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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-17-08

DETERMINATION AND ORDER

RE: SUSPENSION

ROBERT A. ROSE, M.D.,
Respondent.

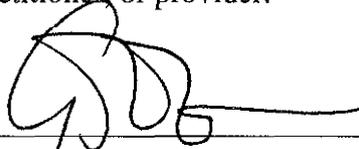
The Administrative Director of the Division of Workers' Compensation is required to suspend any physician, practitioner, or provider from participating in the workers' compensation system as a physician, practitioner, or provider if the individual or entity meets any of the express criteria set forth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

Based upon a review of the record in this case, including the August 4, 2017 recommended Determination and Order re: Suspension of the designated Hearing Officer, the Acting Administrative Director finds that Respondent Robert A. Rose 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 Acting Administrative Director hereby adopts and incorporates the August 4, 2017 recommended Determination and Order re: Suspension of the designated Hearing Officer, attached hereto, as the Acting Administrative Director's Determination and Order re: Suspension.

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

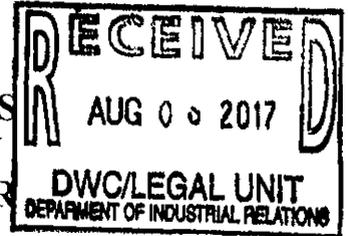
Date:

8/14/17



GEORGE PARISOTTO
Acting 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

**Case No. AD PS-17-08
DETERMINATION AND ORDER**

ROBERT A ROSE, M.D.,
Respondent.

RE: SUSPENSION

A hearing was held in the above-captioned matter on June 5, 2017 pursuant to Labor Code section 139.21(b) (2). At that time, counsel for the parties requested and were granted time to file and serve hearing briefs. The lead brief by counsel for Dr. Rose was to be filed by the close of business on Wednesday, July 5, 2017 and counsel for OD Legal was given until Thursday July 20, 2017 to serve and file a reply brief, the matter would stand submitted as of Thursday, July 20, 2017. A reply brief was received from Dr. Rose's Attorney on Friday 7/28/17. The matter was to stand submitted on Thursday July 20, 2017 at 5:00 p.m.; however the court will consider the reply brief in its decision.

At the Hearing Dr. Rose raised several issues; 1. His conviction did not involve a crime of moral turpitude. 2. The crimes for which he was convicted, Lewd conduct in a public place and in public view (PC §647(a)) and resisting arrest by a peace officer (PC§148(a) (1)), did not go to the practice of medicine and therefore his right to participate in the workers' compensation system should not be suspended. 3. That the notice issued to Dr. Rose for his suspension was not proper as it failed to give him due process as to issues set and specifically which section of Labor Code §139.21 he supposedly violated. 4. That he demanded this hearing address his status as a QME in the Workers' Compensation System.

The court will address Dr. Rose's concerns that the notice is confusing and improper. Dr. Rose's attorney claims confusion, as there are two different notices issued by the Acting Administrative Director George Parisotto. The first being the hearing under Labor Code §139.21 for the suspension proceedings noticed therein and the second regarding the administrative actions taken against the doctor and his status as a QME in the Workers' Compensation System

under §139.2. This hearing has nothing to do with his QME status. They are separate and distinct proceedings. The administrative director's office (AD) has many roles in the workers' compensation system. The status of Dr. Rose as a Panel Qualified Medical Evaluator (PQME) was not set before this court; it is a separate administrative proceeding conducted through the AD's office and the Medical Unit. Whether he has had his hearing under Labor Code §139.2 (n) (cite incorrect) as claimed in his supplemental brief has no bearing on this proceeding. Therefore, this court will not address the doctor's concerns over his status as a PQME or whether or not he has been given his hearing rights in regards to the revocation of his status as a PQME.

Proper notice was given for this hearing under Labor Code §139.21 and the issues addressing his suspension from practice in the workers' compensation system. Further, after the notice was sent the doctor timely requested a hearing which was conducted and the doctor testified therein. The parties were given additional time to file trial briefs on the issues raised including the court's acceptance of a reply brief from the doctor. The doctor had adequate notice of the issues presented and therefore there is no violation of his due process rights as they pertain to this hearing.

Dr. Rose's attorney seems to think the court is confused as to the status of his license. Dr. Rose was convicted of two crimes as set forth above. Subsequently he violated his probation and an additional hearing was held in the Superior Court. An additional plea agreement was entered into, wherein Dr. Rose voluntarily restricted his license, which the superior court accepted and those restrictions are the ones listed on the medical board's website regarding the status of Dr. Rose's license. Effective 7/7/16 Dr. Rose cannot, 1. See female patients, 2, be in the presence children without the permission of his probation officer, 3. In addition, his medical practice is restricted to evaluating claimants in worker's compensation cases only, and is not to treat any patients. Dr. Rose's contention is that these restrictions and his convictions do not violate Labor Code §139.21. The short answer is this court finds they do.

Dr. Rose argues that pleading guilty to lewd conduct in a public place and in public view (PC §647(a)) and resisting arrest by a peace officer (PC§148(a) (1)), is not one of the enumerated prohibited or criminal conducts under Labor Code §139.21(a) (1) (A). This court finds that it is and that his conduct violated Labor Code §139.21(a) (1) (A) (iv) as it is substantially related to the qualifications, functions, or duties of a provider of services. By his own request the doctor cannot treat any patients, cannot see female patients nor can he be in the presence of minors

without permission of his probation officer. The only thing he is allowed to do is evaluate male patients in the workers' compensation system. The restrictions on his license go directly to his ability to perform services in the workers' compensation field and are substantially related to his qualifications, functions, and duties as a provider of services. Dr. Rose's license is restricted he cannot treat patients he is not qualified to examine patients as a treating physician, further as he cannot treat patients he cannot act a PQME. A PQME must be able to treat patients and must certify under Labor Code §139.2(b)(2) that prior to his appointment as a PQME at least one third of his practice time was providing direct medical treatment. Here the doctor cannot treat patients so his ability to participate in the workers' compensation system is directly affected and substantially related to his qualifications, functions, and duties as a provider of services. Participation in the workers' compensation system is a privilege and not a right. Dr. Rose's conduct is egregious enough to warrant that privilege be suspended.

In his request for hearing, Dr. Rose raised the issue of moral turpitude. It is not one of the elements specifically set forth in Labor Code §139.21(a) (1) (A), it is not part of this court's determination.

The last argument raised was the due process argument that the notice by the Administrative Directive was defective as it failed to set forth the specific grounds for the suspension as required by 8 Cal. Code of Regs §9788.1(2). It was not defective it set forth the basis for this hearing. The issues regarding his status as a PQME are not being addressed in this proceeding and were not listed in the notice issued by the Acting AD.

Therefore, based on the above, this hearing officer makes his determination that Dr. Rose violated Labor Code §§139.21(a) (1) (A) (iv) and Dr. Robert A. Rose be suspended from participation in the workers' compensation system.

IT IS SO ORDERED that Dr. Robert A. Rose is hereby suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

DATE: 8/4/17



WCJ ALAN SKELLY
Hearing Officer