BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

BLAKLEY CRUMLEY,	)	
	)	
Petitioner,	)	
	)	
v.	)	DOCKET NO.
	)	OSAH-PSC-SAN-1636724-78-Schroer
PROFESSIONAL STANDARDS COMMISSION,	)	
	)	
	)	
Respondent.	)	

FINAL DECISION

I. INTRODUCTION

Respondent Georgia Professional Standards Commission (the "Commission" or "PSC") asserts that Petitioner Blakley Crumley violated ethical standards and seeks to suspend his teaching certificate for one year. Petitioner appeals the Commission's determination. Pursuant to Commission Rule 505-6-.04 and O.C.G.A. § 20-2-984.5, an administrative hearing was held on May 6 and 11, 2016, before the Office of State Administrative Hearings ("OSAH"). Petitioner was represented by Kristine Orr Brown, Esq., and the Commission was represented by Assistant Attorney General Christian A. Fuller. The record closed after the Court received post-hearing briefs on June 15, 2016.

After careful consideration of all the evidence of record in this case, and based upon a preponderance of evidence, the Administrative Law Judge makes the following findings of facts, legal conclusions, and decision.

II. FINDINGS OF FACTS

1.

Petitioner holds an educator's certificate in the State of Georgia and held such certificate at all times relevant to this matter. (Statement of Matters Asserted, ¶ 1; Answer ¶ 1.)

2.

In April 2014, Petitioner was a teacher at East Jackson Middle School ("East Jackson Middle") in the Jackson County School District. East Jackson Middle School is located close to East Jackson High School. During the 2013-2014 school year, East Jackson Middle's eighth grade students attended school in a wing of the high school. Petitioner served as the athletic director, assistant coach, and physical education teacher at East Jackson Middle. (Statement of Matters Asserted, ¶ 2; Answer ¶ 2; Tr. 48-49, 106, 109.)

3.

At the end of April 2014, the students of East Jackson Middle participated in several days of standardized testing known as the Criterion-Referenced Competency Tests ("CRCT"). The educators and staff of East Jackson Middle were involved in assisting with the administration of the CRCT during this time period. On the evening of Tuesday, April 22, 2014, after a day of CRCT testing, Petitioner and a number of his colleagues met for dinner at La Hacienda, a restaurant in Commerce, Georgia. (Tr. 40-41, 108-109.)

4.

Petitioner was one of the last to arrive at the restaurant at approximately 7:00 p.m. He ordered dinner, and he and another teacher, Ronnie Jones, each ordered a pitcher of beer. Petitioner and Mr. Jones shared the two pitchers through the evening. Petitioner and Mr. Jones left the restaurant together about 10:00 p.m. Petitioner drove Mr. Jones to Petitioner's home, where Petitioner also has a shop for repairing old cars. Petitioner's wife and children were away visiting relatives, and Petitioner testified that he and Mr. Jones drove one of his old cars and then talked and watched television until 11:00 p.m. Mr. Jones, who was going through a divorce, spent the night at Petitioner's home. (Tr. 109-10, 136-38.)

5.

At the administrative hearing on June 13, 2016, Petitioner denied drinking any additional alcohol at home and testified that he went to bed shortly after 11:15 p.m. However, on April 23, 2014, Petitioner told Heidi Hill, the principal of East Jackson Middle, that he and Mr. Jones did consume additional drinks at his home that evening. Having weighed the testimony of the witnesses, including the timing and circumstances of the statements, the Court finds Petitioner's statements to Hill to be more credible on this point. Nevertheless, it is unclear from the evidence in the record what or how much Petitioner had to drink at home and when he stopped drinking that evening. (Tr. 51, 111-13.)

6.

Petitioner got up the next day, Wednesday, April 23, 2014, at 6:30 a.m. He and Mr. Jones left Petitioner's house a little late, around 7:20 a.m., because Petitioner could

not find his keys. According to Petitioner, Mr. Jones drove Petitioner's car because they were "cutting it close," and also because Mr. Jones enjoyed driving Petitioner's BMW. Petitioner denied being unable to drive due to alcohol impairment, although he told Ms. Hill that day that he had not driven because he was not feeling well. Again, the Court finds Petitioner's statements to Ms. Hill to be more credible on this point. (Tr. 69, 113-14, 142.)

7.

During a regular school day at East Jackson Middle, teachers generally were expected to be at school from 7:45 a.m. until 3:45 p.m. During CRCT testing days, when teachers were responsible for proctoring the tests, teachers were asked to be at school by 7:30 a.m. so that they could check out their testing materials in the media center and be ready to receive the students for testing between 8:00 a.m. and 8:15 a.m. (Tr. 10, 17, 33.)

8.

On April 23, 2014, Petitioner was assigned to proctor the CRCT for a small group of students at East Jackson Middle. Mr. Jones, who was assigned to students being tested in the high school building, drove Petitioner to East Jackson Middle at approximately 8:00 a.m. As Mr. Jones drove Petitioner's car up the drive toward East Jackson Middle, a number of teachers and administrators were in the media center located in the front of the school, with a clear view of the driveway and front parking lot. By the time Petitioner and Mr. Jones arrived at East Jackson Middle, the testing coordinator, Tiffany Barnett, was growing concerned because Petitioner had not picked up his test materials and testing time was drawing near. (Tr. 13-15, 33, 42-43, 118-19.)

