

February 22, 2019

**VIA FEDEX AND CERTIFIED MAIL**

Hearing Request  
Administrative Director  
Division of Workers' Compensation  
1515 Clay Street, Suite 1800  
Oakland, California 94612

**VIA U.S. MAIL**

Hearing Request  
Department of Industrial Relations  
Officer of the Director  
Anti-Fraud Unit  
1515 Clay Street, Suite 1700  
Oakland, CA 94612

Re: Daniel Capen, M.D. Notice of Provider Suspension – Worker's Compensation

To whom it may concern:

My law firm represents Daniel Capen, M.D. On February 21, 2019, Dr. Capen received the enclosed "Notice of Provider Suspension – Worker's Compensation" ("Suspension Notice") (Exhibit A). **Dr. Capen would like to request a hearing to dispute this suspension.**

Dr. Capen should be contacted through me at my firm. My contact information is set forth above. Dr. Capen's regular mailing address is:

Daniel Alexander Capen  
15901 Hawthorne Boulevard, #250  
Lawndale, CA 90260

The Suspension Notice states that it is suspending Dr. Capen "because you have been convicted of a crime described in Labor Code Section 139.21(a)(1)(A)." That is not accurate. While Dr. Capen has been charged with a crime, he has not yet been "convicted" of anything. A "conviction" only takes place after an individual has been sentenced and a judgment has been entered. I am enclosing a copy of the docket for Dr. Capen's case. (Exhibit B.) As you can see, Dr. Capen has not been sentenced and no judgment has been entered. His sentencing is set for August 2019.

Accordingly, there is no basis at this time to suspend Dr. Capen.

Very truly yours,



Grant B. Gelberg

Encls.

# **EXHIBIT A**

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION  
LEGAL UNIT  
1515 Clay Street, Suite 1700  
Oakland, California 94612  
Tel (510) 286-7100 Fax (510) 286-0687



February 15, 2019

Daniel Alexander Capen  
15901 Hawthorne Boulevard, #250  
Lawndale, CA 90260

**NOTICE OF PROVIDER SUSPENSION – WORKERS' COMPENSATION**

Dear Mr. Capen:

The Administrative Director of the Division of Workers' Compensation (DWC) is required by Labor Code section 139.21(a)(1)(A) to suspend you from participation in the California workers' compensation system because you have been convicted of a crime described in Labor Code section 139.21(a)(1)(A). Enclosed are copies of the documents relied upon by the Administrative Director as the basis for taking this action.

Your suspension will start 30 calendar days after the date of mailing of this notice, unless you submit a written request for a hearing, which will stay the suspension pending the outcome of the hearing. Your request must be made within 10 calendar days of the date of mailing of this notice. If you do not request a hearing within the 10-day time limit, you will be suspended from participation in the California workers' compensation system pursuant to California Code of Regulations, title 8, section 9788.2(b).

Your request for a hearing must contain:

- Your current mailing address;
- The legal and factual reasons as to why you do not believe Labor Code section 139.21(a)(1) is applicable to you; and
- Your original signature or the original signature of your legal representative.

The scope of the hearing is limited to whether or not Labor Code section 139.21(a)(1) is applicable to you. The Administrative Director is required to suspend you unless you provide proof in the hearing that Labor Code section 139.21(a)(1) does not apply.

Your original request for a hearing and one copy of the request must be filed with the Administrative Director. Additionally, you must also serve one copy of the request for a hearing on the DWC Legal Unit. The addresses for the Administrative Director and the Legal Unit are:

February 15, 2019  
Daniel Alexander Capen

Hearing Request  
Administrative Director  
Division of Workers' Compensation  
1515 Clay Street, Suite 1800  
Oakland, California 94612

and

Hearing Request  
Department of Industrial Relations  
Officer of the Director  
Anti-Fraud Unit  
1515 Clay Street, Suite 1700  
Oakland, CA 94612

The original and all copies of the request for hearing must have a proof of service attached. A sample proof of service, containing all necessary elements, can be found on the DWC website at <https://www.dir.ca.gov/dwc/forms.html>, under the category "Court Forms," and then "Proof of Service." The Administrative Director is required to hold your hearing within 30 days of the receipt of your written request. The hearing will be conducted by a hearing officer appointed by the Administrative Director. You will be notified shortly after the receipt of your request of the date and time of the hearing.

For more information about the suspension procedure, please refer to Provider Suspension Regulations, California Code of Regulations, title 8, sections 9788.1 - 9788.4, which can be found on the DWC website at <http://www.dir.ca.gov/dwc/DWCPropRegs/Provider-Suspension-Procedure/Clean-Version/Text-of-Regulations.pdf>.

Sincerely,



George Parisotto  
Administrative Director  
Division of Workers' Compensation

Encls:

- Information in *United States of America v. Daniel Capen*, (Case No. CR18-00124-JLS), United States District Court, Central District of California
- Plea Agreement for Defendant Daniel Capen in *United States of America v. Daniel Capen*, (Case No. CR18-00124-JLS), United States District Court, Central District of California
- Criminal Minutes – General in *United States of America v. Daniel Capen*, (Case No. CR18-00124-JLS), United States District Court, Central District of California
- Criminal Docket for Case #: 8:18-cr-00124-JLS-1 in *United States of America v. Daniel Capen*, (Case No. CR18-00124-JLS), United States District Court, Central District of California
- Declaration of Socorro Tongco in Support of Notice of Provider Suspension

February 15, 2019  
Daniel Alexander Capen

-Proof of Service

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA (Southern Division – Santa Ana)  
CRIMINAL DOCKET FOR CASE #: 8:18-cr-00124-JLS-1**

Case title: USA v. Capen

Date Filed: 06/28/2018

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Assigned to: Judge Josephine L. Staton

**Defendant (1)**

**Daniel Capen**

represented by **Douglas A Axel**  
Sidley Austin LLP  
555 South Flower Street Suite 4000  
Los Angeles, CA 90013  
213-896-6178  
Fax: 213/96-6600  
Email: [daxel@sidley.com](mailto:daxel@sidley.com)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*  
*Designation: Retained*

**Pending Counts**

18:371: Conspiracy  
(1)

42:1320a-7b(b)(1)(A): Soliciting  
and Receiving Illegal Remunerations  
for Health Care Referrals;  
(2)

**Disposition**

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

None

**Disposition**

**Highest Offense Level (Terminated)**

None

**Complaints**

None

**Disposition**

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**Plaintiff**

**USA**

represented by **Joseph Timothy McNally**  
AUSA – Office of US Attorney  
Santa Ana Division  
411 West Fourth Street 8th Floor  
Santa Ana, CA 92701  
714-338-2829  
Fax: 714-338-3561  
Email: [joseph.mcnally@usdoj.gov](mailto:joseph.mcnally@usdoj.gov)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

*Designation: Assistant US Attorney*

**Ashwin Janakiram**

AUSA – Office of the US Attorney  
 General Crimes Section  
 312 North Spring Street Suite 1100  
 Los Angeles, CA 90012  
 213-894-2875  
 Fax: 213-894-6269  
 Email: [ashwin.janakiram@usdoj.gov](mailto:ashwin.janakiram@usdoj.gov)  
**ATTORNEY TO BE NOTICED**  
*Designation: Assistant US Attorney*

**Scott D Tenley**

AUSA – Office of US Attorney  
 Santa Ana Branch Office  
 411 West Fourth Street 8th Floor  
 Santa Ana, CA 92701  
 714-338-2829  
 Fax: 714-338-3561  
 Email: [scott.tenley@usdoj.gov](mailto:scott.tenley@usdoj.gov)  
**ATTORNEY TO BE NOTICED**  
*Designation: Assistant US Attorney*

Date Filed	#	Docket Text
06/28/2018	<u>1</u>	INFORMATION filed as to Daniel Capen (1) count(s) 1, 2. (dg) (Entered: 06/29/2018)
06/28/2018	<u>2</u>	CASE SUMMARY filed by AUSA Joseph T. McNally as to Defendant Daniel Capen; defendants Year of Birth: 1949 (dg) (Entered: 06/29/2018)
06/28/2018	<u>3</u>	NOTICE of Related Case(s) filed by Plaintiff USA as to Defendant Daniel Capen Related Case(s): SACR14-00034 JLS (dg) (Entered: 06/29/2018)
06/28/2018	<u>4</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Daniel Capen. This criminal action, being filed on in the U. S. Attorneys Office before the date on which Judge Andre Birotte Jr and Michael Fitzgerald began receiving criminal matters. (dg) (Entered: 06/29/2018)
06/28/2018	<u>5</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Daniel Capen Re Magistrate Judges Jacqueline Chooljian, Patrick J. Walsh, Sheri Pym, Michael Wilner, Jean Rosenbluth, Alka Sagar, Douglas McCormick, Rozella Oliver, Gail Standish, Steve Kim, John Early and Shashi H. Kewalramani. (dg) (Entered: 06/29/2018)
06/28/2018	<u>6</u>	PLEA AGREEMENT filed by Plaintiff USA as to Defendant Daniel Capen (dg) (Entered: 06/29/2018)
07/30/2018	<u>11</u>	MINUTES OF INITIAL APPEARANCE ON INFORMATION HEARING held before Magistrate Judge Karen L. Stevenson as to Defendant Daniel Capen. Defendant states true name as charged. Attorney: Douglas A Axel for Daniel Capen, Retained, present. Court orders bail set as: Daniel Capen (1) 250,000 Unsecured AB, See attached bond for terms and conditions. PIA held, see separate minutes. Court Smart: CS 7/30/18. (dg) (Entered: 07/31/2018)
07/30/2018	<u>12</u>	DESIGNATION AND APPEARANCE OF COUNSEL; filed by Douglas A Axel appearing for Daniel Capen (dg) (Entered: 07/31/2018)
07/30/2018	<u>13</u>	ADVISEMENT OF STATUTORY & CONSTITUTIONAL RIGHTS filed by Defendant Daniel Capen. (dg) (Entered: 07/31/2018)
07/30/2018	<u>14</u>	PASSPORT RECEIPT from U. S. Pretrial Services as to Defendant Daniel Capen. USA passport was received on 7/30/18. (dg) (Entered: 07/31/2018)
07/30/2018	<u>15</u>	BOND AND CONDITIONS OF RELEASE filed as to Defendant Daniel Capen conditions of release: \$250,000 Unsecured AB approved by Magistrate Judge Karen L. Stevenson. (dg) (Entered: 07/31/2018)

07/30/2018	<u>16</u>	WAIVER OF INDICTMENT by Defendant Daniel Capen before Magistrate Judge Karen L. Stevenson (dg) (Entered: 07/31/2018)
07/30/2018	<u>17</u>	MINUTES OF POST-INDICTMENT ARRAIGNMENT held before Magistrate Judge Karen L. Stevenson as to Defendant Daniel Capen (1) Count 1,2. Defendant arraigned, states true name: As charged. Attorney Doug Axel, Retained present. Case assigned to Judge Josephine L. Staton. Counsel are directed to contact the Judge's CRD to set dates for all further proceedings. Court Smart: CS 07/30/2018. (dfi) (Main Document 17 replaced on 8/6/2018) (tba). (Entered: 08/02/2018)
08/02/2018	<u>18</u>	SCHEDULING NOTICE by Judge Josephine L. Staton as to Defendant Daniel Capen. Change of Plea Hearing is set for 8/24/2018 at 9:30 AM. Counsel and Defendant are ordered to appear. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (tg) TEXT ONLY ENTRY (Entered: 08/02/2018)
08/07/2018	<u>19</u>	Notice of Appearance or Withdrawal of Counsel: for attorney Scott D Tenley counsel for Plaintiff USA. Adding Scott D. Tenley as counsel of record for United States of America for the reason indicated in the G-123 Notice. Filed by Plaintiff Scott D. Tenley. (Attorney Scott D Tenley added to party USA(pty:pla))(Tenley, Scott) (Entered: 08/07/2018)
08/24/2018	<u>20</u>	ORDER RE CRIMINAL PROCEEDINGS for cases assigned to Judge Josephine L. Staton. (tg) (Entered: 08/24/2018)
08/24/2018	<u>21</u>	MINUTES OF CHANGE OF PLEA Hearing held before Judge Josephine L. Staton as to Defendant Daniel Capen. Defendant sworn. Court questions defendant regarding the plea. The Defendant Daniel Capen (1) pleads GUILTY to Count 1 and 2 of the Information. The plea is accepted. The Court ORDERS the preparation of a Presentence Report. Sentencing set for 2/8/2019 at 8:30 AM before Judge Josephine L. Staton. Court Reporter: Deborah Parker. (es) (Entered: 08/24/2018)
09/11/2018	<u>22</u>	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Ashwin Janakiram on behalf of Plaintiff USA. Filed by Plaintiff USA. (Attorney Ashwin Janakiram added to party USA(pty:pla))(Janakiram, Ashwin) (Entered: 09/11/2018)
01/17/2019	<u>23</u>	NOTICE of Manual Filing of First Stipulation to Continue Sentencing Date, Proposed Order, Governments Unopposed Ex Parte Application, proposed order sealing document filed by Plaintiff USA as to Defendant Daniel Capen (McNally, Joseph) (Entered: 01/17/2019)
01/18/2019	<u>24</u>	SEALED - GOVERNMENT'S EX PARTE APPLICATION for Order Filing Documents Under Seal; Declaration of Joseph T. McNally. (UNDER SEAL). (jp) (Entered: 01/18/2019)
01/18/2019	<u>25</u>	SEALED - ORDER SEALING DOCUMENTS by Judge Josephine L. Staton. (UNDER SEAL). (jp) (Entered: 01/18/2019)
01/18/2019	<u>26</u>	SEALED DOCUMENT- FIRST STIPULATION TO CONTINUE SENTENCING DATE. [UNDER SEAL]. (jp) (Entered: 01/18/2019)
01/18/2019	<u>27</u>	SEALED - ORDER CONTINUING SENTENCING DATE by Judge Josephine L. Staton. [UNDER SEAL]. (jp) (Entered: 01/18/2019)

Proof of Service by Mail

I declare that:

I am (resident of / employed in) the county of Los Angeles, California.

I am over the age of eighteen years, my (business / residence) address is:

550 South Hope Street, Suite 1850  
Los Angeles, California 90071

On February 22, 2019, I served the attached Request for Hearing  
on the parties listed below in said case, by placing a true copy thereof enclosed in  
a sealed envelope with postage thereon fully paid, in the United State mail at  
Los Angeles, California addressed as follows:

VIA FEDEX AND CERTIFIED MAIL  
Hearing Request  
Administrative Director  
Division of Workers' Compensation  
1515 Clay Street, Suite 1800  
Oakland, California 94612  
VIA U.S. MAIL  
Hearing Request  
Department of Industrial Relations  
Officer of the Director  
Anti-Fraud Unit  
1515 Clay Street, Suite 1700  
Oakland, California 94612

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct, and that this declaration was executed on

(date) February 22, 2019, at Los Angeles, California.

Type or print name Jillian Song

Signature 