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

In Re: PROVIDER SUSPENSION

Case No. AD PS-17-12

DETERMINATION AND ORDER

RE: SUSPENSION

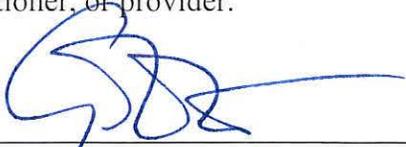
KEVIN DO, M.D.,
Respondent.

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 October 10, 2018 recommended Determination and Order re: Suspension of the designated Hearing Officer, the Administrative Director finds that Respondent Kevin Do, 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 Administrative Director hereby adopts and incorporates the October 10, 2018 recommended Determination and Order re: Suspension of the designated Hearing Officer, attached hereto, as the Administrative Director's Determination and Order re: Suspension.

IT IS HEREBY ORDERED that Kevin Do, M.D., is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

Date: October 19, 2018



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

Kevin Do, M.D.,

Respondent.

Case No. AD PS-17-12

**DETERMINATION AND
ORDER RE: SUSPENSION**

A hearing was held in the above-captioned matter on Oct 3, 2018 pursuant to LC § 139.21(b) (2). This is the undersigned Hearing Officer's Recommended Determination and Order Re: Suspension pursuant to Title 8 California Code of Regulations § 9788.3(c).

The parties submitted briefs with attached exhibits. The attached exhibits are itemized below.

Respondent argued the suspension provisions of LC § 139.21 are impermissible for the reasons stated in their brief which are:

1. Dr. Do is not currently suspended from the practice of medicine and therefore this statute is inapplicable to him.

2. The Administrative Director violated and continues to violate Dr. Do's 5th and 14th amendment procedural due process rights under the US Constitution and the plain language of the statute by prematurely suspending him prior to a hearing.
3. The Administrative Director failed to provide mandatory notice and right to a hearings as set forth in LC 139.21 prior to suspending Dr. Do and publishing his name on the WCAB website prior to a hearing.
4. There is unrefuted evidence that Dr. Do's premature "suspension" without adhering to his procedural due process rights has deprived him of "property" without the right to a hearing in violation of the U.S. Constitution.
5. The application of LC 139.21 is a violation of ex post facto.
6. Dr. Do's ability to collect on validly incurred medical bills incurred prior to the passage of LC 139.21, which have no connection to his 2003 conviction constitute a "taking" without just compensation.
7. The services provided preceded the enactment of LC 139.21 and thus there is actual evidence that his inability to collect medical expenses for services rendered prior to January 2017 violates ex post facto and due process.

EXHIBITS

DIR/AFU

DIR'S 1 Letter from the Governor regarding the signing of AB 1422.

DIR 'S 2 Information and minute order in *United States of America v. Kevin T. Do, M.D.*, Case No. CRS-02-0338 before the United States District Court for the Eastern District of California.

DIR'S 3 List of DIR Suspension Activities.

DIR 'S 4 Medi-Cal Suspension Letter.

DIR 'S 5 Department of Health Care Services Medi-Cal List of Ineligible and Suspended Providers.

DIR 'S 6 Amended Notice of Provider Suspension.

RESPONDENT

DR. Do's A, Decision from the Medical Board of California dated November 16, 2005, with attachments.

DR. Do's B, Summary of Administrative Actions before the Medical Board of California dated January 2006.

DR. Do's C, Printout from the Department of Industrial Relations ' Website regarding Criminally Charged Providers Whose Liens Are Stayed.

DR. Do's D, Letter from Chavez & Breault dated February 27, 2017, with attached documents.

DR. Do's E, Petition to Strike DOR of Liberty Medical Group.

DR. Do's F, Handwritten notations regarding hearing notes and other documents.

Exhibits 1-6, and A-F are ordered admitted into evidence.

FACTS

Respondent Kevin Do, M.D. was convicted on 8/15/2003 of Health Care Fraud, Aiding and Abetting in violation of 18 USC 1347.2. (Ex 2) On 2/20/2003, Respondent was suspended from the Medi-Cal Program for an indefinite time. (Ex 4) Respondent's medical license was suspended by the medical board and he was placed on probation, but at present, his medical license is current and he continues to practice medicine. (Ex A, Resp. Brief P.4 L1-13)) Respondent is currently indefinitely suspended from the Medi-Cal Program. (Ex 5)

On 8/25/17, Respondent was served a Notice of Provider Suspension. A timely request for a hearing was made 8/30/17. (MOH P. L13-L15) The request for a hearing was received on 9/6/2018, and a hearing scheduled for 10/4/2018, as required by Reg. § 9788.3(a). Prior to the hearing a request for continuance was made by Respondent's attorney and the matter was rescheduled. This was followed by multiple requests for continuances with the matter ultimately being set for hearing on 10/3/2018.

DETERMINATION

Labor Code section 139.21(a)(1)(A) and (B) applies to Respondent Kevin Do, M.D. As a result, the Administrative Director is required to immediately suspend respondent pursuant to Labor Code section 139.21(b)(2).

BASIS FOR DETERMINATION

Both respondent and the AFU have submitted briefs which have been reviewed and considered by the court. AFU has also submitted a Request for Judicial Notice regarding Exhibits 1,3,4,5 pursuant to EC § 452(c) and Ex 2, pursuant to EC § 452(d). All Exhibits

have been admitted as no objections were made by either party. The Court also grants the Request for Judicial Notice and admits the AFU Exhibits 1-5 pursuant to EC §§ 452(c) and (d).

Respondent has made several constitutional challenges to the imposition of a suspension. These include violations of due process and ex post facto, and a taking without compensation. This Court does not have jurisdiction to determine constitutional issues, and therefore these issues will not be addressed. The status of Respondent's unpaid bills for medical services is not at issue and not relevant to this proceeding. The issue to be addressed is whether Respondent comes within the suspension provisions of LC 139.21(a)(1)(A), such that he must be suspended from the workers' compensation system.

LC 139.21 includes the following provisions:

(a)

(1) The administrative director shall promptly suspend, pursuant to subdivision (b), 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 following criteria:

(A) The individual or entity has been convicted of any felony or misdemeanor and that crime comes within any of the following descriptions:

(i) It involves fraud or abuse of the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system, or fraud or abuse of any patient.

(ii) It relates to the conduct of the individual's medical practice as it pertains to patient care.

(iii) It is a financial crime that relates to the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system.

(iv) It is otherwise substantially related to the qualifications, functions, or duties of a provider of services.

(B) The individual or entity has been suspended, due to fraud or abuse, from the federal Medicare or Medicaid or the Medi-Cal program.

The Administrative Director is required to suspend a physician, practitioner, or provider from participating in the workers' compensation system if that physician, practitioner, or provider had been convicted of a crime described in LC § 139.21(a)(1)(A). There is no dispute that Respondent has been convicted of Health Care Fraud, Aiding and Abetting in violation of 18 USC § 1347.2. (Exh 1) This is a crime described in LC § 139.21(a) (1) (A) (i), (iii) and (iv). The factual findings in the Decision of the Medical Board provide the factual background to Respondent's criminal conviction. (Ex A) The Medical Board found that respondent was involved in a scheme to defraud Medi-Cal and received funds from the scheme, thus the crime involved fraud of the Medi-Cal program and was a financial crime relating to the Medi-Cal program satisfying LC § 139.21(a)(1)(A)(i) and (iii). (Exh A) The Medical Board also made a finding that the crime was substantially related to the qualifications, functions and duties of a licensed physician and surgeon, thus the crime meets the criteria of LC § 139.21 (a)(1)(A)(iv). (Ex A) Based on respondent's conviction he is subject to suspension from the workers' compensation system.

Respondent was also suspended from the Medi-Cal program in 2003, and remains suspended. (Exh 4, and 5) As Respondent is currently suspended from the Medi-Cal program LC § 139.21 (a) (1) (B) requires that he be suspended from the workers' compensation system.

LC § 139.21 (a) (1) indicates the administrative director shall promptly suspend a physician, practitioner or provider if the criteria for suspension are met. LC 139.21 (a) (1) (A) and (B) are applicable to Respondent and therefore he must be suspended from the workers' compensation system.

Respondent argues he is not currently suspended from the practice of medicine, and therefore the statute is not applicable to him. This argument is without merit. A physician may be suspended from the workers' compensation system even though their actual license to practice medicine is still valid. Respondent need only come within the criteria for suspension found in LC § 139.21(a) (1).

Respondent also argues the administrative director violated respondents' due process rights by prematurely suspending him prior to his hearing, and that the administrative director failed to provide mandatory notice and right to a hearing prior to suspending him and publishing his name on the WCAB website prior to a hearing. This argument is not based on the facts. Respondent was not suspended by the Administrative Director. Respondent was served notice that he would be suspended 30 days from the date of mailing of the notice. Respondent then made a timely request for a hearing. LC § 139.21 (b) (2) indicates that a request for hearing will stay the suspension. Quite simply Respondent was never suspended, and any argument based on his being suspended prior to this date is factually incorrect. Respondent made a request for a hearing, and a

hearing was scheduled. Multiple continuances have occurred, but the suspension has remained stayed until the present. In the list of suspended physicians on the DIR website Respondent is referring to, it is noted that Respondent has appealed the notice of suspension. (Ex 3) Because Respondent requested a hearing, the suspension was stayed, and he was never suspended. Respondent is fully aware of this, and notes this in their brief. (Resp Brief, P4, L13-14)

Respondent argues the Administrative Director failed to provide mandatory notice and a right to a hearing prior to suspending Respondent and publishing his name on the WCAB website prior to a hearing. The list Respondent referred to in their brief is the DIR list of criminally charged providers whose liens are stayed pursuant to LC 4615. (Ex C). As previously noted, Respondent was given notice, and is having a hearing prior to suspension. As to inclusion on the DIR list, respondent is confusing the list of criminally charged providers whose liens are stayed, (Ex C), with the list of providers who have been suspended. (Ex 3) These are two different lists. Respondent is on the list of criminally charged providers whose liens are stayed pursuant to LC § 4615 because he was charged with a crime. The DIR is required to publish the list of criminally charged providers whose liens are stayed by federal court order. (See *Vanguard Medical Management Billing, Inc., et al. v. Christine Baker, et al.* (C.D. ca.1 Dec. 22, 2017, No. EDCV-17-965-GW (DTBX)) [nonpub.ord.]

Respondent's also argues the premature suspension without due process has deprived him of property without the right to a hearing in violation of the US Constitution. This court will not address whether there is a constitutional violation, but will point out again that

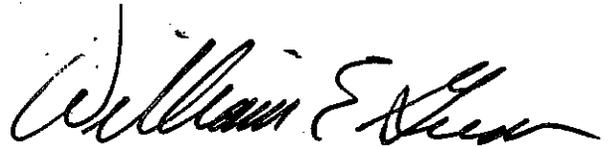
Respondent argues the application of LC 139.21 is a violation of ex post facto. Respondent also argues the inability to collect on validly incurred medical bills incurred prior to the passage of LC 139.21, which have no connection to his 2003 conviction, constitute a "taking" without just compensation, and the services provided preceded the enactment of LC 139.21 and thus there is actual evidence that his inability to collect medical expenses for services rendered prior to January 2017 violates ex post facto and due process. The constitutional issues will not be addressed, but it should be noted that the status of any of respondent's bills for service or liens are not at issue in this proceeding. Respondent retains the right to seek collection of his bills, and they are not dismissed but stayed pending commencement of lien consolidation proceedings pursuant to LC § 4615(b), and LC § 139.21 (e).

Respondent has been convicted of a crime that meets the criteria for suspension in LC 139.21 (a) (1) (A) (i), (iii) and (iv), and is also suspended from the Medi-Cal program meeting the criteria of LC 139.21 (a) (1) (B). The immediate suspension of respondent from the workers' compensation system is required pursuant to LC 139.21(b) (2).

ORDER

IT IS ORDERED that Kevin Do is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

DATE: October 10, 2018



WCJ William E. Gunn

Hearing Officer