

**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

BRYAN CRAIG COUEY

"

Riverside, CA 92506

Case No.: 1H 2009 006

OAH No.: 2009080460

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on March 5, 2010.

It is so ORDERED February 23, 2010.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

BRYAN CRAIG COUEY
6771 Blackwood Street
Riverside, CA 92506

Respondent.

Case No. 1H-2009-006

OAH No. 2009080460

AMENDED PROPOSED DECISION

On December 21, 2009, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Douglas Lee, Deputy Attorney General, represented complainant.

Respondent represented himself.

The matter was submitted on December 21, 2009.

FACTUAL FINDINGS

1. Stephanie Nunez, Executive Officer of the Respiratory Care Board of the State of California (Board) filed Statement of Issues No. 1H-2009-006 in her official capacity on July 20, 2009. Respondent filed a timely Notice of Defense.

2. On December 4, 2008, respondent signed a Respiratory Care Practitioner Application for Licensure and submitted it to the Board on December 18, 2008. The Board denied the application by letter dated May 26, 2009.

3. On March 1, 2000, in the Superior Court of Riverside County, respondent pled guilty and was convicted of violating Vehicle Code section 10851, vehicle theft, a felony.

The court placed respondent on probation for three years on condition, among others, he serve 90 days in custody, pay restitution, and pay a fine and fees. The court found respondent violated probation on January 31, 2001 and revoked probation, and then reinstated it on the same terms and conditions. On May 3, 2001, the court again found respondent in violation of probation, revoked probation, and reinstated it a week later on the same terms and conditions.

Respondent committed the offense on or about December 16, 1999. He and another person stole a vehicle and began to strip parts from it. Respondent admitted to a police officer that he installed two parts from the stolen vehicle into his own vehicle.

4. On January 31, 2001, in the Superior Court of Riverside County, respondent pled guilty and was convicted of violating Penal Code section 459, burglary, a felony. On March 23, 2001, the court placed respondent on probation for three years on terms and conditions which included serving two days in custody, with credit for two days served, and payment of various fines and fees.

Respondent committed the offense on September 29, 2000. He and another person entered the Thrifty Sunshine Food store in Corona, California, and stole cases of beer. The arresting officers discovered that the truck in which respondent arrived and intended to leave after stealing the beer did not have its rear license plate attached. The officers found the license plate on the back seat of the truck.

Respondent committed this offense while he was still on probation for his 2000 conviction of vehicle theft.

5. On October 18, 2004, in the Superior Court of San Bernardino County, respondent pled guilty and was convicted of violating Vehicle Code section 23152, subdivision (b), driving a vehicle with a blood alcohol level of 0.08 percent or higher, a misdemeanor. The court placed respondent on probation for three years and ordered him to pay a fine of \$1,439.00 plus fees and attend a first offender alcohol program.

On July 27, 2005, the court revoked probation because respondent had not completed the alcohol program. Respondent did not appear in court until October 10, 2006, at which time the court reinstated probation, ordered him to serve ten days in custody, modified the terms of probation, and extended probation until October 18, 2009.

On December 4, 2006, the court revoked probation. The court issued a bench warrant on February 5, 2007. On October 30, 2008, the court reinstated probation and increased the custody commitment to 14 days and reduced the amount of the fine.

Respondent committed the offense on August 30, 2003. A police officer from the Rialto Police Department observed respondent driving a pickup truck and weaving in and out of traffic. The officer stopped respondent's vehicle, smelled a strong odor of alcohol on respondent's breath, administered a series of field sobriety tests, and arrested him.

Respondent committed this offense while on probation for his 2001 burglary offense.

6. On September 29, 2005, in the Superior Court of Riverside County, respondent pled guilty and was convicted of violating Vehicle Code sections 23152, subdivision (a), driving a vehicle under the influence of alcohol, and 14601.1, subdivision (a), driving with a suspended license, both misdemeanors. The court placed respondent on probation for four years, ordered him to serve 35 days in custody, pay fines and fees, and complete a drinking driver program.

On March 7, 2006, the court revoked respondent's probation and issued a bench warrant. On October 24, 2006, respondent admitted a violation of probation. The court then reinstated probation on the same terms and conditions. On May 8, 2008, respondent admitted another violation of probation. The court continued probation, but required respondent to serve an additional five days in custody, with the term to run concurrently with the sentence on another case.

