

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

In the Matter of the)
Teaching License of:) FINAL ORDER
)
RICK DELBERT BURNHAM) Office of Administrative
) Hearings Case No. 109293

On October 3, 2003, Administrative Law Judge M. E. Tarkington issued a Proposed Order on Default 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 on Default.

ORDER

The Commission adopts the Proposed Order on Default and revokes the Oregon Teaching License of Rick Delbert Burnham.

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 THE TEACHING) **PROPOSED ORDER ON DEFAULT**
LICENSE OF)
) OAH Case No.: 109293
RICK DELBERT BURNHAM

HISTORY OF THE CASE

On May 13, 2003, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing proposing to revoke the Oregon Teaching License of Rick Delbert Burnham (Respondent) pursuant to ORS 342.175 through ORS 342.190 and the Standards for Competent and Ethical Performance of Oregon Educators, OAR Chapter 584, Division 020. The notice alleged that Respondent was convicted of the crime of Patronizing a Prostitute (RCW 9A.88.110) in the District Court of the State of Washington in Clark County, a crime listed in ORS 342.143(3). Respondent timely requested a hearing and the Commission referred this matter for hearing to the Office of Administrative Hearings on June 25, 2003. The contested case hearing was scheduled for September 29, 2003.

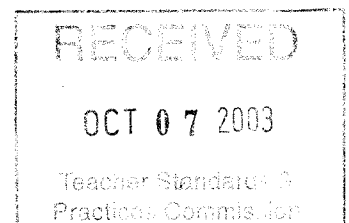
On August 27, 2003, the Commission filed a Motion for Ruling on Legal Issues (Summary Judgment), along with a supporting affidavit and exhibits. Respondent did not file a response. This order was drafted as the response to the Commission's Motion. However, on September 18, 2003, I received notice from Respondent's attorney that Respondent had withdrawn his hearing request. Pursuant to OAR 137-003-0670(1)(b), (3), this order will serve as a Proposed Order on Default.

ISSUES

1. Whether Respondent was convicted of a crime that requires the Commission to revoke his Oregon Teaching License under ORS 342.175.
2. Whether there is an issue of material fact that is relevant to the resolution of the legal issues in this case.
3. Whether the Commission is required to revoke Respondent's Oregon Teaching License

EVIDENTIARY RULINGS

The evidentiary record consists of the Commission's Exhibits A and B and the Affidavit of Joe Gordon McKeever, Assistant Attorney General.



FINDINGS OF FACT

1. Respondent holds a Standard Oregon Teaching License. (Affidavit of Joe Gordon McKeever.)
2. On April 18, 2003, Respondent was convicted of the crime of patronizing a prostitute, a violation of RCW 9A.88.110 in the District Court of the State of Washington in Clark County. (Ex. A, B.)

CONCLUSIONS OF LAW

1. Respondent was convicted of a crime that requires the Commission to revoke his Oregon Teaching License under ORS 342.175.
2. There is no issue of material fact that is relevant to the resolution of the legal issues in this case.
3. The Commission is required to revoke Respondent's Oregon Teaching License.

OPINION

Grounds for Revocation of Teaching License

ORS 342.175(2) states:

Notwithstanding ORS 670.280, the commission shall revoke any license or registration and shall revoke the right of any person to apply for license or registration if the person has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 when the holder or person has been convicted of any crime described in ORS 342.143(3).

ORS 167.007 (prostitution) is one of the crimes described in ORS 342.143 (3)(a)(A). ORS 342.143 (3)(a)(C) further includes conviction of a crime that is substantially equivalent to any of the crimes listed in subparagraph ORS 342.143(1)(a)(A).

Respondent's Conviction

The Judgment and Sentence Order from the District Court of the State of Washington in and for the County of Clark establishes that Respondent was convicted of patronizing a prostitute in violation of RCW 9A.88.110. (Exs. A and B.). RCW 9A.88.110, of which Respondent was convicted, provides as follows:

- (1) A person is guilty of patronizing a prostitute if:
 - (a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or

(b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him or her; or

(c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

ORS 167.007 provides as follows:

(1) A person commits the crime of prostitution if:

(a) The person engages in or offers or agrees to engage in sexual conduct or sexual contact in return for a fee; or

(b) The person pays or offers or agrees to pay a fee to engage in sexual conduct or sexual contact.

RCW 9A.88.110 is substantially the same as ORS 167.007. The wording of the statutes is such that the Oregon statute would cover any situation that is covered in RCW 9A.88.110. Therefore, I find that Respondent was convicted in the State of Washington of a crime that is substantially equivalent to ORS 167.007.

Legal Standard for Motions for Ruling on Legal Issues

OAR 137-003-0580, which provides the standards for evaluating Motions for Ruling on Legal Issues (Summary Judgment) provides, in pertinent part:

(6) The hearing officer shall grant the motion for a legal ruling if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories or admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

In this case, the agency is required to revoke Respondent's Oregon Teaching License under ORS 342.175 based on his conviction for patronizing a prostitute. There is no issue as to any material fact that is relevant to the resolution of the legal issue in this case. Thus, the Commission is entitled to a favorable ruling as a matter of law.

RULING

The Commission's Motion for Ruling on Legal Issues (Summary Judgment) is granted.

PROPOSED ORDER

I propose that the Teachers Standards and Practices Commission issue the following order:

Respondent's Oregon Teaching License is revoked.



M. E. Tarkington, Administrative Law Judge
Office of Administrative Hearings

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

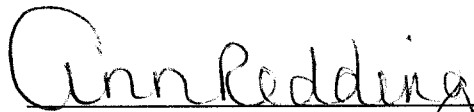
I certify that on October 3, 2003, I served the attached Proposed Order on Default by mailing in a sealed envelope, with first class certified postage prepaid, a copy thereof addressed as follows:

RICK DELBERT BURNHAM
PO BOX 142
RAINIER OR 97048

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Transportation Hearings Division