

BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION  
OF THE STATE OF OREGON

In the Matter of the )  
Teaching License of ) FINAL ORDER  
MICHAEL EUGENE MOOBERRY )  
 ) Case No. 700193

On December 18, 2007, Administrative Law Judge (ALJ) Dove L. Gutman issued a Ruling on Motion for Summary Determination and Proposed Order in this case.

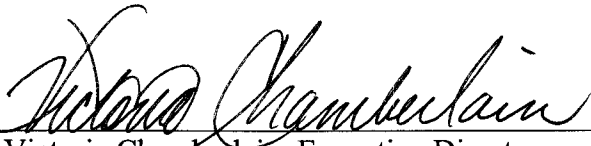
The Teacher Standards and Practices Commission adopts in its entirety the Findings of Fact, Conclusions of Law and Order contained in the attached Ruling on Motion for Summary Determination and Proposed Order.

ORDER

The Commission adopts the Ruling on Motion for Summary Determination and Proposed Order denying Mr. Mooberry's application for an educator license.

Dated this 11<sup>th</sup> day of February 2008.

TEACHER STANDARD AND PRACTICES COMMISSION

By:   
Victoria Chamberlain, Executive Director

**NOTICE:** You are entitled to judicial review of this Final Order pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition in the Oregon Court of Appeals. The petition must be filed within 60 days from the date of service of this Final Order.

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

IN THE MATTER OF THE TEACHING	)	<b>RULING ON MOTION FOR</b>
LICENSE OF:	)	<b>SUMMARY DETERMINATION</b>
	)	<b>AND PROPOSED ORDER</b>
	)	
<b>MICHAEL E. MOOBERRY</b>	)	OAH Case No: 700193

**HISTORY OF THE CASE**

On July 10, 2007, the Teacher Standards and Practices Commission (Commission) issued a Notice of Denial of Teaching License and Opportunity for Hearing (Notice of Denial) to Michael E. Mooberry. On August 2, 2007, Mr. Mooberry requested an administrative hearing. On August 17, 2007, the matter was referred to the Office of Administrative Hearings (OAH).

On September 13, 2007, Administrative Law Judge (ALJ) Dove L. Gutman of the OAH was assigned to preside over the matter. On October 1, 2007, a pre-hearing telephone conference was held. ALJ Gutman presided. Assistant Attorney General (AAG) Jeff Dover represented the Commission. Mr. Mooberry represented himself. On October 2, 2007, ALJ Gutman issued a Pre-Hearing Order.

On November 7, 2007, the Commission filed a Motion for Summary Determination. On November 9, 2007, Mr. Mooberry filed his Response.

**ISSUES**

1. Whether, on or about January 16, 2007, Mr. Mooberry submitted a falsified application to the Commission when he answered "no" to character question 4, denying that his teaching credentials had been suspended, in violation of OAR 584-050-0006(2)(a).
2. Whether, on or about January 16, 2007, Mr. Mooberry submitted a falsified application to the Commission when he answered "no" to character question 7, denying that he had been disciplined by a public agency responsible for licensure, in violation of OAR 584-050-0006(2)(a).
3. Whether the Commission has sufficient evidence of Mr. Mooberry's lack of fitness to serve as an educator, pursuant to OAR 584-050-0006(2)(e).
4. Whether the Commission has sufficient evidence of Mr. Mooberry's gross neglect of duty and lack of moral character, pursuant to OAR 584-020-0040(4)(c).

## LEGAL STANDARD FOR SUMMARY DETERMINATION

In contested case matters, the Commission has adopted the current version of the Attorney General's Model Rules of Procedure under the Administrative Procedure Act. OAR 584-001-0005. The Model Rules of Procedure pertaining to contested case proceedings are set forth in OAR Chapter 137, Division 3.

Motions for Summary Determination are governed by OAR 137-003-0580, which provides in pertinent 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.

## FINDINGS OF FACT

1. The Teacher Standards and Practices Commission is the state agency that issues licenses to teachers and administrators who possess the minimum competencies, knowledge and skills to teach and administer in public schools of the state. ORS 342.121.

2. The Commission may also require an applicant for a teaching, personnel service or administrative license to furnish evidence satisfactory to the Commission of good moral character, mental and physical health, and such other evidence as it may deem necessary to establish the applicant's fitness to serve as a teacher. ORS 342.143.

3. On or about December 8, 1992, while employed by the Santa Rosa City Schools in California, Mr. Mooberry placed a pair of scissors on or near the neck of a student in his classroom. Mr. Mooberry was subsequently placed on administrative leave pending investigation of the incident. (Ex. 3; Notice of Denial.)

4. On May 8, 1996, the California Commission on Teacher Credentialing (California Commission) issued a Notice of Commission Action (Notice) to Mr. Mooberry that suspended his teaching credentials for ten (10) days, effective June 7, 1996. The Notice was sent to Mr.

Mooberry via certified mail. Mr. Mooberry signed the certified mail receipt on May 11, 1996. (Ex. 2.)

5. On January 16, 2007, Mr. Mooberry signed and submitted an Application for Educator License Form C-1 (Application) with the Commission. (Ex. 1.) By signing the application, Mr. Mooberry certified that the information submitted on the form was true and accurate. (*Id.* at 4.) On page four of the Application, the following instructions are given regarding 11 character questions: "You must answer each question either 'yes' or 'no' whichever is true. Explain each 'yes' answer in detail on a separate sheet." (*Id.*) On character question 4, "Have you ever had a professional certificate, credential or license (of any kind) revoked or suspended or have you been placed on probationary status for any alleged misconduct or alleged violation of professional standards of conduct," Mr. Mooberry answered "no." On character question 7, "Have you ever been disciplined by any public agency responsible for licensure of any kind, including but not limited to educational licensure," Mr. Mooberry answered "no." (*Id.*) Directly below the character questions, the following warning is given in bold text: "Any false statement knowingly made in this application is grounds for revocation or suspension of your license. If in doubt, disclose and explain rather than conceal." (*Id.*)

6. On July 10, 2007, the Commission issued a Notice of Denial of Teaching License and Opportunity for Hearing to Mr. Mooberry. On August 2, 2007, Mr. Mooberry requested an administrative hearing.

### CONCLUSIONS OF LAW

1. On or about January 16, 2007, Mr. Mooberry submitted a falsified application to the Commission when he answered "no" to character question 4, denying that his teaching credentials had been suspended, in violation of OAR 584-050-0006(2)(a).

2. On or about January 16, 2007, Mr. Mooberry submitted a falsified application to the Commission when he answered "no" to character question 7, denying that he had been disciplined by a public agency responsible for licensure, in violation of OAR 584-050-0006(2)(a).

3. The Commission has sufficient evidence of Mr. Mooberry's lack of fitness to serve as an educator, pursuant to OAR 584-050-0006(2)(e).

4. The Commission has sufficient evidence of Mr. Mooberry's gross neglect of duty and lack of moral character, pursuant to OAR 584-020-0040(4)(c).

## OPINION

The Commission contends that the Motion for Summary Determination should be granted. Mr. Mooberry contends that the Motion should be denied, and the matter should proceed to hearing. As set forth below, the Commission's Motion is granted, and Mr. Mooberry's Application for Educator License is denied.

**1. Whether, on or about January 16, 2007, Mr. Mooberry signed and submitted an Application for Educator License Form C-1 upon which Mr. Mooberry answered "no" to character question 4, "Have you ever had a professional certificate, credential or license (of any kind) revoked or suspended or have you been placed on probationary status for any alleged misconduct or alleged violation of professional standards of conduct," in violation of OAR 584-050-0006(2)(a).**

OAR 584-050-0006 is titled "Criteria for Denying Issuance or Reinstatement of Licenses" and provides, in pertinent part:

(1) The Executive Director may deny issuance of a license, renewal of a license; or reinstatement of a license that has not been subject to discipline. The Executive Director may not deny reinstatement of a license that has been revoked and is subject to OAR 584-050-0015.

(2) Notice of denial and right to a hearing may be issued when any of the following conditions exist:

(a) The applicant submits a falsified application.

On May 8, 1996, Mr. Mooberry's teaching credentials were suspended for 10 days by the California Commission, effective June 7, 1996. On May 11, 1996, Mr. Mooberry was notified of the suspension via certified mail. Thus, Mr. Mooberry knew that his teaching credentials had been suspended.

On January 16, 2007, Mr. Mooberry signed and submitted an Application to the Commission in which he answered "no" to question 4, asserting that his teaching credentials had never been suspended for any alleged misconduct or alleged violation of professional standards of conduct. Because Mr. Mooberry knew that his teaching credentials had been suspended in 1996, by answering "no" to question 4, Mr. Mooberry answered falsely on the Application. Therefore, I find by a preponderance of the evidence that Mr. Mooberry submitted a falsified application to the Commission.

Mr. Mooberry argued that he answered "no" because he believed there was a gag order in effect. However, Mr. Mooberry did not present evidence of an actual gag order that prevented him from telling the truth on the Application to the Commission. As such, Mr. Mooberry's argument is not persuasive.

Mr. Mooberry also argued that he misunderstood his attorney's advice, and did not seek clarification until he received the denial. However, Mr. Mooberry could have sought legal advice prior to submitting the Application. Thus, Mr. Mooberry's argument is not persuasive.

**2. Whether, on or about January 16, 2007, Mr. Mooberry signed and submitted an Application for Educator License Form C-1 upon which Mr. Mooberry answered "no" to character question 7, "Have you ever been disciplined by any public agency responsible for licensure of any kind, including but not limited to educational licensure," in violation of OAR 584-050-0006(2)(a).**

As stated above, on May 8, 1996, the California Commission disciplined Mr. Mooberry by suspending his teaching credentials for 10 days. On May 11, 1996, Mr. Mooberry was notified of the suspension via certified mail. As such, Mr. Mooberry knew that he had been disciplined by a public agency responsible for licensure.

On January 16, 2007, Mr. Mooberry signed and submitted an Application to the Commission in which he answered "no" to question 7, asserting that he had never been disciplined by any public agency responsible for licensure of any kind. Because Mr. Mooberry knew that he had been disciplined by a public agency responsible for licensure, by answering "no" to question 4, Mr. Mooberry answered falsely on the Application. Consequently, I find by a preponderance of the evidence that Mr. Mooberry submitted a falsified application to the Commission.

**3. Whether Mr. Mooberry's conduct of failing to report discipline actions on his Application for Educator License Form C-1 is evidence of his lack of fitness to serve as an educator, pursuant to OAR 584-050-0006(2)(e).**

OAR 584-050-0006(2) further provides:

(2) Notice of denial and right to a hearing may be issued when any of the following conditions exist:

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(e) The Executive Director has evidence that the applicant may lack fitness to serve as an educator.

On December 8, 1992, while employed by Santa Rosa City Schools in California, Mr. Mooberry placed a pair of scissors on or near the neck of a student in his classroom. Mr. Mooberry was subsequently disciplined by the California Commission on May 8, 1996, by having his teaching credentials suspended for 10 days.

In the Application that he filed with the Commission, Mr. Mooberry failed to disclose the discipline actions that were taken by the California Commission against his teaching credentials. Mr. Mooberry's failure to disclose those actions on the Application indicates a lack of honesty and integrity. As such, I find, by a preponderance of the evidence that Mr. Mooberry's conduct in failing to disclose discipline actions on his Application to the Commission indicates a lack of fitness to serve as an educator.

**4. Whether Mr. Mooberry's answers on questions 4 and 7, was knowing falsification a document directly related to licensure, which constitutes gross neglect of duty and is a basis for denial of licensure as incorporated in ORS 342.143, "good moral character," pursuant to OAR 584-020-0040(4)(c).**

ORS 342.143 is titled "Issuance of teaching, personnel service or administrative license and registration as charter school teacher" and provides, in material part:

(2) The Teacher Standards and Practices Commission may also require an applicant for a teaching, personnel service or administrative license to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as it may deem necessary to establish the applicant's fitness to serve as a teacher.

OAR 584-020-0040 is titled "Grounds for Disciplinary Action" and provides, in relevant part:

(2) An applicant fails to meet the requirement of ORS 342.143 "good moral character" if the applicant engages in gross neglect of duty, gross unfitness, or other acts which are in violation of sections (1) or (3) of this rule.

(3) The Commission may initiate proceedings to suspend or revoke the license or registration of an educator under ORS 342.175 or deny a license registration to an applicant under ORS 342.143 who:

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(b) Is charged with knowingly making any false statement in the application for a license;

(c) Is charged with gross neglect of duty;

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(4) 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:

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(c) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties[.]

Pursuant to OAR 584-020-0040(4)(c), knowing falsification of any document directly related to licensure is gross neglect of duty. In this case, Mr. Mooberry answered falsely on the character questions 4 and 7 on the Application to the Commission, and did so with full knowledge of the facts. Thus, Mr. Mooberry knowingly falsified his Application for Educator License. Therefore, Mr. Mooberry committed gross neglect of duty and demonstrated a lack of good moral character. Consequently, the Commission may deny Mr. Mooberry's Application for Educator License.

#### **RULING ON THE MOTION**

The Motion for Summary Determination is GRANTED. The hearing scheduled for January 11, 2008 is hereby cancelled.

#### **ORDER**

I propose that the Commission issue the following order:

The Commission's decision to deny Mr. Mooberry's Application for Educator License Form C-1 is AFFIRMED.

Dove L. Gutman  
\_\_\_\_\_  
Administrative Law Judge  
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: December 18, 2007



## 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. 1: Application for Educator License Form C-1.

Ex. 2: State of California Commission on Teacher Credentialing Notice of Commission Action dated May 8, 1996 to Michael Mooberry; Declaration of Service; Certified Mail Receipt signed by Michael Mooberry.

Ex. 3: Sworn Statement by Jose Galvan dated December 9, 1992.