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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-17-07

**DETERMINATION AND ORDER
RE: SUSPENSION**

STEVEN RIGLER, D.C.,
Respondent.

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).

Based upon a review of the record in this case, including the July 19, 2017 recommended Determination and Order re: Suspension of the designated Hearing Officer, the Acting Administrative Director finds that Respondent Steven Rigler, D.C., meets the criteria for suspension set forth in 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 Acting Administrative Director hereby adopts and incorporates the July 19, 2017 recommended Determination and Order re: Suspension of the designated Hearing Officer, attached hereto, as the Acting Administrative Director's Determination and Order re: Suspension.

IT IS HEREBY ORDERED that Steven Rigler, D.C., is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

Date: July 27, 2017



GEORGE PARISOTTO
Acting Administrative Director
Division of Workers' Compensation

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
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Case No. AD PS-17-07

DETERMINATION AND ORDER

RE: SUSPENSION

STEVEN RIGLER, D.C.,

Respondent.

A hearing was held in the above-captioned matter on 5/22/17, pursuant to Labor Code section 139.21(b) (2). The matter was continued to 7/10/17 to allow Respondent an opportunity to review the evidence proffered by OD Legal, and for both parties to submit further briefs for consideration by the Hearing Officer. After further discussion with the parties at the continued hearing on 7/10/17, the matter was submitted for decision.

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

FACTS

1. Labor Code section 139.21(a)(1)(A) requires the Administrative Director to suspend any physician, practitioner, or provider from participating in the workers' compensation system as 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 2/25/15, Respondent, Steven Rigler DC, signed a plea agreement with the United States Attorney's Office in which Respondent agreed to plead guilty to Conspiracy to Commit Honest Services Mail Fraud, 18 U.S.C. § 1349. (*Exhibit 3*). This is a crime meeting the criteria of Labor Code section 139.21(a)(1)(A).

3. On 11/3/15, a hearing was held in the United States District Court for the Southern District of California at which time Respondent entered his guilty plea in accordance with Paragraph 2 above, and Respondent's written plea agreement was filed with, and accepted by the Court. (*Exhibits 3 and 1*)

4. On 4/14/17 Respondent was served with a Notice of Provider Suspension-Worker's Compensation, pursuant to Labor Code section 139.21(a)(1)(A) by the office of the Administrative Director. (*Exhibit 10*)

5. Respondent timely requested a hearing pursuant to Labor Code section 139.21(b)(2) on 4/24/17. (*Exhibit 11*)

DETERMINATION

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

BASIS FOR DETERMINATION

Section 139.21(a)(1) requires the Administrative Director to suspend any physician, practitioner, or provider from participating in the workers' compensation system if that physician, practitioner, or provider has been convicted of a crime described in section 139.21(a)(1)(A). Respondent entered a plea of guilty to Conspiracy to Commit Honest Services Mail Fraud, 18 U.S.C. § 1349 which is a crime described in Labor Code section 139.21(a)(1)(A),

and his plea was accepted by the United States District Court for the Southern District of California.

Respondent asserts there is no admissible evidence before the court to establish he has been convicted of a crime as all the exhibits submitted by OD Legal are inadmissible as hearsay documents with no foundation and no authentication. Respondent argues even if the evidentiary objections are overruled, no conviction of any felony or misdemeanor has occurred, as only a plea of guilty was entered which is not a final judgement.

Both Respondent and OD Legal have submitted briefs that have been reviewed and considered by the court. OD Legal has also submitted a Request for Judicial Notice of three legislative bill analysis reports prepared by legislative staff for AB 1244, and of Exhibits 1 through 8, records from the United States District Court for the Southern District of California. Respondent has objected to the records from the United States District Court arguing they are hearsay with no foundation and no authentication.

Title 8 CCR § 9788.3(b) states:

“The Administrative Director shall designate a hearing officer to preside over the hearing, which need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of the evidence improper over objection in civil actions. Oral testimony shall be taken only on oath or affirmation”

Reg. 9788.3(b) allows the hearing officer to admit relevant evidence if it is the sort of evidence reasonable persons are accustomed to rely in the conduct of serious affairs. Exhibits 1-8 are relevant in this case, and they are the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The admissibility of Exhibits 1-8 in this proceeding is not precluded by a common law or statutory rule of evidence that may otherwise have made the evidence inadmissible in civil actions. Respondent's objection to the admissibility of the documents as hearsay, with no foundation and no authentication is overruled. Respondent's objection is considered by the court as it relates to the weight to be given to the evidence, but Respondent has not argued the information in the documents is false, or that the documents are not true copies of the federal court documents. The documents from the United

States District Court, Exhibits 1-8, are also subject to judicial notice as requested by OD Legal, and this request is granted. Exhibits 1-8 are ordered admitted into evidence and accepted as true and correct copies of the federal court documents.

The legislative committee analyses are also the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs as judicial notice of contemporary legislative committee analyses of legislation may be taken by a court. (In Re J.W. (2002) 29 Cal. 4th 200, 211) The request to take judicial notice is granted and this hearing officer hereby takes judicial notice of the legislative committee analyses of AB 1244 attached to the Request for Judicial Notice of OD Legal as Exhibits A, B and C. Exhibits A, B and C are ordered admitted into evidence as Exhibits 13, 14 and 15.

There is no dispute that Respondent entered a plea of guilty to Conspiracy to Commit Honest Services Mail Fraud, 18 U.S.C. § 1349, and his guilty plea was accepted by the United States District Court for the Southern District of California. This crime is a felony and meets the criteria found in Labor Code section 139.21(a) (1) (A). (*Exhibit 3*)

Respondent argues that he has not been convicted of any crime, felony or misdemeanor, because no final judgement or imposition of sentence has occurred, and without being convicted of a crime as described in Labor Code § 139.21(a)(1), the suspension provision does not apply and he is not subject to suspension.

There is no single, clear definition of what it means to be "convicted" under California law. In some cases, the term has been applied to a guilty plea or jury verdict of guilty, while in others it has been held that one is not convicted until after the entry of judgment or sentencing following the plea or verdict. Respondent relies primarily on *Boyll v. State Personnel Board* (1983) 146 Cal. App. 3d 1070 and *Helena Rubenstein International v. Younger* (1977) 71 Cal. App. 3d 406. Each of these Court of Appeal opinions contain a detailed review of the law regarding the definition of "convicted," and each concludes that "the better rule" is that a "conviction" includes both the plea or verdict of guilty and the entry of judgment or sentencing thereon.

However, all of the cases upon which respondent relies involve a “civil penalty or disability” which would operate to limit or take away a fundamental right. In *Boyll*, the plaintiff entered a guilty plea to a drug offense, was referred to a drug rehabilitation program, and after successful completion of the program, the criminal charge was dismissed. She thereafter applied for and was granted a full and unconditional pardon from the Governor of California. When she then applied for a job with the State and was told she was not qualified by reason of her prior felony conviction, litigation ensued. *Helena Rubenstein International* involved a Lieutenant Governor of California who was found guilty of perjury by a jury, after which a taxpayer group attempted to block his salary and remove him from office as of the date of the verdict. In this case, the Court’s discussion of “the better rule” is dicta; the final holding was based on a Government Code section which expressly provided that an office holder would be deemed convicted of a felony when trial court judgment (meaning sentencing) was entered.

In these cases, the Court noted that a fundamental right was affected; the right to apply for employment and the right to hold state office. These are rights which every citizen has, and the courts have held that where a conviction will operate to limit or take away such a right, the conviction will not be deemed to have occurred until entry of final judgment or sentencing, which did not occur in either of these cases.¹

In contrast, the California Supreme Court has previously noted “the general California rule that ‘a plea of guilty constitutes a conviction.’” *People v. Laino* (2004) 32 Cal. 4th 878, 895 and cases cited therein.

Respondent argues that the legislature could have chosen language indicating any other of the variations of conclusions of a criminal proceeding other than a conviction to justify suspension under LC 139.21 but did not, specifying that only a conviction will result in the imposition of a suspension. Respondent states: “The legislative history makes it clear that Labor Code §139.21 (a)(1) *intentionally* dispensed with the “charged” standard and replaced it with the unequivocal “after conviction” standard. This language was chosen after the Senate amendments

¹ In *Helena Rubenstein International*, the Lieutenant Governor was sentenced and immediately resigned his office upon sentencing, which occurred after the lawsuit had been filed. The Court decided the issue anyway because similar situations could arise in the future.

deleted the entire contents of the proposed bill and replaced it with the expressly stated "convicted" language." (Respondent Brief, 6/28/17, P 1) This Hearing Officer's reading of Exhibit A is a little different. When the Senate amended the bill, the entire contents of the bill were deleted and replaced, but the only change made in the replacement language from the original appears to be the inclusion of a subparagraph (7) that limited reimbursement for legal fees. (Ex A P 2) A comparison of Exhibit A and Exhibit C indicates the Assembly and Senate bills otherwise contain the same language. The Senate did not amend the bill to delete a proposed "charged" standard and replace it with an "after conviction" standard. Respondent's argument is based on an erroneous reading of the legislative analyses.

The California workers' compensation system is entirely a statutory construct. Over the years, the Legislature has enacted, repealed, and amended hundreds of statutes affecting the rights not only of injured workers and employers, but of the numerous providers of goods and services within the workers' compensation system. Several current statutes greatly restrict the frequency and scope of medical treatment for which workers' compensation physicians, practitioners, or providers can be reimbursed, as well as the methods by which such payment can be obtained. California courts have repeatedly held that such limitations are a constitutional exercise of the Legislature's plenary power to enact a comprehensive system of workers' compensation. Physicians, practitioners, and providers do not have a fundamental right to participate in the workers' compensation system outside of the statutes and rules governing such participation.

Labor Code section 139.21 is simply an additional limitation on a physician, practitioner, or provider's ability to provide medical treatment in the workers' compensation system. In addition to precluding payment for treatment outside of a Medical Provider Network or treatment which is not authorized through utilization review or Independent Medical Review, the Legislature has now determined that medical treatment within the workers' compensation system cannot be provided by anyone convicted of defrauding or abusing the system. In light of the ongoing and well-publicized abuse of the system over the last several years, exemplified by the Legislative Analysis found in Exhibits A, B and C, Section 139.21 appears to be a reasonable exercise of the Legislature's plenary power to combat fraud and abuse. The statute serves to

protect injured workers from being preyed upon by those who see them only as a billing opportunity, and protects employers from ongoing payments to those who have been found to have committed crimes against the system, or who have admitted to such crimes.

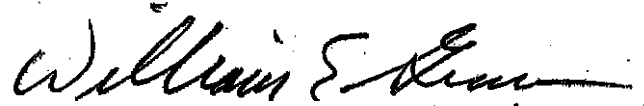
Respondent has admitted in open court that he committed a crime described in Labor Code section 139.21(a)(1)(A). He entered a plea of guilty to that crime, and the court accepted his plea. He is exactly the sort of physician, practitioner, or provider to whom that statute is intended to apply. To allow him to continue to participate in the workers' compensation system over a period of years before sentencing would completely frustrate the purpose of the statute. Regardless of the guilty plea by Respondent and suspension from the Worker's Compensation system he remains free to provide chiropractic treatment anywhere in California. He is only precluded from the Worker's Compensation system.

Under these circumstances, there is no compelling reason to ignore "the general California rule that a plea of guilty constitutes a conviction." Finally, it should be noted that a suspension pursuant to section 139.21(a)(1) is not irreversible. In the unlikely event that Respondent withdraws his guilty plea, the Administrative Director could lift the suspension until there is a new disposition in the criminal proceedings. Unless and until that happens, however, Respondent is guilty of a crime described in section 139.21(a)(1)(A) by his own admission, and is deemed convicted of those crimes at this time for the purposes of that statute.

For the foregoing reasons, a determination was made that Labor Code section 139.21(a)(1)(A) applies to Respondent, and immediate suspension is therefore required by section 139.21(b)(2).

ORDER

IT IS ORDERED that Respondent, Steven Rigler D.C., is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.



William E. Gunn

Hearing Officer

7/19/17

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
4 1515 Clay Street, 18th Floor, Oakland, California 94612.

5 I served the following documents:

6 **ADMINISTRATIVE DIRECTOR'S DETERMINATION**
7 **AND ORDER RE: SUSPENSION;**
8 **Hearing Officer's recommended Determination and Order re: Suspension**

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

10 **By Certified Mail:**

11 Steven Rigler
12 1885 National Avenue
13 San Diego, CA 91113

14 Daniel S. Levinson, Esq.
15 Levinson Stockton LLP
16 990 Highland Drive, Suite 206
17 Solana Beach, CA 92075

18 **By Hand Delivery:**

19 Paige Levy, Chief Judge
20 Division of Workers' Compensation
21 1515 Clay Street, 17th Floor
22 Oakland, CA 94612

23 The documents were served by the following means:

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

26 Placed the envelope or package for collection and mailing, following our ordinary business
27 practices. I am readily familiar with the firm's practice for collection and processing correspondence
28 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.

(BY HAND DELIVERY) I personally caused to be served by hand delivery to the indicated
party above and/or by leaving the envelope or package with an agent at the party's address listed
above.

I declare under penalty of perjury under the laws of State of California that the above is true
and correct. Executed on July 28, 2017, at Oakland, California.


CATHY FUJITA-LAM