

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

**In the Matter of the Accusation and Statement of Issues
Against:**

SARAH MARIE CHAPMAN,

Certificate of Clearance

30-Day Substitute Teaching Permit

Respondent

Case No. 2-200417229

OAH No. 2022120118

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on May 10, 2023, via videoconference.

Diane de Kervor, Deputy Attorney General, represented complainant, Mary Vixie Sandy, Ed.D., Executive Director of the Commission on Teacher Credentialing of the State of California (Commission).

Sarah Marie Chapman, respondent, represented herself.

The record was closed, and the matter submitted for decision on May 10, 2023.

SUMMARY

Complainant asks that respondent's Certificate of Clearance (certificate) be revoked and her application for a 30-Day Substitute Teaching Permit (permit) be denied due to her criminal convictions over a twenty-year period, and her material deception in answering a question on her application for the permit. After giving due consideration to the applicable factors in *Morrison v. State Bd. of Education* (1969) 1 Cal.3d 214, p. 235 ("Morrison factors"), and any applicable aggravating and mitigating factors, it is determined that revocation of her certificate and denial of her permit are not necessary to ensure the safety and welfare of students. A period of probation with terms and conditions will ensure their safety and welfare.

FACTUAL FINDINGS

License History

1. A Certificate of Clearance (certificate) was issued to respondent on April 6, 2018, and expired on May 1, 2023. The Commission retains jurisdiction over this certificate pursuant to Business and Professions Code section 118, if the certificate has in fact expired.

On March 3, 2021, the Commission received an application for a 30-Day Substitute Teaching Permit (permit). On this date, respondent verified under penalty of perjury to the truthfulness of all the statements in the application.

2. Complainant filed and served on respondent an accusation and statement of issues in this matter on September 12, 2022. Complainant alleges in the accusation portion of the pleading that respondent's certificate and permit are subject to discipline for unprofessional conduct (First Cause for Discipline), evident unfitness to serve as a teacher (Second Cause for Discipline), moral turpitude (Third Cause for Discipline), immoral conduct (Fourth Cause for Discipline), and material deception in application (Fifth Cause for Discipline). Complainant alleges in the statement of issues part of the pleading that respondent's application for a 30-day substitute teaching permit is subject to denial because respondent engaged in moral turpitude and practiced material deception or fraud in her application for a 30-day substitute teaching permit.¹

3. As the factual bases for this action, complainant cites respondent's June 24, 2021, driving while intoxicated (DUI) conviction in violation of Vehicle Code sections 23152, subdivisions (a) and (b), and hit and run, in violation of Vehicle Code section 20002, subdivision (a); respondent's conviction on August 21, 2019, for malicious disturbance, in violation of Penal Code section 415, subdivision (2); and her August 18, 2003, conviction for making annoying phone calls and threatening crime with intent to terrorize in violation of Penal Code sections 653M, subdivision (a), and 422.

¹ On complainant's motion, the pleading was amended with this correction at paragraph 17: Riverside County Superior Court replaces Orange County Superior Court and case number RIF1901612 replaces case number 16HM09818.

In addition, complainant asserts that respondent failed to disclose the pending DUI charge when she applied to renew her 30-day teaching certificate on March 3, 2021.

4. As aggravating factors, complainant asserts that respondent engaged in a pattern of multiple acts of wrongdoing and her wrongdoing was “surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators.”

Respondent’s Convictions, the Facts and Circumstances of the Convictions, and Her Answer on Her Application for a Permit

5. Respondent’s convictions and their facts and circumstances are summarized first. Her answer to the question on her permit is summarized afterwards.

RESPONDENT’S CONVICTIONS AND THE FACTS AND CIRCUMSTANCES OF THE CONVICTIONS

6. The facts and circumstances of respondent’s arrests and convictions at issue in this matter are found in court conviction records, the report of the Orange County Sheriff’s Department regarding the DUI arrest, the incident report from the Riverside County Sheriff’s Department regarding the malicious disturbance conviction, and respondent’s statements to the Commission when asked for a written responses. No information was provided regarding the 2003 conviction because records regarding it have been purged by the court.

June 24, 2021, DUI and Hit and Run Conviction

7. Regarding the DUI and hit and run conviction, respondent plead guilty on June 24, 2021, in Orange County Superior Court, Case No. 21HM02992, to violating

Vehicle Code sections 23152, subdivision (a) (driving under the influence of an alcoholic beverage or drug), 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or more), and 20002, subdivision (a) (hit and run with property damage), misdemeanors. Respondent was placed on informal probation for three years, subject to certain terms and conditions. Respondent remains on probation for this offense.

8. The facts and circumstances of respondent's DUI and hit and run are summarized here:

On January 12, 2021, about 8:55 a.m., deputies with the Orange County Sheriff's Department responded to a report of a hit and run traffic collision. Near the collision site, deputies found a man helping respondent fix a flat tire on her vehicle. They noted that respondent was swaying back and forth and had an unsteady gait, her eyes were droopy and watery, her speech was slurred, and her breath emitted the odor of an alcoholic beverage. Respondent stated that she drank an alcohol beverage at approximately 10:00 p.m. on the previous night. Respondent failed field sobriety tests. A Preliminary Alcohol Screening test registered a blood alcohol concentration of 0.113 percent. Respondent was subsequently arrested under Vehicle Code section 23152, subdivisions (a) and (b) (driving under the influence of alcohol). On March 22, 2021, she was charged with violating Vehicle Code section 23152, subdivision (b), and 20002, subdivision (a). The misdemeanor complainant references that her BAC was 0.094 percent.

August 21, 2019, Malicious Disturbance Conviction

9. With respect to the malicious disturbance conviction, on August 21, 2019, respondent pled guilty in Riverside County Superior Court, case number RIF1901612,

to the crime of malicious disturbance in violation of Penal Code section 415, subdivision (2), a misdemeanor, and was convicted. This charge was an amended charge to the criminal complainant, and the other charges of identity theft and fraud were dismissed. Respondent was placed on summary probation for three years, subject to certain terms and conditions, including the payment of restitution to the victim.

10. This conviction arose from a report made by a person who said she was respondent's roommate that respondent stole the victim's credit card and purchased items at different stores. At this hearing, respondent denied she stole her roommate's credit card. On February 8, 2019, as documented in an incident report from the Riverside County Sheriff's Department, the Orange County Sheriff's Department received a report of identity theft. The victim alleged that an unknown person made several unauthorized purchases using two of her credit cards: \$769.81 on one credit card, and \$1,567.86 on another card. The victim stated the only time someone could have taken the credit cards from her purse was when she left the purse unattended while showering at home. During this time, the victim was renting a room in a house where respondent lived. After the investigation, respondent was charged with four counts of identity theft of another to obtain credit under Penal Code section 530.5, subdivision (a), and intent to defraud under Penal Code section 484g, subdivision (a).

11. Respondent was not convicted of identity theft or fraud, but as noted, malicious disturbance under Penal Code section 415, subdivision (2). Malicious disturbance is defined as a person who "who maliciously and willfully disturbs another person by loud and unreasonable noise." (Penal Code, § 415, subd. (2).) The factual basis of this crime, however, cannot be gleaned from the Sheriff's Department report. It further cannot be gleaned from this same report that respondent committed the offenses of identity theft and fraud. Photos taken from the surveillance video in the

report do not allow for the finding that the person at the stores was respondent. Also, clothes found pursuant to a search of respondent's residence do not allow for the finding that these clothes were the clothes the person in the stores wore based on a review of the photos in the report. Respondent did not talk to investigators about this matter. Surveillance videos from the businesses where the purchases were made, which the pleading in this matter references, were not included in the record.

August 18, 2003, Conviction

12. On August 18, 2003, in a criminal proceeding in Orange County Superior Court, case number 03CM05844, respondent was convicted of violating Penal Code sections 653M, subdivision (a) (annoying phone call: obscene/threat), and 422 (threaten crime w/intent to terrorize). Respondent was placed on probation for one year and was fined. On December 6, 2018, the conviction was dismissed pursuant to Penal Code section 1203.4. All police and court documents related to this case were purged. As mentioned, respondent does not dispute her conviction for this offense.

RESPONDENT'S APPLICATION FOR A 30-DAY SUBSTITUTE TEACHING PERMIT

13. On March 3, 2021, respondent filed an application to renew her 30-Day Substitute Teaching Permit. In the application the following question was posed: "Are any criminal charges pending against you?" Although respondent had been arrested and had pending criminal charges against her for the DUI, she answered the question, "No." In completing the Oath and Affidavit section of the electronic application on or about March 3, 2021, respondent certified under penalty of perjury that all statements contained in the application were true and correct.

Respondent's Testimony

14. Respondent's testimony is summarized as follows:

Respondent acknowledges she is an alcoholic. She has a sobriety date of October 14, 2021; the last date she drank alcohol was October 13, 2021. Respondent stated that she began drinking in 2007 after the death of her brother, but she did not realize it was a problem until she was married.

Respondent is motivated to maintain her sobriety due to the birth of her daughter although she decided to live an alcohol-free lifestyle before her daughter's birth.

Through Celebrate Recovery at Saddleback Church, a faith-based support group, respondent works the 12-steps of recovery, and is committed to maintaining her sobriety. Respondent attends two meetings per week, practices the steps daily, and does, as she put it, her homework. As an indication of her active participation in the group, she has been asked to serve as a leader in step study. Respondent also saw a therapist, Katie Strang, Psy.D., from April 5, 2022 to December 17, 2022, for weekly individual and group therapy sessions. She has, in addition, undergone 18 sessions of Transcranial Magnetic Stimulation as a way to overcome her alcoholism. Respondent stressed she has the support of her husband and family, and her family has witnessed her recovery and transformation.

15. Concerning the DUI, respondent stated she and her husband had been drinking and fighting the night before she drove. In the morning, he asked her to leave the residence where they lived, and she left. In her statement to the Commission she said she left quickly because the "altercation" with her husband became physical and she feared for her safety, and he refused to let her call her family. She admitted she

should have gone to a neighbor's house. Respondent said she stopped at a traffic light and did not realize she hit another car in a fender bender. But respondent said she does not remember much from the circumstances of the incident.

16. Respondent remains on probation for the DUI. Due to the birth of her daughter, she was unable to complete part of her probation. She states that she has complied with probation. Court records confirm that she in compliance with her probation.

17. With respect to the malicious disturbance conviction, respondent stated she pled to this offense and agreed to pay restitution to the victim as part of the plea agreement. She said she does not know the victim. In her statement to the Commission, she stated the matter was a case of "mis-identity," and she did not want to go to trial with the chance of being wrongly convicted. She pled guilty to the disturbance charge to avoid this possibility.

18. With respect to the 2003 conviction, respondent stated that she was 17 years old and was prosecuted when she was 18. She said she made annoying phone calls to the victim and her conduct was "very, very immature."

19. Regarding her answer on her application for the permit, respondent said she should have been more diligent, but she did not intend to deceive the Commission.

Respondent was asked to explain her statement to the Commission that she did not disclose the DUI because she wanted to consult with an attorney concerning the pending charge due to the "confidentiality of the information" and "the embarrassment" she felt over the mistake. She explained that because she was not

convicted she believed she did not have to disclose it. Respondent said in hindsight her answer was unprofessional.

20. Respondent stressed she wants to live out her passion for teaching, a career she loves. She has served as a substitute teacher at different grade levels in elementary school and finds her work with students rewarding. She has completed a master's degree in education and is working to obtain a cleared credential. Respondent said she is willing to do whatever it takes to ensure public protection.

Character Testimony and References

21. Respondent called as character witnesses her sister, Shahla Chapman, Psy.D., LFST, her mother Shahin Chapman, and her husband, Jason Farley. These three persons also wrote letters on respondent's behalf, which have been made part of the record. In addition, respondent's father, Patrick Chapman, Claudia Gilmartin, respondent's leader in the Celebrate Recovery step study who has known respondent since November 2021, and Eileen Swift, RN, MSC, a participant with respondent at Celebrate Recovery, submitted letters on respondent's behalf.

22. Dr. Chapman testified she has worked as a therapist in both inpatient and outpatient settings and substance abuse recovery centers. She has witnessed respondent engage in her recovery on a weekly basis, become a contributing part of her support group where she has developed important and positive relationships, and she now leads an alcohol-free life. Respondent has grown and matured since the birth of her daughter in 2022. She is now better able to address adversity. Dr. Chapman stated that respondent is community-minded and recognizes the impact of her behavior on others around her. She believes respondent is safe to be with children.

23. Respondent's mother testified that in recovery respondent has developed positive and healthy relationships, and maintained her sobriety and she is proud of what she has done.

24. Respondent's husband also testified to respondent's commitment to leading a sober life, a goal they share. He stated that they attend Celebrate Recovery together and are committed to leading a healthy lifestyle. He has witnessed an amazing change in respondent and, in his view, she has transformed her life. He said she is remorseful for the DUI and has worked to correct what she has done through Celebrate Recovery.

25. Ms. Gilmartin wrote, as respondent's leader and accountability partner, she has seen respondent's personal growth. She stated that respondent has been an active participant in Celebrate Recovery and respondent is determined to return to teaching as a career she loves.

26. In her letter, Ms. Swift stated that respondent "has put in the work" in recovery and she has witnessed respondent's transformation. She said that respondent has received training to become a Celebrate Recovery leader to help others. Ms. Swift described respondent as a devoted wife and mother. Ms. Swift said she would want a person with respondent's character to teach her children.

27. Respondent's father stated he has observed respondent's commitment to recovery, and her commitment to the program. He noted she is in the process of becoming a 12-step program leader to help others. He believes respondent has turned her life around and asks that she be reinstated to the teaching profession.

Parties' Arguments

28. Complainant argued in closing that respondent's certificate should be revoked, and her application denied consistent with the "Morrison" factors. She asserted that respondent has had a pattern of misconduct, she has a long-standing problem with alcohol, and she was dishonest in answering her application for a permit. She added that respondent's conduct is not remote in time, she remains on criminal probation, and she is likely to continue her conduct.

In the alternative, complainant asked that if a disposition less than revocation and denial is deemed appropriate, that respondent's licensure should be subject to a five-year probation period with biological fluid testing and that she also be required to continue with the Celebrate Recovery support group or similar program.

29. Respondent for her closing referenced her testimony.

Evaluation

30. Respondent testified credibly overall. Her testimony is substantiated by the testimony of family and friends, letters from people who know her, and the record as a whole. Respondent is committed to lead an alcohol-free life, she has changed her behavior, and she has grown. She is committed to teaching and recognizes the impact of her behavior on those around her.

Respondent's testimony that she did not intend to deceive the Commission when she stated "No" to the question whether she was facing the DUI charge is also found credible. At the time she answered the question, the criminal complaint had not been filed. She recognizes she should have answered the question differently, but it is

accepted that her answer appears to have not been done in bad faith to deceive the Commission.

Respondent's testimony that her harassment of another person around 2003 was very immature conduct that is unlikely to reoccur is accepted. As mentioned, no conclusions can be reached regarding the identity theft and fraud charges for purposes of this proceeding.

LEGAL CONCLUSIONS

Standard of Proof

1. In an administrative hearing, the party asserting the affirmative of an issue bears the burden of proof. (*Southern Cal. Jockey Club v. Cal. Horse Racing Board* (1950) 36 Cal.2d 167, 177.) Complainant has the burden of proof with respect to the charges in the accusation. Respondent has the burden of proof with respect to the charges in the statement of issues. Generally, when a hearing is for the purpose of determining whether a license should be issued "the burden may properly be placed on the applicant." (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 259, 265.)

Applicable Statutes

2. Education Code section 44421 provides as follows:

The Commission on Teacher Credentialing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons

serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

3. Education Code section 44345 sets forth specific categories upon which the Commission may deny any application for the issuance of a credential.

Cause Exists to Impose Discipline Against Respondent's Certificate

4. Complainant alleges that cause exists to discipline respondent's certificate and permit under five different categories: unprofessional conduct, evident unfitness for services, moral turpitude, immoral conduct, and material deception on an application. These causes are analyzed in the order presented in the pleading.

5. Complainant alleges in the First Cause for Discipline unprofessional conduct pursuant to Section 44421. (Ed. Code, §44421.) This section authorizes the Commission to impose discipline for unprofessional conduct. It does not, however, define unprofessional conduct. In her trial brief, complainant cites the court of appeal's decision in *Board of Education v. Swan* (1953) 41 Cal.2d 546, 553 for a definition. The court in that decision gives this definition of unprofessional conduct: "[u]nprofessional conduct is 'conduct that violates the rules or ethical code of a profession or is unbecoming a member of a profession in good standing.'" (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) (Also, see for guidance regarding the meaning of unprofessional conduct, *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, at p. 575.)

Thus, for purposes of this matter, any conclusion regarding unprofessional conduct requires a finding that respondent violated laws governing the teaching

profession based on the other causes for discipline or denial as discussed immediately below.

6. In the Second Cause for Discipline complainant alleges that respondent is evidently unfit to serve as a teacher pursuant to Section 44421, and discipline against her certificate should be imposed as a result. (Ed. Code, § 44421.) "Evident unfitness to serve" . . . properly means "clearly not fit, not adapted to or unsuitable . . . ordinarily by reasons of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, at p. 1444, citations omitted.)

Based on this record, complainant did not prove that respondent has a temperamental defect that means she is evidently unfit to serve as a teacher. While respondent has recent convictions for DUI and malicious disturbance, the facts and circumstances of both convictions do not lead to the conclusion that respondent has a temperamental defect that makes her unfit to serve as a teacher.

With respect to the DUI, respondent testified she now recognizes she is an alcoholic, and she credibly stated she has changed her lifestyle to live an alcohol-free life, and she is in recovery, thus countering the assertion she has a temperamental defect that makes her unfit to serve as a teacher due to an alcohol abuse problem. Respondent showed she is willing to change her behavior and has taken affirmative steps to ensure she does not abuse alcohol again. She also participates in the Celebrate Recovery 12-step program, expressed appropriate self-insight, and she understands the impact of her use of alcohol on her community. Family members who testified substantiated the progress she has made in her recovery. Further, in terms of the facts and circumstances of the DUI itself, the facts of the incident do not lead to the conclusion she has a temperamental defect. Without excusing her behavior, the

facts of her DUI suggest the incident arose due to a fight with her husband. She and her husband had been drinking the previous evening and her husband asked her to leave their residence in the morning, which she did. Although she hit another car in a fender bender, and was convicted of hit and run, respondent recognizes the wrongfulness of her conduct and made no excuses for it.

With respect to the malicious disturbance conviction, simply stated, no conclusion can be made regarding whether respondent is evidently unfit to teach due to this conviction because the incident report offers no factual basis for the malicious disturbance conviction. And, further, as found above, no conclusion can be made that respondent committed identity theft and fraud, charges against her that were dismissed. Standing alone, a conviction for malicious disturbance is not a sufficient basis to find that respondent is evidently unfit to serve as a teacher due to a temperamental defect.

With respect to respondent's 2003 conviction, this conviction is remote in time and occurred when respondent was 17 years old. This conduct involved an act of immaturity and does not represent a temperamental defect. Respondent expressed appropriate regret for harassing another person at the time, and respondent has not engaged in similar behavior.

Concerning respondent's failure to truthfully answer the question whether she was the subject of a criminal investigation for the DUI charge when she applied for a 30-day substitute teaching permit on March 3, 2021, respondent credibly, as found above, testified she did not intend to deceive the Commission. She acknowledged she should have read the question more carefully. But with this noted, the question was "Are any criminal charges pending against you?" When she answered this question on March 3, 2021, she had not yet been charged. Charges against her were filed on March

22, 2021, and after she signed her application on March 3, 2021. Thus, her answer is somewhat understandable and consistent with her testimony that she did not know she was facing pending criminal charges since that decision was not for her to make.

Finally, complainant argues that respondent is evidently unfit to teach because she engaged in a pattern of lawlessness over the years. This argument is not found persuasive. Respondent has been convicted of three misdemeanor crimes over a twenty-year period and two crimes more recently. But these convictions do not involve similar behavior to represent a pattern. One conviction occurred in 2003. And as noted, no conclusion can be made regarding the facts and circumstances of the malicious disturbance conviction. The DUI conviction indicates respondent has the capacity to abuse alcohol, but as discussed, respondent credibly addressed her recovery efforts.

7. In the Third Cause for Discipline, complainant alleges that respondent committed an act or acts of moral turpitude that warrant the imposition of discipline. (Ed. Code, § 44435, subd. (e).) The California Supreme Court addressed in *In re Kelley* (1990) 52 Cal.3d 487, the question when crimes involve acts of moral turpitude. The court stated in this regard:

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.

[*Id.*, at p. 494.]

8. Based on information in the police report admitted as evidence, respondent's conviction for hit and run and DUI constitutes conduct involving moral turpitude. As detailed in the report, on January 12, 2021, at about 9:00 a.m., respondent hit another car and continued driving. The driver of the car, whose car respondent hit, followed respondent and contacted the police. Responding officers found respondent and a man helping her, later identified as her husband, trying to fix a flat tire. The reporting officer observed respondent to be visibly intoxicated and noticed damage to respondent's car where she collided with the other vehicle. He further observed that respondent swayed back and forth, had an unsteady gait, alcohol coming from her breath, and slow slurred speech. She failed field sobriety tests. She told officers she and her husband were driving the car. This was not true. Two preliminary alcohol screening tests showed BAC levels of 0.113 percent.

9. No conclusion, on this record, can be made as to whether respondent's 2003 conviction and 2021 conviction constitute crimes involving moral turpitude. First, as discussed earlier, it is not found that respondent's conviction for malicious disturbance constitutes a crime of moral turpitude. The crime of malicious disturbance by itself is not a crime involving moral turpitude. Information in the Riverside County Sheriff's report does not identify facts and circumstances of the crime to find otherwise.

10. Further, it cannot be found that respondent committed identity theft and fraud based on the information in the report itself. Still photos of surveillance video taken at the stores are not clear to identify the person in them as respondent. Clothes similar to the clothes the person in the photos wore in the stores, which the reporting Deputy identified from a search of respondent's residence, do not support a

conclusion that respondent was at the stores purchasing items using the victim's credit cards. Respondent denied she committed the offense and charges of identity theft and fraud were dismissed.

With respect to the facts and circumstances of respondent's 2003 conviction, records describing that conviction have been purged. Respondent's testimony regarding the circumstances of the conviction do not lead to the conclusion that the crime she was convicted of constitutes conduct involving moral turpitude.

11. In the Fourth Cause for Discipline, complainant alleges that respondent committed acts, or an act, of immoral conduct subjecting her certificate and permit to disciplinary action. (Ed. Code, § 44421.) Cause does not exist to find that respondent engaged in an act or acts of immoral conduct.

"Immoral conduct," pursuant to sections 44932, subdivision (a)(1), and 44939,² has been defined to mean conduct that is willful, flagrant, or shameless, conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. It is sometimes used as synonymous with "dishonesty" or a high degree of unfairness. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.) Immoral conduct can be construed according to common usage. "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of

² These sections of the Education Code apply to dismissal actions against credentialed teachers.

corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare." (*Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

12. Consistent with the definitions of immoral conduct in the decisional law, based on this record, respondent's conduct is not found to constitute immoral conduct. Over twenty years, she has had three convictions. The conviction in 2003 is remote in time and occurred when she was immature at 17 years of age. She expressed appropriate regret for her behavior at that time. Other than her testimony, the facts and circumstances of this conduct are not available. Her DUI and hit and run, as discussed, were the result of a situation between herself and her husband, and although she lacked sound judgment in driving under the influence of alcohol, the facts and circumstances do not indicate she acted in a depraved, shameful, or flagrant manner. Respondent expressed appropriate regret over the incident and has taken steps to ensure she does not abuse alcohol again. No findings can be made regarding the facts and circumstances of the malicious disturbance conviction for the reasons previously stated.

13. With respect to respondent's failure to honestly answer the question on her application for a 30-day substitute teaching permit, and whether this conduct constitutes immoral conduct, respondent testified credibly that she made a mistake and did not intend to deceive the Commission by her answer. As also discussed, her testimony is somewhat consistent with the answer to question whether she was facing pending charges because she was formally charged after she answered the question.

14. Complainant alleges in the Fifth Cause for Discipline that respondent's certificate and permit are subject to discipline because she intentionally practiced material deception in her application. (Ed. Code, § 44345, subd. (g).) Based on the findings immediately above, cause does not exist to find that she intentionally practiced material deception in her application.

Cause Exists to Deny Respondent's 30-Day Substitute Teaching Permit

15. Complainant alleges in closing and in a trial brief she submitted that respondent's 30-day Substitute Teaching Permit should be denied under section 44345, subdivision (e), because she engaged in an act of moral turpitude for the conduct identified above, and because she practiced material deception or fraud when she denied that she was facing pending criminal charges in her March 3, 2023, application for a permit.

16. For the reasons found above, cause exists to deny respondent's application under section 44345, subdivision (e), because she committed an act of moral turpitude when she drove under the influence of alcohol and left the scene of an accident she caused on January 12, 2021.

17. Based on the above findings, cause does not exist to deny respondent's application under section 44345, subdivision (g), because she practiced material deception or fraud in her application for a permit.

The Morrison Factors and Aggravating and Mitigating Factors

18. Now that cause has been found to impose discipline against her certificate and deny respondent's permit application, respondent's fitness and

competency to teach must be assessed under the factors detailed in California Code of Regulations, title 5, section 80300. This requires identifying any extenuating or aggravating factors surrounding respondent's conduct. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(4).)

An individual can be removed from the teaching profession only upon a showing that her retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by her actions as a teacher. (*Morrison v. State Bd. of Education* (1969) 1 Cal.3d 214, p. 235.)

19. Criteria set forth in *Morrison* are embodied in California Code of Regulations, title 5, section 80302. The Commission, in conducting its investigation, must determine the relationship between the alleged misconduct and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential. Such relationship may be based on facts which include the following factors: the extent to which the conduct has adversely affected students, fellow teachers, or the educational community and the degree of impact; the proximity or remoteness in time of the conduct; the type of certificate held; the extenuating or aggravating circumstances surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the probability that the questioned conduct will recur; the extent to which adverse action may have a chilling effect upon the constitutional rights of the person involved or on other certificated persons; and the publicity or notoriety given to the conduct. (Cal. Code Regs., tit. 5, § 80302, subds. (a)(1)-(8).)

20. Aggravating factors "are circumstances demonstrating that a greater degree of adverse action is needed to adequately protect the public, schoolchildren, or the profession. (Cal. Code Regs., tit. 5, § 80300, subd. (b).) Complainant alleges that

respondent engaged in conduct that represented a pattern of misconduct and was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators. (Cal. Code Regs., tit. 5, § 80300, subds. (b)(2) and (b)(3).)

