

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

**In the Matter of the Petition to Revoke Probation Against:**

**CHRISTOPHER JAMES CINO,**

**Clear Multiple Subject Teaching Credential,**

**Respondent**

**Case No. 1-839205149**

**OAH No. 2022080686**

**PROPOSED DECISION**

Abraham M. Levy, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on February 9, 2023, via videoconference.

Alvaro Mejia, Deputy Attorney General, represented petitioner, Mary Vixie Sandy, Ed.D., Executive Director of the Commission on Teacher Credentialing of the State of California (Commission).

James Kosnett, Attorney at Law, Kosnett Law Firm, represented respondent, Christopher James Cino, who was present.

The record was closed, and the matter submitted for decision on February 9, 2023.

## **SUMMARY**

Petitioner asks that respondent's probation be revoked due to his arrests and convictions for driving without a license, driving under the influence of alcohol, and his failure to report his arrests to the Commission. Based on the evidence as a whole, the petition to revoke respondent's probation is denied in part and granted in part.

Respondent presented evidence he is sufficiently rehabilitated that allowing him to remain on probation is not against the public interest. But, considering respondent's history of DUIs, and his failure to abide by the terms of his probation, respondent's probation is extended for three years with additional terms and conditions including requirements that he attend mental health therapy, undergo a psychiatric evaluation, and submit to random drug and alcohol testing.

## **FACTUAL FINDINGS**

### **License History**

1. On April 6, 2001, the Commission issued a Clear Multiple Subject Teaching Credential to respondent. The Multiple Subject Teaching Credential was in effect at all times relevant to the charges and is set to expire on June 1, 2026, unless renewed.

## Disciplinary History and Probation

2. Respondent's disciplinary history arises from five convictions for driving under the influence of alcohol (DUI) he incurred between November 6, 1995, and July 1, 2013.<sup>1</sup>

As a result of these convictions, the Commission adopted a Consent Determination and issued an Order, effective on September 27, 2013, in the matter entitled *In the Matter of the Credentials Held by: Christopher Cino*, Case Number 1-85554655. The Commission revoked respondent's credential, stayed the revocation, and suspended respondent's credential for 45 days starting December 14, 2013. His credential was placed on probation for a period of ten years with terms and conditions.

3. Among the terms and conditions of respondent's probation, respondent is required to comply with all terms and conditions of probation and obey all laws. Those specific terms and conditions are as follows:

Condition 10 of the Order states:

If Respondent violates any term or condition of this Consent Determination and Order, Respondent will be given written notice of the alleged violation and an opportunity to respond in writing to the Committee. The

---

<sup>1</sup> The Commission's disciplinary action also identifies that respondent was convicted of resisting arrest. Petitioner in this proceeding emphasized respondent's DUIs as the relevant criminal history.

Committee will make a determination whether a violation of a term or condition of this Consent Determination and Order or of probation has occurred. If the Committee determines that a violation has occurred, the Committee will recommend to the Commission that the stay order be set aside and Respondent's credentials be revoked. The Commission will take final action on the recommendation of the Committee. The Commission will retain jurisdiction over Respondent's case during the period of probation and during the processing of any allegation of a violation of probation. The decision of the Commission with respect to Respondent's violation of the Consent Determination and Order or probation will be final, with no other administrative review, subject only to appropriate judicial review.

4. Condition 7(A) of the Order states:

Any plea of nolo contendere or guilty, jury verdict of guilty, finding of guilt by a court in a trial without a jury, or conviction following a plea of nolo contendere or no contest to any misdemeanor or felony for any violation of the law will constitute a violation of probation. Respondent will obey all federal, state and local laws and regulations, including, but not limited to, the regulations of the Commission. Respondent will submit to the Commission a full and detailed written account of any and all arrests or

citations for any violation of law (except infractions) within 72 hours of the arrest or citation.

5. On June 16, 2022, petitioner filed the petition to revoke respondent's probation. Petitioner alleges that respondent's probation should be rescinded, and his credential revoked because on February 10, 2021, respondent was convicted of driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (b), and was convicted for driving without a valid license on July 22, 2021. Respondent was placed on criminal probation for five years for the DUI offense with various conditions and terms. Respondent does not dispute that cause exists to revoke his probation.

### **Respondent's Convictions and Respondent's Letter to the Commission**

6. The facts and circumstances of respondent's arrests and convictions at issue in this matter are found in reports from the Costa Mesa Police Department, relating to his conviction for driving without a valid license on February 8, 2019, and from the Orange County Sheriff Department, relating to respondent driving under the influence of alcohol (DUI) conviction. These reports were received into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448, 461-464.

7. Regarding the conviction for driving without a license, on July 22, 2021, in the criminal proceeding entitled *People v. Christopher J. Cino* (Case No. 19WM13208), respondent pled guilty and was convicted of driving without a valid license in violation of Vehicle Code section 12500, subdivision (a). The offense was deemed an infraction at respondent's sentencing. Respondent was ordered to pay fines in the sum of \$135. The incident arose from an arrest on February 8, 2019.

Respondent was arrested after a routine traffic violation stop and a records check showed he did not have a valid driver's license.

Respondent did not submit a written account of this arrest to the Commission within 72 hours of his arrest, as required by the terms of his probation with the Commission.

8. Regarding his DUI conviction, on July 22, 2021, in a criminal proceeding entitled *People v. Christopher J. Cino* (Case No. 19WM00296), respondent pled guilty and was convicted of DUI, in violation of Vehicle Code section 23152, subdivision (a), driving a vehicle with a blood alcohol content (BAC) of 0.08 percent or more in violation of Vehicle Code section 23152, subdivision (b), and hit and run with property damage in violation of Vehicle Code section 20002, subdivision (a), all misdemeanors. Respondent's BAC was 0.15 percent, as he acknowledged in the plea form he signed. Respondent was sentenced to 90 days in jail, plus an additional four days in jail in lieu of fines, and was granted informal probation for five years. Respondent was ordered to complete an 18-month Multiple Offender Alcohol Program, and to pay restitution.

9. The Orange County Sheriff's Department report shows the following:

On April 21, 2018, at about 11:22 p.m., Orange County Sheriff's Department deputies responded to a call regarding a vehicle collision in the City of Stanton. Upon arrival, deputies observed two men involved in a physical altercation. A deputy identified respondent as one of the subjects and escorted him to a patrol vehicle for questioning. The deputy immediately detected the strong odor of alcohol emitting from respondent's breath and noticed that respondent had bloodshot, watery eyes and an unsteady gait. During questioning, respondent admitted he collided with the other vehicle, and he consumed an alcoholic beverage that morning. Respondent

refused to answer any other questions or participate in field sobriety testing or a Preliminary Alcohol Screening test. Respondent was arrested for driving under the influence. Deputies requested a warrant for a blood draw and transported respondent to the sheriff's station for processing. As noted, respondent's BAC was 0.15 percent.

10. Respondent did not submit a written account of this arrest to the Commission within 72 hours of his arrest, as required by the terms of his probation with the Commission. The Commission received notification of respondent's arrest through the Department of Justice on April 23, 2018.

11. On September 6, 2021, respondent wrote a letter to the Commission stating that he violated the terms of his probation when he pled guilty to a misdemeanor DUI on July 22, 2021. In this letter, respondent wrote that he has struggled with alcohol abuse through the years and that he "make[s] poor decisions at times due to alcohol." He also stated in this letter that he takes his sobriety seriously and was now sober.

## **Respondent's Testimony**

12. Respondent's testimony is summarized as follows:

Respondent has successfully worked over twenty years as a teacher of students who are at risk of not graduating. He believes he has made a difference in the lives of these students and wishes to continue to do so. Respondent submitted positive performance evaluations dating back 20 years.

Respondent struggles with alcoholism and depression. He described his binge drinking as his problem with alcohol, and said he does not drink every day. He stated

he is now sober and has been sober for five years; he identified his date of sobriety as a time shortly after his 2018 DUI arrest.

13. After his DUI arrest, respondent successfully completed an eight-week outpatient intensive program through Hoag Hospital. This program involved three sessions a week plus random drug and alcohol screens. During this time, he attended at least two Alcoholics Anonymous (AA) meetings per week, saw a specialist in addiction treatment, and a therapist. Respondent testified due to this program he is better able to recognize aspects of his life that are not functioning well, and he can reenter the program when "life gets too much for him." Because of this program, respondent said he can deal with his problems and knows when he needs to ask for help.

14. Respondent testified he attends AA meetings at different locations. Respondent is required to attend these meetings as part of his criminal probation, but he plans to continue to attend AA meetings even after his criminal probation ends. He does not see a mental health therapist or receive mental health treatment. He goes to therapy when he feels he is not in control. To cope with his alcoholism, respondent goes to AA and attends church twice a week.

15. Respondent recognized he failed to notify the Commission of his arrests as required under the term of his probation. He attributed his failure to his deep depression.

16. In answers to questions on cross-examination, respondent said his situation after his 2018 DUI arrest is different from the previous five DUIs because he now recognizes the relationship between his abuse of alcohol and depression. He also said shortly before his 2018 DUI arrest he became seriously depressed and could not



get out of bed. Respondent added that his father's health issues at the time contributed to his abuse of alcohol.

17. Respondent stated that he is willing to comply with any terms of probation the Commission may impose including random biological fluid testing.

## **Character Testimony and References**

18. Respondent called as character witnesses Bradley Morrison, Marlene Simmons, and Darren Lax. Mr. Morrison, Ms. Simmons, and Mr. Lax also submitted letters on respondent's behalf. In addition, respondent submitted letters from his former students, Cynthia Gutierrez and Samuel Gordon.

19. Mr. Morrison testified he has known respondent for over thirty years through church, and for the last five years he has worked with respondent through Celebrate Recovery, a recovery group. Mr. Morrison described respondent as resilient and able to bounce back from the problems he has had. He is generally familiar with respondent's criminal history and his DUIs. He stressed respondent's positive role in the lives of his students over the years. He believes it would be a disservice to students if respondent could not continue as an educator.

20. Ms. Simmons is a teacher for the Orange County Department of Education and has known respondent for twenty years, and has been working with him at the same job site for eight years. She described him as an empathetic, professional, and caring teacher committed to helping at risk students. She said she has seen no problems with his professionalism as a teacher. As president of the teacher's union Ms. Simmons said she would know if any concerns about respondent's professionalism were raised.

Ms. Simmons recognizes respondent is an alcoholic and has struggled with alcohol use. She supports him keeping his credential.

21. Mr. Lax is respondent's colleague and has known him as a fellow teacher for ten years. He has served as lead teacher with respondent for three years. Mr. Lax also described respondent as a very professional and very caring teacher with a deep love for reaching out to at risk youth. Mr. Lax is aware that respondent has struggled with alcohol, but he believes he has diligently worked on his sobriety. He did not know that respondent had five DUI convictions.

22. Mr. Gordon in his letter stated that he has known respondent for 20 years. Respondent was his teacher and helped him learn how to be successful in school. He described respondent as patient and professional. With respondent's help, Mr. Gordon was able to return to the high school and graduate. He has maintained contact with respondent over the years and now considers him a friend. Mr. Gordon is not familiar with respondent's disciplinary history but believes it has to do with his ability to maintain his sobriety.

23. Ms. Gutierrez is a recent graduate of respondent's class and is now attending college. She wrote that respondent has been a blessing to her. He encouraged her to graduate high school and attend college and was always there for her when she needed help. He nominated her for a scholarship to help her provide for her family. Ms. Gutierrez expressed the hope that respondent can continue as a teacher to continue his work to help youth. She did not indicate in her letter she was aware of respondent's disciplinary history.

## **Parties' Arguments**

24. Petitioner argued in closing that due to respondent's DUIs, his credential should be revoked in the public interest. Respondent violated his probation because he did not abstain from alcohol use and failed to obey all laws. Given his disciplinary history, allowing him to remain on probation would be a "toothless endeavor." In the alternative, however, petitioner argued that if respondent is allowed to remain on probation a similar length of probation should be imposed with terms and conditions that include random testing, and that he be required to participate in therapy.

25. Respondent in closing argued that petitioner did not meet her burden to show that revocation is required to protect the public and respondent has earned the right to continue as a teacher due to his exemplary history as a teacher.

## **LEGAL CONCLUSIONS**

### **Standard of Proof**

1. Petitioner has the burden of proving by a preponderance of the evidence that the charges in the petition to revoke probation are true. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.) A preponderance of the evidence means that the evidence on one side outweighs the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed. In other words, it refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **Cause Exists to Revoke Probation**

2. Cause exists to find that respondent violated the terms of his probation due to his July 22, 2021, DUI conviction in violation of Vehicle Code section 12352, subdivision (b), and driving without a license in violation of Vehicle Code section 12500, subdivision (a). Due to these convictions, respondent violated Condition # 7(A), which requires respondent to obey all laws. As a result, under Condition # 10, petitioner may seek to revoke respondent's probation.

3. Cause also exists to find that respondent violated the terms of his probation because he failed to inform the Commission within 72 hours as required under Condition # 7(A) of his arrests for driving without a license and DUI. As a result, under Condition # 10, petition may seek to revoke respondent's probation.

## **Evaluation**

4. With causes to revoke respondent's teaching credential found, the issue is whether rescission of respondent's probation and revocation of his teaching certificate are required due to his violations of the probation. The Commission imposed probation to protect students due to respondent's history of alcohol abuse resulting in DUIs and the question this raises regarding his fitness to serve as a teacher. (See *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, at p. 1444 ("Evident unfitness to serve'. . . means "clearly not fit, not adapted to or unsuitable . . . ordinarily by reasons of temperamental defects or inadequacies." (Citation omitted.)))

5. Considering respondent's credible testimony and the testimony of persons who know him, respondent presented sufficient evidence that he can remain on probation, with his probation extended for a period of time, with additional terms

and conditions to ensure he is fit to serve as a teacher. These terms and conditions include requirements that he be evaluated by a psychiatrist, receive psychotherapy, attend group therapy, and submit to random testing. Respondent testified he is willing to comply with such conditions and terms. With these terms and conditions, revocation of his certificate is not necessary to ensure public protection and would thus amount to impermissible punishment. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.) A ten-year probation period, as petitioner requested in the alternative, would also be punitive considering the evidence of record as a whole.

6. This conclusion is reached for these reasons: Respondent has had a long-standing history of alcohol abuse which has resulted in six DUIs over a 20-year period. Respondent credibly testified he has been sober for five years, since 2018, and is committed to his sobriety. Through the outpatient program he completed in 2019 he gained insight into the scope and nature of his abuse of alcohol. He now recognizes the connection between the episodes of depression he has suffered and his abuse of alcohol. He testified he has resources to help him maintain his sobriety, which include the outpatient program at Hoag, the church he attends, and the AA program.

However, despite recognizing the connection between the episodes of depression and alcohol abuse, respondent has not seen a mental health professional. Thus, as a condition of probation respondent will be required to undergo psychotherapy.

7. 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 February 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 Petition to Revoke Probation is granted in part and denied in part.

The Multiple Subject Teaching Credential issued to respondent is revoked. However, the revocation is stayed, and respondent's probation is extended for a term of three years beginning from the end of respondent's current probation, September 23, 2023, with the following terms and conditions to take effect immediately upon the effective date of this Order:

### **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**

Respondents 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 his or 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. Psychiatric Evaluation**

Within 30 days of the effective date of this order, and on whatever periodic basis thereafter as may be required by the Commission, respondent, at his expense, shall undergo and complete a psychiatric evaluation, including psychological testing if deemed necessary, by a board-certified psychiatrist approved by the Commission. The designated board-certified psychiatrist approved by the Commission may be located anywhere in the State of California and respondent shall pay all travel costs and expenses required to attend, undergo and complete the psychiatric evaluation. Psychiatric evaluations conducted prior to the effective date of this order shall not be accepted as compliance with this requirement.

The psychiatrist shall consider any information provided by the Commission, and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Commission. Respondent shall cooperate in providing the psychiatrist any information and documents that the psychiatrist deems pertinent and requests.

The written evaluation report prepared by the evaluating psychiatrist shall clearly state if Respondent is presently mentally fit to perform the services authorized

by respondent's credentials with complete safety to schoolchildren, the education profession and the public.

Following completion of the evaluation, respondent shall fully comply with all restrictions and conditions recommended by the evaluating psychiatrist within seven days after being notified to do so by the Commission.

If respondent refuses or fails to attend, pay for, or undergo the required psychiatric evaluation, including submitting to psychological testing if deemed necessary, refuses or fails to cooperate with an examiner or, following completion of the evaluation, is found to be presently mentally unfit to perform the services authorized by respondent's credentials with complete safety to schoolchildren, the education profession, and the public, respondent's credentials are immediately suspended upon written notice from the Commission.

If prior to the completion of probation respondent is found 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 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 them.

## **15. 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 his 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.


## **16. Attendance and Participation in Group Support Meetings**

Within 10 days of the effective date of this order, respondent shall begin attendance at an addictive behavior 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 (period of time, e.g., the entire period of probation, or the first 12 months of probation, etc.). Verified documentation confirming respondent's attendance shall be submitted by respondent with each of the Quarterly Declarations to the Commission.

## **17. 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: February 21, 2023

  
Abraham M. Levy (Feb 21, 2023 09:25 PST)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings