

State of Connecticut
**CONNECTICUT EXAMINING BOARD FOR
BARBERS, HAIRDRESSERS AND COSMETICIANS**

Petition Nos.: HC-871113-20-023 and MB-940311-25-003

In the Matter of : Board of Examiners For
: Barbers, Hairdressers and Cosmeticians
JOSEPH LUCA :
Respondent :
MB License 002531 :
H/C License 13375 : September 28, 1998

MEMORANDUM OF DECISION AND FINAL ORDER

I. PROCEDURAL BACKGROUND

On May 14, 1994, the Department of Public Health (hereinafter petitioner) presented the Examining Board For Barbers, Hairdressers and Cosmeticians (hereinafter Board) with a Statement of Charge (Petition No. MB 940311-25-003) against Mr. Joseph Luca (hereinafter respondent), holder of License MB 002531, albeit then subject to probation for the five (5) year period from September 20, 1993 through September 19, 1998. The petitioner alleged that the respondent violated the terms and conditions of probation. Further, the petition alleged that the respondent was "habitually addicted to narcotics and/or other habit-forming drugs, and has used to excess and/or the same as recently as 1987."¹⁷ A hearing was held on September 12, 1994.

On September 11, 1995 the Board revoked License MB 002531 and imposed a \$2,000 civil penalty. The respondent timely appealed to the Superior Court. The Court sustained the respondent's appeal. Joseph Luca v. Examining Board for Barbers, Hairdressers and Cosmetician, et al., CV-95-0554718, Judicial District of Hartford/New Britain at Hartford (Maloney, J., decided November 25, 1996). The Court entered judgment for the respondent.

The Court remanded the matter to the Board and ordered the Board to reinstate License MB 002531. The Court ordered that the Board could continue the existing conditions of probation or "make such reasonable modifications in those conditions as are warranted in view of the plaintiff's present condition." Id. at 16-17.

¹⁷ Neither Chief of Adjudications/Regulations Donna Butane Brewer nor Hearing Officer Steve Varga participated in the preparation of this memorandum or acted in any manner as an agent or representative of the Board at any time in this hearing due to their prior employment in the Legal Office of Regulatory Services and their participation in the prosecution of the respondent under one or more of the above captioned petitions.

On November 6, 1997, the Board gave notice to the parties to appear on December 8, 1998 and show cause why the Board should not order that the conditions and terms of probation set forth in its order of September 20, 1993 to continue to September 1998 or to some later date. That Notice also advised the parties that, on January 31, 1997, the Board received a petition for reinstatement of a second license, License H/C 13375, that the Board had revoked under Petition No. H/C 871113-20-023 on February 25, 1991. The Board, sua sponte, consolidated the hearings.

On December 8, 1997, the petitioner appeared, but the respondent did not. Counsel for the respondent did not request a continuance, but rather advised the Board when contacted by telephone that she had a conflict in schedule. The petitioner requested that the hearing go forward. The Board heard the petitioner on December 8, 1998.

During the hearing, the Board issued an interim order on the record concerning continuing the testing for substance abuse. The order was reduced to a writing and sent to the respondent shortly thereafter. In that letter, the Board identified an Investigator employed by the Department of Public Health to serve as the Board's agent and to monitor compliance. The Board continued the matter.

On March 30, 1998, the Board reconvened the hearing for a second and final day. Both the petitioner and the respondent appeared and were heard. The Board affirmed its interim order as to continuation of the testing for substance abuse and employer reporting. Immediately thereafter, the Board engaged in fact finding.

II. FINDINGS OF FACT

- A. Prior to 1987, the petitioner issued Licenses H/C 13375 and MB 002531 to the respondent.
- B. Prior to 1987, the respondent was personally consuming illegal drugs and using his salon to store cocaine, to receive telephone calls regarding sales of cocaine and/or to sell cocaine.
- C. The respondent does not contest the facts as to his personal substance abuse or the misuse of his salon prior to 1987.
- D. The petitioner brought separate petitions against Licenses H/C 13375 and MB 002531 based on the respondent's substance abuse problems.
- E. On February 25, 1991, the Board revoked License H/C 13375 and that final agency decision was not challenged on appeal or modified since that time.
- F. On September 30, 1991, the Board revoked License MB 002531.
- G. The respondent complied with the drug testing and screening conducted by the U.S. Department of Veterans' Affairs and successfully completed its prescribed rehabilitation activities prior to 1994.

- H. The respondent complied with the drug testing and screening conducted by the Connecticut Department of Corrections and successfully completed its prescribed rehabilitation activities prior to 1994.
- I. The respondent complied with the counseling activities through the U.S. Department of Veterans' Affairs and filed documentation in support thereof, including the termination of the same.
- J. The respondent complied with most of the terms and conditions of probation that were within his power to effectuate and took reasonable steps to ensure reporting requirements were met as to reporters that he could not control.
- K. Prior to September 20, 1993, the respondent moved the Board to reinstate License MB 002531.
- L. On September 20, 1993, the Board reinstated License MB 002531, subject to a five (5) year period of probation, having determined that the respondent was fit to practice as a master barber.
- M. On or about May 14, 1994, the petitioner filed a petition for revocation with the Board.
- N. On September 11, 1995, the Board revoked License MB 002531, but that decision was reversed on appeal by the Superior Court in a decision filed on November 25, 1996.
- O. The Superior Court remanded with direction to reinstate License MB 002531 and with instruction to the Board to continue or to modify the terms and conditions of probation as current conditions warranted.
- P. On or about January 31, 1997, the respondent moved the Board to reinstate License H/C 13375.
- Q. On December 8, 1997, and March 30, 1998, the Board affirmed its order of probation and directed the respondent to continue to comply with the terms and conditions of probation, i.e., to submit to random urine testing for substance abuse not less than once monthly and to file employer reports, if employed.
- R. The respondent complied with the drug testing condition imposed by the Board through its orders of December 8, 1997, and March 30, 1998, when he submitted to random drug screening from January 1998 through [September 1998] and the testing vendor filed reports of the same with the Board's agent. No positive tests results were reported during that period.
- S. On or about July 17, 1998, the respondent filed a report over the signature of the manager of a salon that stated the respondent was competent and was performing professional services without any problems.
- T. The petitioner did not file with the Board any other complaints against the respondent during the probation period related to or directed at continuing

use or abuse of prohibited substances or substandard licensed activities or conduct.

- U. The respondent provided licensed services during his probationary period with any incidents of reported substance abuse.

III. CONCLUSIONS OF LAW

- A. The respondent demonstrated general compliance with the terms and conditions of probation, although not in the form and detail specified in the Board's order of September 30, 1993.
- B. The respondent complied with the interim orders of December 8, 1997 and March 30, 1998.
- C. It is the petitioner's burden to show non-compliance with the terms and conditions of probation.
- D. It is the petitioner's burden to show that a licensee is currently addicted to narcotics and/or other habit-forming drugs, and/or is using intoxicating substances to excess.
- E. If a petitioner offers substantial evidence of current substance abuse, the burden shifts to the respondent to show that he is substance abuse free.
- F. A licensee is not habitually intoxicated or addicted to the use of morphine, cocaine, or other habit-forming drugs just because he was habitually intoxicated or addicted to drugs at one time.
- G. The Board must give considerable weight to the findings of fact and conclusions of law found by the Superior Court for the Judicial District of Hartford/New Britain at Hartford (Maloney, J.) on the issues of whether the respondent did in fact comply with the terms and conditions of probation imposed by the Board and whether the respondent currently presents a danger to the public.
- H. The applicable standards of conduct as to substance abuse are the same for barbers, hairdressers and cosmeticians.
- I. The respondent does not pose a threat to the public in the context of providing services as a licensed master barber, hairdresser or cosmetician.
- J. The continuation of probation is unwarranted.

