

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

In the Matter of the Statement of Issues Against:

TARA GUTIERREZ, Respondent.

Agency Case No. 2-237483388

OAH No. 2023070527

PROPOSED DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 21, 2023.

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

Respondent Tara Gutierrez was present and represented herself.

The ALJ received testimony and documentary evidence. The record closed and the matter was submitted for decision on August 21, 2023.

During a review of the evidence, the ALJ redacted dates of birth, driver license numbers, and social security numbers from Exhibits 2, 3, 7, 9, 11, 14, and 15 for confidentiality purposes.

SUMMARY

Complainant seeks to deny respondent's application for a Certificate of Clearance because she suffered multiple alcohol-related criminal convictions between 2008 and 2019. Complainant established by a preponderance of the evidence respondent's 2019 and 2015 driving under the influence (DUI) convictions were acts of moral turpitude related to respondent's fitness to teach. Respondent demonstrated significant rehabilitation; however, more time is required for respondent to demonstrate her fitness to teach. Her application is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 18, 2021, the Commission received an application for a Certificate of Clearance from respondent.
2. In a letter dated December 23, 2022, the Commission informed respondent its Committee of Credentials recommended the denial of her application.
3. On December 28, 2022, respondent timely requested a hearing.
4. On June 5, 2023, complainant filed the Statement of Issues.

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Respondent's Criminal Convictions

2019 DUI CONVICTION

5. On September 5, 2019, in the Superior Court of California, County of Los Angeles, case number 9WC03861, respondent was convicted upon her plea of no contest of violating Vehicle Code section 23152, subdivision (b), driving with a blood-alcohol concentration of 0.08 percent or higher, a misdemeanor. Respondent also admitted an allegation pursuant to Vehicle Code section 23578 that her blood-alcohol concentration was 0.15 percent or higher.

6. The court placed respondent on summary probation for four years under terms and conditions including serving 64 days in county jail, completing an 18-month alcohol treatment program, paying court fees totaling \$418, completing the Hospital and Morgue program, completing the Victim Impact Program of Mothers Against Drunk Driving, and installing an ignition interlock device on her vehicle for one year.

7. At respondent's sentencing hearing, the court advised respondent that being under the influence of alcohol, drugs or both impairs her ability to safely operate a motor vehicle and that it is extremely dangerous to human life to drive while under the influence of alcohol, drugs, or both. The court further advised respondent that if, as a result of her driving, someone is killed, she can be charged with murder. Respondent had received the same advisement, known as the *Watson* advisement, after her 2015, 2009, and 2008 DUI convictions.

8. The facts and circumstances underlying respondent's 2019 DUI conviction occurred on April 4, 2019, when she drove her vehicle on Interstate 10 while under the influence of alcohol. At about 1:22 a.m., California Highway Patrol (CHP) officers observed respondent driving her vehicle in an area closed for construction,

weaving between lanes. Officers conducted a traffic stop and noted respondent smelled like alcohol. While additional officers were en route to conduct a DUI investigation, respondent fell asleep in her vehicle. After she failed to successfully perform Field Sobriety Tests (FSTs), officers arrested her for DUI. At the CHP office, she provided two breath samples with readings of 0.26 and 0.25 percent blood-alcohol concentration. Respondent told officers she was extremely depressed and suicidal and went out drinking because she wanted to die. The officers sent respondent to a hospital for evaluation.

9. At the time of her 2019 DUI offense, respondent was on summary probation for a 2015 DUI offense. On September 5, 2019, the court found respondent in violation of her probation and sentenced her to 120 days in county jail, to be served concurrently with the 64-day sentence for her 2019 DUI offense.

2015 DUI CONVICTION

10. On October 20, 2015, in the Superior Court of California, County of Los Angeles, case number 5PS25532, respondent was convicted upon her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving with a blood-alcohol concentration of 0.08 percent or higher, a misdemeanor. Respondent also admitted an allegation pursuant to Vehicle Code section 23578 that her blood-alcohol concentration was 0.15 percent or higher.

11. The court placed respondent on summary probation for five years under terms and conditions including serving 120 days in county jail, completing an 18-month alcohol treatment program, paying \$2,797 in fines and fees, completing the Hospital and Morgue program, completing the Victim Impact Program of Mothers Against Drunk Driving, and installing an ignition interlock device on her vehicle.

12. The facts and circumstances underlying respondent's 2015 DUI conviction occurred on February 7, 2015, when she drove her vehicle on Interstate 215 while under the influence of alcohol. A CHP officer observed respondent's vehicle moving erratically within its lane. The officer conducted a traffic stop and noted respondent smelled like alcohol. After she failed to successfully perform FSTs, the officer arrested her for DUI. At a nearby police station, she provided two breath samples with readings of 0.21 and 0.20 percent blood-alcohol concentration.

2015 PUBLIC INTOXICATION CONVICTION

13. On September 24, 2015, in the Superior Court of California, County of San Bernardino, case number 76506TG, respondent was convicted upon her plea of guilty of violating Penal Code section 647, subdivision (f), public intoxication, a misdemeanor.

14. The court ordered respondent to pay a \$440 fine and did not place her on probation.

15. The facts and circumstances underlying respondent's 2015 public intoxication conviction occurred on July 2, 2015, when respondent attended an Alcoholics Anonymous (AA) meeting while intoxicated and damaged a church restroom. After respondent damaged the restroom, a witness called the police, who arrived and observed respondent was under the influence of alcohol. She was swaying from side to side and could not stand without assistance. The officers arrested her for public intoxication.

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2009 DUI CONVICTION

16. On January 26, 2009, in the Superior Court of California, County of San Bernardino, case number TVI801907, respondent was convicted upon her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving with a blood-alcohol concentration of 0.08 percent or higher, a misdemeanor.

17. The court placed respondent on summary probation for three years under terms and conditions including serving 45 days in county jail, completing an alcohol treatment program, and paying fines and fees totaling \$1738.

18. The facts and circumstances underlying respondent's 2009 DUI conviction occurred on June 1, 2008, when respondent drove a vehicle while under the influence of alcohol. The evidence did not disclose further details of the offense. Neither party submitted a police report regarding the incident.

2008 DUI CONVICTION

19. On February 19, 2008, in the Superior Court of California, County of San Bernardino, case number TVA800192, respondent was convicted upon her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving with a blood-alcohol concentration of 0.08 percent or higher, a misdemeanor.

20. The court placed respondent on summary probation for three years under terms and conditions including serving one day in jail, paying fines and fees totaling \$1665, and completing a nine-month alcohol treatment program.

21. The facts and circumstances underlying respondent's 2008 DUI conviction occurred on October 20, 2007, when she drove her vehicle while under the influence of alcohol. A Rialto police officer observed respondent's vehicle drift

between lanes and nearly collide with the curb. The vehicle stopped abruptly and then drove away at a speed well below the speed limit. The officer conducted a traffic stop and noted respondent smelled like alcohol. Respondent could not walk or stand without assistance, and the officer opined she could not safely attempt FSTs. The officer placed respondent under arrest for DUI.

Respondent's Evidence

22. Respondent has worked for the Ontario-Montclair School District (Ontario-Montclair) since 2012 and worked with various other school districts beginning in 2000 when she was 17 years old. She began as an instructional aide at Ontario-Montclair and is now a Registered Behavior Technician, working with children who have behavioral issues.

23. Respondent has been sober since February 15, 2020, the day after her brother was killed during an encounter with police officers while he was intoxicated. She attends AA meetings three times a week and speaks to her sponsor several times a week. Respondent testified the death of her brother was her "breaking point" and "we both died that night, but I had a chance to be reborn." Respondent stated she will never drink again because alcohol "took something from [her] that [she] can't get back."

24. In a letter dated August 23, 2022, Andrea D. Heitz, a licensed clinical social worker, vouched for respondent's commitment to sobriety. She wrote, "[respondent] has gained a lot of insight about what [led] to her drinking and has been working diligently to make behavioral and emotional changes which supports her sober lifestyle." (Ex. 3, p. A46.) Since December 2020, respondent has worked with Ms.

Heitz on a monthly or semi-monthly basis as part of the Kaiser Permanente Chemical Dependency Recovery Program.

25. In a letter dated August 28, 2022, Giuliana Zlatar, Ph.D., vouched for respondent's commitment to sobriety and her desire to serve others. Dr. Zlatar wrote, "[respondent] has a strong support group, of which I am part, and is relentless in wanting to remain engaged in finding ways to further grow and expand her possibilities." (Ex. 3, p. A45.) Since September 2020, respondent has attended weekly therapy sessions with Dr. Zlatar to address mental health issues, including the trauma she experienced after her brother's death.

26. Respondent testified she complied with all the terms and conditions of her criminal probation for her 2019 DUI conviction. Her summary probation is scheduled to terminate on September 5, 2023.

27. Respondent demonstrated a sincere commitment to her sobriety and rebuilding her life to focus on helping children. She testified she is an alcoholic and AA is her cure. She acknowledged her lengthy criminal history and conceded she was a selfish and destructive person before becoming sober. Respondent agreed she was previously not suitable for a Certificate of Clearance. However, she asserted she has since completely changed her life and the Commission should not hold her past against her, stating "a person should be allowed to change and rebuild themselves and become a contributor to society and this world." Respondent applied for a Certificate of Clearance because she planned to become a school psychologist. She has since changed her plans to focus on becoming a school administrator.

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LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Respondent has the burden of proving by a preponderance of the evidence that she is entitled to the certificate she seeks. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221; Evid. Code, § 115.) "Preponderance of the evidence" means 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.)

Applicable Law

2. Under Education Code section 44000 et seq., and California Code of Regulations, title 5 (CCR), section 80000 et seq., the Commission is responsible for credentialing teachers in public schools in California, including taking adverse action against applicants and credential holders. "Adverse action" includes the denial of an application for a credential. (Ed. Code, § 44000.5; CCR, § 80300, subd. (a).)

3. The Commission may deny an application for a credential if the applicant (1) is addicted to the use of intoxicating beverages to excess or (2) has committed any act involving moral turpitude. Any denial must be based upon reasons related to the applicant's fitness to teach. (Ed. Code, § 44345, subds. (c), (e).)

4. The Commission set forth factors to consider in determining the relationship between an applicant's misconduct and their fitness, competence, or ability to perform the duties authorized by the credential. The factors, also known as the *Morrison* factors, include the likelihood the conduct may have 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 or applied

for; 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. (CCR, § 80302; see also *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224–225.)

Cause to Deny Respondent's Application

ALCOHOL ADDICTION

5. Complainant seeks to deny respondent's application because she is addicted to the use of intoxicating beverages to excess.

6. Complainant did not establish by a preponderance of the evidence respondent is addicted to the use of intoxicating beverages to excess. The evidence clearly established respondent abused alcohol for many years, from at least 2007 through 2019. However, respondent credibly testified she has been sober since February 15, 2020, after her brother's death. Respondent's testimony was corroborated by letters from her Kaiser social worker and her therapist, Dr. Zlatar. Although respondent still considers herself an alcoholic, she is not currently addicted to alcohol because she treats her alcoholism and maintains her sobriety through participation in therapy and AA. Cause therefore does not exist to deny respondent's application pursuant to Education Code section 44345, subdivision (c).

ACTS OF MORAL TURPITUDE

7. Complainant seeks to deny respondent's application because she engaged in acts of moral turpitude.

Definition

8. Moral turpitude means an act of “baseness, vileness or depravity.” (*In re Craig* (1938) 12 Cal.2d 93, 97.)

9. Some crimes, such as those involving an intent to defraud or “extremely repugnant” crimes such as murder, are always acts of moral turpitude. Other crimes, such as DUI, are not acts of moral turpitude unless the specific circumstances surrounding the crime or conviction establish moral turpitude exists. (*In re Kelley* (1990) 52 Cal.3d 487, 494 (*Kelley*).) In *Kelley*, the court found an attorney’s second DUI conviction, suffered while still on probation for the first DUI conviction, was not an act of moral turpitude. Similarly, the court also held an attorney’s two DUI convictions suffered in two consecutive years did not involve acts of moral turpitude. (*In re Carr* (1988) 46 Cal.3d 1089.)

10. A fourth DUI offense within a seven-year period is an act of moral turpitude because it is “a recidivist type crime involving an extremely dangerous activity.” (*People v. Forster* (1994) 29 Cal. App.4th 1746, 1756 (*Forster*).) A person with three previous DUI convictions is “presumptively aware of the life-threatening nature of the activity and the grave risks involved.” (*Ibid.*) Driving under the influence despite such knowledge involves moral turpitude because it is indicative of “conscious indifference” or an “‘I don’t care’ attitude” toward the consequences of the activity. (*Ibid.*) The felony DUI statute discussed in *Forster*, Vehicle Code section 23175, was superseded in 2011 by Vehicle Code section 23550, which classified a fourth DUI offense within ten years as a felony.

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Analysis

11. Applying the case law discussed above, respondent's 2019 and 2015 DUI offenses were acts of moral turpitude because they were recidivist conduct involving an extremely dangerous activity. Although respondent's four DUI offenses were not committed within 10 years of each other and therefore none was a felony, respondent was well aware of the dangers of driving while under the influence of alcohol. Her repeated disregard for public safety rendered her conduct acts of moral turpitude.

Fitness to Teach

12. Applying the *Morrison* factors, respondent's 2019 and 2015 DUI offenses render her unfit to teach. There was no evidence presented of respondent's misconduct adversely affecting her students, teachers, or the educational community; however, her repeated disregard for public safety did not set a good example for children. Respondent's misconduct is not remote in time, considering her alcohol-related criminal conduct occurred over 12 years and her most recent DUI offense occurred only about three and one-half years ago. There were aggravating circumstances surrounding respondent's 2019 and 2015 DUI offenses: her blood-alcohol concentration was close to three times the legal limit of 0.08 percent for both offenses, which were her third and fourth DUI offenses. Respondent's conduct also posed a significant threat to public safety and is incompatible with a teacher's status and duties. (*Broney v. Calif. Comm. On Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477 [a teacher's third DUI conviction rendered her unfit to teach, citing the *Morrison* factors].) There was nothing praiseworthy about respondent's conduct. Although respondent is currently sober and testified credibly about her intent to remain sober, she has only been sober for three and one-half years. Based on respondent's lengthy history of significant struggles with alcohol abuse, it is therefore

premature to assess the likelihood of relapse. Although the evidence did not disclose any specific publicity surrounding respondent's misconduct, information regarding criminal convictions is available to the public.

13. Complainant established by a preponderance of the evidence respondent's 2015 and 2019 DUI offenses constitute acts of moral turpitude which render respondent unfit to teach. Cause therefore exists to deny respondent's application pursuant to Education Code section 44345, subdivision (e).

Disposition

14. The Commission's regulations set forth aggravating factors demonstrating a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren, or the profession. Aggravating factors include (1) misconduct evidencing multiple acts of wrongdoing or demonstrating a pattern of misconduct; (2) misconduct surrounded by or followed by bad faith, dishonesty, or other violation of the laws governing educators; (3) the applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; and (4) the applicant had prior notice, warnings, or reprimands for similar conduct from any reliable source. (CCR, § 80300, subds. (b)(2)–(b)(3), (b)(5)–(b)(6).)

15. The Commission's regulations also set forth mitigating factors demonstrating a lesser degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren, or the profession. Mitigating factors include (1) demonstration of good character of the applicant attested to by references from the educational community or the general community

from individuals aware of the extent of the applicant's misconduct and (2) the nature and extent of subsequent rehabilitation. (CCR, § 80300, subds. (m)(4), (m)(7).)

16. Several of the Commission's aggravating factors apply to respondent's case. Respondent has a significant history of alcohol-related criminal conduct, demonstrating a disregard for public safety despite repeated warnings about the dangers of driving under the influence of alcohol. Her 2019 DUI offense occurred while she was still on probation for her 2015 DUI offense. Although respondent submitted evidence of rehabilitation and good character, the Commission's applicable aggravating factors outweigh the applicable mitigating factors in this case.

17. Rehabilitation is a "state of mind," and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940). However, a truer indication of rehabilitation than remorse is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) "The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Little weight is given to an applicant's good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080.)

18. Considering the totality of circumstances, denial of respondent's application is warranted. Although respondent demonstrated significant rehabilitation, more time is required for her to demonstrate her fitness to teach. Her most recent DUI offense was only about three and one-half years ago and on the date of the hearing in this case, she was still on probation for that criminal conviction. Her misconduct was

serious and occurred over many years. Respondent is commended for her commitment to sobriety and her changed lifestyle. Should she choose to reapply in the future, her continued sobriety will reflect favorably on her fitness to teach.

ORDER

The application of respondent Tara Gutierrez for a Certificate of Clearance is denied.

DATE: **09/06/2023**

Harden Sooper

HARDEN SOOPER

Administrative Law Judge

Office of Administrative Hearings