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

In Re: PROVIDER SUSPENSION

Case No. AD PS-17-11

**DETERMINATION AND ORDER
RE: SUSPENSION**

JAMES LEMUS, M.D.,
Respondent.

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The Administrative Director of the Division of Workers' Compensation is required to suspend any physician, practitioner, or provider from participating in the workers' compensation system as a physician, practitioner, or provider if the individual or entity meets any of the express criteria set forth in Labor Code section 139.21(a)(1).

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Based upon a review of the record in this case, including the November 22, 2017 recommended Determination and Order re: Suspension of the designated Hearing Officer, the Administrative Director finds that Respondent James Lemus, M.D., meets the criteria for suspension under Labor Code section 139.21(a) and shall be suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

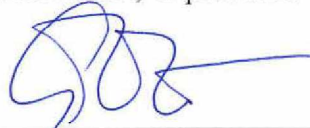
Pursuant to California Code of Regulations, title 8, section 9788.3(d), the Administrative Director hereby adopts and incorporates the November 22, 2017 recommended Determination and Order re: Suspension of the designated Hearing Officer, attached hereto, as the Administrative Director's Determination and Order re: Suspension. The Administrative Director hereby modifies the determination of the designated Hearing Officer as it pertains to the basis for suspension under Labor Code section 139.21(a)(1)(B), and finds that there is sufficient evidence in the record that James Lemus meets the criteria for suspension under that section.

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

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4 Date: December 1, 2017



5 GEORGE PARISOTTO
6 Administrative Director
7 Division of Workers' Compensation

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In Re: PROVIDER SUSPENSION

Case No. AD PS-17-11

JAMES LEMUS, M.D.

Respondent.

**DETERMINATION AND ORDER RE:
SUSPENSION**

A hearing was held in the above-captioned matter on August 25, 2017 pursuant to Labor Code § 139.21 (b)(2). At that time, counsel for James Lemus, M.D., Respondent, submitted his "Brief of and Motion to Dismiss." Pursuant to the parties' stipulation, it was agreed that the Department of Industrial Relations ("DIR") would file responsive papers on or before October 25, 2017 and the Respondent would file a final reply on or before November 13, 2017 and the matter would stand submitted November 13, 2017. (Transcript of Proceedings 6:16-7:2, August 25, 2017.)

Respondent argues: (1) There is no jurisdiction over the Respondent; (2) Labor Code § 139.21 is unconstitutionally vague and overbroad; (3) Suspension under Labor Code § 139.21 does not apply in Dr. Lemus' case.

In its Reply to DIR's brief, Respondent also argues: (4) DIR attached exhibits to its brief not admitted at the time of hearing; and, (5) DIR failed to directly oppose Dr. Lemus' motion to dismiss and thus this matter should be dismissed.

This is the undersigned Hearing Officer's Recommendation and Determination and Order re: Suspension pursuant to Title 8, California Code of Regulations, § 9788.3(c).

EVIDENTIARY RULINGS

The undersigned has considered the Department of Industrial Relations' Request for Judicial Notice dated October 25, 2017 and the Objection of the Respondent to DIR's Exhibits and

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Request for Judicial Notice dated October 30, 2017. The request for Judicial Notice is denied with respect to those documents designated Exhibits "A" and "B" and is granted with respect to the document designated Exhibit "C."

Exhibit "A" is found to be duplicative of Exhibit 2b already marked and admitted into evidence.

Exhibit "B" consists of judicial records related to ongoing proceedings against Dr. Lemus' medical license that were not referenced in the Department of Industrial Relations' Notice of Provider Suspension dated August 25, 2017 that was served on Dr. Lemus prior to his suspension hearing. Dr. Lemus' objection to the introduction of this accusation at the time of his hearing was sustained on, *inter alia*, due process grounds; ultimately, DIR withdrew its reference to this particular accusation. (Transcript of Proceedings 28:10-30:6, August 25, 2017.)

Exhibit "C" is a printout from an online database maintained by the California Department of Health Care Services and shows Dr. Lemus' status as a suspended or ineligible provider in the Medi-Cal program. This information directly relates to the letter notifying Dr. Lemus of his suspension from the Medi-Cal program and marked as Exhibit 2c at the time of hearing. There was no objection to Exhibit 2c at the time of hearing. (Transcript of Proceedings 5:5-21, August 25, 2017.) The undersigned takes Judicial Notice of Exhibit C that shows Dr. Lemus remains on the Medi-Cal Suspended and Ineligible Provider List as of October 25, 2017, and marks such as "RJD Exhibit C."

