

August 31, 2017

Via Overnight Delivery

Hearing Request
George Parisotto
Acting Administrative Director
Division of Workers' Compensation
1515 Clay Street, Suite 1800
Oakland, California 94612



Hearing Request
Legal Unit
Division of Workers' Compensation
1515 Clay Street, Suite 1800
Oakland, California 94612

Re: Hearing Request
Your Aug. 25, 2017 Notice of Provider Suspension--Workers' Compensation
James Lemus, M.D. (Commerce, California)

Dear Mr. Parisotto and DWC Legal Unit:

We represent James Lemus, M.D., of 5020 E. Washington Blvd., Commerce, California 90040. We are in receipt of your Aug. 25, 2017 Notice of Provider Suspension—Workers' Compensation setting forth the Division of Workers' Compensation intent to suspend Dr. Lemus' "participation in the California workers' compensation system" pursuant to section 139.21(a)(1)(A) & (B). The given reasons are that Dr. Lemus was convicted of a crime described in Labor Code section 139.21(a)(1)(A) and/or he has been suspended, due to fraud or abuse, from participation in the federal Medicare or Medicaid programs.

As is authorized, Dr. Lemus hereby requests a hearing, and stay of any intent to suspend.

Dr. Lemus objects to and disagrees with both the factual and legal basis for the proposed action. We are unaware that there has been any noticed and duly processed suspension of Dr. Lemus by

1253300.1

Re: Hearing Request by James Lemus, M.D.

August 31, 2017

Page 2

Medicare or Medicaid. *See* Cal. Lab. Code § 139.21(a)(1)(B). While Dr. Lemus did stipulate to a conviction in 2011, it did not involve fraud or abuse of the Medi-Cal or Medicare programs, or the workers' compensation program, nor did it involve fraud or abuse perpetrated on any patient. It did not involve in his medical practice pertaining to patient care. It did not involve a financial crime relating to the Medi-Cal, Medicare or workers' compensation program. Nor does the plea substantially relate to the qualification, functions or duties of a provider of services. *See* Cal. Lab. Code § 139.21(a)(1)(A). We are unaware of proof to the contrary. Indeed, the Medical Board of California found him fit to continue to practice as a physician and surgeon, albeit under terms of probation.

Additionally, Dr. Lemus objects to the jurisdictional, statutory and constitutional basis for this administrative agency to suspend or prevent Dr. Lemus from seeing or treating patients, or being compensated for professional services sought and rendered within acceptable standards of care, to a patient who suffered an industrial injury and requires medical care, particularly but not limited to emergency and urgent medical assessment, care and follow-up, or to preclude him from providing and being paid for medical services rendered at the request or with the permission of an employer or insurance provider. To the extent the Division contemplates "suspension from participation" as described in section 9788.1 of title 8 of the Code of Regulations, Dr. Lemus further objects that this draconian global action is overbroad, without legitimate or reasonable basis, outside of legislative purview, and unconstitutional (due process, equal protection, over-breadth, medical privacy, freedom of association and contract, separation of powers). Dr. Lemus is not listed with the Division as a qualified medical evaluator. He simply is a provider of medical care—usually emergency or urgent care—to patients, some of whom may have suffered an injury on the job or come to him based on past or established relationships and his knowledge, skill, and reputation as an efficacious and desirable practitioner.

Further, the Division is relying on provision of section 139.21 first enacted into law in 2016 (Stats. 2016, ch. 852, § 1), and going into effect the first of this year. The provisions unreasonably seek to retroactively invalidate not only established relationships and contractual relations between Dr. Lemus and his clients, but it arbitrarily and over-broadly impairs vested rights—which is disfavored at law. *See, e.g., Nasim v. Los Robles Regional Med. Ctr.*, 165 Cal. App. 4th 1538, 1543 (2008). It essentially is affecting Dr. Lemus' right to earn a livelihood by his practice and in the area of his expertise, despite the absence of any evidence of medical negligence or incompetence in assessing and treating injured workers, rendering emergency or urgent care, or otherwise.

We understand numerous legal challenges are now pending to the grounds upon which the Division seeks to take action.

As requested, accompanying this original request is a copy, along with a copy served on the DWC Legal Unit.

Future correspondence should be directed to the undersigned on behalf of our client, Dr. Lemus.

Re: Hearing Request by James Lemus, M.D.

August 31, 2017

Page 3

Very truly yours,

BONNE, BRIDGES, MUELLER, O'KEEFE & NICHOLS
Professional Corporation

Joel B. Douglas

JBD

Attachment (proof of services)

cc: *Personal and Confidential*
James Lemus, M.D.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071-1562.

On August 31, 2017, I served true copies of the following document(s) described as **HEARING REQUEST** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY GOLDEN STATE OVERNIGHT DELIVERY SERVICES: I deposited said document in a Golden State Overnight Delivery Services envelope in a Golden State Overnight Delivery Services receptacle at 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071-1562, California. The envelope was so deposited for overnight delivery prior to the last scheduled pick up by Golden State Overnight Delivery Services, with postage arranged for billing by Golden State Overnight Delivery Services to this office pursuant to this office's account with said carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 31, 2017, at Los Angeles, California.



Vivian F. Chin

SERVICE LIST

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

George Parisotto
Acting Administrative Director
Division of Workers' Compensation
1515 Clay St., Suite 1800
Oakland, CA 94612

Hearing Request
Legal Unit
Division of Workers' Compensation
1515 Clay St. Suite 1800
Oakland, CA 94612