

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 86

19STCP00911

March 27, 2019

BRUCE E. FISHMAN, M.D., et al. vs STATE OF CALIFORNIA, DEPARTMENT OF INDUSTRIAL RELATIONS, et al.

8:30 AM

Judge: Honorable Mitchell L. Beckloff
Judicial Assistant: F. Becerra
Courtroom Assistant: B. Hall

CSR: Leandra Amber, CSR# 12070
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Mona Nemat and Howard A. Kapp

For Defendant(s): No Appearances

Other Appearance Notes: Anna Benedict and Rosemary DiPietrantonio for Respondents

NATURE OF PROCEEDINGS: Hearing on Petitioner's Ex Parte Application Immediate Stay of Administrative Order

Pursuant to Government Code sections 68086, 70044, California Rules of Court, rule 2.956, and the stipulation of appearing parties, Leandra Amber, CSR# 12070, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matter is called for hearing.

The Court, after reading and considering all moving party and opposing party papers, and arguments of counsel, makes the following ruling:

Matter is taken under submission.

LATER:

The Court, having previously taken the matter under submission, now rules as follows:

Having considered the arguments and papers of the parties further, the court GRANTS petitioner's request for ex parte relief and the Determination and Order Re: Suspension issued by Respondents on March 15, 2019 is hereby immediately stayed pending the outcome of this writ proceeding.

Petitioner argues, among other things, his 36-year-old conviction does not substantially relate to his qualifications, functions, or duties as a provider of services. He contends the stale nature of the conviction does not relate to his qualification, functions or duties in 2019. He uses his

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otherwise blemish-free history as a physician to bolster his claim. The hearing officer agreed with Petitioner.

The hearing officer found, "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." The hearing officer conclude, "The conduct of [Petitioner] 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." In reaching her decision, the hearing officer looked to the purpose of Labor Code section 139.21 "to protect innocent injured workers from corrupt physicians, and to ensure wrongdoers do not profit from the system they've corrupted." She further noted the stated purpose of the law "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."

The court recognizes, as argued by the Director this morning, the statute provides no discretion and the legislature intended for immediate suspension in situations like this. The court also notes the Director has not adopted any regulations specifying any exemptions from the suspension requirement.

The objection to Petitioner's declaration is overruled. The declaration has been presented for purposes of a motion hearing and it has been sworn under penalty of perjury.

For purposes of this ex parte application, Petitioner has established irreparable harm if the stay is not granted. (See Paragraph 19-12, Decl. of Bruce E. Fishman.) The harm is substantial in that it would substantially impact his livelihood, ability to maintain his practice and interrupt patient care.

The harm in granting the stay is the risk to workers based on the cloud on Petitioner in these proceedings. That is, the workers are being treated by an individual whose ability to participate in the workers' compensation system should be revoked. Thus, the Director is concerned about compromising workers' cases because of the pending proceedings. That situation has been in place since 2017 when the statute took effect.

The court finds Petitioner has a colorable claim of prevailing on the merits. That is, Petitioner

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has shown some ability to prevail on the merits. His legal argument is not foreclosed by the statute. The statute requires the conviction be "substantially related to the qualifications, functions, or duties" Petitioner performs. The statute requires interpretation of the notion of substantially relatedness and a conviction from 1983.

Based on the foregoing, the court finds a stay is not against the public interest. The issues before the court are not about therapeutic patient treatment. There is no evidence Petitioner has ever had issues as to the quality of treatment since his medical license was reinstated by the state in 1990. There is no issue Petitioner has ever committed fraud. (Code of Civ. Proc. § 1094.5, subd. (g).)

To the extent, consideration of issues relevant to an injunction are relevant to the court's stay order, in balancing the harms and considering the likelihood of success on the merits, the court finds Petitioner is entitled to a stay. Petitioner has established a legal theory that is not foreclosed by the statute, and as demonstrated by the hearing officer's decision, there is some possibility Petitioner could prevail on the merits. In considering the balance of the relative harms, the court finds granting the stay is appropriate.

The ex parte application is granted. The court signs the proposed order as amended this date.

A copy of this minute order is transmitted electronically to counsel appearing this date at the following email addresses:

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