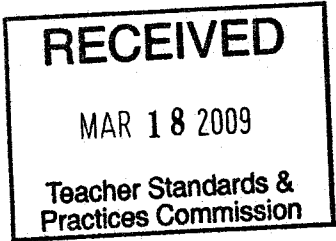


If, after you have filed a petition for rehearing or reconsideration, the agency issues an Order that you are dissatisfied with, you have a right to appeal that Order to the Oregon Court of Appeals pursuant to ORS 183.482.

If, 60 days after you have filed a petition for rehearing or reconsideration, the agency has not issued an Order, your petition will be considered denied and at that time you will have the right to appeal the original Order to the Oregon Court of Appeals pursuant to ORS 183.480 and ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day that your petition for rehearing or reconsideration is deemed denied. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.



BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
TEACHER STANDARDS & PRACTICES COMMISSION

IN THE MATTER OF THE TEACHING)
LICENSE OF:)
)
JOHN H. SEELEY)
)
) OAH Case No: 800656
)

HISTORY OF THE CASE

On July 8, 2008, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing (Notice) to John H. Seeley alleging that Seeley had committed acts of misconduct that could provide a basis for discipline. On July 25, 2008, Seeley requested an administrative hearing. On August 8, 2008, the matter was referred to the Office of Administrative Hearings (OAH).

Senior Administrative Law Judge (ALJ) A. Bernadette House of the OAH was assigned to preside over the matter. A pre-hearing teleconference was scheduled for September 8, 2008, but prior to the teleconference, Seeley submitted a request to recuse ALJ House. Presiding ALJ David Gerstenfeld¹ denied Seeley's request, and his subsequent request to reconsider, and the matter was reset for prehearing.

On November 14, 2008, a teleconference was held on the record. ALJ House presided. Assistant Attorney General (AAG) Jeff Dover represented the Commission. Seeley represented himself. At the conference, Dover advised Seeley that the Commission intended to file a Motion for Summary Determination. ALJ House explained the significance of such a motion and also informed Seeley of his right to file a response if the motion was filed. Seeley was given an extension, to 28 days following the date on which the Motion was filed, in which to file his answer.

On January 9, 2009, the Commission filed a Motion for Summary Determination accompanied by supporting documents and materials. Seeley filed a Response to the Motion on January 19, 2009.

ISSUE

Whether the Commission is entitled to a favorable ruling as a matter of law pursuant to OAR 137-003-0580.

¹ The Chief Administrative Law Judge designated Judge Gerstenfeld to rule on Seeley's Motion for Change of Administrative Law Judge in this case.

EVIDENTIARY RULINGS

The record for this ruling consists of the July 8, 2008 Notice issued to Seeley, the Motion for Summary Determination submitted by the Commission, with attachments, as follows:

- Ex. A1: Indictment *Matter of State of Oregon v. John Howard*, Clatsop County Circuit Court, February 23, 2007;
- Ex. A2: OJIN Printout for Clatsop County Circuit Court, Case No.: 07-1060, *State of Oregon v. John Howard Seeley*;
- Ex. A3: Compact disc record of plea in *State of Oregon v. John Seeley*, Clatsop County Circuit Court, February 22, 2008;
- Ex. A4: Dispositional Order, *State of Oregon v. John Howard Seeley*, Clatsop County Circuit Court, Case No.: 07-1060;
- Ex. A5: Incident reports, Clatsop County Sheriff's Office, November 2006; and

Seeley's Response, which has been marked Ex. R1.

FINDINGS OF FACT

1. John H. Seeley is a teacher, licensed by the Commission in the State of Oregon, and worked in the Jewell School District at the time of the conduct at issue. (Notice; Ex. A5.) Seeley is the father of an adopted daughter, [JS] and a biological daughter, [S]. (Ex. A5.)

2. In November 2006, Deputy Schroeder of the Clatsop County Sheriff's Office was assigned to a child abuse investigation forwarded to the office by the Department of Human Services (DHS.) The investigation involved allegations that Seeley had physically abused JS. (Ex. A5 at 1.)

3. Included in the materials forwarded to the sheriff's office from DHS was an incident report regarding allegations made by an individual, DA, who reported events indicating that Seeley had committed mental and physical abuse of JS. DA called DHS on October 18, 2006 and reported last seeing JS in school on October 16, 2006. DA reported that JS was a friend of his daughter's and that they attended school together. DA had been told by his daughter about things JS said to his daughter that DA concluded needed to be reported as physical and/or mental abuse of JS by Seeley. JS had approached DA and expressed fear of returning home. JS asked DA if she could live with him and his daughter. (Ex. A5 at 10.)

4. In generating the incident report that was forwarded to the sheriff's office, DHS staff reviewed its files for reports related to JS and/or Seeley. The history included four contacts: a call in May 1998 pertaining to concerns about JS; a logged report in February 1999 that alleged possible physical and mental abuse of JS by Seeley; a December 2004 report regarding JS being locked out of the house after returning from running away from home and being forced to stay in a barn, in addition to concerns expressed by teachers in the Jewell School District which were not reported due to feelings of intimidation and fear of retaliation from Seeley; and a report in January 2006 from JS that Seeley hits her and has left bruises on multiple occasions. (Ex. A5 at 11.)

5. Deputy Schroeder reviewed the DHS report and attended an assessment of the case by DHS staff, during which JS was interviewed. During the interview, JS stated that on several occasions she had been disciplined excessively for normal childhood misbehaving. Deputy Schroeder continued the investigation and later interviewed JS and her temporary foster parents regarding the statements she had made during the DHS interview. JS gave specific incidents of abusive conduct by Seeley beginning from the age of four, when she was adopted, and continuing through her eighth year in school. (Ex. A5. at 1.)

6. Following his initial investigation, Deputy Schroeder wrote a report and forwarded it to the Clatsop County District Attorney's (DA's) office for consideration of charging Seeley with a crime under ORS 163.205, Criminal Mistreatment I, Felony. (Ex. A5 at 1.) Deputy Schroeder continued his investigation and generated another incident report on November 28, 2006. That report was also forwarded to the DA's office for felony prosecution. (*Id.* at 31.)

7. The second November 2006 report contained summaries of interviews with additional witnesses and a description of a visit by Deputy Schroeder, accompanied by Deputy Koehnke, to the barn where JS had allegedly been made to stay overnight after she had run away in December 2004. JS was again interviewed and provided a description of the events that occurred the night where she had stayed in the barn and of other times Seeley had committed abusive acts. JS reported one incident where Seeley had grabbed her by the chin, causing bruising on her chin and lower jaw, and had shoved her head against the wall. JS also told the deputy of another incident, summarized in the report, that occurred during Christmas 2005 which involved mental and physical abuse. (Ex. A5 at 17, 18.)

8. After speaking to JS, Deputies Schroeder and Koehnke spoke to DA in late November 2006 about DA's call to DHS on October 18, 2006. DA agreed to allow the deputies to speak to his daughter and to meet at the Jewell School. DA's daughter told the deputies that she knew JS and went to school with her. The daughter relayed past statements made by JS regarding abuse by Seeley. She also reported observations of bruises on JS close in time to when JS told her Seeley had grabbed her by the jaw and shoved her head into a wall at home. The daughter told the deputies that, prior to JS's removal from the home by DHS, JS had given her a letter, regarding an incident at school involving Seeley. DA also gave the deputies a handwritten letter from his daughter, that detailed her observations, and JS's statements, about conduct by Seeley towards JS. A copy of the letter was included in the incident report forwarded to the district attorney's office. (Ex. A5 at 18.)

9. Deputy Schroeder also made notes of his interview with DA from the November 2006 visit. DA reported that JS had told them on several occasions that she hated her dad. DA was aware that JS was left at home alone for several weeks in the summer. JS had given many of her important items to DA's daughter to keep because Seeley would break them. DA reported hearing Seeley inappropriately yelling at JS behind closed doors at school. DA also said that the day DHS removed JS from Seeley's home, Seeley pulled JS out of class without explanations to the teacher or school staff. Seeley's action was conduct contrary to school policy and conduct which would have generated a call to 911 if done by any other parent.

10. The deputies then interviewed another individual, HF, at the school, who also reported knowing that JS had run away from school about one month before being sent to a boarding school in Kentucky. HF's daughter had told her about JS's running away. JS had then asked HF to help her get her gym bag from an abandoned farmhouse where JS had left it when she had run away. After JS told her about it, HF retrieved the bag, located where JS had said that it would be, and found a knife inside the bag. When asked, JS explained that she had had the knife to kill Seeley if he came after her again. HF told Deputy Schroeder that she had observed JS at school and that she had not seen JS act out at school more frequently than other children. The deputies went to HF's home where the gym bag had been kept and retrieved the knife. (Ex. A5 at 18, 19.)

11. Deputy Schroeder also contacted the Long Beach, Washington Police Department (Long Beach PD) and requested any records related to a report by JS that she had called the department after an incident with Seeley. The report forwarded to Deputy Schroeder indicated that JS had called the department after being dropped off on the side of the road by Seeley when he became mad at her. Officers responding to the call had contacted Washington State Children Services. That agency determined the incident was borderline child neglect and referred the case to the Oregon DHS. A copy of the Long Beach PD log entry was included in Schroeder's report. (Ex. A5 at 19, 25.)

12. Deputy Schroeder continued his investigation and interviewed additional witnesses. He included summaries of those interviews in another report and concluded his investigation. Deputy Schroeder recommended that the entire case be forwarded to the DA for Grand Jury consideration. (Ex. A5 at 30, 31.)

13. On February 23, 2007, Seeley was indicted by a Grand Jury on four counts of Criminal Mistreatment in the First Degree (Indictment) brought against him in the Circuit Court of Clatsop County, regarding his treatment of JS. (Ex. A1.)

14. Count 2 of the Indictment read as follows:

The defendant, on or between October 25, 2001 to October 25, 2006, in Clatsop County, State of Oregon, in violation of a legal duty to provide care for and having assumed the care, custody, and responsibility for the supervision of [JS], did unlawfully and knowingly withhold necessary and adequate physical care and medical attention from [JS], a dependent person[.]

(Ex. A1 at 1.)

15. Seeley entered a plea of "not guilty" to all four counts on March 1, 2007. (Ex. A2 at 1.)

16. On February 22, 2008, Seeley, pursuant to an agreement with the DA, entered into a sentencing agreement at a dispositional hearing in front of Judge Nely Johnson, Clatsop County Circuit Court, on Count 2 of the indictment on the felony charge of Criminal Mistreatment in the First Degree (ORS 163.205). (Exs. A2 at 7; A3 at 1:45:38 to 1:51:59; A4.) At the hearing, Seeley was accompanied by counsel. Having been advised of his rights and agreeing to waive those rights, Seeley agreed to proceed with an oral disposition of the matter on the record. (Ex. A3.)

17. Judge Johnson stated that she agreed to abide by the terms of the agreement and recited the terms of the agreement into the record. Seeley agreed that the terms as were read were the terms of the agreement as he understood them to be. Per the terms of the agreement, Seeley stipulated to facts sufficient to support Count 2 and to “whatever evidence he had had access to that support that indictment.” (*Id.* at 1:57:37 to 1:51:59; Ex. A4.) Under the agreement, pursuant to ORS 137.533, the Court did not make findings, or enter a plea, but took the matter under advisement. Seeley was placed on 18 months monitored probation to the bench, and was required to undergo a psychological evaluation in addition to other terms of probation. (Exs. A3 at 1:48:19, A4.)

18. The Court issued a Dispositional Order (Order) on Count 2, Criminal Mistreatment in the First Degree, a Class C Felony, committed on October 25, 2001. The Order dismissed counts 1, 3, and 4 pursuant to plea negotiations. Judge Johnson found that Seeley had freely, knowingly, and voluntarily stipulated to the facts, and that Seeley consented to a stipulated facts trial. (Ex. A4.)

19. On July 8, 2008, the Commission issued the Notice to Seeley alleging misconduct in violation of the laws and rules applicable to licensed teachers in Oregon and proposing disciplinary action, including suspension or revocation of his license. The first of the four allegations of misconduct was as follows: on February 22, 2006, Seeley entered a deferred sentencing agreement and was placed on bench probation for 18 months and ordered to end contact with his daughter JS following indictment on Count 2 of the indictment, charging Criminal Mistreatment in the First Degree (ORS 163.205). Based on Seeley’s entry into the agreement, the Commission alleged that Seeley had been convicted of a violation of federal, state, or local law, conduct which constituted gross unfitness, ORS 342.175(1)(c), on two bases. The first basis was that the alleged conviction was a violation of 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 guilty plea, no contest plea or any other means”). The second basis for alleging gross unfitness was that the conduct leading to the alleged conviction was violation of OAR 584-020-0040(5)(e) (“admission of or engaging in acts constituting criminal conduct, even in the absence of conviction.”) The Commission then set out the specific conduct surrounding the conviction and the authority under ORS 342.175(1)(c) and OAR 584-020-0040(3)(d) under which it proposed to discipline Seeley. (Notice at 1.)

20. The July 8, 2008 Notice, in the second allegation, proposed discipline based upon the February 22, 2006 agreement and surrounding circumstances as a conviction of a crime not listed in ORS 342.143(3), which under ORS 342.175(1)(a), provides the basis for the Commission’s actions, pursuant to ORS 342.175(1)(a) and OAR 584-020-0040(3)(a) (The Commission may initiate proceedings to suspend or revoke the license or registration of an educator under ORS 342.175 * * * to an applicant who * * * [h]as been convicted of a crime not listed in section (1) of this rule, if the Commission finds that the nature of the act or acts constituting the crime for which the educator was convicted render the educator unfit to hold a license.”) The Commission, considering the same circumstances as those for allegation 1, alleged that Seeley’s conduct reflected inappropriate conduct, care and treatment of a minor, rendering him unfit to hold a license and work with children. (Notice at 1.)

21. The July 8, 2008 Notice, in the third allegation, proposed to discipline Seeley, based on the conduct leading to Seeley's entry into the plea agreement, for conduct constituting gross neglect of duty, ORS 342.175(1)(b), in violation of OAR 584-020-0040(4)(o) ("substantial deviation from professional standards of ethics set forth in OAR 584-020-0035") as it incorporates OAR 584-020-0035(3)(a) ("maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty"), and OAR 584-020-0040(4)(n) ("substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030") as it incorporates OAR 584-020-0010(5) ("professional judgment"). The Commission proposed to discipline Seeley under ORS 342.175(1)(b) and OAR 584-020-0040(3)(c). (Notice at 2.)

22. The Commission also made a fourth allegation in the Notice proposing disciplinary action against Seeley but did not move for Summary Determination on allegation 4. (Notice at 2; Motion at 1.)

CONCLUSION OF LAW

The Commission is entitled to a favorable ruling as a matter of law pursuant to OAR 137-003-0580 on allegation 1, that portion alleging gross unfitness under ORS 342.175(1)(c) based upon a violation of OAR 584-020-0040(5)(e) and allegation 3 of the Notice. The Commission is not entitled to a favorable ruling as a matter of law on allegations 1, that portion alleging gross unfitness under ORS 342.175(1)(c) based upon a violation of OAR 584-020-0040(5)(c), 2, and 4 of the Notice.

OPINION

Standard for Motion for Summary Determination

Motions for Summary Determination are governed by OAR 137-003-0580, which provides, in relevant part:

- (6) The administrative law judge shall grant the motion for a legal ruling 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.

Commission's authority to discipline licensed teachers

ORS 342.175, regarding grounds for discipline and reinstatement, provides, in relevant part:

(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 person 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[.]

As addressed in the discussion below, the Commission has promulgated rules that further define gross neglect of duty, subsection (b) and gross unfitness, subsection (c) above.

In its Notice, the Commission proposes to suspend or revoke Seeley's teaching license based upon four allegations, as set out in the findings of fact above and summarized as follows: (1) Seeley is grossly unfit to hold a license because, based on his entry into a sentencing agreement, he has been convicted of a crime or has admitted to engaging in acts that constitute criminal conduct, even in the absence of a conviction; (2) Seeley has been convicted of a crime "not otherwise listed" in ORS 342.143(3), again based on the plea agreement, and the nature of the act or acts constituting that crime render Seeley unfit to hold a license; (3) Seeley's conduct towards his adopted daughter, which served as the basis for a felony charge of Criminal Mistreatment in the First Degree, and as the basis for his entry into a plea agreement and sentencing, constituted a gross neglect of duty; and (4) Seeley engaged in other conduct which also authorized the Commission to discipline him. The Commission moved for summary determination on allegations 1, 2 and 3 as set out in the Notice. It did not seek summary determination on allegation 4 of the Notice.

Gross Unfitness

ORS 342.175 (1)(c) allows the Commission to discipline a licensed teacher based on "any gross unfitness." The Commission has adopted an administrative rule that, in part, defines the term "gross unfitness" to include "conviction" of violating federal, state, or local law. OAR 584-020-0040(5) provides, in relevant part:

Gross unfitness is any conduct which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours or off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:

* * * * *

(c) Conviction of violating any federal, state, or local law. A conviction includes any final judgment of conviction by a court whether as the result of guilty plea, no contest plea or any other means.

(e) Admission of or engaging in acts constituting criminal conduct, even in the absence of a conviction[.]

“Conviction” of a crime under allegations 1 and 2 of the Notice.

In its Motion on allegation 1 of the Notice, the Commission alleged that it had authority to discipline Seeley because he had been *convicted* (emphasis added) of a crime, in violation of OAR 584-020-0040(5)(c), which constitutes gross unfitness under ORS 342.175(1)(c) and in violation of OAR 584-020-0040(5)(e). I will begin with the alleged violation of OAR 584-020-0040(5)(c), which rests upon “conviction” of a crime. The Commission’s allegation rests on the outcome of the criminal proceedings in Circuit Court on February 22, 2008 and the subsequent dispositional order. By its allegation, the Commission argues, as a matter of law, that as a result of the February 22, 2008 proceeding Seeley was convicted of a crime. Therefore, he would be, under its rules, subject to disciplinary action on the basis of that conviction. Seeley argues that his entry into a sentencing agreement was not a “conviction” of criminal conduct for purposed of disciplinary action under OAR 584-020-0040(5)(c) or OAR 584-020-0040(3)(a).

The criminal record in this matter is not straightforward. In his response, Seeley argued that the Motion should not be granted based on the February 22, 2008 dispositional proceedings because entry into a deferred sentencing agreement is not, without further proceedings, a conviction of a crime.² I agree that Seeley has not been, on this record, convicted of the crime of Criminal Mistreatment in the First Degree as of February 22, 2008, nor has he entered a guilty or no-contest plea. He entered a deferred sentencing agreement.

The meaning of conviction under the Oregon Criminal Code is determinative regarding the Commission’s first two allegations. To begin, Seeley was charged with a class C felony. ORS 137.230, relating to the effects of a felony conviction, defines “conviction” or “convicted” as “an adjudication of guilt upon a verdict or finding entered in a criminal proceeding[.]” The Court issued a dispositional order following the February 22, 2008 dispositional hearing pursuant to the authority

² Seeley also argued that the motion should be denied because he had been advised by his attorney that it was illegal for the district attorney to offer the agreement as Seeley had been charged with a felony. Seeley argued that his understanding that the agreement was illegal was a “key factor[] in accepting the agreement,” along with his belief that “everything would be dismissed and expunged when conditions were met,” and that dismissal of charges against his wife and avoiding a trial would result in considerable financial savings. (Response at 1.) Seeley’s reasoning for accepting the agreement is not pertinent here. The findings of fact are based on the exhibits submitted by the Commission, including the records of proceedings in Clatsop County Circuit Court and on the incident reports from the Clatsop County Sheriff’s Office.

granted under ORS 137.533.³ As set out in the findings of fact, that order did not rest upon “an adjudication of guilt upon a verdict or finding” in a criminal matter as defined by ORS 137.230.

If the Commission contends, correctly, that the statute itself implies that Seeley entered a guilty plea or that a finding of guilt was made, the record in this case does not support a finding that either event actually occurred. Under the wording of the statute, a plea agreement is provided for under ORS 137.533 if “a person pleads guilty or is found guilty of a misdemeanor” with some exceptions.⁴ Despite the wording of the statute, according to both the record of the plea agreement and the dispositional order, Seeley was not determined to be guilty nor did he enter a guilty plea to the indictment. Also, if Seeley successfully completes probation, disposition under the statute supports a finding that Seeley was not “convicted” as of February 22, 2008. ORS 137.533 provides that, upon successful completion of the terms of probation, the court “shall discharge the person and

³ ORS 137.533, entitled “Probation without entering judgment of guilt; when appropriate; effect of violating condition of probation,” provides in relevant part:

(1) Whenever a person pleads guilty to or is found guilty of a misdemeanor * * * the court may defer further proceedings and place the person on probation, upon motion of the district attorney and without entering a judgment of guilt, if the person:

- (a) Consents to the disposition;
- (b) Has not previously been convicted of any offense in any jurisdiction;
- (c) Has not been placed on probation under ORS 475.245;
- (d) Has not completed a diversion under ORS 135.881 to 135.901; and
- (e) Agrees to pay the unitary assessment for which the person would have been liable under ORS 137.290 if the person had been convicted[.]

(2) A district attorney may submit a motion under subsection (1) of this section if, after considering the factors listed in subsection (3) of this section, the district attorney finds that disposition under this section would be in the interests of justice and of benefit to the person and the community.

* * * * *

(4) Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon the person’s fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against the person. A discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. A person may be discharged and have proceedings dismissed only once under this section.

⁴ Seeley contests the Commission’s reliance on the dispositional hearing and order in the criminal matter as creating a factual foundation for the Commission’s motion. (Response at 1.) Seeley argued that he had been advised by counsel that the imposition of sentencing by the Court under this provision was illegal because he had been charged with a felony. Seeley also argued that he had been advised that “there would be no stipulations of any kind other than an evaluation which [he] had previously completed and no contact with [his] adopted daughter * * *. (Id.) As he understood, there would be not be a guilty or no-contest plea, and all of these considerations were “key factors” in accepting the plea agreement. Seeley’s reasoning for entering into the agreement is not relevant. This ruling is based upon the documents and other evidence submitted in support of the Motion, including the recording of the court proceedings of February 22, 2008, the Dispositional Order, and the evidence referred to the District Attorney’s office.

dismiss the proceedings against the person. A discharge and dismissal under this section is *without adjudication of guilt* and *is not a conviction* for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.” (Emphasis added) ORS 137.533(4). Therefore, I conclude that, as a matter of law, Seeley was not convicted on February 22, 2008, of the crime alleged in count 2 of the indictment.⁵

As a matter of law, Seeley may not be disciplined for conduct constituting gross unfitness on the basis that he was convicted of a crime in violation of OAR 584-020-0040(5)(c) pursuant to ORS 342.175(1)(c), because there was no conviction. Therefore, this record does not support a ruling in favor of the Commission on that section of allegation 1 of the Notice. The Commission’s Motion for Summary Determination alleging that Seeley was convicted of a crime in violation of OAR 584-020-0040(5)(c), which constitutes gross unfitness under ORS 342.175(1)(c) is, therefore, **DENIED**.

Allegation 1 also alleged that Seeley, in the criminal proceedings, admitted to or engaged in acts constituting criminal conduct, even in the absence of a conviction, and that he may be disciplined on that basis. The record supports the Commission’s allegation on that basis. As a matter of law, Seeley agreed to stipulated facts, and to a stipulated facts trial sufficient to support the charge of Criminal Mistreatment in the First Degree, a C felony crime. He admitted to acts constituting criminal conduct, in violation of OAR 584-020-0040(5)(e), constituting gross unfitness. The Commission’s Motion for Summary determination to suspend, revoke or take other disciplinary action against Seeley’s license to teach on the basis that his conduct violated OAR 584-020-0040(5)(e) constituting gross unfitness in violation of ORS 342.175(1)(c) is, therefore, **GRANTED**.

In allegation 2 of the Notice the Commission again alleges that the entry of the deferred sentencing agreement is a conviction, specifically a conviction for a crime not listed in ORS 342.143(3) for which the Commission may discipline Seeley pursuant to ORS 342.175(1)(a) and OAR 581-020-0040(3)(d). ORS 342.175(1)(a) allows the Commission to discipline a licensed teacher based on the conviction of any crime not listed in ORS 342.143(3).⁶ As discussed above, as

⁵There was no explanation in the Court records as to why Seeley, who was charged with a C felony, was allowed to proceed under ORS 137.533, which on its face applies to misdemeanors. However, for purposes of this determination, the fact that Seeley entered a sentencing agreement regarding the felony charge and the stipulations to which he agreed create the record for my ruling in this case.

⁶ORS 342.143 provides in relevant part:

(3) Without limiting the powers of the Teacher Standards and Practices Commission under subsection (2) of this section and notwithstanding ORS 670.280:

(a) No teaching, personnel service or administrative license or registration as a public charter school teacher or administrator shall be issued to any person who:

(A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.432, 163.433, 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part), 163.680 (1993 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087, 167.007, 167.012, 167.017, 167.054, 167.057, 167.062, 167.075, 167.080, 167.090, 475.848, 475.852, 475.858, 475.860, 475.862, 475.864 (4), 475.868, 475.872, 475.878, 475.880, 475.882, 475.888, 475.890,

a matter of law, the February 22, 2008 proceedings have not resulted in a conviction. The Commission's motion for summary determination on allegation 2 of the Notice is therefore **DENIED**.

Conduct constituting gross unfitness based gross neglect of duty

The Commission also moved for summary determination on allegation 3 of the Notice, based on the conduct underlying Count 2 of the Indictment which led to Seeley's sentencing agreement. The Commission argues that Seeley's conduct underlying the criminal indictment renders Seeley "grossly unfit" in that it constitutes gross neglect of duty under ORS 342.175(1)(b) in violation of OAR 584-020-0040(4)(o) and (n).

a) Establishing the factual basis of the conduct underlying the criminal charges

At his dispositional hearing, Seeley admitted to facts which, although they were not set out in the record, would support Count 2 of the indictment charging Seeley with Criminal Mistreatment in the First Degree of JS. Those facts are, by Seeley's admission, a violation of the law. However, because the specific facts were not set out in the Court record, the determination for this portion of the ruling also relies upon the incident reports documenting Seeley's conduct, as set out in the findings of fact. The incident reports from the Clatsop County Sheriff's office were created during a criminal investigation and those reports were then referred to the Clatsop County District Attorney. The District Attorney then brought criminal charges against Seeley and the Grand Jury returned an indictment.

It is noted that the Commission did not include in support of its motion, an affidavit or other evidence directly stating that the incident reports submitted in support of the Commission's motion were those relied upon by the District Attorney or the Grand Jury, or that the reports were included in "the evidence to which Seeley had access" as referred to by Judge Johnson at the hearing. However, based on this record, it is reasonable to infer that the reports were considered in charging Seeley and in the negotiation of his plea agreement. Additionally, the reports bore sufficient indicia of reliability as to their authenticity, and there was no evidence submitted by Seeley to the contrary. Therefore, the reports are deemed reliable evidence for consideration, such that a reasonable and prudent person would rely upon them in the conduct of their serious affairs, as reflected in the findings of fact.

b) Disciplinary action based on conduct constituting gross neglect of duty

ORS 342.175(1)(b) allows disciplinary action against a teaching license for gross neglect of duty. OAR 584-020-0040(4) states that

Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

475.892, 475.904 or 475.906[.]

* * * * *

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030;

* * * * *

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035.

As incorporated in subsection (n) of the rule above, OAR 584-020-0010 through 584-020-0030 set out standards adopted by the Commission for professional standards of competency for teachers. Specifically, OAR 584-020-0010, which sets out the standards for the competent educator, states that “[t]he educator demonstrates a commitment to * * * [u]se professional judgment[.] OAR 584-020-0010(5).

As incorporated in subsection (o) of the rule above, OAR 584-020-0035 sets out standards adopted by the Commission for the ethical educator. OAR 584-020-0035(3) states that:

The ethical educator, in fulfilling obligations to the profession, will:

(a) Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty[.]

When moving to discipline a teacher for conduct outside of the professional role of the teacher, it is necessary to consider the relation between the conduct at issue and the professional duties of the teacher as a licensed professional. In the recent case of *TSPC v. Bergerson*, 342 OR 301 (2007), the Oregon Supreme Court considered the Commission’s proposed disciplinary action against a teacher for criminal conduct outside of the professional role as a licensed teacher. The Court, in its extensive analysis of the applicable statutes and rules, essentially the same as those cited as authority in this case, determined that the Commission must show a nexus between the conduct for which, under its rules, it proposed disciplinary measures, and the professional responsibilities of teachers. *Bergerson*, 342 Or at 312. The Court also addressed the timing of past conduct as it reflects on a teacher’s current ability to perform the duties of a teacher. In that case, the conduct at issue was single incident which, although it resulted in a criminal charge, was unrelated to her duties as a teacher. When analyzing the applicability of OAR 584-020-0040(5) to conduct that occurred outside of an individual’s professional responsibilities as a teacher, the Court concluded that suspension is authorized “only when the disqualifying status or character trait exists at the time of the hearing[.]” *Id.* at 316.

The Commission alleges that although it occurred in large part outside of the professional setting, Seeley’s conduct towards JS bears a direct relationship to the duties he performs as a licensed teacher. The conduct underlying Count 2 of the indictment and as detailed in the incident reports directly reflects on Seeley’s inability to act in a moral and ethical manner towards a child or children entrusted to his care, rendering Seeley unfit to hold a teacher’s license and to work with children. As set out below, I agree.

Under the allegations made in this case, it is the decision making capacity of Seeley as it relates to a child or children entrusted to his care that is at issue. His conduct, determined to be criminal, towards his adopted daughter over a period of years demonstrates his current inability to meet the standards and expectations of the Commission for an ethical and competent teacher, thus supporting disciplinary action, including suspension or revocation, against his license to teach. Seeley entered into the plea agreement approximately one year ago from the date of this motion. He remains on probation under that agreement. The initial contacts with DHS noting concern over Seeley's conduct were made in 1998 and 1999. Additional instances of Seeley's conduct, detailed in the findings, continued throughout the time JS lived with Seeley until she was removed from the home by DHS. As a matter of law, Seeley's conduct towards JS, determined to be criminal conduct, is the same type of conduct as that regulated by the Commission under the rules set out above.

Bergerson requires that the timing of the conduct at issue must be related to a current finding of inability to meet the Commission's requirements. *Bergerson*, 342 Or at 316. The Commission has met that burden. Seeley's conduct occurred over lengthy period of time. There was no evidence that Seeley's decision making capacity towards a child entrusted to his care has changed from that which resulted in the sentencing agreement and the stipulation to facts sufficient to support the felony charge of Criminal Mistreatment in the First Degree. He remains on probation as of the time of the filing of the Motion. As stated by the Commission in its Motion, possible or actual dismissal of the criminal allegations should Seeley successfully complete his probation is not relevant to the conduct underlying the charge and is irrelevant. Additional evidence, if presented at hearing by Seeley, as to his character would not create a question of fact in this case.

The performance of Seeley's job, as a licensed teacher, requires that he is able to meet the Commission's standards as set out in the applicable laws and rules. Viewing the record as a whole in the light most favorable to the non-moving party, Seeley does not meet those standards. Seeley's conduct constituted gross neglect of duty in that his conduct towards JS was in substantial deviation from professional standards of competency, specifically that he demonstrated a lack of professional judgment under OAR 584-020-0010(5) and OAR 584-020-0040(4)(n). Additionally, his conduct was a substantial deviation from the professional standards of ethics for teachers, specifically the requirement that he maintain the dignity of the profession by respecting and obeying the law and exemplifying personal integrity and honesty pursuant to ORS 342.175(1)(b), OAR 584-0200-0040(4)(o), and OAR 584-020-0035(3)(a). In consideration of the record as a whole in this matter, in the light most favorable to Seeley, there remains no issue of material fact that Seeley has failed to show that he meets the requirements for licensing as stated in allegation 3 of the Notice. The motion for summary determination on allegation 3 is **GRANTED**.

RULING AND ORDER

The Motion for Summary Determination on allegations 1, in part as set out in the Order above, and 2 is **DENIED**. The Motion for Summary Determination on allegation 1, in part as set out in the Order above, and 3 is **GRANTED**. I propose that the Commission issue the following order:

The Commission may suspend or revoke the teaching license of John H. Seeley or otherwise

impose discipline for conduct constituting gross unfitness pursuant to OAR 137-003-0580 on allegation 1, that portion alleging gross unfitness under ORS 342.175(1)(c) based upon a violation of OAR 584-020-0040(5)(e), and for gross neglect of duty, allegation 3 in the July 8, 2008 Notice of Opportunity for Hearing in violation of the applicable statutes and rules.

A. Bernadette House
Senior Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: March 16, 2009

EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the Teacher Standards and Practices Commission. If you disagree with any part of this proposed order, you may file written objections, called "exceptions," to the proposed order and present written argument in support of your exceptions. Written argument and exceptions must be filed **within fourteen (14) days after mailing of the proposed order** with the:

Teacher Standards and Practices Commission
465 Commercial Street, NE
Salem, Oregon 97301

The Commission need not allow oral argument. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination. If oral argument is allowed, the Commission will inform you of the time and place for presenting oral argument.

**APPENDIX A
LIST OF EXHIBITS CITED**

- Ex. A1: Indictment *Matter of State of Oregon v. John Howard*, Clatsop County Circuit Court, February 23, 2007
- Ex. A2: OJIN Printout for Clatsop County Circuit Court, Case No.: 07-1060, *State of Oregon v. John Howard Seeley*
- Ex. A3: Compact disc record of plea in *State of Oregon v. John Seeley*, Clatsop County Circuit Court, February 22, 2008
- Ex. A4: Dispositional Order, *State of Oregon v. John Howard Seeley*, Clatsop County Circuit Court, Case No.: 07-1060
- Ex. A5: Incident reports, Clatsop County Sheriff's Office, November 2006
- Ex. R1: Seeley's Response, January 19, 2009

CERTIFICATE OF MAILING

On March 16, 2009, I mailed the foregoing Ruling on Motion for Summary Determination and Proposed Order in OAH Case No. 800656.

By: First Class and Certified Mail

Certified Mail Receipt #7008 1830 0003 4609 6003

John Seeley
8913 Sleepy Court
Juneau AK 99801

By: First Class Mail

George Finch
Teacher Standards & Practices Commission
465 Commercial Street NE
Salem OR 97301

Jeff Dover
Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem OR 97301-4096

Carol Buntjer
Administrative Specialist
Hearing Coordinator