

**State of California
Office of Administrative Law**

In re:
Division of Workers' Compensation

Regulatory Action:

Title 08, California Code of Regulations

Adopt sections: 9788.1, 9788.2, 9788.3,
9788.4, 9788.5, 9788.6

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**

**Government Code Sections 11349.1 and
11349.6(d)**

OAL Matter Number: 2017-1229-01

**OAL Matter Type: Certificate of Compliance
(C)**

The Division of Workers' Compensation submitted this timely certificate of compliance action to adopt six sections and an article 5.1 under title 8, division 1, chapter 4.5, subchapter 1 of the California Code of Regulations. The regulations implement suspension, hearing, and related procedures for physicians, practitioners, or providers that meet specified criteria in subdivision (a)(1) of Labor Code section 139.21.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code. The regulations are effective February 7, 2018.

Date: February 7, 2018

Richard L. Smith

Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: George Parisotto, Administrative
Director

Copy: Alan Hersh

NOTICE PUBLICATION/REGULATIONS SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2017-1017-01	REGULATORY ACTION NUMBER 2017-1229-01C	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

FEB 07 2018
1:48 PM

2017 DEC 29 A 9:44
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY Division of Workers' Compensation	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2017, 43-2	PUBLICATION DATE 10/27/2017	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Medical Provider Suspension Procedure	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2016-1227-01E, 2017-0622-01EE, 2017-0920-03EE
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</td> <td>ADOPT 9788.1, 9788.2, 9788.3, 9788.4, 9788.5, 9788.6</td> </tr> <tr> <td></td> <td>AMEND</td> </tr> <tr> <td></td> <td>REPEAL</td> </tr> </table>	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 9788.1, 9788.2, 9788.3, 9788.4, 9788.5, 9788.6		AMEND		REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 9788.1, 9788.2, 9788.3, 9788.4, 9788.5, 9788.6						
	AMEND						
	REPEAL						
TITLE(S) 8							

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Alan Hersh	TELEPHONE NUMBER 510-286-0642	FAX NUMBER (Optional) 510-286-0687	E-MAIL ADDRESS (Optional) ahersh@dir.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>[Signature]</i>	DATE 12/22/17
TYPED NAME AND TITLE OF SIGNATORY George Parisotto, Administrative Director per agency request <i>[initials]</i>	

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ENDORSED APPROVED

FEB 07 2018

Office of Administrative Law

**THE DIVISION OF WORKERS' COMPENSATION ADOPTS THE FOLLOWING
UNDER TITLE 8, DIVISION 1, CHAPTER 4.5, SUBCHAPTER 1:**

**ARTICLE 5.1
PROVIDER SUSPENSION PROCEDURE**

§9788.1. Notice of Provider Suspension

- (a) The Administrative Director shall issue a notice of suspension to a physician, practitioner, or provider who has met one of the criteria set forth under Labor Code section 139.21(a)(1).
- (b) The term "suspension from participation" means the physician, practitioner, or provider is prohibited from providing any goods or services related to an occupational injury or illness that is either for pay or required by Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2, 4600, 4600.3, 4610, 4610.5, 4610.6, 4616, and 4620. The term "suspension from participation" also precludes a physician's continued certification as a qualified medical evaluator pursuant to Labor Code section 139.2.
- (c) The physician, practitioner, or provider is prohibited from seeking payment or reimbursement, either directly or indirectly, for any goods or services related to an occupational injury or illness that is provided on or after the date of their suspension.
- (d) The notice required under subdivision (a) shall be in writing and shall include all of the following:
- (1) Notice that the physician, practitioner, or provider is subject to suspension from participating in the workers' compensation system;
 - (2) The basis for the suspension, under Labor Code section 139.21(a)(1);
 - (3) A statement that the suspension is effective 30 days from the date the notice is mailed, unless the physician, practitioner, or provider requests a hearing and, in that hearing, provides proof that Labor Code section 139.21(a)(1) is not applicable;
 - (4) A statement that the physician, practitioner, or provider may request a hearing within 10 calendar days from the date the notice is served mailed, which will stay the suspension pending the outcome of the hearing, and that the failure to request a hearing will result in suspension pursuant to section 9788.2(b); and
 - (5) A description of the method for requesting the hearing, including instructions on how the request should be filed and served.

(e) The notice shall be served by registered or certified mail. ~~The Administrative Director shall have the option to serve the notice on the physician's, practitioner's, or provider's address of record with the Office of the Inspector General of the United States Department of Health~~
California Code of Regulations, title 8, section 9788.1, 9788.2, 9788.3, 9788.4, 9788.5 and 9788.6
Provider Suspension Procedure Final Text (December 2017)

~~Services, the California Department of Health Services, an address on file with physician's, practitioner's, or provider's licensing or certification agency, or from court records.~~

Authority: Sections 133 and 139.21, Labor Code.

Reference: Sections 139.21, Labor Code.

§9788.2. Provider Request for Hearing.

(a) Within 10 ~~calendar~~ days after the date the notice of suspension is served ~~mailed~~, the physician, practitioner, or provider may request a hearing as the respondent with the Administrative Director, in which the respondent may contest the allegation that Labor Code section 139.21(a)(1) is applicable and the basis for suspension. The respondent must set forth the legal and factual reason for the request for hearing.

(b) Failure to timely file a request for hearing shall constitute a waiver of the physician's, practitioner's, or provider's right to an evidentiary hearing. If a request for hearing is not timely filed, the Order of Suspension shall become effective 30 days after the date that the notice of suspension was mailed. ~~‡~~The Administrative Director shall serve an Order of Suspension on the physician, practitioner, or provider after 30 days from the date the notice of suspension is mailed. The Order of Suspension shall provide the written notification required by section 9788.4. The Order of Suspension shall be served upon the physician, practitioner, or provider by registered or certified mail. All appeals from the Order of Suspension issued pursuant to this subdivision shall be made to the Superior Court of California by writ as provided in the Code of Civil Procedure.

(c) The request for hearing shall be in writing and signed by the respondent, or the respondent's legal representative on behalf of the respondent, and shall state the respondent's mailing address.

(d) The respondent must file the original and one copy of the request for hearing on the Administrative Director and serve one copy on the ~~DWC Legal Unit~~ Department of Industrial Relations Anti-fraud Unit at the address stated in the notice of suspension ~~same address as the Administrative Director~~. The original and all copies of any filings required by this section shall have a proof of service attached.

Authority: Sections 133 and 139.21, Labor Code.

Reference: Section 139.21, Labor Code.

§9788.3. Suspension Hearing.

(a) Upon receipt by the Administrative Director of the respondent's timely request for hearing, the Administrative Director shall issue a notice of hearing setting forth the date, time, and place of a hearing to determine whether the respondent shall be suspended from participating in the workers' compensation system. The date of the hearing shall be no later than 30 days after the receipt of the request for hearing, which shall be stated on the notice of hearing. The notice of hearing shall be served on the respondent by registered or certified mail.

California Code of Regulations, title 8, section 9788.1, 9788.2, 9788.3, 9788.4, 9788.5 and 9788.6
Provider Suspension Procedure Final Text (December 2017)

(b) The Administrative Director shall designate a hearing officer to preside over the hearing, which need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of the evidence improper over objection in civil actions. Oral testimony shall be taken only on oath or affirmation.

(c) The designated hearing officer shall issue a written recommended Determination and Order re: Suspension, including a statement of the basis for the Determination, within ten (10) days of the date the case was submitted for decision, which shall be served on the Administrative Director. The time requirement of this subdivision is directory and not jurisdictional.

(d) The Administrative Director shall have ten (10) ~~calendar~~ days from the date of receipt to adopt or modify the recommended Determination and Order re: Suspension issued by the designated hearing officer. In the event the recommended Determination and Order of the designated hearing officer is modified, the Administrative Director shall include a statement of the basis for the Determination and Order re: Suspension signed and served by the Administrative Director, or his or her designee. If the Administrative Director does not act within ten (10) ~~calendar~~ days from the date of receipt of the recommended Determination and Order re: Suspension, then the recommended Determination and Order re: Suspension of the hearing officer shall become the Determination and Order re: Suspension on the eleventh (11th) ~~calendar~~ day.

(e) The Determination and Order re: Suspension shall be served on the respondent by registered or certified mail by the Administrative Director and shall become final on the day it is mailed.

(f) All appeals from the Determination and Order re: Suspension shall be made to the Superior Court of California by writ as provided in the Code of Civil Procedure.

Authority: Sections 133 and 139.21, Labor Code.

Reference: Section 139.21, Labor Code.

§9788.4. Suspension Notification.

(a) Following the date that the Determination and Order re: Suspension is final, the Administrative Director shall provide written notification of the physician's, practitioner's, or provider's suspension from participating in the workers' compensation system to:

(1) The Chief Judge of the Division of Workers' Compensation. Upon notification, the Chief Judge shall provide written notification of the suspension to the district offices of the Division of Workers' Compensation and all Administrative Law Judges employed by the Division.

(2) The special lien proceeding attorney designated under Labor Code section 139.21(f), if one is appointed.

(3) The physician's, practitioner's, or provider's state licensing, certifying, or registering authority.

(b) Following the date that the Determination and Order re: Suspension is final, the Administrative Director shall further:

(1) Update the Division's qualified medical evaluator and medical provider network databases, as appropriate, to indicate the physician's, practitioner's, or provider's suspension; and

(2) Post notification of the physician, practitioner, or provider's suspension on the Division's website.

Authority: Sections 133 and 139.21, Labor Code.

Reference: Sections 139.21, Labor Code.

§9788.5. Amendment of the Order of Suspension or Determination and Order re: Suspension.

If the Administrative Director becomes aware that a suspended physician, practitioner, or provider would be subject to suspension under Labor Code section 139.21(a)(1) for a criminal conviction or other statutory basis that did not serve as the basis for the suspension in the original Order of Suspension or Determination and Order re: Suspension, the Administrative Director may issue an amended Order of Suspension or amended Determination and Order re: Suspension following written notice to the physician, practitioner, or provider pursuant to section 9788.1 and an opportunity for hearing pursuant to sections 9788.2 and 9788.3.

Authority: Sections 133 and 139.21, Labor Code.

Reference: Sections 139.21, Labor Code.

§9788.6. Service and Computation of Time.

(a) In the case of service by mail, the notice or other paper shall be complete at the time of mailing.

(b) All documents shall be considered "filed" when the original is actually received by the Division of Workers' Compensation or the hearing officer designated to hear the case, where appropriate.

per agency
request *RLS*

(c) A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States.

Authority: Sections 133 and 139.21, Labor Code.

Reference: Sections 139.21, Labor Code; Section 1013, Code of Civil Procedure.

California Code of Regulations, title 8, section 9788.1, 9788.2, 9788.3, 9788.4, 9788.5 and 9788.6
Provider Suspension Procedure Final Text (December 2017)