



September 4, 2023

George Parisotto  
Administrative Director  
Division of Workers' Compensation  
1515 Clay Street, Suite 1700  
Oakland, CA 94612

Re: Shahriar Karimi  
Response to Notice of Provider Suspension  
and Request for Hearing

Dear Mr. Parisotto:

On behalf of my client, Dr. Shahriar Karimi, I am responding to the Notice of Provider Suspension and requesting a hearing. As explained in detail below, Dr. Karimi's judicially-dismissed misdemeanor conviction does not involve any qualifying conviction under Labor Code section 139.21, and is not a "conviction" under the statute.

## I. Background

**A. Karimi was criminally prosecuted because he voluntarily placed his license into inactive status while operating a Medicare-licensed Independent Diagnostic Testing Facility (IDTF).**

**1. In 2011, Dr. Karimi voluntarily placed his license into inactive status.**

For nearly three decades between 1984 and 2011, Dr. Karimi was an active practitioner of chiropractic medicine treating California's injured workers. He was managing a busy chiropractic practice and was deeply involved in

serving the local Chiropractic community. Since 2002, he had served as the Santa Clara Chiropractic Association as an officer (President, Treasurer).

In December 2011, Dr. Karimi stopped practicing chiropractic medicine and minimized his professional commitments so that he could focus on his family's acute and time-intensive needs. Since Dr. Karimi would have had to spend time taking continuing education classes to maintain an active license, he instead chose to place the license into inactive status. His decision was based on the need to care for his cancer-stricken nephew as well as an infant daughter and a newborn son. (Exh. A, at p. 3.)

As Dr. Karimi explained to DDA Sousa, Dr. Karimi's 20-year-old nephew, Sasha, was diagnosed with stage 4 bone cancer in 2010. Dr. Karimi assumed a critical role in Sasha's caretaking team, overseeing his medical treatment. Five years later, despite aggressive chemotherapy and amputation, Sasha succumbed to the disease. (Exh. A, at p. 3.)

At the time of Sasha's diagnosis, Dr. Karimi was already caring for his mother, brother, and sister. Also in 2010, Dr. Karimi's daughter was born. (Exh. A, at p. 3) Her birth was soon followed by the birth of Dr. Karimi's son in 2011. (*Id.*) And after their birth, Mrs. Karimi's job expanded geographically, requiring her to travel for half of the year. (*Id.*)

The lapse in Dr. Karimi's license to inactive status was not due to any disciplinary action or scheme to defraud anyone.

## **2. The criminal investigation and proceedings confirmed the lack of intent to defraud.**

### **(a) Felony Complaint.<sup>1</sup> (Exh. B.)**

A felony complaint charged Dr. Karimi with the crimes of presenting a false or fraudulent claim in violation of Insurance Code section 1871.4, subdivision (a) between January 3, 2012, and September 15, 2016 (count 1); between January 1, 2007 and December 31, 2016 (count 2); and, between June 22,

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<sup>1</sup> I was not Dr. Karimi's defense counsel in the criminal proceeding. I represented him in the post-conviction disciplinary proceedings brought by BCE. Exhibit B is discovery I obtained in the disciplinary proceeding. Since the pages already bear the bates numbers from the attorney general's office, I cite to them for ease of reference.

2012, and July 25, 2016 (count 3). It also charged Dr. Karimi with the crime of preparing a false statement to present to an insurer, in violation of Penal Code section 550, subdivision (B)(2) between July 6, 2010 and February 10, 2017 (count 4) and practicing medicine without a certification, in violation of Business & Professions Code section 2052, subdivision (a) between January 1, 2007 and April 11, 2017 (count 5.) (Exh. B, at Bates No. AG 004-006.)

The complaint and the criminal investigation report (see below), never alleged that Dr. Karimi was practicing chiropractic medicine during the time periods of the charged crimes. They also failed to suggest, much less allege, that either Dr. Karimi or his then-owned IDTF ever engaged in over-billing, billing for non-treatment, provided unnecessary services, or that any patient service was not overseen by a licensed medical professional. Despite the exhaustive criminal investigation and prosecution spanning over three years, no evidence suggests that any patient did not receive the services that were prescribed.

**(b) Criminal investigation report. (Exh. B.)**

The basis for the criminal prosecution against Dr. Karimi is that he was allegedly “a former chiropractor and is currently unlicensed.” (Exh. B, at Bates No. AG 010, A015 [“Shahriar Karimi a former licensed chiropractor”], AG 025 [“Shahriar Karimi who does not hold a current chiropractic license . . .”].) The criminal investigation report described the “fraud” as “Workers’ Compensation Medical Provider Fraud,” “meaning a medical provider has made misrepresentations to an insurance carrier by submitting bills from a practice that is not owned by a medical professional.” (Exh. B, at Bates No. AG010; see also *id.* at Bates No. AG007 [“Karimi owns a lay corporation. . . This business is not owned by a medical doctor and therefore it is a violation of Business and Professions code 2052”].)

The criminal investigation relied on the legal opinions Anthony Hurtado, an employee of Liberty Mutual insurance company. He told the investigator:

[A] non-professional could own a clinic if only the technical component was occurring there. . . . Hurtado said it is his understanding it is legal for a lay person to own the clinic if they only bill for the technical component. However, Hurtado said the clinic bills what is called the

“global code” without a modifier this tells the insurance company they are doing both the technical and professional component.

...

[T]he mere fact the clinic misled the carrier into paying the global code is the fraud.

(Exh. B, at Bates No. AG 013-014, 026.)

While Hurtado is an employee of an interested and cooperating insurance company that financially benefited from Dr. Karimi’s prosecution, he is not: (1) BCE that licensed Dr. Karimi since 1984, (2) not the Attorney General’s office that confirmed Dr. Karimi’s licensure since 1984, and (3) not Medicare that licensed and regulated the IDTF.

**(c) Disposition.**

A preliminary hearing was never held to test the prosecution’s theory and its evidence. Instead, after the felony complaint was filed, Dr. Karimi’s criminal defense attorney, James Barrett, and DDA Sousa agreed to enter into a “compliance program.” Dr. Karimi was advised that following the successful completion of the program, his criminal charges would be dismissed. On August 28, 2019, DDA Sousa filed an Amended Complaint, adding a new misdemeanor count for failing to disclose an event affecting a right to an insurance benefit in violation of Penal Code section 550, subdivision (b)(3) (count 6). (Exh. B, at Bates No. AG 041.) The dates alleged in count 6 are between “January 1, 2007 and April 11, 2017,” even though under the prosecution theory, Dr. Karimi could not have been unlicensed between January 1, 2007, and December 11, 2011, as his license was in active status during this time.

Even without a factual basis supporting a no contest plea, on the same date as the filing of the Amended Complaint, August 28, 2019, Dr. Karimi entered a no-contest plea to count 6, based on the advice of his defense counsel. (Exh. B, at Bates No. AG 038.) The minutes of the plea hearing shows that all felony counts were dismissed and further states: “DA has no problem w/ PC 1203.4 once def complies w/ terms.” The terms of the plea included one year of probation, 20 hours of volunteer work, and various fines and fees. (*Ibid.*)

On September 26, 2019, Dr. Karimi's misdemeanor conviction was judicially dismissed under Penal Code section 1203.4. (Exh. B, at Bates No. AG 039.)

**B. Dr. Karimi has been licensed by BCE since 1984.**

- 1. After Dr. Karimi's misdemeanor conviction as judicially dismissed, BCE confirmed that Dr. Karimi's license was in full force and effect at all times relevant to the charges and withdrew its Accusation. (Exh. C.)**

On November 18, 2019, Dr. Karimi changed his BCE license from inactive status to active status. (Exh. B, at Bates No. AG 001.) Several months later, BCE filed an Accusation seeking to revoke or suspend Dr. Karimi's license, based on the 2019 judicially-dismissed misdemeanor conviction for Penal Code section 550, subdivision (b)(3).

BCE withdrew the Accusation on October 29, 2020. (Exh. C.) The Notice of Withdrawal of Accusation states:

2. On or about July 19, 1984, the Board issued Chiropractic License Number DC 15970 to Shahriar Karimi (Respondent). The Chiropractor License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2020, unless renewed.

3. In the interest of justice and pursuant to stipulation of the parties, Accusation No. 2018-1160 is hereby withdrawn without prejudice.

(Exh. C, at pp. 1-2.)

**2. Dr. Karimi has been licensed since 1984, as a matter of law.**

California's Business and Professions Code and the Penal Code establish, as a matter of law, that Dr. Karimi has been licensed since 1984, although he

voluntarily placed his license into inactive status in 2011. Business and Professions Code section 700 provides:

It is the intent of the Legislature to establish in this article an inactive category of health professionals' licensure. Such inactive licenses or certificates are intended to allow a person who has a license or certificate in one of the healing arts, but who is not actively engaged in the practice of his or her profession, to maintain licensure or certification in a nonpracticing status.

As contemplated under this section, Dr. Karimi maintained his licensure in a nonpracticing status and did not engage in the practice of chiropractic medicine when his license remained inactive, between December 2011 to December 2019.

Penal Code section 23 defines "license" to "include a permit or a certificate issued by a state agency" and defines "state agency" to include "the Chiropractic Initiative Act to license and regulate individuals who engage in certain businesses and professions." This section applies only to "a person who has been issued a license to engage in a business or profession by a state agency pursuant to . . . the Chiropractic Initiative Act." (*Ibid.*) Because Dr. Karimi was a licensee, BCE sought an order under Penal Code section 23, during the criminal proceeding, to refrain Dr. Karimi "from using his Chiropractor License No. 15970 and working as a licensed chiropractor." (Exh. B, at Bates No. AG 029.)

**C. Medicare permits global billing by its licensed non-physician owned IDTFs.**

The criminal investigator concluded that Dr. Karimi "who does not hold a current chiropractic license is recorded as the owner of Sunnyvale Imaging Center. This is a violation of Business and Professions Code section 2406, 2408 and 2417." (Exh. B, at Bates No. AG 025.) The criminal prosecution was based on an insurance company investigator's legal opinion that "the mere fact the clinic misled the carrier into paying the global code is the fraud." (Exh. B, at AG 014, 026.) But he never mentioned Medicare regulations governing its licensed IDTFs when he rendered such an opinion.

As stated above, Dr. Karimi was licensed since 1984. Even assuming otherwise, it was undisputed that Dr. Karimi operated a Medicare-licensed IDTF. And Medicare regulations governing its licensed IDTFs permits global billing by non-physician owned IDTFs.

An IDTF is a facility that is “independent both of an attending or consulting physician’s office and of a hospital.” (42 CFR § 410.33, subd. (a)(1).) IDTFs provide technical components of diagnostic testing services. IDTFs are the subject of strict Medicare regulation and oversight in areas related to: (1) quality of care (licensure and certification standards for supervising physicians, technologists, interpreting physicians, facilities, and equipment that include qualification standards defined by the Medicare carrier); (2) significant cost savings for payors (mandatory Medicare fee schedules); and, (3) prevention of fraud and abuse (billing and test codes, reporting and inspection, rules designed to ensure “independence” from other medical facilities and providers). The regulations governing diagnostic imaging and IDTFs are found at 42 CFR, section 410.32 (“Diagnostic X-Ray Tests, Diagnostic Laboratory Tests, and other Diagnostic Tests, Conditions”); and at 42 CFR, section 410.33 (“Independent Diagnostic Testing Facility”). The IDTF standards are found at 42 CFR, 410.33, subdivision (g).

IDTFs can bill “globally” for both the technical and professional component of the diagnostic test and interpretative services, whether performed on or off site. (Carriers Manual section 3060.3C; 3060.5.) If an IDTF wants to bill for a professional interpretation performed by an independent practitioner off the premises of the IDTF, Medicare permits the IDTF to bill for diagnostic test interpretations when: (1) the tests are initiated by a physician or medical group that is independent of the IDTF and the physician or medical group providing the interpretations; (2) the IDTF submits either an assigned or unassigned claim for both the tests and its interpretations; and, (3) the physician or medical group providing the interpretations does not see the patient. For the application of the purchased interpretation rule, no formal reassignment of benefits is necessary since the purchaser of the test—the IDTF—is considered the supplier of the test.

Liberty Mutual employee Hurtado claimed that a non-physician could own and operate a “clinic” so long as the “clinic” only billed for technical components. But Hurtado’s legal conclusion is wrong. The Medicare rules for IDTFs permit global billing by non-physician owners and operators, do not require a licensed physician to own and operate an IDTF, and permit licensed

IDTFs to bill for both the technical and professional components. Medicare sometimes *requires* its licensed IDTFs to use the global billing code—for the technical and professional components—whether performed on or off site, irrespective of whether the IDTF is owned by lay persons or licensed doctors. (Medicare Carriers Manual section 3060.3C; 3060.5.)

The proposition that an active license is required to globally bill for services provided by a Medicare-licensed Independent Diagnostic Testing Facility (IDTF) has not been set forth in any criminal statute. This proposition was in fact disputed by DIR and Division of Workers' Compensation during the relevant periods. (See 92 Ops. Cal. Atty. Gen. 56 at fn. 23.) Indeed, it is a well-known reality in the California workers' compensation system that facilities owned by unlicensed persons routinely perform diagnostic services. During Dr. Karimi's criminal prosecution, SCIF had contracts with two large corporations (Optum and One Call Care Management) to provide diagnostic services. (Exh. D.) Neither company is owned by licensed medical professionals. (Exh. E.)

## II. ARGUMENT

### A. **Dr. Karimi's judicially-dismissed misdemeanor conviction does not involve any qualifying conviction under Labor Code section 139.21.**

1. **The judicially-dismissed misdemeanor conviction does not “involve fraud or abuse of . . . the workers' compensation system, or fraud or abuse of any patient” and does not “relate to the conduct of the individual's medical practice as it pertains to patient care.”**

Dr. Karimi was charged with billing fraud based on the allegations that: (1) he was “a former chiropractor and is currently unlicensed” (Exh. B, at Bates No. AG 010, A015, AG 025 [alleging violations of Bus. & Prof. Code, §§ 2406, 2408, 2417 because Dr. Karimi “does not hold a current chiropractic license”]) and (2) that he submitted bills using “the global code” (Exh. B, at AG 014, 026.)

But as explained above, Dr. Karimi has been continuously licensed by BCE since 1984. He was never “unlicensed.” (See Exh. C, at p. 1; Exh. B, at Bates No. AG 001; Bus. & Prof. Code, § 700 [inactive status maintains licensure].)



And as a BCE licensee, Dr. Karimi could not have made “misrepresentations to an insurance carrier by submitting bills from a practice that is not owned by a medical professional.” (See Exh. B, at Bates No. AG 010, 007 [“Karimi owns lay corporation. . .”]; Pen. Code, § 550, subd. (d)(e) [requiring as an element the existence of “an event” impacting “the right or entitlement to any insurance benefit or payment”].)

Moreover, the complaint and the investigation report never alleged that: (1) Dr. Karimi was practicing chiropractic medicine; (2) Dr. Karimi or the IDTF overbilled, billed for non-treatment, or provided unnecessary services; (3) patient services were not overseen by licensed medical professionals; or (4) patients did not receive prescribed services.

**2. The judicially-dismissed misdemeanor conviction is not “a financial crime that relates to the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system.”**

Dr. Karimi did not mislead any carrier into paying the global code. (See Exh. B, at AG 014, 026 [“the mere fact the clinic misled the carrier into paying the global code is the fraud”].) Dr. Karimi’s then-owned IDTF was Medicare-licensed and compliant. Under the Medicare regulations, its licensed facilities are permitted to (or even required to) use the global billing code, irrespective of whether the IDTF was (and is) owned by lay persons or licensed doctors. (42 CFR §§ 410.32, 410.33, subd. (a)-(g); Carriers Manual section 3060.3C; 3060.5.)

Indeed, at the time of Dr. Karimi’s criminal investigation, SCIF had contracts with two large corporations (Optum and One Call Care Management) to provide diagnostic services. (Exh. D.) Neither company is owned by licensed medical professionals. (Exh. F.)

**3. The judicially-dismissed misdemeanor conviction is not “otherwise substantially related to the qualifications, functions, or duties of a provider of services.”**

As shown by BCE’s withdrawal of its Accusation in October 2020 (Exh. C), Dr. Karimi’s judicially-dismissed misdemeanor conviction is not “otherwise substantially related to the qualifications, functions, or duties of a provider of services.”

Dr. Karimi was prosecuted because: (1) he chose, based on pressing family caretaking commitments, to place his license into inactive status and (2) his Medicare-licensed IDTF globally billed for services permitted by Medicare (whether owned by physicians or non-physicians). Dr. Karimi never billed for services that were not provided by the IDTF. The criminal investigation report shows that there would have been no criminal prosecution if Dr. Karimi had maintained his license in active status. So too, there would have been no criminal prosecution if the IDTF had used a billing code modifier as the Liberty Mutual employee concluded that he should have. There is not even a suggestion (much less evidence) of overbilling, fraudulently billing for services not provided, or patient abuse.

There has been no showing of dishonesty—intentional or otherwise—and there can be no nexus between the judicially-dismissed misdemeanor conviction and Dr. Karimi’s fitness to perform the functions authorized by the license, in a manner consistent with the public health, safety, or welfare.

In addition, there can be no finding of moral turpitude. A physician’s motivation in engaging in the misconduct of which he or she is accused is crucial for a finding of moral turpitude. For example, the California Supreme Court has found that the furnishing of dangerous drugs without a prescription did not involve moral turpitude when surrounding circumstances showed that the accused was not acting for personal gain. (*Yakov v. Board of Medical Examiners* (1968) 68 Cal. 2d 67, 73-74.) Here, Dr. Karimi’s decision to not maintain his license in active status was not motivated by personal gain. It was motivated by the need to care for a cancer-stricken nephew, an infant daughter, and a newborn son, while his wife’s work commitments placed her outside of their home for half of the year. Likewise, the IDTF’s use of global billing codes was not for personal gain, but because it was permitted by Medicare. The IDTF never billed for services not explicitly provided.

Indeed, the judicially-dismissed misdemeanor conviction was unrelated to the quality of the services provided by Dr. Karimi’s IDTF. The question of whether a licensee’s conduct demonstrated moral turpitude is limited to the effect of the licensee’s actions on the quality of his or her services. (*Yakov, supra*, 68 Cal. 2d at 73 n.6.). From the time that Dr. Karimi permitted his license to lapse into inactive status, he did not provide chiropractic services to any patients during the period covered by the criminal prosecution.

Moreover, Dr. Karimi’s license has been in active status since 2019. (Exh. B, at Bates No. AG 001). Thus, he cannot be criminally prosecuted for global

billing even under the prosecutor's theory, and there is no potential for future violation. (See, e.g., *Watson v. Superior Court* (2009) 176 Cal. App. 4th 1407, 1416 [nexus of potential for adverse impact in the future].)

