

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE APPLICATION FOR	:	STATE BOARD OF EXAMINERS
CERTIFICATION AFTER	:	
REVOCATION	:	DOCKET NO. 0809-104
OF	:	
NICHOLAS ARMINIO	:	
_____	:	

At its meeting of September 11, 2008, the State Board of Examiners reviewed an application submitted by Nicholas Arminio requesting certification as a Teacher of Health and Physical Education. Arminio had previously held that certification, but his certificate was revoked in June 1998. Arminio had agreed to surrender his original certificate as a condition of entrance into a Pre-Trial Intervention (PTI) program. Arminio had been charged with two counts of criminal sexual conduct and official misconduct in his capacity as a physical education instructor.

The Board of Examiners had revoked Arminio’s certificate on June 18, 1998, because it was a condition of his entrance into PTI that he no longer have access to children as a teacher. *In the Matter of the License of Nicholas Arminio*, Docket No. 310-06/95-154 (Bd. of Examiners, June 18, 1998). The Board of Examiners found it persuasive that the Ocean County Prosecutor, who had knowledge of the facts underlying the indictment, required Arminio to give up his right to teach in this state in order to avoid criminal prosecution. *Id.* at 4. In fact, the Prosecutor sought the Board of Examiners’ cooperation in ensuring that Arminio was “stricken from the roles of certified teachers in the State of New Jersey.” Letter from Ocean County Supervising Assistant Prosecutor Steven M. Janosko to State Board of Examiners, dated May 1, 1995. Moreover, since Arminio had never responded to the allegations in the Order to Show Cause, the

Board did not have the benefit of his views regarding his conduct. *In the Matter of the License of Nicholas Arminio, supra* at 3-4.

Arminio previously applied for certification after revocation in 1999, but the Board of Examiners denied that application. *In the Matter of the Certification of Nicholas Arminio*, Dkt. No. 001-05/09 (Bd. of Examiners, May 13, 1999.) In a decision dated May 13, 1999, the Board of Examiners determined that Arminio had not adequately demonstrated rehabilitation from the conduct that had led to the initial revocation of his certificate. *Id.* at 2. The Board found that Arminio did not disclose “what led the Ocean County Prosecutor to ask that he be permanently barred from the teaching profession.” *Ibid.* The Board also concluded that Arminio was less than candid with his psychologist when he indicated that his license had been revoked without warning and that the Board “had to revoke’ his certificate. *Id.* at 2-3.

Arminio appealed the Board’s decision to the Commissioner of Education. The Commissioner transmitted the case to the Office of Administrative Law (OAL) and after a lengthy hearing, the Administrative Law Judge (ALJ) determined that Arminio had surrendered his teaching certificate as a condition of his entry into PTI the second time and had falsely indicated on his Maryland teaching license application that his license had never been revoked in any state and that he had never resigned from a teaching position in the face of misconduct charges. *Arminio v. N.J. State Bd. of Examiners*, OAL DKT. No. EDU 10090-99 at 21, 25 (Initial Decision, September 18, 2001.) Of critical importance, the ALJ determined that Arminio had, in fact, engaged in inappropriate behavior of a sexual nature with former students and further found that the student witnesses were credible while Arminio was not. Initial Decision, slip op. at 22-23. Accordingly, the ALJ recommended dismissing Arminio’s application for certification after revocation with prejudice. Initial Decision, slip op. at 26. The Commissioner

adopted the ALJ's decision and gave deference to the ALJ's credibility determinations concluding that "the findings of fact adduced by the ALJ had sufficient basis in the record." *Arminio v. N.J. State Bd. of Examiners*, Dkt. No. 314-10/99 at 43 (Commissioner's Decision, November 5, 2001.)

Arminio is once again seeking certification after revocation. *N.J.A.C. 6A:9-17.10*, which governs applications for certification after revocation, provides:

(a) A certificate that has been revoked for any of the grounds set forth in this chapter shall not be reinstated. An individual who has had a certificate revoked may file an application for a new certificate with the Board of Examiners.

(b) The Board of Examiners shall not issue a new certificate to a candidate whose certificate(s) has been revoked unless the following conditions are met:

1. The candidate shall satisfy all criteria for the issuance of the certificate that are in effect at the time of the application for the new certificate;
2. At least four years shall have passed since the effective date of the revocation of the previous certificate;
3. The candidate shall have provided evidence demonstrating rehabilitation for the unbecoming conduct, incompetence, or other cause for the revocation;
4. If the basis for the revocation was the conviction of a crime that is not disqualifying under N.J.S.A. 18A:6-7.1 et seq., the candidate shall have submitted evidence to the Board of Examiners that he or she has been fully rehabilitated in accord with the factors set forth in N.J.S.A. 2A:168A-2 and that issuing a certificate to the candidate would not be detrimental to the public welfare;
5. The candidate shall have complied with all conditions imposed by the order of revocation; and
6. If the revocation arose from a criminal matter involving the candidate, the candidate shall have provided evidence that he or she has satisfied any conditions imposed by the court, probation, plea bargain agreement or any other entity.

(c) Notwithstanding the provisions of (b) above, the Board of Examiners shall not issue a new certificate to any candidate who is:

1. Ordered to forfeit certification as part of a settlement in a tenure or criminal proceeding;
2. Barred from teaching again in the State of New Jersey by order of a court of competent jurisdiction;
3. Ordered to forfeit certification as part of a plea bargain;
4. Ordered to forfeit certification as a condition for entrance into a pre-trial intervention program as set forth in Rule 3.28 of the New Jersey Court Rules;
5. Ordered to forfeit certification pursuant to a sentence imposed in a criminal proceeding;
6. Barred from teaching for any reason; or
7. Relinquishing his or her certificate pursuant to N.J.A.C. 6A:9-17.11.

Of particular relevance to Arminio's current application is subsection (c)4, which provides that the Board of Examiners shall not issue a certificate to an individual after revocation when that candidate was ordered to forfeit certification as a condition for entry into PTI. In Arminio's case, despite his vociferous claims to the contrary, there can be no dispute that the record shows that he was required to forfeit his certificate when he first entered PTI. Moreover, in Arminio's previous challenge to this Board's denial of his certification request, both the ALJ and the Commissioner found that he agreed to the same requirement when he re-entered the PTI program after withdrawing. In light of that determination, the Board of Examiners need look no further in deciding this case.

However, even assuming that Arminio is not barred from applying for certification due to the circumstances of his previous revocation, nothing in the record before us convinces the Board that Arminio has met his burden of proving rehabilitation. Pursuant to *N.J.A.C. 6A:9-17.10*, Arminio must provide information to this tribunal as to the circumstances leading to the revocation of his prior certificate and demonstrate rehabilitation that warrants the issuance of a new one. In determining whether Arminio has been rehabilitated, the Board finds instructive the factors listed in the Rehabilitated Convicted Offenders Act, *N.J.S.A. 2A:168A-1 et seq.*

Pursuant to that Act, an applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business cannot be disqualified or discriminated against based upon a prior conviction unless the “conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought.” *N.J.S.A. 2A:168A-2*. In order to make that determination, the licensing authority looks at several factors:

- a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
- b. Nature and seriousness of the crime;
- c. Circumstances under which the crime occurred;
- d. Date of the crime;
- e. Age of the person when the crime was committed;
- f. Whether the crime was an isolated or repeated incident;
- g. Social conditions which may have contributed to the crime;
- h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional

academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision. *Ibid.*

Looking at both the statutory criteria and the requirements of *N.J.A.C. 6A:9-17.10*, it is clear that Arminio is not a viable candidate for certification.

After a thorough review of Arminio's submissions, as well as the testimony he presented to the Board, the Board of Examiners determines that he has not adequately demonstrated rehabilitation. Arminio has provided extensive letters of reference as to both his character and employment ethic. In addition, he has submitted a petition with several hundred signatures from many individuals, including his former students and athletes he coached in Maryland. While the amount of time Arminio has obviously spent amassing character references is impressive, it belies one salient fact: he has never expressed remorse or accepted responsibility for his actions in inappropriately touching several female students so many years ago. Rather his submissions and testimony before the Board are a litany of blame ascribed to others for the circumstances that have befallen him. As this Board noted in its prior denial of his application: "The tenor of Arminio's submissions portrays him as the victim, while ignoring the effect his actions had on the real victim, his student." *In the Matter of the Certification of Nicholas Arminio*, Dkt. No. 001-05/09 at 2-3 (Bd. of Examiners, May 13, 1999.)

Clearly, Arminio cannot lay claim to being a role model for students. While some of Arminio's student-athletes from Maryland may attest to what a wonderful job he did as a football coach, those same students would likely feel betrayed if they knew he falsified his application in order to obtain a teaching position there. Nothing has changed since his first application for certification after revocation other than the passage of time and the fact that he lost his

certification in Maryland for his “lack of candor.” Arminio was not fit to teach in New Jersey when his certificate was revoked in 1998 and he is not fit to teach here now. Absent a demonstration of compliance with *N.J.A.C. 6A:9-17.10(b)*’s requirements, this Board finds no basis upon which to overturn that determination.

Accordingly, for the foregoing reasons, on March 31, 2009, the Board of Examiners voted to deny Nicholas Arminio’s application for certification as a Teacher of Health and Physical Education after revocation. On this 11th day of May 2009 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the application of Nicholas Arminio for certification after revocation is denied effective immediately.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing:

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A. 18A:6-9*.

RRH:MZ:nicholasarminio