

Municipal Client Alert
February 2019

**Massachusetts Appeals Court Upholds Natick Chief of Police's Unsuitability
Determination for License to Carry Firearms**

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In a recent decision, *Nichols v. Chief of Police of Natick*, the Massachusetts Appeals Court ("Court") ruled in favor of MHTL's client, concluding that the Superior Court improperly vacated a determination by the Natick Chief of Police that an applicant was unsuitable for a license to carry firearms ("LTC"). David DeLuca, a Partner at MHTL, handled the case in each court. The applicant had an extensive history of prescription drug abuse, fraud, and forgery resulting in 468 criminal charges in less than three years, though he claimed to be rehabilitated. The Court's decision reinforces the wide discretion a local licensing authority has in making LTC suitability determinations, and it reinforces the limited proper scope of judicial review of such determinations.

The Underlying Case

The applicant, Nichols, applied to the Natick Police Department for a Class A (large capacity) LTC firearms in October of 2015. At the time he applied, Nichols had a fifteen-year history of prescription drug abuse, tied in part to his position as a licensed pharmacist. Nichols had been charged with multiple criminal offenses, including various fraud-related crimes. Nichols successfully completed supervised probation and his criminal offenses were either continued without a finding, dismissed, or not prosecuted. By 2015, Nichols was in recovery for five years, and reemployed with his pharmacy license reinstated, but remained on probation with the Board of Registration in Pharmacy. Chief James Hicks denied Nichols' application, concluding that he was unsuitable under G. L. c. 140, § 131(d), as a result of his drug-related criminal history and the timing of his application in relation to his treatment.

Nichols sought review of Chief Hicks' denial in the Natick District Court. The District Court found that Chief Hicks properly denied Nichols' application because of the risks associated with addiction, the fraudulent nature of the charged offenses, the public safety risk associated with mixing firearms and substance abuse, and the short period of time between his addiction-related offenses and his application. Nichols commenced an action in the Superior Court seeking review of the District Court's decision.

The Superior Court vacated Chief Hicks' denial, stating that it was arbitrary and capricious and construing the Chief's testimony in District Court as demonstrating an outright opposition to approving a LTC for a recovering addict, regardless of rehabilitation. In addition, the

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Superior Court judge concluded that Chief Hicks erred due to the absence of a showing that Nichols engaged in violent conduct, and that violence is the essential disqualifying individual characteristic under the suitability standard. Chief Hicks appealed the Superior Court's decision to the Appeals Court.

The Appeals Court's Decision

The Appeals Court sided squarely with the Chief's and District Court's positions. The Court concluded that the Superior Court improperly exceeded the scope of its authority by making a factual finding that Chief Hicks denied Nichols' application on the basis that drug addiction rendered a person permanently unsuitable. The District Court had already made the factual findings as to why Chief Hicks believed Nichols was unsuitable at the time of his application. The Superior Court's review, by contrast, is limited to determining whether the District Court made a substantial error of law, evidenced by the record, which adversely affected a material right of Nichols.

First, the Appeals Court observed that the licensing authority is not required to provide a definitive time period in which a past act will no longer render the applicant unsuitable. Rather, each applicant's history of truthfulness, judgment, and the nature of recovery may be considered on an individual basis. Furthermore, the Superior Court misconstrued the suitability standard in the statute by limiting an applicant's risk to public safety to violent crimes exclusively. For these reasons, the District Court did not commit a substantial error of law when it accepted Chief Hicks' determination that the mix of firearms and substance abuse constitutes a public safety risk.

Impact on Licensing Authorities

The *Nichols* decision is particularly relevant and instructive for licensing authorities because of the prevalence of drug addiction and, more specifically, opioid abuse becoming a national epidemic in recent years. The decision clarifies that licensing authorities are not limited to assessing only past violent crimes in determining whether an applicant is suitable for a LTC. *Nichols* establishes that the licensing authority is empowered to consider any relevant behavior or factors which may create a risk to public safety.

Nichols instructs that the licensing authority should consider LTC applicants who have a history of drug abuse on a case-by-case basis. The licensing authority must consider any rehabilitation efforts that could alleviate the applicant's risk to public safety. The Court recognized that addiction is an ongoing struggle and that relapse is a lingering risk to consider



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as part of the recovery process. In sum, the timing and extent of an applicant's recovery from drug addiction may render them unsuitable at the time he or she applies, but that determination does not mean the applicant will never become suitable at a later time.

A link to the Court's decision can be found on our website at
<http://www.mhtl.com/assets/PDF/12490.pdf>.

If you have any questions about this issue, please contact Paul King or the attorney responsible for your account, or call (617) 495-5000

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