

1 **IT IS HEREBY ORDERED** that Tushar Ramnik Doshi is hereby suspended from participating
2 in the workers' compensation system as a physician, practitioner, or provider.

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Date: April 3, 2017

GEORGE PARISOTTO
Acting Administrative Director
Division of Workers' Compensation

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

Case No. AD PS-17-01

In Re: PROVIDER SUSPENSION

TUSHAR RAMNIK DOSHI, M.D.,

Respondent.

**DETERMINATION AND
ORDER RE: SUSPENSION**

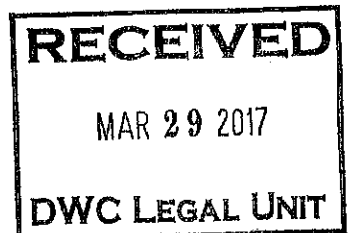
A hearing was held in the above-captioned matter on February 22, 2017 pursuant to Labor Code section 139.21(b)(2). At the request of the parties, time was granted to file trial briefs on the issue of whether respondent has yet been "convicted" of any felony or misdemeanor as the term is used in section 139.21(a)(1)(A), and the matter was ordered submitted for decision as of March 20, 2017. This is the undersigned Hearing Officer's recommended Determination and Order re: Suspension pursuant to title 8, California Code of Regulations section 9788.3(c).

FACTS

1. Labor Code section 139.21(a)(1)(A) 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 Labor Code section 139.21(a)(1)(A).

2. On May 9, 2016, respondent Tushar Ramnik Doshi, M.D. signed a plea agreement with the Riverside County District Attorney's office in which respondent agreed to plead guilty to four felony violations of Penal Code section 550(a)(6) as well as enhancements including one violation of Penal Code section 12022.6(a)(2) and one violation of Penal Code section 186.11(a)(2) (*Exhibit 3*). All of these violations are crimes described in Labor Code section 139.21(a)(1)(A).

3. On May 9, 2016, respondent also signed a Riverside County Superior Court felony plea form in which he agreed to enter a guilty plea to the charges set forth in Paragraph 2 above in exchange for certain sentencing considerations (*Exhibit 2*).



4. On May 9, 2016, a hearing was held in the Riverside County Superior Court at which time respondent entered his guilty plea in accordance with Paragraphs 2 and 3 above, and respondent's plea was accepted by the Court (*Exhibit 4*).

5. Respondent's plea agreement with the District Attorney's office (*Exhibit 3*) includes a requirement that respondent cooperate in the ongoing investigation and prosecution of other individuals. Accordingly, respondent's sentencing has been delayed and is anticipated to be further delayed until his cooperation is no longer required and/or the District Attorney is satisfied that respondent has fulfilled his agreement (*see Transcript of Proceedings 2/22/2017, page 5, line 19 through page 6, line 10*).

6. Respondent's guilty plea is conditional on receiving specified sentencing considerations (*Exhibit 2*). If the sentencing court in its discretion indicates an intent to impose a sentence which is materially more onerous than that to which respondent agreed, respondent would have the right to withdraw his guilty plea and proceed to trial (*Exhibit 3*).

DETERMINATION

Labor Code section 139.21(a)(1)(A) applies to respondent Tushar Ramnik Doshi, 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

There is no dispute regarding the relevant facts. Respondent Dr. Doshi entered a plea of guilty to several felonies which are crimes described in Labor Code section 139.21(a)(1)(A), and his plea was accepted by the Riverside County Superior Court.

Section 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 section 139.21(a)(1)(A). Dr. Doshi asserts that he has not yet been convicted. While his guilty plea has been entered and accepted by the Superior Court, it is conditional on receiving certain sentencing considerations; if he does not receive those considerations, Dr. Doshi may opt to withdraw his plea and proceed to trial. In that event, there is a chance that he could be acquitted of all charges against him. Under these circumstances, Dr. Doshi argues that his guilty plea is not final and he has not therefore been convicted until he has been sentenced.

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. Dr. Doshi 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. In *Truchon v. Toomey* (1953) 116 Cal. App. 2d 736, the plaintiff entered a guilty plea, was placed on probation, and after completion of probation withdrew his plea and entered a plea of not guilty. The charge was then dismissed and his record expunged. When he thereafter tried to register to vote and was told he could not due to his 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 which 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

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, Dr. Doshi argues that a suspension pursuant to section 139.21(a)(1) would be a “civil penalty or disability” 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 Dr. Doshi’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 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.

Labor Code section 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 which 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 light of the ongoing and well-publicized abuse of the system over the last several years, exemplified by cases such as the ongoing prosecution with which Dr. Doshi has agreed to cooperate, section 139.21 appears to be a reasonable exercise of the Legislature’s

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.

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.

Dr. Doshi has admitted in open court that he committed crimes described in Labor Code section 139.21(a)(1)(A). He entered a plea of guilty to those crimes, and the court accepted his plea. He 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 section 139.21(a)(1) is not irreversible. In the unlikely event that Dr. Doshi 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, Dr. Doshi is guilty of crimes described in section 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 Labor Code section 139.21(a)(1)(A) applies to respondent, and immediate suspension is therefore required by section 139.21(b)(2).

ORDER

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

DATE: March 28, 2017

Paul DeWeese

WCJ PAUL DeWEESE
Hearing Officer