Finally, Dr. Karimi took full and complete responsibility for his failure to disclose his inactive licensing status to the carriers after the prosecutor told him that he violated the Business and Professions Code. Dr. Karimi voluntarily repaid all insurance carriers who paid bills with the global billing code, in the amount of \$404,000. He voluntarily withdrew all pending workers' compensation bills and liens for treatment and services provided by the IDTF to injured workers, in the additional amount of \$400,000. He has also been subjected to extreme abuses related to this criminal case (which will not be detailed here, but may be presented at the hearing should the case progress to that stage).

The quality of Dr. Karimi's services was never at issue and the public need not be protected from him.

**B. Dr. Karimi's judicially-dismissed misdemeanor conviction is not a "conviction" under Labor Code section 139.21.**

**1. Assembly Bill No. 1238 (AB 1238)**

Following the enactment of the Anti-Fraud laws, Assembly Bill No. 1238 amended Business and Professions Code section 7.5, subdivision (a), so that a state licensing board "may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) or (c) of Section 480." Section 480, subdivision (c), as amended by AB 2138, in turn, states: "... a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4 ... of the Penal Code, or a comparable dismissal or expungement."

AB 1238 seeks to "reduce recidivism and provide economic opportunity to all its residents" by "[a]lleviating barriers to occupational licensing" and "increasing access to professional licensure." (Concurrence in Senate Amendments, AB 2138 (Chiu and Low), as amended August 24, 2018, at pp. 3, 5.) The Legislature found:

Like all Californians, access to secure employment is critical for these 8 million individuals with a prior conviction to support their families and communities...there continue to be barriers to employment for Californians with prior convictions... All too often, qualified people can be denied licensure or have licenses revoked or suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed.”

(See, e.g., Senate Rules Committee Office of Senate Floor Analyses, Third Reading Bill No. AB 2138, amended 8/24/18, at p. 5.)

The Legislature also confirmed that California Department of Consumer Affairs (DCA) “intends to work with the various boards and bureaus to achieve more clarity and remove unnecessary barriers to licensure.” (Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading Bill No. AB 2138, amended 8/24/18, at p. 5.)

Here, Dr. Karimi’s one-count misdemeanor conviction was judicially dismissed under Penal Code section 1203.4—one month after he entered a no-contest plea. (Exh. B, at Bates No. AG 039.) He is a person that the Legislature intended to protect from the nonpenal consequences of a judicially-dismissed misdemeanor conviction.

**2. A judicially-dismissed misdemeanor conviction now releases a person from nonpenal restrictions imposed for public protection.**

Before the recent passage of AB 1238, our high court observed: “California decisions have established that the ‘penalties and disabilities’ resulting from conviction, from which a probationer may be released pursuant to Penal Code section 1203.4, do not include nonpenal restrictions or qualifications imposed for public protection. . . .” (*People v. Vasquez* (2001) 25 Cal.4th 1225, 1230-1231, and cases discussed.) But with the passage of AB 1238, the cases that previously held that a judicially-dismissed misdemeanor conviction do not release a person from nonpenal restrictions or qualifications imposed for public protection no longer control the analysis. (See, e.g., Bus. & Prof. Code,

§ 480 [prohibiting denial of license based on a judicially-dismissed conviction]; Senate Rules Committee Office of Senate Floor Analyses, Third Reading Bill No. AB 2138, amended 8/24/18.)

Labor Code section 139.21's requirements are nonpenal restrictions expressly imposed for public protection. An expunged misdemeanor conviction can no longer be a basis for provider suspension under section 139.21.

### CONCLUSION

For the reasons stated above, Dr. Karimi requests that the Division withdraw the August 29, 2023, Notice of Provider Suspension. In the alternative, Dr. Karimi requests a hearing. I will accept service of pleadings and correspondence by email: [mi@mikimlaw.com](mailto:mi@mikimlaw.com).

Thank you for your consideration.

Very truly yours,

/S/ Mi Kim

Mi Kim

Enclosures