

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

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

**SUNNY ANN LYMAN, Respondent**

**Case No. 1-833674837**

**OAH No. 2019120593**

**PROPOSED DECISION**

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on June 1, 2020, from Sacramento, California.

Kristina Jarvis, Deputy Attorney General, represented Mary Vixie Sandy, Ed.D. (complainant), Executive Director, California Commission on Teacher Credentialing (Commission).

There was no appearance by or on behalf of Sunny Ann Lyman (respondent). The Commission established that respondent was properly served with a Notice of Hearing. Consequently, this matter proceeded as a default hearing pursuant to Government Code section 11520, subdivision (a).

Evidence was received, the record closed and the matter submitted for decision on June 1, 2020.

## **ISSUE**

Does cause exists to revoke respondent's probation?

## **FACTUAL FINDINGS**

1. On August 1, 2016, the Commission issued respondent a Multiple Subject Teaching Credential. Respondent also holds a Specialist Instruction Credential in Special Education, an Added Authorization as a Resource Specialist, and an Added Authorization in Emotional Disturbance. The credentials will expire on August 1, 2021, unless renewed or revoked.

2. On August 20, 2019, complainant, acting solely in her official capacity, signed and thereafter filed the Petition to Revoke Probation. Complainant contends grounds exist to revoke respondent's probation because respondent failed to comply with its terms and conditions. Specifically, complainant alleges respondent failed to notify her employer she was on probation and failed to notify the Commission in writing within three business days of any changes in her employment.

3. Respondent timely filed a Notice of Defense pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

## Prior Disciplinary Action

4. Effective October 28, 2016, respondent and the Commission entered into a Consent Determination and Order (Consent Order), following the Commission's disciplinary action entitled "In the Matter of the Credentials Held by Sunny Ann Lyman, Case No. 1-210363011." By the Consent Order, respondent stipulated that the Commission take adverse action against her based on four alcohol-related arrests that led to the following misdemeanor convictions, all entered on October 1, 2015:

- 1) Driving under the influence of alcohol with a blood alcohol content (BAC) of more than 0.20 percent and engaging in a hit-and-run, on March 24, 2015
- 2) Driving under the influence of alcohol with a BAC of 0.08 percent or more, on April 14, 2015.
- 3) Driving while under the influence of alcohol with a BAC of 0.08 percent or more, on May 10, 2015, with a prior conviction for driving under the influence.
- 4) Driving while under the influence of alcohol with a BAC of 0.15 percent or more, on May 11, 2015, with two prior convictions for driving under the influence.

5. Pursuant to the Consent Order, respondent's Credentials were revoked, the revocation was stayed, and respondent was placed on probation for five years, subject to certain terms and conditions. The relevant terms and conditions are as follows:

[¶] . . . [¶]

7.F. Respondent will inform her employer, as defined in California Code of Regulations, section 80300, of the reason for, and the terms and conditions of, the adverse action and will provide a copy of this Consent Determination and Order to her employer and immediate supervisor. Respondent will, based on any suspicion of alcohol consumption, submit to alcohol testing at the request of Respondent's employer, immediate supervisor, or law enforcement. Failure to comply with the requirements of this paragraph, including the requirement to submit to an alcohol test, will result in a violation of probation that will be reviewed by the Committee as set forth in paragraph K, below.

7.G. Respondent will notify the Commission in writing of any change in employment that requires her to have a credential. Respondent will notify the Commission in writing within three business days of the cessation of any employment that requires a credential. The notification will contain a full explanation of the circumstances surrounding the cessation of employment. Failure to provide this information to the Commission will result in a violation of probation that will be reviewed by the Committee as set forth in paragraph K, below.

[¶] . . . [¶]

7.K. 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 Committee will make a determination whether a violation of a term or condition of probation has occurred. If the Committee determines that a violation has occurred, Respondent's credentials will be immediately REVOKED.

[¶] . . . [¶]

7.M. Respondent agrees that the Commission's decision with respect to Respondent's violation of probation will be final with no further administrative review.

## **Respondent's Probation Compliance**

6. Michele Nottingham was a Special Investigator for the Commission from February 14, 2018 through July 8, 2019. She was assigned to monitor respondent's probation. Ms. Nottingham submitted a declaration and testified at hearing. She sent respondent a probation orientation packet on April 23, 2018.<sup>1</sup> The packet contained an outline of respondent's probation terms and three copies of the Consent Order. One copy was for respondent, and the additional copies were for respondent to provide to her employer and supervisor. The packet also contained "Acknowledgement of Receipt" forms, which respondent's employer and supervisor were to complete and

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<sup>1</sup> Ms. Nottingham testified respondent was one of several probationers whose probation orientation was inadvertently delayed from the time her probation began.

return to Ms. Nottingham. Ms. Nottingham also called respondent and left her a voicemail to inform her the packet had been sent, and to request respondent schedule a probation orientation telephone call with Ms. Nottingham within the following week.

7. On the morning of May 3, 2018, Ms. Nottingham called respondent and asked to schedule probation orientation. Respondent stated she would return Ms. Nottingham's call later that day between 3:30 p.m. and 4:30 p.m. Respondent returned the call that evening at 8:23 p.m., and left Ms. Nottingham a voicemail. Ms. Nottingham returned respondent's call at 7:35 a.m. on May 4, 2018, and left a voicemail.

8. On May 4, 2018, at 4:35 p.m., respondent left Ms. Nottingham a voicemail stating her school had been on lockdown, and she had been unable to call. On May 8, 2018, respondent called Ms. Nottingham and scheduled probation orientation for May 11, 2018, at 3:30 p.m. Respondent requested Ms. Nottingham re-send the orientation packet, which Ms. Nottingham did.

9. Respondent did not call Ms. Nottingham at the scheduled orientation time on Friday, May 11, 2018. Ms. Nottingham called respondent on the following Monday and requested respondent return her call to schedule or conduct orientation. Respondent left Ms. Nottingham a message the following day saying she had been in the hospital, and asked Ms. Nottingham to call her on May 18, 2018, after 3:30 p.m. to conduct orientation. Ms. Nottingham called respondent at 3:38 p.m. on May 18, 2018, and left respondent a voicemail requesting respondent call her back before close of business.

10. On May 21, 2018, Ms. Nottingham conducted respondent's probation orientation. She reviewed the terms of respondent's probation, particularly condition

7.F., which required respondent to inform her supervisor and employer of her probation and discipline, and to request they return to Ms. Nottingham the Acknowledgement of Receipt forms.

11. On June 7, 2018, Ms. Nottingham left respondent a voicemail stating she had not received the Acknowledgement of Receipt forms from respondent's employer, or respondent's Authorization for Release of Confidential Alcohol and/or Drug Related Information to the Commission on Teacher Credentialing (Release). On June 18, 2018, Ms. Nottingham left a voicemail repeating her request and asking respondent to return her call the same day.

12. On June 19, 2018, Ms. Nottingham left respondent's immediate supervisor, Cristin Fiorelli, Principal of Capitol Collegiate, a voicemail requesting a return call. Ms. Fiorelli returned the call on June 21, 2018. Ms. Nottingham informed Ms. Fiorelli that she had not received signed Acknowledgement of Receipt forms from Capitol Collegiate or Ms. Fiorelli. Ms. Fiorelli stated she did not recall receiving the forms, but she would check respondent's employee file. She also stated that school had let out for the summer, and decisions regarding staffing for the next school year had not yet been made.

13. Ms. Nottingham left respondent a voicemail on June 22, 2018, reminding her of the requirement that she provide the Commission with the Release and to ask her employer to return the Acknowledgement of Receipt forms. Respondent returned Ms. Nottingham's call on June 27, 2018, and informed her she had mailed the Release, but because school was out for the summer, did not know the status of the Acknowledgement of Receipt forms. She also stated she is aware she must inform the Commission of any change of employment.

14. On July 17, 2018, Ms. Fiorelli left Ms. Nottingham a voicemail stating respondent no longer worked at Capitol Collegiate and respondent did not provide Capitol Collegiate with the Acknowledgement of Receipt forms. Ms. Fiorelli was not aware of respondent's probation until Ms. Nottingham informed her. On September 3, 2016, the Commission received a letter from Ms. Fiorelli dated August 23, 2018, and signed under penalty of perjury, stating she first received a copy of the Consent Order when the Commission mailed it to her on July 27, 2018.

15. On July 18, 2018, respondent left Ms. Nottingham a voicemail stating she no longer worked at Capitol Collegiate and she would notify the Commission of new employment. She did not inform the Commission of the employment change in writing. At hearing, Ms. Nottingham opined respondent was stalling her compliance with these probationary terms until the end of the school year.

## **Notices of Violation**

16. On January 28, 2019, the Commission issued respondent a letter stating it had found probable cause of a probation violation and was recommending her credential be revoked. The letter informed respondent she could request reconsideration and/or an administrative hearing. By letter dated February 18, 2019, respondent requested reconsideration and an administrative hearing. She explained she provided the requested forms to her employer more than once, and was unaware they had not been returned to the Commission. At its March 13 through 15, 2019 meeting, the Commission denied respondent's request for reconsideration and informed respondent she could request an administrative hearing. By letter dated April 6, 2019, respondent requested a hearing.



## PRINCIPALS OF LAW

17. Complainant has the burden of proving each of the causes to revoke probation alleged in the Petition to Revoke Probation, and must do so by a preponderance of the evidence. (*Lone Star Security & Video, Inc., v. Bur. of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 454 [“While the board is required to prove the allegations in an accusation by clear and convincing evidence, it is only required to prove the allegations in a petition to revoke probation by a preponderance of the evidence” [citation]”]; quoting *Sandarg v. Dental Bd. of Cal.* (2010) 184 Cal.App.4th 1434, 1441.) Evidence deemed to preponderate must amount to “substantial evidence.” (*Weiser v. Bd. of Retirement* (1984) 152 Cal.App.3d 775, 783.) And to be “substantial,” evidence must be reasonable in nature, credible, and of solid value. (*In re Teed’s Estate* (1952) 112 Cal.App.2d 638, 644.)

18. Under term 7.F. of the Consent Order, respondent was required to provide her employer with the Acknowledgement of Receipt of the Consent Order, and return the form to the Commission. Respondent was also required under term 7.G. to inform the Commission in writing of any change of employment. Term 7.K. allows the Commission to lift the stayed revocation if respondent violates the conditions of probation. Term 7.K. explains respondent will be given notice of the alleged violation and an opportunity to respond. The Commission may then determine whether a violation occurred. If so, respondent’s credential will be revoked.

## ANALYSIS

19. Complainant proved by a preponderance of the evidence that respondent failed to provide her employer with the Acknowledgement Receipt form

and request her employer return the form to the Commission. Complainant also established respondent did not inform the Commission in writing when she began working at Capitol Collegiate or when her contract was not renewed. Respondent produced no evidence to the contrary.

20. Respondent demonstrated a lack of respect for the Consent Order and its terms. The Commission has no assurance that respondent will comply with the terms of her probation in the future. Based on the evidence presented, complainant has met her burden of establishing cause to revoke the probation the Commission granted, and to impose the stayed disciplinary order, revoking all credentials, certificates, and authorizations issued to respondent.

## **LEGAL CONCLUSIONS**

21. As set forth in the Factual Findings as a whole, the evidence established respondent violated Probation Terms 7.F. and 7.G. by failing to provide her employer with the Acknowledgement of Receipt form and inform the Commission in writing of a change of employment. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's Credentials, pursuant to probation term 7.K. of the October 28, 2016 Determination and Consent Order.

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## ORDER

The Petition to Revoke Probation against Sunny Ann Lyman is GRANTED. Respondent's Multiple Subject Teaching Credential, Specialist Instruction Credential in Special Education, Added Authorization as a Resource Specialist, and Added Authorization in Emotional Disturbance are REVOKED.

DATE: June 25, 2020

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*Heather M. Rowan*  
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HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings