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

In Re: PROVIDER SUSPENSION **JASON HUI-TEK YANG, M.D.,** *Respondent.*	**Case No. AD PS-17-06** **DETERMINATION AND ORDER RE: SUSPENSION**

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 May 25, 2017 Findings and Order re: Order of Suspension of the designated Hearing Officer, the Acting Administrative Director finds that Respondent Jason Hui-Tek Yang, M.D., 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 May 25, 2017 Findings and Order re: Order of Suspension of the designated Hearing Officer, attached hereto, as the Acting Administrative Director's Determination and Order re: Suspension.

IT IS HEREBY ORDERED that Jason Hui-Tek Yang, M.D., is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

Date: June 1, 2017

GEORGE PARISOTTO
Acting Administrative Director
Division of Workers' Compensation

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A hearing was held in the above-captioned matter on April 18, 2017 pursuant to Labor Code § 139.21(b)(2). At the request of the parties, time was granted to file trial briefs on the issue of whether Respondent has yet been "convicted" of any felony or misdemeanor as the term is used in LC § 139.21(a)(1)(A), and the matter was ordered submitted for decision as of May 19, 2017. This is the undersigned Hearing Officer's recommended Determination and Order re: Suspension pursuant to Title 8 CCR § 9788.3(c).

FACTS

1. LC § 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 LC § 139.21(a)(1)(A).

2. On October 13, 2016, Respondent signed a Riverside County Superior Court felony plea form in which he agreed to enter a guilty plea to five violations of Insurance Code § 1871.4(a)(1), a felony, as well as enhancements to include a violation of Penal Code § 186.11(a)(2) and a violation of Penal Code § 12022.6(a)(2), in exchange for certain sentencing considerations. The felony plea form was filed with the Riverside County Superior Court. (***Exhibit 2***).

3. A sentencing hearing is currently scheduled for Respondent in Riverside County Superior Court for June 2, 2017. (Respondent's Hearing Brief, P3 L22-23)

DETERMINATION

LC § 139.21(a)(1)(A) applies to Respondent Jason Hui-Tek Yang, M.D. As a result, the Administrative Director is required to immediately suspend Respondent pursuant to LC § 139.21(b)(2).

BASIS FOR DETERMINATION

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.

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, 211) The request to take judicial 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 8, 9 and 10 respectively.

LC § 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 LC § 139.21(a)(1)(A). Respondent entered a plea of guilty to five violations of IC § 1871.4, felony insurance fraud, with additional enhancements which are crimes described in LC § 139.21(a)(1)(A). A sentencing hearing is scheduled for June 2, 2017 in Riverside County Superior Court.

Respondent asserts that despite having entered a guilty plea pursuant to a written plea agreement filed with the superior court, and having a sentencing hearing scheduled, he has not yet been convicted because sentencing was deferred and continued to such time as Respondent successfully performed his commitments under the plea agreement. Respondent argues that since he may yet withdraw his guilty plea, proceed to trial and be acquitted or the charges even be dismissed, the guilty plea itself is not final and he has not yet been convicted of a crime, therefore the LC § 139.21 (a)(1)(A) requirement of a conviction has not yet occurred and suspension is not proper.

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 *Helena Rubenstein International v. Younger* (1977) 71 Cal. App. 3d 406 and *Boyll v. State Personnel Board* (1983) 146 Cal. App. 3d 1070. Each of those 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 each of these cases, the Court noted that a fundamental right was affected: the right to apply for employment; the right to vote; and the right to hold state office. These are rights 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 any of those cases.[1]

[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.

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.

In the present case, Respondent argues that a suspension pursuant to LC § 139.21(a)(1) would be a "civil disability or penalty" which falls into the category of statutes requiring that a "conviction" include both the plea and the judgment or sentencing. However, participation in the workers' compensation system is not a fundamental right, and suspension from such participation does not affect Respondent's ability to otherwise practice medicine.

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 also 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.

LC § 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 that 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 Exhibits 8, 9 and 10 the legislature identified instances of ongoing and well-publicized fraud and abuse of the system that had been occurring as the basis for the necessity to enact LC § 139.21. In light of this, the suspension provision of LC § 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 crimes described in LC § 139.21(a)(1)(A). He entered a plea of guilty to those crimes, and the court accepted his plea. Respondent 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 while he cooperates with a different criminal proceeding would completely frustrate the purpose of the statute. 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 LC § 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 crimes described in LC § 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 LC § 139.21(a)(1)(A) applies to Respondent, and immediate suspension is therefore required by LC § 139.21(b)(2).

ORDER

IT IS ORDERED that Jason Hui-Tek Yang, M.D. is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

DATE: May 25, 2017

William E. Gunn

William E. Gunn
Hearing Officer