FACTS

1. Labor Code section 139.21(a)(1) requires the Administrative Director to suspend any physician, practioner, or provider from participating in the workers' compensation system as

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a physician, practitioner, or provider if the individual has been convicted of any felony or misdemeanor described in Labor Code section 139.21(a)(1)(A).

2. On January 28, 2011, Respondent, James Lemus, executed a plea agreement in *United States of America v. James Lemus*, Case No. CR11-0181 in which he agreed to plead guilty to a felony, *to wit*, a violation of 26 U.S.C. §7201 Attempt to evade or defeat tax. (*Exhibit 2b.*)

3. On November 6, 2012, Respondent, James Lemus, M.D., entered into a Stipulated Settlement and Disciplinary Order in *In the Matter of the Accusation Against: James Alfred Lemus, M.D., Physician and Surgeon's Certificate No. G 42274*, Case No. 11-2011-218741, in which he agreed to have his Physician and Surgeon's Certificate revoked due to his felony conviction, which revocation was stayed and a seven-year term of probation, subject to terms and conditions was imposed. (*Exhibit 3.*)

4. On March 13, 2013, the California Department of Health Care Services notified Respondent, James Lemus, M.D., of his suspension from the Medi-Cal program "for an indefinite period of time." (*Exhibit 2c.*)

5. As of October 25, 2017, Respondent, James Lemus, M.D., remained suspended from the Medi-Cal program. (*RJD Exhibit C.*)

DETERMINATION

Respondent's Motion to Dismiss is DENIED.

Labor Code section 139.21(a)(1)(A) applies to Respondent, James Lemus, M.D. As a result, the Administrative Director is required to immediately suspend Respondent pursuant to Labor Code section 139.21(b)(2).

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BASIS FOR DETERMINATION

Respondent argues this matter should be dismissed because the DIR did not file “formal” opposition to Dr. Lemus’ motion to dismiss¹. The undersigned finds DIR timely filed its responsive brief pursuant to the parties’ stipulation and that DIR’s responsive papers addressed the issues raised by Respondent in his “Brief of and Motion to Dismiss.”

Respondent argues the Administrative Director has no ‘jurisdiction’ to suspend him from the Workers’ Compensation system, arguing: “He is not registered, certified or licensed by the DWC.” (Brief of and Motion to Dismiss 5:14, October 25, 2017.) He further argues: “Dr. Lemus is not a participant in the system, even if on occasion he is called upon by patient, employer or carrier to render emergency or urgent medical care to an injured person.” (*Id.*, 7:9-11.) Dr. Lemus’ testimony establishes he has been participating in the workers’ compensation system for many years. He testified: “I’ve been practicing this for – since 1980, and I have expertise in – in success with their workers and providing, you know, great care.” (Transcript of Proceedings 24:2-13, August 25, 2017.) He affirmed he provides services related to occupational injuries and illnesses. (*Id.*, 38:5-8.) He testified he has accepted pre-designation as a treating physician in the workers’ compensation system. (*Id.*, 12:12-19, 39:13-19. *See also*, Labor Code § 4600 and 8 CCR § 9780.1.) He also testified he has accepted assignment as a primary treating physician pursuant to Labor Code § 4600. (*Id.*, 39:20-40:5.)

¹ Respondent’s “motion to dismiss” was incorporated into his legal brief and was not set forth as a separate pleading.

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Labor Code § 139.21(a)(1) directs the Administrative Director to suspend "any physician, practitioner, or provider from participating in the workers' compensation system" in certain circumstances. 8 CCR § 9788.1 states, in pertinent part:

(b) The term "suspension from participation" means the physician, practitioner, or provider is prohibited from providing any goods or services related to an occupational injury or illness that is either for pay or required by Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2, 4600, 4600.3, 4610, 4610.5, 4610.6, 4616, and 4620. The term "suspension from participation" also precludes a physician's continued certification as a qualified medical evaluator pursuant to Labor Code section 139.2.

(c) The physician, practitioner, or provider is prohibited from seeking payment or reimbursement, either directly or indirectly, for any goods or services related to an occupational injury or illness that is provided on or after the date of their suspension.

Here, Dr. Lemus' testimony establishes his activities meet the definition of "participation" in the workers' compensation system.

Dr. Lemus argues Labor Code § 139.21 is unconstitutionally vague and overbroad. This determination is outside of the scope of this hearing officer's jurisdiction. Thus, whether or not Labor Code § 139.21 *et seq.* is unconstitutionally vague and overbroad is not a factor the undersigned can determine.

Dr. Lemus argues that suspension under Labor Code § 139.21 does not apply in his case. On January 28, 2011, Dr. Lemus, executed a plea agreement in *United States of America v. James Lemus*, Case No. CR11-0181 in which he agreed to plead guilty to a felony, *to wit*, a violation of 26 U.S.C. §7201 Attempt to evade or defeat tax. (*Exhibit 2b.*)

In his plea agreement, Lemus agreed that the following statements are true: In 2003, Lemus owned and operated Lemus Medical Center ("LMC") as a sole proprietorship in Commerce,

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California. (*Exhibit 2b* at p. 7.) During that time, Lemus provided physicals and drug testing to truck drivers as required by the Department of Transportation. (*Id.*) Lemus required most of the truck drivers to pay in cash and received approximately \$88,663 in cash from performing these drug tests. (*Id.*) Lemus knew he was required to file a U.S. Individual Tax Return, Form 1040, reporting his taxable income, including the cash he received and pay the taxes that were due. (*Id.*) However, in order to conceal the cash from the Internal Revenue Service ("IRS"), Lemus willfully failed to report the cash to the IRS and attempted to evade the payment of the tax. (*Id.*, p. 7-8.) Subsequent to his federal conviction, on or about November 6, 2012, Lemus entered into a stipulation with the Medical Board of California in a disciplinary action entitled *In the Matter of the Accusation Against James Alfred Lemus, M.D.*, Case No. 11-2011-218741 for the revocation of his Physician's and Surgeon's Certificate due to his felony criminal conviction. (*Exhibit 3* at p. 10.) Due to the stipulated settlement between Lemus and the Medical Board, Lemus' Physician's and Surgeon's Certificate was revoked on February 8, 2013. (*Exhibit 3* at p. 1, 4.) However, the revocation was stayed and Lemus was placed on probation for seven years with special terms and conditions. (*Exhibit 3* at p. 5.)

Dr. Lemus' felony conviction resulted in his suspension from the Medi-Cal program. (*Exhibit 2c*, *Exhibit C*.) The California Department of Health Care Services based his suspension from the Medi-Cal program on a finding that his felony conviction involved "fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service." (*Exhibit 2c*.)

Dr. Lemus' conviction for felony tax evasion brings him under the purview of Labor Code § 139.21, which states, in pertinent part:

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(a) (1) The administrative director shall promptly suspend, pursuant to subdivision (b), any physician, practitioner, or provider from participating in the workers' compensation system as a physician, practitioner, or provider if the individual or entity meets any of the following criteria:

(A) The individual has been convicted of any felony or misdemeanor and that crime comes within any of the following descriptions:

(i) It involves fraud or abuse of the Medi-Cal program, Medicare program, or workers' compensation system, or fraud or abuse of any patient.

(ii) It relates to the conduct of the individual's medical practice as it pertains to patient care.

(iii) It is a financial crime that relates to the Medi-Cal program, Medicare program, or workers' compensation system.

(iv) It is otherwise substantially related to the qualifications, functions, 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.

(C) The individual's license, certificate, or approval to provide health care has been surrendered or revoked.

Dr. Lemus' felony conviction falls under Labor Code § 132.21(a)(1)(A)(iv)—it is substantially related to the qualifications, functions or duties of a provider of services. Dr. Lemus pled guilty to a felony charge of tax evasion for intentionally failing to report approximately \$88,633 to the IRS. He received cash payments from patients undergoing Department of Transportation drug testing and physicals and knowingly and willfully attempted to evade and defeat payment of federal income tax on these receipts. In his plea agreement, Dr. Lemus specifically admitted his conduct in attempting to evade and defeat the assessment of federal income tax was affirmative, willful, and knowing and acknowledged in his plea agreement, "Defendant admits that the defendant is, in fact, guilty of the offense as described." (*Exhibit 2b* p. 5:1-13.) In the plea agreement, Lemus also agreed: "Defendant understands that the conviction in this case may also

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subject defendant to various other collateral consequences, including but not limited to revocation of probation, parole, or supervised release in another case and suspension or revocation of a professional license." (*Id.* at p. 6:13-18.) He also certified "I am pleading guilty because I am guilty of the charges." (*Id.* at p. 16:17-18.)

