

STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION

Case No. AD-PS-18-03

**In Re: PROVIDER SUSPENSION**

BRUCE ELIOT FISHMAN, M.D.;  
BRUCE ELIOT FISHMAN, M.D., FICS, INC.;  
AND FAMILY URGENT CARE &  
INDUSTRIAL MEDICAL CLINIC, INC.

**DETERMINATION AND ORDER  
RE: SUSPENSION**

Respondent

**PROCEDURAL TIMELINE**

On April 19, 2018, a Notice of Provider Suspension was served upon Bruce Eliot Fishman, M.D., (Dr. Fishman) by George Perisotto, Administrative Director of the Division of Workers' Compensation.

On April 27, 2018, Dr. Fishman, by and through counsel, Brissman & Nemat, objected to the Notice of Suspension, and requested a hearing, pursuant to Labor Code §139.21.

On May 8, 2018, a Notice of Hearing and Designation of Hearing Officer was served upon the parties by George Perisotto, Administrative Director of the Division of Workers' Compensation. The matter was set before the Honorable Bolynda Schultz, Workers' Compensation Judge, acting as Designated Hearing Officer, on May 29, 2018, at 10:00 a.m.

On May 25, 2018, a Supplemental Notice of Provider Suspension was served upon Dr. Fishman, by George Perisotto, Administrative Director of the Division of Workers' Compensation, noting the suspension hearing would encompass additional entities of Bruce Eliot Fishman, M.D., FICS, Inc., and Family Urgent Care & Industrial Medical Clinic, Inc., as entities Dr. Fishman either controlled or was a shareholder with greater than ten percent interest. The the parties jointly requested a continuance based upon the Supplemental Notice of Provider Suspension. The Court granted a continuance and Ordered the matter be set for hearing on August 15, 2018. It is worth noting there was a typographical error on the Joint Request for

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Continuance. The parties referenced Case No. AD-PS-17-12 in error. This created confusion going forward, and various documents were labeled incorrectly.

On July 19, 2018, the parties jointly requested a continuance due to availability of counsel.

On July 30, 2018, the Court granted a continuance and Ordered the matter be set for hearing on August 31, 2018.

On August 31, 2018, the matter was heard. The parties requested the Court issue interim orders regarding various legal and evidentiary issues prior to testimony being given. Exhibits were submitted. The Court granted the request, and the matter was continued to December 19, 2018.

On September 28, 2018, the parties filed a Stipulation to Continue Briefing Schedule.

On October 1, 2018, Dr. Fishman filed a Request for Judicial Notice, an Evidentiary Brief, and a Procedural Brief.

On October 23, 2018, the parties filed a Stipulation and Order to Continue Hearing and Extend Briefing Schedule.

November 2, 2018, the DIR's Anti-Fraud Unit filed a Reply Brief.

On November 30, 2018, the Court issued Interim Orders. The issues of jurisdiction, collateral estoppel, and due process were addressed. No objections were filed in relation to the Orders.

On December 18, 2018, the parties jointly requested a continuance based upon illness of counsel. The Court granted a continuance and ordered the matter be set for hearing on January 30, 2019, at 2:00 p.m.

On January 30, 2019, the matter was heard. The parties stipulated to offers of proof in lieu of Dr. Fishman's testimony. Dr. Fishman requested permission to file a supplemental brief, and the request was granted. Dr. Fishman also requested, should the Hearing Officer determine suspension appropriate, that a stay regarding the actual suspension be recommended, pending an

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appeal. That request was deferred and taken under advisement. There was discussion regarding representation of counsel for the Department of Industrial Relations. At the August 31, 2018, hearing, Philip Landsman, Esq., was noted as Department of Industrial Relations, Office of the Director, Anti-Fraud Unit, and Attorney for Acting Administrative Director. The attorneys appearing on January 30, 2019, noted their appearances as John Cumming, Esq., Special Counsel to the Director of Industrial Relations on behalf of the Department of Industrial Relations, and Rosemary DePietrantonio, Esq., Office of the Director, Anti-Fraud unit, Attorney for the Office of the Director. They wished to clarify that they do not represent the Administrative Director. The Department of Industrial Relations made a motion to amend their exhibit list. Having not objection, the motion was granted, and Exhibits 11 and 12 were entered into evidence. A briefing schedule was outlined, and the Court's determination was scheduled for a date no later than March 11, 2019.

On February 13, 2019, Dr. Fishman filed a Final Brief in Reply.

On February 25, 2019, the DIR filed a Final Brief in Reply, and the matter was submitted for decision.

**OPINION ON DECISION**

According to Judgment and Probation Commitment Order, Docket No. 83-60055-01, in the United States District Court, Eastern District of Michigan, on July 14, 1983, Bruce Eliot Fishman, M.D., was convicted of one count of Conspiracy to Distribute Narcotic and Non-Narcotic Controlled Substances, in violation of Title 21, Section 846 of the United States Code. He was sentenced to three and one-half years custody and fined \$25,000.00. The Order was signed by The Honorable Robert E. DeMascio, U.S. District Judge, on July 15, 1983. (See Office of the Director's Exhibit 3, Judgment on Criminal Indictment.)

Dr. Fishman obtained a license to practice medicine in the state of California as a physician and surgeon on February 3, 1983. Based upon his conviction in the Eastern District of Michigan, his license was revoked on February 26, 1985. He petitioned the California Board of Medical Quality Assurance (CBMQA) for reinstatement of his license in August of 1986. The

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CBMQA's very thorough Finding of Fact, dated July 31, 1987, denied Dr. Fishman's request for reinstatement, noting rehabilitation had not been established due to insufficient time between parole and request, as well as inadequately guided volunteer activity. (See Dr. Fishman's Exhibit A, CBMQA Case No. L-40352.) Dr. Fishman again petitioned the CBMQA for reinstatement, and the matter was heard on April 5, 1990. After a thorough investigation, a determination was made on May 7, 1990, that "Petitioner has established that he is sufficiently rehabilitated so that it would not be adverse to the public interest to restore petitioner's certificate in a probationary status." The probationary reinstatement was effective June 6, 1990. (See Dr. Fishman's Exhibit B, CBMQA Case No. L-49870.)

Dr. Fishman petitioned the CBMQA for termination of his probationary status, and the matter was heard on October 14, 1993. After a thorough investigation, a determination was made on January 10, 1994, that "Petitioner has made a satisfactory showing that it would not be contrary to the public interest to reinstate petitioner's certificate." The petition for termination of probation was granted, and Dr. Fishman's certificate was reinstated without restriction. (See Dr. Fishman's Exhibit C, CBMQA Case No. L-61422.)

Effective January 1, 2018, almost twenty-four years after Dr. Fishman was fully reinstated to practice medicine in the state of California, Labor Code §139.21 was enacted by Assembly Bill 1244. The relevant portion is as follows:

*(a) (1) The administrative director shall promptly suspend, pursuant to subdivision (b), 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 following criteria:*

*(A) The individual or entity has been convicted of any felony or misdemeanor and that crime comes within any of the following descriptions:*

*(i) It involves fraud or abuse of the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system, or fraud or abuse of any patient.*

*(ii) It relates to the conduct of the individual's medical practice as it pertains to patient care.*

*(iii) It is a financial crime that relates to the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system.*

*(iv) It is otherwise substantially related to the qualifications, functions, or duties of a provider of services.*

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The Court looks to the legislative intent of Assembly Bill 1244.<sup>1</sup> The Senate Committee on Labor and Industrial Relations, meeting on June 29, 2016, addressed the key issue of whether the legislature should require the administrative director of the Division of Workers' Compensation to suspend a medical service provider if he or she is convicted of workers' compensation fraud. The comments addressed fraud as a "specter haunting the workers' compensation system" and presented a fundamental challenge to the operation of the system for all stakeholders. They detailed more than a \$1 billion in fraudulent activity by a variety of medical providers, noting specific providers by name, and the dollar amounts associated with their fraudulent activity. The comments state that AB 1244 sought to combat workers' compensation fraud by changing the incentives facing medical providers in the California workers' compensation system. The proponents of the bill cited significant fraud throughout the system, and how outrageous billing and treatment practices endangered injured workers and lead to significant employer costs.

The Senate Rules Committee of August 15, 2016, reiterated the information from the June 29, 2016, Senate Committee on Labor and Industrial Relations. Arguments in opposition were added, dealing with payment of liens to suspended providers. The Senate Rules Committee of August 19, 2016, was a Senate floor amendment to clarify the lien suspension process for physicians, practitioners, and providers convicted of fraud.

The summary of the August 23, 2016 Concurrence in Senate Amendments required the Administrative Director of the Department of Workers' Compensation to suspend a medical service provider if he or she is convicted of workers' compensation fraud. The purpose of the bill sought to combat workers' compensation fraud by changing the incentives facing medical providers in the California workers' compensation system. Specifically, the bill sought to create a suspension process for medical providers who commit serious crimes or are involved in fraudulent activity that is modeled after the suspension process for Medi-Cal...and required the suspension of a medical provider if the medical provider is convicted of a felony, a misdemeanor connected to fraud, a misdemeanor connected to patient or privilege abuse, or the medical

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<sup>1</sup> [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201520160AB1244](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1244)

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provider's license is suspended or revoked. The bill suspended the provider and denied further payment after conviction and the completion of the suspension process. Examples of recent fraudulent activity by Pacific Hospital and Spinal implants, Peyman Heidary and Cary Abramowitz, Ronald Grusd and George Reese, and Philip Sobol were specifically cited, with discussion outlining how medical bills and workers' compensation liens from doctors convicted of medical fraud were still being pursued, and how in theory, payment of these liens could be utilized by a convicted physician to pay restitution.

The purpose of the bill clearly states the legislature sought to combat workers' compensation fraud. The legislature's inclusion of crimes occurring prior to the enactment of Labor Code §139.21 was to ensure a wider net was cast and avoid limiting the provisions of the statute to those providers more recently caught. How wide the net should be cast and how far backwards reaching it should extend are interesting questions. This Court chooses to avoid form over substance when it is nonsensical; however, selective incorporation of the statute would be unfair. Dr. Fishman is not immune from the process; summary judgment would give rise to grievances from other physicians who may be similarly situated. The purpose of the suspension hearing is for the matter to be heard in its entirety.

The physicians specifically named by the legislature are ones who have been a plague during their tenure, and who, if not suspended, would currently and actively pose a threat to the workers' compensation system through their misdeeds. Respondent makes a convincing argument that the nexus between his 1983 actions and how they are substantially related his current medical practice, more specifically the qualifications, functions, or duties of a provider of services, do not exist in perpetuity. It is clear the CBMQA was incredibly thorough in their investigation of Dr. Fishman and incrementally reinstated his privileges, noting the shrinking nexus. Dr. Fishman has done nothing since his license was fully reinstated in 1994 that could be considered a threat to injured workers or the workers' compensation system. Although not a "poster boy," as pointed out by the Office of the Director, Dr. Fishman is in a separate category from the recently indicted physicians who were specifically named by the legislature.

The purpose of Labor Code §139.21 is to protect innocent injured workers from corrupt physicians, and to ensure wrongdoers do not profit from a system they've corrupted. That stated

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purpose does not apply to Dr. Fishman; therefore, to suspend his ability to practice medicine in the workers' compensation system would not be a just outcome.

Labor Code §139.21(a)(1)(A) requires that the individual or entity has been convicted of a felony or misdemeanor, and that the crime falls within four specific subsection requirements. Subsection (i) requires the crime must involve fraud or abuse of the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system, or fraud or abuse of any patient. There is no evidence of fraud or abuse of the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system, or fraud or abuse of any patient by Dr. Fishman. Subsection (ii) requires the crimes must relate to the conduct of the individual's medical practice as it pertains to patient care. There is no evidence that Dr. Fishman's 1983 criminal conviction relates to his current practice or to patient care during his tenure as a physician in the California workers' compensation system since May 7, 1990. Subsection (iii) requires the crimes must be financial crimes related to the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system. There is no evidence of a financial crime by Dr. Fishman that relates to the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system. Subsection (iv), a 'catch-all' provision, requires the crimes must otherwise substantially relate to the qualifications, functions, or duties of a provider of services. There is no evidence that Dr. Fishman's 1983 criminal conviction is substantially related to the qualifications, functions, or duties of a provider of services during his tenure as a physician in the California workers' compensation system since May 7, 1990.

**DETERMINATION AND ORDERS**

The Court finds as follows:

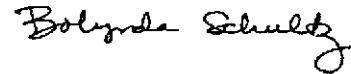
1. The conduct of BRUCE ELIOT FISHMAN, M.D., on or around 1981-1982, for which he was convicted on July 14, 1983, does not violate Labor Code §139.21, and his conduct was not substantially related to the qualifications, functions, or duties of a provider of services, during his tenure as a physician in the California workers' compensation system since May 7, 1990.

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**IT IS SO ORDERED** that BRUCE ELIOT FISHMAN, M.D., not be suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

**IT IS FURTHER ORDERED** that the entities of Bruce Eliot Fishman, M.D., FICS, Inc., and Family Urgent Care & Industrial Medical Clinic, Inc., as noted on the Supplemental Notice of Provider Suspension, also not be suspended from participating in the workers' compensation system as a physician, practitioner, or provider.

**IT IS SO RECOMMENDED** that should the Administrative Director disagree with the Determination and Orders, a stay of the suspension would be appropriate, pending respondent's intended appeal.



DATE: March 6, 2019

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**BOLYNDA SCHULTZ**  
WORKERS' COMPENSATION JUDGE

**Service:**

George Parisotto, Administrative Director, Division of Workers' Compensation,  
1515 Clay Street, 18<sup>th</sup> Floor, Oakland, CA 94612

**SERVICE VIA OVERNIGHT MAIL AND ELECTRONIC MAIL IN ANAHEIM, CALIFORNIA by  
M. Rodriguez 3/7/2019**