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**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

APR 1 2016

NATASHA GOBIN,
Petitioner,

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K. Westray
Kevin Westray, Legal Assistant

v.

Docket No.: OSAH-PSC-APP-1629432-
122-Howells

PROFESSIONAL STANDARDS
COMMISSION,
Respondent.

FINAL DECISION

The Professional Standards Commission (“Commission”) found probable cause to deny Petitioner’s application for a paraprofessional license. Petitioner appealed the Commission’s decision. The hearing in this matter was held on March 3, 2016. Petitioner appeared *pro se*. Respondent was represented by Susan R. Haynes, Assistant Attorney General.

After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Petitioner’s application for a paraprofessional license is hereby **GRANTED**, provided that she meets all licensure requirements. However, the Petitioner shall receive a **REPRIMAND** for her conduct.

Findings of Fact

1.

Petitioner applied for a paraprofessional license on January 30, 2015. (Resp. Ex. A.)

2.

On the application, Petitioner answered “yes” to the following question: “Have you ever had an adverse action (i.e. warning, reprimand, suspension, revocation, denial, voluntary

surrender, disbarment) taken against a professional certificate, license or permit issued by an agency **OTHER THAN the Georgia Professional Standards Commission?**” *Id.*

3.

On February 9, 2015, Petitioner self-reported to the Commission that she was arrested and charged with Reckless Conduct and that her license to operate a day care was revoked. (Resp. Ex. B.)

4.

On July 8, 2012, Petitioner, two of her children and three other neighborhood children were returning from catering an event at Petitioner’s church. Petitioner was driving her husband’s Ford Expedition. On the way home, Petitioner stopped at her brother’s house to pick up her youngest child. She left the five children in the vehicle. While she was in her brother’s house, one of the neighborhood girls, D. P. (age 13), began bothering Petitioner’s son, R.W. (age 13), by putting a balloon in his face. The balloon popped and R.W. began looking for something to throw at D.P. After rummaging in the middle console of the vehicle, R.W. found his father’s gun. He showed the gun to D.P. and told her to “stop playing with [him].” R.W. denies pointing the gun at D.P. Before Petitioner returned to the vehicle with her daughter and her niece, R.W. put the gun back in the middle console. When Petitioner got back in the vehicle, D.P. told her that R.W. pulled a gun on her. Petitioner did not know what D.P. was talking about because she did not know the gun was in the vehicle. The gun and vehicle belong to Petitioner’s husband. (Tr. 27-29, 46-47, 52-53, 57-59; Exs. P1(a) – P1(g), P3, Resp. D., Resp. E.)

5.

While driving to a gas station, Petitioner reprimanded her son R.W. for pulling out the gun. When they arrived at the gas station, Petitioner sent her younger son K.G. into the store to

pay for the gasoline. D.P. began verbally antagonizing R.W. Petitioner told D.P. and R.W. that if they were going to fight, they needed to get out of the vehicle. D.P. got out of the vehicle and continued to taunt R.W. Initially, R.W. remained in the vehicle. At some point, D.P. opened the door where R.W. was seated in the vehicle and subsequently slammed the door on his foot. R.W. became angry and exited the vehicle. D.P. and R.W. then began fighting. (Tr. 31-32, 47-48, 53, 59; Exs. Resp. D., Resp. E.)

6.

After D.P. had exited the vehicle and before the physical fight ensued, Petitioner exited the vehicle and began pumping gasoline. She kept the door open while she pumped the gasoline. She had left the gun in the console, but the console does not lock. She did not feel comfortable putting the gun in her purse. Nor did she feel comfortable unloading the gun, as it is not her gun and she does not know how to unload it. When the fight ensued she stayed at the vehicle with the other children. She did not feel comfortable going to break up the fight while leaving the other children in the car with the gun in the console. Three adult bystanders broke up the fight between D.P. and R.W. The police subsequently arrived and questioned witnesses. D.P. and R.W. were arrested and taken to juvenile detention. Petitioner was arrested for Cruelty to Children in the First Degree. (Tr. 30-33, 48-49; Ex. Resp. D.)

7.

Petitioner's charge was reduced to misdemeanor Reckless Conduct. On February 27, 2014, Petitioner pleaded guilty to the Reckless Conduct charge and was given First Offender Treatment. She was sentenced to twelve months of probation, required to pay a fine of \$300.00, and complete six child parenting classes. She has completed the terms of her sentence. (Exs. Resp. C, D.)

8.

On August 2, 2012, the Georgia Department of Early Care and Learning (“DECAL”) sent Petitioner notice that it was revoking her registration to operate her Family Day Care Home (“FDCH”). At the time, one of her children had been diagnosed with a kidney disease which resulted in medical bills. Her home was in foreclosure and she was dealing with the legal ramifications of R.W.’s actions. For these reasons, she chose not to fight the revocation of her registration to operate the FDCH. The revocation became effective thirty days after her receipt of the notice. (Ex. Resp. F; Tr. 36-37.)

9.

During the nine years that Petitioner operated her FDCH she did not receive any citations. Other than this one arrest and guilty plea, Petitioner has not been in any other trouble with the law. (Tr. 25.)

10.

Based on the fact that Petitioner pleaded guilty to the charge of Reckless Conduct and the fact that DECAL revoked Petitioner’s registration to operate a FDCH, the Commission found probable cause to deny Petitioner’s application for a paraprofessional license. (Statement of Matters Asserted.) Petitioner requested a hearing to contest the Commission’s decision to deny her application.

Conclusions of Law

1.

Petitioner as an applicant bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

The Commission has adopted a Code of Ethics for Educators, which defines the professional behavior of educators and serves as a guide to ethical conduct. Ga. Comp. R. & Regs. r. 505-6-.01. Furthermore, the Code of Ethics for Educators defines unethical conduct which justifies disciplinary action against educators¹. *Id.* The Commission may deny a certificate for the same grounds that it may sanction an educator who currently holds a certificate.² Ga. Comp. R. & Regs. 505-6-.01(5)(a). Here, the Commission asserted that Petitioner violated Rule 505-6-.01(3)(a) [Legal Compliance] and Rule 505-6-.01(5)(a)(5) [revocation of a professional license].

3.

The Commission based the denial of Petitioner's application, in part, on the revocation of her registration to operate a FDCH. For this reason, the Commission cited Rule 505-6-.01(5)(a)(5) which provides that the Commission is authorized to deny a certificate when the applicant has had a "suspension or revocation of any professional license or certificate." Ga. Comp. R. & Regs. 505-6-.01(5)(a)(5). For the reasons that follow, the undersigned concludes that the revocation of a registration to operate a FDCH is not the revocation of a professional license.

4.

The Commission's rules do not define "professional license." Under the laws regarding professional corporations, the Georgia Code has defined the term "profession" as "the profession of certified public accountancy, architecture, chiropractic, dentistry, professional engineering,

¹ The term "educator" includes teachers, school or school system administrators, or other education personnel who hold a certificate or who have applied for but have not yet received a certificate. Ga. Comp. R. & Regs. r. 505-6-.01(2)(b). "For purposes of the Code of Ethics for Educators, 'educator' also refers to paraprofessionals." *Id.*

² The term "certificate" includes "any teaching, service, or leadership certificate, license, or permit" issued by the Commission. Ga. Comp. R. & Regs. 505-6-.01(2)(a).

land surveying, law, pharmacy, psychology, medicine and surgery, optometry, osteopathy, podiatry, veterinary medicine, registered professional nursing, or harbor piloting.” O.C.G.A. § 14-7-2(2); *see also* O.C.G.A. § 20-2-982.1(9) (implicitly recognizing teaching as a profession). For the purposes of regulating professional associations, the Georgia Code defines “professional service” as “the personal services rendered by attorneys at law and any type of professional service which may be legally performed only pursuant to a license from a board pursuant to Title 43” O.C.G.A. § 14-10-2(2). Black’s Law Dictionary defines a “professional” as “[a] person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.” *Professional*, Black’s Law Dictionary (7th ed. 1999).

5.

In actions for professional malpractice, the Georgia Supreme Court has held that the term “professional” is limited to those professions recognized in Georgia Code Sections 14-7-2(2), 14-10-2(2), 43-1-24, and Chapter 4 of Title 26. *Harrell v. Lusk*, 263 Ga. 895, 897-98 (1994). The undersigned has found no case law addressing the meaning of the term “professional license” for the purposes of denying or sanctioning another license. However, one court, in determining the appropriate burden of proof to revoke a license to operate a day care, distinguished such license from professional licenses. *Hardee v. Dep’t of Soc. & Health Svcs.*, 215 P.3d 214, 218 (Wash. Ct. App. 2009). There, the Department of Early Learning argued that the license issued to the child care provider is in the nature of a site license, as opposed to a professional license. *Id.* The court noted that the Department’s argument was “well taken” and further concluded that the home child care license was more in the nature of an occupational license as opposed to a professional license. *Id.*

6.

Here, DECAL revoked Petitioner's registration to *operate* a FDCH. Registrations to operate a FDCH are non-transferable. Ga. Comp. R. & Regs. 290-2-3-.04(2)(d)(2). If the owner of the day care moves to another location, a new registration is required. *Id.* In contrast, professional licenses are issued to individuals and are not associated with a particular location. Thus, like in *Hardee*, Petitioner's registration to operate a FDCH is more in the nature of a site license or an occupational license as opposed to a professional license.

7.

Further, although some training and education is required for a FDCH provider, the minimum requirements do not compare to the training, education or experience, and examinations required for professional licenses. *See e.g.*, O.C.G.A. § 43-3-9 (requirements for CPA include significant education, a year of experience and passing an examination); O.C.G.A. § 43-9-7 (requirements for chiropractic license include six years of education and passing an examination); O.C.G.A. § 43-11-40 (requirements for dentistry license include significant education and passing an examination); O.C.G.A. § 43-26-7 (requirements for a registered professional nurse license include significant education and passing an examination).

8.

Finally, unprofessional or unethical conduct is a ground for sanctioning professional licenses. *See e.g.*, O.C.G.A. §§ 43-1-19(a)(6), 43-3-21(a)(6), 43-4-13(a)(2), 43-9-12(a)(6), 43-11-47(a)(6), 43-15-19(a)(2), 43-30-9(a), 43-34-8(a)(7), 43-35-16(a)(13), 43-50-41(a)(6); *see also* Ga. Comp. R. & Regs. 505-6-.01(3)(j). The grounds for sanctioning the registration of a FDCH do not include "unprofessional" or "unethical" conduct. For the foregoing reasons, the revocation of Petitioner's registration to operate a FDCH is not the same as a revocation of a

professional license. Accordingly, as the rule is currently written, revocation of a registration to operate a FDCH is not a ground for denying a paraprofessional license.³

9.

The Commission also cited Commission Rule 505-6-.01(3)(a) as a ground for the denial of Petitioner's application. Standard 1 of the Code of Ethics for Educators states, in pertinent part:

(a) Standard 1: Legal Compliance - 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; or of any other sexual offense as provided for in Code Section 16-6-1 through 16-6-17, 16-6-20, 16-6-22.2, or 16-12-100; **or any other laws applicable to the profession.** As used herein, conviction includes 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

Ga. Comp. R. & Regs. 505-6-.01(3)(a)(emphasis added).

10.

Petitioner pleaded guilty to a misdemeanor charge of Reckless Conduct and was granted First Offender Treatment. The crime of Reckless Conduct is not a felony, a crime of moral turpitude, a drug crime, or a sex crime. Thus, the only other provision the Commission could rely upon is "any other laws applicable to the profession." *Id.*

11.

The crime of Reckless Conduct, standing alone, is not a law applicable to the profession of teaching. It is not specific to teaching, educators, or students. Rather, it is a criminal misdemeanor contained in Chapter 5 of Title 16. However, here, where the reckless conduct

³ Clearly, if the Commission wishes to include the revocation of a registration, certificate or license issued by DECAL as a ground for sanctioning or denying a teaching certificate or paraprofessional license it can do so by adding that ground to its rule.

involved students (as defined in Rule 505-6-.01(2)(c)), the undersigned concludes that it is a law applicable to the profession. Accordingly, the Commission has established that Petitioner violated Rule 505-6-.01(3)(a).

12.

If the Commission finds probable cause to impose a sanction against an educator or to deny a certificate to an applicant, and the educator or applicant contests the Commission's finding of probable cause, the educator or applicant must be provided the opportunity for a hearing. O.C.G.A. § 20-2-984.5(d). After a hearing, the Commission "may take any of the actions referred to in subsection (c), based on the administrative law judge's findings of fact and conclusions of law." *Id.* (emphasis added). The use of the word "may" in subsections (c) and (d) of Section 20-2-984.5 implies that the Commission has discretion in deciding whether to impose a sanction or deny a certificate.

13.

Commission Rule 505-6-.01(5)(a) also authorizes the Commission to suspend, revoke or deny certificates, to issue reprimands or warnings, or to monitor educators' conduct and performance. Rule 505-6-.01(5)(a) further states that unethical conduct as described in Standards 1-10 of The Code of Ethics for Educators shall be considered a cause for disciplinary action. Ga. Comp. R. & Reg. 505-6-.01(5)(a).

14.

Based upon the criminal documents it received, the undersigned understands why the Commission decided to deny Petitioner's application. The allegations in the Accusation and the arrest report describe a very serious scenario. However, the facts established through the credible sworn testimony at the hearing paint a different picture. For example, the criminal

documents state that Petitioner was in the vehicle when R.W. pulled out the gun. At the hearing, the credible testimony of several witnesses established that Petitioner was not in the vehicle when R.W. found the gun and showed it to D.P. The criminal documents also allege that Petitioner got out of the vehicle at the gas station and left R.W. and D.P. in the vehicle alone with the gun while they were still arguing. The credible testimony of the witnesses at the hearing established that Petitioner did not go into the store leaving R.W. and D.P. alone with the gun. Instead, Petitioner sent her younger son into the store to pay for the gasoline and she remained at the side of the vehicle with the door open to pump gasoline. Further, the testimony established that when Petitioner initially left the students in the vehicle at her brother's house, she did not know the gun was in the vehicle.

15.

Notwithstanding, Petitioner and other witnesses acknowledge that Petitioner did instruct R.W. and D.P. to get out of the vehicle if they were going to fight. The undersigned recognizes that Petitioner made the decision that she thought was best under the circumstances. However, the undersigned concludes that the decision to tell arguing teenagers to get out of the vehicle "if they were going to fight," without first trying to diffuse the situation, was error in judgment. It had the effect of tacitly allowing the fight to escalate.

16.

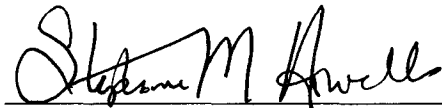
After considering the evidence as a whole, the undersigned concludes that Petitioner's conduct does not warrant the denial of her application. On the face of the criminal documents the events of July 8, 2012 appeared more serious than the facts established by the testimony. Other than the arrest and guilty plea for misdemeanor Reckless Conduct, Petitioner has had no other trouble with the law and she has completed the terms of her sentence. During the nine

years that she operated her day care, she did not have any citations. When DECAL sought revocation of her registration to operate a FDCH, Petitioner did not contest the revocation because of other circumstances in her life at the time. Nevertheless, Petitioner exhibited poor judgment when she did not attempt to diffuse the argument between the teenagers and tacitly allowed it to escalate. Under these circumstances, a reprimand is appropriate.

Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, Petitioner's application for a paraprofessional license is hereby **GRANTED**, provided that she meets all applicable requirements for licensure. However, Petitioner shall receive a **REPRIMAND** for her conduct.

SO ORDERED this 1st day of April, 2016.

A handwritten signature in black ink, appearing to read "Stephanie M. Howells", written over a horizontal line.

STEPHANIE M. HOWELLS
Administrative Law Judge