

II. Findings of Fact

1.

Petitioner has been a teacher his entire professional career. Specifically, Petitioner taught in the state of Louisiana for two years, before obtaining a teaching certificate in Georgia in 2001. Since 2009, he has been employed as a health and physical education teacher and as an assistant basketball coach in DeKalb County, Georgia. Teaching is Petitioner's sole source of income. (*Testimony of Jackson; Testimony of Petitioner; Exhibit R-A.*)

2.

In the year 2000, prior to obtaining a Georgia teaching certificate, Petitioner was arrested on a misdemeanor marijuana possession charge. The charge was subsequently dismissed. On December 20, 2007, in Fayette County, Georgia, Petitioner was arrested and charged with a misdemeanor Violation of the Georgia Controlled Substances Act (Possession of Marijuana Less than One Ounce). On March 2, 2009, he pleaded guilty and was granted a conditional discharge pursuant to O.C.G.A. § 16-13-2. He was required to serve twelve months on probation and pay a fine of \$1,475.00. He completed the terms of his probation and was discharged without a court adjudication of guilt on April 29, 2010. (*Testimony of Jackson; Exhibit R-A.*)

3.

Shortly thereafter, on May 15, 2010, Petitioner was again arrested on a misdemeanor marijuana possession charge, this time in Clayton County, Georgia. "On December 27, 2010, [Petitioner] pled guilty to possessing an ounce or less of marijuana" and the State Court of Clayton County mistakenly granted Petitioner a conditional discharge, which is available to persons charged with drug possession who have never before incurred a drug-related conviction. (*Exhibit R-B, Judge Harold G. Benefield's Order in Case No. 2010CR10619, dated March 2,*

2012.) Consequently, the conditional discharge was subsequently withdrawn on May 5, 2012, as *void ab initio*, when the court discovered for the first time that Petitioner has “previously availed himself of a 16-13-2 discharge for another marijuana charge. . . . [which] fact renders the defendant ineligible as a matter of law for that sort of disposition.” *Id.* As a layperson, Petitioner was unaware of the legal requirements for conditional discharge and had not been informed by his criminal defense attorney that the court had entered an order voiding his conditional discharge of December 2010. Because the terms of his probation did not change, he only became aware of the criminal conviction when his attorney in the present case obtained his criminal records through the Georgia Crime Information Center. (*Testimony of Jackson; Testimony of Petitioner; Exhibit R-B.*)

4.

On a renewal application for a teaching certificate, dated February 1, 2013, Petitioner honestly answered “yes” to the question, “Have you been convicted of a drug offense after July 1, 2008, while holding any professional certificate, license or permit?” However, at no time prior to submitting the renewal application in February 2013 did Petitioner inform the Commission that he had incurred two misdemeanor marijuana “convictions.” (*Testimony of Jackson; Exhibit P-1.*)

5.

Two prior teaching certificate applications that Petitioner filed in 2004 and 2008, respectively, did not require Petitioner to report misdemeanor marijuana charges, inquiring only as to felonies and misdemeanors *involving moral turpitude*. Possession of Marijuana Less than One Ounce while a misdemeanor, does not involve moral turpitude. Therefore, on each application, Petitioner honestly indicated that he had not been convicted of a felony or crime of

moral turpitude. The teaching certificate application was amended in 2010 to include a request for information on all drug-related convictions. (*Testimony of Jackson; Exhibits P-2, P-3.*)

6.

Following an investigation of Petitioner's criminal history, the Commission found probable cause that Petitioner violated the following standards of conduct under the Code of Ethics for Educators: Standard 1 (Legal Compliance), Standard 4 (Honesty), Standard 9 (Required Reports), and Standard 10 (Professional Conduct). In deciding to revoke Petitioner's teaching certificate, the Commission considered the time span between Petitioner's drug offenses; the fact that Petitioner did not disclose the offenses within ninety days of their occurrence; and the fact that Petitioner was allegedly dishonest in attempting to obtain a conditional discharge of the 2010 marijuana possession charge in the State Court of Clayton County. Petitioner appealed the Commission's decision in a letter dated December 11, 2013. (*Testimony of Jackson; OSAH Form 1 and attachments.*)

III. Conclusions of Law

1.

Because the Commission seeks to sanction Petitioner's teaching certificate, it bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

The Commission is authorized to sanction an educator who has violated the professional standards of performance and ethical conduct incumbent upon educators, as provided in the Code of Ethics for Educators. O.C.G.A. § 20-2-984.1; Ga. Comp. R. & Regs. 505-6-.01(1), (5). If the

Commission finds that there is probable cause for imposing a sanction against an educator, it may recommend any combination of the following:

- (1) That the educator be warned, reprimanded, monitored, or any combination thereof; or
- (2) That the certificate of the educator be suspended, revoked, or denied.

O.C.G.A § 20-2-984.5(c); *see also* Ga. Comp. R. & Regs. 505-6-.01(5).

Standard 1: Legal Compliance

3.

Standard 1 of the Code of Ethics for Educators, entitled “Legal Compliance,” provides, in pertinent part:

An educator shall abide by federal, state, and local laws and statutes. Unethical conduct includes but is not limited to the commission or conviction of a felony or of any crime involving moral turpitude; of any other criminal offense involving the manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana as provided for in Chapter 13 of Title 16

Ga. Comp. R. & Regs. 505-6-.01(3)(a); *see also* O.C.G.A. § 20-2-984.3(a)(5) (granting Commission authority to investigate). A “conviction” for purposes of Standard 1 is specifically defined to include:

a finding or verdict of guilty, or a plea of nolo contendere, regardless of whether an appeal of the conviction has been sought; a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction.

Id. (emphasis added). A conditional discharge falls within the definition of a “conviction” as defined by the Code of Ethics, because it allows the court to withhold an adjudication of guilt and, upon the successful completion of probation, discharge the defendant without an

adjudication of guilt. O.C.G.A. § 16-13-2(a). Additionally, Petitioner's plea of guilty on May 15, 2010, fits the definition of a conviction. *Jackson v. Lowry*, 171 Ga. 349, 351 (1930) ("In a criminal proceeding a confession of the offense by the party charged, by a plea of guilty, is the highest kind of conviction of which the case admits, and subjects him precisely to the same punishment as if he were tried and found guilty by verdict."); *see also* O.C.G.A. § 17-7-93(b) ("If the person pleads 'guilty,' the plea shall be immediately recorded on the minutes of the court by the clerk, together with the arraignment; and the court shall pronounce the judgment of the law upon the person *in the same manner as if he or she had been convicted of the offense by the verdict of a jury*. At any time before judgment is pronounced, the accused person may withdraw the plea of 'guilty' and plead 'not guilty.'") (emphasis added).

4.

The Commission has proven that Petitioner was convicted (as defined by the Code of Ethics) of misdemeanor possession of marijuana on two occasions in violation of Standard 1 of the Code of Ethics for Educators: the first when he pleaded guilty and received a conditional discharge on May 2, 2009, and the second when he pleaded guilty on May 15, 2010, and received a conditional discharge that was later determined to be *void ab initio*. Ga. Comp. R. & Regs. 505-6-.01(3)(a).

Standard 4: Honesty

5.

However, the Commission has failed to prove that Petitioner violated Standard 4, Honesty, which requires educators to "exemplify honesty *in the course of professional practice*." Ga. Comp. R. & Regs. 505-6-.01(3)(d) (emphasis added). As Standard 4 expounds, sanctionable dishonesty might occur by omitting mention of one's criminal history. Nonetheless, Petitioner's

neglect to timely report his criminal convictions to the Commission does not constitute a violation of Standard 4 because the evidence indicated the oversight was inadvertent, and no dishonesty can be demonstrated without a showing of willfulness. *See Hurt & Quin, Inc. v. St. Malyon*, 85 Ga. App. 164, 171 (1951) (“Dishonesty certainly carries with it the idea of a wilful wrong”). In addition, the Commission argues that Petitioner is guilty of violating Standard 4 because he did not inform the Clayton County State Court of a prior conditional discharge out of Fayette County. However, even if the Commission could prove Petitioner intended to mislead the Clayton County State Court, the incident did not occur in *the course of his professional practice* and is, therefore, outside the purview of Standard 4.

Standard 9: Required Reports

6.

The Commission has successfully proven that Petitioner violated Standard 9 of the Code of Ethics, entitled “Required Reports,” which provides, in part:

An educator shall file reports of a breach of one or more of the standards in the Code of Ethics for Educators Unethical conduct includes but is not limited to:

1. failure to report all requested information on documents required by the Commission when applying for or renewing any certificate with the Commission;
2. failure to make a required report of a violation of one or more standards of the Code of Ethics for educators of which they have personal knowledge as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner; and
3. failure to make a required report of any violation of state or federal law soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. These reports include . . . any offense involving a controlled substance.

Ga. Comp. R. & Regs. 505-6-.01(3)(i). Petitioner did not timely report “the commission or conviction” of two misdemeanor marijuana offenses dating from 2007 and 2010, both of which constituted violations of Standard 1 of the Code of Ethics and state and federal law involving controlled substances.² 21 U.S.C. §§ 811-812; O.C.G.A. §§ 16-13-2(b), 16-13-30(j); Ga. Comp. R. & Regs. 505-6-.01(3)(a).

Standard 10: Professional Conduct

7.

The Commission has not proven that Petitioner’s conduct was a violation of Standard 10 of the Code of Ethics, entitled “Professional Conduct,” which requires an educator to

[D]emonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the teaching profession. Unethical conduct includes but is not limited to any conduct *that impairs and/or diminishes the certificate holder’s ability to function professionally in his or her employment position, or behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students.*

Ga. Comp. R. & Regs. 505-6-.01(3)(j). In other words, there are two ways an educator might violate Standard 10: first, by engaging in behavior that impairs the educator’s ability to do his or her job, or, second, by engaging in behavior that is detrimental to students. In *Professional Standards Commission v. Petersen*, 248 Ga. App. 424 (2007), the court found no violation of Standard 10 where two teachers hosted a party in their home where underage students were

² The Commission did not prove an Ethics violation relating to Petitioner’s arrest in the year 2000 for possession of marijuana because those charges were dismissed. An arrest, standing alone, cannot serve as the basis for a disciplinary action against the Petitioner’s teaching certificate because it does not establish that Petitioner committed the crime charged. See Ga. Comp. R. & Regs. 505-6-.01(3)(a) (“Unethical conduct includes . . . commission or conviction [of certain crimes]”). As the Supreme Court noted in *Schware*:

The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. When formal charges are not filed against the arrested person and he is released without trial, whatever probative force the arrest may have had is normally dissipated.

Schware v. Board of Bar Exam’rs of New Mexico, 353 U.S. 232, 241 (1957).

imbibing alcohol. Specifically, the court determined that the behavior did not impair the teachers' ability to function professionally. *Id.* at 428. The court, however, did not address the question of when a teacher's conduct would be considered detrimental to the welfare of students, because, in that case, the only issue was a single party and, at the time, a "*pattern of behavior or conduct that is detrimental*" to students was needed to constitute a violation of Standard 10. *Id.* at 428 (emphasis added).

8.

Other cases have analyzed when conduct will be considered to have been detrimental to students, so as to constitute a violation of Standard 10. In *Professional Standards Commission v. Alberson*, 273 Ga. App. 1 (2005), the Georgia Court of Appeals found sufficient *evidence and testimony in the record* "taken together" that could indicate that a superintendent's behavior had been detrimental to the morals of students—specifically, evidence that, as a superintendent, the plaintiff was "expected to serve as a role model for students" because he occupied a "high-profiled position in the community" and was under a "fair amount of scrutiny." *Id.* at 5-6 (internal quotation marks omitted). In addition, the incident leading to the sanctioning of the superintendent's teaching certificate was "'general knowledge' among members of the community after it occurred." *Id.* at 6. While the court concluded that there need not be "direct evidence affirmatively demonstrating that [the superintendent's] conduct causally led to a decline in the morals of students," the court still based its conclusion on *evidence and testimony in the record* that could justify a finding of harm to the student body. *Id.* at 5-6; *see also Prof'l Standards Comm'n v. Adams*, 306 Ga. App. 343, 347-48 (2010) (violation of Standard 10 supported where evidence in record of harm to student and unprofessional behavior in school); *Prof'l Standards Comm'n*, 269 Ga. App. 309, 311-313 ("two heated altercations on school

grounds in which [educator] admittedly cursed and threatened physical violence” supported finding a violation of Standard 10).

9.

Here, there is no evidence that the Petitioner’s conduct impaired his ability to function professionally or that his behavior was detrimental to the health, welfare, discipline, or morals of students. For instance, no evidence was presented that Petitioner’s teaching was at all impacted by his marijuana convictions or that Petitioner came to school impaired—i.e., that his ability to function professionally in his employment position was diminished. Nor was there any evidence that the students were even aware of his off-campus behavior. In the cases cited above, the fact that an incident involved students or was with their knowledge was significant for establishing that the activity was to their detriment. Without any evidence of such professional impairment or detriment to students, the mere possibility of such is insufficient to establish a breach of Standard 10.

Appropriate Sanction

10.

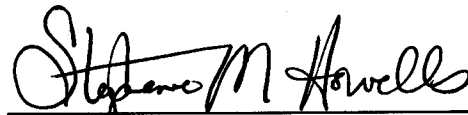
As the Commission has proven Petitioner violated the Code of Ethics, it is “authorized to suspend, revoke, or deny [Petitioner’s] certificate[], to issue a reprimand or a warning, or to monitor the [Petitioner’s] conduct and performance.” Ga. Comp. R. & Regs. 505-6-.01(5)(a). The Commission proposes revocation of Petitioner’s teaching certificate. However, revocation is not warranted under the particular facts and circumstances of this case. As Georgia courts have stated, “[n]ext to the loss of freedom comes the loss of one’s means of a livelihood.” *Wills v. Composite State Bd. of Med. Exam’rs*, 259 Ga. 549, 551 (1989) (citing *Schaffer v. State Bd. of Veterinary Med.*, 143 Ga. App. 68, 72 (1977)). Revoking Petitioner’s license and thereby

eliminating his ability to support himself in his chosen profession is a serious impairment of his property rights. *Id.* The facts here simply do not justify so serious a penalty. While Petitioner has incurred criminal convictions, these convictions were misdemeanors. There was no evidence that Petitioner's actions impaired his ability to function professionally or endangered the students under his care. Finally, contrary to the Commission's position, Petitioner did not *intentionally* conceal his convictions but reported them on the first renewal application that requested such information. More appropriately, Petitioner's teaching certificate should be suspended for thirty days and he should be issued a reprimand.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission's decision to sanction Petitioner's Georgia teaching certificate is hereby **AFFIRMED**. However, the proposed sanction is **MODIFIED**, and Petitioner's teaching certificate shall be **SUSPENDED** for a period of thirty days. Furthermore, this decision shall be considered a formal **REPRIMAND**, cautioning Petitioner that any further unethical conduct will lead to a more serious action against his certificate.

SO ORDERED, this 14th day of July, 2014.



STEPHANIE M. HOWELLS
Administrative Law Judge