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2 BEFORE THE
3 TEACHER STANDARDS AND PRACTICES COMMISSION
4 STATE OF OREGON
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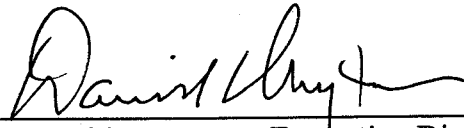
6 In the Matter of the)
7 Application for Teaching License of) ORDER DENYING
8 CRAIG ROGER MOTTAZ) APPLICATION FOR
9) TEACHING LICENSE
10

11
12 FINAL ORDER
13

14 By resolution dated January 15, 1999, the Teacher Standards and Practices
15 Commission adopts the attached proposed order to uphold the Executive
16 Director's denial of the Application for an Oregon Teaching License of Craig
17 Roger Mottaz.
18

19 DATED THIS 27th day of January, 1999.
20

21 TEACHER STANDARDS AND PRACTICES COMMISSION
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23
24 By 
25 _____
26 David V. Myton, Executive Director
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28 NOTICE: YOU ARE ENTITLED TO A JUDICIAL REVIEW OF THIS ORDER.
29 JUDICIAL REVIEW MAY BE OBTAINED BY FILING A PETITION FOR REVIEW
30 WITHIN 60 DAYS FROM THE SERVICE OF THIS ORDER. JUDICIAL REVIEW
31 IS PURSUANT TO THE PROVISIONS OF ORS 183.482 TO THE OREGON
32 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 Application of
5 Craig R. Mottaz

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, OPINION AND
ORDER

6 On January 28, 1998, David Myton, Executive Director for the Teacher Standards and
7 Practices Commission (Commission) denied an Oregon Teaching License application for
8 Craig R. Mottaz (Mottaz) on the basis that Mottaz lacked fitness to serve as an Oregon educator.
9 The Executive Director based the denial on Mottaz's 1991 conviction in California of child
10 annoyance/molestation and action by the California Commission on Teacher Credentialing
11 (California Commission) revoking Mottaz's California credential in 1993 and refusal to reinstate
12 his license thereafter. Mottaz appealed the Executive Director decision on February 1, 1998, and
13 requested a delayed hearing until a time he would be in Oregon. A hearing was held on
14 December 29, 1998, in Salem, Oregon, before a panel of three Commissioners; Karen Famous,
15 Chair, Jerry Colonna and Robert Goerke. Mottaz represented himself and the Commission was
16 represented Assistant Attorney General Gary M. Cordy. The hearing was conducted as a
17 contested case hearing and was tape-recorded.

18 The panel heard testimony from Mottaz and the following exhibits were received into
19 evidence:

20 Commission exhibits:

- 21 1. Exhibit 1 – Application correspondence; pages 1-8.
22 2. Exhibit 2 – California Commission on Teacher Credentialing file materials;
23 pages 101-132; 19 page excerpt of Mottaz appeal of criminal conviction.

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3. Exhibit 3 – Oregon laws, rules and interpretation; pages 201-229.
4. Exhibit 4 – California laws and dismissal order; pages 301-321.
- Applicant Exhibits:

Mottaz made reference to documents contained in the Commission file but did not number and submit copies of those documents. Nonetheless the panel agreed that any documents in the administrative record would be considered exhibits.

RULINGS

Counsel to the Commission objected to Mottaz's testimony regarding alleged "criminal" and "illegal" activities of the California Commission on Teacher Credentialing. The panel ruled that Mottaz could make legal argument regarding California law but could not testify regarding his perceptions of California Commission actions.

Mottaz argued that the Commission could not consider this 1991 California conviction because it had subsequently been dismissed under California Penal Code section 1203.4. The panel ruled, for reasons explained in the conclusion of law below, that the California conviction could be considered.

FINDINGS OF FACT

1. On May 24, 1991, Mottaz was convicted by a unanimous 12-person jury of violation of section 647.6 of the California Penal Code, Annoying or Molesting a Child, a misdemeanor. Exhibit 2, page 116.
2. The criminal conviction was based on Mottaz kissing the lips and rubbing the breasts and legs of a 12-year old girl in November and December 1990. At the time Mottaz was the girl's Sunday school teacher and provided weekly private music lessons to the girl in her home.

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- 1 3. On July 23, 1991, the court placed Mottaz on probation for a period of two years with
2 several conditions including jail time and sex offender registration. Exhibit 2,
pages 113-115.
- 3 4. Mottaz filed a Notice of Appeal of his conviction on August 2, 1991. His conviction was
not reversed on appeal.
- 4 5. On July 21, 1993, the California Commission notified Mottaz that pursuant to section
5 44425 of the California Education Code, it had revoked all credentials and certificates
under the jurisdiction of the Commission.
- 6 6. On September 21, 1993, the judge that presided over the 1991 trial, entered an order of
7 dismissal of the case pursuant to California Penal Code section 1203.4. The order of
dismissal was not based on any new exonerating evidence or any appellate court order.
- 8 7. At its November 3-4, 1994, meeting the California Commission denied Mottaz's Petition
9 for Reinstatement.
- 10 8. At its January 5-6, 1995, meeting the California Commission reconsidered its November
11 denial and then voted to sustain its prior action.
- 12 9. At its August 21-22, 1997, meeting the California Commission again denied Mottaz's
13 Petition for Reinstatement.
- 14 10. At its December 4-5, 1997, meeting the California Commission voted to reconsider and
15 then voted to sustain its prior action to deny Mottaz's Petition for Reinstatement.
- 16 11. Mottaz personally appeared before the California Commission on two occasions to argue
17 for his reinstatement.
- 18 12. Mottaz obtained numerous references and recommendations in support of his effort to
19 become recertified in California. In addition he obtained a report in 1994 from
20 Dr. Richard Greene a Psychologist that opined that Mottaz was not a child molester.
These materials were submitted in the administrative record and considered by the panel.
- 21 13. Mottaz denies he committed the acts that resulted in his conviction.

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1 14. The action by the California Commission revoking and denying reinstatement of
2 Mottaz's license in California was for reasons and through procedures that are the same
as or substantially equivalent to those permitting similar action in Oregon.

3 15. Conviction in California of section 647.6 of the California Penal Code, Annoying or
4 Molesting a Child under 18 is substantially equivalent to a conviction of ORS 163.415,
Sexual Abuse in the Third degree.

5 **CONCLUSIONS OF LAW**

6 Mottaz lacks fitness to serve as an Oregon educator:

7 1. Mottaz violated OAR 584-020-0040(1)(m) and engaged in gross unfitness when
8 he was convicted in 1991 in California of violation of section 647.6 of the Penal
9 Code, a crime substantially equivalent to ORS 163.415, Sexual Abuse in the
10 Third Degree.

11 2. Mottaz violated OAR 584-020-0040(5)(a) and engaged in conduct constituting
12 gross unfitness when his teaching license was revoked in 1993 by the California
13 Commission and when on several subsequent occasions he was unable to
14 demonstrate to the satisfaction of the California Commission that there was
15 sufficient rehabilitation warranting license reinstatement.

16 **OPINION**

17 1. Mottaz has asserted to both the Executive Director and the panel that as a matter
18 of law he has no California criminal conviction and therefore no basis exists to deny his license
19 application. Mottaz is wrong in his assertions regarding California law and even were that not
20 so, he is also wrong regarding Oregon's authority to consider a conviction expunged or pardoned
21 in another state.

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1 Section 1203.4 of the California Penal Code provides in part:

2 (a) In any case in which a defendant has fulfilled the conditions of
3 probation for the entire period of probation, * * * the court shall set aside
4 the verdict of guilty; and, * * * the court shall thereupon dismiss the
5 accusations or information against the defendant and except as noted
6 below, he shall thereafter be released from all penalties and disabilities
7 resulting from the offense of which he has been convicted, * * * the order
8 shall state, * * * that the order does not relieve him of the obligation to
9 disclose the conviction in response to any direct question contained in any
10 questionnaire or application for public office or for licensure by any state
11 or local agency. * * *

8 Section 44008 of the California Education Code provides in part:

9 (a) Except as provided in subdivision (b) of this section, a termination
10 of probation and dismissal of an accusation or information pursuant to
11 Section 1203.4 of the Penal Code shall not, for the purpose of this
12 division, have any effect.

12 Therefore under California law the California Commission could consider the 1991
13 conviction even though it was "dismissed" under section 1203.4.

14 However, even if California law permitted a complete restoration of rights through a
15 process of pardon, expunction or dismissal, Oregon could nonetheless consider an applicant for a
16 teaching license to be convicted for Oregon licensure purposes. The Oregon Supreme Court has
17 held that there is no federal "full faith and credit" Constitutional problem when Oregon decides
18 not to observe another state's policy choice as to the expunction or dismissal of criminal
19 convictions. *Delephant v. Bd of Police Standards and Training*, 317 Or 273 (1993). Thus in
20 deciding whether to abide by another state's action, Oregon can consider whether the same relief
21 would be available in Oregon.

22 Had Mottaz engaged in the same conduct in Oregon that resulted in his 1991 California
23 conviction, Mottaz would have been convicted of Sexual Abuse in the Third Degree. (A full

1 discussion of the equivalency of the California section 647.6 and ORS 163.415 will be described
2 below.) Sex Abuse in the Third Degree could not be set aside or expunged in Oregon. See
3 ORS 137.225(5)(d). Conviction of this crime would result in a permanent disqualification from
4 a teaching or administrative license in Oregon. ORS 342.143. Therefore the Commission could
5 consider a California conviction under section 647.6 even if California law prohibited the
6 California Commission from considering the conviction because it had been dismissed/expunged
7 under California law.

8 2. Conviction under California Penal Code section 647.6 is substantially equivalent
9 to a conviction under ORS 163.415, Sexual Abuse in the Third Degree. Therefore Mottaz
10 legally must be denied an Oregon license under OAR 584-020-0040(1)(m).

11 California Penal Code section 647.6 provides in part:

12 Every person who annoys or molests any child under the age of 18
13 is punishable by a fine not exceeding one thousand dollars (\$1,000) or by
14 imprisonment in the county jail for not exceeding one year or by both the
fine and imprisonment.

15 California courts have interpreted the law to require motivation of unnatural abnormal
16 sexual interest in children. *People v. Kongs*, 37 Cal Rptr 2d 327, 1994. For purposes of
17 California law section 647.6 is considered a "sex offense." California Education Code sections
18 44010, 44425. Exhibit 4, pages 301-308.

19 OAR 584-020-0040 requires evaluation of whether a law was substantially equivalent to
20 that of another state by review of the laws in effect in Oregon at the time of the conviction.

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1 ORS 163.415 in effect at the time of Mottaz's conviction stated in relevant part:

2 163.415 Sexual abuse in the third degree. (1) A person commits
3 the crime of sexual abuse in the third degree if the person subjects another
4 person to sexual contact and

4 (a) The victim does not consent to the sexual contact; or

5 (b) The victim is incapable of consent by reasons of being
6 under 18 years of age, mentally defective, mentally
7 incapacitated or physically helpless.

7 Under ORS 163.305 Sexual contact was defined as:

8 * * * any touching of the sexual or other intimate parts of a person
9 or causing such person to touch the sexual or other intimate parts of the
10 actor for the purpose of arousing or gratifying the sexual desire of either
11 party.

11 It is possible that conduct that would violate section 647.6 might not, if committed in
12 Oregon, violate ORS 163.415. However such would be the exception and not the rule and the
13 rule requires the conviction to be substantially equivalent, not identical. Therefore it is more
14 important to analyze the conduct at issue rather than hypothetical possibilities. Mottaz was
15 convicted under section 647.6 because he rubbed the breasts and upper legs of a 12-year old girl
16 and kissed her on the lips. That conduct if committed in Oregon would clearly constitute sexual
17 abuse. Therefore the California conviction under section 647.6 is substantially equivalent to
18 ORS 163.415 for OAR 584-020-0040 purposes and Mottaz can not legally be licensed by the
19 Commission in Oregon.

20 3. The revocation and continued denial of reinstatement of Mottaz's license by the
21 California Commission constitutes evidence of gross unfitness under OAR 580-020-0040(5)(a).

22 In his January 28, 1998, denial of Mottaz's license application, the Executive Director
23 stated in part:

1 Furthermore, the actions of the California Commission on Teacher
2 Credentialing to revoke your California Credential in 1993, to deny
3 reinstatement in 1994 and in August 1997, and to reconsider and sustain
4 the 1997 denial of reinstatement in December 1997 raise further questions
5 about your qualifications. CTC has responsibilities in California
6 comparable to our agency's authority in Oregon. CTC is in a position to
7 examine your background with full support of the State of California.
8 Although CTC's actions are not in themselves a basis for denial in
9 Oregon, this record of CTC action is pertinent to my decision.

10 The panel concludes that licensure action in another state may be evidence of gross
11 unfitness sufficient to deny an Oregon license. In this case, Mottaz's conviction under section
12 647.6 did not as a matter of law result in his permanent denial of California licensure.
13 Nonetheless the California Commission concluded on several occasions that Mottaz had not
14 demonstrated sufficient rehabilitation to warrant reinstatement. The most recent denial by the
15 California Commission in December 1997, occurred after Mottaz submitted his September 1997
16 application for an Oregon license.

17 The panel concludes that the California Commission's refusal to license Mottaz
18 constitutes evidence of gross unfitness under OAR 580-020-0040(5)(a) to warrant the denial of
19 an Oregon application for a teaching license. We reach this conclusion because of the recentness
20 of the California Commission action, the similarity of Oregon and California grounds for licesne
21 denial in this case and the similarity of procedures afforded Mottaz by California.

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1 **ORDER**

2 The Commission upholds the Executive Director's decision and concludes that Craig R.
3 Mottaz lacks fitness to serve as an Oregon educator under ORS 342.143, OAR 584-020-0040(1)
4 and 584-020-0040(5). Because Mottaz has a conviction in California of a substantially
5 equivalent crime to ORS 163.415, his disqualification is permanent.

6 DATED this 27th day of January 1999.

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8 By: David V. Myton
9 David V. Myton, Executive Director
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