

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF TRANSPORTATION  
**UNITED STATES COAST GUARD**

---

UNITED STATES COAST GUARD

Complainant

vs.

DEREK A. REYNOLDS,

Respondent.

---

Docket Number CG S&R 00-0392  
CG Case No. 1739980

**ORDER OF REVOCATION**

**Issued : November 25, 2002**

**Issued by: Joseph N. Ingolia, Chief Administrative Law Judge**

**For the Respondent:**  
**Thomas M. Russo, Esq.**

**For the Coast Guard:**  
**LT. Mark Bottiglieri**  
**LTJG Connie Williamson**

## I. PRELIMINARY

On June 27, 2001, the Undersigned issued an Order Granting Motion for Continuance and Requirements of Proof of Cure Enumerated (Order) in which the Respondent, Derek A. Reynolds, Merchant Mariner's License, No. 913045 "and all other documents and certificates issued to the Respondent," were REVOKED. The revocation was STAYED until September 30, 2002, to allow the Respondent the opportunity to complete "cure" in accordance with the SWEENEY requirements enumerated in the Order.

On June 19, 2002, an Investigating Officer (I.O.) for U.S.C.G., Activities New York filed a Motion to Revoke (Motion) seeking outright revocation of the Respondent's license alleging that the Respondent had been using his revoked license for employment as a deckhand and captain on board the uninspected towing vessel, the RACHEL MARIE. On July 22, 2002, the Respondent filed a timely Memorandum in Opposition to Motion to Revoke denying that he had worked under his revoked license or in any "licensed capacity contrary to the Court's [June 27, 2001] Order." In addition, the Respondent stated that he was attempting to complete his "cure" requirements but for "for financial reasons has been unable to pay the medical and expert fees in order to have the appropriate evidence brought before the Court." The Respondent presented a copy of a letter from South Oaks Hospital stating that Mr. Reynolds had been discharged from an outpatient program following evaluation and monitoring. The Respondent then moved to

dismiss the Coast Guard's Motion to Revoke or in the alternative set a hearing to allow the Respondent an opportunity to "fully explain the nature his part-time employment."

On August 15, 2002, a hearing was set to convene on October 1, 2002 at the Jacob Javits Federal Building, 26 Federal Plaza, Courtroom 238, New York, New York. On September 24, 2002, this matter was continued by unopposed request of the Respondent to November 14, 2002. The parties were later notified of the specific courtroom by Notice Confirming Location of S&R Hearing dated November 5, 2002.

On November 14, 2002, the hearing convened as scheduled. However, prior to the commencement of the hearing, the Respondent requested a pre-hearing conference with the Undersigned and the Coast Guard stating that a hearing was not required. During the pre-hearing conference, the Respondent admitted that he had been working under his revoked license but that he sought leniency due to special circumstances regarding his personal and financial conditions. Furthermore, the Respondent expressed the desire to complete the terms of his cure requirements so that he could eventually return to work as a licensed mariner.

## **II. DISCUSSION**

The Respondent admits that he has worked under his revoked license in contravention of my June 27, 2001 Order. That being so, the only clear course is to order the OUTRIGHT REVOCATION of the Respondent's Merchant Mariner's License

(No. 913045). However, it is noted that the Respondent expressed the desire to successfully demonstrate cure and return to work as a licensed mariner. In that effort, the Respondent has successfully completed a program of evaluation and monitoring from South Oaks Hospital. With that in mind, the Respondent was instructed that he could continue the cure process outlined in my June 27, 2001 Order and upon successful completion, request to have this matter reopened pursuant to 33 CFR § 20.904, Reopening.

The procedures to reopen under § 20.904 (e)(1) state, “At any time, a party may file a petition to reopen with the Docketing Center for the ALJ to rescind any order suspending or revoking a merchant mariner’s license ....” In addition, § 904(f) provides, “Three years or less after an S&R proceeding has resulted in revocation of a license, certificate, or document, the Respondent may file a motion for reopening of the proceeding to modify the order of revocation with the ALJ Docketing Center. (f)(1) Any motion to reopen the record must clearly state why the basis for the order of revocation is no longer valid and how the issuance of a new license, certificate, or document, is compatible with the requirement of good discipline and safety at sea.” A copy of 33 CFR § 20.904 is attached to this order.

