

BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

David S. Chapman,

Respondent.

CDSS No. 7811137006 and
7811137006B

OAH No. 2011121012

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on June 11, 2012.

Martin Winfield, Staff Counsel, represented Complainant Jeffrey Hiratsuka, Deputy Director of the Department's Community Care Licensing Division (Department).

Respondent David Chapman represented himself.

Oral and documentary evidence was received and the matter was submitted June 11, 2012.

The Department of Social Services brings this Accusation to deny respondent's request for a criminal record exemption and revoke the criminal record exemption it granted him in 2006. For the reasons set out below, the exemption is denied and the 2006 exemption is revoked.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant made this Accusation (Criminal Record Exemption Denial and Revocation of Previously Granted Criminal Record Exemption) in his official capacity, through authority delegated to Mary Jolls, Program Administrator of the Adult and Senior Care Program, in her official capacity.

2. Until April 11, 2011, respondent was employed at the Rosewood Adult Residential Facility III, a licensed adult residential facility in Long Beach. On January 19, 2006, Respondent was granted a criminal exemption for a prior conviction, allowing him to continue working there. On January 11, 2011, the Department notified respondent that because of a new conviction, a new criminal record exemption was required for respondent

to continue working at Rosewood. Respondent requested an exemption. The Department denied the request on April 11, 2011, and told respondent it intended to revoke his previous exemption. Respondent timely requested this hearing.

Criminal Convictions and Exemption

3. On September 12, 2000, in Los Angeles County Superior Court, case number Z19968, respondent was convicted on his guilty plea of possessing marijuana in violation of Health & Safety Code¹ section 11357, subdivision (b), a misdemeanor.² He was fined \$356.

4. On January 19, 2006, the Department granted respondent a criminal record exemption. It included a condition that he not be convicted of another crime, and another condition that he not engage in conduct indicating that he may pose a risk to clients.

5. On November 17, 2010, in Los Angeles County Superior Court, case number OLG025711, respondent was convicted on his no contest plea of possessing a controlled substance in violation of Health & Safety Code section 11377, subdivision (a), a misdemeanor. The court found there was factual basis for the plea, and sentenced respondent to three years of summary probation. According to the police report, police officers searched respondent's apartment on August 11, 2010, because respondent's housemate was on probation. They found methamphetamine in the living room, where the housemate slept, and arrested the housemate. An officer then went into the bedroom where respondent was sleeping and asked respondent if he had methamphetamine. Respondent answered that he had, and used methamphetamine, and showed the officer a bottle of methamphetamine that the housemate had given to him. Respondent was arrested at 7:20 pm.

Mitigation, Aggravation and Rehabilitation

6. In his written explanation to the Department and his testimony at hearing, respondent maintained that he possessed no illegal substance in 2010, but was arrested and convicted solely because his housemate had methamphetamine. At hearing he testified that when he told the police officer he had methamphetamine, he was "incoherent" because of his medications, particularly Clozaril, an antipsychotic drug he takes because he is schizophrenic. Respondent takes other medications. His testimony about them was not entirely clear, but they include two drugs he takes so he can sleep, medicine for diabetes, a heartburn medication, and medical marijuana he takes because the heartburn medication gives him nausea. Respondent admitted that being incoherent in the early evening was not unusual for him. The police officer's statement that there was methamphetamine in his room and that respondent admitted to being a user is clear. Respondent's claim that he was in such a state that he did not know what was happening or what he was saying makes anything he

¹ All citations are to the Health and Safety Code, except those that begin with "CCR" to denote citations to California Code of Regulations, title 22.

² The Accusation erroneously alleges that this conviction was for violating section 11377, subdivision (b).

says about the night of the arrest inherently unreliable on its face.

7. At hearing, respondent testified that his 2010 conviction was a “bad experience” from which he had learned “not to associate with people who are on probation and stuff.” He testified that he quit drinking seven years ago, and has not used methamphetamine in two years. The police report indicates that he was still using it less than two years ago, but it is possible respondent’s testimony meant that he stopped using it after he was arrested in August 2010.

8. Respondent testified that he had no idea he had been arrested or convicted in 2000.

9. The Rosewood facility, where respondent worked from 1998 until he was excluded by the Department’s order in April 2011, is a board and care facility for the elderly. Respondent gave medications, cooked and washed dishes, and did light housekeeping.

10. Respondent goes to group therapy twice a week, but was not clear about what sort of therapy it was (for example, whether it was specifically addressed to drug or alcohol abuse) or whether he was going to these sessions before his 2010 arrest or conviction.

11. Respondent submitted reference letters from longtime family friends, the daughter of a now-deceased client of the facility, a neighbor of the facility, someone who says she has known respondent for 30 years (respondent is 46), and the mother of the housemate who gave respondent methamphetamine. They asserted that respondent is caring and diligent. A certified nurse practitioner who has been involved with respondent’s treatment in some way (she did not say specifically) wrote that respondent “has a diagnosis of Chronic Paranoid Schizophrenia and takes psychotropic medication,” and that he has not abused drugs or alcohol since 2000.” The nurse practitioner and the housemate’s mother opined that respondent was not guilty of the 2010 drug possession charge. The others did not mention criminal convictions.

12. Paragraph 13(a) of the Accusation alleges, as “a factor in aggravation,” that on January 4, 2011, Respondent failed to appear for judicial proceedings related to his 2010 conviction and the court issued a bench warrant. The court minutes reflect as much, but there is no other evidence in the record on the subject (it was not mentioned at hearing), and the court minutes also reflect (1) that January 4, 2011 was the only date on which respondent’s public defender counsel did not appear on his behalf, and (2) on the next court date, February 7, 2011, the court recalled the warrant and imposed no sanction on respondent. The evidence is less consistent with a simple failure to appear than with miscalendaring by the court, miscommunication between court and respondent or his counsel, or an error by respondent’s counsel in missing a court date that respondent may not even have been required to attend. The evidence is insufficient to establish an aggravating factor.

LEGAL CONCLUSIONS

1. There is cause to exclude respondent from a facility licensed by the Department, as alleged in paragraph 17 of the Accusation. Section 1558, subdivision (a)(4) provides that the Department may prohibit a licensee “from employing, or allowing in a licensed facility, or allowing contact with clients,” a person who has done any act “that would constitute a basis for disciplining a licensee.” Respondent’s two drug-related convictions (Factual Findings 3 and 5) make him subject to discipline under section 1522, subdivision (a)(4), which allows the Department to revoke the license of a licensee who “has been convicted of a crime other than a minor traffic violation.” Under section 1558, subdivision (a)(2), the Department may prohibit respondent’s employment or presence in a licensed facility for committing acts “inimical to the health, morals, welfare, or safety” of facility clients or the public. His illegal possession of controlled substances, particularly methamphetamine in 2010, is conduct inimical to health and safety.

2. As alleged in paragraph 15 of the Accusation, Respondent’s 2010 conviction is also cause to revoke his 2006 criminal record exemption. CCR section 80019.1, subdivision (v) provides that a criminal record exemption can be revoked if the “individual is convicted of a subsequent crime,” or for conduct “that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client.” The 2006 criminal record exemption (Factual Finding 4) specifically says that it will remain valid provided respondent is not convicted of a subsequent crime and does not engage in conduct indicating that he may pose a risk to the health and safety of any individual who is or may be a client. Respondent was convicted of subsequent crime, and his possession of methamphetamine (Factual Finding 5) was conduct indicating that he may pose a threat to facility clients.

3. To obtain a criminal record exemption, respondent must present substantial and convincing evidence that he has been rehabilitated and is of good character. (CCR § 80019.1 subd. (c)(4).) One of the criteria for rehabilitation is passage of time: CCR section 80019.1, subdivision (k)(2) provides that the Department shall consider a criminal record exemption if the applicant has committed two nonviolent misdemeanors and four years have passed since he completed his most recent probation. Respondent will be on probation until November 2013. (Factual Finding 5.) Because respondent’s probation is informal, the four years may be counted from the date of his conviction (CCR § 80019.1, subd. (k)(7)), but less than two years have passed since his last conviction (Factual Finding 5), and under CCR section 80019.1(1), the lack of passage of sufficient time since his conviction creates a rebuttable presumption that he is not of such good character as to justify a criminal record exemption.

4. Respondent’s evidence of rehabilitation is insufficient to overcome the presumption. His violating the conditions of his 2006 criminal record exemption (Factual Findings 4 and 5) is strong evidence against finding rehabilitation and good character. Other factors to be considered (set out in CCR section 80019.1, subdivision (e)) also show that there is insufficient evidence of rehabilitation and good character. While both his convictions were for nonviolent crimes, his denial of culpability, based entirely on his lack of

capacity to understand what was happening, does not show truthfulness; even if he is not intentionally lying about it, his account cannot be trusted. Some of his character references are based largely on his denial of guilt, while others do not address the conviction. (Factual Finding 11.) Taken as a whole, they paint a picture of a nice person who does his job well and is liked, but do not convince that respondent is someone trustworthy enough to work in a licensed facility, particularly in a job that involves access to medications. (Factual Finding 9.) In this context, the lack of a letter from his former employer, or other person at the Rosewood Adult Residential Facility, is particularly significant, since such a person would shed light on his fitness to work there. Respondent has worked at Rosewood for about 13 years (Factual Finding 9) and had two misdemeanor convictions in that time. His no longer living with the housemate who supplied him with methamphetamine (Factual Finding 7) is a circumstance making it somewhat less likely that the crime of possession will be repeated, and his attending therapy is a factor tending to show rehabilitation, but he has not presented substantial and convincing evidence that it is in the public interest to grant him another criminal record exemption.

ORDER

1. Respondent David Chapman's request for a criminal record exemption is denied.
2. The criminal record exemption granted respondent David Chapman in 2006 is revoked.
3. Respondent David Chapman is excluded from, and prohibited from employment in, and from presence in, any facility licensed by the Department, and from contact with the clients of any facility licensed by the Department, for at least two years.
4. Respondent David Chapman is prohibited from reapplying for a criminal record exemption for a period of two years from the effective date of this decision.

DATED: July 9, 2012

_____/s/_____
HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings