

**STATE BAR COURT
REVIEW DEPARTMENT**

In the Matter of

JOHN C. DEIERLING

A Member of the State Bar

[No. 88-C-15291]

Filed June 4, 1991

SUMMARY

Respondent was convicted of one felony count of possession of marijuana for sale. The Supreme Court placed him on interim suspension from the practice of law pending disposition of the disciplinary proceeding against him. Upon consideration of the facts and circumstances surrounding respondent's conviction, the State Bar Court hearing judge found that respondent's conduct involved moral turpitude, but that disbarment would be an excessive sanction. The hearing judge recommended a four-year stayed suspension, four years probation, and actual suspension for two years (including up to one year credit from the interim suspension) and until respondent showed rehabilitation and fitness to practice under standard 1.4(c)(ii). (Hon. Alan K. Goldhammer, Hearing Judge.)

The examiner requested review, seeking respondent's disbarment. Upon its independent review, the review department held that the hearing judge had properly considered evidence of respondent's 1982 arrest for growing marijuana plants, which had been disposed of by diversion, since respondent had testified voluntarily on the matter and made no objection to the questions. In light of the commercial nature of respondent's marijuana growing, offset by the mitigating evidence of respondent's subsequent rehabilitation from drug and alcohol abuse, the review department concurred with the hearing judge's conclusions that the facts and circumstances surrounding the conviction involved moral turpitude, but that there were sufficient mitigating circumstances to warrant respondent's suspension rather than disbarment. In order to place respondent in the same position with respect to the length of his actual suspension that he would have been in absent a request for review, the review department recommended that respondent be suspended for four years, stayed, with four years of probation and actual suspension for thirty months, retroactive to the effective date of his interim suspension, and until respondent complied with standard 1.4(c)(ii).

COUNSEL FOR PARTIES

For Office of Trials: Hans M. Uthe, Jerome Fishkin

For Respondent: Harry J. Englebright

HEADNOTES

- [1 a, b] **159 Evidence—Miscellaneous**
Respondent's assertion that the hearing judge improperly considered his prior arrest for growing marijuana, the prosecution of which had been diverted, was without merit, where respondent voluntarily testified, with advice of counsel, that he had grown marijuana at the time in question, and where respondent did not object to questions on the subject.
- [2] **159 Evidence—Miscellaneous**
194 Statutes Outside State Bar Act
It is not clear that the statute regarding inadmissibility of evidence regarding diversion proceedings (Penal Code section 1000.5), and related case law, applies in attorney disciplinary proceedings, since such proceedings are conducted in the judicial branch of government by the State Bar Court, acting as an arm of the Supreme Court, and are aimed at assessing the attorney's fitness to practice law. Even if such authorities are applicable, evidence of respondent's arrest which resulted in diversion was properly used to show that respondent had a long history of involvement with marijuana.
- [3 a, b] **1515 Conviction Matters—Nature of Conviction—Drug-Related Crimes**
No Supreme Court opinion has determined that a conviction of possession of marijuana for sale is one that inherently involves moral turpitude; hearing judge's conclusion that such a conviction did inherently involve moral turpitude was in error.
- [4] **164 Proof of Intent**
191 Effect/Relationship of Other Proceedings
1515 Conviction Matters—Nature of Conviction—Drug-Related Crimes
1691 Conviction Cases—Record in Criminal Proceeding
The commercial or distribution aspect of respondent's crime was conclusively established by his conviction of possession of marijuana for sale.
- [5] **1515 Conviction Matters—Nature of Conviction—Drug-Related Crimes**
1523 Conviction Matters—Moral Turpitude—Facts and Circumstances
In matter arising from conviction of possession of marijuana for sale, respondent's role as a principal, his motive of potential financial gain and his awareness of the illegality of his actions demonstrated that moral turpitude was involved in the circumstances surrounding respondent's conviction.
- [6] **801.30 Standards—Effect as Guidelines**
It is important to examine the Standards for Attorney Sanctions for Professional Misconduct as guidelines.
- [7] **801.41 Standards—Deviation From—Justified**
1552.59 Conviction Matters—Standards—Moral Turpitude—Declined to Apply
Where enough mitigating circumstances had been sufficiently established, and were coupled with the lack of extreme seriousness of respondent's offense, the hearing judge correctly concluded that suspension rather than disbarment was the appropriate discipline for a conviction of possession of marijuana for sale, even though the circumstances of the conviction involved moral turpitude.

- [8] **162.20 Proof—Respondent’s Burden**
725.12 Mitigation—Disability/Illness—Found
750.10 Mitigation—Rehabilitation—Found
Although the Supreme Court requires that lawyers’ claims in mitigation based upon substance abuse show adequate evidence of a causal connection between the abuse and misconduct and a meaningful and sustained rehabilitative period, the Court does not require that the respondent’s rehabilitation be complete to qualify as mitigation. Where respondent showed that his marijuana use and alcohol abuse led in part to his criminal activity, and that he had undertaken a program of steady progress toward rehabilitation, and had successfully dealt with his addiction and maintained sobriety, mitigation was properly found.
- [9] **172.20 Discipline—Drug Testing/Treatment**
172.30 Discipline—Alcohol Testing/Treatment
Probation conditions which included regular substance screening were well directed to maintain respondent’s program of rehabilitation from drug use and alcohol abuse and to offer appropriate protection to the public.
- [10] **613.90 Aggravation—Lack of Candor—Bar—Found but Discounted**
While respondent was less than fully candid with the State Bar Court in his lack of explanation of some of the circumstances surrounding his conviction, the hearing judge properly found that respondent’s lapses of candor were not so egregious as to require a finding in aggravation.
- [11] **695 Aggravation—Other—Declined to Find**
While respondent’s criminal offense was surrounded by his possession of firearms, such possession was not a separate aggravating circumstance, where there was no evidence that the firearms were illegal or that they were used in an aggressive or threatening manner.
- [12] **695 Aggravation—Other—Declined to Find**
While attorneys’ illicit conduct involving minors has been viewed critically by the Supreme Court in the past, the presence of marijuana in respondent’s home where his teenage sons resided was not an aggravating factor in the absence of direct evidence that the minors were exposed to illegal conduct or had access to the marijuana.
- [13] **1515 Conviction Matters—Nature of Conviction—Drug-Related Crimes**
Other than one disbarment in a matter involving additional very serious misconduct, marijuana distribution convictions of attorneys have resulted in suspension ranging from no actual suspension to three years stayed suspension and two years actual suspension.
- [14 a, b] **130 Procedure—Procedure on Review**
1549 Conviction Matters—Interim Suspension—Miscellaneous
1552.53 Conviction Matters—Standards—Moral Turpitude—Declined to Apply
Where review department saw no justifiable reason to deviate from hearing judge’s recommendation of suspension in felony conviction matter which had resulted in interim suspension, and effect of examiner’s request for review had been to extend interim suspension, review department believed it appropriate to attempt to place respondent in same position as if examiner had not requested review, by modifying length of suspension and giving increased credit for interim suspension.

- [15] 116 **Procedure—Requirement of Expedited Proceeding**
 135 **Procedure—Rules of Procedure**
 176 **Discipline—Standard 1.4(c)(ii)**
 2403 **Standard 1.4(c)(ii) Proceedings—Expedited**
 2409 **Standard 1.4(c)(ii) Proceedings—Procedural Issues**

Under applicable expedited hearing procedures, a respondent may apply for a hearing pursuant to standard 1.4(c)(ii) up to 150 days before the respondent's actual suspension is set to expire. (Rules 810-826, Trans. Rules Proc. of State Bar.)

- [16] 175 **Discipline—Rule 955**
 1699 **Conviction Cases—Miscellaneous Issues**

Where respondent in conviction matter had been ordered to comply with rule 955, California Rules of Court, at the time of respondent's interim suspension, and that suspension had remained in effect continuously since ordered, review department did not recommend that respondent be ordered to comply again in connection with final imposition of discipline.

ADDITIONAL ANALYSIS

Aggravation

Found

- 541 Bad Faith, Dishonesty
586.11 Harm to Administration of Justice
691 Other

Mitigation

Found

- 791 Other

Discipline

- 1613.10 Stayed Suspension—4 Years
1615.08 Actual Suspension—2 Years
1616.50 Relationship of Actual to Interim Suspension—Full Credit
1617.10 Probation—4 Years

Probation Conditions

- 1023.10 Testing/Treatment—Alcohol
1023.20 Testing/Treatment—Drugs
1024 Ethics Exam/School
1630 Standard 1.4(c)(ii)

OPINION

STOVITZ, J.:

Respondent John C. Deierling was admitted to practice law in California in 1977. He has no prior record of discipline. In 1989, he was convicted of one count of violation of Health and Safety Code section 11359 (possession of marijuana for sale). Effective May 19, 1989, the Supreme Court placed him on interim suspension, since his conviction was of a California felony. (Bus. & Prof. Code, § 6102 (a).)

After referral of his conviction by the Supreme Court, a State Bar Court hearing judge found that the facts and circumstances surrounding respondent's offense involved moral turpitude. The judge recommended a four-year stayed suspension on conditions including probation for that period and actual suspension for the first two years and until respondent demonstrates his rehabilitation and fitness to practice under standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct (Trans. Rules Proc. of State Bar, div. V). The hearing judge also recommended that up to one year of the actual suspension be credited to respondent's interim suspension.

Claiming that the hearing judge's suspension recommendation is inadequate and that disbarment is called for, the examiner has sought our review. He also contends that some mitigating circumstances found by the judge were not sufficiently established and that a number of aggravating circumstances predominate. In contrast, the respondent, although not seeking review, contends that some of his testimony was improperly considered but that the examiner's claims are not well taken with regard to aggravating and mitigating circumstances.

Independently reviewing the record, we have concluded that, with one insignificant exception, the hearing judge's findings of fact are fully correct. In our view, the judge weighed appropriately all miti-

gating and aggravating circumstances to reach a disciplinary result consistent with the balance of factors present and clearly in line with comparable Supreme Court decisions arising from similar offenses. Because we find no reason to disturb the hearing judge's essential findings or recommendation, we adopt the essence of the judge's recommended discipline as if this review had not intervened and extended respondent's interim suspension. Accordingly, we recommend to the Supreme Court that respondent be suspended from the practice of law for four years, that execution of that suspension be stayed on conditions including a four-year probation, and that actual suspension be for a period of thirty months commencing May 19, 1989, and until respondent establishes proof of rehabilitation and fitness to practice under standard 1.4(c)(ii). We also recommend that respondent comply with the other conditions of probation recommended by the hearing judge.

I. PROCEDURAL HISTORY

In January 1989, respondent pled *nolo contendere* in a municipal court of El Dorado County, California, to one count of violating Health and Safety Code section 11359 (possession of marijuana for sale).¹ In May 1989, the Superior Court of El Dorado County suspended imposition of sentence and admitted respondent to three years probation on conditions including six months in county jail and the duty to abstain from alcoholic beverages and any restricted dangerous drugs or narcotics, including marijuana. (Exh. 1.)

In the meantime, the State Bar had transmitted to the Supreme Court the record of respondent's conviction; and, effective May 19, 1989, the Supreme Court suspended respondent until final disposition of this proceeding of because of his California felony conviction. (Bus. & Prof. Code, § 6102 (a).) On October 11, 1989, the high court referred respondent's conviction to the State Bar Court for a hearing, report and recommendation as to whether the facts and

1. Upon respondent's plea, an "armed" allegation under Penal Code section 12022, subdivision (a) was stricken. Dismissed were counts charging respondent with a violation of Health

and Safety Code section 11358 (planting or cultivating marijuana) and Penal Code sections 12025 (carrying a concealed firearm) and 12031 (carrying a loaded firearm). (Exh. 1.)

circumstances surrounding his offense involved moral turpitude or other misconduct warranting discipline. That Supreme Court order gave rise to the proceeding we now review.

II. THE FACTS AND CIRCUMSTANCES SURROUNDING RESPONDENT'S CONVICTION

We agree with the hearing judge's observation (decision, pp. 6, 8-9) that the basic facts of this case are not disputed. With one insignificant exception noted in the following footnote, we adopt all 13 of the judge's "findings of fact."² The findings and supporting facts may be summarized as follows:

Respondent was arrested in 1988 while tending his marijuana plants in a small grove in the El Dorado Forest. Originally, he planted 40 to 70 plants. Using botanical principles to maximize marijuana quality, he ended up with about 25 plants. (Decision, pp. 2-3; R.T. pp. 57-62, 148.) One was seven feet tall. Most of the rest were not fully mature and were three to four feet tall. Expert evidence posited that if a single mature (six- to seven-foot tall) plant were to yield one pound of saleable marijuana plant tops, the street value of each of respondent's plants when mature would be \$1,800 to \$2,200 per pound for a total value of between \$45,000 to \$55,000. (Decision, p. 4; R.T. pp. 104, 124-125.)

When arrested, respondent had a loaded revolver (.357 Colt "Python") in his day pack slung over his back. There was a dispute in the testimony whether the weapon was holstered or not but it was undisputed that respondent never touched the revolver during the arrest and the arrest was peaceful; respondent was cooperative. (Decision, p. 3; R.T. pp. 21, 35-36, 222-224.)

After arrest, a search warrant was executed on respondent's home. His 18-year-old son was there.

Investigating officers found marijuana-growing paraphernalia such as instruction books, seed packages, indoor growing lights and irrigation equipment. They also found scales for weighing marijuana, marijuana seeds and several firearms including a semi-automatic rifle³ and pistol. Respondent's 16-year-old son also lived there but was not home during the search. (Decision, p. 5; R.T. pp. 81, 84-89, 93, 101-102, 134-135.)

There is no evidence and no claim that respondent had ever sold any of the marijuana he was cultivating, but it almost all was still maturing. There is no doubt from the several law enforcement officers who testified that the "crop" respondent was growing was a commercial one. Respondent acknowledged his conviction of possession of marijuana for sale; but other than testifying that he did not have any intention of going into the marijuana growing business, he did not explain what his aims were in growing marijuana. (R.T. pp. 209-210.) Respondent also testified that the guns in his home were for collecting and hunting purposes, that some of the equipment found in his home was for ceramics, not marijuana, and that the scales were for weighing out ammunition for bullets he made for his guns. (*Id.* at pp. 211-214, 221, 232.)

Since his admission in 1977, respondent's law practice was devoted almost entirely to criminal defense matters either as a sole practitioner or in association with others. He had defended persons charged with narcotics law violations and was familiar with those laws as well as the illegality of his own acts in cultivating marijuana. By the time of his arrest, his practice was "doing okay." (Decision, p. 4; R.T. pp. 207, 210-211, 227-228.)

Respondent had used marijuana for many years, first "smoking pot" when he was 13. (Decision, p. 4.) In 1987 and 1988 he was buying marijuana in one-eighth ounce units for between \$25 and \$40 per unit.

2. We modify the fifth line of finding 10 (decision, p. 4, line 20) to find that respondent entered the Other Bar program in October 1988, not 1989.

3. Respondent disputed sharply testimony of a law enforcement officer that this rifle was an "assault" rifle. It is undis-

puted that it was a semi-automatic rifle. (R.T. pp. 101-102, 222.) At the time respondent's house was searched, the rifle was a legal weapon and it was legal to have it in his residence. (R.T. pp. 134-135.)

Sometimes, this quantity would last respondent a week; at other times, if he was really "into smoking," only a day. He described the drug's effects as follows: "It didn't show. I wasn't abusing the drug at that point, at least, I didn't feel that I was abusing it, or didn't realize that I was abusing at that point in time. I restricted it to evenings and weekends. And I couldn't tell myself, I didn't see that it was interfering with my practice of law, and I didn't do anything that would give any outward, I mean I didn't miss appearances, I did all the work I was supposed to do, there weren't any indications like that that I wasn't—I was doing real well, I was doing okay." (R.T. pp. 211-212.)

On direct examination, respondent testified that about 15 years earlier, he grew a single marijuana plant as a "lark" and did not grow any more until 1988. (*Id.* pp. 208-209.) On cross-examination he again testified that these were his only two instances of marijuana growing. When later asked if he had ever been to Woodland (Yolo County), he testified that he had grown marijuana plants there and was arrested for it in 1982. (Decision, p. 4; R.T. p. 230.)

In addition to his long-time marijuana use, respondent testified that he had had occasional bouts with alcohol abuse resulting in an occasional "binge." He never had blackouts or memory loss. While testifying that his marijuana and alcohol usage were sporadic, respondent considered that he was an addict. (Decision, p. 4; R.T. pp. 217-218, 232-233, 236-237.)

Between his 1989 plea and sentencing, respondent completed a 90-day alcohol recovery program at the Sacramento Recovery House (decision, p. 4; exh. B) and since October 1988, he has participated in the Other Bar program for recovering alcoholics. Norwood Grisham, program consultant, who had 15 years of experience counselling or monitoring persons who have abused chemicals, admitted that he never tested respondent nor was he his sponsor but Grisham testified that he checked on respondent "from time-to-time" and that he was still adhering to his program and maintained sobriety. (R.T. pp. 178, 185, 195.)

III. FINDINGS OF FACT AND CONCLUSIONS OF HEARING JUDGE

After making the essential findings of fact about the circumstances surrounding respondent's misconduct, which we have adopted, the hearing judge concluded that respondent's offense and the facts and circumstances surrounding its commission involved moral turpitude.⁴ The hearing judge also found applicable certain portions of the Standards for Attorney Sanctions for Professional Misconduct (Trans. Rules Proc. of State Bar, div. V ["standards"]). He found that respondent's offense was surrounded by bad faith and concealment as an aggravating circumstance. (Standard 1.2(b)(iii).) The judge also found aggravating that respondent's misconduct significantly harmed the administration of justice (standard 1.2(b)(iv)) and that respondent was convicted of a crime involving moral turpitude inherently and in the facts and circumstances. Under standard 3.2, disbarment was required unless compelling mitigating circumstances clearly predominate. (Decision, pp. 5-6.)

In discussing the evidence, the hearing judge noted that respondent, because of his criminal defense law practice, was well aware of the laws prohibiting narcotics cultivation or distribution, that he was a principal in the marijuana cultivation, that respondent's plan to cultivate marijuana was secretive, that weapons were implicated in the offense but only peripherally, that the fact of respondent's conviction as well as the surrounding circumstances showed that it was a modest but unquestionably commercial enterprise; and that respondent's testimony was incredible that he did not intend any commercial use of the marijuana he was growing. (Decision, pp. 7-11.) Despite the serious aspects of respondent's crime and its surrounding circumstances, the hearing judge concluded that respondent's mitigation was compelling and predominating. Therefore, the judge concluded that disbarment would be disproportionately harsh when viewed against relevant decisions of the Supreme Court. (Decision, p. 10.) The judge found it significant that respondent's offense was not committed in the capacity of attorney.

4. See discussion, *post*, p. 560, regarding the judge's conclusion.

ney at law, nor directly related to the practice of law, that the amount of marijuana involved was far less than in other comparable Supreme Court opinions, that respondent did not profit from his illegal acts, that respondent did embark on a program of rehabilitation, albeit as a result of his arrest, and that a measurable period of stayed and actual suspension was necessary to fulfill the primary purposes of imposing discipline including the preservation of public confidence in the legal system. The hearing judge identified the primary factors which led him to conclude that disbarment was too harsh: the relatively small amount of marijuana involved, that respondent's own use of marijuana led to his offense and that he undertook a program of recovery from drug and alcohol abuse. (Decision, pp. 15-16.)

IV. DISCUSSION

A. Respondent Is Not Entitled to a New Hearing Based on His Claim of Prejudice in Admitting Evidence.

[1a] Upon review for the first time respondent asserts that the hearing judge improperly considered respondent's 1982 arrest in Woodland arising out of his having grown marijuana plants there. Since that prosecution had been diverted, respondent contends that any evidence received about it in this State Bar Court hearing was inadmissible and that the hearing judge should either redraft his decision to reflect its elimination from the record or, in the alternative, respondent should be given a new hearing.

[1b] Respondent's claim of error is without merit. At trial, respondent did appear surprised when asked if he had ever been in Woodland and appeared to realize that his answer would contradict his earlier testimony that he had only grown marijuana twice. Before respondent gave testimony about his 1982 cultivation, the examiner asked him twice whether he wanted to consult with his counsel. Not only did he decline to do so, but his counsel advised him to answer one of the questions about this 1982 matter. Before he was asked about his 1982 arrest, he volunteered that he had grown marijuana in 1982 in Woodland. (R.T. p. 230.) Respondent made no objection to his being asked these few questions and the examiner

never introduced any documentary evidence concerning the 1982 arrest.

In support of his claim of error in admitting evidence, respondent cites Penal Code section 1000.5 and *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219. In that case, the court construed Penal Code section 1000.5 and held that disciplinary proceedings before the Board of Medical Quality Assurance ("BMQA") cannot be predicated solely on the record of a diverted arrest after successful completion of diversion. The court noted that BMQA was not barred from using information in the doctor's arrest record to start proceedings before the licensee completed diversion, nor was the board barred from investigating the matter prior to diversion completion to "develop additional information." (*Id.* at pp. 232-233.)

[2] For several reasons, the cited authorities do not aid respondent. First, it is not at all clear that either Penal Code section 1000.5 or the *B.W.* case would apply to this attorney disciplinary proceeding, conducted in the *judicial* branch of government by the State Bar Court acting as an arm of the Supreme Court of California and having as its aim the assessment of an attorney's fitness to practice law. (Cf. *Stratmore v. State Bar* (1975) 14 Cal.3d 887, 891.) It should also be noted that in a relatively recent moral character admissions matter, in assessing whether an applicant for admission to practice law was possessed of good moral character, the Supreme Court recited evidence about several arrests for drug offenses not followed by filed charges or which were dismissed. (*Seide v. State Bar* (1989) 49 Cal.3d 933, 936.) Even if, *arguendo*, the principles of *B.W.* are deemed applicable to this situation, respondent's 1982 arrest was not used as the predicate for any disciplinary proceeding or action. As we recited, *ante*, this proceeding was started based upon respondent's 1989 conviction. Respondent's 1982 arrest was of no consequence in this proceeding. The only significance of the 1982 incident was respondent's voluntary testimony that he had grown marijuana. That fact was only significant to show, together with other facts freely testified to by respondent, that he had a long history of involvement with marijuana prior to his unchallenged 1989 conviction which started this disciplinary proceeding.

B. The Facts and Circumstances Surrounding Respondent's Conviction Involve Moral Turpitude.

[3a] Although we do correct the hearing judge's conclusion in his decision that respondent's conviction inherently involved moral turpitude,⁵ [3b - see fn. 5] we adopt the judge's conclusion that the facts and circumstances surrounding that conviction do involve moral turpitude. [4] There can be no dispute as to the commercial or distribution aspect of respondent's crime. Not only was it conclusively established by his conviction (see Bus. & Prof. Code, § 6101), but on review respondent concedes the commercial potential of his activity. [5] Guided by the Supreme Court decisions in similar cases, we conclude that the circumstances showing respondent's role as a principal, his motive of potential financial gain and his awareness of the illegality of his actions demonstrate the correctness of the hearing judge's conclusion that moral turpitude was involved in the circumstances surrounding respondent's conviction. (See *In re Possino* (1984) 37 Cal.3d 163, 168, fn. 3; *In re Cohen, supra*, 11 Cal.3d at p. 421.) Significantly, respondent does not dispute that his conviction involved moral turpitude in its surrounding circumstances and did not seek review before us.

C. A Balanced Consideration of All Relevant Factors Leads to Suspension Rather Than Disbarment as the Appropriate Degree of Discipline, as the Hearing Judge Concluded.

In its essence, the examiner's position is that respondent's conviction warrants disbarment, that any mitigating circumstances are not sufficiently established and that aggravating circumstances predominate. We disagree, for we believe that the examiner has failed to focus sufficiently on the actions of our Supreme Court in specific cases involving marijuana distribution offenses.

[6] We acknowledge the importance of examining the standards as guidelines. (See *Harford v. State Bar* (1990) 52 Cal.3d 93, 100.) [7] Most applicable is standard 3.2, providing that final conviction of a member of a crime involving moral turpitude in the facts and circumstances shall result in disbarment unless the most compelling mitigating circumstances clearly predominate, in which case, not less than a two-year actual suspension shall be imposed. Review of this record supports the hearing judge's determination that enough mitigating circumstances have been sufficiently established, when coupled with the lack of extreme seriousness of respondent's offense, to warrant suspension rather than disbarment as the appropriate discipline. The examiner points to several factors to attempt to show that aggravation, not mitigation, preponderates. We shall deal with each factor in turn.

[8] The examiner claims that respondent did not show convincingly that his misconduct was attributed to his addiction or that he is sufficiently rehabilitated. While our Supreme Court does require lawyers' claims in mitigation based on substance abuse to show adequate evidence of a causal connection between the abuse and misconduct and a meaningful and sustained rehabilitative period (e.g., *Porter v. State Bar* (1990) 52 Cal.3d 518, 528; *Harford v. State Bar, supra*, 52 Cal.3d at p. 101), the Court does not require that the respondent's rehabilitation be complete to qualify as mitigating. Here, respondent presented convincing, uncontradicted testimony showing that his long-time marijuana use, and his alcohol abuse at least in part led to his marijuana cultivation. Equally uncontradicted was his testimony that he has successfully dealt with his addiction to date, maintaining sobriety. Whatever may have been the motivation for respondent's rehabilitative steps, he has undertaken a program of steady progress toward rehabilitation. Although witness Grisham was not respondent's counsellor, he checked up on him periodically and believed he was main-

5. [3b] We regard as more of an inadvertent error the judge's conclusion that respondent's conviction inherently involved moral turpitude. The Supreme Court order referring this matter to the State Bar Court did not so determine and no Supreme Court opinion in other cases involving the same or

comparable marijuana offenses has so determined. (*In re Kreamer* (1975) 14 Cal.3d 524, 527, 530; *In re Cohen* (1974) 11 Cal.3d 416, 421; *In re Higbie* (1972) 6 Cal.3d 562, 569-570.)

taining sobriety. As noted, *ante*, Grisham had extensive experience observing persons addicted to chemicals. Respondent's testimony is buttressed further by the documentary evidence that he completed a three-month resident alcohol abuse program in Sacramento. (Exh. B.) [9] Moreover, the hearing judge's recommended probation conditions, including regular substance screening, which we adopt, seem well directed to maintain respondent's program of rehabilitation and offer appropriate protection to the public.

[10] Next, the examiner contends that respondent was not candid in these proceedings. In these circumstances, respondent cannot be overly faulted for not initially revealing his 1982 marijuana growing. As a criminal defense lawyer, he may have thought he was not required to reveal it since it ended in a diverted prosecution and he seemed momentarily surprised when the issue came up. If there was any lack of candor, it centered around his lack of explanation of what he planned to do with a grove which started with 40 to 70 marijuana plants. The hearing judge struck at the heart of the matter when he characterized respondent as "more childish and immature than dishonest or venal. While [r]espondent was less than fully candid with the Court, his lapses of candor were not so egregious as to require a finding that Standard 1.2(b)(vi) applied." (Decision, p. 14.)

[11] The examiner points to respondent's possession of firearms as an aggravating circumstance. While respondent's offense was indeed surrounded by his firearm possession, there is no evidence whatever that those firearms were illegal or used in an aggressive or threatening manner. The hearing judge correctly concluded that the circumstance that respondent was armed spoke more of the commercial nature of his marijuana activity than as a separate aggravating circumstance. (See decision, pp. 10, 15.)

[12] The examiner also seeks to aggravate respondent's offense by contending that it showed his exposure of minor children to illicit conduct. An attorney's illicit conduct involving minors has been viewed quite critically by our Supreme Court in the

past. (E.g., *In re Duggan* (1976) 17 Cal.3d 416, 420; *In re Plotner* (1971) 5 Cal.3d 714, 727.) However, here there is no direct evidence that minors were exposed to any illegal conduct. Respondent's son who was at home at the time of the search was 18 and there is no proof that he or respondent's other son had access to any marijuana used by respondent. While the hearing judge did not expressly deal with this factor, he did note that respondent was the sole principal since "no one else was implicated." (Decision, p. 9.)

[13] The only case of which we are aware resulting in disbarment following an attorney's conviction of marijuana distribution activities was *In re Possino, supra*, 37 Cal.3d 163. However, the facts and circumstances of that offense were far more serious than the record before us. Possino offered to sell 350 pounds of marijuana and, in addition, offered to buy sizable amounts of cocaine and sell large amounts of stolen securities. His offense was aggravated by his improper approach to a juror during his criminal trial. Other marijuana distribution convictions of attorneys have resulted in suspension ranging from no actual suspension for an attorney who, on two instances, had distributed large quantities of marijuana and had presented undisputed evidence concerning his rehabilitation and past and present good character (*In re Kreamer, supra*, 14 Cal.3d 524), to three years stayed suspension and two years actual suspension for an attorney who knowingly assisted another in transporting a large quantity of marijuana and who also presented favorable character evidence. (*In re Cohen, supra*, 11 Cal.3d 416.)

Although the foregoing cases were all decided prior to the standards, we believe that the Supreme Court would not take a materially different approach to the circumstances surrounding respondent's conviction. In that regard, we take note of *In re Leardo* (1991) 53 Cal.3d 1, where the Court deemed adequate a suspension completely retroactive to a lengthy interim suspension for an attorney's possession of heroin and cocaine with intent to distribute, fully considering the strong evidence of rehabilitation in that record, as well as Leardo's addiction to prescribed medication which led ultimately to his illegal drug abuse.

[14a] In the matter before us, we conclude that the hearing judge appropriately weighed all relevant factors and did so in a most careful, thorough and balanced manner. We see no justifiable reason to deviate from the judge's essential recommendation which fully reflects the seriousness of respondent's offense. Because that recommendation is for suspension and because respondent's felony conviction resulted in his interim suspension, the necessary effect of the examiner's request for review has been to extend that interim suspension. We estimate that if the examiner had not sought review and that if the Supreme Court had adopted the hearing judge's decision without any petition for review filed in the Supreme Court, the Supreme Court would likely have acted by January 1991 and respondent's actual suspension would have been set to expire as early as January 1992 if respondent had, by that time, made the showing under standard 1.4(c)(ii) required in the hearing judge's decision filed August 6, 1990.

[14b] We believe it appropriate in this particular matter to attempt, as much as possible, to place the respondent in relatively the same position as he would have been had the examiner not requested review. We therefore recommend that respondent be suspended from the practice of law for four years, that execution of that suspension be stayed, and that respondent be placed on probation for a period of four years upon conditions including that he be actually suspended from practice for a period of 30 months commencing May 19, 1989, and until he makes a satisfactory showing of his rehabilitation and fitness under standard 1.4(c)(ii).⁶ [15] Under the expedited hearing procedures adopted by the Board of Governors, respondent may apply for a hearing to demonstrate his rehabilitation and fitness up to 150 days before his actual suspension is set to expire, should the Supreme Court follow this recommendation. (Rules 810-826, Trans. Rules Proc. of State Bar.)

V. FORMAL RECOMMENDATION

For the foregoing reasons, we recommend that respondent, John C. Deierling, be suspended from the practice of law in the State of California for a period of four years, that the execution of such suspension be stayed, and that respondent be placed on probation for a period of four years upon the following conditions:

1. Respondent shall be actually suspended from the practice of law in California for a period of 30 months commencing May 19, 1989, the effective date of his interim suspension and until he has shown proof satisfactory to the State Bar Court of his rehabilitation and fitness to practice pursuant to standard 1.4(c)(ii).

2. Respondent shall comply with the provisions of paragraphs 2 through 15 of the conditions recommended by the hearing judge and contained on pages 18 through 22 of his decision.

We also recommend to the Supreme Court that respondent be ordered to take and pass the California Professional Responsibility Examination administered by the State Bar of California Committee of Bar Examiners within one (1) year from the effective date of the Supreme Court's order. [16] We do not recommend that respondent be ordered to again comply with the provisions of rule 955, California Rules of Court, as respondent was so ordered at the time of his interim suspension and that suspension has remained in effect continuously since ordered.

We concur:

PEARLMAN, P.J.
NORIAN, J.

6. Although the hearing judge recommended a two-year actual suspension as a probation condition, our recommendation of a 30-month actual suspension is not intended as increased discipline. Since, due to this intervening review, our recom-

mendation affords greater credit for respondent's interim suspension than did that of the hearing judge, our recommendation proposes the same practical length of actual suspension as did that of the hearing judge.