Respondent committed these offenses on June 7, 2005. He was driving his pickup truck at a high speed when his vehicle struck another car that was parked on the shoulder of the road and flipped over. A witness observed the accident and pulled respondent out of his vehicle. Respondent was given medical aid and was uncooperative with police officers. His speech was slurred and he displayed symptoms of being under the influence of alcohol. The arresting officer later determined respondent's driver's license had been suspended at the time of the accident.

Respondent committed these offenses while on probation following his 2004 driving under the influence conviction.

7. On October 24, 2006, in the Superior Court of Riverside County, respondent pled guilty and was convicted of violating Vehicle Code sections 23152, subdivision (a), driving a vehicle under the influence of alcohol, and 14601.1, subdivision (a), driving with a suspended license, both misdemeanors. Respondent admitted a prior misdemeanor driving under the influence conviction. The court placed respondent on probation for four years, ordered him to serve 20 days in custody, pay a fine of \$1,768.00, complete a drinking driver program, and install an ignition interlock device in his vehicle.

On September 5, 2007, the court found respondent in violation of probation and continued him on the same terms and condition. On May 8, 2008, the court again found respondent in violation of probation and ordered him to serve an additional term of five days in custody.

Respondent committed the offenses on August 28, 2006. A witness observed respondent driving his pickup truck in a reckless and dangerous manner, and called the police. A police officer chased respondent who had attempted to flee at a high speed, but the officer caught him. Respondent was identified and it was determined that there was a warrant for his arrest from the San Bernardino Superior Court in the bail amount of \$20,000.00, and his license had been suspended/revoked. Respondent appeared to be under

the influence of alcohol. After the officer administered field sobriety tests, he arrested respondent for driving under the influence of alcohol. Respondent was uncooperative when a technician tried to administer a blood alcohol test, and was belligerent at the police station. He eventually provided three breath samples, all of which showed he was intoxicated.

Respondent committed these offenses while on probation following his 2004 and 2005 driving under the influence convictions.

8. On May 8, 2008, in the Superior Court of Riverside County, respondent pled guilty and was convicted of violating Vehicle Code sections 23152, subdivision (a), driving a vehicle under the influence of alcohol, 23152, subdivision (b), driving a vehicle with a blood alcohol level of 0.08% or higher, and 14601.1, subdivision (a), driving with a suspended license, all misdemeanors and with prior convictions. The court placed respondent on probation for five years, ordered him to serve 120 days in custody, with the sentence to run consecutively to sentences imposed in prior cases, pay a fine of \$2,084.00 and other fees, complete a drinking driver second offender program, and install an ignition interlock device in his vehicle.

On September 11, 2008, the court found respondent in violation of probation and continued him on the same terms and condition.

Respondent committed the offenses on December 12, 2007. A CHP officer observed respondent driving his pickup truck at a high speed and failing to stop at a red light. The officer attempted to stop him by activating his lights and siren, but respondent continued to drive fast and run red lights while passing several cars. Eventually, respondent stopped his pickup. The officer approached the pickup and detected a strong odor of alcohol coming from the interior of the vehicle. Respondent appeared intoxicated and failed a series of field sobriety tests. The officer arrested him for driving under the influence of alcohol. Respondent refused to take a chemical test. A blood sample was forcibly removed from respondent.

Respondent committed these offenses while on probation following his 2005 and 2006 driving under the influence convictions.

9. On May 25, 2008, in the Lake Havasu City Consolidated Court, Lake Havasu, Arizona, respondent pled guilty and was convicted of criminal damage, a misdemeanor. The court fined him \$250.00 and two days in county jail, suspended upon payment of the fine.

On October 3, 2008, the court set aside the judgment, dismissed the complaint, and released respondent from all penalties and disabilities resulting from the conviction.

Respondent committed the offense on May 24, 2008. He had been drinking that day and when he returned to his rented condominium, he did not have the key, and attempted to force his way into the condominium by breaking a window.

Respondent committed this offense while on probation following his 2005, 2006, and 2008 California convictions. He committed this offense two weeks after his last driving under the influence conviction.

10. Respondent's criminal convictions are substantially related to the qualifications, functions, and duties of a respiratory care practitioner (Cal. Code Regs., tit. 16, § 1399.370, subs. (b) and (c)).

