

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

In the Matter of the First Amended Accusation
Against:

THOMAS MILTON BELL, R.C.P.
1246 West Palm Avenue
Redlands, CA 92373

Respiratory Care Practitioner
License No. 1915,

Respondent.

Case No. 1H-2007-590

OAH No. 2008050350

DECISION AFTER NON-ADOPTION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California on August 4, 2009.

Deputy Attorney General David P. Chan represented complainant.

Thomas M. Bell (respondent) personally appeared and was represented by Ronald G. Skipper, Esq.

Oral and documentary evidence was received and the matter was submitted on August 4, 2009.

The Respiratory Care Board ("the Board") considered the proposed decision of the Administrative Law Judge. After due consideration thereof, the Board decline to adopt said proposed decision and thereafter set a date of November 9, 2009 as the final date for the parties to submit written arguments. Written arguments having been received from complainant, and the time for filing written arguments in the matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board pursuant to Section 11517 of the Government Code and Section 3753.5(b) of the Business and Professions Code hereby makes the following decision.

FACTUAL FINDINGS

1. The First Amended Accusation against respondent was filed by Stephanie Nunez (complainant), while acting in her official capacity as the Executive Officer of the Respiratory Care Board (the board), State of California.

2. On May 10, 1985, the board issued respondent Respiratory Care Practitioner License Number 1915. That license was in full force and effect at all times relevant to the charges contained in the First Amended Accusation.

3. On May 12, 2008, complainant filed a Petition for Interim Order of Suspension against respondent and on June 5, 2008, respondent stipulated to an order suspending his license pending the outcome of the instant proceedings.

4. On January 20, 2006, respondent was convicted, in San Bernardino County Superior Court, after entry of his guilty plea, of one count of violating California Vehicle Code section 23152, subdivision (a) (driving under the influence of drugs: to wit; methamphetamines and benzodiazepines), a misdemeanor crime, which is substantially related to the qualifications, functions, and duties of a Respiratory Care Practitioner.

5. The facts and circumstances underlying respondent's 2006 conviction were as follows: On May 23, 2005, respondent was seen "staggering" and "stumbling" out of the Redlands Smoke Shop. Witnesses saw respondent get into a car and drive off. The witnesses were concerned about respondent driving after exhibiting symptoms of being under the influence so one of the witnesses called the police and reported what he had seen. Ultimately, the police spotted respondent's vehicle, stopped him, conducted field sobriety tests (FSTs), and arrested respondent due to his poor performance on the FSTs. Subsequent laboratory tests of respondent's blood in conjunction with his admissions revealed that he was driving under the influence of methamphetamines and "some psych medications." (Exh. C¹-5.)

6. As a result of the 2006 conviction, respondent was placed on three years of summary probation under certain terms and conditions including serving 30 days in jail and that he "violate no law other than minor traffic." (Exh. C-7.)

7. On August 27, 2008, respondent was convicted, in San Bernardino County Superior Court, after entry of his nolo contendere plea, of one count of violating California Vehicle Code section 23152, subdivision (a) (driving under the influence of drugs: to wit; methamphetamine), a misdemeanor crime which is substantially related to the qualifications, functions and duties of a Respiratory Care Practitioner.

8. The facts and circumstances underlying respondent's 2008 conviction were as follows: On January 10, 2008, respondent was involved in a traffic accident with another vehicle. The police responded to the scene of the accident, contacted respondent, administered FSTs to respondent, and concluded that he was under the influence of drugs.²

9. As a result of the 2008 conviction, respondent was placed on three years of summary probation under certain terms and conditions.

¹ "C" denotes complainant's exhibits.

² The officers excluded alcohol as the cause of respondent's apparent intoxication by having him "blow into" an alcohol detection device. Respondent's breath sample "came back 0.00" for alcohol. (Exh. C-10.)

10. The fact that respondent was still on criminal probation for his 2006 conviction at the time of his 2008 offense is a factor in aggravation.

11. Respondent did not contest the facts set forth in Findings 1 through 9, above. Rather, his case focused on the issue of rehabilitation, the probability of relapse, and his overall prognosis for remaining clean and sober.

Evidence of Rehabilitation

12. Respondent testified that he has remained clean and sober since January 11, 2008, the day after his 2008 arrest, and no contradictory evidence was presented. Consequently, respondent's testimony that he has been clean and sober since January 11, 2008 is credited.

13. From 1989 until he was placed on administrative leave as a result of his convictions, and the resulting administrative actions, including the interim suspension of his license, respondent acted in the capacity of a clinical instructor at Crafton Hills College. In this capacity, respondent conducted classroom instruction and lectures and taught in a "clinical setting at Redlands Community Hospital where he had previously worked from 1984 until 1985 as a respiratory technician and then as a registry eligible therapist." (Exh. R³-5.) As part of his employment contract with the San Bernardino Community College District, respondent underwent periodic peer and student assessments. Though the most recent assessments reveal that respondent was well regarded as an instructor by his peers and his students (Exh. R-4), under Title 16, California Code of Regulations, section 1399.372(g) these statements cannot be used for consideration of rehabilitation unless they are related to quality of practice, signed under penalty of perjury and are from licensed health care providers responsible for the supervision of respondent's work. The statements in Exhibit R-4 do not satisfy the requirements of Title 16, California Code of Regulations, section 1399.372(g).

14. On January 12, 2008, respondent began, and presently continues to participate in, the Loma Linda University Behavioral Medicine Center's 12-Step drug and alcohol treatment program (Exh. R-6.) Part of respondent's drug dependency treatment involved an intensive outpatient program which respondent underwent from January 17 through February 12, 2008. In a February 12, 2008 letter, Peter Przekop, M.D. reported:

“. . . [respondent] was admitted to Loma Linda University Behavioral Medicine Center for the treatment of chemical dependency on 1/17/08. He has successfully completed treatment and is discharged on 2/12/08. He is cleared to return to work without restrictions." (Exhibit R-8)

15. Craig C. Rath, Ph.D., a California licensed Clinical Psychologist conducted a psychological evaluation of respondent on July 15, 2009, and appeared at the instant hearing and testified concerning respondent. Based on the assessment and respondent's "history" from January of 2008 to the date of the hearing, Dr. Rath believes that respondent is "safe" to practice and teach as long as he abstains from substance abuse. Consequently, respondent's case "comes down to prognosis." In this regard, Dr. Rath noted:

³ "R" denotes respondent's exhibits.

“It is well recognized in literature and among substance abuse workers that older individuals have a statistically greater chance of remaining clean and sober than younger individuals. There is a rapid drop-off in abuse of substances such as methamphetamine around age forty and an individual in their forties has a much better chance of remaining sober than an individual in their twenties. In fact, substance abuse is the only disorder that the more failed attempts at rehabilitation that occur, the better the prognosis. In other words, the more a substance abuser continues to try and enters different treatment modalities over the years, the greater the chance he will ultimately succeed.” (Exhibit R-1.)

Complainant’s expert, John Treuting, Ph.D., a consulting toxicologist for the board, also testified at the instant hearing. Dr. Treuting testified that “Methamphetamine is one of the most, if not the most addicting substances. To be able to effectively deal with it – the recidivism rate is extremely high.” Dr. Treuting essentially agreed with Dr. Rath’s statement, quoted above. However, since Dr. Treuting did not have any information on respondent’s status since 2008, he did not express a professional opinion concerning respondent’s current ability to practice and teach his profession. Dr. Treuting did, however, testify that if respondent has remained clean and sober from January of 2008 to the present he would be able to conduct his activities as a respiratory therapist instructor successfully.

Unlike Dr. Treuting, Dr. Rath did have continuous and current knowledge concerning respondent’s post 2008 status. According to Dr. Rath, respondent, who is now 55 years old and married, with two adult children, ages 29 and 24, has a solid support structure and fits into the “good” prognosis category of recovering substance abusers. Dr. Rath concluded that in respondent’s case the “indications of a positive prognosis include, but are not limited to, his history of repeated attempts to maintain sobriety, the absence of any sort of major mental illness such as major depression or anxiety attacks, successful continuous abstinence since January of 2008, continuing participation in psychological, behavioral and addictive therapies, and a lack of social isolation through sustaining a marital relationship and an extensive network of individuals he has met through the treatment process.” (Exh. R-1.)

16. Dr. Rath’s opinion must be weighed against respondent’s own testimony on his substance abuse history. Dr. Rath opines that there is a rapid drop-off in abuse of substances such as methamphetamine around age forty and that an individual in their forties has a much better chance of remaining sober than an individual in their twenties. By his own testimony, respondent has engaged in a lengthy and steady use of illegal substances from his teenage years well into his fifties. In fact, respondent was 51 years old at the time of his 2005 DUI, and 54 years old at the time of the 2008 arrest and admitted methamphetamine abuse. Respondent’s behavior suggests a ramping up of his use of illegal substances after age forty, rather than a rapid drop-off of use.

17. Respondent testified that he tried LSD in high school; underwent an alcohol treatment program in 1987; while on prescription drugs, developed a cross-addiction for antihistamines which lasted approximately 20 years with escalation in the last 5 years. He admitted using alcohol from his teens until his thirties; tried marijuana

as a teen; used barbiturates, tried heroin, hallucinogenic mushrooms, masculine, cocaine, and “has abused every class of chemicals.”

18. Since April 15, 2008, respondent has regularly attended counseling sessions with Steven Zorn, LCSW, at the Inland Psychiatric Medical Group, Inc. located in Redlands, California. (Exh. R-7.)

19. The reasonable costs of the investigation and prosecution of this case total \$20,447.

LEGAL CONCLUSIONS

1. Cause exists for discipline pursuant to Business and Professions Code sections 3750, subdivisions (d) and (g), and 3752 and Title 16, California Code of Regulations, section 1399.370 because, as set forth in Findings 4, 5, and 6, respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a Respiratory Care Practitioner.

2. Cause exists for discipline pursuant to Business and Professions Code sections 3750, subdivisions (d) and (g), and 3752 and Title 16, California Code of Regulations, section 1399.370 because, as set forth in Findings 7, 8, and 9, respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a Respiratory Care Practitioner.

3. Cause exists for discipline pursuant to Business and Professions Code sections 3750, subdivisions (d) and (g), and 3752 and Title 16, California Code of Regulations, section 1399.370, subdivision (c) because, as set forth in Findings 4, 5, 6, 7, 8, and 9, respondent was convicted of crimes involving driving under the influence of drugs.

4. Cause exists for discipline pursuant to Business and Professions Code sections 3750, and 3750.5, subdivision (b) and Title 16, California Code of Regulations, section 1399.370, subdivision (a) because, as set forth in Findings 4, 5, 6, 7, 8, and 9, respondent possessed and used/abused methamphetamines and benzodiazepines.

5. Although the experts opine that having engaged in rehabilitative services since January 12, 2009 respondent may return to his job as respiratory therapist instructor if he remains clean and sober, the public health, safety, and welfare requires a longer period of sobriety especially when contrasted against respondent’s 30 year history of substance abuse, and the recidivism associated with methamphetamines. This is particularly true since respondent’s 2008 arrest and conviction occurred while he was still on court-ordered probation for the 2006 DUI wherein methamphetamines use was also involved. On these facts, to allow respondent to practice on a probationary license would be inconsistent with the Board’s statutorily mandated highest priority of protection of the public.

6. The reasonable costs of the investigation and prosecution of this matter, recoverable by the board pursuant to Business and Professions Code sections 3753.5 and 3753.7 total \$20,447.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Respondent's Respiratory Care Practitioner License Number 1915 is hereby revoked.
2. Respondent shall pay to the Board the sum of \$20,447 as the reasonable costs of the investigation and prosecution of this case.

This Decision shall become effective on January 14, 2010.

IT IS SO ORDERED on this 7th day of January, 2010

By: Original signed by:
LARRY L. RENNER, BS, RCP, RRT, RPFT
President, Respiratory Care Board of California