

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


IN THE MATTER OF:                                     ) **FINAL ORDER INCORPORATING**  
   ) **AMENDED PROPOSED ORDER**  
   )  
**NANCY LEE STERNS**                                     ) **OAH Case No.: 1002067**

This matter came before the Teacher Standards and Practices Commission during its public meeting on July 19, 2012. The Commission has considered the Amended Proposed Order along with written arguments and exceptions filed by Licensee on May 29, 2012.

The Commission does not find Licensee's exceptions persuasive, and hereby adopts the attached Amended Proposed Order as the Final Order.

Now therefore, Nancy Lee Sterns' application for school counselor is denied.

It is so Ordered this 20 day of August 2012.

  
\_\_\_\_\_  
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.

## CERTIFICATE OF MAILING

On August 21<sup>st</sup>, 2012, I mailed the foregoing Final Order Incorporating Amended Proposed Order in OAH Case No. 1002067.


By: First Class Mail

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

IN THE MATTER OF:	) <b>AMENDED PROPOSED ORDER</b>
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NANCY L. STERNS	) OAH Case No. 1002067
	)

This matter came before the Commission to consider the Proposed Order issued by Administrative Law Judge Rick Barber on August 9, 2011. Licensee did not file exceptions to the Proposed Order. After review of the records and files herein, the Commission adopts in part and rejects in part the Proposed Order, as more fully explained below.

**HISTORY OF THE CASE**

On September 13, 2010, the Teacher Standards and Practices Commission (Commission or TSPC) issued a Notice of Opportunity for Hearing, denying an application for a School Counselor License, to Nancy L. Sterns (Respondent).<sup>1</sup> On September 14, 2010, Respondent requested a hearing through her attorney, Elizabeth McKanna.

On November 26, 2010, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) James Han was assigned to preside at hearing. The case was later reassigned to ALJ Rick Barber.

Hearing was held on May 23 and 24, 2011, in Salem, Oregon. Respondent appeared and was represented by Ms. McKanna. The Commission was represented by Assistant Attorney General Judith Anderson. The Commission called the following witnesses: Josie Bissell; Teresa Persson, LPC; Dan Kelly; Respondent; and Commission Legal Liaison George Finch. Respondent called the following witnesses: Susan Cundiff; Joni Parsons; Suzanne Price; Loni Chalmers; James Howard; and Respondent. The record was held open for written briefing and closed on June 30, 2011.

**ISSUES**

1. Whether Respondent committed gross neglect of duty by failing to report possible sex abuse of a child;
2. Whether Respondent knowingly made a false representation on a form submitted to the Commission; and
3. Whether, if either of the above is true, Respondent's application for a School Counselor License should be denied.

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<sup>1</sup> An Amended Notice was sent to Respondent and her attorney on May 6, 2011. It is the amended notice that is at issue in this case.

## EVIDENTIARY RULINGS

Exhibits A1 through A12, offered by the Commission, and Exhibits R1 through R11<sup>2</sup> and R13 through R22, offered by Respondent, were identified for the record. All were admitted into evidence without objection, except the following:

- Exhibit R14 was withdrawn by Respondent;
- Respondent objected to Exhibit A8, a police report, on hearsay grounds and as part of a larger objection to Exhibit A9 (see below). Exhibit A8 was admitted into evidence with the weight of that evidence to be determined later;
- Respondent objected to Exhibit A9 because it is the investigative report of another agency (the Licensed Professional Counselors and Therapists (LPCT) Board). That ruling was taken under advisement and is addressed below.

**Admissibility of Exhibit A9.** Respondent argues that Exhibit A9 is inadmissible and that the Commission may not rely upon the LPCT investigation in this case because of ORS 676.175, which states:

**Complaints and investigations confidential; exceptions; fees.** (1) A health professional regulatory board shall keep confidential and not disclose to the public any information obtained by the board as part of an investigation of a licensee or applicant, including complaints concerning licensee or applicant conduct and information permitting the identification of complainants, licensees or applicants. However, the board may disclose information obtained in the course of an investigation of a licensee or applicant to the extent necessary to conduct a full and proper investigation.

(2) Notwithstanding subsection (1) of this section, if a health professional regulatory board votes not to issue a notice of intent to impose a disciplinary sanction:

(a) The board shall disclose information obtained as part of an investigation of an applicant or licensee if the person requesting the information demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

(b) The board may disclose to a complainant a written summary of information obtained as part of an investigation of an applicant or licensee resulting from the complaint to the extent the board determines necessary to explain the reasons for the board's decision. An applicant or licensee may review and obtain a copy of any written summary of information disclosed to a complainant by the board after the board has deleted any information that could reasonably be used to identify the complainant.

(3) If a health professional regulatory board votes to issue a notice of intent to impose a disciplinary sanction, upon written request by the licensee or applicant, the board shall disclose to the licensee or applicant all information obtained by the board in the investigation of the allegations in the notice except:

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<sup>2</sup> There is no Exhibit R12.

(a) Information that is privileged or confidential under a law other than this section.

(b) Information that would permit the identification of any person who provided information that led to the filing of the notice and who will not provide testimony at a hearing arising out of the investigation.

(c) Information that would permit the identification of any person as a person who made a complaint to the board about a licensee or applicant.

(d) Reports of expert witnesses.

(4) Information disclosed to a licensee or applicant under subsection (3) of this section may be further disclosed by the licensee or applicant only to the extent necessary to prepare for a hearing on the notice of intent to impose a disciplinary sanction.

(5)(a) A health professional regulatory board shall disclose:

(A) A notice of intent to impose a disciplinary sanction against a licensee or applicant that has been issued by vote of the board;

(B) A final order that results from the board's notice of intent to impose a disciplinary sanction;

(C) An emergency suspension order;

(D) A consent order or stipulated agreement that involves licensee or applicant conduct; and

(E) Information to further an investigation into board conduct under ORS 192.685.

(b) A health professional regulatory board may make the information required to be disclosed under paragraph (a)(A) to (D) of this subsection available in electronic form, accessible by use of a personal computer or similar technology that provides direct electronic access to the information.

(6) If a notice of intent to impose a disciplinary sanction has been issued by vote of a health professional regulatory board, a final order that results from the board's notice of intent to impose a disciplinary sanction, an emergency suspension order or a consent order or stipulated agreement that involves licensee or applicant conduct shall summarize the factual basis for the board's disposition of the matter.

*(7) A health professional regulatory board record or order, or any part thereof, obtained as part of or resulting from an investigation, contested case proceeding, consent order or stipulated agreement, is not admissible as evidence and may not preclude an issue or claim in any civil proceeding except in a proceeding between the board and the licensee or applicant as otherwise allowed by law.*

(8)(a) Notwithstanding subsection (1) of this section, it is not disclosure to the public for a board to permit other public officials and members of the press to

attend executive sessions where information obtained as part of an investigation is discussed. Public officials and members of the press attending such executive sessions shall not disclose information obtained as part of an investigation to any other member of the public.

(b) For purposes of this subsection, "public official" means a member or member-elect, or any member of the staff or an employee, of a public entity as defined by ORS 676.177.

(9) A health professional regulatory board may establish fees reasonably calculated to reimburse the actual cost of disclosing information to licensees or applicants as required by subsection (3) of this section.

(Emphasis added). The emphasized portion of the statute is the basis of Respondent's objection. She contends that the LPCT evidence and investigation are not admissible in these proceedings.

The Commission contends that it was entitled to receive and to rely upon the documents from the LPCT Board pursuant to a companion statute:

**Disclosure of confidential information to another public entity; criteria.** (1) Notwithstanding any other provision of ORS 676.165 to 676.180, *a health professional regulatory board, upon a determination by the board that it possesses otherwise confidential information that reasonably relates to the regulatory or enforcement function of another public entity, may disclose that information to the other public entity.*

(2) Any public entity that receives information pursuant to subsection (1) of this section shall agree to take all reasonable steps to maintain the confidentiality of the information, except that the public entity may use or disclose the information to the extent necessary to carry out the regulatory or enforcement functions of the public entity.

