

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-17-04

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

10 **THOMAS M. HERIC,**
11 *Respondent.*
12

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 April 26, 2017 Findings and Order
18 re: Order of Suspension of the designated Workers' Compensation Administrative Law Judge, the
19 Acting Administrative Director finds that Respondent Thomas M. Heric meets the criteria for
20 suspension set forth in Labor Code section 139.21(a) and shall be suspended from participating in the
21 workers' 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 April 26, 2017 Findings and Order re: Order of Suspension of the Workers'
24 Compensation Administrative Law Judge, attached hereto, as the Acting Administrative Director's
25 Determination and Order re: Suspension.

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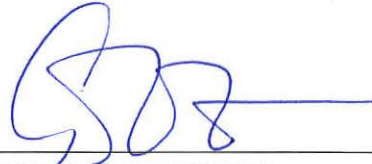
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1 **IT IS HEREBY ORDERED** that Thomas M. Heric is hereby suspended from participating in
2 the workers' compensation system as a physician, practitioner, or provider.

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6 Date: May 4, 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

Case No. AD PS-17-04

In Re: PROVIDER SUSPENSION

THOMAS M. HERIC

Respondent,

FINDINGS AND ORDER
RE: Order of Suspension
(L.C. §139.21)

ROBERT C. MOEST

Attorney for Respondent - Thomas M. Heric

OFFICE OF THE DIRECTOR – LEGAL UNIT

By: Attorney Mi Kim

Attorneys for Defendant

Notice of Provider Suspension – Workers Compensation having issued per L.C. §§ 139(a)(1)(A), and (B). Dr. Thomas M. Heric having requested a hearing; said hearing having taken place on 03/27/2017 per L.C. §139(b)(2). All parties having appeared with the opportunity to present evidence and testimony with said issues having been heard on the record, and both sides having had the opportunity to file post hearing briefs, the Honorable Robert Mays, Workers' Compensation Administrative Law Judge ("WCJ"), finds as follows:

DISCUSSION

Respondent, Thomas M. Heric, per his counsels Post Trial Brief takes the position that although they do not contest the authenticity of the documents relating to his criminal conviction in the United States District Court for the Eastern District of California and the 09/29/2006 letter excluding Thomas M. Heric from participation in Medicare, that:

1) said conviction was not “fraud” within the meaning of 18 U.S.C. 1347, but was merely a conviction for a false statement in connection with his provider number, and therefore does not bring the conviction within the meaning of *L.C. §139.21(a)(1)(A)*

2) that if his conviction did not involve fraud then it could not involve fraud or abuse of the Medi-Cal, Medicare, Workers Compensation System or fraud of any patient

3) that Thomas M. Heric never neglected or harmed any patient.

First, Exhibit #1 and #2 clearly identify the crime that Thomas Heric plead guilty to as involving fraud, “False statements relating to health care fraud, aiding and abetting”. Further, because of his plea agreement, the Department of Health & Human Services “excluded Thomas Heric from participation in any capacity in the Medicare, Medicaid and all Federal Health Care Programs” (Exhibit #3, dated 9/29/2006).

Black’s Law Dictionary Revised 4th Edition (1968) defines “fraud” as: “An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury... Any kind of artifice employed by one person to deceive another... A generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.... “Bad faith” and “fraud” are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc...”

The Oxford Dictionary and Thesaurus American Edition (1996) defines “fraud” as: “criminal deception; the use of false representations to gain an unjust advantage. A dishonest artifice or trick. A person or thing not fulfilling what is claimed or expected of it. Deception, trickery, cheating, subterfuge, sharp practice, chicanery, deceit, swindling, double-dealing, duplicity, artifice, craft, guile, bluff,...”

L.C. 139.21(a)(1) states that the Administrative Director to “shall” promptly suspend any physician, practitioner, or provider from participating in the Workers’ Compensation System if they meet any of the following descriptions:(A) convicted of any felony or misdemeanor and that crime comes within any of the following descriptions: (i) It involves fraud or abuse of the Medical Program, Medicare Program, or Workers Compensation System,... (iv) It is otherwise substantially related to the qualifications, function, or duties of a provider of services... (B) the individual or entity has been suspended, due to fraud or abuse, from the Federal Medicare or Medicaid Programs.

Therefore, clearly Thomas M. Heric’s plea and conviction falls within the common understanding of “fraud”. The term “fraud” as used in *L.C. §139.21* is not limited to any specific federal crime interpretation as alleged by respondent, Thomas M. Heric. Further is was because of his plea agreement and conviction of false statements relating to health care fraud that he was barred from participating in any capacity in the Medicare, Medicaid and **all** Federal Health Care Programs.

FINDING OF FACT

1. Thomas M. Heric was charged and plead guilty to 18 USC 1035 and 2, false statements relating to health care fraud, aiding and abetting on 06/29/2006 in the case of *United States of America v. Thomas M. Heric*, case # 2:05CR00092 01 per Court Exhibit #1 and #2. Said guilty plea is in violation of *L.C. §139 (a)(1)(A)*.
2. Thomas M. Heric was excluded from participation in any capacity in Medicare, Medicaid and all Federal Health Care Programs per Department of Health & Human Services letter to Mr. Heric 09/29/2006 for a minimum statutory period of 5 years, per Courts Exhibit #3 and as further identified in correspondence from the Department of Health & Human Services letter, 09/29/2006. Exhibit #6 to the Medical Board of California. Said suspension was due to his conviction in the United States District Court of a criminal offense related to the delivery of an item or service under the Medicare or State Health

Care Program. No evidence was provided that Mr. Heric was ever reinstated. Said suspension from participation is in violation of *L.C. §139 (a)(1)(B)*.

3. Thomas M. Heric, having had the opportunity at hearing to present evidence and/or testimony as to why the Notice of Provider Suspension mailed on 02/22/2017, Exhibit #4, per *L.C. Section 139. (a)(1)(A)* and *(B)* should not apply, and having presented no evidence, failed to sustain his burden of proof that said suspension from the California Workers' Compensation System should not commence.

RECOMMENDATION

Based on Thomas M. Heric having been convicted of a felony/misdemeanor involving fraud per *L.C. §139.21(a)(1)(A)* and having been suspended due to said fraud from Federal Medicare per *L.C. §139.21(a)(1)(B)* as outlined in the Finding of Facts above, it is recommended that Thomas M. Heric be suspended from participating in the Workers' Compensation System as a physician, practitioner, or provider.

ORDER

IT IS ORDERED that Thomas M. Heric be and hereby is suspended from participating in the Workers' Compensation System as a physician, practitioner or provider per *L.C. §139(a)(1)*.

Dated: 04/26/2017



Robert M. Mays

Workers' Compensation Administrative Law Judge