

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

In the Matter of the)
Teaching License of) FINAL ORDER
)
THOMAS J. HOLLCRAFT) Case No. 901201

On February 22, 2010, Senior Administrative Law Judge (ALJ) Dove L. Gutman issued a 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 Proposed Order.

ORDER

The Commission adopts the Proposed Order in its entirety and denies Hollcraft's application for a Substitute Teaching License.

Dated this 14th day of May 2010.

TEACHER STANDARD AND PRACTICES COMMISSION

By: 
Victoria Chamberlain, Executive Director
Teacher Standards and Practices Commission

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provision of ORS 183.482 to the Oregon Court of Appeals.

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Teacher Standards &
Practices Commission

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

IN THE MATTER OF:) PROPOSED ORDER
)
THOMAS J. HOLLCRAFT,) OAH Case No.: 901201
Respondent)

HISTORY OF THE CASE

On June 17, 2009, the Teacher Standards and Practices Commission (Commission) issued a Notice of Denial of Teaching License and Opportunity for Hearing to Thomas J. Hollcraft (Respondent). On July 16, 2009, Respondent requested a hearing.

On July 23, 2009, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Dove L. Gutman was assigned to preside at hearing.

On October 8, 2009, a pre-hearing telephone conference was held. ALJ Gutman presided. Respondent represented himself. Assistant Attorney General (AAG) Raul Ramirez represented the Commission. Lynn Beaton appeared on behalf of the Commission. On October 9, 2009, ALJ Gutman issued a Pre-Hearing Order setting forth the issues and schedule for hearing.

On January 13, 2010, a hearing was held in Salem, Oregon. ALJ Gutman presided. Respondent represented himself. AAG Ramirez represented the Commission. Marie Marckx, Respondent's wife; Joe Ortiz, Commission Investigator; Heidi Reinhardt, Commission employee; Patti Liddell, Commission employee; Lynn Beaton, Commission Representative; and Respondent all provided testimony. The record closed on January 13, 2010.

ISSUES

1. Whether Respondent failed to demonstrate that he has sufficient mental or physical health to hold a license. ORS 342.143(2); OAR 584-050-0006(3)(d).
2. Whether, on or about January 27, 2009, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(c).
3. Whether Respondent's application for a substitute teaching license shall be denied.

EVIDENTIARY RULING

The Commission's Exhibits A1 through A5 were admitted into the record over Respondent's objections. Respondent's Exhibits R1 through R7, R9, and R11 through R18 were admitted into the record without objection.¹ Respondent's Exhibit R10 was excluded as cumulative.

FINDINGS OF FACT

Background

1. Respondent is a 73-year-old retired teacher. He has been diagnosed with dementia. In October 2008, Respondent fell and had a brain bleed. Since that time, Respondent has suffered significant and progressive decline in cognitive ability. (Test. of Marckx; test. of Hollcraft; Exs. A3, A4.)

2. On January 27, 2009, Respondent went to the Commission's offices and filled out an Application for Educator License Form C-1 (Application). Question seven on page four of the Application states: "Have you ever been disciplined by any public agency responsible for licensure of any kind, including but not limited to educational licensure?" Respondent answered "No" to the question. Respondent signed and filed the Application with the Commission. (Test. of Liddell; Ex. A2.)

3. On January 27, 2009, Patti Liddell, the Commission's Public Service Representative, spoke with Respondent regarding the fees that needed to be paid with the Application. Respondent had difficulty understanding what Ms. Liddell was talking about. Ms. Liddell had to explain things several times to Respondent. (Test. of Liddell; Ex. A2.)

Mental or physical health

4. Marie Marckx is Respondent's wife. She drives Respondent to his appointments because Respondent is no longer allowed to drive. She also attends Respondent's appointments because Respondent is unable to recall what is told to him. (Test. of Marckx.)

5. In March 2009, Ms. Marckx contacted the Commission and spoke with Joe Ortiz, the Commission's investigator. Ms. Marckx told Mr. Ortiz that Respondent was no longer competent to teach. Mr. Ortiz requested that Ms. Marckx have Respondent's physicians provide letters to the Commission regarding Respondent's health. (Test. of Ortiz; test. of Marckx.)

6. Seth Rosenfeld, MD, is Respondent's primary care physician. On March 20, 2009, Dr. Rosenfeld provided the following statement to Ms. Marckx:

As you know, I am writing as Thomas Hollcraft's primary care physician. I understand that he has an interest in returning to his previous vocation of substitute teaching.

¹ Respondent did not submit Exhibit R8.

In my role as Mr. Hollcraft's primary physician, I have treated him for the past year and a half for several significant medical problems, which includes a significant and progressive cognitive decline. I believe his dementia would prevent him from being able to reliably contribute meaningfully to the classroom. I believe that despite his sincere desire to do so, it would be unwise for Mr. Hollcraft to pursue teaching, for his health and for the well-being of his students.

(Ex. A3.)

7. Greg Zarelli, MD, is Respondent's neurologist. On March 25, 2009, Dr. Zarelli provided the following statement to Mr. Ortiz:

This letter will verify that Thomas Hollcraft is a patient of mine followed in the Neurology Clinic at Kaiser Sunnyside Medical Center. Mr. Hollcraft has been a patient of mine since 2000 and he is currently followed by me for a history of seizures.

It is my understanding that Mr. Hollcraft is applying through your organization to substitute teach. I have a concern about that as I have found Mr. Hollcraft to have evidence of cognitive impairment at recent clinic visits. In my medical opinion it may not be safe to allow him to manage a classroom unsupervised. If you chose [sic] to allow him to substitute teach, I would recommend that he first undergo a thorough neuropsychological evaluation to assess him for cognitive dysfunction.

(Ex. A4.)

8. Respondent disagrees with his doctors and his wife. Respondent believes that his dementia has not worsened. Respondent has ordered medication to help with brain function. (Test. of Hollcraft; Ex. R16.)

Previous discipline

9. On or about April 13, 2002, Respondent signed an Agreed Order of Stayed Suspension with the Superintendent of Public Instruction for the State of Washington. (Ex. A1.)

10. When Respondent filled out the Application, he knew he had been previously disciplined by a public agency. Respondent deliberately answered "No" to question seven on the Application because he did not want his license held up. (Test. of Hollcraft.)

CONCLUSIONS OF LAW

1. Respondent failed to demonstrate that he has sufficient mental or physical health to hold a license.
2. On or about January 27, 2009, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(c).
3. Respondent's application for a substitute teaching license shall be denied.

OPINION

Mental or physical health

Respondent contends that he has sufficient mental or physical health to hold a teaching license. As the proponent of this position, Respondent has the burden of proof. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Cook v. Employment Division*, 47 Or App 437 (1980) (the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987). As set forth below, Respondent has failed to meet his burden.

ORS 342.143 is titled "Issuance of licenses and registrations" and provides, in pertinent part:

(2) The Teacher Standards and Practices Commission may 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 or administrator.

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

(1) The Executive Director may deny issuance of a license, certificate or registration; renewal of a license, certificate or registration; or reinstatement of a license, certificate or registration under the conditions set forth in subsection (3) below.

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

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

In March 2009, Ms. Marckx, Respondent's wife, informed the Commission that Respondent was no longer competent to teach. The Commission requested that Ms. Marckx provide evidence of Respondent's mental and physical health.

On March 20 and March 25, 2009, Ms. Marckx submitted medical documentation confirming that Respondent's cognitive impairment had progressed to a level where Respondent was unable to contribute meaningfully to the classroom and unable to manage a classroom unsupervised.

I find, by a preponderance of the evidence that Respondent failed to establish that he possesses sufficient mental and physical health to serve as an educator. Consequently, the Commission may deny Respondent's application for a teaching license.

Gross neglect of duty

The Commission contends that Respondent committed gross neglect of duty by answering "No" to question seven on the application. The Commission has the burden of proving by a preponderance of evidence that Respondent's conduct constituted gross neglect of duty. ORS 183.450(2), *Reguero v. Teacher Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on TSPC in disciplinary action); *Cook v. Employment Division*, 47 Or App 437 (1980) (the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987). As set forth below, the Commission has met its burden.

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

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

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

(c) Is charged with gross neglect of duty;

(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:

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

On January 27, 2009, Respondent filled out an Application for Educator License and answered "No" to the following question: "Have you ever been disciplined by any public agency responsible for licensure of any kind, including but not limited to educational licensure?"

The evidence in the record establishes that Respondent knew he had been previously disciplined by a public agency when he filled out the Application. The evidence further establishes that Respondent deliberately answered "No" to question seven on the Application because he did not want his license held up.

I find, by a preponderance of the evidence that Respondent knowingly made a false statement on his Application. As such, Respondent engaged in gross neglect of duty. Therefore, the Commission may deny Respondent's Application for Educator License.

ORDER

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

The Notice of Denial of Teaching License and Opportunity for Hearing issued on June 17, 2009 is AFFIRMED.

Dove L. Gutman

Senior Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: February 22, 2010

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.

CERTIFICATE OF MAILING

On February 22, 2010, I mailed the foregoing Proposed Order in OAH Case No. 901201.

By: First Class and Certified Mail

Certified Mail Receipt #7009 0820 0001 6776 7514

Thomas Hollcraft
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Portland OR 97294-3507

By: First Class Mail

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