(3) For purposes of this section, "public entity" means:

(a) A board or agency of this state, or a board or agency of another state with regulatory or enforcement functions similar to the functions of a health professional regulatory board of this state;

(b) A district attorney;

(c) The Department of Justice;

(d) A state or local public body of this state that licenses, franchises or provides emergency medical services; or

(e) A law enforcement agency of this state, another state or the federal government.

ORS 676.177 (emphasis added). TSPC therefore contends that Exhibit A9 is admissible.

To the extent there is a conflict between the two statutes, the specific takes precedence over the general. ORS 676.177 expressly allows a health professional regulatory board to provide its information to another "public entity," and subsection (3)(a) of the statute includes the boards or agencies of this state. Although TSPC is technically a "commission," there is no

reason to exclude it from “public entity” on mere terminology. Exhibit A9 is admissible in this proceeding, and I admit it into evidence. However, the same statute indicates that the other agency’s record (Exhibit A9), although admissible under the following statute,<sup>3</sup> cannot have a preclusive effect on the licensee or applicant. Therefore, while Exhibit A9 is admitted into evidence, it is not conclusive proof that Respondent did what the former agency claimed she did.<sup>4</sup>

## **CREDIBILITY DETERMINATION**

The ALJ made a credibility determination in connection with the Commission’s allegation that Respondent failed to report child abuse. The ALJ’s credibility determination centered around the difference in testimony between Respondent and Josie Blake. The Commission does not adopt the credibility determination, as it has no bearing on the remaining allegation.

## **FINDINGS OF FACT**

1. Respondent was a counselor licensed through the Licensed Professional Counselors and Therapists Board in the State of Oregon. In her counseling practice, and later as a school counselor, Respondent has regularly reported possible child abuse of every kind to the appropriate authorities. (Test. of Respondent).

2. In 2006, Josie Blake’s daughter, B, told Blake and Blake’s mother that her stepfather (Blake’s husband) had touched her “downstairs” inappropriately, and had her touch his “downstairs” as well, referring to the genital regions. B’s comments to both of them was done in a singsong voice, like she was singing a nursery rhyme, and B did not seem upset. Neither Blake nor her mother believed B because of the light-hearted way she mentioned it. (Test. of Blake).

3. In 2006, Blake, her husband and B went to family counseling sessions with Respondent, who was a licensed counselor. Respondent did not make contemporaneous notes of the sessions. (Test. of Respondent). Blake told Respondent she was worried about B, who was acting aloof, and listed a number of items she wanted Respondent to be watching for, including depression. Seemingly as an afterthought, Blake said she wanted Respondent to determine whether B had been touched inappropriately. Blake never told Respondent that B had reported being touched by her stepfather. (Test. of Respondent).

4. Respondent met with B on the first visit to discuss the issues raised by her mother, including being touched. She asked “good touch, bad touch” questions of B, but B denied being touched inappropriately by anyone. Thereafter, Respondent focused her assessment primarily on depression and anxiety issues. The counseling ended after three-to-five visits. (Test. of Respondent).

5. In 2007, Respondent worked in Germany as a counselor for the Department of Defense, working with soldiers returning from active combat in Iraq. She counseled the soldiers and also worked with the families of the soldiers, addressing such issues as post-traumatic stress disorder (PTSD), domestic violence, alcohol abuse and relationship problems. (Ex. R1 at 2).

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<sup>3</sup> ORS 676.175(7) indicates the document is not admissible in a “civil proceeding.” Without determining whether an administrative hearing is a civil proceeding, the specific language of 676.177(3) indicates that it is admissible in a hearing before another public entity.

<sup>4</sup> Respondent made no admissions of wrongdoing in the settlement with the LPCT Board, so no preclusive effect would be possible anyway.

The time in Germany exhausted Respondent, and she decided to pursue a different form of counseling, in the schools. (Test. of Respondent).

6. For the 2007-08 school year, Respondent was hired as a school counselor for Eagle Point Elementary School in Eagle Point, Oregon. She worked under an emergency school counselor license, for which she had applied on September 17, 2007. (Ex. R3). She regularly reported suspected child abuse to the county authorities. (Ex. R13 at 6).

7. In September 2008, the Eugene School District sought an extension of Respondent's emergency school counselor license so she could work as a counselor at Kelly Middle School in Eugene. (Ex. R8). That license extension was granted and she worked the school year at the middle school. (Ex. R9).

8. In 2008, it came to light that B had been abused by her stepfather as B had claimed, and the Blake family was in crisis. Blake called Respondent to see if she would counsel them, to address the issues. (Test. of Blake). At that time, Respondent had left her counseling practice to pursue school counseling. She was working at Eagle Rock Elementary and was not taking private patients. When Blake called, she told Respondent that B wanted to see her, and that the "worst thing imaginable has happened" but did not mention child sexual abuse. Blake was very upset. Respondent was in the middle of an important matter at school, so she could not talk to Blake for very long. She told Blake she was no longer in private practice, and gave her the name and number of a counselor she could call immediately. Respondent then called the counselor and left a message that she should expedite seeing Blake and her family. (Test. of Respondent). B's stepfather was convicted of Attempted Sexual Abuse on July 7, 2008. (Ex. A9).

9. When the sexual abuse matter was investigated by the Grants Pass Department of Public Safety in January 2008, the investigator interviewed Blake. The report stated in part:

Josie said that after B left for school she contacted Nancy Sterns, the counselor they saw before, to see if they could get in for a family session. Nancy told her that she does not do family counseling any more and referred her to Susan Scorso in Medford.

(Ex. A8 at 4).

10. Blake and her daughter eventually began treating with Teresa Persson, LPC. Blake told Persson that she had told Respondent about the abuse back in 2006, and Persson filed a complaint about Respondent with the Licensed Professional Counselors and Therapists (LPCT) Board, where Respondent was licensed. The complaint was filed July 18, 2008. The LPCT investigative report stated in part:

Complainant Persson alleges that Nancy Stern failed to report child sexual abuse \* \* \*. Complainant Persson alleges that Sterns was told by Josie Blake that Blake's minor daughter disclosed three years ago, and during 2008, that she had been sexually abused by her stepfather, Jason Blake and Sterns failed to make a proper report.

(Ex. A9 at 1).



11.<sup>5</sup> After receiving the complaint, the LPCT executive director sent a letter to Respondent regarding the complaint and requested a response. On July 29, 2008, Respondent replied to the investigative letter and included notes from three sessions with B and Josie. At the hearing, Respondent admitted that while she had previously represented that the submitted notes were drafted contemporaneously with the counseling session, she had created them after receiving the letter from LPCT to use in her response to the LPCT letter.

(Ex. A9 at 3, 7-10; testimony of Respondent).

12.<sup>6</sup> On August 27, 2008, Dan Kelly, investigator for LPCT, interviewed Respondent regarding the complaint against her. On August 28, 2008, Dan Kelly spoke with Respondent by telephone again in response to Respondent's request to the LPCT Executive Director that Mr. Kelly call her. Respondent told Mr. Kelly that she wanted to finish a point they had discussed the day before.

(Ex. A9 at 4; testimony of Dan Kelly, Respondent).

11. On January 8, 2009, Respondent signed a stipulation with the LPCT Board, voluntarily relinquishing her license as a counselor. The stipulation stated in part:

The facts as alleged by the Board are that in August 2006 and January 2008, Client A informed Respondent that Client A's minor child (Child) had disclosed sexual abuse. Client A requested that Respondent assess Child to determine if the Child had been sexually abused.

Respondent violated her mandatory child abuse reporting responsibility in August 2006 and in January 2008 when she failed to report this suspected child sexual abuse to the appropriate authorities.

\* \* \* \* \*

Respondent does not admit or make any admissions of the facts as alleged in [section] 3.3.

(Ex. A10 at 3). Respondent disagreed with the Board's allegations but did not think she would need this license again, because she was already working as a school counselor. She was told by an attorney that it would cost more than \$10,000 to fight the charges. As a result, Respondent surrendered her license. (Test. of Respondent).

12. While working in Eugene, Respondent enrolled in the Master of Arts in School Counseling at Northwest Christian University in Eugene, graduating in December 2009. Dean James Howard wrote a letter expressing his trust in her integrity, ethics and character. (Ex. R13 at 8).

13. In April 2009, a Human Resources administrator from the Eugene School District received a copy of the Stipulated Settlement in the LPCT matter and forwarded it on to TSPC. (Ex. A7). Suzanne Price, the Principal at Kelly Middle School when Respondent worked there,

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<sup>5</sup> The Commission has supplemented the findings of fact with fact #11 to complete the chronology of events related to the inquiry and investigation of Respondent's conduct as an LPCT licensee.

<sup>6</sup> The Commission has supplemented the findings of fact with fact #12 to complete the chronology of events related to the inquiry and investigation of Respondent's conduct as an LPCT licensee.

would rehire Respondent and would recommend her highly as a school counselor. (Ex. R13 at 4; test. of Price).

14.<sup>7</sup> On August 27, 2008, as part of the preparation for student teaching under the Masters Program, Respondent filled out a Form PA-1. She answered "No" to the following question:

Are you currently the subject of an inquiry, review or investigation for alleged misconduct or alleged violation of professional standards of conduct?

(Ex. A11 at 2). Respondent thought the question referred to actions concerning an educational license, and did not think it referred to her LPCT license. Respondent acknowledged that she was interviewed by LPCT investigator Dan Kelly on August 27 and 28, 2008, but thought her interview with Mr. Kelly resolved the complaint against her. (Test. of Respondent). 15.

On September 13, 2010, TSPC issued its Notice of Opportunity for Hearing, denying Respondent's application for a school counselor license because of the allegations of failing to report child abuse and because she made a false response on her application for a school counselor license. (Doc. P1).

### CONCLUSIONS OF LAW

1. Respondent did not commit gross neglect of duty by failing to report possible sex abuse of a child;
2. Respondent did commit gross neglect of duty by knowingly making a false representation on a form submitted to the Commission; and
3. Respondent's application for a School Counselor License should be denied.

### OPINION

As the proponent of the contentions that Respondent committed gross neglect of duty and knowingly made a false representation, TSPC must present evidence in support of its position. ORS 183.450(2). It must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence, absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

**Child Abuse Issue.** The standard set forth in the Commission's administrative rule is quite clear that failure to report child abuse would be considered 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:

\* \* \* \* \*

(s) Failing to report child abuse pursuant to ORS 419B.010.

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<sup>7</sup> The Commission supplemented this finding of fact to complete the chronology and provide relevant evidence.

OAR 584-020-0040(4)(s). However, while the standard is clear, the evidence that Respondent failed to report child abuse is not.

As previously addressed, the LPCT Stipulation is not binding in this proceeding. The statute will not allow it to have preclusive effect here, and the words of the document itself make it clear that Respondent did not agree to the facts set forth by the LPCT Board. After examining the record the Commission did not prove by a preponderance of the evidence Respondent failed to report child abuse. Consequently that allegation is dismissed.

The evidence concerning Respondent's alleged failure to report comes down to a dispute between Josie Blake, the mother of the abused child, and Respondent. The Commission is unable to determine by a preponderance of the evidence that Respondent failed to report child abuse.

**Providing False Information.** On August 27, 2008, Respondent answered "No" to a question of whether she was currently the subject of an inquiry, review or investigation for alleged misconduct of professional standards of conduct. Respondent claimed that she interpreted the question to refer to the standards of conduct within educational licensure, and answered "No." A plain reading of the question at issue does not support Respondent's claim, even if she believed it.

The questions on the PA-1 form (not the Application, as the Notice indicated),<sup>8</sup> are designed to elicit information about the fitness of an applicant for student teaching.<sup>9</sup> The first question asks about "educational or school-related employment." The second (the one at issue here) refers to "professional standards of conduct." The third asks about "contracts for educational services." There is nothing in the second question that refers to educational licenses, while questions one and three explicitly refer to educational activities. Question 2 clearly states: "Are you currently the subject of an inquiry, review or investigation for alleged misconduct or alleged violation of professional standards of conduct?" Plainly, question asks for information about pending inquiries or investigations that may impact an applicant's eligibility for a license from the Commission. The limitation that Respondent claimed to have read into the question is simply not there.

By statute, the LPCT is a professional licensing board.<sup>10</sup> A license granted by the LPCT is a professional license and requires adherence to certain professional standards of conduct.<sup>11</sup> TSPC's interpretation of the meaning of its own question is reasonable and Respondent's contention that the question refers only to educational licenses is implausible and self-serving. If Respondent had any question as to whether she needed to report the LPCT investigation she could have called TSPC for clarification or answered yes and explained her response. Further, the question asks if the applicant is the subject of an "inquiry, review or investigation"; it is clear from the evidence provided that Respondent knew she was at least the subject of an inquiry or review regarding her LPCT license. She had recently responded to the LPCT director's letter regarding the complaint filed against her and she had been interviewed by an LPCT investigator on the very day she submitted the PA-1.

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<sup>8</sup> The importance of the PA-1 form is that the LPCT investigation had started at the time she filled out that form.

<sup>9</sup> Testimony of George Finch; Ex. A11 at 2.

<sup>10</sup> ORS 670.275; 675.705, 715; 676.160.

<sup>11</sup> See ORS 675.705-994; OAR 833-100-0011 – 0071.

OAR 584-020-0040(4)(c) prohibits: "Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or profession duties." There is no dispute over whether the PA-1 form is directly related to licensure; the form itself states that it is required to complete student teaching, which is a requirement for licensure.

Respondent argues that to show that she knowingly falsified or misrepresented her answer on the PA-1, the Commission must show that Respondent intentionally made a false statement. She further contends that, in answering no to question 2, she did not *intend* to deceive the Commission about the LPCT investigation of her conduct and therefore did not knowingly misrepresent or falsify her answer, she merely made a mistake. As noted above, Respondent was aware that the LPCT board was at least inquiring into or reviewing her conduct related to a complaint that had been filed with the board, even if she did not consider it to be an investigation. Respondent's own testimony at the hearing demonstrated that she was aware of the actual circumstances that she was being questioned about. Thus, in answering no to question 2 on the PA-1, Respondent, who was aware that she had been the subject of an inquiry, review or investigation related to her LPCT license, knowingly misrepresented or falsified her answer.

The question, then, is whether a "knowing" misrepresentation requires a specific intent to deceive or defraud, or whether a lesser mental state is sufficient. In a recent decision, the Commission considered the plain meaning of the word "knowing" along with relevant case law regarding the application of the definition of knowing and concluded that a "knowing" misrepresentation does not require a specific intent to deceive or defraud; it only requires that the individual be aware of the facts and circumstances related to the misrepresentation. See *In the Matter of the Teaching License of Nancy Bakker-Kroft*, TSPC Final Order 800780 (Aff'd Without Opinion CA144803 (2012), citing *Webster's Third New Int'l Dictionary* 1252, 1445 (unabridged ed 1993)), and *In re Conduct of Fitzhenry*, 343 Or 86, 101, 162 P3d 260 (2007) ("Unlike violations that require a lawyer to act with intent, '[a] lawyer acts knowingly by being consciously aware of the nature or attendant circumstances of the conduct, but not having a conscious objective to accomplish a particular result.'). This interpretation is consistent with established case law. See *In re Glenna Marie Zarnekee*, TSPC Final Order No. 119059, p 6 (March 2005), the commission determined that the license applicant had not knowingly misrepresented facts when she neglected to include a criminal charge against her because there was insufficient circumstantial evidence to demonstrate that the applicant was "aware" of that charge. See also *In re Teaching License of Jerome Arthur Anderson*, TSPC Default Order (Jan 2006) (licensee's "failure to report" conviction constituted "knowing" misrepresentation of facts); *In the Matter of the Teaching License of Lori Jean Bacon*, Default Order of Revocation (July 2008) (licensee's minimization of circumstances leading to conviction constituted a knowing misrepresentation).

In *Bakker-Kroft*, a teacher's renewal application was denied based in part on misrepresentations and false statements made in a letter of explanation that she submitted to the commission regarding her arrest and conviction. *Id.* The licensee in *Bakker-Kroft* argued, as Respondent does in this case, that she did not *intend* to deceive the Commission when she wrote her letter. *Id.* at 18. Ultimately the Commission determined that Licensee's awareness of the objective circumstances leading to her conduct was enough to satisfy the knowing requirement in the rule. The Commission's interpretation of OAR 584-020-0040(4)(c), is reasonable and consistent with its authority and will be given deference by the courts. *Don't Waste Oregon Comm. V. Energy Facility Citing*, 320 Or 132, 142(1994).

In summary, it is understandable why the Commission would look seriously at Respondent's situation, given the uncontested surrender of her counseling license and the seriousness of the charges made by the LPCT Board. However, the preponderance of the evidence indicates Respondent did not fail to report child abuse. However, the charge that

Respondent knowingly misrepresented facts when she answered “no” to question 2 on the PA-1 is supported by the evidence presented at hearing and such evidence does meet the preponderance standard.

**Sanction:** TSPC proposes that Respondent’s application for a school counselor license be denied and that her right to apply be suspended for one year. Respondent argues that the sanction is too harsh because she has already been unable to apply for a TSPC license for two and a half years because of this case against her. Respondent testified that she began her program to meet the education requirements to be a licensed school counselor in August, 2008. She was a school counselor under an emergency license until June, 2009. In September, 2009, Respondent began a ten week practicum that was required to complete her school counselor program. Accordingly, the first time she would have been eligible for a school counselor license was after she took the Praxis exam in mid 2010 – about a year ago, not the two and a half years that Respondent contends. The proposed sanction of denial of Respondent’s application is within the Commission’s discretion and is not overly harsh. *Olson v. Mortuary and Cemetery Board*, 230 Or App 376, 393(2009).

**ORDER**

The Teacher Standards and Practices Commission issues the following order:

That its Amended Notice dated May 6, 2011 be **AFFIRMED** as to the charge of gross neglect of duty for knowing falsification or misrepresentation of a document related to licensure, employment or professional duties, and **REVERSED** as to the charge of failing to report child abuse. Licensee’s application for school counselor is **DENIED**.

Dated this 10<sup>th</sup> day of May 2012.



Victoria Chamberlain  
Executive Director, Teacher Standards and  
Practices Commission

## EXCEPTIONS

The amended proposed order is the Commission's action on the Administrative Law Judge's Proposed Order. If you disagree with any part of this amended proposed order, you may file written objections, called "exceptions," to the amended 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 amended proposed order** with the:

Teacher Standards and Practices Commission  
250 Division 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. After the Commission considers the exceptions or oral argument, the Commission will enter a Final Order

**CERTIFICATE OF MAILING**


On May 11<sup>th</sup>, 2012, I mailed the foregoing Amended Proposed Order issued on this date in OAH Case No. 1002067.

By: First Class

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