IV. DISCUSSION

The genesis of this matter relates back to an 1987 arrest of the respondent for the possession and use of narcotics in the confines of his salon and two complaints related thereto that the petitioner brought to the Board, one as to License H/C 13375 and the other as to License MB 002531. The Board revoked both licenses.

While License H/C 13375 remained revoked, the respondent requested that License MB 02531 be reinstated. The Board granted the request, but placed the respondent on probation for five (5) years from September 20, 1993 through September 19, 1998. The terms and conditions of probation included drug testing, employer monitoring and reporting and counseling. The Board engaged an investigator of the Department of Public Health to serve as its agent in monitoring compliance.

Shortly, thereafter, the Board's agent reported to the Board that the respondent was not compliant with the terms and conditions of probation. On May 14, 1994, the petitioner filed a Statement of Charges seeking revocation because the respondent violated the probation and because he was habitually addicted to drugs. As summarized in the Superior Court's Memorandum of Decision, the Board's revocation was defective and could not be affirmed. The evidence of addiction was too remote and stale, especially in light of more recent and substantial evidence of rehabilitation. The Court sustained the appeal and remanded the matter with an order to reinstate the license. The Court respected the existing probation, but suggested modification was allowable based on the respondent's current condition.

On remand, the Board provided the opportunity for the parties to be heard on remand as to License MB 002531 and as to the respondent's request to the Board to reinstate License H/C 13375. The matters were consolidated because the protection of public health and prohibitions against drug use are founded on the same standards under both licenses.

At hearing, the petitioner did not present any additional or new evidence as to the alleged addiction problems of the respondent nor showed any evidence of consumer complaints against him related to his professional activities or otherwise. Having the Superior Court ruling in hand, the evidence of record in the earlier proceeding is insufficient to support a finding of a continuing addiction and seriously undermines any finding of continuing drug abuse.

The burden is on the petitioner to prove the elements of its petition with a preponderance of evidence. Having shown that the respondent was addicted in 1987, the petitioner had no evidence of an ongoing or continuing problem. To the contrary, the record in this hearing contains substantial evidence that the respondent had successfully engaged in treatment at the U.S. Department of Veterans' Affairs and the Connecticut Department of Corrections.

Moreover, as to remand hearing, the respondent presented additional evidence that he was rehabilitated. He complied with the clarified requirements for random urine testing as ordered on December 8, 1997 and as affirmed on March 31, 1998. No positive test results were reported, i.e., no evidence of substance abuse was discovered. In addition, the respondent filed one report from a salon manager that stated the respondent does not create a risk to the public while performing licensed activities. Continuation of the substance abuse testing is not warranted. Continuation of the probation is not justified.

Although the respondent may have been less than forthright in complying with all terms and conditions of the probation and in communicating with the Board's agent, the Board

acknowledges that there is substantial evidence of record as to his compliance as noted by the Court. The absence of monthly urine drug testing for a considerable period of the probation may support an inference that the respondent may have been using prohibited substances and wished to avoid detection. Such an inference, however, is insufficient to establish that the respondent is currently addicted to substances or is currently using prohibited substances in excess, especially given unrefuted evidence of rehabilitation as noted by the Court and the more recent random urine screenings that show the respondent is free of prohibited substances.

Again, the burden is on the petitioner to show the elements of the petition by a preponderance of evidence. The evidence must be substantial, i.e., enough evidence for a reasonable person to believe the facts to be so. The petitioner failed to meet its burden. The petitioner did not even show that the burden of proof should shift to the respondent to show that he is free of prohibited substances. Even so, the respondent presented substantial evidence that he is rehabilitated. Therefore, the Board does not find an on going need for drug screening or continuation of the probation.

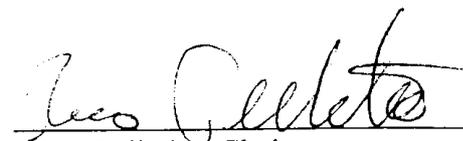
ORDER

The Connecticut Examining Board for Barbers, Hairdressers and Cosmeticians hereby orders:

1. As to Petition MB 940311-25-003, the Board finds in favor of the respondent and said petition is denied.
2. As to the Board's order of September 20, 1993, the Board finds the respondent has completed his obligations of probation and License MB 00253 is reinstated without restriction, effective September 20, 1998.
3. As to Petition H/C License 871113-20-023, the Board finds in favor of the respondent and H/C 13375 is reinstated without restriction.
4. This Order is effective upon signature of the Chairperson of the Board.

So ordered this 28th day of SEPTEMBER, 1998.

CONNECTICUT EXAMINING
BOARD FOR BARBER,
HAIRDRESSERS AND
COSMETICIANS.

BY: 
Reno Pelletier, Chairperson

STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

DA
3/15/94
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In Re: Joseph Luca, H.C.
License No. 13375

Petition No. 871113-20-023

MEMORANDUM OF DECISION

Rec'd from
David Paine
3-15-94
mjb

PROCELURAL BACKGROUND

The Connecticut Board of Examiners for Barbers, Hairdressers and Cosmeticians was presented with a Statement of Charges by the Department of Health Services dated 10/4/89 brought against Joseph Luca (Respondent). The Statement of Charges alleged, in two counts, violations of Connecticut General Statutes §20-263.

The Notice of Hearing and Statement of Charges were issued to the Respondent and/or his counsel. The hearing was originally scheduled for 11/27/89. It was rescheduled to 10/22/90. The Respondent was represented by counsel at the hearing and admitted the allegations in the Statement of Charges. (Tr. 10/22/90 p. 4).

Prior to the initiation of the charges, the Respondent was given the opportunity to show compliance with all lawful requirements for the retention of his license pursuant to Connecticut General Statutes §4-182(c). (Tr. 10/22/90 p. 4)

Each member of the Board involved in this decision attests that he/she reviewed the record of this proceeding and/or was present at the hearing and that this decision is based entirely on the record, and their professional knowledge.

This Memorandum of Decision sets forth the Boards findings of fact, conclusions of law, and order.

FINDINGS OF FACT:

After consideration of the entire record, the findings of fact are the following:

1. The Respondent Joseph Luca was the holder of Hairdressing/Cosmetology License 13375 and he held that license at all times relevant to the Statement of Charges. (Tr. 10/22/90 p. 4).
2. During 1987, the Respondent operated Josef's Salon of Beauty in New Britain, CT. (Tr. 10/22/90 p. 4).
3. On or about 10/17/87 and/or 10/21/87 and or 11/4/87 he used the salon for one or more of the following purposes:
 - a. Storing cocaine, and/or
 - b. Receiving phone calls regarding the sale of cocaine, and/or
 - c. Selling cocaine. (Tr. 10/22/90 p. 4).
4. On or about May 13, 1988 he was found guilty of the following:

- a. Possession of a narcotic with intent to sell in violation of Connecticut General Statutes §21a-277(a). (Tr. 10/22/90 p. 4).

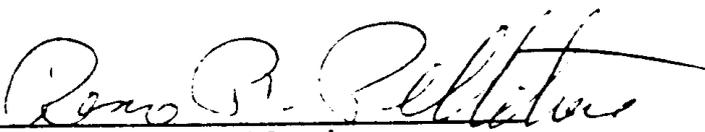
DISCUSSION AND CONCLUSIONS OF LAW:

The Board finds that Joseph Luca's conduct as admitted by him, is a violation of Connecticut General Statutes §20-263 in that it constitutes illegal, incompetent or negligent conduct in the course of professional activities.

ORDER

Pursuant to its authority under the Connecticut General Statutes §19a-17 and §20-263 the Board of Barbers, Hairdressers and Cosmeticians hereby orders the hairdresser's and cosmetician's license of Joseph Luca be revoked.

2-25-91
DATE


by: Reno R. Pelletier
CT Examining Board for Barbers,
Hairdressers & Cosmeticians

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