There is case law to support a finding that tax evasion is a crime of moral turpitude that is substantially related to the qualifications, functions, or duties of a medical provider. "A conviction of tax evasion under section 7201 necessarily involves moral turpitude . . . we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of \$65,000 in taxes may yet be considered honest in his dealings with his patients." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 469-470.) "Intentional dishonesty, ... demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine." (*Windham* citing *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305.)

The workers' compensation system relies on the truth and veracity of physicians providing care to patients to determine if, *inter alia*, an individual's injury is a compensable claim. Dr. Lemus argues he is not designated as an "Agreed Medical Examiner" or as a "Qualified Medical Examiner" in the system, does not calculate permanent disability ratings, and does not determine apportionment as it relates to injury; nonetheless, professionals who *do* make such determinations necessarily rely upon his treatment records. In cases of occupational injury or illness, Dr. Lemus is required to complete narrative medical reports, the form and content of which are regulated by DIR—even in cases of emergency care. (*See, e.g.*, Labor Code § 6409, 8 CCR 14003, 14006, 14006.1.) In cases where Dr. Lemus has accepted pre-designation as a personal physician or has

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accepted appointment as a Primary Treating Physician, he is required to affix to his mandated medical reporting the following declaration: "I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code § 139.3²." (See, e.g. 8 CCR 9785(f)(8), 9785.2.1.) In contested claims, records generated by Dr. Lemus may be presented to the court. As such, Dr. Lemus' felony conviction for a crime involving dishonesty has a direct bearing on the court's ability to rely upon his medical reporting. In addition, Dr. Lemus' conviction for felony tax evasion is substantially related to the qualifications, functions or duties of a provider of services in the workers' compensation system.

ORDER

IT IS ORDERED that James Lemus, M.D. is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

Dated: November 22, 2017



**Cassandra V. Stajduhar
Hearing Officer**

²Labor Code § 139.3 sets forth unlawful financial interests of physicians in the workers' compensation system. Thus, the propriety of a provider's finances have been specifically highlighted by the legislature as requiring ongoing affirmation by participants in the system.

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**CERTIFICATE OF SERVICE BY OVERNIGHT DELIVERY
(CCP § 1013, 2015.5)**

I am over the age of 18 years and not a party to the entitled action. My business address is: 420 South 4th Street, Suite 900, Los Angeles, California 90013.

I served the following documents:

Determination and Order Re: Suspension
Original Transcript of Proceedings and Exhibits
Brief of and Motion to Dismiss by Respondent James Lemus, M.D.
Brief of Department of Industrial Relations
Request for Judicial Notice, Declaration of Eugene Ho, Exhibits
Reply to DIR's Brief
Objection to DIR's Exhibits and Request for Judicial Notice

on the following person at the following address:

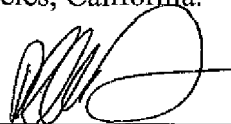
George Parisotto
Administrative Director
Division of Workers' Compensation
1515 Clay Street, 18th Floor
Oakland, California 94612

The documents were served by the following means:

(BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier, delivery fees paid or provided for, and addressed to the persons at the address listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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

Executed on November 22, 2017 at Los Angeles, California.



Rosalva Morales

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

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

5 I served the following documents: **DETERMINATION AND ORDER RE: SUSPENSION**
6 on the following person(s) at the following address(es):

7 **By Certified Mail:**

8 **Joel B. Douglas, Esq.**
9 **Bonne, Bridges, Mueller, et al.**
10 **355 South Grand Ave., Ste. 1750**
11 **Los Angeles, CA 90071-1562**

12 **James Lemus**
13 **5020 E. Washington Blvd.**
14 **Commerce, CA 90040**

15 **By Hand Delivery:**

16 **Paige Levy, Chief Judge**
17 **WCAB**
18 **1515 Clay Street, 17th Floor**
19 **Oakland, CA 94612**

20 **Mi Kim, Esq.**
21 **DIR/ODL**
22 **c/o Regina Schneider**
23 **1515 Clay Street, 17th Floor**
24 **Oakland, CA 94612**

25 The documents were served by the following means:

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

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

HAND DELIVERY/PERSONAL SERVICE. I personally delivered the documents to the person(s)
indicated at the address(es) above by leaving the documents at the specified office address with a receptionist
or an individual in charge of the office in an envelope or package clearly labelled to identify the person(s)
being served.

I declare under penalty of perjury under the laws of State of California that the above is true and
correct. Executed on December 1, 2017, at Oakland, California.

28 
URSULA JONES