The pertinent requirements for the Respondent to successfully demonstrate cure as enumerated in my June 27, 2001 Order are as follows:

Respondent is to successfully complete a drug rehabilitation program that establishes that the Respondent is drug-free and the risk of Respondent's subsequent use of dangerous drugs is sufficiently low to justify a return to work.

Respondent must:

- (1) provide adequate evidence of successful completion of all elements of the rehabilitation and drug testing programs;
- (2) enroll in a drug rehabilitation program certified by a governmental agency or accepted by an independent professional association;
- (3) attend a substance abuse monitoring program (such as AA/NA) for a minimum period of one-year following successful completion of the rehabilitation program;
- (4) participate in a random, unannounced drug-testing program for a minimum period of one-year following the successful completion of the rehabilitation program. During the drug-testing program, the Respondent must take at least 6 random drug tests conducted in accordance with Department of Transportation procedures found in Title 49, Code of Federal Regulations (CFR) Part 40.
- (5) file a copy of the Medical Review Officer's (MRO) determination that the Respondent is drug-free and that the risk of Respondent's subsequent use of dangerous drugs is sufficiently low to justify return to work. This MRO must sign this determination (certification letter to return to work). The name and address of the MRO is as follows:

David M. Katsuyama, MD  
c/o Greystone Health Sciences Corporation.  
7777 Alvarado Rd., Suite 606  
La Mesa, CA 91941  
Phone: 800 666-3791  
619 698-0105  
619 698-0198

- (6) be subject to increased, unannounced testing for a period of up to 60 months in accordance with 46 CFR 16.37(d). The MRO will determine the period and frequency of testing.
- (7) pay the expenses for this rehabilitation program;
- (8) deposit all Coast Guard-issued licenses, certificates, and/or documents with Activities New York for the duration of the entire rehabilitation program including the initial post-treatment monitoring period;
- (9) advise the Investigation Department at Activities New York of any change of address and/or telephone number by mail; and
- (10) send filings and evidence of successful completion to the Investigating Officer at the following address:

Commander  
U.S. Coast Guard Activities New York  
Attn: Investigations Department  
212 Coast Guard Drive  
Staten Island, NY 10305

As discussed in the pre-hearing conference, the Respondent indicated that he no longer resides in New York and has moved to Florida. As such, Activities New York will coordinate as necessary, with the local Marine Safety Office for the Respondent's Florida residence to facilitate the requirements for the completion of cure. Furthermore,

the parties upon mutual agreement may use a substitute MRO in this matter. If the parties cannot agree to a substitute the ALJ will approve a substitute MRO.

### **III. ORDER**

**IT IS HEREBY ORDERED** that the Respondent's Merchant Mariner's License, No. 913045 and all other documents and certificates issued to the Respondent, DEREK A. REYNOLDS, are **REVOKED OUTRIGHT**.

The parties are **HEREBY NOTIFIED** that they may file a notice of appeal from this Order within thirty days (30) upon issuance. If neither party files an appeal pursuant to 33 C.F.R. Subpart J within the thirty (30) day period, this Order will constitute final Coast Guard action. An appeal notice, if any, shall be served on all parties and filed with: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, Maryland 21202-4022, phone number (410) 962-7434, fax number (410) 962-1742, AND the Commander, U.S. Coast Guard, Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305.

Each party appealing this Order has sixty days (60) following the issuance of this Order to file an appellate brief. An appellate brief shall be served on all parties and filed with: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, Maryland 21202-4022, phone

number (410) 962-7434, fax number (410) 962-1742, AND the Commander, U.S. Coast Guard, Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305.

The rules and procedures for appellate review are found in 33 C.F.R. Part 20, Subpart J, specifically, §§ 20.1001–1103. A copy of Subpart J has been provided to the Respondent as part of the service of this order.

---

JOSEPH N. INGOLIA  
Chief Administrative Law Judge

Done and dated on this \_\_\_\_ of November, 2002  
Baltimore, Maryland