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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-18-16

GABY OH,

DETERMINATION AND ORDER

RE: SUSPENSION

Respondent.

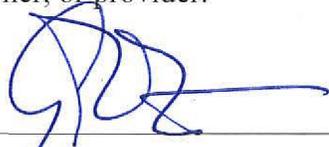
12 The Administrative Director of the Division of Workers' Compensation is required to suspend
13 any physician, practitioner, or provider from participating in the workers' compensation system as a
14 physician, practitioner, or provider if the individual or entity meets any of the express criteria set forth in
15 Labor Code section 139.21(a)(1).

16 Based upon a review of the record in this case, including the September 12, 2018 recommended
17 Determination and Order re: Suspension of the designated Hearing Officer, the Administrative Director
18 finds that Respondent Gaby Oh meets the criteria for suspension set forth in Labor Code section
19 139.21(a) and shall be suspended from participating in the workers' compensation system as a
20 physician, practitioner, or provider. Pursuant to California Code of Regulations, title 8, section
21 9788.3(d), the Administrative Director hereby adopts and incorporates the September 12, 2018
22 recommended Determination and Order re: Suspension of the designated Hearing Officer, attached
23 hereto, as the Administrative Director's Determination and Order re: Suspension.

24 **IT IS HEREBY ORDERED** that Gaby Oh is hereby suspended from participating in the
25 workers' compensation system as a physician, practitioner, or provider.

26 Date: September 14, 2018

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GEORGE PARISOTTO
Administrative Director
Division of Workers' Compensation

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

In Re: PROVIDER SUSPENSION

GABY OH,

Respondent.

Case No. AD PS-18-06

**DETERMINATION AND
ORDER RE: SUSPENSION**

A hearing was held and the above-captioned matter was submitted for decision on September 11, 2018 pursuant to Labor Code section 139.21(b)(2). This is the undersigned Hearing Officer's recommended Determination and Order re: Suspension pursuant to title 8, California Code of Regulations section 9788.3(c).

FACTS

1. Labor Code section 139.21(a)(1) mandates that the Administrative Director "shall promptly suspend" any physician, practitioner, or provider from participating in the workers' compensation system as a physician, practitioner, or provider if, among other things, "the individual's license, certificate, or approval to provide health care has been surrendered or revoked" pursuant to subparagraph (C).

2. On January 4, 2017, the Respiratory Care Board of California adopted a proposed decision of an Administrative Law Judge dated December 2, 2016, and Ms. Oh's license to practice as a Respiratory Care Provider was revoked effective January 11, 2017 (*Exhibits 3 & 2*).

3. On July 27, 2018, the Administrative Director issued a Notice of Provider Suspension, advising Ms. Oh that she must be suspended from participation in the workers' compensation system as a result of her license revocation (*Exhibit 4*).

4. On August 7, 2018, Ms. Oh requested a hearing regarding her suspension pursuant to title 8, California Code of Regulations section 9788.2(a), which requires the respondent to "set forth the legal and factual reason for the request for hearing." The sole ground for contesting the suspension was, "I am seeking work/employment as a medical assistant and do not want this stigma to hurt my background."

DETERMINATION

Labor Code section 139.21(a)(1)(C) applies to respondent Gaby Oh. As a result, the Administrative Director is required to immediately suspend respondent pursuant to Labor Code section 139.21(b)(2).

BASIS FOR DETERMINATION

There is no dispute regarding the relevant facts. Respondent Gaby Oh's license as a Respiratory Care Provider was revoked by the licensing board effective January 11, 2017. Such license revocation triggers the application of Labor Code section 139.21(a)(1) pursuant to subparagraph (C) of that statute.

Ms. Oh did not and does not contend that section 139.21(a)(1) is inapplicable. Instead, Ms. Oh throws herself on the mercy of the Administrative Director and pleads that she not be suspended because she is concerned about the effect such suspension may have on her ability to obtain employment in any medical office that sees workers' compensation patients. She also stated to the undersigned that she is not a bad person, she is turning her life around, and she is working on getting her license reinstated.

Unfortunately for Ms. Oh, section 139.21(a)(1) does not provide for the exercise of any discretion or judgment in its application on the ground that the respondent is a good person who is trying her best. The statutory language is mandatory; the Administrative Director "shall promptly suspend" any provider to whom the statute applies. Subdivision (b)(2) further notes that the Administrative Director "is required to suspend" the provider unless, at the hearing requested pursuant to that subdivision, the provider "provides proof that paragraph (1) of subdivision (a) is not applicable." Ms. Oh did not contest the statute's applicability and did not offer any evidence at all outside of her personal statement summarized above. Subdivision (b)(2) further notes that if the statute is found to be applicable after the hearing, the Administrative Director "shall immediately suspend" the provider.

The most recent amendments to section 139.21 added subparagraph (6) to section 139.21(a), which allows (but does not require) the Administrative Director to adopt regulations specifying any exemptions "that shall not serve as the basis for exclusion under paragraph (1)." The undersigned is unaware of any such regulations having been adopted to date. However, the existence of that paragraph suggests that the Legislature intended to allow some discretion to the Administrative Director in the application of section 139.21(a)(1). Whether such

discretion may extend to what would essentially be a grant of mercy in the absence of any legal or factual basis is up to the Administrative Director to determine. It appears obvious that the exercise of any such discretion without explicit controlling regulations would readily lend itself to charges of discrimination or unfair treatment unless the Administrative Director were willing to "stay his hand" and not suspend anyone who insisted that they were trying to do better.

For the foregoing reasons, a determination was made that Labor Code section 139.21(a)(1)(C) applies to respondent, and in the absence of any exercise of discretion by the Administrative Director, immediate suspension is required by section 139.21(b)(2).

ORDER

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

DATE: September 12, 2018

Paul DeWeese

**WCJ PAUL DeWEESE
Hearing Officer**