

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

In the Matter of the Accusation Against:

TAMARA PILAR WAGNER, Respondent

Agency Case No. 2-273992602

OAH No. 2024010634

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 20, 2024, from Sacramento, California.

Malissa N. Siemantel, Deputy Attorney General, represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission).

Respondent Tamara Pilar Wagner (respondent) failed to appear, nor did anyone appear on her behalf. Respondent was properly served with the notice of hearing, and the matter proceeded as a default pursuant to Government Code section 11520.

Evidence was received, the record closed, and the matter submitted for decision on March 20, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent holds or held multiple credentials and certificates from the Commission (collectively, "respondent's credentials"). On September 4, 1991, the Commission issued respondent an Emergency 30-Day Substitute Teaching Credential, which expired on June 30, 1994. On January 11, 1994, the Commission issued respondent a Preliminary Multiple Subject Teaching Credential, which expired on February 1, 1999. On February 9, 1999, the Commission issued respondent a Clear Multiple Subject Teaching Credential, which is scheduled to expire on April 1, 2024, unless renewed or revoked. On August 25, 2003, the Commission issued respondent a Clear Crosscultural, Language and Academic Development Certificate (CLAD Certificate), which was in full force and effect at all relevant times.

2. On October 28, 2022¹, the Commission's Committee of Credentials (Committee) determined probable cause existed to recommend that the Commission suspend respondent's credentials for 180 days based on her November 2021 conviction for driving with a blood alcohol content (BAC) of 0.08 percent or greater (driving under the influence of alcohol, or DUI) and the conduct underlying the conviction. The evidence did not establish whether respondent timely requested an administrative hearing challenging that recommendation.

¹ The Accusation stated the date as "October 20-22, 2021." At hearing, complainant moved to amend the Accusation, at paragraph 9, page 3, line 2, to read "October 19-21, 2022." The motion was granted and the Accusation was so amended.

3. On March 29, 2023, complainant, acting solely in her official capacity, signed an Accusation seeking to discipline respondent's credentials based on her unprofessional conduct, immoral conduct, and commission of an act involving moral turpitude based on her November 2021 DUI conviction and the underlying conduct. The Accusation further alleged, as a matter in aggravation, that the Commission suspended respondent's credentials for 21 days in April 2010 based on her October 2007 and June 2005 DUI convictions and the conduct underlying both. Respondent filed a Notice of Defense to the Accusation. This hearing followed.

Cause for Discipline: November 2021 DUI Conviction

4. On November 5, 2021, in the Superior Court of California, County of San Joaquin, case number LOD-CR-MDUI-2021-0010026, respondent was convicted, on her plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (DUI), a misdemeanor. She also admitted a sentencing enhancement under Vehicle Code section 23578 (having a BAC exceeding 0.15 percent). The court suspended imposition of sentence and placed respondent on informal probation for three years on conditions that she serve seven days in jail, complete a nine-month alcohol program, and pay fines and fees. The circumstances underlying the conviction occurred on July 23, 2021, when respondent drove after drinking alcohol and crashed her vehicle into an irrigation canal.

Matters in Aggravation: April 2010 Suspension for October 2007 and June 2005 DUI Convictions

5. On April 30, 2010, the Commission suspended respondent's credentials for 21 days based on her previous DUI convictions. Specifically, on October 9, 2007, in the Superior Court of California, County of San Joaquin, respondent was convicted, on

her plea of no contest, of misdemeanor DUI. Additionally, on June 27, 2005, in the Superior Court of California, County of San Joaquin, respondent was convicted, on her plea of no contest, of misdemeanor DUI.

Morrison Factors

6. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court concluded a teaching credential cannot be disciplined for immoral conduct, unprofessional conduct, or conduct involving moral turpitude “unless that conduct indicates that the [educator] is unfit to teach.” (*Id.* at p. 229.) The Court outlined factors to consider when determining whether an educator’s conduct demonstrates unfitness to teach (*ibid.*), and the Commission adopted those factors by enacting California Code of Regulations, title 5, section 80302.

LIKELIHOOD OF ADVERSE EFFECT ON STUDENTS OR FELLOW TEACHERS

7. “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 children coming under [her] care and protection.” (*Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 552.) Respondent’s disregard for the law reflects poorly on her individually, and on teachers generally. Moreover, the nature of respondent’s criminal activity demonstrates a severe lack of sound judgment. Because students are impressionable and may try to emulate their teachers, it is essential that an educator’s behavior be beyond reproach. Respondent’s November 2021 conviction and the underlying conduct demonstrated behavior inimical to the well-being of students, and portrayed both her and the teaching profession negatively.

TYPE OF CREDENTIALS HELD

8. Respondent's Clear Multiple Subject Teaching Credential and CLAD Certificate authorize her to teach students of many ages in a variety of contexts. Therefore, it is even more imperative that she exemplify the type of behavior society wants emulated by students and possess sound judgment. Respondent's November 2021 conviction and the underlying conduct raise concerns over whether she is an appropriate role model for her students.

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

9. Neither the Education Code nor the regulations adopted by the Commission specify what constitutes "extenuating circumstances." However, the California Code of Regulations defines "mitigating factor" as "an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever." (Cal. Code Regs., tit. 5, § 80300, subd. (m).) The Commission's regulations also define "aggravating factor" as "an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession." (*Id.* at § 80300, subd. (b).)

10. The repeated nature of respondent's criminal conduct demonstrates a pattern of misconduct involving the irresponsible use of alcohol. Furthermore, respondent's convictions demonstrate a flagrant disrespect for the law. Taken together, respondent's convictions and the underlying conduct demonstrate the need for a greater degree of adverse action to ensure public protection. Respondent did not offer any evidence of mitigating circumstances.

PRAISEWORTHINESS OR BLAMEWORTHINESS OF THE MOTIVES RESULTING IN THE MISCONDUCT

11. Respondent bears the sole blame for her criminal conduct. Her choices led her to drive after using alcohol and the resulting DUI conviction.

LIKELIHOOD OF RECURRENCE

12. Respondent has already been convicted of DUI three times. She did not attend the hearing or offer any evidence to suggest her criminal behavior is unlikely to reoccur.

Analysis

13. It is undisputed respondent was convicted of DUI in November 2021, following two previous DUI convictions in October 2007 and June 2005. The evidence established the criminal conduct underlying her convictions involved driving while under the influence of alcohol. The clear and convincing evidence established that respondent engaged in unprofessional and immoral conduct and committed an act involving moral turpitude. When considering the relevant *Morrison* factors, respondent's conduct demonstrated her unfitness to teach for the reasons explained above. Therefore, cause exists to discipline her credentials. In light of the serious and repeated nature of her criminal conduct, coupled with the Committee's recommendation, respondent's credentials should be suspended for 180 days.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the existence of grounds for disciplining respondent's credentials, and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Dept. of Motor Vehicles* (1983) 33 Cal.3d 532, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Gardener v. Comm'n on Professional Competence* (1985) 164 Cal.App.3d 1036, 1039-1040 [recognizing that the clear and convincing evidence standard applies to proceedings to discipline a teacher's credential, whereas the lesser preponderance of the evidence standard applies to proceedings to dismiss a teacher from particular employment].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

2. The California Supreme Court has recognized that the terms "immoral conduct" and "unprofessional conduct" substantially overlap one another and that conduct which constitutes one, often includes the other. (See, *Morrison v. State Bd. of Education, supra*, 1 Cal.3d at p. 221, fn. 9.) "Unprofessional conduct" includes "'that which violates the rules of ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing.'" (*Bd. of Education v. Swan, supra*, 41 Cal.2d at p. 553; quoting, 66 Corpus Juris, p. 55.) In describing what constitutes "immoral conduct" within the context of the Education Code, the court in

Board of Education of San Francisco Unified School District v. Weiland (1960) 179 Cal.App.2d 808, said:

In *Orloff v. Los Angeles Turf Club*, 36 Cal.2d 734, at page 740 [227 P.2d 449], the Supreme Court quotes with approval the following statement from Words and Phrases, permanent edition, volume 20, pages 159-160: "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 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."

(*Id.*, at p. 811.)

3. The court in *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, said the following about the definition of immoral or unprofessional conduct:

Moreover, the definition of immoral or unprofessional conduct must be considered in conjunction with the unique position of public school teachers, upon whom are imposed "responsibilities and limitations on freedom of action which do not exist in regard to other callings." [Citation.]

(*Id.*, at p. 1466.)

4. And the following has been said about the analysis for determining whether particular conduct constitutes sufficient cause for taking adverse action against a credential:

Goldsmith v. Board of Education, 66 Cal.App. 157, 168 [225 P. 783], quoted in *Board of Education v. Swan*, 41 Cal.2d 546, 553-554 [261 P.2d 261], found that the standards for judging the propriety of a teacher's conduct, and the extent to which that conduct may be the basis for the revocation of a credential, involves many aspects. ". . . the teacher is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher's selection and retention."

(*Moser v. State Bd. of Education* (1972) 22 Cal.App.3d 988, 991.)

5. The Commission may discipline a credential for unprofessional conduct. (Ed. Code, § 44421.) The clear and convincing evidence established respondent engaged in unprofessional conduct. Therefore, cause exists to discipline her credential pursuant to Education Code section 44421.

6. The Commission may discipline a credential for immoral conduct. (Ed. Code, § 44421.) The clear and convincing evidence established respondent engaged in

immoral conduct. Therefore, cause exists to discipline her credential pursuant to Education Code section 44421.

7. The Commission may discipline a credential "for any cause that would have warranted the denial of an application for a credential or the renewal thereof." (Ed. Code, § 44421.) An application for a credential may be denied if the applicant "has committed any act involving moral turpitude." (Ed. Code, § 44345, subd. (e).) The clear and convincing evidence established respondent committed an act involving moral turpitude. Therefore, cause exists to discipline her credential pursuant to Education Code section 44421, as that statute relates to Education Code section 44345, subdivision (e).

8. Cause exists to discipline respondent's credentials for the reasons explained above. However, respondent's actions were not so extreme or harmful as to indicate revocation of her credentials is the only manner of protecting the public. Rather, consistent with the Committee's recommendation, respondent's credentials should be suspended for 180 days.

ORDER

All credentials, certificates, and authorizations issued to respondent Tamara Pilar Wagner are suspended for the period of 180 days from the effective date of this Decision.

DATE: April 2, 2024


Sean Gavin (Apr 2, 2024 10:05 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings