

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF WORKERS' COMPENSATION
4 BEFORE THE ADMINISTRATIVE DIRECTOR
5

6 **In Re: PROVIDER SUSPENSION**
7

Case No. AD PS-17-02

8 **DETERMINATION AND ORDER**
9 **RE: SUSPENSION**

10 **MICHAEL EDWARD BARRI,**
11 *Respondent.*
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13 The Administrative Director of the Division of Workers' Compensation is required to suspend
14 any physician, practitioner, or provider from participating in the workers' compensation system as a
15 physician, practitioner, or provider if the individual or entity meets any of the express criteria set forth in
16 Labor Code section 139.21(a)(1).

17 Based upon a review of the record in this case, including the recommended Determination and
18 Order re: Suspension of the designated Workers' Compensation Administrative Law Judge, the Acting
19 Administrative Director finds that Respondent Michael Edward Barri meets the criteria for suspension
20 set forth in Labor Code section 139.21(a) and shall be suspended from participating in the workers'
21 compensation system as a physician, practitioner, or provider. Pursuant to California Code of
22 Regulations, title 8, section 9788.3(d), the Acting Administrative Director hereby adopts and
23 incorporates the recommended Determination and Order re: Suspension of the Workers' Compensation
24 Administrative Law Judge as the Acting Administrative Director's Determination and Order re:
25 Suspension.

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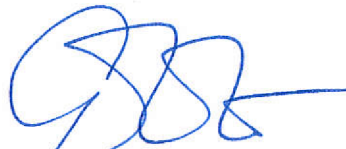
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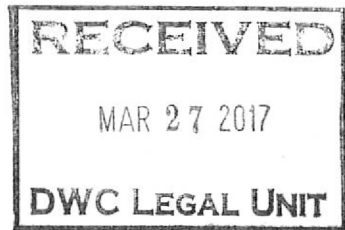
1 **IT IS HEREBY ORDERED** that Michael Edward Barri is hereby suspended from participating
2 in the workers' compensation system as a physician, practitioner, or provider.

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6 Date: April 3, 2017



7 **GEORGE PARISOTTO**
8 Acting Administrative Director
9 Division of Workers' Compensation

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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
BEFORE THE ADMINISTRATIVE DIRECTOR

In Re: PROVIDER SUSPENSION

MICHAEL EDWARD BARRI,
Respondent.

Case No. AD PS-17-02
DETERMINATION AND ORDER
RE: SUSPENSION

A hearing was held in the above-captioned matter on February 24, 2017 pursuant to Labor Code section 139.21(b)(2). At that time, counsel for the parties requested and were granted time to file and serve hearing briefs. The brief by OD Legal was to be filed by the close of business on Monday, March 20, 2017 and counsel for Dr. Barri was given until March 24, 2017 to serve and file a reply brief, the matter would stand submitted as of Monday, March 20, 2017.

At the Hearing Dr. Barri raised three issues; 1. The statute cannot be applied retroactively, 2. The statute is vague on its face, and 3. That it is an unconstitutional ex post facto law. Dr. Barri does not dispute he pled guilty to some of the charges as set forth in the Information filed January 25, 2016 in Case #SACR16-00008, the acceptance of referral fees.

Dr. Barri's first argument is that the statute cannot be applied retroactively. To determine this we must look at the legislative intent when the statute was drafted and passed. It is clear that the legislature wanted this law to apply to all liens and lien claimants. AB1244 dealt with existing liens and how new liens were to be filed. It changed how liens were to be filed, and required new disclosures on existing liens. This shows the clear legislative intent that the bill was to be applied retroactively as it applied to all liens. When the Senate passed SB899 in 2004 one thing it did was change the methodology of how penalties were to be applied. In Green v. WCAB (2005) 70 Cal. Comp. Cas. 294, the Court of Appeal reached back to a judge's decision that issued the year before the new law passed and applied the statute retroactively changing the way penalties were to be calculated on all cases not just on issues that arose after the law was passed. Additionally, the Court of Appeal in Kleeman v. WCAB (2005) 70 Cal. Comp. Cas. 133 and Rio

Linda Union School District v. WCAB (Scheftner)(2005) 70 Cal. Comp. Cas. 999 also held that SB899 was to be applied retroactively to all cases on the separate issue of apportionment. Workers' Compensation law is a creature of statute and not common law, so different standards apply. Here, the statute was properly applied retroactively against Dr. Barri, Tristar Medical Group and Jojaso Management Company Inc. who were all mentioned in the Information. In his plea agreement Dr. Barri stated and verified he owned and operated Tristar Medical Group, owned operated and/or controlled Jojaso Management Company and that all three received kickbacks from Pacific Hospital of Long Beach and Tri-City Medical Center in Hawaiian Gardens. Labor Code §139.21(e) states that once a doctor is convicted, it is not just the liens of the doctor which go into the special adjudication process but also any liens filed by "any clinic, group or corporation in which the suspended physician, practitioner, or provider has an ownership interest." This is further reiterated in Labor Code §4615. This conduct of receiving kickbacks was already illegal under Labor Code §139.3 which was adopted in 1993. Unlike Labor Code §139.21, §139.3 specifically stated that it is to apply to dates of injury after 1/1/94. This conduct of accepting kickbacks was already a misdemeanor under 139.3(g) and the defendant was already not liable for payment of these liens 139.3(f). Here, the new statutes under Labor Code §139.21 gives the Department of Workers' Compensation a consolidated way to handle the liens, as well as additional disciplinary action against the offending parties. The conduct Dr. Barri pled guilty to, was already illegal under the Labor Code, and he knew it was at the time he entered into the contracts.

Dr. Barri's second argument is that this statute is unconstitutional. That determination is not within the scope of this Hearing Officers determination. Therefore, whether or not Labor Code §139.21(a)(1) et al is an unconstitutional ex post facto law, is not a factor this court can determine and it cannot be a basis for a decision in this matter at this Hearing.

Dr. Barri's final argument is that the statute is vague and unenforceable. This court will not address the constitutional challenge to the statute, but will find that the statute is not vague on its face. Dr. Barri's tries to argue that he did not know this conduct was illegal. This conduct has been illegal and a misdemeanor under Labor Code §139.3 since 1994. This conduct was known by the doctor to be illegal. The only thing that changed was a consolidated way to handle the liens and the suspension of his right to practice in the workers' compensation arena. These came

in to play with the adoption of Labor Code §139.21 but they are specifically outlined in the statute and the statute is not vague.

Therefore, based on the above, this hearing officer makes his determination that Dr. Barri violated Labor Code §§139.21(a)(1)(A)(i), (ii), (iii), and (iv) and Dr. Barri, Tristar Medical Group and Jojaso Medical Management be suspended from participation in the workers' compensation system.

IT IS SO ORDERED that Michael Edward Barri is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

DATE: 3/24/17



WCJ ALAN SKELLY
Hearing Officer

1 **CERTIFICATE OF SERVICE BY MAIL**
2 **(C.C.P. section 1013(a), 2015.5)**

3 **In Re PROVIDER SUSPENSION**

4 I am over the age of 18 years and not a party to the entitled action. My business
5 address is 1515 Clay Street, 18th Floor, Oakland, California 94612.

6 On **April 3, 2017**, I served the following document(s):

- 7 • **DETERMINATION & ORDER RE: SUSPENSION FROM WORKERS'**
8 **COMPENSATION ADMINISTRATIVE LAW JUDGE, ALAN SKELLY AND**
9 **ACTING ADMINISTRATIVE DIRECTOR, GEORGE P. PARISOTTO**

10 on the following person(s) at the following address(es):

11 **BY U.S. CERTIFIED MAIL**

12 Michael Barri
13 999 North Tustin Avenue, Suite 201
14 Santa Ana, CA 92705-6506

15 **Counsel for Barri:**

16 Stephen A. Silverman, Esq.
17 Silverman & Milligan, LLP
18 10877 Wilshire Boulevard, Suite 610
19 Los Angeles, CA 90024-4348

20 The documents were served by the following means:

21 **(BY U.S. CERTIFIED MAIL)** I enclosed the document(s) in a sealed envelope or
22 package addressed to the person(s) at the address(es) listed above and:

23 Placed the envelope or package for collection and mailing, following our ordinary
24 business practices. I am readily familiar with the firm's practice for collection and
25 processing correspondence for mailing. Under that practice, on the same day that
26 correspondence is placed for collection and mailing, it is deposited in the ordinary course of
27 business with the U.S. Postal Service, in a sealed envelope or package with the postage fully
28 prepaid.

I declare under penalty of perjury under the laws of State of California that the above is true and correct.

Executed on **April 3, 2017**, at Oakland, California.



ROBRIELLE BEVERLY