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January 27, 2017

File No.:9C060.001

HAND DELIVERY

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

Re: January 17, 2017 Michael Edward Barri Notice of Provider Suspension -
Workers' Compensation

Dear Mr. Parisotto:

I represent Michael Barri. This letter responds to the Notice of Provider Suspension that you sent to Dr. Barri on January 17, 2017.

Dr. Barri requests a hearing on the proposed provider suspension and contests the applicability of Labor Code Section 139.21 to him for at least two reasons.

First, in the absence of a clear legislative intent to the contrary, statutes are presumed to apply prospectively. *See Evangelatos v. Superior Court*, 44 Cal. 3d 1188, 1193-94, 753 P.2d 585, 587 (1988). Nothing in the language of Assembly Bill 1244, which enacted Section 139.21, suggests that the legislature intended Section 139.21 to apply retroactively to convictions that occurred prior to its enactment on September 30, 2016. Dr. Barri entered his guilty plea on March 11, 2016, and therefore Section 139.21 does not apply to him.

Second, Section 139.21 cannot legally be applied to Dr. Barri because to do so would violate the prohibition against ex post facto laws in the United States and California Constitutions. *See U.S. Const.*, art. I, § 10, cl. 1; *Cal. Const.*, art. I, § 9. As applied to Dr. Barri, Section 139.21 is retrospective, since it was enacted on September 30, 2016, and you seek to apply it to Dr. Barri's

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guilty plea entered on March 11, 2016. It is essentially criminal in effect, since it is activated by Dr. Barri's guilty plea, and its broad scope and effect is punitive rather than remedial. *See People v. 25651 Minoa Dr.*, 2 Cal. App. 4th 787, 795, 3 Cal. Rptr. 2d 577 (1992), *modified* (Feb. 5, 1992).

Dr. Barri reserves the right to present additional reasons why Section 139.21 does not apply to him at the hearing.

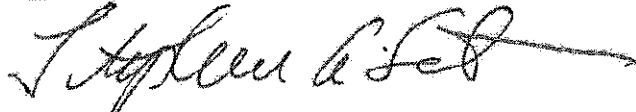
Finally, as required by CCR § 9788.2(c) and your Notice of Provider Suspension, Dr. Barri's mailing address is:

Michael Edward Barri
999 North Tustin Avenue, #201
Santa Ana, CA 92705

However, I request that you direct all correspondence and other communications regarding this matter to me.

Very truly yours,

SILVERMAN & MILLIGAN LLP



STEPHEN A. SILVERMAN

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

Proof Of Service By Mail Overnight Mail

I declare that:

I am (resident of/employed in) the county of Los Angeles California. I am over the age of eighteen years, my (business/residence) address is:

10877 Wilshire Blvd., Suite 610, Los Angeles, CA 90024

On Jan. 27, 2017, I served the attached Letter to George Parisotto on the Acting administrative director of Division of Worker's Compensation and one copy to the DWC Legal unit in said case, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid, ^{By overnight mail} ~~in the United State mail at~~

10877 Wilshire Blvd Ste 610 Los Angeles CA addressed as follows _____

George Parisotto, DWC, 1515 Clay Street, Ste 1800 Oakland, CA 94612 & Legal Unit, Division of Workers' Compensation 1515 Clay Street, Suite 1800 Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on

(date) January 27, 2017, at Los Angeles California.

Type or print name Nicole Prout

Signature 

Proof Of Service By Mail

I declare that:

I am (resident of/employed in) the county of Los Angeles California. I am over the age of eighteen years, my (business/residence) address is:

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George Parisotto, DWC, 1515 Clay Street, Ste 1800 Oakland, CA 94612 & Legal Unit, Division of Workers' Compensation 1515 Clay Street, Suite 1800 Oakland, CA 94612

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Type or print name Nicole Prout

Signature 

Proof Of Service By ~~Mail~~ Hand Delivery

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&
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Type or print name _____

Signature _____