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Action

Professional Practices Committee

Proposed Policy on Division of Professional Practices Cases

Executive Summary: This agenda item provides a proposed policy recommendation for the Commission's consideration that would authorize staff to close matters as a ministerial act for specified Vehicle Code violations.

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

Presenter: Michael Barth, Assistant General Counsel, Division of Professional Practices

Strategic Plan Goal

I. Educator Quality

- ◆ Effectively, efficiently, and fairly monitor the fitness of all applicants and credential holders to work with California students.

Proposed Policy on Division of Professional Practices Cases

Introduction

This agenda item presents, for the Commission's consideration, a proposed policy giving staff authority to close cases related to specified single Vehicle Code (VC) violations. The policy would be consistent with the Commission's earlier decision authorizing staff to close first-offense driving under the influence (DUI) cases, which also are a violation of the Vehicle Code.

Background

In March 2012 the Commission adopted the following policy:

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.

The application of this policy had an immediate impact, allowing DPP and the COC to process more cases and to focus on cases that have a "nexus" to the profession. Under state law, an adverse action against a credential-holder may only be taken if the misconduct has a relationship to the fitness to perform the duties authorized by the credential, a "nexus." Under Title 5, California Code of Regulations, section 80302, the following factors (also called Morrison factors) are to be weighed in determining fitness to perform authorized duties:

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.

Driving under the influence is a violation of VC sections 23152 and 23153. This is the most common criminal charge reported to the Commission. Other commonly seen violations of the VC include driving without a license (VC section 12500) and driving with a suspended license

(VC section 14601.1). In many cases involving violation of the VC, 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 or other VC violation while driving a district vehicle, or perhaps circumstances of a particular DUI or other VC violation offense could result in extensive local publicity, adversely impacting the local educational community.

The Commission adopted policy in March 2012 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 closed by the staff. However, this has created a situation where lesser violations of the VC are sent to the Committee of Credentials (COC). The time needed to be placed on the Committee's calendar may delay credentials for a few months. This situation results in unfairness to some applicants who are prevented from teaching during the Committee review process when the delay ends with the case being closed. These cases also present a work load for the staff in a time when our need for communications with stakeholders is increasing. Adopting this policy allows for a more efficient operation in DPP and the COC, and greater fairness to applicants.

Proposed Policy on VC Offenses:

An applicant or holder who is convicted of multiple infractions or a single misdemeanor charged under the Vehicle Code (VC) sections specified below shall not be submitted to the Committee of Credentials for review. Staff shall close the matter and note the offense in the DPP database. The Vehicle Code sections are as follows:

- 20- False Statement to Department of Motor Vehicles*
- 31- Provide False Information to Peace/Police Officer*
- 4461(c)- Display Unauthorized Disabled Placard*
- 4462.5- Show on Vehicle/Give Officer Unlawful Registration*
- 5204(a)- Valid Tags not Displayed*
- 12500(a)- Drive Without a License*
- 14601(a)- Driving on a Suspended License/Reckless*
- 14601.1(a)- Driving on a Suspended License*
- 14601.5(a)- Driver's License Suspended/DUI: Refuse Test*
- 14601.2- Drive when License Suspended for DUI or Drugs*
- 14604(a)- Owner Required to Determine if Driver is Licensed*
- 16025(a)- Failure to Provide Identification, Insurance Etc. at Accident*
- 16028(a)- False Proof: Financial Responsibility*
- 23109(c)- Aide/Abet in Exhibition of Speed*
- 23140- Minor Driving under the Influence (individual under age 21)*
- 23222(b)- Drive with less than 1oz. Marijuana*
- 23223(a)- Open Container in Vehicle*
- 23224(a)- Minor knowingly Operate Vehicle: With Alcohol*
- 40508(b)- Failure to Pay*
- 40508(a)- Failure to Appear*
- 40509.5- Failure to Appear/Pay Fines*
- 40616- Fail to Provide Proof of Correction*

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. When these exceptions exist the matter shall be reviewed by the Chairperson of the COC and, if approved, shall be presented to the COC.

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. In addition, this proposal allows more cases to be handled in a rapid manner. If the Commission adopts the proposed policy, cases can be opened and closed in just a few days. If cases wait for a COC meeting, each case will be open for up to an additional 30-45 days.

From a legal perspective, it is unusual that the VC offenses described 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 these offenses would impact a person's ability to perform the duties authorized by the credential.

Conclusion

Staff recommends that the Commission adopt the policies as presented related to cases involving VC offenses as specified.