

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

6 **In Re: PROVIDER SUSPENSION**

Case No. AD PS-17-05

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

10 **PHILIP A. SOBOL, M.D.,**
11 *Respondent.*

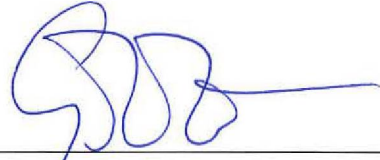
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13 The Administrative Director of the Division of Workers' Compensation is required to suspend
14 any physician, practitioner, or provider from participating in the workers' compensation system as a
15 physician, practitioner, or provider if the individual 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 April 28, 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 Philip A. Sobol 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 April 28, 2017 Determination and Order re: Suspension of the Workers' Compensation
24 Administrative Law Judge, attached hereto, as the Acting Administrative Director's Determination and
25 Order re: Suspension.

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1 **IT IS HEREBY ORDERED** that Philip A. Sobol is hereby suspended from participating in the
2 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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Case No. AD PS-17-05

PHILIP A. SOBOL, M.D.,
Respondent.

**DETERMINATION AND ORDER
RE: SUSPENSION**

A hearing was held in the above-captioned matter on April 4th, 2017 pursuant to Labor Code section 139.21(b) (2). At that time, counsel for Philip A. Sobol M.D., Respondent, submitted a hearing brief which included several objections. OD Legal requested time to file a reply brief to which no objection was made by Respondent. OD Legal was given until 4/21/17 to submit a response to Respondent's hearing brief at which time the matter will be submitted for decision.

Respondent argued the Suspension provision of LC 139.21 is impermissible for the following reasons:

1. The suspension provision is a prospective law and thus cannot be applied to Respondent's criminal conduct and resulting guilty plea which predated both the enactment of the statute and its effective date;
2. If applied retroactively to Respondent, the Suspension Provision would violate the Ex Post Facto Clause of the United States and California Constitutions; and
3. The Suspension Provision is void for vagueness under the United States and California Constitutions.

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Respondent also argued the hearing procedure as set forth in the Suspension Provision and in the "Emergency Regulations" promulgated by the DWC to implement the Suspension Provision (Title 8, California Code of Regulations, §§ 9788.1-9788.4), violate the Administrative Procedures Act, and specifically Government Code Sections 11500 *et seq.*, in that they fail to require an adjudicatory proceeding before an Administrative Law Judge on the staff of the Office of Administrative Hearings and governed by the rules and procedures for such hearings. Respondent in addition argues the hearing procedure as found in Reg. 9788.3 violates the due process clause of the United States and California Constitutions.

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) 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 Nov. 20, 2015, Respondent, Philip A. Sobol, M.D. signed a plea agreement with the United States Attorney's Office for the Central District of California in which respondent agreed to plead guilty to two felonies, Conspiracy, 18 U.S.C. § 371 and Interstate Travel in Aid of a Racketeering Enterprise, 18 U.S.C. § 1952. (*Exhibit 1*). These violations are crimes described in Labor Code section 139.21(a)(1)(A).

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3. On Jan. 22, 2016, a hearing was held in the United States District Court for the Central District of California at which time respondent entered his guilty plea in accordance with Paragraph 2 above, and respondent's plea was accepted by the Court. (*Exhibits 3 and 4*)

DETERMINATION

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

BASIS FOR DETERMINATION

Both Respondent and OD Legal have submitted briefs which 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.

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. The legislative committee analyses are 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,

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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 as Exhibits A and B. Exhibits A and B are ordered admitted into evidence as Exhibits 7 and 8 respectively.

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). There is no dispute that Respondent entered a plea of guilty to two felonies, and the plea was accepted by the United States District Court for the Central District of California. Both felonies are crimes described in Labor Code section 139.21(a) (1) (A). (*Exhibit 1*) Based on the facts, and Section 132.21(a) (1), Dr. Sobol is required to be suspended from the worker's compensation system by the Administrative Director.

Respondent has argued the suspension provision is a prospective law and thus cannot be applied to his criminal conduct and resulting guilty plea which predated both the enactment of the statute and its effective date. Respondent argues there is no evidence that section 139.21 should apply retroactively. Both of these arguments lack merit.

To determine whether the statute applies to Respondent's criminal conduct we must look at the legislative intent when the statute was drafted and passed. It is clear that the legislature intended for the suspension provisions of AB 1244 to apply to Respondent. In the legislative committee analyses of AB 1244 found in Exhibits 7 and 8, Respondent, Dr. Philip Sobol, is specifically identified by name as an example of conduct requiring the passage of AB1244.

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There is no doubt the legislature intended the suspension provisions of LC 139.21 to apply to Respondent regardless of the date of conviction. The suspension provisions of LC 139.21 therefore apply to Respondent based upon the clear evidence of legislative intent, even though the conviction giving rise to the suspension predated the effective date of the statute.

Respondent's second argument is that the suspension provision of LC 139.21 is an unconstitutional violation of the Ex Post Facto Clause of the United States and California Constitutions. That determination is not within the scope of this hearing officer's jurisdiction. Therefore, whether or not Labor Code §139.21 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.

Respondent argues the suspension provision of LC 139.21 is void for vagueness under the United States and California Constitutions because the statute doesn't cite the criminal statute to which the provisions apply, and that a conviction of any one of a virtually endless list of offenses could invoke the suspension provisions of LC 139.21. As previously noted this hearing officer does not have jurisdiction over claims of constitutional violations and a determination that LC 139.21 is void for vagueness on constitutional grounds will not be addressed. This hearing officer will make a finding that the statute is not vague on its face, and is able to be interpreted based on its plain meaning and is the basis for the hearing at hand. LC 139.21(a)(1) states the Administrative Director shall suspend from the worker's compensation system a physician, practitioner or provider, who is convicted of a crime that falls within certain specified criteria listed in LC 139.21 (a) (1). There is no vagueness, but rather in order for the suspension

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provisions to apply, the statute provides that the individual must meet one of the specific listed criteria which include a conviction of specifically described crimes. This is not an endless list of offenses as Respondent argues, but rather the statute clearly defines certain types of crimes which will result in a suspension. A medical provider is given an opportunity in the statute to show the crime for which they were convicted of is not of the type of offence listed, and therefore should not give rise to the suspension provisions of LC 139.21. Respondent was given this opportunity, but despite having this opportunity Respondent never argued the crimes he was convicted of didn't come within any of the listed descriptions. Respondent was convicted of two felonies arising from fraud of the worker's compensation system. It is clear from the facts admitted in the plea agreement that the crimes Respondent was convicted of come within one of the descriptions listed in LC 139.21(a)(1)(A)(i)-(iv) based on the plain meaning of the statute.

Respondent also argues the hearing procedure as set for in the Suspension Provision and in the "Emergency Regulations" promulgated by the DWC to implement the Suspension Provision violate the Administrative Procedures Act, in that they fail to require an adjudicatory proceeding before an Administrative Law Judge on the staff of the Office of Administrative Hearings and governed by the rules and procedures for such hearings.

Gov.Code Section 11415.10(a) states the following:

(a) The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding. If no other governing procedure is provided by statute or regulation, an agency may conduct an adjudicative proceeding under the administrative adjudication provisions of the Administrative Procedure Act.

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(b) This chapter supplements the governing procedure by which an agency conducts an adjudicative proceeding.

LC 139.21 is a specific statute applicable to the Administrative Director and in which the legislature described the procedure by which an administrative agency conducts an adjudicative proceeding regarding medical provider suspensions. As such, it is a governing procedure provided by statute or regulation, and is therefore the governing procedure for medical provider suspension hearings and not the Administrative Procedure Act. If there were no governing procedure provided by statute or regulation for the medical provider suspension hearings then the hearings would be required to be conducted according to the Administrative Procedure Act, but this is not the case.

Respondent argues that since the DWC has adopted regulations requiring a hearing for the discipline and reappointment of Qualified Medical Evaluators to be conducted pursuant to the Administrative Procedure Act, that the failure to require the same procedure in the regulations promulgated for the medical provider suspension hearing procedure violates the Administrative Procedure Act. The legislature allowed discipline and reappointment hearings for Qualified Medical Evaluators to be held according to the Administrative Procedure Act, but in this instance chose to have the administrative agency conduct the adjudicative proceedings regarding medical provider suspensions. There is no reason the legislature couldn't make this decision, and Government Code § 11415.10 clearly states the legislature may choose to have the administrative agency conduct an adjudicative proceeding according to the statutes and regulations applicable to that proceeding, or in this case LC 139.21. Since the Government Code

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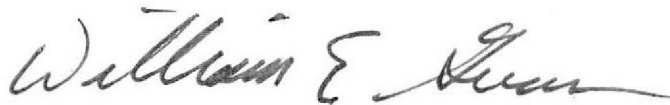
specifically allows an administrative agency, in this case the Department of Industrial Relations, to conduct a hearing through a specific statute enacted that applies to the agency, and not the Administrative Procedure Act, respondent's argument fails.

Respondent argues the hearing procedure rules set forth in Reg. 9788.3 violates the due process clauses in the Federal and State constitutions. That determination is not within the scope of this hearing officer's jurisdiction. Therefore, whether or not the LC §139.21(a) (1) et al hearing procedure violates the due process clauses of the Federal and State Constitutions will not be addressed. This hearing office will point out that after being served with the "Notice Of Provider Suspension-Workers Compensation" (Ex 5) Respondent requested a hearing as provided for in LC 139.21, (Ex A) and was given an opportunity to present evidence that LC 139.21 (a)(1) was not applicable. Respondent provided no evidence that LC 139.21 (a) (1) did not apply.

ORDER

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

Dated: April 28, 2017



**William E. Gunn
Hearing Officer**