11. Respondent is 28 years old, single, and lives with his parents. He graduated from high school in 1999, and took some classes at a community college. He started attending a respiratory therapy program at Concorde Career College in San Bernardino in 2007, and graduated with honors with an Associate of Science degree in February 2009. He also obtained an advanced RRT certification and received training as an ACLS and PALS provider.

Prior to starting the respiratory therapy program, respondent worked in various sales positions and in construction.

12. Respondent testified at the hearing and provided a lengthy trial brief detailing his history. He took responsibility for his criminal conduct and attributed it to alcohol abuse. He testified that during his clinical rotation in 2008, he decided that he needed to change his behavior and consequently stopped drinking. He testified he completed an 18-month drinking driver program, and in September 2009 began attending Alcoholics Anonymous meetings. He provided documentation of his ongoing attendance at AA meetings to corroborate his testimony. He testified his sobriety date is November 19, 2009.

13. Respondent provided a psychological report from Erin K. Ferma, Ph.D. Respondent's attorney had referred respondent to her for a psychological evaluation. She interviewed him in an outpatient setting on October 12, 2009, and she administered a series of psychological tests. She reviewed his medical history and performed a mental status examination. She concluded that he met the criteria for an adjustment disorder because of his current legal situation, but he did not meet the criteria of any other Axis I or Axis II disorder including alcohol abuse.

14. Respondent submitted a number of letters and declaration supporting his application for licensure.

15. The Board incurred costs of investigation and prosecution in the amount of \$1,974.00 for the services of the Attorney General. The amount is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 3750 provides in part:

The board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

[¶] . . .

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

[¶] . . .

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

[¶] . . .

(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

2. Cause to deny respondent's respiratory care practitioner application pursuant to Business and Professions Code sections 3718, 3732, and 3750, subdivisions (d), (g), and (j), commission of crimes and fraudulent, dishonest, or corrupt acts substantially related to the qualifications, functions, and duties of a respiratory care practitioner, was established by reason of Factual Findings 3 through 10.

3. The Board's criteria of rehabilitation are set forth in Title 16, California Code of Regulations, section 1399.374 and its Disciplinary Guidelines. Respondent presented substantial evidence of his efforts at rehabilitation, and his efforts are supported by a number of people. In addition, he presented at the hearing as a mature, serious, and motivated person who is well on his way toward overcoming his past.

Respondent's past, however, requires that his application for a respiratory care practitioner license be denied. Respondent's criminal history spans eight years, nearly his entire adult life, and contains numerous instances not only of criminal conduct but intentional failures or refusals to follow court orders, reasonable requests by police officers, and so forth. With a criminal history like this, respondent must demonstrate "a substantial period of

exemplary conduct.” *In re Gossage* (2000) 23 Cal. 4th 1080, 1096. Typically, such periods of exemplary conduct are measured in years. In respondent’s case, it is measured in a few short months.

Respondent testified that he has learned that he is an alcoholic; that alcoholism is a disease, and consequently, that he cannot ever drink. He has yet to prove he can implement that wisdom. His efforts toward reaching that goal have just begun — indeed he has been attending AA for three months. A court first required respondent to attend a drinking driver program in 2004, yet that and subsequent programs had little effect for years. He remains on criminal probation. He is yet to prove that he is no longer the person depicted in the criminal reports or the one who repeatedly refused to meet the obligations imposed on him following each of his convictions. Further, he must make that showing while he is no longer under the scrutiny of probation. *In re Gossage, supra* at 1099. Thus, it must be concluded that far more time and a far longer track record of sobriety and exemplary conduct are required before respondent can be entrusted with a license as a respiratory care practitioner. For these reasons, respondent’s application for a respiratory care practitioner license must be denied.

4. Cause to require respondent to pay the Board its costs of investigation and prosecution of this matter in the amount of \$1,974.00 pursuant to Business and Professions Code section 3753.5, was established by Factual Finding 15.

ORDER

1. The application of respondent Bryan Craig Couey for a respiratory care practitioner license is denied.

2. Respondent is ordered to pay the Respiratory Care Board the costs of its investigation and prosecution in the amount of \$1,974.00.

DATED: 2/1/2010


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings