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2 BEFORE THE  
3 TEACHER STANDARDS AND PRACTICES COMMISSION  
4 STATE OF OREGON  
5


6 In the Matter of the )  
7 Teaching License of ) REINSTATEMENT OF LICENSE  
8 ROBERT PHILLIP CARWITHEN ) AND ORDER OF PROBATION  
9 )

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12 FINAL ORDER  
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14 By resolution dated May 13-14, 1999, the Teacher Standards and Practices  
15 Commission adopts the attached proposed order to reinstate the Oregon  
16 Teaching License of Robert Phillip Carwithen and places Mr. Carwithen on  
17 Probation for a period of four years from the date of this order. Conditions of  
18 probation as indicated on the attached Order.

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20 DATED THIS 19th day of May, 1999.

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22 TEACHER STANDARDS AND PRACTICES COMMISSION

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25 By   
26 \_\_\_\_\_  
27 David V. Myton, Executive Director  
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29 NOTICE: YOU ARE ENTITLED TO A JUDICIAL REVIEW OF THIS ORDER.  
30 JUDICIAL REVIEW MAY BE OBTAINED BY FILING A PETITION FOR REVIEW  
31 WITHIN 60 DAYS FROM THE SERVICE OF THIS ORDER. JUDICIAL REVIEW  
32 IS PURSUANT TO THE PROVISIONS OF ORS 183.482 TO THE OREGON  
33 COURT OF APPEALS.  
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1 BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION  
2 OF THE STATE OF OREGON

3 In the Matter of the  
4 Teaching License of

5 ROBERT PHILIP CARWITHEN

PROPOSED ORDER

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8 On March 3, 1999, the Teachers Standards and Practices Commission (Commission)  
9 held a hearing concerning the application for reinstatement of the Oregon Teaching License of  
10 Robert Philip Carwithen. The hearing was held before a panel of the Commission consisting  
11 of Jonathon Hill, Paul Meyer and Toby Clauson. Dr. Hill served as Chair of the panel. The  
12 hearing was conducted as a contested case matter and was tape-recorded. Mr. Carwithen was  
13 represented by Monica Smith, Attorney at Law, and the Commission was represented by Joe  
14 McKeever, Assistant Attorney General.

15 Mr. Carwithen testified on his own behalf and called the following witnesses: Craig  
16 Prough, Principal at Sheridan High School; W. Keith Weathers, Owner of Weathers Music  
17 Corporation; Patricia Parezo, Licensed Professional Counselor; and Amanda Carwithen.  
18 Mr. Carwithen offered the following exhibits which were received into evidence without  
19 objection:

20  
21 1/20/99 Letter from Roselee Cain, MD  
22 Teacher performance evaluations from 1995 and 1996  
23 1990 Employment Application and Resume  
24 1990 Letters of Reference from North Douglas School District  
25 1/13/99 Written report from Patricia Parezo

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1 The Commission called Rachel Brudnok as a witness and offered the following exhibits  
2 which were received into evidence without objection:

3 7/18/96 Letter from Rachel Brudnok

4 7/30/96 Resignation Agreement between Robert Carwithen and the Sheridan School District

5 7/15/97 Stipulation, Surrender of License and Default Order

6 1/13/99 Letter from Patricia Parezo, MA.

7 Undated Letter from Rachel Brudnok to the Teachers Standards and Practices Commission

8 2/24/99 Supplementary Statement to the Letter of Roselee Cain, MD.

### 9 FINDINGS OF FACT

10 1. Mr. Carwithen held an Oregon teaching license from 1984 until July 15, 1997.

11 He was employed as a Music Teacher and Band Director at the North Douglas School District  
12 from 1984 to the summer of 1990 and with the Sheridan School District from the summer of  
13 1990 until his resignation from the school district on July 30, 1996.

14 2. During the 1995-96 school year, Mr. Carwithen worked closely with a 17-year  
15 old female student. The student served as Mr. Carwithen's student aide and was  
16 Mr. Carwithen's student in a music class and a small extra-curricular vocal group.

17 3. During the 1995-96 school year, Mr. Carwithen and the student spent significant  
18 periods of time alone together. The student frequently counseled with Mr. Carwithen  
19 concerning her personal life, and Mr. Carwithen also confided with the student about his  
20 personal problems. Mr. Carwithen related to the student as a close personal friend, and he  
21 failed to maintain an appropriate teacher-student relationship.

22 4. Mr. Carwithen sometimes talked with the student about sexual topics, and he  
23 inappropriately permitted the student to discuss sexual topics with him.

24 5. One day in April 1996, Mr. Carwithen initiated a conversation about sexual  
25 topics with the student at the school. Mr. Carwithen told the student that he was sexually  
26 attracted to the student and asked the student if she would ever consider a sexual relationship  
with an older man. The student reasonably interpreted Mr. Carwithen's remarks as a request

1 for sexual favors, and Mr. Carwithen acknowledged in his testimony that he intended his  
2 remarks to be a request for sexual favors. The student rejected Mr. Carwithen's request.  
3 After that day, Mr. Carwithen did not make any subsequent requests for sexual favors or  
4 engage in any subsequent discussion of sexual topics with the student.

5 6. Following the above conversation, the student informed her sister and a friend  
6 that Mr. Carwithen had made inappropriate remarks to her. Eventually a rumor about the  
7 conversation reached one of the parents who informed Mr. Carwithen of the rumor in June or  
8 July 1996. Mr. Carwithen contacted the student, who had then graduated from high school,  
9 and requested that the student meet him at the school. Mr. Carwithen met with the student and  
10 suggested to her that if she were asked about her conversation with Mr. Carwithen, she could  
11 do one of three things: (1) tell the truth about the conversation; (2) state that she had  
12 misinterpreted Mr. Carwithen's remarks; or (3) state that she had made up the conversation as  
13 part of a schoolgirl fantasy. Mr. Carwithen further told the student that if she told the truth it  
14 would cause Mr. Carwithen to lose his job and his marriage. He intended by his statement to  
15 encourage the student to lie about the earlier conversation.

16 7. Following her meeting with Mr. Carwithen, the student informed her mother  
17 about what had occurred. The student's mother encouraged her to write a letter to the school  
18 which the student did on about July 18, 1996. The school district initiated an investigation and  
19 contacted Mr. Carwithen concerning the allegations. Mr. Carwithen admitted that he had  
20 made inappropriate remarks to the student and resigned his position with the district.

21 8. In July 1997, Mr. Carwithen entered into a stipulation with the Commission in  
22 which he acknowledged the inappropriate conversation with the student in April 1996 and his  
23 subsequent encouragement to the student that she not tell the truth about their conversation.  
24 He surrendered his teaching license on July 15, 1997.

25 9. In August 1997, Mr. Carwithen began treatment with psychiatrist Roselee Cain.  
26 Dr. Cain prescribed anti-depressant medication and began a series of regular psychotherapy

1 sessions. Dr. Cain submitted a letter to the Commission indicating that over the course of his  
2 treatment Mr. Carwithen had steadily gained insight into the factors that contributed to his  
3 inappropriate behavior. Dr. Cain stated that in her opinion Mr. Carwithen was not likely to  
4 have the same problems in the future that would lead to a similar incident.

5 10. Dr. Cain referred Mr. Carwithen and his wife to Patricia Parezo for marital  
6 counseling and counseling around the issues that resulted in Mr. Carwithen's loss of his job  
7 and teaching license. Mr. Carwithen has met with Ms. Parezo on almost a weekly basis for a  
8 period of 14 months. Ms. Parezo testified that Mr. Carwithen had expressed genuine remorse  
9 for his actions. She further testified that over the course of treatment Mr. Carwithen had  
10 developed a clear understanding of the effects of his actions and statements on the student.  
11 Ms. Parezo also testified that Mr. Carwithen had developed a clear understanding of  
12 appropriate teacher-student boundaries and an ability to avoid emotional attachments with  
13 students.

14 11. Mr. Carwithen received favorable evaluations from his employer, and he was an  
15 effective music instructor.

16 12. The Commission has no evidence that Mr. Carwithen has engaged in other  
17 sexually inappropriate conduct towards students.

#### 18 CONCLUSION OF LAW

19 Mr. Carwithen has the burden to show that he has good moral character and is fit to  
20 hold an Oregon Teaching License. ORS 342.143 and OAR 584-050-0006. Mr. Carwithen has  
21 made a sufficient showing of fitness to have his teaching license reinstated on a probationary  
22 basis.

#### 23 DISCUSSION

24 Any educator who has surrendered a teaching license or whose license has been revoked  
25 may apply for reinstatement of the license after one year. In this event, the Commission may

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1 require the applicant to furnish satisfactory evidence of good moral character, mental and physical  
2 health and any other evidence relevant to the applicant's fitness. ORS 342.175(3).

3 The Commission has considered relatively few applications for reinstatement, especially  
4 where the teacher has engaged in inappropriate conduct towards a student. Counsel for Mr.  
5 Carwithen cited some court cases concerning reinstatement of attorneys who had been  
6 disbarred. These cases provide some guidance to the Commission in applying its statutes,  
7 rules and professional standards. The Supreme Court has held that an attorney applicant for  
8 reinstatement should show "the sense of ethical responsibility and the maturity of character to  
9 withstand the many temptations with [he] will confront in the practice of law." *In re Taylor*,  
10 293 Or 285, 296 (1982). If there is doubt as to this issue, it should be resolved in favor of  
11 protection of the public. *Id.* The Supreme Court has also held that an attorney applicant must  
12 demonstrate not only an ability to conform his or her current conduct but reasonable assurance  
13 that misconduct will not reoccur. *In re Nash*, 317 Or 354, 363 (1993).

14 In approaching this case, the panel makes the following general conclusions. The  
15 educator has the burden of demonstrating to the Commission that he or she possesses good  
16 moral character and has undergone sufficient rehabilitation to assure there will be no  
17 reoccurrence of unprofessional conduct. In cases, such as this one, where the educator has  
18 violated his or her trust to students, the educator has a substantial burden; where there is doubt  
19 about the educator's ability to conform his or her future conduct, the issue should be resolved  
20 in favor of protection of students and the school community.

21 Mr. Carwithen on a single occasion made extremely inappropriate remarks of a sexual  
22 nature toward a student. Mr. Carwithen's conduct did not involve physical contact with the  
23 student.

24 The panel concludes that Mr. Carwithen has shown genuine remorse for his actions.  
25 Mr. Carwithen has undergone an intensive counseling program and an intensive plan for  
26 rehabilitation. Based on Mr. Carwithen's testimony and the expert testimony of

1 Mr. Carwithen's counselor, the panel concludes that Mr. Carwithen understands the impact of  
2 his conduct on the student and that he has gained sufficient insight to insure that similar  
3 conduct will not be repeated.

4 The panel also takes into account that Mr. Carwithen's misconduct did not involve  
5 physical sexual contact and that his inappropriate remarks, although extremely egregious,  
6 occurred only once and were not repeated. Although Mr. Carwithen initially encouraged the  
7 student to lie, he took responsibility for his actions as soon as he was confronted by his  
8 employer. He also voluntarily and at considerable expense underwent an intensive counseling  
9 program to deal with the factors that resulted in his behavior.

10 The Commission considers any sexual contact between a teacher and a student to be  
11 extremely serious. Sexual contact includes sexual advances and verbal conduct of a sexual  
12 nature directed towards a student. OAR 584-020-0005(5). Sexual contact with a student will  
13 almost always result in revocation of the educator's teaching license. Mr. Carwithen's conduct  
14 in April 1996 demonstrated a clear lack of good moral character and a breach of the trust  
15 between teachers, students, parents and the public. In order to meet the burden of showing  
16 good moral character, the teacher must demonstrate rehabilitation and clear evidence that the  
17 misbehavior will not reoccur. The panel believes it is unlikely that Mr. Carwithen will have  
18 an inappropriate personal relationship with a student or encourage a student to lie in the future.  
19 In this case, the panel concludes that Mr. Carwithen has met his burden of proof and has  
20 demonstrated the likelihood that he possesses good moral character as that term is used under  
21 ORS 342.143.

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**PROPOSED ORDER**

The Oregon teaching license of Robert Philip Carwithen shall be reinstated on a probationary basis for a period of four years from the date of this order. Conditions of probation shall be as follows:

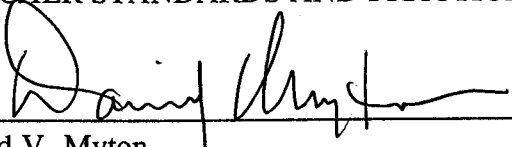
1. Mr. Carwithen shall continue with counseling at such level as recommended by his counselor and no less than four sessions per year during the period of probation. Mr. Carwithen shall provide a copy of this order to his counselor and shall direct the counselor to notify the Executive Director if, in the judgement of the counselor, Mr. Carwithen may again engage in conduct that would violate professional standards. Mr. Carwithen shall provide consent for the counselor to disclose to the Executive Director any information necessary to comply with this order.

2. Mr. Carwithen shall comply with all Standards for Competent and Ethical Performance of Oregon educators under OAR 584 division 020.

3. Mr. Carwithen shall provide information as requested by the Commission to verify that he has complied with conditions of probation, including a written statement of satisfactory performance by any employing district.

DATED this 18<sup>th</sup> day of May 1999.

TEACHER STANDARDS AND PRACTICES COMMISSION

  
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David V. Myton