

David James Smith
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May 22, 2024

George Parisotto,

I have received your correspondence of May 13, 2024. The following are the legal and factual reasons as to why my suspension from participation in the California workers' compensation system pursuant to section 139.21(a)(1)(A) of the Labor Code is improper. I request a hearing on the matter.

In relevant part, section 139.21 provides for suspension of a provider if the individual has been convicted of a misdemeanor involving fraud or abuse, relates to conduct of an individual medical practice as it relates to patient care, is a financial crime, or is substantially related to the qualifications, functions or duties of a provider of services. Of those provisions, only patient care and qualifications to practice are relevant to the plea entered in December, 2023, on a Superseding Information of December 26, 2024, following the dismissal of the indictment dated December 13, 2022, which is enclosed with your correspondence.

Under the plea agreement that facilitated that plea, there was an admitted factual basis. The factual basis alleges that I compounded fentanyl citrate in my medical practice in a manner which resulted in its adulteration because the compounding environment failed to meet applicable standards. The factual basis does not allege that this related to patient care or to my qualifications or competency to practice medicine. Indeed, the Medical Board of California determined on October 19, 2021, following a thorough evaluation of my competency to compound and provide intrathecal care that I was competent and qualified. Enclosed is the correspondence from the Board making that determination.

Notably, in my over thirty years of compounding in my medical practice, I have not had any claims by anyone that my compounding resulted in contamination of the medications.

All compounding at issue that was performed by me has always been done under a sterile hood, utilizing sterile technique and with sterility testing by an outside third party, Eagle Testing.

All medications have always been properly ordered using the required DEA 222 form and were obtained from an FDA approved and DEA sanctioned manufacturing facility.

For these reasons and those to be presented at the requested hearing, the suspension is improper.

Please submit email correspondence to the following:

David Smith - sdcpmdjs@hotmail.com Wanda Hall- whall@epikinc.us

Matt Rifat- matthew.rifat@lomdr.com

Very truly yours,

/S/ David J. Smith

David J. Smith, M.D.

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