

any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

* * * * *

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue

a final order without first issuing a proposed order.

OAR 137-003-0580. In keeping with the rule above, the Commission views the evidence in a light most favorable to Licensee, the non-moving party.

ISSUES

1. Whether there are material facts remaining to be determined concerning the Commission's decision to deny renewal of Licensee's teacher's license and suspend or revoke his right to reapply for a teaching license.

2. Whether, if there are no material facts left to be decided, TSPC is entitled to a ruling in its favor as a matter of law.

DOCUMENTS REVIEWED

The Commission reviewed the Motion and the five attached exhibits.

FINDINGS OF FACT

1. Licensee has held a Standard Personnel Service License with a Standard School Psychologist endorsement since 1993, and his most recent license was scheduled to expire on September 3, 2013. Licensee timely applied for renewal of his license on August 28, 2013. (Ex. 2).

2. While his license renewal was under consideration, the Commission received a September 3, 2013 letter from Susan Waddell, the Superintendent of Linn Benton Lincoln ESD. The letter informed the Commission that Licensee had been arrested on a prostitution-related charge on August 29, 2013. (Ex. 3).

3. On August 29, 2013, Licensee was arrested by Salem Police for patronizing a prostitute. (Ex. 4). On April 24, 2014, he was convicted of the crime by a jury verdict. (Ex. 5).

4. Licensee's conviction was based on conduct occurring on August 30, 2013. On that date, Licensee responded to a false advertisement in the escorts section of Backpage.com. The advertisement was placed by Officer Brian Bidiman of the Salem Police Department as part of an anti-prostitution sting operation. Officer Bidiman knew from experience that persons conducting prostitution related activity will use the escort section of Backpage.com. Through a series of text messages and phone calls with undercover police, Licensee agreed to exchange money for sexual services. Licensee agreed to bring wine to the motel specified in the advertisement. Licensee was arrested after he knocked on the door and attempted to flee on foot. During the arrest, Licensee made statements indicating that his life was over and "this is what happens when you're a sex addict...I'm a sex addict." In addition to the bottle of wine Licensee brought to the encounter, items found in Licensee's pocket during the arrest included one unused condom, a piece of paper with what appeared to be names and numbers of prostitutes and a wine cork screw. (Ex. 4)¹

¹ This Finding of Fact was added by the Commission

5. On October 15, 2014, the Commission issued its Notice of Opportunity for Hearing to Licensee. After reviewing the information about his arrest and conviction, the notice alleged in pertinent part:

4. Your conviction constitutes gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5) (*Use professional judgment*); OAR 584-020-0040(1)(II)(*ORS 167.008 – Patronizing A Prostitute*). This conduct also constitutes gross unfitness in violation of ORS 342.175(1)(c); OAR 584-020-0040(5)(c)(*Conviction of violating any federal, state, or local law. A conviction includes any final judgment of conviction by a court whether as a result of a guilty plea, no contest plea or any other means*), OAR 584-020-0040(5)(d)(*Commission of an act listed in OAR 584-020-0040(1)*); and OAR 584-020-0040(5)(e)(*Admission of or engaging in acts constituting criminal conduct, even in the absence of a conviction*).

5. Pursuant to ORS 342.175(3) and OAR 584-020-0040(1) the Teacher Standards and Practices Commission must revoke your license and your right to apply for a license based on your conviction of any of the crimes listed in ORS 342.143(3)(a), or the substantial equivalent of any of those crimes.

6. The conduct underlying your indictments and conviction constitutes gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5) (*Use professional judgment*); OAR 584-020-0040(4)(k)(*Violation of any rule or order of the Commission*); and OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(3)(*Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty*). Additionally, your conviction and conduct related to your conviction constitute “gross unfitness” in violation of ORS 342.175(1)(c); OAR 584-020-0040(3)(a) and (d) as defined by OAR 584-020-0040(5)(“*Gross unfitness is any conduct which renders an educator unqualified to perform his or her professional responsibilities*”).

(Ex. 1).

5. ORS 167.008 states:

Patronizing a prostitute. (1) A person commits the crime of patronizing a prostitute if the person pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual contact.

(2) Patronizing a prostitute is a Class A misdemeanor.

ORS 167.008 is one of the crimes listed in ORS 342.143(3).

CONCLUSIONS OF LAW

1. There are no material facts remaining to be determined concerning the Commission's decision to deny renewal of Licensee's teacher's license and suspend or revoke his right to reapply for a teaching license.
2. TSPC is entitled to a ruling in its favor as a matter of law.

OPINION

The Commission contends in its motion that Licensee's license application must be denied and his license revoked because of his conviction for patronizing a prostitute. Based on Licensee's conviction for the crime alleged, there is no genuine issue of material facts in connection with the allegations in paragraphs 4 and 5 of the Notice. The Commission is therefore entitled to such a ruling.

The facts of the case are not in dispute. Licensee was arrested for patronizing a prostitute on August 29, 2013, and convicted of the crime on April 24, 2014.²

ORS 342.175 states in part:

Grounds for discipline; reinstatement. (1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license or registration if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

- (a) Conviction of a crime not listed in ORS 342.143 (3);
- (b) Gross neglect of duty;
- (c) Any gross unfitness;

* * * * *

(3) The commission shall revoke any license or registration and shall revoke the right of any person to apply for a license or registration if the person has held a license or registration at any time and the holder or applicant has been convicted of any crime described in ORS 342.143 (3).

(Emphasis added). Under this statute, if the licensee is convicted of any of the crimes listed in ORS 342.143(3), the Commission "shall" revoke his license and his right to apply for a license in

² Although the Notice refers at one point to the "conduct underlying [Licensee's] indictments, the circumstances of Licensee's actions and his arrest, while addressed with specificity in the documents accompanying the motion, do not need to be repeated here.

the future. The language of the statute means that the Commission *must* revoke/refuse to renew the license of a person convicted of a crime listed in ORS 342.143(3), and must also revoke the right to apply for a license as well. Here, Licensee's conviction for Patronizing a Prostitute (ORS 167.008) is listed in the statute.

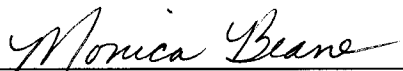
The Commission also alleged in paragraph 6 of the Notice that Licensee's conduct underlying the conviction constitutes Gross Neglect of Duty. Licensee was convicted following a jury trial of patronizing a prostitute. Licensee did not file a response to the Commission's motion. Based on this record the Commission finds that viewing the facts in the light most favorable to Licensee (the non-moving party), there is no genuine issue of material fact. Licensee engaged in the conduct alleged and the Commission is therefore entitled to judgment as a matter of law.

The facts underlying Licensee's conviction establish that he initiated contact with a person he thought to be a prostitute and arranged to exchange money for sexual services. Licensee's conduct is a crime, and constitutes a substantial deviation from professional standards of ethics that obligate Licensee to use professional judgment, and maintain the dignity of the profession by respecting and obeying the law, exemplifying integrity and honesty. Licensee failed to adhere to his ethical obligations as an educator by engaging in the conduct leading to his conviction.

FINAL ORDER

For the foregoing reasons, Licensee's license is hereby revoked.

It is so Ordered this 14th day of December, 2016



Monica Beane, Executive Director
Teacher Standards and Practices Commission

NOTICE OF APPEAL OR RIGHTS

YOU ARE ENTITLED TO JUDICIAL REVIEW OF THIS ORDER. JUDICIAL REVIEW MAY BE OBTAINED BY FILING A PETITION FOR REVIEW WITHIN 60 DAYS FROM THE SERVICE OF THIS ORDER. JUDICIAL REVIEW IS PURSUANT TO THE PROVISIONS OF ORS 183.482 TO THE OREGON COURT OF APPEALS

CERTIFICATE OF MAILING

On December 16, 2016, I mailed the foregoing Final Order Adopting Ruling on Motion for Summary Determination in OAH Case No. 1403943 to:


By: U.S. First Class Mail and Certified Mail Return Receipt Requested 7016 0750 0000 2419 0556

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Patty Sheldon
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CERTIFICATE OF MAILING

On January 19, 2017, I mailed the foregoing Final Order Adopting Ruling on Motion for Summary Determination in OAH Case No. 1403943 to:

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