

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

In the Matter of the Teaching License of:) FINAL ORDER
)
Lawrence W. Jordan) Office of Administrative
) Hearings Case No. 129200

On November 20, 2006, Administrative Law Judge Rick Barber issued a Proposed Order in this case.

On December 5, 2006, the Commission received from Mr. Jordan his written exceptions to the proposed order. The Commission has fully considered the written exceptions and is now fully advised.

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

ORDER

The Commission adopts the Proposed Order and denies Mr. Jordan's application for a Substitute Teaching License.

Dated this 11 day of January 2007.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: *Victoria Chamberlain*
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**

IN THE MATTER OF)	PROPOSED ORDER
)	
LAWRENCE W. JORDAN,)	OAH Case No. 129200
Respondent.)	

HISTORY OF THE CASE

On May 23, 2006, the Teacher Standards and Practices Commission (Commission) issued a Notice of Denial of Teaching License to Lawrence W. Jordan (Respondent). On June 5, 2006, Respondent requested a hearing. The Commission referred the matter to the Office of Administrative Hearings on June 29, 2006.

On August 30, 2006, prior to the hearing, the Commission filed a Motion for Summary Determination. Respondent presented written argument on September 15, 2006, and supplemented that argument on September 18, 2006. On September 28, 2006, the undersigned issued an Order Granting Partial Summary Determination.

Hearing was held on October 11, 2006, in the OAH offices on Lana Avenue in Salem. Administrative Law Judge Rick Barber presided. Respondent was present and represented himself. The Commission was present through its investigator Susan Nisbet, and was represented by Jeff Dover of the Department of Justice. Respondent and Ms. Nisbet testified. The record was held open solely for the return of Exhibit A7, which was admitted into evidence at hearing but released to Mr. Dover to make copies for the parties. That document was returned the same afternoon, and the record was closed on the date of hearing.

EXHIBITS

Exhibits A1 through A7 were identified, offered by the Commission, and admitted into evidence without objection. In addition, Procedural Documents P1 through P9 were identified. Although not part of the evidence, the Procedural Documents are designated part of the documentary record of the hearing.

ISSUES

The Order Granting Partial Summary Determination determined that Respondent provided false information on his applications for teaching licenses, and limited the issues at hearing to the following:

1. Whether Respondent's false statements on his teaching applications in 1998, 2002 and 2005 were made "knowingly."

2. Whether, if the statements were made knowingly and Respondent was found to violate the Commission's rules, denial of the right to seek a license or license revocation would be the appropriate sanction.

At hearing, Respondent presented arguments which were in the nature of affirmative defenses to the Commission's charges. The defenses included arguments that the Commission exceeded its authority or had no jurisdiction to act in this case, and that the Commission violated a "statute of limitations" in ORS 342.175. I will address these affirmative defenses in the body of the argument below.

FINDINGS OF FACT

1. Respondent was granted a basic teacher's certificate in Oregon on August 14, 1987. (Test. of Nisbet).

2. Respondent was previously an attorney and a member of the Oregon State Bar. On December 27, 1985, the Oregon Supreme Court disbarred Respondent for several violations of Bar disciplinary rules, including neglecting a legal matter entrusted to him, dishonest conduct involving client trust fund violations, and conflicts of interest. *In re Jordan*, 300 Or 430 (1985). (Ex. A3).

3. On June 8, 1998, Respondent submitted Public School Service Form C-1 (License Application), seeking to renew his Oregon teaching certificate. Respondent answered "No" to all of the character questions in the application, including Question 4 ("*Have you ever had a professional certificate, credential or license (of any kind) revoked or suspended or have you been placed on probationary status for any alleged misconduct or alleged violation of professional standards of misconduct?*") and Question 7 ("*Have you ever been disciplined by any public agency responsible for licensure or any kind, including but not limited to educational licensure?*"). Respondent did not disclose his disbarment to the Commission at that time. (Ex. A5). A renewal of Respondent's certificate was granted based on this application. (Test. of Nisbet).

4. On March 19, 2002, Respondent submitted another license application to the Commission, seeking to renew his Oregon teaching certificate. Respondent answered "No" to all of the character questions in the application, including Questions 4 and 7. On Question 7, Respondent initially answered "Yes" but crossed out the answer and wrote "No" instead. Respondent was thinking about his disbarment when he initially wrote "yes" on the form, but changed his mind. Respondent did not disclose his disbarment to the Commission at that time. (Ex. A4). A renewal of Respondent's certificate was granted based on this application. (Test. of Nisbet).

5. On December 30, 2005, Respondent applied for a substitute Oregon teaching certificate, knowing that his basic certificate would expire on March 8, 2006. Due to health reasons, including a stroke occurring in approximately 2001, Respondent had not worked enough hours as a teacher in the previous four years to qualify for the

basic certificate. A Commission employee encouraged Respondent to apply for his substitute teaching certificate, since the number of hours of teaching was lowered for that certificate. (Test. of Nisbet). Respondent answered "No" to Question 4 and "Yes" to Question 7. (Ex. A1). Respondent explained the "Yes" answer by writing: "*#7 State bar license suspended for non-payment of dues. Have receive[d] letter from OSB with bill for reinstatement. Haven't money, so haven't applied.*" (Ex. A2). Respondent did not disclose his disbarment to the Commission at that time.

6. In 2004, before filling out his application for the teaching certificate in 2005, Respondent sought information about how to reinstate his license to practice law with the Oregon State Bar. Respondent received documents from the Bar describing the process and providing a reinstatement application. Those documents stated Respondent had been disbarred and must meet the dictates of BR (Bar Rule) 8.1 in order to be reinstated. (Ex. A7). Respondent did not seek reinstatement.

7. On May 4, 2006, Respondent was interviewed by Susan Nisbet, an investigator for the Commission, because of the Commission's belief that Respondent had given false information on his applications. Respondent indicated that he did not disclose the disbarment because he believed he had a *license* to practice law, not a *certificate*, and he read the questions to refer to certificates. He further stated that he was seeking his teaching license in Oregon because he was moving back (from California) after having suffered a stroke. (Ex. 6).

8. When Respondent read Questions 4 and 7 on the applications, he considered the language about other professional licenses to be "surplusage" and "overreaching" by the Commission, so he did not disclose his previous disbarment to the Commission. (Test. of Respondent).

CONCLUSIONS OF LAW

1. Respondent knowingly provided false information to the Commission.
2. Denial of the license is the appropriate sanction for the provision of false information in the Applications.

OPINION

Respondent submitted false information to the Commission on three separate occasions—in his 1998 application, his 2002 application, and his 2005 application for a teaching certificate. For the reasons which follow, I have concluded that his actions were performed knowingly. Before addressing the reasons for that conclusion, however, I will address Respondent's affirmative defenses raised at hearing.

Affirmative Defenses. As noted, Respondent made several arguments during the course of the hearing concerning the Commission's actions in this case. First, he contended that the Commission had exceeded its authority and jurisdiction when it

refused to grant him a license. Second, Respondent contended that there was a timeliness problem—that the Commission had exceeded the statute of limitations on his actions. Finally, Respondent contended that the Commission could not prove his false statements were “knowingly” made. I will address these alleged defenses before addressing the Commission’s burden of proof and evidence.

1. *Exceeding Authority and Jurisdiction.* According to Respondent, the Commission does not have the authority or the jurisdiction to take action against him as they have done in this case. However, the legislature has granted such authority to the Commission:

(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:

* * * * *

(e) Any false statement knowingly made in an application for issuance, renewal or reinstatement of a license[.]

ORS 342.175. Thus, by statute, the Commission has the power to discipline Respondent, up to and including license revocation or denial.

2. *Statute of Limitations.* Respondent also argues that this same statutory language is a “statute of limitations,” and that any matter taking place more than five years before the current time must be disregarded because of the “five year” rule in the statute. However, Respondent misreads the statute. The five year language is, in effect, a statement of jurisdiction over the teacher, administrator or applicant. The sole criterion is “if the person has held a license at any time within five years prior to the issuance of the notice of charges[.]” That criterion has been met in this case. Respondent held a teaching license from August 1987 until March 2006. The Notice was issued on May 23, 2006, only two months after Respondent’s teaching license expired.

Respondent’s legal arguments, addressed above, do not change the complexion of the case at all. There is no real question about the ability of the Commission to act in this matter. The factual issue that remains is whether the false statements Respondent provided to the Commission were *knowingly* false. The Commission has the burden to prove that the statements were knowingly false under the language of the statute quoted above. Respondent claims the false statements were not made knowingly. Having carefully weighed the evidence, I disagree.

Definition of “knowingly.” The meaning of the term “knowingly” is the key to understanding the factual issues which remain in this case. The term is used in both the statute and the administrative rule governing the Commission’s actions, but the word is not defined in either place. Accordingly, I give the word its common meaning in the

English language. *PGE v. Bureau of Labor & Industries*, 317 Or 606 (1993). The American Heritage Dictionary defines "knowing" as:

1. Possessing knowledge, intelligence or understanding * * * 3. Deliberate.

American Heritage Dictionary at 705 (2d College Ed. 1991). Using this definition, the question is whether Respondent possessed the knowledge that the information he was providing to the Commission was false. Was his inclusion of false information on the applications deliberate?

Respondent argues that his responses were not knowingly false. He contends that he did not think that his bar license was the type of license about which the questions were asked. I take Respondent's testimony as important evidence of his state of mind at that time. However, there are certain factors which convince me that Respondent knew more than he now admits, and that what he wrote on the applications was knowingly false.

1. Inconsistent and false statements. First, the statements Respondent has made about his disbarment have been so incorrect, and so inconsistent in their content, that I must make some conclusions about Respondent's mental state. His comments about his disbarment have been inconsistent and incorrect, even after the Commission provided him with the Supreme Court decision and the Oregon State Bar records they had. For instance, he has stated:

- That he was *suspended* from the practice of law for nonpayment of dues, and did not have the money to pay the dues. (Ex. A2). There is no evidence that Respondent was ever suspended for nonpayment of dues.
- When he received the Motion for Summary Determination (which included an actual copy of the Supreme Court decision, showing that the Bar had recommended a three year suspension but the Court had disbarred him), Respondent represented to the ALJ that the Bar only wanted to *reprimand* him and he did not know how he had been disbarred. (Doc. P7).
- He testified at the hearing that he had not participated in the Supreme Court proceeding on his disbarment, when the Court's decision shows that he had. (Ex. A3).

These statements are all false—so false that I must conclude that Respondent is mentally incompetent, very negligent or knowingly false. However, the record does not show mental incompetence or negligence.

Because the record showed that Respondent suffered a stroke a few years ago, and because his state of mind is obviously important when determining whether his actions were knowingly done, I was concerned about the possibilities that his competence was

affected by the stroke.¹ I asked Respondent a few questions about his condition; it was very clear that Respondent understood the circumstances of his case, that he had excellent long-term memory (remembering, for instance, his judicial race against Judge Sloper in Marion County in the early 1980s), and that his communication skills were also excellent. In short, I found no basis to believe that Respondent was incompetent. I also saw no evidence that he would act rashly or negligently. By process of elimination, I concluded that the comments in the applications were placed there knowingly.

2. *Changed answers on applications.* The second factor leading to the conclusion that Respondent knowingly provided false information is a comparison of the three applications and what changed with each one. There is an interesting progression in the way Respondent answered Question 7 in 1998, 2002 and 2005. Question 7 asked:

Have you ever been disciplined by any public agency responsible for licensure of any kind, including but not limited to educational licensure?

(Ex. A1 at 5). In 1998, Respondent answered the question “No.” (Ex. A5 at 3). In 2002, Respondent wrote “Yes,” but crossed it out and wrote “No.” (Ex. A4 at 4). In 2005, Respondent wrote “Yes” and explained that his bar license had been suspended for non-payment of dues. (Ex. A2).

When Respondent was asked about the answers he provided, and especially the response in 2002 when he crossed out the initial “Yes” and wrote “No,” he admitted that he was thinking at that time about his disbarment. This testimony is important: It shows that Respondent was thinking about the disbarment while reading the question in 2002, but *chose* not to tell the Commission about it at that time. This choice made by Respondent was a deliberate decision, knowingly made, to exclude information about the disbarment on the 2002 application.

That deliberate choice impeaches other parts of Respondent’s testimony. He testified that he never thought of his Bar license when filling out the applications. He claimed he thought of many other kinds of license, including his pilot’s license, hunting license, and driver’s license, but he did not think of his license to practice law. He testified that he was confused because he did not think a teaching *certificate* and a bar *license* had anything in common. And yet, he eventually admitted that he changed the answer on the 2002 application to avoid giving the Commission information about his previous Bar license.

Respondent’s testimony established that he knew he should be providing information about his disbarment, but made the deliberate decision to not provide that information. Those representations meet the definition of “knowing.” In fact, even his 2005 application (where he answered Yes to Question 7) contains knowing misrepresentations. Respondent knew that he had been disbarred from practicing law in

¹ Respondent did not raise any issues regarding his competence. As will be seen, I do not find any competence issues, either, but include this section to show that the analysis made of his comments was complete.

Oregon for several reasons (including conflicts of interest, commingling of funds, and other charges); he had no reasonable basis to believe that he had been suspended for failure to pay bar dues. Telling the Commission that he had only been suspended when he knew he had been disbarred was a knowingly false statement.

Based upon the progression in the applications, I conclude that Respondent intentionally left the disbarment information off of the applications.

3. "*Surplusage*" and "*Overreaching*." Based upon my review of the evidence, there is one even stronger piece of evidence showing the intentional nature of Respondent's actions. Respondent testified that he considered the questions on the applications to be "surplusage" and "overreaching" in their scope, and did not want to answer them. (Test. of Respondent). As he later argued, Respondent did not believe the Commission had the right to ask such questions.

For whatever reason, however, Respondent *knowingly* left off the information concerning his previous Bar discipline. I conclude that Respondent knowingly provided false information to the Commission in 1998, 2002 and 2005.

The Appropriate Sanction. Having determined that Respondent violated ORS 342.175(1), I look to that same statute to determine the appropriate sanction:

(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 * * *

The statute allows suspension, revocation or discipline of a teacher or administrator, and allows suspension or revocation of the right to apply for a license. The Commission's Notice indicated its intent to revoke, not suspend, Respondent's license in this case.

Observing Respondent's presentation of his case, I was struck by his unwillingness to see the Commission's side of the false statement issue. Despite the testimony of Ms. Nisbet, which described the importance of character in educators and the importance of giving the Commission full information on applications, Respondent did not acknowledge that character had any place in the process. I have no doubt that Respondent still considers those questions on the application to be surplusage and overreaching on the Commission's part. There was no understanding shown by Respondent as to why such "surplusage" might be important. Under those circumstances, the denial of the substitute teaching license is more appropriate than a suspension.

In summary, I conclude that the Commission's decision to deny Respondent's license is appropriate.

ORDER

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

That the Notice issued May 23, 2006, denying Respondent's application for a substitute teaching license, be **AFFIRMED**.

Rick Barber

Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE:

November 20, 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 2005 Teaching Application
- Ex. A2 Respondent's Addendum to Exhibit A1
- Ex. A3 Supreme Court decision (*In re: Jordan*)
- Ex. A4 2002 Teaching Application
- Ex. A5 1998 Teaching Application
- Ex. A6 Nisbet Interview of Respondent
- Ex. A7 Oregon State Bar Application Information

CERTIFICATE OF SERVICE

I certify that on November 20, 2006, I served the attached Proposed Order by mailing certified and/or first class mail, in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

LAWRENCE WILLIAM JORDAN
4017 SE VINEYARD RD
MILWUKIE OR 97267

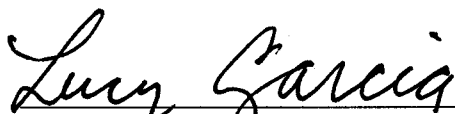
BY FIRST CLASS AND CERTIFIED MAIL
CERTIFIED MAIL RECEIPT # 7005 1160 0003 9713 8739

VICTORIA CHAMBERLAIN
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