

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

In the Matter of the Petition for  
Reinstatement:

DELENO N. DUNCAN JR.

Funeral Director No. FDR 1726  
Apprentice Embalmer License No. AE 12130

Petitioner.

File No. A1 2001-319

OAH No. N-2002050132

**DECISION AFTER PETITION FOR REINSTATEMENT**

This matter came before the Director of the Department of Consumer Affairs (hereinafter the "Department"), Cemetery and Funeral Bureau (hereinafter the "Bureau"), by submission of an application for reinstatement, dated September 15, 2016, by Petitioner Deleno N. Duncan, Jr. The parties were offered an opportunity to submit written argument on or before November 30, 2016. Petitioner submitted written argument on November 30, 2016.

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

**FACTUAL FINDINGS**

*Licensure History*

1. On or about August 4, 1998, the Bureau issued Apprentice Embalmer Registration number AE 12130 to Petitioner. On August 4, 2002, the registration expired, and has not been renewed.
2. On or about July 22, 1999 the Bureau issued Funeral Director License No. FDR 1726 to Delano N. Duncan, Jr. On July 31, 2002, the license expired, and has not been renewed.

*Criminal Convictions*

3. On or about August 5, 2002, Glen. V. Ayers, then Bureau Chief, filed an Accusation against Petitioner's apprentice embalmer registration and funeral director license. The Accusation alleged that Petitioner had been convicted of various crimes, as follows:



A. 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, in Santa Clara County Superior Court criminal case number CC 198558. 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. On or about September 11, 2001, Petitioner was convicted of having violated California Penal Code section 243.4 (sexual battery), a misdemeanor, in Solano County Superior Court, case number VCR 152490. This case also involved Petitioner making unlawful sexual contact with an individual after first taking him to a cemetery or funeral home.

C. On or about July 15, 2002, Petitioner was convicted of having violated California Penal Code section 118 (perjury), a felony, in Solano County Superior Court, case number VCR 161512. This conviction was based on an incident during which Petitioner intentionally provided false information in a Department of Motor Vehicle application.

D. Petitioner was initially placed on felony probation as punishment for his convictions. His felony probation was revoked in 2002 and he was sentenced to serve a prison term with the California Department of Corrections and Rehabilitation (CDCR). Petitioner was released from probation in 2005, with parole ending in 2006.

#### *Administrative Hearing*

4. On or about February 27, 2003, Petitioner's Funeral Director's license and Apprentice Embalmer Registration were revoked, effective March 29, 2003. In addition, as a requisite for gaining reinstatement of either license, Petitioner was ordered to pay the Bureau its cost of investigation and enforcement in the amount of three thousand dollars (\$3,000).

#### *Reinstatement*

5. On or about June 14, 2013, Petitioner submitted a letter to the Bureau requesting reinstatement of his Funeral Director's license. On August 2, 2013, he filed a formal Petition for Reinstatement, by submitting an Application for Funeral Director Examination and License Fee. The parties were offered an opportunity to submit written argument. Petitioner submitted written argument in the form of an email to the Bureau on August 19, 2013. The Attorney General submitted written argument on October 3, 2013. The petition was denied on March 24, 2014.

6. On or about March 24, 2015, Petitioner filed an Application for Funeral Director Examination and License Fee, seeking to reinstate his Funeral Director's license. Accompanying his application he submitted a personal letter on his behalf, his Department of Justice California



Criminal History Information Background Check, letters of support, expungement documentation and a resume. The parties were offered an opportunity to submit written argument. Petitioner submitted written argument on June 26, 2015. The Attorney General submitted written argument on June 29, 2015. The petition was denied on July 29, 2015.

7. On or about September 15, 2016, Petitioner filed an Application for Funeral Director Examination and License Fee, seeking to reinstate his Funeral Director's license and apprentice embalmer registration. Accompanying his application he submitted a personal letter on his behalf. The parties were offered an opportunity to submit written argument. Petitioner submitted written argument on November 30, 2016. In support of his rehabilitation, Petitioner submitted a personal statement, a letter from his former attorney David Regan and a letter from Robert P. Feyer, Senior Counsel of Orrick, Herrington & Sutcliffe, and two letters from Sharper Future. He also submitted email correspondences with CDCR Division of Adult Parole Operations, Sex Offender Management Board; a record of no criminal complaint from the Contra Costa County Office of the District Attorney; a record confirming his criminal probation expiration from Solano County Probation Department; CDCR Certification of Discharge; two Penal Code Section 1203.4 Order of Dismissals in Case Numbers VCR 161512 and VCR 152490; and California Criminal History Information obtained from the California Department of Justice (DOJ).

### LEGAL CONCLUSIONS

1. Protection of the public shall be the highest priority for the Cemetery and Funeral Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Bus. & Prof. Code, § 7601.1.)

2. A person whose license has been revoked may petition the Bureau for reinstatement. (Bus. & Prof. Code, § 7711; Gov. Code, § 11522.)

3. A petitioner applying for reinstatement must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful." (*Hippard v. State Bar*, (1989) 49 Cal.3d 1084, 1092; *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. In considering the Petition for Reinstatement, the Director has considered the criteria specified in California Code of Regulations (CCR), Title 16, Sections 1253 and 1253.5.<sup>1</sup>

5. Pursuant to CCR Section 1253:

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

---

<sup>1</sup> Section 1253.5, subsection (b) provides that the criteria to be applied in a petition for reinstatement are those criteria set forth in section 1253.



- (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 [a] or [b].
- (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.

6. Pursuant to CCR Section 1253.5, subsection (b), the criteria to be applied in a petition for reinstatement are those criteria set forth in section 1253.

7. Taking rehabilitation criteria factors into consideration:

- a. Petitioner committed several crimes; all of which are serious in nature. More importantly, they were directly related to his work as a funeral director and his access to the places incidental to his profession, in order to lure and impress his victims. In addition, his sexual battery and child molestation crimes evidenced a serious disregard for the law and willingness to take advantage of the vulnerable.
- b. There is no evidence that Petitioner committed any acts or crimes subsequent to the convictions identified in Factual Finding 3.
- c. Petitioner's last crime occurred in 2003. The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct.
- d. Petitioner served his prison sentence. He was released from probation in 2005. His parole ended 2006. He also paid the Bureau \$3,000 pursuant to the cost recovery order at the time of his license revocations.
- e. Petitioner submitted various documents in support of his rehabilitation.

8. In Petitioner's undated personal statement, submitted with his September 15, 2016 petition, he writes:

"I have changed completely from the young man who made the terrible mistakes and bad decisions in 2001 – 2003. I have under gone class and one therapy at Sharper Future, have obtained a bachelor's degree, 2 masters degrees, have stayed out of any criminal activity for the past 13 years, have worked gainfully and regularly as much as I can with the limited license condition and have been an integral part of my church.... I can assure you that I no longer have the past desires or wish for sexual experimentation which led to my original offense. I am much more of a mature person that I was back 12 years ago. I have paid my fine in full of \$3,000 to the Cemetery and Funeral Bureau and I continue to recognize the seriousness of my prior



actions and, continue to feel remorse about them, but I am not the same person who acted so appropriately back then and I do not even think about bring[ing] my past to my present.... I have been a good part of my community, church and industry.”

And, in Petitioner’s letter submitted at the time of written argument on November 30, 2016, he writes:

“I have done all which I can with the resources made available to me to try to gain a second chance....I have not denied the fact that I molested a 15 year old boy[.] I have not denied the fact that it was a horrific choice on my part. But it is also my choice to never do that again. Since my release from custody I have had jobs[,] kept a place to stay and stay[ed] out of trouble.... My time going to school outweigh my time in custody and on parole. My... educational achievements have helped me out and I am happy for what I have accomplished. I am extremely sorry for what I have done[.] I am extremely sorry for my actions. Though I cannot make anyone forgive me I have to forgive myself and move on. I’ve paid my fines. I’ve paid my restitution, I’ve gotten all expunged what I could and discharged off parole and I’ve moved on.... All I can do is keep coming back until someone gives me a chance that’s all I can do.”

Petitioner’s educational achievements since his license revocation are commendable. Petitioner has not sustained subsequent criminal convictions and stayed out of trouble. The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Petitioner completed criminal probation and terms imposed as a condition of probation such as a court mandated sex offender program and restitution. While restitution is not necessarily determinative of whether rehabilitation has been proven, it is a legitimate and substantial factor to be considered “in the overall factual showing made by the individual seeking reinstatement.” (*Hippard v. State Bar*, supra, 49 Cal.3d at p. 1093) Petitioner paid cost recovery to the Bureau. Petitioner recognizes the seriousness of his misconduct. While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the process, it is only a first step. (*In re Conflenti* (1981) 29 Cal.3d 120, 25.) Petitioner expresses remorse for his conduct, but not for the harm he caused. Mere remorse does not demonstrate rehabilitation. (*In re Menna* (1995) 11 Cal.4th 975, 991; *In re Conflenti*, supra, 29 Cal.3d at 124.) Petitioner *does not deny* he committed the criminal offenses and that they were horrific. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

9. Petitioner submitted a letter from his former attorney, David Regan, dated March 25, 2015, approximately a year and a half prior to the current petition. Mr. Regan states that for more than 12 years petitioner has lived as an exemplary law-abiding citizen, with no negative contacts with law enforcement, gained commendation of his peers, and provided excellent funeral services and that given this, Petitioner has met the requirement of a substantial period of exemplary conduct. Mr. Regan also goes on to state that petitioner attached several letters which attest to his high moral character, honesty and work ethic.



Mr. Regan erroneously claims that Petitioner provided several support letters which attest to Petitioner's high moral character, honesty and work ethic. Not only did Petitioner not submit letters from others attesting to his high moral character, honesty and work ethic, Mr. Regan's letter is also void of these characterizations. Also, while it is true that cases authorizing admission on the basis of rehabilitation commonly involve a substantial period of exemplary conduct following the applicant's misdeeds, proof of exemplary conduct include at a minimum a lengthy period of not only unblemished, but exemplary conduct. (*In re Menna*, supra, 11 Cal.4th at 989; *In re Gossage* (2000) 23 Cal.4th 1080, 1096.) Sustained exemplary conduct includes proof that the applicant is making amends to the victims and the community harmed. (*In re Menna*, supra, 11 Cal.4th at 990.) There is no evidence to support that Petitioner has made amends to his victims or that he has made amends to the community he harmed. And, not reoffending is a step towards demonstrating rehabilitation, but does not in and of itself exude exemplary conduct. Mr. Regan's letter does not provide evidence which demonstrates Petitioner has engaged in truly exemplary conduct in the sense of returning something to the community he betrayed.

10. Mr. Robert P. Feyer, Senior Counsel with Orrick, Herrington & Sutcliffe also submitted a letter dated September 2, 2016, on Petitioner's behalf. He writes that Petitioner seeks to serve the public in the funeral industry, in which he has been working consistently. He also writes that Petitioner is a respected member of his community and active in his church.

Mr. Feyer's letter does not indicate how he knows the Petitioner. While he writes that Petitioner has been working consistently, he does not attest to Petitioner's character, honesty or work ethic. Mr. Feyer's letter does not provide evidence which demonstrates Petitioner's rehabilitation.

11. Petitioner submitted two letters from Sharper Future, a social rehabilitation and relapse prevention program where he participated in his mandatory sex offender treatment program as a condition of his parole between March 2005 and March 2006. The first letter, dated April 14, 2009, from Peter Ashurst, confirms Petitioner entered the program on March 23, 2005, consistently attended individual and group therapy, and his final session was on March 14, 2006, which coincided with his March 2006 parole end date. Mr. Ashurst does not attest to Petitioner's character, honesty or work ethic.

Sharper Future's Assistant Director, Elissa Klein, wrote a more recent letter on Petitioner's behalf dated July 19, 2016. Ms. Klein writes that her organization no longer has a case file for Petitioner. She reviewed his "criminal history records" that he provided her. She acknowledges that she does not know what Petitioner's sexual offense risk assessment was when he was released from custody and this time there is no sexual offense risk assessment that is appropriate to use in Petitioner's situation given his length of time in the community without sexual re-offense. She concluded that since he has been in the community for 10 years or more without sexual offense or violent re-offense, she would consider him to be low risk at this point. While she is a licensed clinical social worker, there is no indication that she professionally evaluated, assessed or provided therapeutic treatment to Petitioner in her capacity as licensed clinical social worker. Her letter does not indicate that she personally knows Petitioner and does not attest to his character, honesty or work ethic.



The evidence from Sharper Future demonstrates that Petitioner engaged in no more therapy than that which was mandated by the terms of his criminal probation and failed to demonstrate that Ms. Klein's statement on risk factors was substantial evidence. As such, the letters from Sharper Future do not demonstrate Petitioner's rehabilitation.

12. Petitioner submitted two Orders of Dismissal pursuant to Penal Code section 1203.4 for case numbers VCR 152490 (conviction for violation of Penal Code section 243.4(d)(1), sexual battery) and VCR 161512 (conviction for violation of Penal Code section 118 (perjury), dated October 25, 2011. Such dismissals are not demonstrative of Petitioner's rehabilitation, but rather merely evidence that he completed the minimal terms of his criminal probation. The fact that Petitioner's prior convictions have been expunged does not prevent the Bureau from relying upon them to deny Petitioner's application. (*Ready v. Grady* (1966) 243 Cal.App.2d 113, 116.)

13. Petitioner submitted a record of no criminal complaint from the Contra Costa County Office of the District Attorney, dated February 22, 2013, evidencing that a review of their records showed no criminal complaint was issued against Petitioner based upon an incident described in Richmond Police Department report number 97-69, occurring on January 1, 1997. The incident date referred to in this record predated the dates his Bureau licenses were issued and were not grounds for his license revocations. The record does not demonstrate Petitioner's rehabilitation.

14. Petitioner submitted a record evidencing his criminal probation expiration from Solano County Probation Department dated October 15, 2005. It demonstrates that his criminal probation ended over ten years ago, which is relevant to his rehabilitation.

15. Petitioner submitted CDCR Certification of Discharge evidencing he was discharged from CDCR on all existing felony commitments as of March 16, 2006. It demonstrates that his parole ended over ten years ago, which is relevant to his rehabilitation.

16. Petitioner submitted an email chain dated November 14, 2016, between him and Ally Serna, a Staff Services Manager I with CDCR Parole Sex Offender Management Board, to ascertain his "score," which he indicates is done by the California Sex Offender Management Board. Ms. Serna indicated that she contacted DOJ and confirmed that DOJ does not have a score on file for him. There is insufficient evidence about what the "score" is and what it assesses for the email chain to be of probative value.

## CONCLUSION

Petitioner bears the burden of establishing his rehabilitation by substantial and convincing evidence. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.) "The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue." (*Kwasnik v. State Bar*, supra, 50 Cal.3d at 1086.) The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be." (*In re Menna*, supra, 11 Cal.4th at 987, citing *Kwasnik v. State Bar*, supra, 50 Cal.3d at p. 1086 (dis. opn. of Lucas, C. J.); see *In re Nevill* (1985) 39 Cal.3d 729, 735; *Roth v. State Bar* (1953) 40 Cal.2d 307, 313 *In re Gossage*, supra 23 Cal.4th at 1096.)

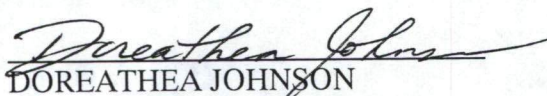


Petitioner has failed to demonstrate any sufficient rehabilitation since his release from custody. His statement that "all he can do is keep coming back until someone gives him a chance", is evidence of his continued lack rehabilitation. Other than his educational achievements, Petitioner only presented evidence to support conduct which he was mandated to do as a condition of criminal probation or as a condition to seek reinstatement of a new Bureau issued license. Petitioner committed serious crimes and has failed to demonstrate exemplary conduct to overcome the amount of evidence sufficient to reflect rehabilitation standard. Stating one has remorse is not tantamount to proof of remorse. Even his tacit "I have not denied the fact" is inconsistent with admitting to the crimes which he was convicted of and taking full responsibility. And, while he has attained educational benchmarks, this attainment appears to be completely self-serving, and he has not used that accomplishment to benefit his community or the community he harmed. Petitioner claims to be "a good part of his community, church, and (professional funeral) industry" since his release from prison, yet he has failed to demonstrate evidence to support this statement. Petitioner's efforts and acts of rehabilitation must be demonstrated by proven action, not just his own claims of being "good." Petitioner's progress in rehabilitation is still insufficient to eliminate risk to the public at this time.

#### **ORDER**

The Petition for Reinstatement of Revoked Funeral Director License Number 1726 and Apprentice Embalmer Registration number AE 12130, submitted by Deleno N. Duncan, Jr. is denied.

IT IS SO ORDERED this 27 day of December, 2016.

  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs