

**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

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2016-1227-01


OAL Matter Type: Emergency (E)

The Division of Workers' Compensation submitted this emergency action to adopt four sections and an Article 5.1 under title 8, division 1, chapter 4.5, subchapter 1 of the California Code of Regulations. The proposed regulations will implement suspension hearing and related procedures for physicians, practitioners, or providers that meet specified criteria in Labor Code section 139.21(a)(1). A suspended physician, practitioner, or provider will be prohibited from participating in treating patients or acting as a qualified medical examiner in California's workers' compensation system.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/6/2017 and will expire on 7/6/2017. The Certificate of Compliance for this action is due no later than 7/5/2017.

Date: January 6, 2017


Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: George Parisotto
Copy: Yvonne Hauscarriague

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

EMERGENCY

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2016-1227-01E
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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

JAN 06 2017

1:56 p.m.

2016 DEC 27 A 10:55
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	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

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)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 9788.1, 9788.2, 9788.3, 9788.4
AMEND
TITLE(S) 8
REPEAL

3. TYPE OF FILING
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input 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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

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)
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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) _____

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 Yvonne Hauscarriague	TELEPHONE NUMBER (510) 268-0680	FAX NUMBER (Optional) (510) 268-0687	E-MAIL ADDRESS (Optional) yhauscarriague@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 	DATE 12/19/16
TYPED NAME AND TITLE OF SIGNATORY George Parisotto, Acting Administrative Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 06 2017

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 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

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 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 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. 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 at the 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 shall be served on the respondent by registered or certified mail.

(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 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, then the recommended Determination and Order of the hearing officer shall become the Determination and Order 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.