

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANDREW JARMINSKI,

Respondent.

Case No. 800-2014-006495

OAH No. 2017080956

**ORDER GRANTING STAY PENDING  
OUTCOME OF CRIMINAL  
PROCEEDINGS; ORDER RE:  
STIPULATED INTERIM PRACTICE  
RESTRICTION; NOTICE OF  
TELEPHONIC STATUS  
CONFERENCE**

This matter is currently set for hearing on March 5 through 8, 2018, and for a Prehearing Conference and Mandatory Settlement Conference on January 22, 2018. On September 7, 2017, respondent filed a motion for a stay of the administrative proceeding pending the completion of the related criminal matter. Respondent argued that, pursuant to *Pacers, Inc. v. Superior Court* (1984) 162 Cal. App. 3d 686, this proceeding arises from the same facts that gave rise to the pending criminal proceeding in *People of the State of California v. Andrew Jarminski, M.D., et al.*, Orange County Superior Court, Case No. 16CF1351. Respondent contended that he has exercised, and intends to continue exercising, his Fifth Amendment right against self-incrimination in the instant proceeding and that he should not be required to disclose information that might be used against him in the pending criminal action. To protect respondent's constitutional rights and to promote the interests of justice, respondent contended that the Medical Board of California's entire action should be stayed until the criminal proceeding has concluded.

Complainant initially opposed the motion. Complainant asserted that the *Pacers, Inc. v. Superior Court* case, *supra*, 162 Cal. App. 3d 686, involved the stay of a pending civil case, and not an administrative matter focused on public protection as in the instant proceeding. Complainant cited various cases that allowed an administrative matter to proceed despite the pendency of a criminal case. Complainant asserted that the balancing test employed in the relevant cases, and particularly as set forth in *Avant! Corporation v. Superior Court* (2000) 79 Cal.App.4th 876, 885, did not support a stay. Complainant argued that respondent's defense could be presented via expert testimony, that complainant had a compelling interest in proceeding expeditiously with the hearing, and that complainant could

be severely prejudiced if the hearing was delayed due to the potentially lengthy duration of the criminal proceedings. Complainant noted that complainant's witnesses included patient P.L. and physician assistant J.G., whose memories of the events from 2011 and 2012 could fail, and that the witnesses could become unavailable.

In reply, respondent argued that a proper balancing of all the *Avant!* factors requires a stay. Respondent asserted that respondent could not present his entire defense via expert testimony, as he would be unable to present his own account of the circumstances here, or any mitigating factors, in the absence of a stay. Respondent contended that he no longer prescribes the creams at issue, and that an interim order could be entered requiring respondent to abide by his intention not to do so in the future, if this administrative tribunal deemed it necessary to protect the public. Respondent further asserted that because the criminal matter is already well under way, any delay would not be detrimental. Moreover, respondent noted that in the event he is convicted of two serious felonies, he would likely be incarcerated, and his license would be automatically suspended, thus addressing the public protection issue. Respondent also noted that the events at issue are already at least five years old, and that complainant's witnesses are witnesses in the ongoing criminal matter; witness P.L. additionally is the plaintiff in a civil case against respondent (a case which has been stayed by the Superior Court). Respondent thus suggested that the memories of the witnesses would not be impacted by a stay.

On December 20 and 22, 2017, Presiding Administrative Law Judge Susan L. Formaker held telephonic status conferences with the parties to discuss the motion and the parties' positions on the motion. Christine A. Rhee appeared on behalf of complainant; Peter R. Osinoff appeared on behalf of respondent. After discussion with the parties, Presiding Administrative Law Judge Susan L. Formaker informed the parties that if the public could be adequately protected through an interim order, a stay would be appropriate pending the completion of the criminal proceedings. After discussion with their clients, the parties, through counsel, orally stipulated to the stay on the condition that the interim practice restriction set forth below was ordered.

Accordingly, the following order is issued:

1. STAY OF ADMINISTRATIVE PROCEEDING. This administrative matter is stayed until judgment is entered in respondent's pending criminal case or the case is otherwise finally resolved, or until the parties agree that the administrative proceeding may resume.
2. VACATING OF HEARING AND PHC/MSC DATES. The March 5 through 8, 2018 hearing dates, and the January 22, 2018 Prehearing Conference and Mandatory Settlement Conference dates, are vacated.
3. STIPULATED INTERIM PRACTICE RESTRICTION. Pursuant to the parties' stipulation, respondent, Andrew Jarminski, M.D., will not dispense or prescribe non-FDA approved compounded medications during the pendency of this proceeding before the

Medical Board of California. This interim practice restriction shall remain in effect until the effective date of the agency's decision in this matter.

4. TELEPHONIC STATUS CONFERENCE. A telephonic status conference has been scheduled before an Administrative Law Judge with the Office of Administrative Hearings at **11:00 a.m. on March 26 2018**. Counsel for complainant shall initiate the call by dialing (213) 576-7200. During the telephonic status conference, the parties shall be prepared to address the current status of the criminal proceedings against respondent, as well as any other matters that may affect the stay or the scheduling of hearing and other dates in this matter.

IT IS SO ORDERED.

DATED: December 22, 2017

DocuSigned by:

*Susan Formaker*

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SUSAN L. FORMAKER  
Presiding Administrative Law Judge  
Office of Administrative Hearings