

1
2
3
4
5
6
7
8
9
10
11

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

In Re: PROVIDER SUSPENSION

Case No. AD PS-17-10

DETERMINATION AND ORDER

RE: SUSPENSION

EDWARD ALBERT G. BALBAS, M.D.,
Respondent.

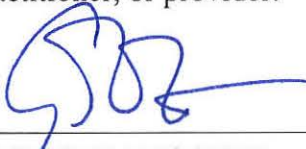
12 The Administrative Director of the Division of Workers' Compensation is required to suspend
13 any physician, practitioner, or provider from participating in the workers' compensation system as a
14 physician, practitioner, or provider if the individual or entity meets any of the express criteria set forth in
15 Labor Code section 139.21(a)(1).

16 Based upon a review of the record in this case, including the October 20, 2017 recommended
17 Determination and Order re: Suspension of the designated Hearing Officer, the Administrative Director
18 finds that Respondent Edward Balbas, M.D., meets the criteria for suspension set forth in Labor Code
19 section 139.21(a) and shall be suspended from participating in the workers' compensation system as a
20 physician, practitioner, or provider. Pursuant to California Code of Regulations, title 8, section
21 9788.3(d), the Administrative Director hereby adopts and incorporates the October 20, 2017
22 recommended Determination and Order re: Suspension of the designated Hearing Officer, attached
23 hereto, as the Administrative Director's Determination and Order re: Suspension.

24 **IT IS HEREBY ORDERED** that Edward Balbas, M.D., is hereby suspended from participating
25 in the workers' compensation system as a physician, practitioner, or provider.

26 Date: October 30, 2017

27
28



GEORGE PARISOTTO
Administrative Director
Division of Workers' Compensation

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

In Re: PROVIDER SUSPENSION

EDWARD ALBERT G. BALBAS, M.D.,
Respondent.

**Case No. AD PS-17-10
DETERMINATION AND ORDER
RE: SUSPENSION**

A hearing was held in the above-captioned matter on September 8, 2017 pursuant to Labor Code section 139.21(b) (2). At that time, counsel for the parties requested and were granted time to file and serve hearing briefs. The lead brief by counsel for Dr. Balbas was to be filed by the close of business on Friday September 29, 2017 and counsel for OD Legal was given until Monday October 16, 2017 to serve and file a reply brief, the matter would stand submitted as of Monday, October 16, 2017. A brief was received from Dr. Balbas's attorney on Thursday 9/28/17 and the Reply brief from OD Legal was received 10/16/17. The matter was to stand submitted on Monday October 16, 2017.

At the Hearing Dr. Balbas raised several issues; 1. His conviction only involved private insurance companies and not Medi-Cal, Medicare, the workers' compensation system, fraud or abuse of a patient or patient care. 2. The crimes for which he pled guilty to were two counts of violating PC §549, false or fraudulent claims against insurers, solicitation, acceptance or referral of business and one count of PC§186.11(a) (2) a sentencing enhancement for excessive taking. Dr. Balbas argues this does not go to the practice of medicine and therefore his right to participate in the workers' compensation system should not be suspended. 3. That the statute cannot be applied to him retroactively.

The court will address Dr. Balbas's last concern first. Dr. Balbas's third argument is that this statute is unconstitutional ex post facto law. That determination is not within the jurisdiction of this Hearing Officers determination. Therefore, whether or not Labor Code §139.21(a)(1) 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. Dr. Balbas also contends the statute cannot be

applied retroactively. To determine this we must look at the legislative intent when the statute was drafted and passed. It is clear from the legislative intent that the legislature wanted this law to apply retroactively to all doctors convicted of crimes that fall within the purview of Labor Code 139.21. When the Senate passed SB899 in 2004 one thing it did was change the methodology of how penalties were to be applied. In Green v. WCAB (2005) 70 Cal. Comp. Cas. 294, the Court of Appeal reached back to a judge's decision that issued the year before the new law passed and applied the statute retroactively changing the way penalties were to be calculated on all cases not just on issues that arose after the law was passed. Additionally, the Court of Appeal in Kleeman v. WCAB (2005) 70 Cal. Comp. Cas. 133 and Rio Linda Union School District v. WCAB (Scheftner) (2005) 70 Cal. Comp. Cas. 999 also held that SB899 was to be applied retroactively to all cases on the separate issue of apportionment. Workers' Compensation law is a creature of statute and not common law, so different standards apply. Here, the statute was properly applied retroactively against Dr. Balbas. Here, the new statute under Labor Code §139.21 gives the Department of Workers' Compensation a consolidated way to handle the disciplinary action against the offending parties. The Workers' Compensation system is created by statute and the legislature has plenary power over it as is shown by the various reforms that workers' compensation system has gone through during the past 30 years.

Dr. Balbas argues that pleading guilty to billing for services that were not performed or provided to the patient (PC §549) is not one of the enumerated prohibited or criminal conducts under Labor Code §139.21(a) (1) (A). This court finds that it is and that his conduct violated Labor Code §139.21(a) (1) (A) (i), (ii), and (iv), his conduct was substantially related to the qualifications, functions, or duties of a provider of services. Dr. Balbas argues that he did not fraudulently bill Medi-Cal or Medicare that only fraudulently billed private insurance companies for the service that were not performed. Based on this he contends (i) is not applicable to him. However, it is. It is not just fraud or abuse of the Medi-Cal, Medicare or workers' compensation system but fraud or abuse of any patient. Here the patient could be harmed if they had a deductible or copay for the services rendered and billed through their insurance company. In the workers' compensation system, these same private insurance companies that he fraudulently billed are the same companies who would be paying for the treatment given to the injured workers. Dr. Balbas was ordered to pay restitution in the amount of \$657,367.81 to various companies including, CIGNA, AETNA, Blue Shield and Anthem Blue Cross. Subsection (ii) also applies because billing for services that

were not performed on the patient yet billed goes toward patient care or lack thereof. In the workers' compensation system there are limits on certain types of treatment and by billing for services that were not performed may result in the denial of needed care later during the treatment of the applicant. The abuse of the billing leads directly to the greed associated with the patient care and the doctor's methods of practicing. This hearing officer also finds that Dr. Balbas violated (iv). The doctor contends the subsection is vague and overly ambiguous. The statute states the doctor can be suspended if the felony or misdemeanor conviction is, (iv) related to his qualifications, functions, or duties of a provider of services. Here the doctor has to perform the services and bill for the services as well as collect for the services. Billing for services that were not performed means the doctor had to evaluate what treatment to give the patient and what treatment he could bill for and not give the applicant. This goes towards patient care, and the functions and duties as a provider of services. The attorney for Dr. Balbas attempts in his brief to argue that the doctor was not responsible for the fraudulent billing but his co-conspirator was. The doctor pled guilty to two counts of billing fraud. It is irrelevant whether or not there was a co-conspirator or not. The doctor collected the money and was ordered to pay restitution in the amount of \$657,367.81 for the crimes he committed.

Based on the above the doctor violated Labor Code §139.21(a) (1) (A) (i), (ii), and (iv) and is hereby ordered suspended from participation in the workers' compensation system.

IT IS SO ORDERED that EDWARD ALBERT G. BALBAS, M.D. is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

DATE: 10/20/17



WCJ ALAN SKELLY
Hearing Officer