



Importance of Evidence of Rehabilitation

Justin D. Hein

June 19, 2012

All licensees should be aware that as a license-holder, they are held to a higher standard of responsibilities than other members of the public. This means they are entrusted with the ability to provide certain types of services, given their education, experience, and skill. However, that trust only goes so far. If the licensee fails to uphold minimum expectations of the profession or service, then the license will be taken away.

The trend over the past two decades has been to greatly expand what is included as “minimum expectations”. Specifically, in California, almost all felony convictions and/or pleas are considered a violation of minimum expectations and a vast majority of misdemeanors are considered “substantially related to the profession“. For example, a Certified Public Accountant could very well face license discipline in the event he or she is arrested and convicted for driving under the influence of alcohol – even though the incident is seemingly completely unrelated to any professional function.

While it is extremely debatable whether this trend is equitable or effective, it is, nonetheless, our reality. And as a result, professional licensees need to know what to do and who to turn to when they find themselves in such a situation. After all, professional licensees are human beings who make mistakes. However, without appropriate advice and counsel, the initial mistake can be compounded leading to exceedingly severe and unwarranted consequences.

The vast majority of licensing agencies are required, by law, to take into consideration evidence of rehabilitation, mitigation, and character when rendering any license discipline. This type of evidence can be presented at anytime to the licensing agency. This type of evidence can be used to influence the type of discipline initially sought, all of the way through the administrative hearing process to influence the type of discipline being imposed by the hearing officer or agency.

What this means is that the significance of the question of whether or not a licensee committed the alleged misconduct is actually minimized. It cannot be the single

justification for the discipline. Rather, the agency is compelled to take evidence of rehabilitation, mitigation, and character into consideration before rendering its decision.

Another way to look at it means that a licensing matter is actually answering two distinct questions – first whether or not the alleged misconduct occurred, and second, whether the evidence of rehabilitation, mitigation, and character has been sufficiently presented to warrant reducing the discipline.

It is this second part of a license discipline matter that is more often than not what determines the discipline imposed. And it is this second part that is **COMPLETELY IGNORED** by inexperienced attorneys representing licensees or licensees representing themselves.

At a minimum, presenting evidence of rehabilitation, mitigation, and character **COMPELS** the agency (or if at hearing, the administrative law judge) to account for it in its disciplinary decision. It must identify it and – at the very least – explain why it was not enough to blunt the underlying conduct or blunt the discipline ultimately imposed. Furthermore, in almost every decision by the administrative law judge or adopted by the agency, in so addressing the evidence of rehabilitation, mitigation, and character, the author will provide a roadmap as to what else is still missing or what else needs to be done in order to submit a successful petition for reinstatement for the agency to reconsider or modify the discipline imposed down-the-road.

An attorney experienced in professional license defense law is well aware of this dichotomy of your matter/hearing. And they should be well aware of how to compile this evidence to use within your matter as soon as possible.