

**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
FOR THE CEMETERY AND FUNERAL BUREAU  
STATE OF CALIFORNIA**

In the Matter of the Petition for  
Reinstatement:

File No. A1 2001-319

DELENO N. DUNCAN JR.  
3721 Malcolm Street  
Oakland, CA 94605  
Funeral Director No. FDR 1726

Petitioner.

DECISION

This matter came before the Department of Consumer Affairs (hereinafter the "Department") Cemetery and Funeral Bureau (hereinafter the "Bureau"), by submission of an application for reinstatement, dated August 2, 2013. Subsequently, the Bureau requested written argument from both the petitioner and the Attorney General. Petitioner submitted written argument in the form of an email, dated August 19, 2014 to Lisa Moore, Bureau Chief, and Ellis Kjer, Bureau Enforcement Analyst on or about September 17, 2013. Argument from the Attorney General was received by the Bureau on October 3, 2013.

Jonathan Cooper, Deputy Attorney General, represented the Attorney General.

Delean N. Duncan, Jr, Petitioner, represented himself.

Documentary evidence and argument having been received, the matter submitted, the Department finds the following facts:

FACTUAL FINDINGS

1. On or about July 22, 1999, the Bureau issued to Petitioner Funeral Director License No. FDR 1726. On August 5, 2002, First Amended Accusation No. A1-2001-319 was filed. The Accusation alleged that Petitioner had been convicted of various crimes, as follows:

A. Child Molestation:

On or about March 22, 2001, Petitioner was convicted of having violated Penal Code section 288(c)(1) (lewd acts with a child of 14 or 15), a felony. This conviction was based upon an incident in which Petitioner brought a 15-year-old boy to the mortuary where petitioner worked and showed him several corpses. He then had the boy sit on his lap, after which he had the boy step on a cheeseburger

while petitioner masturbated. This does not appear to have been an isolated event. The victim in this case described for the police how petitioner had, over a period of about a year, initiated him into a gang, had lengthy sexual phone calls with him, given him money and sent him photographs of naked men. Petitioner was known, to this victim and the victim's age-mates, as "Undertaker." Petitioner had taken the victim for rides in a hearse, and shown him photographs of dead people. On numerous occasions, Petitioner had made the victim step on cheeseburgers and twinkies while Petitioner watched.

B. Sexual Battery:

On or about September 11, 2001, Petitioner was convicted of having violated California Penal Code section 243.4 (sexual battery). This case also involved Petitioner making unlawful sexual contact with an individual after first taking him to a cemetery or funeral home.

C. Perjury:

On or about July 15, 2002, Petitioner was convicted of having violated California Penal Code section 118 (perjury), a felony. This conviction was based on an incident during which Petitioner intentionally provided false information in a DMV application.

Based on these convictions, on or about February 27, 2003, the Director of the Department of Consumer Affairs revoked Petitioner's Funeral Director license.

2. On or about June 14, 2013, Petitioner submitted a letter to the Bureau requesting reinstatement of his Funeral Director license. Petitioner subsequently provided his "formal" petition for reinstatement on August 2, 2014, by completing and submitting the Bureau's Application for Funeral Director Examination and License Fee which Petitioner identified as an "application for Reinstatement."

3. On August 19, 2013, Petitioner wrote a letter to Lisa Moore in which he stated that he had made "mistakes" and that he had "messed up." He regrets the "bad choices" that he made in the past. Petitioner did not specify which of his past acts he considers to have been mistakes. Nevertheless, Petitioner did express remorse and accepts responsibility for his past transgressions.

4. Although Petitioner was initially placed on felony probation as punishment for his felony convictions, in 2002 his probation was revoked and he was sentenced to serve a prison term. Petitioner was released from probation in 2005, and his parole ended in 2006. Since that time he has participated in a mandatory sex offender treatment program with the Sharper Future as a condition of his parole and he completed a degree program at Colorado Technical University. He has paid to the Bureau the entire amount of cost recovery (\$3,000.00) that he was ordered to pay as a result of the decision revoking his license. He succeeded in convincing the Court to expunge his perjury and sexual battery convictions.

5. Petitioner claims that he has spent "years in therapy and ...have learned a great deal about myself and my past and how to move forward." Nevertheless, Petitioner only provided documentary evidence that he participated in a mandatory sex offender treatment program with Sharper Future that

was a condition of his parole. Petitioner failed to provide evidence of any other therapy that he participated in despite his claims of "years in therapy."

### LEGAL CONCLUSIONS

1. Petitioner bears the burden of proving that he has been fully rehabilitated. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) With this burden in mind, the Bureau must consider the criteria set forth in California Code of Regulations, Title 16, sections 1253<sup>1</sup> and 1253.5.<sup>2</sup> Applying these criteria to this case, the Bureau should consider the extremely serious nature of Petitioner's crimes. These crimes evidenced a serious disregard for the law and willingness to take advantage of the weakness of others. His crimes were, moreover, substantially and directly related to his work as a funeral director. He capitalized on both his status as a funeral director and on his access to the places and incidentals of his profession in order to lure and impress his victims. On the other hand, as Petitioner notes in his petition, these crimes occurred long ago. Since then Petitioner has participated in some sex offender treatment, has had some of the crimes expunged and has obtained additional college education.

2. Petitioner has certainly shown some evidence of rehabilitation. He has not, however, provided any evidence that he has insight into whatever it was that motivated him in his misconduct. Petitioner's evidence regarding sex offender treatment is remarkable in that it documents nothing more than the fact that Petitioner participated in treatment as required by his parole conditions. Nothing about the letter from the Sharper Future program addresses Petitioner's progress in treatment, his insight into his past offenses or his likelihood of reoffending. The Bureau has before it, in short, little more than an assurance that Petitioner obeyed the rules while he was under supervision. Compliance with the requirements of parole, however, does not demonstrate rehabilitation and is generally given little weight in considering whether rehabilitation has been established. (*In re Gossage* (2000) 23 Cal.4th 1089, 1099.) Considering Petitioner's serious history and his status as a registered sex offender, his evidence of rehabilitation seems inadequate to support a finding that Petitioner has been sufficiently rehabilitated to warrant reinstatement. Petitioner has failed to prove that his license should be reinstated.

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<sup>1</sup> Section 1253 states:

When considering the denial of a license under Section 480 of the Business and Professions Code, the bureau, in evaluation the rehabilitation of the applicant and his or her present eligibility for a license, will consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (d) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

<sup>2</sup> Section 1253.5(b) provides that the criteria to be applied in a petition for reinstatement are those criteria set forth in section 1253.

ORDER

The petition for reinstatement is hereby denied. The license is not reinstated.

IT IS SO ORDERED ON THIS 24th day of March, 2014.

By:   
DOREATHEA JOHNSON  
Deputy Director of Legal Affairs.