

PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed July 30, 2001

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)	00-V-14393
)	
Glenn M. Terrones,)	OPINION ON REVIEW
)	
A Member of the State Bar.)	
_____)	

The State Bar requests review, under rule 300, Rules of Procedure of the State Bar (Rules of Procedure), of a decision of a hearing judge granting Glenn R. Terrones’s petition for relief from actual suspension following his disciplinary suspension that included a requirement that he show satisfactory proof to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law as required under standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.¹ Proceedings on petitions for relief from actual suspension are governed by rules 630 through 641, Rules of Procedure.

We have previously considered the State Bar’s request and have granted review under rule 300, Rules of Procedure. In granting that review, and before oral argument, we invited the parties to focus attention on the circumstances surrounding Terrones’s application for an insurance license from the Department of Insurance, State of California, filed in conjunction with his seeking employment as an insurance agent for Cigna Insurance Company (Cigna).

¹The standards are found in title IV of the Rules of Procedure. All further references to standards are to this source.

As set forth in rule 634, Rules of Procedure, Terrones is required to show compliance with the conditions of standard 1.4(c)(ii) by a preponderance of the evidence as distinguished from the usual standard before this court, requiring clear and convincing evidence. Under rule 639, Rules of Procedure, hearing department decisions on petitions for relief from actual suspension are reviewable only in accordance with rule 300, Rules of Procedure. The standard of review under rule 300 is abuse of discretion or error of law. (Rule300(k), Rules Proc.) “Thus, the decision of the hearing judge is reviewed not with an intention of substituting the view of this court for that of the hearing judge, but rather with the intention of ‘employ[ing] the equivalent of the substantial evidence test by accepting the trial court’s resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences [citations omitted].’” (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 577-578.)

The Supreme Court has expressed its concern that the State Bar establish an expedited procedure for hearing and disposing of petitions for relief from actual suspension in the event a standard 1.4(c)(ii) condition be imposed on an attorney’s discipline. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1080, fn. 6.) The obvious need was to avoid procedural delays that effectively created a far longer actual suspension than that ordered by the Supreme Court. To meet that concern, the State Bar provided that the proceedings governing relief from actual suspension under standard 1.4(c)(ii) be expedited, including a requirement that the service of all pleadings, decisions and other documents be by personal delivery or overnight mail. (Rule 630(b), Rules Proc.) The State Bar has but 45 days within which to determine whether to oppose the petition, and if it opposes the petition or is unable to decide, the hearing must be set within 35 days. (Rule 633(c), Rules Proc.) The State Bar may take the petitioner’s deposition promptly after the filing of the petition for relief, but the deposition may not extend any of the time limits

under the rules unless ordered by the court for good cause shown. (Rule 635, Rules Proc.) Other than taking the petitioner's deposition, no discovery is permitted except on order of the court, and even then, the discovery may not extend the time in which a hearing is required as provided under the rules, except for good cause shown to the court. (Rule 635, Rules Proc.) Documentary evidence is limited to that attached to the pleadings except for good cause shown. (Rule 636, Rules Proc.) The hearing department's decision is to be filed within 15 days following the conclusion of the hearing. (Rule 638, Rules Proc.; see also *In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 578-579.)

Standard 1.4(c)(ii) requires “proof satisfactory to the State Bar Court of [an attorney’s] rehabilitation, present fitness to practice and general learning and ability in the general law before the [attorney] shall be relieved of the actual suspension.”

For the reasons stated below, we conclude that the hearing judge’s decision should be affirmed.

DISCIPLINARY BACKGROUND

Terrones was admitted to practice in February 1983. On or about June 30, 1995, he and the State Bar entered into a stipulation of facts and culpability that included proposed discipline. In that stipulation Terrones acknowledged that on or about June 1992, he settled a personal injury case for \$9,000, in which the client had employed a prior attorney. Terrones had agreed to represent the client for the same contingent fee as the prior attorney. Terrones received a draft from an insurance company for \$9,000 payable to the client, the prior attorney, and himself. He endorsed the prior attorney’s name on that draft and deposited all of the proceeds in his trust account on or about June 10, 1992. A medical provider had a valid lien on the proceeds of the settlement in the sum of \$2,000. That medical provider was not paid until August 1, 1992, and

the balance in the trust account dropped below \$2,000 during the intervening period. Terrones stipulated that signing the prior attorney's name to the check was moral turpitude in violation of Business and Professions Code section 6106 and that he was culpable of moral turpitude in misappropriating funds held in trust for the medical provider.

Terrones further stipulated that in 1991 he represented Ronald Albert on a contingent fee basis in a personal injury claim. Terrones had authority to sign Albert's name to checks and drafts. In February 1992, Terrones received an insurance draft from the opposing parties' insurance carrier in the sum of \$25,000, payable to him and his client. That amount represented advance payment under a medical pay provision of the opposing parties' insurance and was to be credited against any future settlement or recovery. Terrones did not inform Albert of the receipt of the \$25,000 and caused Albert's name to be endorsed on the draft and deposited the proceeds in his trust account. The Albert case was tried in November 1993, resulting in a judgment in the approximate sum of \$26,000. The prior payment of \$25,000 was credited against the verdict. During the time between the payment of \$25,000 and the judgment, Terrones's trust account balance had fallen as low as approximately \$1,740. Albert did not learn of the receipt of the \$25,000 until January 1994. In addition, Terrones failed to respond to two letters from State Bar investigators looking into Albert's complaints.

The stipulation included an acknowledgment that Terrones was culpable of a violation of rule 4-100(B)(1) of the Rules of Professional Conduct, requiring an attorney to promptly notify a client of receipt of client funds, moral turpitude (Bus. & Prof. Code, § 6106) by misappropriating the \$25,000 and failure to respond to the State Bar's investigative letters (Bus. & Prof. Code, § 6068, subd. (i)).

It was stipulated that Terrones's misconduct was aggravated because of the multiple offenses found, and there was mitigation because there was no discipline between his admission to practice in 1983 and the culpability agreed to. It was stipulated that Terrones should be suspended for a period of five years, that suspension be stayed on the condition, inter alia, that he actually be suspended for two years and until he has satisfactorily shown the State Bar Court his rehabilitation, fitness to practice, and learning and ability in the law as required by standard 1.4(c)(ii). With modifications, that stipulation was approved by a State Bar Court hearing judge. On December 7, 1995, the Supreme Court filed an order in case number SO49112 in which it imposed the stipulated discipline on Terrones. Terrones's two-year actual suspension under that order began on January 6, 1996.

EVIDENCE OF REHABILITATION AND PRESENT FITNESS TO PRACTICE LAW

We have before us, as the record in this review under rule 300, Rules of Procedure, the petition together with its exhibits, the State Bar's opposition to the petition, exhibits introduced at the hearing, and an electronic tape recording of the hearing. Those items together with the hearing judge's decision granting the petition constitute the record on review. At all times in considering the matter before us, we bear in mind the summary nature of the proceedings (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 578, 581, 584), and we review the record to determine if there is substantial evidence to support the findings and take care not to substitute our judgement for that of the hearing judge. (*Id.* at pp. 577-578.) In addition, we review the record to determine if any errors of law have been committed. (Rule 300(k), Rules Proc.)

Background to Terrones's Prior Misconduct

The following findings were made by the hearing judge, and we hold that they are each supported by substantial evidence. We note that none of the following background history was before the State Bar Court or the Supreme Court in imposing the prior discipline.

Terrones is a native Californian, having been raised in Southern California. No member of his family had attended college. Because of economic need, he was raised by his maternal grandparents until his grandmother died when he was eleven years of age, at which time he came under the supervision of his parents. Terrones attended the University of Pennsylvania and law school at Boalt Hall. He was admitted to practice in July 1983. He immediately commenced practice in a small firm in Beverly Hills. In January 1986 he opened his own office in Beverly Hills.

In both college and law school, Terrones consumed alcohol and marijuana on a regular basis. In 1984 he began using cocaine as his drug of choice, although its use was confined to social occasions until about 1991. In 1989 Terrones was named in a paternity suit by his daughter's mother and, in response, he sought custody of his daughter. The "long, vicious, custody battle that ensued drained [Terrones] emotionally and financially." In May 1991 he married his present wife. By late 1991 Terrones's use of alcohol and cocaine "escalated" and became "far more regular." There followed, in early 1992, serious financial problems in his practice, coupled with his denial of the fact that he was suffering from drug and alcohol problems. In addition to his drug and alcohol abuse, Terrones attributes part of his financial problems at that time to a lack of business acumen. As a result, he began to "commingle funds from [his] client trust account in late 1991 in order to pay [his] bills." This, combined with his

“lack of supervision over [his] office staff” resulted in the misconduct underlying the discipline imposed on him by the Supreme Court in case number SO49112.

Terrones’s Evidence of Rehabilitation and Present Fitness

In 1996 Terrones began participation in a Twelve-Step recovery program known as Cocaine Anonymous (CA). He has not used either cocaine or alcohol since November 21, 1996, and continues to participate in the CA program. He became the general service representative for that group, responsible for helping to manage the business of the program for his local district in February 1997. In April 1998 he assumed the added responsibility of organizing CA community events and public service announcements addressed to those seeking help from addiction. In January 1999 he became the hospital and institutions representative for that group, requiring that he meet with addicts incarcerated in various institutions and share his addiction problems with those addicts. He is now responsible for the organization of their weekly meetings at a local hospital. The testimony of Terrones’s expert, a Diplomate of the American Board of Psychiatry and Neurology with a certificate of Added Qualification in Addiction Psychiatry and a private practice in that field, establishes Terrones’s present rehabilitation from drug and alcohol addiction. The State Bar notes that it does not now challenge this portion of Terrones’s rehabilitation.

Terrones obtained a license to sell life and disability insurance² from the State of California in mid-1997 and is presently employed selling health and life insurance policies. In connection with that employment and as a function of seeking employment in that field, Terrones has devoted over 200 hours studying estate planning, taxation, partnership, corporate law, inter

²The State Bar challenges the propriety of Terrones’s application for that license, discussed *post*.

vivos trusts, as well as insurance law and ethics for insurance agents. The State Bar continues to challenge Terrones's present learning and ability in the law.

In early 1997 Terrones and his wife began attending services at Throop Memorial Church in Pasadena. He, along with his wife, teaches in the church's religious elementary school weekly and serves on the church finance committee. In April 2000 he was elected president of that church by the congregation.

Paul Sawyer, the minister of Terrones's church, has known Terrones since January 1997. Through church activities and other mutual interests, they have become well acquainted. In a church men's group meeting in December 1998, Terrones shared with the entire group his misconduct that commenced in 1992, including the improper endorsement of the settlement draft, mishandling client trust funds, failure to notify a client of the receipt of funds and his failure to respond to the investigation by the State Bar. He provided Sawyer with a copy of the official records of the State Bar Court finding Terrones culpable of moral turpitude. Terrones expressed his contrition and acknowledged learning an important lesson from the pain he inflicted on himself and others. Sawyer was made aware of Terrones's addiction to drugs and the efforts he has made to rehabilitate himself.

Stephanie Wells is the president of Prime Benefits Plus Insurance Service and met Terrones in May 1998. She has served as his manager for over two years. She had reviewed documents from the State Bar Court and believes the conduct demonstrated in that material is "a complete departure from his normal character." Wells believes that, in the years she has been in the insurance business, Terrones is among the most ethical agents she has encountered and "has demonstrated the utmost integrity, honesty, a genuineness in the performance of his duties." She was surprised to learn of Terrones's prior drug problem because of the total absence of any

conduct on his part suggesting such a problem. She recommends that he be permitted to return to the practice of law.

Karrin Feemster, a lawyer and chief financial officer of Prime Benefits Plus Insurance Service, met Terrones around January 1999. At their initial meeting, he told Feemster that he had been suspended for professional misconduct. He made no excuses for his misconduct, nor did he attempt to rationalize it, but rather accepted the consequences of those actions. She stated, “I have had occasion to discuss matters of estate and business taxation planning and I am impressed with the extent of his knowledge and understanding of the law in these areas.” She supports Terrones's return to active practice.

Benjamin Salazar, a claims analyst for an insurance company, met Terrones over three and one-half years ago at a CA meeting and was present at meetings where petitioner shared not only his prior addiction problems, but the facts and circumstances surrounding his suspension from the practice of law. He has reviewed a copy of the factual stipulations with the State Bar. He believes that Terrones has undergone a thorough rehabilitation from “drugs, his character, and his life. There is no question in [his] mind that [Terrones] is fit to practice law, and will serve the legal community well if afforded the chance.”

Warren Kelly is an attorney practicing in Los Angeles and a third cousin of Terrones. He has been in regular contact with Terrones since his suspension. He has reviewed the stipulation leading to the prior discipline and was familiar with Terrones’s cocaine addiction and prior misconduct and the effect they had on Terrones's personal life. Kelly describes Terrones as a changed person, no longer using drugs and a person who has fully rehabilitated himself. He further states that “[Terrones] and I have had numerous discussions about the law and particularly about litigation matters. He remains extremely knowledgeable and still has a

remarkably keen eye for issues that arise in litigation. In the past year I have had occasion to discuss with [Terrones] on [sic] matters of estate planning and taxation, and it is plainly evident that he has developed a vast amount of expertise in this area.”

Terrones has complied with the conditions of his probation requiring him to attend the State Bar’s Ethics School and its Client Trust Account Record-Keeping Course and has passed the Multistate Professional Responsibility Examination.

Terrones testified that he has not sought earlier relief from suspension because he wanted to make sure that his personal life was stabilized and that he had sufficient funds to pay the costs that the Supreme Court awarded the State Bar in case number SO49112. He estimated that those costs would be in the neighborhood of \$4,000.

**STATE BAR’S EVIDENCE IN OPPOSITION TO REHABILITATION
AND PRESENT FITNESS**

The State Bar placed in evidence a certified copy of a file of the California Department of Insurance, consisting of a copy of Terrones’s application, dated April 29, 1997, for a license to act as a life insurance agent. That file indicates that such a license was issued to Terrones on June 20, 1997. Among the questions on that application was number 18, which reads in part: “Have you been the subject of any administrative agency disciplinary action?” Terrones answered that question “yes.” The question is followed by a somewhat detailed definition of “administrative action.” Between question 18 and the signature line is an “IMPORTANT NOTICE” requiring those who give an affirmative answer to that question to attach a detailed statement of the events leading to that disciplinary action and, if available, to attach certified

copies of that action.³ The only attachment to the application shown in that certified copy of the file is an order of the Supreme Court suspending Terrones for non-payment of State Bar membership fees. The Supreme Court's suspension of an attorney for non-payment of membership fees is not a disciplinary action. The State Bar relies on this application to show that Terrones was not candid or forthcoming in his application to the Department of Insurance, and contends that it shows a lack of rehabilitation.

In rebuttal, Terrones shows that he applied to Cigna Insurance Company (Cigna) for employment as an insurance agent. He advised Harvey Jacobson, the Los Angeles manager of Cigna, of his disciplinary problems with the State Bar. Terrones provided Cigna with a complete copy of his disciplinary record. Although Cigna's "compliance people," located on the east coast, advised Jacobson that it was doubtful they would approve the hiring of Terrones because of those problems, Jacobson wished to pursue that possibility. As a part of his seeking employment with Cigna, Cigna asked Terrones to complete the application to become an insurance agent and to provide a written attachment describing the circumstances leading to his suspension and return it to Cigna. Terrones did complete the application and prepared the addendum. While not false, that addendum was certainly less than a full description of his

³The full text of that "IMPORTANT NOTICE" is: "If you answered yes to (18), (19), or (20), attach a detailed statement, signed by you, of the events which led to the charges (dates and places). If the matter was heard in court, attach copies, Certified by the Court, of the Criminal Complaint and the Sentencing Minute Order showing the final plea, judgment and sentence. If any disciplinary action was taken by an administrative agency, attach certified copy of the action."

misconduct.⁴ Terrones signed the application under penalty of perjury along with the addendum and delivered it to Cigna, along with a check for the filing fee for that application. Jacobson did not see the document as filed with the Department of Insurance, nor did Terrones. Terrones understood that the assembling and filing of the application was to be done by Jacobson's administrative assistant. She did not testify. Terrones believed that Cigna would attach all of the documentation that he had provided, including the State Bar disciplinary record. Terrones did not see a copy of the application as filed until discovery in preparation for the hearing below.

The State Bar has shown that the Client Security Fund (CSF) paid \$3,445.67 to Sylvia Hernandez based on claims she made against Terrones. The Hernandez claim was made in August 1996 and apparently was based upon alleged non-payment to medical care providers in a matter Terrones had handled for Hernandez. He had closed his file in October 1995. CSF sent a "Notice of Intention to Pay" to Terrones at his address of record in late September 1996. In the absence of any response from Terrones, CSF paid the claim. Terrones was unaware of the Hernandez claim until the taking of his deposition in this matter, which was shortly before the hearing in this matter. He denied ever seeing correspondence from CSF. From his file, Terrones

⁴That addendum states: "I was disciplined by the State Bar of California in 1995 for transgression that occurred in February and June of 1992. More specifically, the State Bar and I stipulated that I (1) failed to timely and properly notify a client of receipt of client funds; (2) [sic] to cooperate timely with the State Bar's investigation of a matter; (3) failed to manage properly my client trust account fund on two separate and isolated instances in February of 1992 and June of 1992; and (4) endorsed a settlement check without my co-counsel's consent in June of 1992. [¶] It must be noted, however, that the State Bar concluded that allegations against me that I failed to timely disburse funds to my client were unfounded and not supported by the evidence. There were no allegations by my client or by co-counsel that I had wrongfully taken or converted money from either of them. [¶] The foregoing stipulations resulted in my agreeing to a suspension of my license commencing January 6, 1996." (Emphasis in original.)

presented a number of letters demonstrating that in fact medical providers on the Hernandez case had been paid.

The hearing judge found that “[p]etitioner was not aware of the Hernandez issue until his deposition was taken in this matter.” Terrones’s testimony that he did not know of the claim of Hernandez is substantial evidence of that fact. We also note, there is no clear and convincing evidence that Hernandez had a valid claim against Terrones. In any event, Terrones will be required to reimburse CSF for funds paid out as a result of his conduct. (Bus. & Prof. Code, § 6140.5, subd. (c).) We find the hearing judge did not abuse his discretion in finding this did not prevent Terrones’s showing of rehabilitation.

The State Bar raises three additional issues challenging Terrones’s rehabilitation. First, a number of Internal Revenue Service and Franchise Tax Board liens were recorded against Terrones in 1996 and again in 1998 covering taxes due from 1991 through 1995. The record shows that the balance due at the time of the hearing below was approximately \$472 to the Internal Revenue Service and \$500 to the Franchise Tax Board, and these sums are being paid in installments according to agreements with these agencies. Second, after his suspension, Terrones continued to use the abbreviation “Esq.” on his fax machine identifier. He testified that the identifier was included on the fax machine when he was practicing law and that he did not know how to remove it. Third, Terrones had done work for an attorney during his period of suspension without telling that attorney he was suspended from practice. Terrones testified that the work was only preliminary research, that he never met the attorney and assumed he knew of the suspension. We conclude that it was within the hearing judge’s discretion to reject each of these contentions as being sufficient to impeach Terrones’s showing of rehabilitation and do not further discuss them.

DISCUSSION

As indicated, we review the record to determine if there is substantial evidence to support the hearing judge's decision and to determine if an error of law has occurred. (Rule 300(k); *In the Matter of Murphy*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 577.) We draw a clear distinction between the showing of rehabilitation required under that standard and that required for the reinstatement of a disbarred attorney. In the latter case, the petitioner "must present stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question." (*Kepler v. State Bar* (1932) 216 Cal. 52, 55.) A disciplined attorney seeking relief from actual suspension of the right to practice law remains an attorney, but one whose prior serious misconduct has placed in question that attorney's moral character by virtue of that misconduct. That is, in disbarment cases, the attorney has been found not fit to practice law, and his or her name has been stricken from the roll of attorneys, while in standard 1.4(c)(ii) proceedings, the attorney has suffered a more modest negative evaluation of his or her character. We deem the showing of rehabilitation required under this latter standard to be that of overcoming a reduced prior finding of a danger to the public.

In addressing the required showing of rehabilitation for reinstatement following disbarment, the Supreme Court has stated: "The evidence presented [to show rehabilitation] is to be considered in light of the moral shortcomings that previously resulted in discipline." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092, citing *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) In a proceeding seeking relief from suspension under standard 1.4(c)(ii), "the moral shortcomings that previously resulted in discipline" are proportionally less than is true where the prior moral shortcomings resulted in disbarment. Nonetheless, one seeking relief from

suspension following the imposition of a 1.4(c)(ii) condition must show, by a preponderance of the evidence, that he or she meets the high moral standards required of all attorneys in this state. As we have noted, the proceeding is summary in nature (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 578, 581, 584), is much expedited and is not designed as a full-fledged reinstatement proceeding.⁵ Further as we have noted, the parties' right to review of a hearing judge's decision on a petition for relief from actual suspension is limited to review under rule 300, Rules of Procedure, and our standard of review is limited to a consideration of abuse of discretion or error of law on the part of the hearing judge.

The purpose of attorney discipline is not to punish the attorney, but rather to protect the public, the courts and the profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.3.) We presume that the prior discipline was appropriate to accomplish that purpose, based on the facts as shown in that prior record of discipline. That prior discipline did require that Terrones be prepared to show his rehabilitation following a two-year period of suspension. A significant circumstance contributing to Terrones's prior misconduct is now revealed to be his then addiction to illegal drugs and alcohol. That information was unknown to the State Bar and to this court at the time of imposition of the prior discipline. Terrones explains that, at the time of his prior discipline, he was in denial that he had a drug or alcohol problem or that these substances contributed to his misconduct. The psychiatrist testifying on Terrones's behalf confirmed that such denial is a common occurrence among those addicted to illegal drugs or alcohol.

⁵Compare reinstatement proceedings, which are governed by rules 660 through 666 of the Rules of Procedure. In such proceedings, the State Bar is given 120 days for investigation (rule 663(a), Rules Proc.), followed by a 120-day discovery period (rule 663(b), Rules Proc.). The burden of proof is by clear and convincing evidence. (Rule 665(b), Rules Proc.)

We have now been presented with clear evidence of Terrones's prior addiction, and his subsequent control of that addiction. The State Bar does not argue to the contrary. "An attorney's rehabilitation from alcoholism or other substance abuse is entitled to significant weight in mitigation if the attorney establishes these elements: (1) the abuse was addictive in nature, (2) the abuse causally contributed to the misconduct, and (3) the attorney has undergone a meaningful and sustained period of rehabilitation." (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 595, citing *In re Billings* (1990) 50 Cal.3d 358, 367-368.) While reinstatement cases arising after disbarment require a sustained period of exemplary conduct, that test must of necessity be somewhat relaxed where an attorney is seeking relief from actual suspension under standard 1.4(c)(ii). *Silva-Vidor v. State Bar, supra*, 49 Cal.3d at page 1080, footnote 6, makes clear that, for the purposes of that standard, an attorney may show his or her rehabilitation even before the completion of the term of actual suspension. This is in marked contrast to the stringent requirements imposed on one seeking a return to the bar after disbarment. (*Tardiff v. State Bar, supra*, 27 Cal.3d at p. 403.) Ultimately, the "question remains whether petitioner is a fit and proper person to be permitted to practice, and that question usually turns upon whether he has committed or is likely to continue to commit acts of moral turpitude." (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157, citing *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 453.)

The State Bar relies on evidence of Terrones's April 1997 application to the Department of Insurance for a license to act as a life insurance agent. The application, as introduced into evidence, was less than complete. There is no competent evidence showing that the addendum purporting to describe Terrones's prior misconduct was attached to the filed copy of the application. Assuming for purposes of discussion that the questioned addendum was attached,

the application remained less than complete. However, the hearing judge has determined that, nonetheless, Terrones has met his burden of showing rehabilitation from his prior misconduct resulting in discipline. Only if that determination by the hearing judge involves an error of law or an abuse of discretion will we disturb that finding.

The record is uncontradicted that Terrones gave a full copy of his State Bar disciplinary record to Cigna as a part of his application for employment. Terrones prepared the application and answered truthfully the question concerning his discipline by the State Bar. He signed the application under penalty of perjury and delivered it along with the addendum and his check covering the filing fee to Cigna as a part of his application for employment. Cigna had a regular procedure for filing such applications with the Department of Insurance on behalf of applicants for employment or advancement with the company. He believed that Cigna would attach that full record of discipline along with the addendum to the application he delivered to them. Although the hearing judge did not separately determine the effect of that application on Terrones's showing of rehabilitation he, following his recital of the factual showing including the evidence concerning the application to the Department of Insurance, did conclude Terrones "has demonstrated rehabilitation and present fitness by a preponderance of the evidence."

We review the record to determine if there is substantial evidence to support that finding of rehabilitation and present fitness. We find, not an excuse for, but an explanation of, Terrones's misconduct leading to his prior discipline: his addiction to alcohol and cocaine. It is uncontested that he has brought those addictions under control. The uncontroverted evidence shows that Terrones has not used either substance since November 1996. The record demonstrates that Terrones has met the three-step test set forth in *Hawes v. State Bar*, *supra*, 51 Cal.3d at page 595 because (1) the abuse was addictive in nature, (2) it causally contributed to his

misconduct and (3) he has undergone a sustained and meaningful period of rehabilitation.

Compliance with the last item in the *Hawes* test is demonstrated by Terrones's participation in his church, his election as president of that organization as well as his candor with employer, friends and church members alike concerning his misconduct as a lawyer and his addiction.

If Terrones either lied or deliberately misled the Department of Insurance in his application to become an insurance agent that would adversely impact his rehabilitation and present fitness to practice law. (*In re Gossage* (2000) 23 Cal.4th 1080, 1102 [rehabilitation requires "high degree of frankness and truthfulness"].) He did answer the question pertaining to prior discipline truthfully. The addendum, along with the attachment of the order of the Supreme Court showing his suspension for delinquent fees, standing alone, suggest an attempt to mislead the Department of Insurance. However, the record shows Terrones reasonably expected that the application would contain his entire disciplinary record. He presented the entire disciplinary record to Cigna and expected that record to be attached to the application, just as it had been forwarded to the "compliance people" of Cigna on the east coast. He described his misconduct to Jacobson, had been open with his church, CA group, employer, along with friends and relatives about his misconduct and addiction.

The most nearly analogous case called to our attention is *Calaway v. State Bar* (1986) 41 Cal.3d 743, involving a petition for reinstatement following disbarment under which Calaway was required to show his rehabilitation by clear and convincing evidence. There Calaway acted as a conservator for a party whose will named Yale University (Yale) as a beneficiary. Yale brought an action against Calaway, claiming he fraudulently induced his conservatee to remove Yale as a beneficiary of the estate. Calaway notified his malpractice carrier of the claim, and the carrier denied coverage on the grounds that Calaway omitted from his insurance application any

mention of misappropriation of funds from the conservatorship estate, his involvement in gambling operations and a federal conviction, along with a failure to mention an existing State Bar recommendation that he be disbarred. Calaway brought an action against the carrier in which the carrier prevailed on a summary judgment motion. Calaway prevailed in the action brought by Yale. In his application for reinstatement, Calaway listed the action brought by Yale, but failed to mention the action he brought against the insurance carrier.⁶ In a split decision the Supreme Court determined that this failure did not constitute a basis for denying Calaway readmission to practice.

We look to the balance of the evidence before the hearing judge in making his determination that Terrones had shown sufficient rehabilitation and present fitness to practice law. Terrones made a full disclosure of his past misconduct and alcohol and drug addiction to the mens' group at his church long before filing his application for reinstatement. He made a similar full disclosure to Cigna, from whom he was seeking employment. He had made equal disclosures to his present employer and to each of his character witnesses. Based on the totality of the evidence, there is a clear basis for determining that Terrones did not deliberately attempt to mislead the Department of Insurance.

Through full participation, he has become a leader in the drug rehabilitation program in which he participates as well as becoming president of his church congregation, after making a full disclosure of his past misconduct and drug addiction to the mens' group of that congregation. Although his actual suspension was for a period of two years beginning on January 6, 1996, Terrones withheld seeking relief from suspension until on or about October 23, 2000, more than

⁶We note that Calaway's action against the insurance carrier was a part of the court file involving Yale's action against him.

two and one-half years after his actual suspension could have been terminated upon an adequate showing of rehabilitation. He has used this additional time to make a recovery from drug and alcohol abuse, to establish his religious foundations and secure funds to meet his obligations to the State Bar.

We conclude that the hearing judge had before him substantial evidence upon which to base a conclusion that Terrones did not attempt to mislead the Department of Insurance with his application, and the State Bar did not impeach Terrones's showing of rehabilitation and present fitness.

As a final challenge, the State Bar argues that Terrones has not adequately shown his present learning and ability in the general law as required by standard 1.4(c)(ii). As the hearing judge noted, “[p]etitioner completed a number of classes required by the Department of Insurance, including insurance contracts, claims, procedures and ethics. Many of the classes included material that involved case law and applicable statutes. Between 1998 through 2000, Petitioner completed 100 hours of an educational program, plus more than 200 hours studying estate planning and taxation for small businesses.” He litigated his personal bankruptcy in 1996, his own child custody matter and obtained a dismissal of a criminal charge brought by his child's mother arising out of a scheduled visitation with his daughter. Two of his character declarants commented on his extensive knowledge on the law of estate and business taxation. Kelly commented on Terrones's knowledge and keen eye for issues in litigation. Even if we accord a substantial discount to the educational activities of Terrones because they were oriented to insurance, we cannot find an abuse of discretion in the hearing judge's finding that Terrones has established present learning and ability in the general law by a preponderance of the evidence.

CONCLUSION

For the reasons set forth, we find no abuse of discretion or error of law on the part of the hearing judge and affirm his decision filed in this matter on February 16, 2001.

OBRIEN, P. J.

We concur:

STOVITZ, J.
WATAI, J.

Case No. 00-V-14393

In the Matter of Glenn M. Terrones

Hearing Judge

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