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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-19-03

DETERMINATION AND ORDER

RE: SUSPENSION

SCHLOMO SCHMUEL,

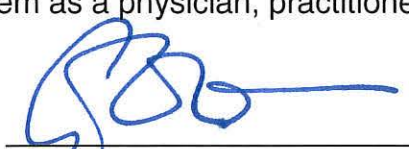
Respondent.

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 November 18, 2019 Report & Recommendation re: Suspension of the designated Hearing Officer, the Administrative Director finds that Respondent Schlomo Schmucl 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 November 18, 2019 recommended Report & Recommendation re: Suspension of the designated Hearing Officer, attached hereto, as the Administrative Director's Determination and Order re: Suspension.

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

Date: November 25, 2019



GEORGE PARISOTTO
Administrative Director
Division of Workers' Compensation

STATE OF CALIFORNIA
Division of Workers' Compensation

IN RE: PROVIDER SUSPENSION

SCHLOMO SCHMUEL,
Respondent

Case No.: AD PS-19-03

REPORT & RECOMMENDATION
re SUSPENSION

INTRODUCTION

This matter arises out of a Notice of Provider Suspension dated 09/13/2019 pursuant to Labor Code § 139.21, followed timely Hearing Request dated 09/2/2019 by Respondent Schlomo Schmucl.

Respondent is represented by Rondeau Law Firm, by Charles Rondeau, Esq.

Department of Industrial Relations, Office of the Director – Anti-Fraud Unit by Anna Kathryn Benedict, Esq., attorney for Anti-Fraud Unit.

All appearances by individual parties and representatives at the proceedings are noted in the minutes of hearing dated 10/22/2019.

The above-entitled matter having been heard October 22, 2019 by Jeffrey V. Marrone, Workers' Compensation Administrative Law Judge, appointed Designated Hearing Officer by the Administrative Director of the Division of Workers' Compensation, and submitted for decision as of 12/02/2019, the following report and recommendations are provided to the Administrative Director:

FINDINGS OF FACT

Judicial notice is taken as to the following documents, and marked as Exhibits:

DIR AFU Exhibit 1 - 09/13/2019 Administrative Director Notice of Provider Suspension-Workers' Compensation;

DIR AFU Exhibit 2 - 03/07/2019 Superior Court, County of San Diego Complaint-Felony;

DIR AFU Exhibit 3 - 08/06/2019 Superior Court, Schlomo Schmucl Plea of Guilty;

DIR AFU Exhibit 4 - 08/06/2019 US District Court Information;

DIR AFU Exhibit 5 - 07/30/2019 US District Court Plea Agreement;

DIR AFU Exhibit 6 - 09/22/2019 Schlomo Schmucl Hearing Request;

DIR AFU Exhibit 7 - 09/30/2019 Administrative Director Notice of Hearing.

Respondent has objected at hearing to Exhibit 2, Complaint, and Exhibit 4, Information, based on relevance. As the Plea of Guilty in the Superior Court and Plea Agreement in US District Court must, logically have a listing of the criminal act(s) in order to show proper notice to the charged party, Exhibits 2 and 4 are admitted into evidence.

Respondent has not objected to Exhibits 1, 3, 5, 6 and 7.

Respondent has not contested that the charges to which the Respondent has made plea agreements upon are felonies.

The Respondent was provided leave to file points and authorities as to the admissibility of evidence. This time frame has passed. There is therefore no need for responsive brief from the Anti-Fraud Unit.

Respondent has issued a letter dated 11/06/2019 objecting to the Standing of DIR-AFU asserting that DIR-AFU has admitted that it did not represent the Administrative Director.

The Anti-Fraud Unit issued a responsive letter dated 11/12/2019.

DISCUSSION

Respondent has objected at hearing to Exhibit 2, Complaint, and Exhibit 4, Information, based on relevance. As the Plea of Guilty in the Superior Court and Plea Agreement in US District Court must, logically have a listing of the criminal act(s) in order to show proper notice to the charged party, Exhibits 2 and 4 are admitted into evidence.

Respondent has not objected to Exhibits 1, 3, 5, 6 and 7 at hearing and these are therefore admissible.

Exhibits 2, 3, 4, and 5 show that Respondent has made a Plea in each of the State and US District Court cases, admitting felonies that he:

- 1) Knowingly entered an agreement between two or more persons to commit Honest Services Mail Fraud and Health Care Fraud, and at least one of the co-conspirators committed and overt act in furtherance of the conspiracy;
- 2) that this doctor, a healthcare professional, with a fiduciary duty to his victims, devised or knowingly participated in a scheme to deprive a victim of his or her right to a doctor's honest services;
- 3) the scheme consisted of soliciting and facilitating the receipt of kickback payments from suppliers of healthcare services and products to be paid to the doctor in the exchange for referrals;
- 4) that the respondent acted with intent to defraud by depriving the victim of his or her right to a doctor's honest services;

- 5) the respondent used or caused someone to use the mails to carry out or try to carry out the scheme or plan;
- 6) The respondent acted with willful intent to defraud, by knowingly executing, or attempting to execute, a scheme or artifice to defraud a health-care benefit program, or to obtain money or property owned by, or under the custody or control of, a health-care benefit program by means of false or fraudulent pretenses, representations or promises;
- 7) The false or fraudulent pretenses, representations or promises related to a material fact in connection with the delivery or payment for health-benefits, items or services.

Respondent has not contested that the charges to which the Respondent has made plea agreements upon, are felonies. The parties agreed that Labor Code § 139.21 (a) (1) (A) (i) and (iii) are applicable; that Labor Code § 139.21 (a) (1) (A) (iv) is disputed as applicable; and, as to the suspension hearing only, Labor Code § 139.21 (a) (1) (A) (ii) is not to be utilized.

Labor Code § 139.21, in pertinent part, states:

- (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.
 - (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 programs or the Medi-Cal program.
 - (C) The individual's license, certificate, or approval to provide health care has been surrendered or revoked.
 - (D) The entity is controlled by an individual who has been convicted of a felony or misdemeanor described in subparagraph (A).
- (2) The administrative director shall exercise due diligence to identify physicians, practitioners, or providers who have been suspended pursuant to subparagraph (B) of paragraph (1) by accessing the quarterly updates to the list of suspended and ineligible providers maintained by the State Department of Health Care Services for the Medi-Cal program at <https://files.medical.ca.gov/pubsdoco/SandILanding.asp>.
- (3) For purposes of this section and Section 4615, an entity is controlled by an individual if the individual is an officer or a director of the entity, or a shareholder with a 10 percent or greater interest in the entity.

(4) For purposes of this section and Section 4615, an individual or entity is considered to have been convicted of a crime if any of the following applies:

(C) A plea of guilty has been accepted by a federal, state, or local court.

The respondent has plead guilty to felony counts due to fraud or abuse of the workers' compensation system, participated in a scheme to deprive patient of his or her right to a doctor's honest services. By Plea admissions, the doctor has acted to defraud the health-care system and workers' compensation system. He has breached his fiduciary and other care duties to his patients/clients, making this a financial crime.

The conduct is substantially related to the qualifications, functions, or duties of a provider of services. By participating in a scheme defraud a health-care benefit program the respondent has violated his licensing oath which sets forth his duties as a provider, and has become involved in activity that affects the functions of a good faith provider, a violation of Labor Code § 139.21 (a) (1) (A)(iv).

The respondent has admitted Labor Code § 139.21 (a) (1) (A) (i) and (iii) apply in this case.

Therefore, it is appropriate that the administrative director suspend the physician/practitioner/provider from participating in the workers' compensation system pursuant to Labor Code § 139.21 (a) (1) (A) (i), (iii) and (iv).

RESPONDENTS REQUEST FOR HEARING ON STANDING OF THE ANTI-FRAUD UNIT

Respondent has issued a letter dated 11/06/2019 requesting a special hearing based on a new objection.

Although Title 8, Cal Code Regulations Section 10450 is not binding in this instance, the pleading requirements are instructive as a model to follow. In this matter the letter is not compliant with the regulation, but I recommend that the issues be addressed. Respondent objects to the standing of DIR-AFU asserting that DIR-AFU has admitted that it did not represent the Administrative Director, and as

such lacked legal standing to appear and participate in the suspension hearing “in its own right”; and as a result the suspension hearing was a legally defective proceeding.

The Anti-Fraud Unit has responded by letter of 11/12/2019 setting forth that the DIR-AFU cannot represent the Administrative Director of the Division of Workers’ Compensation prior to a final determination of suspension. The AD cannot be a party to the administrative suspension proceedings in which he will make the final determination of the matter of suspension, per Labor Code § 139.21.

The respondent did not raise these issues at time of hearing; and as such, may have waived such argument. However, to address the issue, per Labor Code Section 54, The Director of the Division of Industrial Relations shall perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the department, except as otherwise expressly provided by this code. Under Labor Code Section 54.5, the Director of the Division of Industrial Relations may appoint an attorney and assistants licensed to practice law in this state. In the absence of an appointment, the attorney for the Division of Workers’ Compensation shall also perform legal services for the department as the Director of Industrial Relations may direct.

The Administrative director has provided notice of the suspension, provided the evidence, and makes the determination as to the suspension, taking into consideration the recommendations of the workers’ compensation judge, acting as hearing officer. As such, the Administrative Director cannot be a party to the administrative suspension proceedings in which he will make the final determination of the matter of suspension, per Labor Code § 139.21.

The DIR Anti-Fraud Unit does not represent the Administrative Director. The DIR Anti-Fraud Unit represents the Department of Industrial Relations. The DIR performs all duties, exercises all powers and jurisdiction, assumes and discharges all responsibilities, and carries out and effects all purposes vested by law in the department. The Department of Industrial Relations has been charged with the enforcement of proceeding with the Legislative Intent towards Fraud Prevention in Workers Compensation as specified in Insurance Code § 1871(d).

Further, under Labor Code § 139.21 (b) (3),

The administrative director shall have power and jurisdiction to do all things necessary or convenient to conduct the hearings provided for in paragraph (2). The hearings and investigations may be conducted by any designated hearing officer appointed by the administrative director. Any authorized person conducting that hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

And, pursuant to Labor Code § 139.21 (f),

After notice of suspension, pursuant to subdivision (d), and if subdivision (e) applies, the administrative director shall appoint a special lien proceeding attorney, who shall be an attorney employed by the division or by the department. The special lien proceeding attorney shall, based on the information that is available, identify liens subject to disposition pursuant to subdivision (e), and workers' compensation cases in which those liens are pending, and shall notify the chief judge regarding those liens.

Thus, it is proper for the DIR/Anti-Fraud Unit Counsel to be present and to be participating in the suspension hearing.

This hearing officer therefore recommends that the Request for Special hearing be denied.

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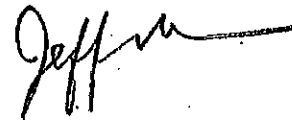
RECOMMENDATIONS

It is the recommendation of the undersigned that:

- a) the Administrative Director suspend the physician/practitioner/provider Schlomo Schmucl, and each entity which is owned, operated and or controlled by Schlomo Schmucl from participating in the workers' compensation system pursuant to Labor Code § 139.21 (a) (1) (A) (i), (iii) and (iv);
- b) That, if the Administrative Director acts to suspend physician/practitioner/provider Schlomo Schmucl, and each entity which is owned, operated and or controlled by Schlomo Schmucl, that the Administrative Director commence a consolidation of all lien claims of physician/practitioner/provider Schlomo Schmucl, and each entity which is owned, operated and/or controlled by Schlomo Schmucl, by instruction to the Chief Judge of the Workers' Compensation Appeals Board to commence determinations as to which liens, if any, are considered as tainted by the acts that have triggered the 139.21 (a) (1) (A) determinations;
- c) That the Request for Special hearing be denied.

Respectfully Submitted,

DATE: 11/18/2019



Jeffrey Marrone
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE