REVISED FINDING OF EMERGENCY
OF THE
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

REGARDING THE CALIFORNIA LABOR CODE
TITLE 8, CALIFORNIA CODE OF REGULATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5 DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1 PROVIDER SUSPENSION RULES

Government Code Section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

The Acting Administrative Director of the Division of Workers' Compensation (DWC) finds that the adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

FINDING OF EMERGENCY

Basis for the Finding of Emergency

- On September 30, 2016, the Governor signed Assembly Bill (AB) 1244 (Chapter 852) which takes effect on January 1, 2017.
- AB 1244 adds Labor Code section 139.21 which requires the Administrative Director to promptly suspend any physician, practitioner, or provider from participating in the workers' compensation system if that individual has been convicted of any felony or misdemeanor involving fraud or abuse of the Medi-Cal program, Medicare program, or workers' compensation system, if that individual's license, certificate, or approval to provide health care has been surrendered or revoked, or if that individual has been suspended for fraud or abuse from participation in the Medicare or Medicaid programs.
- AB 1244 mandates the adoption of regulations for promptly suspending a physician, practitioner, or provider from participating in the workers' compensation system if that individual meets the criteria specified above.
- AB 1244 requires the Administrative Director to provide notice of the suspension, which becomes effective after thirty (30) days from the date the written notice is sent, unless the physician, practitioner, or provider stays the suspension by requesting a hearing within ten (10) days from the date the written notice is sent.

- Action is necessary in order to implement, on an emergency basis, the provisions of Labor Code section 139.21. These regulations are mandated by Labor Code section 139.21(b)(1), which provides: “The administrative director shall adopt regulations for suspending a physician, practitioner, or provider from participating in the workers’ compensation system, subject to the notice and hearing requirements in paragraph (2).”

- Because the statute requires the Administrative Director to promptly suspend any physician, practitioner, or provider from participating in the workers’ compensation system if that individual meets the criteria specified above effective on or after January 1, 2017, there is insufficient time to go through the regular rulemaking process.

- Assembly Bill 1244 is a comprehensive bill that, in addition to adding a provider suspension hearing procedure, also added a special lien adjudication process to address the liens of those physicians, practitioners, or providers who were suspended on the basis of certain criminal convictions. Since the special lien proceeding is triggered by certain provider suspensions, the implementation and execution of the proceeding is dependent upon the existence and operation of the suspension process. In other words, without immediate implementation of the suspension process, the provisions related to the special lien adjudication process are inoperative and cannot be implemented.

- This emergency rulemaking only pertains to the provider suspension regulations. The special lien proceeding regulations will be done in a separate rulemaking and will be filed as a regular rulemaking package.

- The DWC is warranted in filing the provider suspension regulations as an emergency regulation because we could not have completed a regular rulemaking to effectuate the compelling mandate of the statute that became effective on January 1, 2017 to promptly suspend providers who meet the statutory criteria. Due to the interplay between the processes mandated by AB 1244, the drafting of the provider suspension regulations could not be done in a vacuum. Instead it required that consideration be given to all the processes and their interactions with each other, including how the suspension regulations might impact the implementation of the lien adjudication process. The development of the suspension regulations required analysis not only of its own functionality but also research, consideration and discussion of the interconnection it would have with the special lien proceeding process.

  After the Legislature granted authority to the agency to adopt regulations regarding the procedure to suspend providers, time was necessary for the

agency had to meet, decide, and write what the hearing procedures would be to provide all parties with a roadmap of the suspension hearing procedure mandated by the statute. While the statute provides for a hearing, it is the regulations that set forth the hearing procedures so that all parties are aware of the rules of the suspension process.

The regulations provide the entire provider suspension procedure. As indicated, significant time was needed to prepare the regulations for emergency rulemaking. The proposed regulations, the Notice of Proposed Rulemaking, Initial Statement of Reasons, and the Economic Impact Assessment-Fiscal Impact (STD 399) had to be written. To complete these documents, the agency had to identify physicians, practitioners, or providers potentially covered by the statute who had been criminally convicted for fraud or abuse of the Medi-Cal program, Medicare program, or workers' compensation system, suspended from Medicare or Medicaid programs for fraud or abuse, or had their licenses, certificates, or approvals to provide health care surrendered or revoked. Extensive data had to be obtained from Federal and State sources, and matched with individuals participating in the California Workers' Compensation Program. Given all that was involved in developing these regulations, under even the most optimistic of timeframes, it is not feasible to imagine that the regular rulemaking process could have been utilized and still have the regulations in effect in January. As noted, these regulations could not be drafted in a vacuum and careful consideration needed to be given to the interplay between the processes mandated by AB 1244. An example is provided below to demonstrate what the DWC needed to meet if it proceeded under the regular rulemaking timeframes. This example will provide the most optimistic of timeframes that would require circumstances to align perfectly and turn-around times to be met at an unprecedented speed. Nevertheless, for the sake of this example, if the DWC only took five business days to draft the proposed regulations, despite what was already indicated above, this would bring us to October 7, 2016 because AB 1244 was approved by the Governor and filed with the Secretary of State on Friday, September 30, 2016. In order to increase public participation pursuant to Government Code section 11346.45, it is the DWC's internal agency policy to post its proposed regulations in a Public Forum for 10 calendar days during this preliminary rulemaking stage. If the proposed regulations were posted on October 10, 2016, the end of the Public Forum would bring us to Friday, October 19, 2016. The DWC carefully considers all comments received during the Public Forum and uses the public's input to complete the draft proposed regulations, the Notice of Proposed Regulations, the Initial Statement of Reasons, the Department of Finance Form 399, and the Form 400. This entire rulemaking package usually takes at least a few weeks to prepare. However, since this timeline is considering

the most optimistic of timeframes, let's assume the DWC completes this by Friday, October 28, 2016, seven business day after the end of the Public Forum. Pursuant to internal agency policy, the DWC is then required to send the entire rulemaking package to the Labor Secretary's Office for approval. Even under the most optimistic of timeframes, assume it takes one week to get Agency approval. Therefore, the approval to proceed with the formal rulemaking process for submission to the Office of Administrative Law would be approximately November 7, 2016. If the DWC sends this to OAL via overnight express and it is received on November 8, 2016, then OAL will publish the notice ten (10) days after on Friday, November 18, 2016 which would mark the beginning of the 45-Day Comment Period. The 45-Day Comment Period would end on January 1, 2017. A public hearing is held at the conclusion of the 45-Day Comment Period, which in this case would be January 3, 2017. The DWC must respond to all comments received during the 45-Day Comment Period. The majority of comments are historically submitted on the last week of the 45-Day Comment period with most of those comments being received on the very last day of the 45-Day Comment Period. Responding to all of the comments received usually takes at least a month if not more. The DWC's comment charts are usually hundreds of pages long. If the DWC responded to all the comments received in a blistering seven business days, it would bring us to January 12, 2017. The DWC would then need to draft the Final Statement of Reasons and make sure the Form 399 is signed by the Department of Finance. This assumes, however, that none of the comments received during the 45-day comment period compelled any changes to the regulations. If so, then the DWC would need to revise its proposed regulations and then go out for another 15-Day comment period which would take us to the end of January. If additional 15-Day comment periods were necessary then this rulemaking would not be completed until February 2017. Again, this timeline applies the most optimistic of timeframes. Hypothetically, it is mathematical possible to condense this timeframe by a couple of weeks but this mathematical possibility is realistically impossible.

- On August 19, 2016 the Department of Industrial Relations published an Issue Brief entitled "Issues and Impact of Lien Filing in California Workers' Compensation System." The issue brief outlined key issues and options involved in lien filing and cost reductions that could be achieved through improvements to the Labor Code's lien statutes. Although the issue brief focused on the lien process, it also provided important data for this emergency rulemaking that illustrates the type and scope of problems convicted providers have on the workers' compensation system. Nearly $6 million in liens have been filed by indicted and/or convicted parties. The issue brief states, "The top 1% of lien filers by volume on adjudicated cases between 2013 and 2015 discussed above

included 68 businesses. Together, these entities filed 273,222 liens totaling $2.5 billion in accounts receivable. Two of the business owners are currently under indictment, and three others have pleaded guilty." In addition, the issue brief provides a table that gives totals for liens filed by parties indicted and/or convicted from 2011- 2015. The importance of the issue brief to this emergency rulemaking is not the dollar amounts provided because that issue will be highlighted in DWC's future lien proceedings rulemaking, but rather, to provide data that gives context to the far-reaching scope that a small subset of indicated or convicted providers can have on the workers' compensation system.

Table 1. Totals for Liens Filed by Parties Indicted and/or Convicted, 2011-2015, WCAB Cases

Total Liens: 579,787; Total Lien Amounts: $4,066,059,795	Number(#)/Amount($)
Number of liens filed by indicted and/or convicted parties	97,079
Number of liens in system filed by indicted parties	80,532
Amount ($) of liens in system filed by indicted parties	$508,210,868
Number of liens in system filed by parties that either offered a plea or were convicted	16,547
Amount ($) of liens in system filed by parties that either offered a plea or were convicted	$91,107,125
Percent of all liens in system filed by indicted and/or convicted parties	17%
Total amount ($) liens in system filed by indicted and/or convicted parties	$599,317,993

Sources: DWC Lien Filing System, data current as of August 11, 2016; various court sources on indictments, pleas, and convictions.

As shown in Table 1, 17% of all liens in the system were filed by indicted or convicted parties to date. Importantly, the dollars tied to these liens totaled $599,317,993, which, if paid, would be an additional cost to the system.

- High-profile workers' compensation fraud prosecutions have revealed that many of these physicians, practitioners, or providers who have been indicted or convicted of fraud are involved in questionable patient care that is harming California's injured workers. Capping schemes, kickbacks, and illegal patient referrals have resulted in injured workers who have received unneeded or harmful treatment, been maimed for life, who needed additional surgeries to repair incompetent work, and sadly, death of an injured worker's infant due to

failure to provide proper patient care, all driven by these fraudulent schemes rather than their medical needs. The following four fraud prosecutions highlight the harm caused to California's injured workers:

1) In a September 15, 2015 News Release, the Los Angeles County District Attorney's Office announced two criminal Grand Jury indictments charging Dr. Munir Uwaydah and his former office managers, among the 15 named, in two indictments totaling 132 felony counts. The charges included fraudulent billing of more than $150 million to insurance companies and paying attorneys and marketers up to $10,000 a month each for illegal patient referrals. However, the most serious charges in the indictment involved Dr. Uwaydah and his staff deceiving nearly two dozen patients into surgeries that they thought would be performed by Dr. Uwaydah, but in fact, were performed by a physician's assistant who never attended medical school. These patients were operated on under general anesthesia and without Dr. Uwaydah present in the operating room. Today, Dr. Uwaydah's whereabouts are unknown. In fact, his medical license was automatically cancelled by the Medical Board of California on June 10, 2013 because of non-practice in California. As a result, Dr. Uwaydah would be a physician subject to suspension pursuant to Labor Code section 139.21 because his medical license has been revoked. According to prosecutors, all 21 patients sustained lasting scars and many required additional surgeries and suffered physical and psychological trauma.

2) An article written by Christina Jewett, published in the Sacramento Bee on March 30, 2016, described the case of Tammy Martinez, a truck driver who injured her back pushing a 1-ton cart. Her workers' compensation attorney referred her to doctors who installed spinal rods and screws to her spine in the Pacific Hospital of Long Beach. The operation did not go well. Ms. Martinez' left foot was pulseless after the operation and within two weeks, her left leg had to be amputated above the knee. Her attorney pleaded guilty to accepting kickbacks for referring his clients to certain doctors, and the owner of the now defunct Pacific Hospital of Long Beach, Michael Drobot, pleaded guilty in early 2014 to paying at least $20 million in kickbacks to dozens of marketers, doctors and others who helped fill the surgery suites of the now defunct Pacific Hospital of Long Beach. Under the terms of their plea agreements, Michael Drobot is cooperating with the federal investigation. Here is a list of physicians who have pleaded guilty to various counts of fraud and for failing to report income received from kickback payments and, therefore, subject to suspension pursuant to Labor Code section 139.21: Philip Sobol, Alan Ivar, and Mitchell Cohen. Federal prosecutors linked the bribes to more than 4,400 risky spinal operations at the hospital. There are allegedly dozens of physicians who participated in the

fraudulent, but more importantly dangerous, scheme. As indicated several have already pleaded guilty, others have been charged, or are expecting to be arraigned.

3) The same article written by Christina Jewett, published in the Sacramento Bee on March 30, 2016 also described the case of Denise Rivera who filed a workers' compensation claim when she slipped and fell injuring her knee while giving a child a shower as a nursing assistant. Her company doctor said she needed knee surgery, but the request was denied. Ms. Rivera then saw a TV commercial for legal help for work-injury cases and called the number. She was then connected with the California Injury Lawyer, Inc. and was provided a list of doctors and companies she was expected to see three times per week. She received MRIs, acupuncture, shockwave therapy and treatments with a device that seemed like a jackhammer thumping her knee. She also received pain creams that she said "seemed like Bengay." The total bill for her care was $95,257 and Ms. Rivera stated, "None of the treatments they've given me helped." It turns out Riverside County prosecutors now allege that Ms. Rivera walked into a clinic, with eight affiliate sites, that ran a $122 million scam. In July 2014 chargers were filed against attorney Cary Abromowitz and chiropractor Peyman Heidary and six additional people, including a number of physicians. In a follow-up article, by Christina Jewett published in the Reveal on June 1, 2016, states, Peyman Hiedary ran an operation that paid cappers $100 per patient to recruit injured workers who were provided the same medical care regardless of their injuries. Although charges against Peyman Heidary are still pending, physician Tushar R. Doshi has already pleaded guilty to four felony counts of insurance fraud and physician Jason Yang pleaded guilty to five counts of making false and fraudulent representations for the purpose of obtaining compensation. Both of these doctors would be subject to suspension pursuant to Labor Code section 139.21.

4) Finally, two Orange County Grand Jury indictments named 15 people including physicians, chiropractors, and the head of Landmark Medical Management, Kareem Ahmed. Prosecutors contend Kareem Ahmed hired pharmacists to produce a pain-relief cream, gave kickbacks to doctors and chiropractors to prescribe it to workers' compensation patients, and conspired to submit phony claims. The indictment also alleges that Dr. Andrew Jarminski was paid $1.9 million in kickbacks. Sadly, Dr. Jarminski is also the doctor who prescribed the cream to Priscilla Lujan for treatment regarding a workers' compensation injury. Ms. Lujan claims she applied the cream to her knee and back as she was directed by Dr. Jarminski. After using the medication, she took care of her five-month-old son, Andrew Gallegos, including preparing a bottle for

him, bouncing him on her knee and carrying him on her shoulders. She put her son to bed and she woke up to find her baby cold, his lips blue and eyes half open. Little Andrew Gallegos died an hour later "as a result of multiple drug intoxication." Authorities later confirmed that the ingredients that killed Andrew Gallegos were found in the cream prescribed to her by Dr. Jarminski. Ms. Lujan and her attorney allege the cream was improperly labeled because it did not contain Ms. Lujan's name, what the prescription was for, or how to use it. The label stated the cream was only to be applied in a medical office under a doctor's direction. Charges of fraud and involuntary manslaughter are still pending against Dr. Jarminski. Because Dr. Jarminski has not been convicted nor has his license to practice medicine been suspended or revoked he would not be subject to suspension pursuant to Labor Code section 139.21. However, he clearly is a physician the DWC would closely monitor and is an example of a physician who would be included in our database so that the Administrative Director could promptly act if he were to meet the criteria for suspension.

- The emergency regulations will provide the procedure for suspension hearings, thus ensuring that injured workers receive medical care from physicians, practitioners, or providers who have maintained their qualifications to practice and who have not been convicted of the listed felonies, misdemeanors, or involved in other listed fraudulent or abusive behaviors.

- Without the implementation of emergency regulations, as of January 1, 2017, physicians, practitioners, or providers, who have been convicted of any felony or misdemeanor involving fraud or abuse of any patient, the Medi-Cal program, the Medicare program, or the workers' compensation system, or whose license, certificate, or approval to provide health care has been surrendered or revoked, or who have been suspended for fraud or abuse from participation in the Medicare or Medicaid programs, may still be treating patients in the workers' compensation system causing harm to the public peace, health and safety, and general welfare.

Background

- The DWC develops regulations to implement, interpret, and make specific the California Labor Code.

- On August 19, 2016, the DWC published an Issue Brief outlining key issues and options involved in lien filings. Part of the Issue Brief described problematic medical providers who are under indictment or convicted of fraud.

- AB 1244 was signed into law by Governor Brown on September 30, 2016 to become effective January 1, 2017.
- The August 19, 2016 Issue Brief noted that 68 businesses comprising the top one percent of lien filers filed more than 273,000 liens totaling $2.5 billion in accounts receivable on adjudicated cases between 2013 and 2015. Two of the business owners are indicted and three have pled guilty.

AUTHORITY AND REFERENCE

The Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code sections 111, 133, and 139.21 proposes to add Subchapter 1 (Article 5.1) of Chapter 4.5, of Title 8 California Code of Regulations, and adopt sections 9788.1, 9788.2, 9788.3 and 9788.4.

Reference is to Labor Code sections 139.21

INFORMATIVE DIGEST

Summary of Existing Laws

On September 30, 2016, Governor Brown signed into law Assembly Bill 1244 (Gray, Chapter 852/2016). The bill addresses medical fraud within the workers' compensation system and creates a new suspension process for physicians, practitioners and providers who have either been convicted of one of the crimes enumerated in Labor Code section 139.21(a)(1), suspended due to fraud or abuse from the Medicaid or Medicare programs, or has had their license, certificate, or approval to provide health care revoked or surrendered.

Currently, outside of removal of their certificate to act as a Qualified Medical Evaluator, there is no suspension procedure for medical providers who have been convicted of fraud or abuse-related offenses or who have been suspended from the Medicaid or Medicare programs due to fraud or abuse. Nor is there a suspension procedure for medical providers who have had their license, certificate, or approval to provide care revoked or surrendered.

The new addition of Labor Code section 139.21(a) in AB 1244 will require the Administrative Director to suspend providers that have been convicted of a felony or misdemeanor involving (a) fraud or abuse of the workers' compensation system, Medi-Cal, Medicare, or fraud or abuse of any patient; (b) conduct related to the individual's medical practice as it pertains to patient care; (c) a financial crime related to the Medi-Cal program, Medicare program, or workers' compensation system; or (d) otherwise substantially related to the qualifications, functions, or duties of a provider of services. In addition, Labor Code section 139.21(a) will require the Administrative Director to

suspend physicians, practitioners, and providers from participating in the workers' compensation system who have been suspended from the Medicare or Medicaid programs due to fraud or abuse; or whose license, certificate, or approval to provide health care has been revoked or surrendered.

The Administrative Director is required to exercise due diligence to identify physicians, practitioners, or providers who have been suspended 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.

In addition, Labor Code section 139.21(b) mandates the Administrative Director adopt regulations for suspending a physician, practitioner, or provider from participating in the workers' compensation system subject the following notice requirements:

The Administrative Director is required to provide physicians, practitioners, or providers written notice of their right to a hearing and the procedures to follow to request a hearing on the suspension. The notice shall state the suspension will take effect after thirty (30) days from the date the notice was mailed unless the physician, practitioner, or provider requests a hearing within ten (10) days the notice was mailed. The request for a hearing shall stay the suspension until the hearing is completed. The hearing shall be held within thirty (30) days of the receipt of the request. If the Administrative Director finds that the criteria for suspension listed above is applicable, the physician, practitioner, or provider shall be immediately suspended from participating in the workers' compensation system.

The Administrative Director shall have the power and jurisdiction to conduct these hearings or may designate and appoint a hearing officer to conduct the provider suspension hearings. Any appointed hearing officer may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the deposition of witnesses to be taken in the manner prescribed by law for similar cases in civil cases in the superior courts of California.

Labor Code section 139.21(c) requires the Administrative Director to promptly notify the physician's, practitioner's , or provider's state licensing board of a suspension imposed pursuant to this section and shall update the qualified medical evaluator and medical provider network databases as appropriate.

Labor Code section 139.21(d) requires the Administrative Director to give notice of the suspension to the Chief Judge of the division so that notice can be promptly given to district offices and all workers' compensation judges. All suspensions shall be posted on the department's internet web site.

Finally, the proposed regulations repeat or rephrase various provisions of Labor Code section 139.21 added by Assembly Bill 1244. Duplication is necessary to satisfy the clarity standard of Government Code section 11349.1(a)(3) to establish comprehensive and detailed procedures for the suspension of physicians, practitioners, or providers from participating in the workers' compensation system. Rather than simply delegating to the Division authority to establish such programs, the Labor Code provisions provide for a hearing, but it is the regulations that specify the documents that must be filed or submitted by the parties, the timelines for filing, the nature of the review that will be conducted, and the required elements in a decision. Since this provider suspension procedure is entirely new to workers' compensation in this state, duplication is beneficial so that affected parties can analyze and review program procedures and the timeframes for exercising statutory rights in one set of documents.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON

- Department of Industrial Relations. "Issue Brief: Issues and Impact of Lien Filing in California Workers' Compensation System." August 19, 2016.
- Los Angeles County District Attorney's Office News Release "15 Indicted in $150 Million Insurance Fraud, Patient Scam Conspiracy." September 15, 2015.
- The Medical Board of California printout of the Breeze License Verification for Dr. Munir Uwaydah.
- Court reporter's transcript of Philip A. Sobol, M.D. signed and filed Plea Agreement in the United States District Court for the Central District of California.
- Court reporter's transcript of Alan C. Ivar, D.C. signed and filed Plea Agreement in the United States District Court for the Central District of California.
- Court reporter's transcript of Mitchell G. Cohen, M.D. signed and filed Plea Agreement in the United States District Court for the Central District of California.
- Sacramento Bee, Christina Jewett, "Profiteering masquerades as medical care for injured California workers." March 30, 2016.
- Reveal, Christina Jewett, "Fraud accusations grow in California's embattled workers' comp system." June 1, 2016.
- Felony Complaint filed in the Superior Court of California, County of Riverside against Tushar Ramnik Doshi.
- Felony Plea Form of Tushar Ramnki Doshi filed in the Superior Court of California, County of Riverside.

- Indictment filed in the Superior Court of California, County of Riverside against Touba Pakdel-Nabati, Quynam Nguyen, and Jason Yang.
- Felony Plea Form of Jason Yang filed in the Superior Court of California, County of Riverside.
- KPCC 89.3, Karen Foshay, "Baby's death linked to alleged massive workers' comp scheme." June 23, 2014.

SUMMARY OF PROPOSED REGULATIONS

The Administrative Director adopts administrative regulations governing medical provider suspension procedures. These regulations implement, interpret, and make specific Labor Code section 139.21 as follows:

1. Section 9788.1. Notice of Provider Suspension

- This new section sets forth the process for issuing the notice of suspension to a medical provider who has met one of the criteria set forth under Labor Code section 139.21(a) (1).
- The section adds a definition for the "suspension from participation" to ensure that the term's meaning, as used in the regulations, will be clear to the regulated public.
- The section states that a physician, practitioner, or provider is prohibited from seeking payment for goods or services related to an occupational injury or illness provided on or after the date of their suspension.
- The section lists the required elements of the notice of suspension, i.e., the basis for suspension, the timeframe for requesting a hearing, and the manner of service of the notice upon the provider.

2. Section 9788.2. Provider Request for Hearing.

- This new section provides the process for a medical provider served with notice of suspension to request a hearing with the Administrative Director of the Division of Workers' Compensation.
- Within 10 calendar days after the date of mailing of the notice of suspension, the provider may request a hearing to contest the allegation that Labor Code section 139.21(a)(1) is applicable. The provider must state the legal and factual reason for the request for hearing.

- The failure of the provider to request a hearing constitutes a waiver of their right to a hearing. If a request is not filed, the Administrative Director shall issue an Order of Suspension 30 days after the notice of suspension was issued together with the written notice required by section 9788.4. Any appeal from the Order shall be made to the Superior Court of California.

- The request for hearing must be in writing and state the provider's mailing address. One original request and one copy must be filed with the Administrative Director, and one copy must be served on the DWC Legal Unit. The original and all copies shall have a proof of service attached.

3. Section 9788.3. Suspension Hearing.

- The new section provides the hearing procedure for the medical provider to contest the notice of suspension. Within 10 calendar days following receipt of the provider's request for hearing, a notice of hearing will issue setting forth the date, time, and place of the suspension hearing. The date of the hearing will be no later than 30 days after the receipt of the hearing request.

- The Administrative Director will designate a hearing officer to preside over an informal hearing, i.e., it does not need to be conducted according to the technical rules of evidence. However, oral testimony shall be taken only on oath or affirmation.

- Following the hearing, the designated hearing officer will issue a written recommended Determination and Order re: Suspension, which must include the basis for decision. The Determination must be served upon the Administrative Director within 10 days after the case is submitted to the hearing officer.

- Following issuance of the Determination and Order, the Administrative Director will have 10 calendar days to adopt or modify the Determination and Order. If the decision is modified, the Administrative Director must include a statement of the basis for the modification. The Determination must be served on the provider and is final on the day it is mailed. If the Administrative Director does not act within 10 calendar days, then the recommended Determination and Order of the hearing officer shall become the Determination and Order on the eleventh (11th) calendar day.

- Appeals to the Determination and Order must be made by writ to a Superior Court of California.

4. **Section 9788.4. Suspension Notification.**

- This new section sets forth the list of individuals and entities that must be notified upon a provider suspension. The list includes: the Chief Judge of DWC, who shall correspondingly notify the DWC district offices and all DWC Administrative Law Judges; the special lien proceeding attorney designated under Labor Code section 139.21(f), if one is appointed; and the provider's state licensing, certifying, or registering agency.
- In addition, the Administrative Director must update the DWC Qualified Medical Evaluator and Medical Provider Network databases to reflect the provider suspension and also post notification of the provider's suspension on the department website.

DETERMINATION OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Physicians and other providers of medical services to injured workers, who have been convicted of fraudulent activity, have been suspended by the either the Medicare or Medicaid programs, or have had their license or certificate suspended or revoked, will be impacted by the suspension process and resultant prohibition from participating in the workers' compensation system.

The Department of Industrial Relations, Division of Workers' Compensation, has made an initial determination that the adoption of these regulations will not have a significant, statewide adverse economic impact directly affecting business. The Division of Workers' Compensation has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submission may include the following considerations: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to business; (ii) consolidation or simplification or compliance and reporting requirements for businesses; (iii) the use of performance standards rather than prescriptive standards; (iv) exemption or partial exemption from the regulatory requirements for businesses.

POLICY STATEMENT OVERVIEW

The objective of the proposed emergency regulations is to implement the requirement of a creating a suspension process for medical providers: (1) found to have been convicted of any felony or misdemeanor involving fraud or abuse of the Medi-Cal program, Medicare program, or workers' compensation system: (2) who have had their license, certificate, or approval to provide health care surrendered or revoked; or (3) who have been suspended, due to fraud or abuse, from participation in the Medicare or

Medicaid programs. Currently, there is no suspension procedure for such medical providers outside of removal of their certification to act as a Qualified Medical Evaluator.

Physicians, practitioners, or providers who have been suspended by the Administrative Director will immediately be precluded from participating in the workers' compensation system. This will prevent them from further harming California's injured workers and provide deterrence to future abusive or fraudulent conduct.

DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The DWC is the only agency regulating this area and there aren't any regulations that are inconsistent or incompatible with what is being proposed.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

NONE

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department of Industrial Relations, Division of Workers' Compensation has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

FISCAL IMPACT STATEMENT

A. Cost or Savings to any state agency: NONE

B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: NONE

C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE

D. Other nondiscretionary cost or savings imposed on local agencies: NONE

E. Cost or savings in federal funding to the state: NONE

STATEMENT OF CONFIRMATION OF MAILING OF FIVE-DAY EMERGENCY NOTICE

(Title 1, CCR section 50(a)(5)(A))

The Division of Workers' Compensation sent notice of the proposed emergency action to every person who has filed a request for notice of regulatory action at least five working days before submitting the emergency regulations to the Office of

Administrative Law in accordance with the requirements of Government Code section 11346.1(a)(2).