaid Overpayments for the period April 17, 2009 through March 18, 2010.

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Before: James F. Horan, Administrative Law Judge

Held at: New York State Department of Health  
90 Church Street  
New York, NY 10007  
8/9/ 2011, 9/8/11, 9/14/11, 9/27/12, 11/26/12

Parties: Office of the Medicaid Inspector General (OMIG)  
Office of Counsel  
217 Broadway, 8<sup>th</sup> Floor  
New York, NY 10007  
BY: Francis Ruddy, Esq.

Rx Now Inc., Patrick Edward Alcindor, RPh.,  
and Sourette Alcindor  
Sauchick Law Group  
641 Lexington Avenue – 15<sup>th</sup> Floor  
New York, NY 10022  
BY: Alec Sauchick Esq.  
8/9/11, 9/8/11& 9/14/11

Sourette Alcindor, Pro Se,  
9/27/12 [Withdrew from case thereafter]

Rx Now Inc., No Appearance  
9/27/12 & 11/26/12

Patrick Alcindor, No Appearance  
9/27/12 & 11/26/12

## Summary and Jurisdiction

The Appellants Rx Now Inc., d/b/a Procure Pharmacy (Procure), a provider under the Medicaid Program, Sourette Alcindor, Procure's President and sole shareholder and Patrick Alcindor, RPh., a provider under the Medicaid Program and Procure's former Supervising Pharmacist, each requested a hearing pursuant to Title 18 NYCRR §519.4 to appeal a determination by the Office of the Medicaid Inspector General (OMIG). The OMIG Determination sought repayment following an audit from the three Appellants, individually and severally, for overpayments totaling \$1,836,847.64, on the grounds that Procure submitted false claims to Medicaid for drugs Procure never dispensed and for unsubstantiated claims with no support from wholesalers' purchase orders. The OMIG also sought exclusion from the Medicaid Program for various periods for Procure, Sourette Alcindor and Patrick Alcindor. At the hearing in this matter, the Appellant Sourette Alcindor withdrew from the case and accepted a two year exclusion from Medicaid [9/27/12 transcript p. 28], the ALJ ruled thereafter that the appeal for Procure had been abandoned [11/26/12 transcript p. 131] and the OMIG also conceded that the agency had recovered the entire \$1,836,847.64 overpayment [9/27/12 transcript p. 30]. The remaining issues in this matter involve whether Patrick Alcindor can contest the \$1,836,847.64 overpayment recovery from Procure and whether OMIG acted appropriately in excluding Patrick Alcindor as a provider. The ALJ rules that Patrick Alcindor lacks any authority to contest the recovery from Procure and that the OMIG acted appropriately in excluding Patrick Alcindor for five years and until reinstatement.

Proceedings and Evidence

The ALJ conducted the hearing in this matter pursuant to New York Social Services Law Articles 1 and 5 (McKinney Supp. 2013), New York Public Health Law (PHL) Article 1 (McKinney Supp. 2013), New York Administrative Procedure Act (SAPA) Articles 3-5 (McKinney 2013) and Title 18 NYCRR Parts 504, 515, 518 & 519.

The OMIG presented as hearing witnesses four current or former OMIG Investigators: Martin Durkin, Steven Burnstill, Ethan Saffer and Maria Baez. No witnesses testified for any of the three Appellants. The OMIG marked for identification eighty-four documents.

The OMIG offered eighty-two into evidence that the ALJ received into the record:

- Exhibit 1 Notice of Pre-hearing Conference 1/6/11,
- Exhibit 2 Notice of Hearing 1/6/11,
- Exhibit 3 Affirmation of Service by Mail,
- Exhibit 4 Entrance Conference Letter 4/5/10,
- Exhibit 5 Letter excluding Patrick Alcindor from Medicaid 5/13/10,
- Exhibit 6 Notice of Proposed Agency Action,
- Exhibit 7 Letter from Jeffrey Granat, Esq.,
- Exhibit 8 Letter from David Glasel, Esq.,
- Exhibit 9 OMIG letter to Granat,
- Exhibit 10 E-mail from Robert Tengeler, Esq.,
- Exhibit 11 OMIG Letter to Glasel,
- Exhibit 12 Glasel letter to OMIG,
- Exhibit 13 OMIG Letter to Glasel,
- Exhibit 14 Tengeler Letter to OMIG,
- Exhibit 15 Notice of Agency Action,
- Exhibit 16 Certified Mail Receipts,
- Exhibit 17 Tengeler Letter to OMIG,
- Exhibit 18 Patrick Alcindor hearing request,
- Exhibit 19 OMIG letter to Alcindor,
- Exhibit 20 [Exhibit pre-marked but never offered into evidence],
- Exhibit 21 OMIG letter to Glasel,
- Exhibit 22 [Exhibit pre-marked but never offered into evidence],
- Exhibit 23 Granat letter to OMIG,
- Exhibit 24 E-mail from OMIG Investigator Durkin,
- Exhibit 25 Email from OMIG Director Ryan to Durkin,
- Exhibit 26 Compact Disc with Excel Spreadsheet,

Exhibit 27 E-mail from A. J. Gagnon at eMedNY to OMIG Investigator Burnstill,  
 Exhibit 28 E-mail Gagnon to Burnstill,  
 Exhibit 29 Checks paid by Medicaid to Rx Now, Inc.,  
 Exhibit 30 Health Dept. (DOH)/Computer Science Corporation (CSC) 11/6/09,  
 Exhibit 31 DOH Memo to CSC 3/12/10,  
 Exhibit 32 Certified Certificate of Incorporation for Rx Now Inc.,  
 Exhibit 33 Certificate of change of service address for Rx Now Inc.,  
 Exhibit 34 Certificate of assumed name for Rx Now Inc. as Procure Pharmacy,  
 Exhibit 35 Felony Complaint New York County Criminal Court 3/18/10,  
 Exhibit 36 Supreme Court Indictment 10/12/10,  
 Exhibit 37 People's Voluntary Disclosure Form,  
 Exhibit 38 OMIG Letter to Kinray, Inc.,  
 Exhibit 39 Kinray E-mail 4/12/10,  
 Exhibit 40 OMIG Letter to Cardinal Health 4/5/10,  
 Exhibit 41 Cardinal Health E-mail 4/26/10,  
 Exhibit 42 OMIG Letter to Amerisource Bergen Drug Corp. 4/5/10,  
 Exhibit 43 Amerisource E-mail 4/30/10,  
 Exhibit 44 OMIG Letter to RDC Wholesalers 4/5/10,  
 Exhibit 45 RDC E-mail 4/12/10,  
 Exhibit 46 OMIG Letter to Auburn Pharmaceutical 4/12/10,  
 Exhibit 47 Auburn E-mail 4/12/10,  
 Exhibit 48 OMIG Letter to Masters Pharmaceutical 7/21/10,  
 Exhibit 49 Masters Letter 10/22/10,  
 Exhibit 50 OMIG Letter to Harvard Group LLC 8/2/10,  
 Exhibit 51 Harvard Group Letter 8/2/10,  
 Exhibit 52 OMIG Letter to Anda 9/13/10,  
 Exhibit 53 Anda Letter 10/18/10,  
 Exhibit 54 OMIG Letter to Top Rx 9/13/10,  
 Exhibit 55 Top Rx E-mail 11/15/10,  
 Exhibit 56 OMIG Letter to Express Medical Supply, Inc.,  
 Exhibit 57 Express Medical Supply, Inc. 10/19/10,  
 Exhibit 58 OMIG Letter to Genetco Inc. 9/20/10,  
 Exhibit 59 Genetco E-mail 9/23/10,  
 Exhibit 60 New York State Education Department (SED) Search Rx Now Inc.,  
 Exhibit 61 SED Search for Kenneth Brown Pharmacist,  
 Exhibit 62 SED Search for Patrick Edward Alcindor Pharmacist,  
 Exhibit 63 Medicaid Enrollment file for Patrick Edward Alcindor,  
 Exhibit 64 Medicaid Enrollment file for Rx Now, Inc. d/b/a Procure Pharmacy,  
 Exhibit 65 SED Pharmacy Board Supervisor Screen,  
 Exhibit 66 Daniel Gonzalez written statement 7/21/10,  
 Exhibit 67 Notice of Change of Supervising Pharmacist 3/1/11,  
 Exhibit 68 Tengeler Letter to OMIG 2/17/11,  
 Exhibit 69 Letter from Harvard Group to OMIG 2/23/11,  
 Exhibit 70 Letter from Harvard Group to OMIG 3/1/11,  
 Exhibit 71 Tengeler letter withdrawing as attorney for hearing,  
 Exhibit 72 Harvard Group sample invoice 3/8/11,

- Exhibit 73 Harvard Group Letter to OMIG concerning Rx Now check statements,
- Exhibit 74 OMIG Letter to Appellants concerning pre-hearing conference,
- Exhibit 75 Subpoena for RX Now Bank Records,
- Exhibit 76 Records in response to Subpoena,
- Exhibit 77 Excel Spreadsheet concerning Rx Now checks to Harvard Group,
- Exhibit 78 New York County Supreme Court Indictment 02981-2011,
- Exhibit 79 Notice of Appearance from Khenkin & Sauchick, P.C.,
- Exhibit 80 Subpoena for Rx Now Bank Signature Card,
- Exhibit 81 Certificate of Disposition Indictment Number 05208-2010,
- Exhibit 82 Certificate of Disposition Indictment Number 02981-2011,
- Exhibit 83 Excel Spreadsheet with corrections for Exhibit 2A,
- Exhibit 84 Excel Spreadsheet with corrections for Exhibit 3.

The OMIG never offered into evidence pre-marked exhibits 20 or 22. The ALJ received seven ALJ exhibits into the record:

- ALJ I 7/13/12 Letter from ALJ to parties setting date to continue hearing,
- ALJ II Richard Harrow, Esq. Letter withdrawing from hearing,
- ALJ III 9/5/12 Letter from ALJ setting 9/27/12 hearing date,
- ALJ IV 10/9/12 ALJ Letter concerning Sourette Alcindor's appeal withdrawal,
- ALJ V 10/30/12 Letter concerning Superstorm Sandy hearing adjournment,
- ALJ VI 11/5/12 Patrick Alcindor letter concerning representation by St. Clair firm,
- ALJ VII Letter from Jeffrey St. Clair denying representation of Patrick Alcindor.

The ALJ Exhibits dealt with either scheduling of the hearing and/or the Appellants' representation by legal counsel. The Appellants submitted no documents into the record.

The record also contained the five volume hearing transcript. The three 2011 transcripts are numbered consecutively 1-466 and the two 2012 transcripts are numbered 1-181.

When this report references a matter in the transcript, the report will list first the hearing date and then the page for that date's transcript at which that matter appears (*e.g.* 11/26/12 transcript, page 179).

Under SAPA § 306(2), all evidence, including records and documents in an agency's possession of which an agency wishes to avail itself, shall be offered and made a part of the record of a hearing. Under Title 18 NYCRR § 519.18(f), computer generated documents prepared by the Department or its fiscal agent to show the nature and amounts

of payments made under the program will be presumed, in the absence of direct evidence to the contrary, to constitute an accurate itemization of the payments made to a provider. In addition to testimony and documents in evidence, and pursuant to SAPA § 306(4), an ALJ may take Official Notice of any matter for which Judicial Notice may be taken.

Under SAPA § 306(1), the burden of proof in a hearing falls on the party which initiated the proceeding. Title 18 NYCRR § 519.18(d) provides that the Appellant bears the burden to show a determination of the Department was incorrect and that all claims submitted were due and payable. Title 18 NYCRR 519.18(h) and SAPA § 306(1) provide that a decision after hearing must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3<sup>rd</sup> Dept. 1984), appeal dismissed 63 N.Y.2d 649.

#### Findings of Fact

The ALJ made the following findings of fact (FF) after affording the parties an opportunity to be heard and after considering the evidence. The items in brackets that follow the findings represent documents in evidence [Ex.], testimony from the record [transcript p.] and matters under Official Notice [ON] on which the ALJ relied in making the findings. In instances in which conflicting evidence appears in the record, the ALJ considered and rejected that other evidence.

1. Procure participated as a pharmacy provider in the Medicaid Program, Provider ID # 03037827, during the audit period April 17, 2009 – March 18, 2010 [Ex. 64, page 2].
2. Patrick Alcindor participated as a provider in the Medicaid Program, Provider ID # 01993791, during the dates at issue in the audit April 17, 2009 – March 18, 2010 [Ex. 64, page 2]
3. Sourette Alcindor owned 100% of the shares in Rx Now, Inc. d/b/a Procure and served as President of the corporation, during the dates at issue in the audit, April 17, 2009 – March 18, 2009 [Ex. 64, page 61].
4. Procure received a license to operate as a pharmacy from the New York State Education Department (SED) on September 30, 2008 [Ex. 64, page 53].
5. The SED license listed Patrick Alcindor as Procure’s Supervising Pharmacist [Ex. 64, page 53].
6. Procure received enrollment as a Medicaid Provider effective on April 7, 2009 [Ex. 64, page 43].
7. The New York State Department of Health (Department) is the single state agency responsible for administering the Medicaid Program in New York State [ON SSL § 363-a, PHL § 201.1(v)].
8. The OMIG is an independent office within the Department with the responsibility for investigating, detecting and preventing Medicaid fraud, waste and abuse and for recouping improper Medicaid payments [ON PHL § 30].

9. Procure did business as a pharmacy at 1728 Amsterdam Avenue in New York County [Ex. 64, page 56].
10. New York City Police undercover officers entered the premises at Procure posing as Medicaid recipients on October 9, 2009, October 29, 2009, November 20, 2009 and January 8, 2010 [Ex. 35; 8/9/11 transcript pages 29-30].
11. The undercover officers presented prescriptions on those dates for the prescription medications Reyataz, Truvada, Prezista and/or Procrit [Ex. 35, 37, 81; 8/9/11 transcript pages 29-30].
12. Patrick Alcindor gave the undercover officers money in exchange for the prescriptions, but dispensed no medications to the officers [Ex. 35, 37, 81; 8/9/11 transcript pages 29-30].
13. Procure subsequently billed the Medicaid Program for filling the prescriptions that the undercover officers presented [Ex. 35; 8/9/11 transcript pages 29-30].
14. The New York City Police Department presented at Procure on March 18, 2010 with arrest warrants for Patrick Alcindor and another Procure employee and with warrants to search the premises at Procure [9/8/11 transcript pages 205-208].
15. Investigators from OMIG and SED were present at Procure that day and entered the premises when the Police had completed their business on that day [9/8/11 transcript page 208].

16. A New York County Grand Jury indicted Patrick Alcindor on October 12, 2010 on three counts of Attempted Grand Larceny in the Third Degree (a Class E Felony) and one count of Attempted Grand Larceny in the Fourth Degree (a Class A Misdemeanor) for billing Medicaid for the Reyataz, Truvada, Presista and Procrit that Patrick Alcindor failed to dispense [Ex. 36, 37].
17. A New York County Supreme Court Jury convicted Patrick Alcindor on February 10, 2012 on three counts of Attempted Grand Larceny in the Third Degree (a Class E Felony) and one count of Attempted Grand Larceny in the Fourth Degree (a Class A Misdemeanor) [Ex. 81].
18. Following the March 18, 2010 arrests at Procure, the OMIG undertook an audit of Procure concerning the ten drugs for which Procure submitted the highest billings, from the time of Procure's Medicaid enrollment in April 2009 until March 10, 2010 [8/9/11 transcript page 38].
19. The OMIG identified the ten highest billed drugs as Truvada 200-300 mg tablet, Atripla tablet, Reyataz 300 mg capsule, Norvir 100 mg softgel cap, Epzicom tablet, Kaletra 200-50 mg tablet, Prezista 600 mg tablet, Combivir tablet, Isentress 400 mg tablet and Mepron 750 mg/5 ml suspension [Ex. 24].
20. During the April 2009-March 2010 audit period, Procure billed Medicaid \$2,793,461.65 for the ten drugs [Ex. 24].

21. The OMIG also sought information from the Appellants concerning the drug wholesalers who provided the ten drugs to Procure [8/9/11 transcript pages 38-40].
22. At Procure on March 18, 2010, the Supervising Pharmacist on that date, [REDACTED], provided the names for five wholesalers; Kinray, Cardinal Health, Amerisource Bergen Drug Corp., Rochester drug Cooperative, Inc., and Auburn Pharmaceutical [8/9/11 transcript pages 88-89; Ex. 15].
23. Former attorneys for the Appellants eventually provided the names for six other wholesalers from which Procure purchased the ten drugs: Masters Pharmaceutical, The Harvard Group, LLC., Anda, Top Rx, Express Medical and Genetco [Ex. 7, 12, 14].
24. The OMIG then contacted the eleven wholesalers to obtain purchase orders from the wholesalers for Procure's purchases of the ten drugs during the audit period [Ex. 38, Ex. 40, Ex. 42, Ex. 44, Ex. 46, Ex. 48, Ex. 50, Ex. 52, Ex. 54, Ex. 56, Ex. 58].
25. The OMIG concluded from the wholesalers' responses that the purchase orders failed to substantiate 65.75% of the claims that Medicaid paid to Procure during the audit period [Ex. 15, Ex. 39, Ex. 41, Ex. 43, Ex. 45, Ex. 47, Ex. 49, Ex. 51, Ex. 53, Ex. 59].
26. The OMIG issued a Notice of Agency Action on November 22, 2010 in which the OMIG announced the intent to recover restitution from the

three Appellants, jointly and severally, amounting to \$1,836,847.64 [Ex. 15].

27. The OMIG identified the \$1,836,847.64 as the amount of the unsubstantiated claims [Ex. 15].
28. The OMIG began withholding Medicaid payments from Procure on March 22, 2010, pursuant to the authority under Title 18 NYCRR §518.7 [Ex. 68].
29. The OMIG was able to recover the entire \$1,837,847.64 in alleged overpayments from Procure through the withholding [Ex. 68; 9/27/12 hearing transcript page 30].
30. Sourette Alcindor advised the Medicaid Program by letter on October 20, 2010 that she wished to terminate Procure's Medicaid Provider Number effective on October 4, 2010 [Ex. 64, page 13].
31. Former attorneys for the Appellants Sourette Alcindor and Procure submitted a letter to the OMIG on February 17, 2011 that attached invoices from Harvard Drug Group and a listing of checks that Procure allegedly used to purchase the top ten drugs from the eleven wholesalers at issue in this case [Ex. 68].
32. The February 17, 2001 letter argued that the invoices and the check listing showed that Procure purchased the ten drugs in quantities beyond what the OMIG audit revealed and that demonstrated that there was no overcharge [Ex. 68].

33. The OMIG provided that information to Harvard Drug Group and Harvard responded that the invoices attached to counsel's February 17, 2011 letter were not invoices that Harvard Drug Group generated [Ex. 69, Ex. 70].
34. The OMIG also issued a subpoena for bank records from the checking account that the Appellants allegedly used in making the purchases to which the February 17, 2011 letter referred [Ex. 75, 9/27/12 transcript pages 49-50].
35. After analyzing the bank records in the response to the subpoena, the OMIG determined that almost all of the checks referenced in the check listing went to payees other than the eleven drug wholesalers [Ex. 76, Ex. 77; 9/27/12 transcript pages 49-50].
36. A New York County Grand Jury indicted Patrick Alcindor in June 2011 on two counts for Tampering With Physical Evidence, an E Felony, for introducing false bank records and false Harvard Drug Group invoices in an official proceeding [Ex. 78].
37. A New York County Supreme Court Jury convicted Patrick Alcindor on both Tampering counts on February 10, 2012 [Ex. 82].
38. New York State Supreme Court Justice Edward J. McLaughlin sentenced Patrick Alcindor to 6.5 to 13 years in prison, on March 15, 2012, upon the convictions for Attempted Grand Larceny and Tampering [Ex. 81, Ex. 82].

39. Patrick Alcindor was incarcerated during the September 27 and November 26, 2012 hearing days [ALJ I].
40. Sourette Alcindor withdrew her request for appeal during the September 27, 2012 hearing day and indicated that she would accept the two year Medicaid exclusion [9/27/12 transcript pages 28-36].
41. The ALJ accepted the withdrawal on the record [9/27/12 transcript page 35].
42. Sourette Alcindor and counsel for OMIG conceded during the September 27, 2012 hearing day that Procure ceased doing business as of October 2010 [9/27/12 transcript pages 28-30].
43. No representative appeared for Procure at the November 26, 2012 hearing day and the ALJ ruled that the appeal on behalf of Procure was abandoned [11/26/12 transcript page 131].

### Issues

- I. May the Appellant Patrick Alcindor seek the refund of the \$1,837,847.36 that the OMIG recovered from Procure as the overpayment in this case?  
The ALJ rules that Patrick Alcindor lacks authority to act as the representative for Procure.
- II. Did the OMIG act appropriately in excluding Patrick Alcindor as a provider in the Medicaid Program for five years, and until reinstated, for

engaging in criminal conduct and unacceptable practices? The ALJ rules that the OMIG acted appropriately in excluding Patrick Alcindor.

### Discussion and Conclusions

Title 18 NYCRR § 518.1(c) defines overpayment as any amount not authorized to be paid under the medical assistance program, whether paid as a result of improper claiming, unacceptable practices, fraud, abuse or mistake. Title 18 NYCRR § 515.2 defines unacceptable practices to include conduct contrary to rules, rates or fees, fraud or abuse, false claims, false statements, failure to disclose, unacceptable record keeping, client deception and failure to meet recognized standards. Under Title 18 NYCRR §515.3(c), whenever the Department sanctions a provider, the Department may also sanction an affiliate of that provider. Title 18 NYCRR §504.1 defines affiliates to include persons with overt, covert or conspiratorial control of the provider. Under Title 18 NYCRR §504.3(e), by enrolling in the Medicaid Program, a provider agrees to submit claims for payment only for services actually furnished and which are medically necessary or otherwise authorized. Title 18 NYCRR § 504.3(h) states that a provider agrees to provide true, accurate and complete information in relation to any claim. Title 18 NYCRR §504.3(i) provides that by enrolling, a provider agrees to comply with the rules, regulations and official directives of the Department.

The ALJ concludes that all the Appellants received legally sufficient notice concerning the issues in the hearing and that all the Appellants received the opportunity to present a defense to the actions to disqualify and /or to recoup payment. All three

Appellants appeared by Alec Sauchik, Esq. for the August 9, 2011, September 8, 2011 and September 14, 2011 hearing days. By the time the hearing commenced, Patrick Alcindor faced multiple criminal charges. Mr. Sauchik objected to proceeding with the hearing because the administrative hearing on the exclusion and restitution could compromise Patrick Alcindor's due process rights in the upcoming criminal trial. The counsel for OMIG, Mr. Ruddy, requested that the hearing begin so that OMIG could present the witnesses Durkin, Burnstill and Saffer because those gentlemen were retired or about to retire and OMIG feared that the witnesses would be unavailable or difficult to contact if there was a delay in the hearing's commencement. The ALJ ruled that the hearing would commence to receive the testimony from witnesses Durkin, Burnstill and Saffer and the hearing would then enter hiatus until the criminal trial's completion. Due process requires no delay in commencing an administrative hearing because a pending criminal proceeding arises from the same facts, Alesko v New York State Liquor Authority, 29 A.D.2d 84, 285 N.Y.S.2d 696 (1<sup>st</sup> Dept. 1967) affd. 21 N.Y.2d 778; Langemyr v. Campbell, 27 A.D.2d 942, 279 N.Y.S.2d 41 (2<sup>nd</sup> Dept. 1967) affd. 21 N.Y.2d 796; Matter of Baumeister v. Bar Association of Erie County, 38 A.D.2d 139, 327 N.Y.S.2d 893 (4<sup>th</sup> Dept. 1972). The Durkin, Burnstill and Saffer testimony came in during the August 8, 2011, September 9, 2011 and September 14, 2011 hearings days and the ALJ then adjourned the hearing. The criminal trial ended with Patrick Alcindor's conviction on February 2, 2012.

The ALJ attempted to reconvene the hearing following the criminal conviction, in consultation with Mr. Ruddy and Mr. Sauchik. Mr. Sauchik indicated, however, that he no longer represented any of the Appellants. The ALJ advised all parties by letter that the

hearing would continue and Patrick Alcindor and Sourette Alcindor requested adjournments until after an appeal from Patrick Alcindor's criminal conviction. Sourette Alcindor also requested an adjournment because she wished to call Patrick Alcindor as a witness and he was unavailable due to his incarceration. The ALJ denied the adjournment requests and the hearing continued on September 27, 2012 and November 26, 2012 [see ALJ I, ALJ III and ALJ IV]. Patrick Alcindor failed to appear on those dates and no one appeared to represent Patrick Alcindor [see ALJ VI, ALJ VII; 11/26/12 transcript pages 124-127].

Turning to Issue I, the ALJ has ruled that Patrick Alcindor lacks authorization to act as representative for Procure and to seek return of any funds that the OMIG withheld from Procure to recover the \$1,836,847.64 overpayment. In a letter to the ALJ on November 5, 2012, Patrick Alcindor indicated that a new attorney would be appearing for Patrick Alcindor and Procure in the hearing thereafter [ALJ VI]. No attorney appeared for either Procure or Patrick Alcindor when the hearing continued on November 26, 2012 [ALJ VII] and the ALJ ruled that Procure's appeal had been abandoned [FF 43]. Under 18 NYCRR § 519.12(a), abandonment occurs when no appellant or appellant's representative appears at a hearing.

The Medicaid Application for Procure identified Sourette Alcindor as the sole shareholder in Rx Now, Inc. d/b/a Procure [Ex. 64], so Patrick Alcindor held no ownership interest in Procure. Sourette Alcindor withdrew from the proceeding on September 27, 2012, by stating her withdrawal on the record pursuant to 18 NYCRR §519.(b)(2). Both the OMIG and Sourette Alcindor agreed that Procure ceased doing business in October 2010. Sourette Alcindor never provided the ALJ with a written

authorization for Patrick Alcindor to act as the representative for Procure, pursuant to the requirements at 18 NYCRR § 519.9. Patrick Alcindor worked as the Supervising Pharmacist at Procure previously, but Kenneth Brown replaced Patrick Alcindor as Supervising Pharmacist effective March 1, 2010 [Ex. 67]. In the November 22, 2010 Notice of Agency Action [Ex. 15], the OMIG sought restitution from Patrick Alcindor individually, or all Appellants severally, for the \$1,836,847.64 overpayment, but the OMIG recovered that entire sum by withholding money due Procure [Ex. 68; 9/27/12 transcript page 30]. No funds for the restitution, therefore, came from Patrick Alcindor individually. For these reasons, the ALJ finds that Patrick Alcindor holds no authorization to challenge the withholding of funds from Procure to satisfy the restitution that OMIG required in the November 22, 2010 Notice of Agency Action. Further, Patrick Alcindor failed to appear at the November 26, 2012 hearing to present any reason why he should have been able to challenge the withholding. In addition, the ALJ notes that the evidence in this case establishes clearly that the OMIG acted appropriately in recovering the \$1,836,847.64 overpayment for the unsubstantiated claims that Procure submitted during the audit period.

On Issue II, the ALJ has ruled that the OMIG acted appropriately in excluding Patrick Alcindor from the Medicaid Program. The OMIG sought to exclude Patrick Alcindor from the Medicaid Program for five years, and until reinstated, under Title 18 NYCRR § 515.3. That regulation at § 515.3(a)(1) permits exclusion for a reasonable time for engaging in unacceptable practices. Under Title 18 § 515.2(b)(1), unacceptable practices include making false claims or false statements. Patrick Alcindor's criminal convictions demonstrate that he made false claims and false statements by billing

Medicaid for medications that Patrick Alcindor and Procure never dispensed. The criminal conduct standing alone warrants the five year exclusion. As the Supervising Pharmacist at Procure during the audit period, Patrick Alcindor also bore responsibility for Procure's conduct in submitting the \$1,836,847.64 in unsubstantiated claims to the OMIG during the audit period. The submission of the unsubstantiated claims also warrants Patrick Alcindor's exclusion from the Medicaid Program. The ALJ notes further that Procure bore responsibility for the actions of Patrick Alcindor as the Supervising Pharmacist and an affiliate of Procure. The ALJ finds that the OMIG acted appropriately in excluding Procure from the Medicaid Program for five years, and until reinstated.

Administrative Law Judge James F. Horan renders this decision pursuant to the designation by the Commissioner of Health of the State of New York to render final decisions in hearings involving Medicaid provider audits.

Dated: November 19, 2013  
Menands, New York

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James F. Horan  
Administrative Law Judge

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