

**BEFORE THE
COMMISSION ON TEACHER CREDENTIALING
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

MATTHEW FRANCIS WOOD, Respondent

Case No. 2-88587744

OAH No. 2021080773

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on February 3, 2022, from Sacramento, California.

Brent O. Jex, Deputy Attorney General, represented complainant Mary Vixie Sandy, Ed.D. (complainant), Executive Director of the California Commission on Teacher Credentialing (Commission).

Jonathan C. Turner, Attorney at Law, represented Matthew Francis Wood (respondent) who was present.

Evidence was received, the record closed, and the matter submitted on February 3, 2022.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. On December 4, 2019, the Commission received respondent's application for a certificate of clearance. On December 4, 2019, respondent certified, under penalty of perjury, the truthfulness of all statements, answers, and representations in the application.

2. During January 20 through 22, 2021, the Committee of Credentials (Committee) recommended denial of respondent's application based on allegations that he had been convicted of misdemeanors in 2004 (wet reckless driving), 2009 (driving under the influence (DUI)), and 2015 (disorderly conduct), and that he failed to disclose the 2004 and 2015 convictions in his application. Respondent appealed the denial, and this hearing followed.

Complainant's Evidence

MISDEMEANOR CONVICTIONS

3. On April 13, 2015, in Tahoe Justice Court, Douglas County, Nevada, Case No. 15CR0111, respondent was convicted on his guilty plea of violating Douglas County Code section 9.24.030, disorderly conduct, a misdemeanor. The court sentenced respondent to pay a \$900 fine.

4. The circumstances leading to respondent's 2015 conviction are partially summarized in a letter dated September 24, 2020, from respondent to the Committee in which he provides an explanation of his convictions and his failure to disclose his

2004 and 2015 convictions in his application. With respect to the 2015 conviction, respondent's letter states:

The disorderly conduct in Reno in 2015 is the most shameful moment in my life. I do not recall any of the things that are written in that arrest report to this day. My friends and I were in Reno for a bachelor party and things clearly got out of hand. I have never done anything like that or acted in that manner ever before and I will most certainly make sure it never happens again.

5. The arrest reports prepared by Douglas County Sheriff's deputies were admitted in evidence as administrative hearsay pursuant to Government Code section 11513, subdivision (d), to supplement and explain respondent's written admission and testimony regarding the circumstances leading to his 2015 conviction. As administrative hearsay, the arrest reports are insufficient, standing alone, to support a factual finding. Respondent does not have any recollection of the events other than that he was in Reno for a bachelor party, drank too much alcohol, and ended up in jail. The arrest reports supplement and explain respondent's testimony, to the extent that he was arrested for disorderly conduct and transported to jail.

6. Complainant did not submit court records to prove the 2004 or 2009 convictions. However, respondent's September 24, 2020 letter to the Committee includes the following:

The night I received the [2004] wet and reckless I was not supposed to be the driver. Unfortunately, the person I was with was incapacitated and my hand was forced when we

had to leave very suddenly. When I was pulled over on that foggy night, I blew a .04 [blood alcohol concentration] BAC according to the breathalyzer, which is under the legal limit, but because I was only 20 years old and not quite legal drinking age, I was arrested that night. The DUI in 2009 was also a mixture of bad luck and a less than wise decision to drive. I had a friend who had zero drinks with me that night but the thought never occurred to me to have him drive because I did not feel intoxicated. That night I blew a .08 BAC according to the breathalyzer, which is exactly the legal limit. Since that night in 2009, I made the decision never to drive no matter how little I may have had to drink.

FAILURE TO DISCLOSE CRIMINAL CONVICTIONS

7. On December 4, 2019, respondent electronically submitted an application for a certificate of clearance. By submitting the application, respondent swore or affirmed under penalty of perjury that the information contained in the application is true and correct. In response to the question in the application of whether respondent had “ever been convicted of any felony or misdemeanor in California or any other place” respondent answered in the affirmative. Respondent then disclosed only his 2009 DUI conviction.

8. Respondent’s September 24, 2020 letter to the Committee provides his explanation regarding his failure to disclose two of his three convictions, as follows:

The intent and purpose of this letter, first and foremost, is to assure the [C]ommittee that the omission of any

paperwork related to any past misconduct was a gross oversight. I recognize my mistake and take full responsibility for it, though it was not intentional. It was never my intention to fool or mislead the Committee as I am well aware of what is on my record and that a background check via fingerprint would show the incidents on my report. At the time of sending my application I believed I was saving, not sending. As my correspondence with one of your Staff Services Analyst[s] Mr. Marc Malaspino will show, I was fully cooperative when I was made aware of this mistake, I then proceeded to get all the missing paperwork in as fast as I could.

Respondent's Evidence

RESPONDENT'S TESTIMONY

9. Respondent is 38 years old. He grew up in Sacramento, and graduated from Hiram Johnson High School in 2002. From 2002 through 2008 he worked with students in after school programs through the Sacramento Department of Recreation.

10. Respondent began working for the Sacramento Unified School District in 2013 as a custodian. In 2016, respondent was promoted to the position of plant manager at Washington Elementary School in Sacramento. He is responsible for maintaining the school facilities. He also helps supervise children in the cafeteria and has regular interactions with teachers and school administrators. Respondent has never been accused of misconduct in his employment with the schools.

11. Respondent does not "remember a whole lot" about the events leading to his 2015 arrest and conviction. He was at a bachelor party for a friend, and he drank too much hard liquor too fast. He recalls that he was crying and apologetic after he was taken to jail. He characterizes the events as "one of the worst nights of my life." As a result of the conviction, the court imposed a fine of approximately \$1,000, which he paid. The court did not impose probation. Respondent accepts full responsibility for his conduct.

12. With respect to the 2009 DUI conviction, respondent recalls that he was out with a friend playing poker in downtown Sacramento. When it came time to leave he did not feel "buzzed" so he did not ask anyone else to drive. He was pulled over for a traffic violation and submitted to a breathalyzer test which showed he had a BAC of 0.08. Respondent accepts full responsibility for his conduct.

13. With respect to the 2004 wet reckless conviction, respondent was with friends "drinking and having a good time." He was driving his friend's car because his friend was too intoxicated. He was pulled over by law enforcement and submitted to a breathalyzer test which showed a BAC of 0.04. He accepts full responsibility for his conduct.

14. Respondent is not a heavy drinker. He made a "big mistake" by drinking hard alcohol too fast at the 2015 bachelor party. He drank to the point of "blacking out" on that occasion. He has not done that before or since.

15. Respondent currently drinks beer at home or at his brother's house once every month or two. He and his brother drink a little more beer during football season while watching games on television. He typically drinks approximately three or four beers throughout a game. His wife drives him home afterward.

16. Respondent has not sought treatment for possible alcohol abuse, other than as required by the court following his 2009 DUI conviction. Respondent drinks beer in moderation, and does not feel he has an alcohol problem. Nobody has ever expressed to him any concern that he might have a problem with alcohol or anger management.

17. The Sacramento Office of Education provides grants to classified employees to help them obtain the credentials necessary to join the teaching profession. Respondent participated in this opportunity and earned a bachelor's degree from Brandman University in 2019.

18. Respondent averred that he "unintentionally" forgot to disclose his 2004 and 2015 convictions when he submitted his application for a certificate of clearance. He submitted the application online and at night when he was tired. He has no other explanation for his failure to disclose his 2004 and 2015 convictions.

LETTERS OF SUPPORT

19. Respondent submitted six letters of support from individuals who know him through his work in the schools. All of the authors have observed respondent in his work, and speak highly of him as a person and his commitment to the mission of educating children. They highly recommend respondent, without reservation, as a potential member of the teaching profession. Four of the letters of support accept and are partially based on respondent's assertion that he accidentally failed to disclose two of his three convictions.

Discussion

20. The evidence is clear based on respondent's convictions that he had a problem with alcohol abuse during the 11 years between 2004 and 2015. The evidence did not, however, establish that respondent currently has a problem with alcohol or any other intoxicating substance. Rather, the evidence established that respondent drinks alcohol occasionally and responsibly. There is very little chance he will return to irresponsible or abusive alcohol consumption.

21. Respondent testified that he submitted his application online and at night, and that his failure to disclose his 2004 and 2015 convictions in his application was "unintentional." Respondent's September 24, 2020 letter to the Committee states: "At the time of sending my application I believed I was saving, not sending." Respondent did not address this purported mistake of "saving" versus "sending" during his testimony or in any other writing.

22. Respondent's September 24, 2020 letter to the Committee also states: "As my correspondence with one of your Staff Services Analyst[s] . . . will show, I was fully cooperative when I was made aware of the mistake" Respondent did not introduce the correspondence showing his cooperation.

23. Respondent recalls his 2004, 2009, and 2015 convictions. Although he does not recall many of the events leading to his 2015 conviction, he knows he was convicted. He described the night of his arrest in 2015 as "the worst night of my life." For these reasons, it is highly unlikely respondent forgot his 2015 conviction when he listed his convictions in his application for a certificate of clearance.

24. There is no credible reason to believe that respondent simply forgot his 2004 and 2015 convictions when he submitted his application. Nor did respondent

provide credible evidence that he made a mistake of “sending” versus “saving” his application. Based on the evidence as a whole, the only reasonable finding is that respondent intentionally chose not to disclose his 2004 and 2015 convictions. In doing so, respondent attempted a material deception in his application.

25. It is clear that respondent keenly desires to work as a public school teacher. Respondent has taken substantial steps toward his stated goal. Respondent severely undercut his efforts by submitting an application under penalty of perjury in which he intentionally failed to disclose two of his three misdemeanor convictions.

26. Teaching is a profession that requires a high level of integrity of those who seek to be credentialed. Respondent cannot reasonably expect to enter the teaching profession until he submits a clean application. For these reasons, respondent’s application must be denied. In the event respondent remains interested in entering the teaching profession, he is encouraged to submit a full and complete application when he is eligible to do so.

LEGAL CONCLUSIONS

1. In response to the Statement of Issues, respondent has the burden of proving by a preponderance of the evidence that he is entitled to the credential he seeks. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.) Preponderance of the evidence means “more likely than not.” (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

2. Education Code section 44345 provides in part:

The commission may deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who falls under any of the following categories:

[11] . . . [11]

(c) Is addicted to the use of intoxicating beverages to excess.

[11] . . . [11]

(e) Has committed any act involving moral turpitude.

[11] . . . [11]

(g) Has intentionally practiced or attempted to practice any material deception or fraud in his or her application.

[11] . . . [11]

Any denial pursuant to subdivisions (a) to (e), inclusive, shall be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform.

3. The Commission has set forth the following factors to consider in determining whether there is a relationship between the alleged misconduct and the applicant's fitness to teach, as follows: (1) the extent to which respondent's conduct

has adversely affected students, fellow teachers, or the educational community; (2) the proximity or remoteness in time of the conduct; (3) the type of certificate held or applied for by respondent; (4) the extenuating or aggravating circumstances of the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the probability that the misconduct will recur; (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of respondent or other certificated persons; and (8) the publicity or notoriety given to the conduct. (California Code of Regulations (CCR), title 5, section 80302.) These factors, hereinafter referred to as the *Morrison* factors, were initially developed by the California Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*).

Allegation of Addiction to Intoxicating Beverages

4. Complainant alleged based on respondent's convictions that he is addicted to the use of intoxicating beverages, and that his application is subject to denial pursuant to Education Code section 44345, subdivision (c). The evidence is clear based on respondent's convictions that he had a problem with alcohol abuse during the years of 2004 through 2015. However, the evidence did not establish that respondent currently has an alcohol problem or is addicted to the excessive use of intoxicating beverages. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, complainant did not establish cause to deny respondent's application pursuant to Education Code section 44345, subdivision (c).

Allegation that Respondent Attempted a Material Deception

5. Complainant alleged based on respondent's failure to disclose his 2004 and 2015 convictions in his application that his application is subject to denial

pursuant to Education Code section 44345, subdivision (g). The evidence established that respondent attempted a material deception when he failed to disclose his 2004 and 2015 convictions in his application. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, complainant established cause to deny respondent's application pursuant to Education Code section 44345, subdivision (g).

Allegations of Moral Turpitude

6. Complainant alleged that respondent's application is subject to denial pursuant to Education Code section 44345, subdivision (e), based on his misdemeanor convictions, his conduct underlying those convictions, and his failure to disclose his 2004 and 2015 convictions in his application.

7. The California Supreme Court stated the following in the case of *In re Kelley* (1990) 52 Cal.3d 487, 494:

Conviction of some crimes establishes moral turpitude per se. These include crimes involving an intent to defraud as well as extremely repugnant crimes such as murder.

[Citations.] Convictions for drunk driving [Fn. Omitted], however, do not per se establish moral turpitude. Therefore if moral turpitude exists in this case, it must be based on the particular circumstances surrounding the convictions.

8. The circumstances underlying respondent's convictions in 2004 (wet reckless) and 2009 (DUI) did not demonstrate moral turpitude. With respect to respondent's 2015 conviction for disorderly conduct, complainant did not present evidence sufficient to establish that respondent committed acts of moral turpitude. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole,

complainant did not establish cause to deny respondent's application pursuant to Education Code section 44345, subdivision (e), based on his misdemeanor convictions.

9. With respect to respondent's failure to disclose his 2004 and 2015 convictions in his application, respondent attempted to commit a material deception and in doing so committed a dishonest act. Moral turpitude has been defined by the courts to include dishonesty, even if not a criminal act. Specifically, moral turpitude has been described as "any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime." (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.) Respondent committed an act involving moral turpitude when he failed to disclose his 2004 and 2015 misdemeanor convictions in his application. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, complainant established cause to deny respondent's application pursuant to Education Code section 44345, subdivision (e), subject to analysis under the *Morrison* factors set forth in CCR, title 5, section 80302.

Application of *Morrison* Factors to Respondent's Conduct Involving Moral Turpitude

10. Respondent's misconduct in failing to disclose his 2004 and 2015 misdemeanor convictions in his application are considered under the *Morrison* factors, as set forth below. (1) Respondent's conduct adversely affected the educational community in that his dishonest application subverted the credentialing process. (2) Respondent's misconduct is more proximate than remote in time in that he submitted his dishonest application in December 2019. (3) Respondent applied for a credential that would have put him in direct contact with students. (4) Respondent's conduct is aggravated by the fact that it includes dishonesty. CCR, title 5, section 80300, subdivision (b), lists aggravating factors including dishonesty. (5) Respondent's

misconduct is entirely blameworthy, and is not praiseworthy in any respect. (6)
Respondent is unlikely to again engage in the same or similar misconduct. (7)
Disciplinary action or the denial of respondent's application will not have an adverse
impact or chilling effect upon the constitutional rights of respondent or any other
person. (8) There is no evidence that there has been any publicity or notoriety
regarding respondent's misconduct.

11. Based on the foregoing consideration of respondent's conduct in relation
to the *Morrison* factors, respondent's misconduct in failing to disclose his 2004 and
2015 misdemeanor convictions is substantially related to his fitness to serve as a
teacher. For these reasons, and based on the Factual Findings and Legal Conclusions
as a whole, respondent's application must be denied.

ORDER

Respondent Matthew Francis Wood's application for a Certificate of Clearance is
DENIED.

DATE: March 7, 2022

Timothy J. Aspinwall

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings