

**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.
3721 Malcolm Street
Oakland, CA 94605

Funeral Director No. FDR 1726

Petitioner.

File No. A1 2001-319

OAH No. N-2002050132

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 March 24, 2015, by Petitioner Deleno N. Duncan, Jr. The parties were offered an opportunity to submit written argument on or before June 30, 2015. Petitioner submitted written argument, dated June 26, 2015. The Attorney General submitted written argument, dated June 29, 2015.

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

FACTUAL FINDINGS

1. On or about August 4, 1998, the Bureau issued Petitioner Apprentice Embalmer Registration number AE 12130. On or about July 22, 1999, the Bureau issued Petitioner Funeral Director License number FDR 1726. On August 5, 2002, the Bureau filed the First Amended Accusation (No. A1-2001-319). 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.

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. Petitioner was released from probation in 2005, with parole ending in 2006.

2. On or about February 27, 2003, Petitioner's Funeral Director's license and Apprentice Embalmer Registration were revoked. And, 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).

3. 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.

A. Petitioner participated in a mandatory sex offender treatment program with the Sharper Future as a condition of his parole between March 2005 and March 2006. Petitioner completed a degree program at Colorado Technical University with a Bachelor's of Art Degree in Management [date]. And, he paid the Bureau cost recovery of \$3,000.00 he was ordered to pay as a result of the decision revoking his license. Moreover, he expressed remorse in his written, admitting he had made "mistakes," and regretted the "bad choices" he made in the past.

B. While Petitioner claimed to have spent years in therapy, he only provided documentary evidence of having participated in the mandatory sex offender treatment program with Sharper Future which was a condition of parole. He failed to provide evidence of any other therapy that he participated in despite his claim of "years of therapy."

C. Petitioner petition was denied March 24, 2014. While he evidenced some rehabilitation, he failed to provide any evidence that he had insight into what motivated him in his criminal misconduct and his record of treatment was unremarkable in that it documented nothing more than the fact he participated in treatment as required by his parole condition.

4. On or about March 24, 2015, Petitioner filed an Application for Funeral Director Examination and Licensee 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.

5. Petitioner reiterated his prior treatment with Sharper Future, the mandatory sex offender program he was ordered to participate in as a condition of his parole between March 2005 through March 2006, describing what he learned when he was in therapy while on parole which was that his offenses were "experimental" because he wanted to know "what it would be like to be with the same sex." He further intimates that "[e]veryone at one point in a lifetime has thought about what it would be like to be with the same sex they might not have acted on it. In [his] case, acting on that was a very bad choice because of the victim's age." He again reiterates that he has sat in therapy of many types of offences and explains that he avoids re-offending through therapy.

7. Petitioner submitted a letter from Sharper Future dated April 14, 2009. The letter explains that he entered the program as a part of his parole on March 23, 2005, and contended until March 14, 2006, when his parole ended. He considered hiring a psychologist to demonstrate rehabilitation but determined it to be too costly.

8. Petitioner submitted eight letters of recommendation in support of his Petition. The supporters spoke of knowing Petitioner for some period of time and supporting the reinstatement of his license, however, none of the supporter's letters evidenced that they had personal knowledge of his convictions.

9. Petitioner's sexual battery conviction, Penal Code section 243.4 and perjury conviction, Penal Code section 118, were Ordered dismissed October 25, 2011. Petitioner did not submit evidence that his conviction for violating Penal Code section 288(c)(1), lewd and lascivious acts with a child of 14 or 15), a felony, were ordered dismissed.

10. Petitioner's current Petition differs very little from his prior Petition. There is no indication that Petitioner has engaged in counseling between 2006 to present.

LEGAL CONCLUSIONS

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

2. Petitioner carries the burden to establish by clear and convincing evidence that he is entitled to the requested relief. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

3. In considering the Petition for Reinstatement, the Director has considered the criteria specified in California Code of Regulations, Title 16, sections 1253¹ and 1253.5.²

4. Petitioner's crimes occurred long ago, they were serious in nature. However, 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. And his sexual battery and child molestation crimes evidenced a serious disregard for the law and willingness to take advantage of the vulnerable.

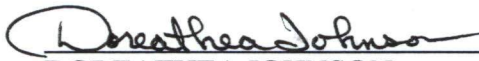
5. While Petitioner again relies on his prior treatment at Sharper Future, compliance with the requirements of parole, does not demonstrate rehabilitation and is generally given little weight in considering whether rehabilitation has been established. (*In re Gossage* (2000) 23 Cal.4th 1089, 1099.) Petitioner has failed to demonstrate any rehabilitation since the time his prior Petition for Reinstatement was denied on March 24, 2014, until now. Moreover his attempt to explain what he learned from his treatment program was dismal and evidences his misperception that the criminality in his acts, which was solely the victim's the age, not the victim's gender. Petitioner has failed to demonstrate sufficient evidence of rehabilitation to support a finding that he has been sufficiently rehabilitated to warrant reinstatement.

6. For the reasons set forth in Factual Findings 6 through 9 and Legal Conclusions 1 through 5, cause does not exist under Business and Professions Code section 7711 or Govt. Code section 11522, to grant the Petition for Reinstatement of Petitioner's revoked license.

ORDER

The Petition for Reinstatement of Revoked Funeral Director License Number 1726, submitted by Deleno N. Duncan, Jr. is denied.

IT IS SO ORDERED this 29th day of July, 2015.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

¹ 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.

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