21. "Mitigating factors" are circumstances demonstrating that the public, schoolchildren, and the profession would be adequately protected by a more lenient degree of adverse action. (Cal. Code Regs., tit. 5, § 80300, subd. (m).) Potential mitigating factors include: (1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious; (2) lack of harm to the person who is the object of the misconduct; (3) emotional or physical difficulties suffered by the holder which substantially contributed to the misconduct, provided that the difficulties were not the product of illegal conduct such as illegal substance abuse, and further provided that the holder has established through clear and convincing evidence that the holder no longer has such difficulties; (4) attestations to the holder's good character by individuals from the educational or general community who are aware of the extent of the holder's misconduct; (5) objective action by the holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing designed to timely make amends; (6) proximity or remoteness in time of the misconduct relative to the seriousness of the misconduct; and (7) the nature and extent of subsequent rehabilitation. (Cal. Code Regs., tit. 5, § 80300, subd. (m).)

Disposition

22. After applying applicable *Morrison* factors in California Code of Regulations, title 5, section 80300, subdivisions (a) and (b), and considering any aggravating and mitigating factors, it is concluded that revocation of respondent's certificate and denial of her permit application are not necessary to protect students,

school employees, or others who might be affected by her actions as a teacher.
(*Morrison, supra*, 1 Cal.3d at p. 235.)

However, due to the nature and severity of respondent's conduct relating to her DUI and hit and run, a period of probation with terms and conditions, including random biological fluid testing, participation in a support group, and therapy, is necessary to ensure the safety and welfare of students. Consistent with this interest, a three year term of probation is deemed sufficient. With terms and conditions of probation, revocation of her certificate and denial of her permit application are not necessary to ensure public protection and would amount to impermissible punishment. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

23. This conclusion is reached for these reasons: Respondent displayed a serious lack of judgment both when she decided to drive while under the influence of alcohol, and then when she left the scene of an accident she caused while she was impaired. By driving under the influence of alcohol, and leaving the scene of an accident, respondent's conduct would reflect negatively on the school and community where she may teach. "'A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the (students) coming under (her) care and protection.'" (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, at 824 citing *Board of Education v. Swan* (1953) 41 Cal.2d 546, 552.) Also, as additional factors in reaching the conclusion that probation is required, respondent's conduct is recent, and she remains on criminal probation. She is thus expected to be on her best behavior. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

24. In terms of aggravating factors that complainant argues are present, it is not found that respondent's misconduct represented a pattern of misconduct, or that

the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators. Respondent's three convictions over 20 years do not represent a pattern. The 2003 conviction occurred when respondent was young and immature, and the malicious disturbance conviction does not allow for any conclusion regarding the conduct that led to the conviction. Respondent's answer to the question on her application does not lead to the conclusion she acted in bad faith for the reasons discussed above.

25. A number of mitigating factors are present. Respondent now recognizes she is an alcoholic, and she credibly testified she has decided to lead an alcohol-free life. To ensure her sobriety, she has taken steps by participating in the Celebrate Recovery 12-step program, she has participated in therapy, and she has undergone other treatment to address her alcoholism. Family and friends stated respondent has transformed herself.

26. In deciding the terms and conditions of probation to impose, it is noted that the Commission has not adopted uniform terms and conditions of probation. The Commission has, however, requested public comment on proposed disciplinary guidelines that would include uniform terms and conditions similar to those of other licensing agencies. (See Proposed Disciplinary Guidelines (Feb. 21, 2019) <https://www.ctc.ca.gov/docs/default-source/commission/agendas/2019-02/2019-02-5b.pdf?sfvrsn=2> [as of May 17, 2023].) Under Government Code section 11515, official notice of that public comment request is made of these proposed guidelines. The uniform terms and conditions of probation in the proposed disciplinary guidelines have been referenced for the limited purpose of providing guidance as to the format of the probation terms and conditions in this case.

ORDER

The Certificate of Clearance issued to respondent is revoked. However, the revocation is stayed, and respondent is placed on probation for three years, from the effective date of this order, on the terms and conditions detailed below.

Respondent's application for a 30-day Substitute Teaching Permit is granted; however, the permit is immediately revoked, the revocation is stayed, and respondent is placed on probation for three years, from the effective date of this order, on the following terms and conditions:

1. Severability Clause

Each condition of probation contained herein is a separate and distinct condition. If any condition of probation, or part thereof, or any application thereof, is declared by a court of competent jurisdiction to be unenforceable in whole or in part, or to any extent, the remaining conditions of probation, and each of them, and all other applications thereof, shall not be affected. Each condition of probation herein shall be separately valid and enforceable to the fullest extent permitted by law.

2. New Credentials Subject to Order

Any new credential issued by the Commission to respondent during the period of probation shall be subject to this order, and respondent shall be subject to the same terms and conditions of probation with respect to any such new credentials, as set forth herein.

3. Compliance with Probation

Respondent shall fully comply with each and every term and condition of probation. During the entire period of probation, respondent shall submit quarterly declarations under penalty of perjury, in a format to be approved by the Commission, stating whether there has been full compliance with the terms and conditions of probation. Respondent shall submit a full and detailed description of any violation of any terms or condition of probation on the quarterly declarations.

Respondent shall submit the quarterly declarations not later than 10 days after the end of each quarter which, for purposes of this term and condition, are: March 31st, June 30th, September 30th, and December 31st.

4. Cooperation with Commission

During the entire period of probation, respondent shall fully cooperate with the Commission in its monitoring and investigation of respondent's compliance with probation.

5. Interview with Commission

During the entire period of probation, respondent shall be available for interview either in person or by telephone, with or without prior notice, with the Commission.

6. Notification

Within five days of the effective date of this order, respondent shall provide a true and correct copy of this decision, together with a true and correct copy of the petition to revoke probation, which form the basis for the decision, to respondent's employer as defined by the California Code of Regulations, title 5, section 80300, subdivision (j), if any, and to respondent's immediate supervisor at that employer.

Within five days of complying with this notification requirement, respondent shall submit proof of compliance to the Commission.

If respondent changes employment at any time during probation, respondent shall again comply with this notification requirement within seven days of accepting new employment and shall again submit proof of compliance to the Commission, as required herein, within five days of complying with this notification requirement. Respondent shall comply with this notification requirement, and proof of compliance, as described herein, each and every time respondent changes employment during the probationary period.

Within seven days of this order, respondent shall also notify the Commission in writing of the name and address of the current employer with whom respondent has contracted or is otherwise engaged to perform education services. Respondent shall provide this same information to the Commission within seven days of any change in employment and, in addition, shall also provide a full and complete explanation of the facts and circumstances surrounding the cessation of employment with the former employer.

7. Maintain Active, Current Credentials

During the entire period of probation, respondent shall maintain active, current credentials with the Commission, including during any period of suspension.

8. Maintain Current Contact Information

Within seven days of the effective date of this order, respondent shall notify the Commission of a current mailing address, current email address, and current telephone number where voicemail or text messages may be left. Within 72 hours of any change

of mailing address, email address, or telephone number, respondent shall notify the Commission of the new mailing address, email address, and telephone number.

9. Obey All Laws

Respondent shall obey all federal, state and local laws, including all laws governing the education profession in California, and shall remain in full compliance with all court orders, criminal probation or parole, and shall make all court-ordered payments.

Except for minor traffic infractions, within 72 hours of any incident resulting in respondent's arrest, the filing of any criminal charges, or citation issued, respondent shall submit a full and detailed description of the incident to the Commission. For purposes of this condition, a "minor traffic infraction" includes only traffic violations which are punishable by a maximum fine of \$250, and do not subject the offender to incarceration or probation. (See Veh. Code, § 42001; Pen. Code, §§ 17, subd. (d), 19.6 and 19.8.)

Within 72 hours of receiving notice of any violation of any court order, criminal probation or parole, or failure to make any court-ordered payment, respondent shall submit a full and detailed description of the incident to the Commission.

To permit monitoring of respondent's compliance with this condition, respondent shall ensure that fingerprints are on file with the Commission. Respondents residing outside of California can also comply with this fingerprint requirement by submitting, within 30 days of the effective date of this order, two fingerprint cards (FD-258) and payment of the additional applicable fingerprint fee.

10. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring, as designated by the Commission, for each year of probation. Probation monitoring costs shall be made payable to the California Commission on Teacher Credentialing. Within 30 days of the effective date of this order, respondent shall pay the Commission the prorated probation monitoring costs for the number of months remaining in the calendar year. Beginning with the second year of probation, the full year of probation monitoring costs shall be paid to the Commission on or before January 31st of each calendar year. The total probation monitoring costs for each calendar year may be adjusted by the Commission on an annual basis.

11. Violation of Probation

Failure to fully comply with any term or condition of probation, or any part thereof, shall constitute a violation of probation. If respondent violates any term or condition of probation, or any part thereof, in any respect, the matter will be referred to the Office of the Attorney General for preparation of a Petition to Revoke Probation. After giving respondent notice and an opportunity to be heard, the Commission may revoke probation and impose the order that was stayed, i.e., revocation of respondent's credentials. If a Petition to Revoke Probation is filed against respondent during probation, or the Attorney General's Office has been asked to prepare a Petition to Revoke Probation against respondent, the Commission shall have continuing jurisdiction until the matter is final, and the period of probation shall be automatically extended until the matter is final.

Respondent's credentials may also be subject to immediate suspension for any specified violation of probation as provided in this order. If respondent does not comply with any part of a probation condition that includes a consequence of suspension for failure to comply, the Commission will notify respondent in writing that

respondent's credentials are immediately suspended. Thereafter, the suspension of respondent's credentials shall not be lifted until the effective date of a final decision of the Commission on a Petition to Revoke Probation to be filed against respondent.

If a Petition to Revoke Probation is not filed against respondent within 30 days of issuance of the written notification from the Commission to respondent that respondent's credentials are immediately suspended, or respondent is not provided with an administrative hearing within 30 days of a written request for a hearing, unless respondent stipulates to a later hearing, the suspension shall be dissolved. The deadlines established herein shall be computed pursuant to the provisions of sections 12 through 12c of the Code of Civil Procedure. Where an original suspension has dissolved, nothing shall prohibit issuance of another suspension for any additional or subsequent violation by respondent as a condition of probation.

12. Abstention from the Possession and Use of Mood-Altering Substances

For purposes of this term and condition of probation, banned substances include alcohol, marijuana and any of its derivatives, all controlled substances and dangerous drugs, and all other mood-altering drugs or substances.

During the period of probation, respondent shall completely abstain from the possession or use of all banned substances.

CAUTION: Respondent shall not ingest or use any products that contain any trace amount of any banned substance such as cold/flu medications, cough syrups, diet pills and products, mouthwash, skin care or hygiene products, perfumes, poppy seeds, or certain foods and desserts, etc.

This probationary term does not apply to controlled substances or dangerous drugs lawfully prescribed to respondent by a licensed health care professional legally authorized to do so as part of documented medical treatment for a bona fide illness or condition. Respondent shall provide information regarding any current or former treating physician, counselor, or any other treating healthcare professionals as requested by the Commission.

Within five days of receiving any prescription for any controlled substance or dangerous drug, respondent shall provide written notification of the following information to the Commission: (1) the licensed health care professional who issued the prescription including address and telephone number; (2) the name of the prescribed controlled substance or dangerous drug, and the strength and quantity of the prescribed controlled substance or dangerous drug; and (3) the name, address, and telephone number of the pharmacy that filled the prescription.

Respondent shall also execute a release authorizing the release to the Commission of physical health medical records, mental health medical records, prescribing records and pharmacy records. The release shall remain valid and in full force and effect for the entirety of respondent's probationary period. If respondent, for any reason, rescinds the release during her period of probation, the rescission shall constitute a violation of probation and respondent's credentials are immediately suspended upon written notice from the Commission.

13. Banned Substances Testing

Respondent shall participate in random testing for the detection of banned substances, which include alcohol, marijuana and any of its derivatives, all controlled substances and dangerous drugs, and all other mood-altering drugs or substances, at

a laboratory previously approved by the Commission. Such testing shall include, but not be limited to, biological fluid testing (i.e., urine, blood, or saliva testing), hair, fingernail, or breath testing, and/or participation in a daily drug screening program previously approved by the Commission. Respondent shall bear the expense of such testing.

Respondent shall not perform any service authorized by respondent's credentials until respondent has signed up for and is presently participating in banned substances testing, and has submitted documentation to the Commission evidencing that participation, as required herein.

Respondent shall make daily contact, each and every day of the probationary period, including weekends, holidays, and vacations both inside and outside of California, with a laboratory previously approved by the Commission to determine if respondent is required to submit a specimen or specimens for testing on that day.

During probation, respondent shall also promptly submit to testing for the detection of banned substances at the direction of respondent's employer, immediate supervisor, and/or law enforcement.

Respondent shall fully cooperate with the Commission and shall, when directed, personally appear and provide a specimen or specimens for testing to detect the use of any banned substances. All specimen collections shall be observed.

Any alternative testing site proposed by respondent due to an anticipated vacation or travel outside of California must first be approved by the Commission at least 30 days prior to respondent's anticipated vacation or travel. As part of the approval process, respondent shall provide any and all information about the proposed alternative testing site requested by the Commission. Unless previously

approved by the Commission, respondent shall not utilize an alternative testing site and any test results from an alternative testing site which has not been previously approved by the Commission shall not be accepted as valid test results.

If respondent fails to participate in random testing for the detection of banned substances, fails to make daily contact with a laboratory previously approved by the Commission, fails to personally appear when directed to do so, fails to provide a specimen or specimens for the detection of banned substances, tests positive for any banned substance, or otherwise violates this condition of probation in any respect, respondent's credentials are immediately suspended upon written notice from the Commission.

Any test result registering over the established laboratory cut off level for any banned substance, even that which could result from respondent's incidental contact with any banned substance, shall be considered a positive test result and, therefore, a violation of probation. If respondent has a positive test result for any banned substance, respondent's credentials are immediately suspended upon written notice from the Commission.

If respondent has a negative diluted test result, respondent shall submit to blood, saliva, hair, fingernail, or breath testing at respondent's own expense as directed by the Commission.

If the Commission determines, for any reason, that a previously reported positive test is not evidence of prohibited use, the Commission shall so inform respondent and respondent's employer that the positive test will not be treated as a violation of probation and that respondent's credentials are no longer suspended. In making this determination, the Commission may, but is not required to, consult with

the specimen collector, laboratory testing facility, respondent, any treating physician or other healthcare provider, or any support group facilitator, to determine whether the positive test is evidence of respondent's prohibited use of a banned substance.

14. Psychotherapy

Within 60 days of the effective date of this order, respondent shall submit to the Commission for prior approval the name and qualifications of a California-licensed board-certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders who will provide psychotherapy to respondent. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the psychotherapist has determined that no further psychotherapy is necessary, and respondent has been so notified in writing by the Commission. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist deems pertinent and requests. Respondent shall pay all cost of psychotherapy treatment.

The psychotherapist shall consider any information provided by the Commission and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Commission. Respondent shall also have the treating psychotherapist submit quarterly status reports to the Commission.

Respondent shall fully comply with all restrictions and conditions recommended by the psychotherapist within seven days of being notified to do so by the Commission. If, prior to the completion of probation, the psychotherapist finds respondent to be mentally unfit to perform the services authorized by respondent's

credentials with complete safety to schoolchildren, the education profession and the public, the psychotherapist shall immediately inform the Commission of this finding in writing. Respondent shall thereafter receive written notification from the Commission that her credentials are immediately suspended, the Commission shall retain continuing jurisdiction over respondent's credentials, and the period of probation shall be extended until the Commission determines that respondent is mentally fit to perform such services.

Respondent shall execute a release authorizing the release of all information regarding psychotherapy treatments, including any psychiatric evaluation and psychological testing, to the Commission. The release shall remain valid and in full force and effect for the entirety of respondent's probationary period. If respondent, for any reason, rescinds the release during the period of probation, the rescission shall constitute a violation of probation and respondent's credentials are immediately suspended upon written notice from the Commission.


15. Attendance and Participation in Group Support Meetings

Respondent shall continue to attend Celebrate Recovery, or other similar support group (e.g., Alcoholics Anonymous, Narcotics Anonymous, or other similar support group), which has been previously approved by the Commission. Respondent shall attend at least one meeting of the approved support group per week for the entire period of probation. Verified documentation confirming respondent's attendance shall be submitted by respondent with each of the Quarterly Declarations to the Commission.

16. Completion of Probation

Respondent shall submit full payment of all remaining probation monitoring costs not later than 60 days prior to the completion of probation. Upon completion of probation, respondent's credentials shall be fully restored, and this decision will continue to remain a matter of public record thereafter.

DATE: May 23, 2023


Abraham M. Levy (May 23, 2023 14:41 PDT)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings