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Action

Professional Practices Committee

Policies on Division of Professional Practices Cases

Executive Summary: This agenda item provides proposed policy recommendations for the Commission's consideration.

Recommended Action: Staff recommends that the Commission adopt the proposed policy recommendation.

Presenter: Nanette Rufo, Director, Division of Professional Practices

Strategic Plan Goal: 1

Promote educational excellence through the preparation and certification of professional educators

- ◆ Evaluate and monitor the moral fitness of credential applicants and holders and take appropriate action

January 2012

Policies on Division of Professional Practices Cases

Introduction

This agenda item presents a series of issues for the Commission's consideration. Each section impacts the work of the Division of Professional Practices (DPP) in large or small ways. Some issues, like retention of paper records may normally have been made at the management level. However, given the Commission's stated desire for greater transparency and accountability, these items are being presented to the Commission for review.

Policy for Single Misdemeanor Alcohol Offense

At the December 2010 meeting of the Commission on Teacher Credentialing (Commission), the Commission looked at data showing five year trends. That data clearly showed that the largest single case type was criminal alcohol offenses. Data collected from February 2010 to the end of November 2011, shows that "Reports of Arrest and Prosecution" (RAP) sheets for a first-time alcohol offense are 28.61% of the RAP sheets received in DPP. A misdemeanor "alcohol offense" as described in this policy proposal includes driving under the influence (DUI), drunk in public and wet (or alcohol involved) reckless driving.

Under Education Code section 44421, the Commission shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service. Education Code section 44345(c) allows the Commission to deny an application if the person "is addicted to the use of intoxicating beverages to excess."

In addition to looking at the criminal conviction, the Commission must also review the particular facts surrounding a conviction before making a decision to take a disciplinary action. Under case law and regulation, the Commission must look at the facts and determine whether the misconduct has a relationship to the person's ability or fitness to perform the duties authorized by a credential.

The typical DUI offense is where a police officer pulls over a car because of irregularities in driving. The officer does roadside testing and blood alcohol testing. If the driver fails the testing, the driver may be arrested, booked and released. If the person is convicted of a criminal offense, the Commission has jurisdiction to take an adverse action. However, the adverse action may only be taken if the misconduct has a relationship to the fitness to perform the duties authorized by the credential. Under Title 5 California Code of Regulations section 80302, the following factors (also called Morrison factors) are to be weighed:

1. The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated;

2. The proximity or remoteness in time of the conduct;
3. The type of credential held or applied for by the person involved;
4. The extenuating or aggravating circumstances surrounding the conduct;
5. The praiseworthiness or blameworthiness of the motives resulting in the conduct;
6. The likelihood of the recurrence of the questioned conduct;
7. The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons; and
8. The publicity or notoriety given to the conduct.

In the typical first time misdemeanor DUI, it is difficult to make the connection between the criminal conduct and the ability to perform the duties authorized by the credential. However, such a connection is occasionally present. For example, a district administrator could be arrested for a DUI while driving a district vehicle, or perhaps circumstances of a particular DUI offense could result in extensive local publicity, adversely impacting the local educational community.

The issue of how to effectively handle alcohol offenses was also raised at the stakeholder meeting held in November. A proposal was made by Michael Rothschild, attorney representing the California Teachers Association, to create “an easily administered and low cost program” where first and second alcohol offenses would be diverted from the Committee review process while the individual completed all court orders imposed for the DUI. Under Mr. Rothschild’s proposal, if the person satisfactorily completed the court’s orders then no review by the Committee would be needed. DPP staff would periodically monitor the criminal case to determine if probation was violated. If the person failed to complete the program and violated probation, then a review by the Committee could be started.

To more efficiently address the workload from a single alcohol offense, this agenda item asks the Commission to review current practices in this area and consider setting new policy.

Current Practice and Proposed Policy on One Alcohol Offense

Current practice by DPP, and informally approved by the Committee, is that a *single* alcohol-related offense that is not aggravated by a high blood alcohol level, property damage, involvement of a child, on school property or while driving to or from school employment, is presented to the Committee on the Consent Calendar. Before putting the matter on the Consent Calendar, DPP staff checks with Department of Motor Vehicles records to determine if the person was convicted of other alcohol offenses and checks to determine if online court documents are available. The Committee routinely votes to close these cases.

At the December 2011 meeting of the Committee, the Committee considered and determined to recommend to the Commission the following policy for a single alcohol related offense:

An applicant or holder who is convicted of one misdemeanor alcohol related offense shall not be submitted to the Committee of Credentials for review. Staff shall close the matter and note the offense in the DPP database.

If an applicant or holder has other acts of misconduct, staff shall include the DUI offense when presenting the case to the Committee of Credentials.

The exception to this policy is where staff is aware of the involvement of a child, a school or school property in the alcohol offense, or where adverse publicity impacts the local community. These exceptions shall be presented to the Committee of Credentials.

This recommendation utilizes staff time in the most effective manner possible. Preparing the Consent Calendar takes staff time. For matters that are being routinely closed, expending any additional time to prepare a Consent Calendar is not an efficient use of scarce resources.

The proposal by CTA would serve an important purpose in informing educators convicted of a DUI that such behavior may lead to action against a credential and the recommendation from staff does not provide this information to the educator. However, given the workload within DPP, staff does not believe this is the Commission's best use of its limited resources, for the reasons discussed below.

From a legal perspective, it is unusual that a single alcohol related offense will give rise to a sufficient nexus to take an adverse action. Absent publicity, involvement of children or school property, it is difficult to determine how a single offense would impact a person's ability to perform the duties authorized by the credential.

It is important to note that the alcohol related misconduct does not go unpunished. Court ordered criminal sanctions for a first offense DUI typically include: informal probation for three to five years; a fine of between \$1400 and \$1800; a restricted license enables the person to drive during the course of employment, to and from work or school; and a California licensed DUI program. There is also a mandatory 48 hours of jail time with a DUI first offense, though this requirement is often converted to work service. Issuing such punishments for criminal actions is the role of the courts. The Commission's role is to take action only when such misconduct impacts the classroom or the educational community.

An additional factor for the Commission to consider in weighing this recommendation is that the employing school district also receives subsequent arrest notices. The employer, not the Commission, is in a position to know if the alcohol related crime is related to conduct in the classroom. For example, a district may have received comments about an educator smelling of alcohol. The district would be in a position to connect the arrest notice for the DUI with those reports. The district, not the CTC, is in the best position to deal with the concerns since the district has more knowledge of any performance issues. The policy recommended by staff would let a single alcohol offense without aggravating factors be handled as a local issue.

Early Settlement

During the stakeholders meetings several favorable comments were made about trying to resolve cases early in the process. Some alcohol cases might be resolved earlier in the process by a regulatory change. Under the current regulation, the Committee may only consider settlement after finding probable cause to take an adverse action. Title 5, California Code of Regulations, section 80320 states “At any time after the Committee has determined that a Statement of Issues or an Accusation shall be filed against a respondent, but before a final determination of the matter has been made by the Commission, the respondent may propose and the Committee may recommend to the Commission a settlement upon terms which sufficiently provide for the protection of the public, schoolchildren and the profession.” This means that the Committee may consider a settlement only after informal review, formal review and an administrative hearing is requested.

Particularly in alcohol cases, where the Committee has a history of recommending settlements with appropriate monitoring conditions, the ability to settle a case earlier might be advantageous to the individual under review and the Commission. The following change in regulation would allow for an earlier settlement of a case:

At any time after the Committee has *commenced an investigation*, but before a final determination of the matter has been made by the Commission, the respondent may propose and the Committee may recommend to the Commission a settlement upon terms which sufficiently provide for the protection of the public, schoolchildren and the profession.

Staff recommends that the Commission authorize staff to begin a discussion of this proposal with various stakeholder groups. No approval to commence the formal rulemaking process is requested at this time. Such a request, if any, would be made to the Commission at a later meeting.

Policy on Failure to Disclose Information

Applicants are required to disclose certain information on their applications. The information is requested in a section called Professional Fitness Questions (PFQs). This section includes questions about arrests, convictions, and leaving employment under adverse circumstances. The application, including the PFQs section, is signed by the applicant, verifying the facts under penalty of perjury.

When an applicant omits required PFQ information on the application, it is considered a “failure to disclose.” The report of the Bureau of State Audits noted that inconsistent practices were used in the DPP in determining whether to: 1) take no action on a failure to disclose; or 2) send a letter informing the applicant that failure to disclose is considered falsification of an application and grounds for denial; or 3) opening an investigation and presenting the matter to the Committee. To assist the Commission in setting policy in this area, at its December 2011 meeting the Committee of Credentials considered and recommended to the Commission some policies when an applicant fails to disclose information.

The policies recommended by the Committee weigh the “materiality” of the information that was not disclosed. Here the concept of materiality boiled down to the question, “if the Committee

knew this information would it possibly result in a different outcome of the matter?” So if the applicant failed to disclose a conviction that the Committee previously investigated, no action should be taken. However, if a serious offense was not disclosed, then the failure to disclose should be added as an allegation of misconduct. Based on those concepts the Committee recommends the following policies to the Commission on failure to disclose:

1. *If an applicant fails to disclose information that the Committee of Credentials and/or Commission has previously reviewed, investigated or taken action on, no action should be taken.*
2. *If an applicant fails to disclose information that is presented to the Committee of Credentials on a Consent Calendar, the failure to disclose will be added to the information on the Consent Calendar.*
 - a. *If the Committee of Credentials closes the case, then a letter should be sent to the applicant concerning the duty to fully and truthfully respond to questions on the application.*
 - b. *If the Committee of Credentials determines to open an investigation, then the failure to disclose should be included in the allegations.*
3. *If an applicant fails to disclose information of such a nature that the Committee of Credentials commences an investigation into the alleged misconduct, then the failure to disclose should be included as an allegation.*
4. *The Commission delegates authority to the Commission’s attorney staff to make exceptions to these failures to disclose policies based on the facts of a particular case. Any exception shall be documented in the file with the name of the attorney staff making the decision.*

Policy on Retention of Paper Records

The DPP maintains voluminous paper files on cases that are reviewed by the Committee of Credentials (Committee). When a paper file is closed, it is stored on-site for a year, then the file is transferred to the State Records Center for storage. At the end of 2011, 106 boxes of records were transferred out of DPP. The contents of these files are considered critical to the work of the Commission and the files are retained for twenty years or more.

In addition to these critical files, DPP also receives “miscellaneous” documents, documents that do not tie to a case file. These include documents where no case was opened, a case was previously reviewed, printed documents from online sources, supporting documents for direct applications, subsequent rap notifications, or other miscellaneous notifications.

Currently DPP is reviewing these documents and simply holding them. In the past, such documents were simply destroyed by putting them in the secured shred bin. However, given the heightened scrutiny over DPP’s operations, staff began holding on to the documents. However, maintaining boxes of documents of little current value also poses issues. It is important to track these documents to ensure that appropriate action is being taken and to maintain a trail of actions for accountability. To address the critical need for staff accountability and to establish the proper

processing of such documents, staff recommends that the Commission adopt policy authorizing staff to scan these miscellaneous documents and attach them to the appropriate person in the database. Once the information is scanned, then after a three month retention period for accountability and monitoring, the paper documents will be disposed of by confidential destruction.

Recommendations

1. The Commission adopt the following policy for handling a single alcohol offense:
 - a. *An applicant or holder who is convicted of one misdemeanor alcohol related offense shall not be submitted to the Committee of Credentials for review. Staff shall close the matter and note the offense in the DPP database.*
 - b. *If an applicant or holder has other acts of misconduct, staff shall include the DUI offense when presenting the case to the Committee of Credentials.*
 - c. *The exception to this policy is where staff is aware of the involvement of a child, a school or school property in the alcohol offense, or where adverse publicity impacts the local community. These exceptions shall be presented to the Committee of Credentials.*
2. The Commission authorizes staff to discuss with interested stakeholder groups possible revisions to Title 5, California Code of Regulations, section 80320.
3. The Commission adopt the following policy for sending Failure to Disclose letters:
 - a. *If an applicant fails to disclose information that the Committee of Credentials and/or Commission has previously reviewed, investigated or taken action on, no action should be taken.*
 - b. *If an applicant fails to disclose information that is presented to the Committee of Credentials on a Consent Calendar, the failure to disclose will be added to the information on the Consent Calendar.*
 - 1) *If the Committee of Credentials closes the case, then a letter should be sent to the applicant concerning the duty to fully and truthfully respond to questions on the application.*
 - 2) *If the Committee of Credentials determines to open an investigation, then the failure to disclose should be included in the allegations.*
 - c. *If an applicant fails to disclose information of such a nature that the Committee of Credentials commences an investigation into the alleged misconduct, then the failure to disclose should be included as an allegation.*
 - d. *The Commission delegates authority to the Commission's attorney staff to make exceptions to these failures to disclose policies based on the facts of a particular case. Any exception shall be documented in the file with the name of the attorney staff making the decision.*

4. The Commission adopt the following policy for miscellaneous documents in the DPP:
DPP staff may scan miscellaneous documents and attach them to the appropriate person in the database. Once the information is scanned and after a three month retention period for accountability and monitoring, the paper documents shall be disposed of by confidential destruction