

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
MICHAEL S. D’ALESSIO : ORDER OF REVOCATION
_____ : DOCKET NO: 1819-240

At its meeting of August 1, 2019, the State Board of Examiners (Board) reviewed information it received regarding Michael S. D’Alessio. The Monmouth County Prosecutor’s Office and the Office of Student Protection (OSP) provided information to the State Board of Examiners (Board) regarding D’Alessio.

On June 10, 2019, D’Alessio received an Order of Postponement and entered a Pre-Trial Intervention (PTI) program for a period of 12 months following entry of an Accusation for Possession of a Controlled Dangerous Substance (CDS), suboxone (3rd degree). The Accusation was the result of several other charges in which D’Alessio was alleged to have engaged in conspiracy to distribute CDS within 500 feet of a public housing unit, knowingly distribute, dispense or possess CDS with intent to distribute within 1,000 feet of school property, harm to a child, and possession of oxycodone, amphetamine and alprazolam.

These charges were the result of an investigation into the sale of prescription pain medication. The investigation revealed that individual(s) associated with D’Alessio obtained medication from the Acme pharmacy and then returned to the parking lot outside the pharmacy. The medication was sold in the parking lot out of the vehicle driven by D’Alessio. D’Alessio had his child in the car at the time of the investigation and allegedly when the sale(s) were made; further D’Alessio’s credit card was used to purchase the prescription medication.

D’Alessio currently holds a Teacher of Handicapped and Teacher of Elementary Grades K-8 Certificate of Eligibility with Advanced Standing. After reviewing the above information, at

its September 19, 2019 meeting, the Board voted to issue an Order to Show Cause (OSC) to D'Alessio as to why his certificates should not be revoked.

The Board sent D'Alessio the OSC by regular and certified mail on September 23, 2019. The OSC provided that D'Alessio must file an Answer within 30 days. D'Alessio responded on October 21, 2019. In his Answer, D'Alessio admitted that he received pretrial intervention (PTI) but generally denied the allegations that formed the basis for the criminal charges. (Answer, ¶¶ 3-4). D'Alessio indicated that he was “in the wrong place at the wrong time.” *Id.* at ¶ 4. He further states that he would not have agreed to enter PTI if he realized it would jeopardize his educator certificates. *Id.* at ¶ 3. He believes that his certificates should not be revoked because he has dedicated his life to helping the special education community. *Id.* at ¶ 6. He has been back to teaching for two years without an incident. *Id.*

Since there were material facts in dispute, on October 31, 2019, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. On February 15, 2022, Administrative Law Judge (ALJ) Joseph A. Ascione, issued an Initial Decision in the case. *In the Matter of the Certificates of Michael D'Alessio, Jr.*, Dkt. No. EDE 15392-19 (Initial Decision, February 15, 2022).

After reviewing the record, ALJ Ascione found that D'Alessio's actions on October 21, 2015 “clearly demonstrate conduct that is unbecoming, or just cause for a revocation of the certificates.” (Initial Decision, slip op. at 10.) Specifically, ALJ Ascione found that D'Alessio's arrest for possession of CDS is a serious offense and that while D'Alessio denies involvement in the possession and distribution of CDS, he facilitated the actions of his co-defendant (McNamara) in the matter. *Id.* at p. 11. Further, ALJ Ascione found that D'Alessio's actions display “a clear lack of judgment.” *Id.* In conclusion, ALJ Ascione found that the Board met its burden of proof

and that D'Alessio's conduct constitutes unbecoming conduct and just cause to warrant the revocation of his certificates. *Id.* at p. 12.

D'Alessio filed Exceptions and the Deputy Attorney General (DAG or Deputy) representing the Board filed a reply to the Exceptions.

In his Exceptions, D'Alessio argued that the ALJ's finding that D'Alessio may have unknowingly engaged in the conduct was in conflict with his ultimate findings that D'Alessio knowingly engaged in unbecoming conduct that warrants revocation of his certificates. (Exceptions at p. 2). The crux of the matter is the nature of D'Alessio's involvement in the CDS transaction. D'Alessio argues that the ALJ's determination as to that fact is inconclusive and therefore it confirms that the Board did not meet its burden of proof. *Id.*

D'Alessio further argues that ALJ Ascione's determination that D'Alessio should have known of Mr. McNamara's intent to distribute is belied by the fact that D'Alessio testified that from his perspective he was helping an employee of his family business by taking him to a legitimate pharmacist in a familiar town. *Id.*

Additionally, several witnesses testified that D'Alessio's relationship with McNamara was more of a an employee relationship than a friendship. *Id.* D'Alessio states that the testimony does not indicate that he was in the habit of socializing with McNamara. *Id.* at p. 3. Thus, ALJ's finding that D'Alessio should have known of McNamara's addiction is incorrect.

Moreover, D'Alessio challenges the ALJ's determination as to McNamara's credibility when he testified. Additionally, D'Alessio takes exception to the ALJ's finding that his past and present successful employment with Middletown Board of Education did not mitigate the penalty. *Id.* at p. 5. D'Alessio further takes exception to ALJ Ascione's characterization of D'Alessio's

agitated state during his testimony and then using that to determine that D'Alessio's testimony was less than truthful. *Id.*

The DAG assigned to the matter argued that the initial decision should be affirmed because it was not arbitrary or capricious and is supported by credible evidence in the record. *See Reply to Exceptions* at p. 8. She further states that the ALJ correctly assessed witness credibility. ALJ Ascione correctly noted several contradictions in D'Alessio's testimony and noted his agitated state during his testimony. *Id.* at p. 9.

The DAG further stated that the ALJ's decision cites credible testimony to support the finding that D'Alessio had a lifelong familiarity with McNamara, that D'Alessio's card was used to purchase the CDS, that Suboxone was found in D'Alessio's wallet, and that he did not inquire as to why he was being arrested. *Id.* at p. 11. Accordingly, the record supports the ALJ's finding that D'Alessio knew or should have known of McNamara's addiction and should have known that he was involved in the possession and distribution of CDS. *Id.*

Finally, the DAG argued that D'Alessio incorrectly stated that the ALJ disregarded his past and present employment. Rather, the ALJ credited testimony and noted that D'Alessio was able to perform his teaching duties well. *Id.* at p. 15. The record reflects that the ALJ considered this information but "simply found it unconvincing in light of Respondent's reprehensible conduct." *Id.*

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of May 19, 2022, the Board reviewed the Initial Decision, Exceptions and Reply to Exceptions. After full and fair consideration of the Decision and submissions, the Board voted to adopt the Initial Decision.

“Teachers ... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.” *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings.

As noted above, after assessing the evidence and credibility of the witnesses, ALJ Ascione concluded that D'Alessio's testimony as to the nature/significance of his relationship with McNamara was “less than truthful.” *See* Initial Decision at p. 8. ALJ Ascione determined that D'Alessio's denial of McNamara's drug addiction was "less than credible" given McNamara's closeness to D'Alessio's family and business making "the absence of that knowledge implausible." *Id.* He also found that testimony from D'Alessio's coworker was a blanket opinion and based upon this, the Board finds no cause to overturn ALJ Ascione's credibility assessment and therefore his findings of fact.

Moreover, the Board is also unpersuaded by D'Alessio's argument that his current and former employment history should mitigate the penalty here. The ALJ assessed the credibility of the related testimony here and deemed that it does not outweigh the egregiousness of D'Alessio's conduct. *Id.* at p. 11. The Board finds no cause to overturn this finding.

After reviewing the entire record, the Board agrees with the ALJ's assessment regarding D'Alessio's unbecoming conduct and agrees that a revocation of his certificates is appropriate.

Accordingly, on May 19, 2022, the Board voted to adopt the Initial Decision and ordered revocation of D'Alessio's certificates. On this 30th day of June 2022, the Board formally adopted its written decision to adopt the Initial Decision in this matter and it is therefore ORDERED that Michael D'Alessio's Teacher of Handicapped and Teacher of Elementary Grades K-8 Certificate

of Eligibility with Advanced Standing is hereby REVOKED, effective immediately. It is further ordered that D'Alessio return his certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

Date of Mailing:
via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.