

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

In the Matter of the Application for a)
Teaching License of:) FINAL ORDER
)
MICHAEL LYNN STARK) Office of Administrative
) Hearings Case No. 127036

On August 29, 2006, Administrative Law Judge Alison Greene Webster issued a Proposed Order in this case. On August 30, 2006, a Corrected Proposed Order was issued.

The Teacher Standards and Practices Commission adopts the Findings of Fact, Conclusions of Law and sanction contained in the attached Corrected Proposed Order.

ORDER

The Commission adopts the Corrected Proposed Order denying the application of Michael Lynn Stark for an Oregon teaching license.

Dated this 3 day of November 2006.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: 
Victoria Chamberlain, Executive Director

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**

RECEIVED
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Teacher Standards &
Practices Commission

IN THE MATTER OF THE APPLICATION) **CORRECTED PROPOSED ORDER**
FOR A TEACHING LICENSE OF)
)
MICHAEL LYNN STARK,) OAH Case No. 127036
Applicant)

HISTORY OF THE CASE

On September 28, 2005, Michael Lynn Stark submitted an Application For Educator License Form C-1 to the Teacher Standards and Practices Commission (TSPC). On December 2, 2005, TSPC issued a Notice of Denial of Teaching License and Opportunity for Hearing. TSPC alleged that Applicant failed to furnish satisfactory evidence of good moral character necessary to establish fitness to serve as an educator. Specifically, TSPC alleged that Applicant engaged in criminal behavior and that he misrepresented facts in regard to his arrest. TSPC proposed to deny the license under OAR 584-020-0040(4)(c) and (5)(e), and OAR 584-050-0006(1) and (5). Applicant timely requested a hearing.

On March 13, 2006, 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 hearing was held on August 1, 2006, in Salem, Oregon. Applicant Stark appeared with counsel, Lindsay Fowler. TSPC was represented by Assistant Attorney General **Matthew Donohue**. The following witnesses testified on TSPC's behalf: Officers Robert Hart and Rachel Schacht of the Eugene Police Department and Susan Nisbet, TSPC Investigator. Applicant Michael Stark testified on his own behalf. The record closed at the conclusion of the hearing on August 1, 2006.

ISSUES

1. Whether Applicant engaged in criminal behavior, prostitution, in Eugene, Oregon, on August 18, 2004.
2. Whether Applicant misrepresented the facts leading to his arrest for prostitution in connection with his application for an Oregon educator license.
3. Whether TSPC has grounds to deny Applicant licensure under ORS 342.143, OAR 584-050-0006(1) or (5) and 584-020-0040(4)(c) or (5)(e).

EVIDENTIARY RULINGS

Exhibits A1 to A4, offered by TSPC, were admitted into the record without objection.

FINDINGS OF FACT

1. On August 18, 2004, Applicant Michael Stark was arrested for prostitution in violation of the City of Eugene Code, Section 4.745(1)(b).¹ (Ex. A1 at 5.) At the time of his arrest, Applicant was a graduate student in the teaching program at Pacific University in Eugene. (*Id.* at 3.)

2. On the afternoon of August 18, 2004, Applicant was driving his car in the area of 6th and Polk Streets in Eugene, Oregon when he noticed a woman walking westbound on the south side of 6th. The woman was Eugene Police Officer Rachel Schacht. At the time, Officer Schacht was dressed in plain clothes (shirt, shorts and running shoes) and working as a prostitute decoy. Applicant circled the block and, when he came back around, found Officer Schacht walking eastbound on 6th towards Tyler Street. Applicant turned onto Tyler Street and stopped his car along the curb. Officer Schacht and Applicant made eye contact from across the street. Applicant nodded his head, and Officer Schacht approached his car. He already had his driver's side window rolled down. Officer Schacht told Applicant that she "needed to make some money." Applicant offered to help her out and advised that he had \$24. Officer Schacht asked Applicant what she had to do for the \$24. Applicant responded, "Give me head and let me play with your titties." Officer Schacht then asked Applicant to meet her in the alley on W. 5th between Tyler Street and Van Buren. Applicant agreed to do so. Officer Schacht walked away from Applicant's vehicle. She gave a prearranged signal to other officers participating in the prostitution sting to indicate that a prostitution deal had been made. (Test. of Schacht; Ex. A3.)

3. As Applicant pulled away from the curb and turned east on W. 5th toward Van Buren, uniformed officers pulled in behind him. Officer Hart stopped Applicant at W. 5th and Blair. Officer Hart contacted Applicant and requested his driver's license. As Applicant retrieved his license, Officer Hart told him that he had been stopped because of the woman he had just been talking with on Tyler St. Applicant appeared very nervous, and was hesitant to talk with Officer Hart. Officer Hart told Applicant to step out of the car. Applicant did so. Officer Hart placed him in handcuffs and read him the *Miranda* rights. Officer Hart explained to Applicant that if he was cooperative and willing to talk about what had happened with Officer Schacht, he would be cited and released. Officer Hart further explained that if Applicant was uncooperative, he would go to jail. (Test. of Hart; Ex. A4.)

4. Officer Hart asked Applicant about his encounter with the woman on Tyler St. Applicant said he was "going to help a homeless girl." Applicant then said, "I think I should . . ." but did not complete the thought in an audible voice. During the stop, Officer Hart was advised

¹ Section 4.745(1)(b) of the Eugene Code provides: "A person commits the crime of prostitution if: * * * the person pays or offers or agrees to pay a fee to engage in sexual conduct or sexual contact." The section further defines "sexual contact" as "any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party." Section 4.745(2)(c).

via cell phone that Applicant had offered Officer Schacht \$24 for a "blow job" and to fondle her breasts. Officer Hart asked Applicant if he had offered \$24 in exchange for a "blow job." Applicant replied, "Yeah." Applicant also consented to a search of his pockets and his car. Officer Hart found \$24 in Applicant's pocket. Applicant was cited for prostitution and released. (Test. of Hart; Ex. A4.)

5. Applicant appeared in the Eugene Municipal Court on the prostitution charge on or about September 1, 2004. He pled not guilty and paid \$50 bail. He paid an additional \$50 bail on September 28, 2004. The matter was set for trial December 9, 2004. On that date, Applicant paid the court another \$300, and the city prosecutor dismissed the charges against him. (Ex. A1 at 6-8.)

6. On October 31, 2005, Applicant submitted an Application for Educator License Form C-1, with attachments, to TSPC. In the application, Applicant answered "Yes," to Character Question No. 8, which asks: "Have you ever been convicted or granted a conditional discharge by any court for: (a) any felony; (b) misdemeanor; or (c) any major traffic violation * * *." (Ex. A1 at 4.) In a letter attached to his application, Applicant disclosed that he had been charged with the offense of prostitution on August 18, 2004. He explained that his attorney "made arrangements with the District Attorney to have the charges against me dropped in return for partial forfeiture of bail." Applicant also offered the following explanation for the incident:

I was just leaving the parking lot when I noticed a woman gesturing for a ride. I pulled over to offer some assistance. In a relatively short amount of time, it became apparent that this person was looking for more than a ride. In fact, she was an undercover police officer posing as a prostitute in a prostitution sting. Instead of disengaging from the dialogue immediately, which I should have done, I listened with compassion to a woman in a desperate situation. I had absolutely no intentions to pay this woman for sexual favors. The only thing I agreed to do was to pull into the ally [sic] to talk. It was at this point I found myself surrounded by police.

(*Id.* at 10.) Applicant also submitted a copy of the citation, complaint and documentation that he had forfeited bail in the amount of \$400 to the charge of prostitution. (*Id.* at 5-9.)

7. Susan Nisbet, TSPC investigator, was assigned to follow up with Applicant's application and investigate his character. She spoke with Applicant on November 15, 2005 and asked that he submit additional information about his arrest, including the police reports. On or about November 22, 2005, Applicant submitted copies of the reports by Officers Schacht and Hart as well as his own detailed description of the incident. Applicant also advised Ms. Nisbet that there were several inaccuracies in the officers' reports. (Test. of Nisbet; Ex. A2.)

