

NOTICE: If you are dissatisfied with this Order you may not appeal it until you have asked the agency to rehear the case or to reconsider the Order. To obtain agency rehearing or reconsideration you must file a petition for rehearing or reconsideration pursuant to OAR 584-019-0045 within 60 days from the day this Order was served on you. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service was the day it was *mailed*, not the day you received it. If you do not file a petition for rehearing or reconsideration within the time limits provided, you will lose your opportunity for rehearing or reconsideration and you will lose your right to appeal to the Oregon Court of Appeals.

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 AND PRACTICES COMMISSION**

IN THE MATTER OF THE
LICENSURE OF

STEPHEN DELBERT MORGAN

) **PROPOSED ORDER**

)

)

) OAH No. 119106



HISTORY OF THE CASE

On May 21, 2004, the Teacher Standards and Practices Commission (TSPC) issued a Notice of Opportunity For Hearing, in which it charged Stephen Delbert Morgan, Respondent herein, with misconduct including gross neglect of duty and proposed to suspend or revoke his Oregon teaching license or impose other discipline under ORS 342.177. Respondent timely requested a hearing.

On December 7, 2004, TSPC referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Alison Greene Webster was assigned to preside at hearing. A prehearing telephone conference was convened on February 9, 2005. Assistant Attorney General Joe Gordon McKeever represented TSPC. Respondent appeared pro se.

During the prehearing conference, Respondent and TSPC agreed to submit the matter on the record, with written briefs to follow. Respondent stipulated to the facts stated in the Notice, but challenged the proposed sanction. TSPC, through Assistant Attorney General Elizabeth Thomson Denecke, submitted its closing argument on March 9, 2005. Respondent submitted his brief on March 21, 2005. The record closed on March 21, 2005, upon receipt of Respondent's brief.

ISSUE

What is the appropriate sanction for Respondent's failure to disclose on his Oregon Statewide Teacher Application that he had previously been disciplined by TSPC in September 2001 and that the discipline resulted in a suspension of his teaching license?

EVIDENTIARY RULINGS

Based on Respondent's stipulation to the alleged misconduct set forth in the Notice of Opportunity for Hearing, no TSPC Exhibits were offered or admitted. A copy of Respondent's Order Setting Aside Arrest or Conviction was marked and admitted as Exhibit R1.

FINDINGS OF FACT

1. Respondent was arrested on July 27, 2000 on two counts of furnishing liquor to a minor. He was subsequently convicted on one of the two counts. (Ex. R1.)
2. On September 14, 2001, TSPC suspended Respondent's teaching license for one year. TSPC reinstated Respondent's license in May 2003 and placed him on probation for two years. (Stipulation.)
3. On February 24, 2004, the Klamath County Circuit Court issued an Order Setting Aside Respondent's July 27, 2000 arrest and the conviction for furnishing liquor to a minor. The Order indicated that "the arrest is deemed not to have occurred and the defendant may accordingly answer any question relating to its occurrence as if it had not occurred." (Ex. R1.)
4. On or about April 15, 2004, Respondent applied for a teaching position on teachoregon.com by submitting an electronic Oregon Statewide Teacher Application. The application asked: "Have you ever had a professional certificate, credential or license (of any kind) revoked or suspended or have you been placed on probationary basis for any alleged misconduct or alleged violation of professional standards of conduct?" Respondent answered "No" to the question. (Stipulation.)
5. The Oregon Statewide Teacher Application also asked applicants: "Have you ever been disciplined by any public agency responsible for licensure of any kind, including but not limited to educational licensure?" Respondent also answered "No" to this question in completing the online application. (Stipulation.)

CONCLUSION OF LAW

A 90-day suspension of Respondent's teaching license, plus four years probation upon reinstatement is an appropriate sanction for Respondent's failure to disclose on the Oregon Statewide Teacher Application that he had previously been disciplined and had his license suspended by TSPC.

OPINION

Because Respondent stipulated that, in completing the Oregon Statewide Teacher Application, he denied having had his teaching license suspended or having been disciplined by any public licensing agency, TSPC need not prove the allegations of misconduct set forth in the Notice of Opportunity for Hearing. *Cf. Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action).

ORS 342.175¹ and 342.177 give TSPC the authority to suspend, revoke or otherwise discipline a teacher for gross neglect of duty.² TSPC contends that Respondent made knowing

¹ ORS 342.175 provides in pertinent part, as follows:

misrepresentations on the teacher application, and that a suspension of six months or 90 days is warranted under the circumstances and consistent with prior TSPC disciplinary orders.

Respondent, on the other hand, contends that he had no intention to deceive when he answered the questions on the application. He asserts that, because his arrest and conviction had been set aside and he had been advised to treat the occurrence as if it had not occurred, he reasonably believed that he could answer "No" to these two questions.

While Respondent may have been legally authorized to deny that he had been arrested for, and/or convicted of, furnishing alcohol to a minor, the two questions at issue on Oregon Statewide Teacher Application did not address prior arrests or criminal convictions. Instead, they asked whether Respondent had ever had a professional certificate revoked or suspended for misconduct and whether he had ever been disciplined by a public agency responsible for licensure of any kind. Because Respondent had been disciplined by TSPC and had his teaching license suspended in 2001, his negative responses to these questions were knowingly false.

TSPC has previously disciplined licensed teachers for making false statements on school-related employment applications. In the case of *Mary Ellen Edwards* (TSPC, Stipulation and Order of Suspension, May 2004), the licensee was found to have violated a civil reporting statute and was reprimanded by TSPC in 1999. In applying to a school district for non-certified, non-teaching consultant position in 2003, the licensee responded "No" to the question, "Have you ever been investigated for misconduct related to your employment." The licensee believed she answered the question accurately because she was applying for a non-certified position. TSPC found that the licensee made a false statement on the application, and suspended her teaching license for 60 days.

In *Rosemary Ellis Phillips* (TSPC, Stipulation and Order, May 2004), the licensee's teaching license was suspended in 1997 for failure to submit fingerprints with her teaching license application. She applied for, and was granted reinstatement in 2001. On her reinstatement application, the licensee denied that she had ever had a professional license revoked or suspended for misconduct or violation of professional standards. TSPC found that the licensee made a knowing misrepresentation on her reinstatement application, and issued a public reprimand.

In *Randy Scott Gross* (TSPC, Stipulation, Order of Suspension and Probation, May 2003), the licensee had falsely claimed on his license application that he had never failed to

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

* * *

- (b) Gross neglect of duty;

² Pursuant to OAR 584-020-0040(4)(c), "gross neglect of duty" includes knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties.

complete a teaching contract or been placed on leave from an employer due to misconduct. He also falsely claimed on an employment application that he had never been dismissed or asked to resign from a teaching position. TSPC imposed a six-month suspension, with conditions upon reinstatement, and four years probation.

Finally, TSPC has refused to reinstate a licensee's revoked license when the licensee failed to disclose the prior revocation on the application for reinstatement, and has revoked a license where the licensee falsely claimed on the application that he had never been convicted of a crime. *Jonathan Daniel Bell* (TSPC, Default Order, October 2003); *Edwin George Weamer* (TSPC, Default Order, July 2004).

Respondent, like licensee Edwards discussed above, maintains that he had no intent to deceive when he completed the statewide teacher employment application and denied that his teaching license had been suspended and/or that he had been subject to discipline. But, intent to deceive is not required under OAR 584-020-0040(4)(c).³ Considering Respondent's conduct in light of the prior TSPC disciplinary orders discussed above, I find that a 90-day suspension, followed by four years of probation upon reinstatement, is appropriate. Indeed, as TSPC notes, Respondent's misrepresentations were more significant than the one of licensee Edwards, in that Respondent was applying for a teaching position when he falsely represented that he had not been investigated by TSPC for criminal conduct.

³ Numerous statutes and rules make it a violation or, in some instances, a crime to falsify information. In *Pierce v. Dept. of Public Safety Standards and Training*, 196 Or App 190 (2004), the court found that the term "falsify" as used in ORS 181.662 simply means to represent incorrectly. Intent to deceive is not implicit requirement of the statute. ORS 181.662 authorizes DPSST to deny or revoke public safety officer certification if the person falsified any information on the application for certification or any documents submitted to the department.

ORDER

I propose the Teacher Standards and Practices Commission issue the following order:

The Oregon teaching license of Respondent Stephen Delbert Morgan is suspended for a period of 90 days.

Upon reinstatement of his teaching license, Respondent Morgan shall be placed on probation for a period of four years subject to the following conditions:

1. Respondent Morgan shall obey all Standards for Competent and Ethical Performance of Oregon Educators set forth in OAR Chapter 584, Division 20; and
2. Respondent Morgan shall accurately answer all questions on any future applications for teaching positions in Oregon.



Alison Greene Webster, Administrative Law Judge
Office of Administrative Hearings

MAILING AND ISSUE DATE:

April 14, 2005

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.