

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

In the Matter of the)
Teaching License of:) FINAL ORDER
)
DANIEL RICHARD GRANNEY) Office of Administrative
) Hearings Case No. 110094
)

On December 24, 2003, Administrative Law Judge Ray Myers issued a Proposed Order in this case.

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

ORDER

The Commission suspends Daniel Graney's right to apply for an Oregon Teaching License for a period of six months. Reinstatement of Daniel Graney's license is conditioned on his being cleared by a psychiatric examiner selected by the Commission to return to teaching and compliance with procedures under OAR 584-050-0015(3).

Dated this 15th day of January 2004.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: 
Victoria Chamberlain, Executive Director

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 service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

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

IN THE MATTER OF

) **PROPOSED ORDER**

)

) OAH Case No. 110094

DANIEL RICHARD GRANNEY

)

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Teacher Standards &
Practices Commission

HISTORY OF THE CASE

On May 16, 2003, the Teacher Standards and Practices Commission (TSPC or the Commission) issued a Notice of Opportunity for Hearing to Mr. Daniel Richard Graney alleging that Mr. Graney had committed acts of misconduct that constitute gross unfitness to be a teacher. Mr. Graney requested a hearing. TSPC referred the matter to the Office of Administrative Hearings (OAH) on August 8, 2003. The OAH assigned the matter to Administrative Law Judge Ray Myers to conduct a hearing and to issue a Proposed Order.

Hearing convened in Salem, Oregon, on October 2, 2003. Assistant Attorney General Joe McKeever represented the Commission. Attorney Gary Bertoni represented Mr. Graney. Mr. Graney testified on his own behalf. The record was left open to receive a transcript of testimony given by a psychiatrist, Pear Sweetman, MD, in a related criminal matter. That document was received on November 24, 2003, and is admitted into the record as Exhibit R1. The record closed on November 24, 2003.

ISSUES

1. Did Mr. Graney act in a way that would constitute gross unfitness under OAR 584-020-0040(5)(e) by committing acts constituting criminal conduct.
2. Did Mr. Graney act in a way that would constitute gross unfitness under OAR 584-020-0040(5)(c) by committing acts that constitute Burglary I and Misdemeanor Assault but for Insanity.
3. If Mr. Graney committed acts constituting gross unfitness under either or both of the above allegations, what is the appropriate sanction for Mr. Graney's violation.

EVIDENTIARY RULING

TSPC offered Exhibits A1 to A7 into evidence. Mr. Graney offered Exhibit R1 into evidence. All offered exhibits were admitted.

FINDINGS OF FACT

1. Mr. Graney was licensed by TSPC as a substitute teacher in the State of Oregon at the time the actions that led to this matter occurred. His license expired on September 15, 2003. (Test. of Graney.)

2. Mr. Graney has suffered from the mental disorder of Bipolar Mood Disorder for over 14 years. He has been compliant with medication and treatment; however, despite his compliance, he began to suffer a reoccurrence of symptoms shortly before the acts at issue in this matter. He began to experience paranoid and delusional thinking and auditory hallucinations. (Ex. A2; test. of Graney.) Mr. Graney believed that people were talking about him as a potential child molester. (Ex A2).

3. Mr. Graney also suffers from substance abuse problems. (Ex. A2; test. of Graney.) Except for a four-month period in 1999, Mr. Graney has been sober for approximately 11 years. (Test. of Graney.)

4. On March 31, 2001, Mr. Graney was at his former wife's home helping her with yard work. He believed that the neighbors were talking about him as a potential child molester. (Ex. A2; test. of Graney.) Mr. Graney burst into a neighbor's home and assaulted the neighbor while he was sleeping. Another neighbor helped to subdue Mr. Graney and the police were called. (Ex. A3.) Mr. Graney was charged with Burglary in the First Degree and Felony Assault in the Fourth Degree. Washington County Circuit Judge Gardner found him guilty, except for insanity, of Burglary in the First Degree and Misdemeanor Assault in the Fourth Degree. Mr. Graney was placed under the jurisdiction of the Psychiatric Security Review Board (PSRB) for 21 years. (Ex. A1.)

5. Mr. Graney is very compliant with treatment. The episode in question was aberrant behavior for Mr. Graney. Since the incident, Mr. Graney has been placed on an anti-psychotic medication, which helps prevent auditory hallucinations. In addition, his mood stabilizer medication has been increased. Mr. Graney does not present a substantial danger to the community. (Ex. R1.)

6. Mr. Graney moved to Florida a little over one year ago with permission of PSRB. Mr. Graney sees a psychiatrist in Florida once a month. He takes medication to treat his Bipolar Mood Disorder, including an anti-psychotic drug that was prescribed following the assault incident. He is employed as an assistant realtor and as a maintenance man in a water treatment plant. He is taking classes so that he can be licensed as a realtor in Florida. He has no current plans to teach anywhere. Mr. Graney continues to believe that people were actually talking about him as a potential child abuser. (Test. of Graney.)

CONCLUSIONS OF LAW

1. Mr. Graney acted in a way that would constitute gross unfitness under OAR 584-020-0040(5)(e) by committing acts constituting criminal conduct.
2. Mr. Graney acted in a way that would constitute gross unfitness under OAR 584-020-0040(5)(c) by committing acts that constitute Burglary I and Misdemeanor Assault but for Insanity.
3. The appropriate sanction for Mr. Graney's violations is suspension of his substitute teacher's license in Oregon for six months pursuant to ORS 342.175.

OPINION

TSPC has authority to suspend or revoke a teacher's license for gross unfitness. ORS 342.175(1) states in relevant part:

(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:

* * * * *

(c) Any gross unfitness;

TSPC has defined gross unfitness in OAR 584-020-0040, which states in relevant part:

(5) Gross unfitness is 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 and off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:

* * * * *

(c) Conviction of violating any federal, state, or local law. A conviction includes any final judgment of conviction by a court whether as the result of guilty plea, no contest plea or any other means.

* * * * *

(e) Admission of or engaging in acts constituting criminal conduct, even in the absence of a conviction.

The Court of Appeals has stated:

A guilty except for insanity finding is not an acquittal--it is a *guilty verdict*. The only difference between a "guilty" verdict and a "guilty except for insanity" verdict is the dispositional alternatives, including possible confinement and supervision by the Psychiatric Security Review Board. *State v. Reese*, 156 Or App 406, 409(1997)

Thus, Mr. Graney has been convicted of a crime. Had Mr. Graney committed this offense in the context of his role as a substitute teacher, or been as delusional as he was at the time of this assault, it would certainly have affected his ability to teach. I conclude that TSPC has sustained its burden of proving, under subsection (c) that Mr. Graney has demonstrated gross unfitness.

Mr. Graney has also admitted to committing the acts constituting both crimes charged. Furthermore, he has been found in court to have engaged in the acts constituting that criminal conduct. Therefore, TSPC has sustained its burden of proving, under subsection (e) that Mr. Graney has demonstrated gross unfitness.

The major issue in this case is the appropriate sanction. The Commission proposes revocation whereas Mr. Graney argues that suspension is sufficient. TSPC has authority under ORS 342.175(1) to either suspend or revoke Mr. Graney's license.¹ The episode in question appears to be aberrant behavior for Mr. Graney based on his criminal history and the evidence of the experts. He has been a very compliant patient and continues to comply with his treatment including taking his medications and regularly seeing a psychiatrist. As a result of this episode, his medications have been changed to prevent a recurrence of this episode. I recommend that the Commission suspend Mr. Graney's license rather than revoking it. The suspension should be for a period of at least six months and reinstatement should be conditioned on Mr. Graney's being cleared by an independent psychiatric examiner to return to teaching.

¹ Mr. Graney's license has expired. However, TSPC has continuing authority to impose a sanction on his license. The effect of revocation or suspension is to prevent Mr. Graney from applying to reinstate his license.

PROPOSED ORDER

I propose that the Commission issue the following final order:

Mr. Graney's substitute teacher's license is suspended for a period of six months. Reinstatement of his license is conditioned on Mr. Graney's being cleared by a psychiatric examiner selected by the Commission to return to teaching.



Ray Myers, Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE

December 24, 2003

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 SERVICE

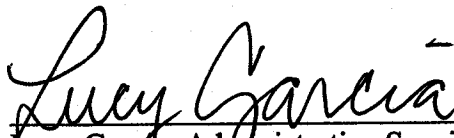
I certify that on December 24, 2003, I served the attached Proposed Order by mailing in a sealed envelope, with first class certified postage prepaid, a copy thereof addressed as follows:

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