8. Applicant submitted another written statement about the incident, which he actually wrote a day or two after his arrest. Applicant represented to TSPC that:

Without provocation, she [Officer Schacht] stated to me that for \$24 dollars she would only be willing to perform oral sex. I asked her if she was a prostitute and she gave no reply. * * * She asked me if that was all she had to do for the \$24, or if I want anything else. * * * She asked me next, in her words, if I wanted to play with her titties or anything else. * * * She asked me to meet her in the alley. This was the only thing I agreed to do. My response to meet her was only an attempt to diffuse the situation.

(Ex. A2 at 3.)

9. Following Investigator Nisbet's investigation, TSPC denied Applicant's application for a teaching license. TSPC determined that Applicant did not provide satisfactory evidence of good moral character or other evidence TSPC considered necessary to establish fitness as an educator. Based on the police reports, TSPC determined that Applicant engaged in the criminal act of prostitution and that he misrepresented the facts leading to his arrest in the written statements he submitted to TSPC in connection with his application for licensure. (Test. of Nisbet.)

CONCLUSIONS OF LAW

1. Applicant engaged in criminal behavior, prostitution, in Eugene, Oregon on August 18, 2004.
2. Applicant misrepresented the facts leading to his arrest for prostitution in connection with his application for an Oregon educator license.
3. TSPC has grounds to deny Applicant licensure under ORS 342.143, OAR 584-050-0006(1) or (5) and 584-020-0040(4)(c) or (5)(e).

OPINION

TSPC is the agency authorized to issue teaching licenses in the State of Oregon. Under ORS 342.143, TSPC may require an applicant for a teaching 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 584-050-0006 sets out criteria for denying issuance of licenses. Under OAR 584-050-0006(6), TSPC shall deny a license when "the Executive Director has evidence that the applicant may lack fitness to serve as an educator." TSPC will also deny a license when the applicant submits a falsified application. OAR 584-050-0006(1).

In a license application proceeding, an applicant has the burden of establishing his or her fitness to obtain the license. *Sobel v. Board of Pharmacy*, 130 Or App 374 (1994). But, as the proponent of the position that Applicant engaged in criminal behavior and misrepresented facts in his application for licensure, TSPC bears the burden of presenting evidence. ORS 183.450.

TSPC must prove its allegations by a preponderance of the evidence. *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of 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).

Under OAR 548-020-0040(2), an applicant fails to meet ORS 342.143's requirement of "good moral character" if he or she "engages in gross neglect of duty, gross unfitness or other acts which are in violation of sections (1) or (3) of this rule."² TSPC defines "gross unfitness" as "any conduct which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours or off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively." OAR 584-020-0040(5). Even in the absence of a conviction, engaging in an act of criminal conduct may constitute gross unfitness. OAR 584-020-0040(5)(e).

In this case, TSPC alleges that Applicant has not established his fitness to serve as an educator because he engaged in criminal behavior, prostitution, in Eugene, Oregon in 2004. TSPC further alleges that Applicant misrepresented the facts leading to his arrest for prostitution in his written application for licensure. Applicant, on the other hand, denies engaging in criminal behavior. He challenges the reliability of the officer's reports and their memory of the incident in issue. Applicant also denies making any misrepresentations or false statement in his application for a teaching license, claiming that he explained the circumstances of his arrest to the best of his recollection.

A. Criminal Conduct

In the City of Eugene, Oregon, a person commits the crime of prostitution if he or she pays or offers or agrees to pay a fee to engage in sexual conduct or sexual contact. Eugene Code, Section 4.745(1)(b).

Applicant contends that he did not offer or agree to pay money to Officer Schacht in exchange for sexual conduct or sexual contact. He asserts that all he did was agree to meet a woman in the alley. But, as set forth above in the findings of fact, I am persuaded by the testimony of Officer Schacht that, on the afternoon of August 18, 2004, Applicant offered Officer Schacht money (\$24) in exchange for oral sex and/or sexual contact. I am further persuaded by the testimony of Officer Hart that, upon arrest, Applicant admitted that he offered Officer Schacht money in exchange for oral sex. This issue hinges on the witnesses' credibility and, after considering the conflicting accounts of the events of August 18, 2004, I give more weight to the officers' testimony. The officers were not parties to this proceeding and have no real interest in its outcome. Also, the officers had motivation to accurately report what occurred

² Section (1) of OAR 548-020-0040 provides that TSPC shall deny licensure of any person who has been convicted of any of the crimes listed in ORS 342.143. Subsection (3) of the rule authorizes TSPC to "deny a license or registration to an applicant under ORS 342.143 who: * * * (b) Is charged with knowingly making a false statement in the application for a license; (c) Is charged with gross neglect of duty; or (d) Is charged with gross unfitness."

during the decoy operation, as they may be subject to civil liability for false arrest. *See Matthews v. Eldridge*, 424 US 319 (1976). Consequently, I find that it is more likely than not that Applicant engaged in a criminal act, prostitution, as defined by the Eugene City Code, on the afternoon of August 18, 2004.

The record establishes that Applicant was not convicted of this crime, but as noted above, a conviction is not necessary. Under TSPC's rules, engaging in an act of criminal conduct can constitute gross unfitness.

B. Misrepresentation or False Statement in the Application

In explaining the circumstances giving rise to his arrest in his teaching license application, Applicant asserted, among other things, that he had "absolutely no intentions to pay this woman for sexual favors." In a subsequent submission to TSPC, Applicant stated that "without provocation, she stated to me that for \$24 dollars she would only be willing to perform oral sex. * * * She asked me to meet her in the alley. This was the only thing I agreed to do." As noted above, TSPC alleges that in submitting these written statements, Applicant misrepresented the facts leading to his arrest.

As noted above, TSPC is entitled to deny issuance of a license when the applicant "submits a falsified application." OAR 584-050-0006(1). Under OAR 584-020-0040(c), "gross neglect of duty" includes "knowing falsification of any document or knowing misrepresentation directly related to licensure, employment or professional duties." Although the latter provision requires a "knowing" falsification as a ground for disciplinary action against a teacher, the criteria for denying issuance of a license does not. Under OAR 584-050-0006(1), the Executive Director may deny a license whenever an applicant makes a false representation on his or her application, regardless of whether the falsification was deliberate. *See, e.g., Pierce v. Dept. of Public Safety Standards and Training*, 196 Or App 190 (2004) (where the court found that the term "falsify" as used in ORS 181.662 simply means to represent incorrectly.³ Intent to deceive is not implicit requirement of the statute.)

Because Applicant represented to TSPC that he had no intention to pay Officer Schacht for sexual conduct and he denied offering the officer \$24 in exchange for oral sex, he did not accurately explain the events leading to his arrest. I am persuaded, therefore, that Applicant incorrectly represented the circumstances of his arrest in his application for licensure.

Given Applicant's commission of a criminal act and his misrepresentations to TSPC concerning the events leading to his arrest, TSPC is entitled to deny Applicant's application for a teaching license under ORS 342.143(2).

³ 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 Application of Michael Lynn Stark for a teaching license is denied.

Alison Greene Webster

Alison Greene Webster, Administrative Law Judge
Office of Administrative Hearings

MAILING AND ISSUE DATE: August 29, 2006

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. A1: Application for Educator License form C-1 with attachments
- Ex. A2: Incident Report from Michael Stark, dated 8/19/04
- Ex. A3: Supplemental Report, Officer Rachel Schacht, Eugene Police,
dated 8/21/04
- Ex. A4: Supplemental Report, Officer Robert Hart, Eugene Police,
dated 8/28/04

CERTIFICATE OF SERVICE

I certify that on August 30, 2006, I served the attached Corrected Proposed Order by mailing in a sealed envelope, with first class certified postage prepaid, a copy thereof addressed as follows:

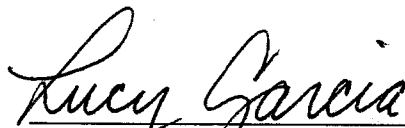
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