

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

In Re: PROVIDER SUSPENSION

Case No. AD PS-19-01

**DETERMINATION AND ORDER**

**RE: SUSPENSION**

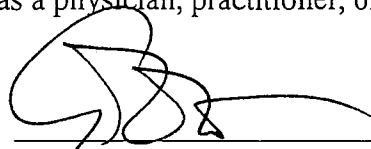
**MICHAEL JEROME HENRY, M.D.,**  
*Respondent.*

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 April 23, 2019 recommended Determination and Order re: Suspension of the designated Hearing Officer, the Administrative Director finds that Respondent Michael Jerome Henry, 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 April 23, 2019 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 Michael Jerome Henry, M.D., is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

Date: April 25, 2019



GEORGE PARISOTTO  
Administrative Director  
Division of Workers' Compensation

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On February 15, 2019, George Parisotto, the Administrative Director of the Division of Workers' Compensation served a "Notice of Provider Suspension – Workers' Compensation" on Michael Jerome Henry, M.D. (respondent). On February 22, 2019, respondent, through counsel timely appealed the suspension notice.

A hearing was held in the above-captioned appeal on March 25, 2019, pursuant to California Labor Code section 139.21, subdivision (b)(2).<sup>1</sup> At that hearing, respondent appeared along with his counsel Christopher D. Hughes of Nossaman LLP. Anna Kathryn Benedict, appeared as counsel for the Office of the Director of the Department of Industrial Relations, Anti-Fraud Unit.

In his appeal to the suspension notice, and at the hearing respondent argued that any suspension under section 132.21 should be limited to a period of 3 years from April 27, 2018. Respondent requested time to file a legal brief on his position and time was granted until April 8, 2019. The Anti-Fraud Unit was allowed until April 22, 2019, to file its response. Both parties

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise stated.

waived time for submission until April 22, 2019, and this decision is timely under California Code of Regulations, title 8, section 9788.3, subdivision (c).

### **FACTS**

1. Section 132.21, subdivision (a)(1)(A) 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 felony or misdemeanor involving fraud or abuse of the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system, or fraud or abuse of a patient.

2. On April 8, 2017, the Orange County District Attorney charged respondent with 12 criminal counts including medical insurance fraud, making of false claims, receiving rebates for patient referrals, insurance fraud, under California Penal Code sections 549-550, and California Business and Professions Code section 650 (**exhibit 2**).

3. On April 27, 2018, respondent entered a plea of guilty to count 4 of the indictment (Unlawful Referral of Patients, Bus. & Prof. Code §650). That crime falls under those described in section 139.21, subdivision (a). In exchange for the guilty plea all other counts were dismissed. The Orange County Superior Court accepted the plea (**exhibits 3 and A**).

4. The Superior Court sentenced respondent to probation and restitution. One of the terms of the probation was that "Defendant (respondent) will not work in the Workers' Compensation System for 3 years from todays date" (**exhibit 3**).

5. The Administrative Director was not a party to the plea agreement and is not bound by it.

### **DETERMINATION**

Labor Code section 139.21, subdivision (a)(1)(A) apply to respondent Michael Jerome Henry, M.D. As a result the Administrative Director is required to immediately suspend

respondent from participating in the Workers' Compensation system pursuant to Labor Code section 139.21, subdivision (b)(2). There is no time limit on the length of the suspension.

### **BASIS FOR DETERMINATION**

The applicable statutes and regulations impose affirmative duties on the Administrative Director including the duty to exercise due diligence in identifying physicians suspended from the workers' compensation system (Lab. Code § 139.21, subd. (a)(2); Cal. Code Regs., tit.8, §9788.1). The Legislative Counsel's Digest of Assembly Bill 1244 notes that the bill (amending section 139.21) notes that the Administrative Director must act promptly to suspend a physician

In this matter neither party offered any evidence of when the Administrative Director first became aware, or should have become aware, of the entry of conviction against respondent, so there is no basis to find that the Administrative Director's failed to act promptly. Accordingly, respondent's argument that the delay between entry of conviction and notice of suspension should limit his suspension, is not persuasive.

Respondent's crime is one involving an element of criminal intent (*People v Herring* (1999) 20 Cal.4th 440, 446, 84 Cal. Rptr. 2d 839) and the statute involved (Bus. & Prof. Code § 650) was passed an effort to combat insurance fraud (2000 Cal SB 1988: "The Medical Practice Act, the Chiropractic Act, and the State Bar Act provide for the licensing and regulation of physicians, chiropractors, and attorneys, respectively. Under these and other related insurance fraud provisions, certain activities involving the engaging of runners, cappers, steerers, or other persons to procure patients or clients are a crime..."). Accordingly, the suspension under section 139.21, subdivision (a)(1)(A) is correct.

Further, the agreement in the plea deal that respondent's suspension from workers' compensation shall last 3 years, is not binding on the administrative director. Section 139.21

imposes no time limits on the suspension. The plea agreement was a contract between respondent and the prosecutor, and once accepted by the court those parties were bound by their agreement (*People v Segura* (2008) 44 Cal.4th 921, 930-931; 80 Cal. Rptr. 3d 715). But as with any contract, it is only binding on the parties to the contract, and those parties cannot impose any obligations on a third party that did not assent or participate in the contractual determinations (Civ. Code §§1558-1559, *Retail Clerks Union v L. Bloom Sons. Co* (1959) 173 Cal.App.2d 701, 703, 344 P.2d 51, *Clemens v American Warranty Corp.* (1987) 193 Cal.App.3d 444, 452, 238 Cal. Rptr. 339). As such, the plea agreement has no effect on the Administrative Director's right/duty to indefinitely suspend respondent.

**ORDER**

**IT IS ORDERED THAT** respondent Michael Jerome Henry, M.D. is suspended from participating in the workers' compensation system as a physician, practitioner, or provider.



DATED: April 23, 2019

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**Gregory P. Cleveland**  
**Hearing Officer**