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8 Attorney for Defendant
 9 DUKE AHN, M.D.

10 **BEFORE DIVISIION OF CALIFORNIA’S WORKERS’ COMPENSATION**
 11 **DEPARTMENTAL APPEAL BOARD**
 12 **CIVIL REMEDIES DIVISION**

13 In the Case of:

Case Docket: TBA

14 DUKE AHN, M.D.

15 Participant,

**DUKE AHN’S REQUEST FOR
 ADMINITRATIVE HEARING AND
 ATTACHED EXHIBITS 1 THROUGH 5**

16 vs.

17 ADMINISTRATIVE DIRECTOR of the
 18 DIVISIION OF WORKERS’
 19 COMPENSATION (DWC)

20 Respondent.

21 **TO ALL PARTIES AND OTHEIR COUNSEL:**

22 Participant, Duke Ahn M.D. hereby submits this Request for Hearing for along with proposed
 23 exhibit, copies of exhibits and witness list.
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1 **RELEVANT BACKGROUND**

2 On April 3, 2017 the Orange County prosecutors filed criminal accusations against Dr. Ahn and
3 twenty or so other doctors and individuals accusing the group of orchestrating a massive billing fraud
4 relating to compound creams and urine toxicology testing for worker's compensation patients. After
5 approximately two years of intensive litigation, prosecutor acknowledge that the case against Dr. Ahn
6 is no longer attainable and under great financial pressure and assurance by his criminal defense counsel
7 that a misdemeanor plea would not adversely affect his licensure, Dr. Ahn agreed to plea to a single
8 misdemeanor count California Business and Professions Code §650 (receiving consideration for patient
9 referrals). The California court suspended the imposition of his sentence and ordered Mr. Ahn to serve
10 3 years of informal probation. The probation term is to end May 10, 2022. (see Ahn Exhibit 1, Orange
11 County Superior Court Case Summary) and sentencing is to be put over until that date. On January 16,
12 2020, Attorney General's office sought an action before the Medical Board of California, Department
13 of Consumer Affairs to suspend or revoke Dr. Ahn's medical license (Ahn, Exhibit 2).

14
15 On August 20, 2020, Orange County Superior Court of the State of California reviewed Dr.
16 Ahn's petition to dismiss his pending criminal action pursuant to California Penal Code §1358. After
17 extensive argument and opposition from the prosecutor, the judge granted Dr. Ahn's relief and found
18 that Dr. Ahn's criminal action is to be dismissed in the interest of justice pursuant to California Penal
19 Code §1358 (Ahn. Exhibit 3). On September 1, 2020, just days after receiving the certified copy of the
20 court order from the criminal proceeding, the attorney general's office moved to dismiss their original
21 accusation, withdrawing their request for suspension or revocation (Exhibit 4). California's Health and
22 Human Services Agency then took action to reinstate Dr. Ahn's privileges under their
23 programs.(Exhibit 5).

24
25 On August 23, 2022, Dr. Ahn received notice from the Administrator Director of the Division
26 of Worker's Compensation (DWC) notifying of his suspension from participating in the Workers'
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1 Compensation programs incorrectly relying on the accusations filed in April of 2017 without regard o
2 the subsequent dismissal pursuant to Penal Code Section 1385.

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4 **APPLICABLE LAW**

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6 California’s Penal Code Section 1385 provides authority to state court judges to dismiss cases
7 in the interest of justice. Such as dismissal, if granted is only available in case that has not reached a
8 final judgment. Even when defendants enter a plea of guilty, it is not considered a final judgment until
9 and terms of the probation have been completed and the judge have discretion to dismiss the case
10 without final judgment and without any adverse record. The case that highlights the use of section
11 1385 dismissals is the case of *People vs. Chavez* (2016) 5 Cal.App.5th 110, 117. The case also
12 distinguishes a section 1385 dismissal from that of a dismissal pursuant to Penal Code Section 1203.4,
13 which is commonly referred to as an expungement. The *Chavez* case enumerated for us that a court’s
14 dismissal under PC 1385 is properly granted if it is issued prior to the termination of probation (which
15 is the case for Dr. Ahn). The *Chavez* case further elaborates that even when there is a plea agreement,
16 if the court grants a dismissal pursuant to PC 1385 prior to the termination or completion of probation,
17 no final judgement or conviction is entered. This is an important distinction in this case because a
18 section 1385 dismissal will nullify any prior plea and renders California’s DHCS’s decision null.

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20 **ISSUES PRESENTED**

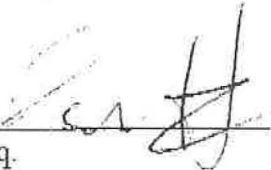
21 1. Whether Labor Code section 139.21(a)(1) applies to Dr. Ahn when his case was dismissed
22 pursuant to Penal Code Section 1385.

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Dated: August 29, 2022

LEXINT LAW GROUP, APLC

By: /s/ Robert C. Hsu 
Robert C. Hsu, Esq.
Attorneys for Participant
DUKE AHN M.D.