9.

As Mr. Jones approached the school, he slowed down in a turn lane approximately 40 to 80 yards from the front of the school. When the vehicle came to a brief stop, Petitioner was observed opening the passenger side door, which was closest to the school, sticking his head out of the door, and vomiting. When another vehicle pulled up behind the BMW, Mr. Jones began driving the car through the turn while the passenger-side door was still open. (Tr. 14-17, 25, 29, 34, 115.)

10.

At the administrative hearing, Petitioner denied vomiting that morning. Instead, Petitioner testified that he asked Mr. Jones to stop the car so that he could throw out ice from his cup of Coke Zero. The Court does not find Petitioner's explanation for why he wanted to slow down and throw his ice out in the middle of the school's front driveway, instead of waiting until Mr. Jones dropped him off in the side parking lot just a short distance away, to be credible. Moreover, Ms. Hill testified that on the morning of April 23, 2014, while discussing the events of the day, Petitioner admitted throwing up and acknowledged that he was not feeling well that morning. His statements to Ms. Hill were consistent with the observations of both Ms. Hill and Ms. Barnett, who testified that Petitioner did not look like he felt well that morning. Having weighed the evidence, including the demeanor and motives of the witnesses and the timing of the statements, the Court finds by a preponderance of the evidence that Petitioner vomited in the driveway of the school on the morning of April 23, 2014 and came to school feeling tired and sick.[1]

[1] Ms. Hill described Petitioner as being "exhausted." She testified that "even putting the alcohol aside, to stay up until the wee hours of the morning as an educator knowing you're about to administer a very important test to students, I have concerns about that.... [H]e wasn't [on] his A game, he wasn't his

However, there is no evidence that Petitioner smelled of alcohol while at school that day or that he exhibited any other physical manifestations of impairment from drinking the night before, such as blood-shot eyes or slurred speech. (Tr. 16, 51-53, 62, 115-16, 143-47, 156, 165, 169, 174.)

11.

Petitioner entered the media center a short time after being dropped off and picked up his testing materials. He talked briefly with Ms. Barnett, who asked him to let her know if he did not feel well during testing so that she could bring him some crackers or find someone to replace him. She did not suspect he was under the influence of alcohol at that time. Petitioner took his testing materials and began to administer the CRCT to three students in a small conference room. (Tr. 16-17, 21, 118-19.)

12.

Shortly before the first section of the CRCT was completed, between 9:30 a.m. and 10:00 a.m., Ms. Hill asked Petitioner to come out into the hall and speak with her. Ms. Hill had seen Mr. Jones earlier that morning at the high school and was convinced Mr. Jones was under the influence of something. When she learned that Mr. Jones had been drinking with Petitioner the night before and that Petitioner had been seen vomiting in the driveway of the school that morning, she wanted to check on Petitioner. He told her that the "night just kind of got away from us," but that he was fine. Ms. Hill did not smell alcohol or notice any obvious signs of impairment, and she allowed him to return to the room and finish proctoring the test for his students. (Tr. 49-55, 119.)

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perky self, . . . he always arrived at school very upbeat, . . . and that wasn't the Mr. Crumley that I saw that day." (Tr. 53.)

13.

After consulting with the Jackson County School District's Human Resources Director, Kathy Elrod, Ms. Hill decided to ask all the teachers who had been out together the night before to take a breathalyzer test. The school resource officer, Deputy Joe O'Kelley, contacted the Jackson County Sheriff's Office, and Corporal Bruce Cronic came to the school to administer the breathalyzer tests. Cpl. Cronic used a hand-held device called an "alco-sensor" to detect the presence of alcohol on the breath of the teachers tested. Cpl. Cronic testified that his device is "self-calibrating," and is "nothing like the GBI has to go through." He testified that when he first received the device years ago it came with a certification from the manufacturer. He further testified that the alco-sensor was just one of a number of tools he uses on the roadside to determine whether a driver is under the influence. On April 23, 2014, Cpl. Cronic spent about fifteen minutes at East Jackson Middle conducting alco-sensor testing on the six teachers, but he could not recall testing Petitioner specifically or what the result was from his test. He does recall telling Deputy O'Kelley whether the result was positive or negative after each administration. (Tr. 55, 82, 89-92, 94-97.)

14.

The evidence in the record shows that Cpl. Cronic conducted the alco-sensor test on Petitioner two or three times before he got a sufficient sample of Petitioner's breath. Cpl. Cronic did not tell Petitioner the results of the final test, but Ms. Elrod, who was present during the testing,[2] told Petitioner that one of the officers had said that Petitioner

[2] Ms. Elrod testified that she did not know what the alco-sensor registered on the final test of Petitioner's breath. (Tr. 75.)

could not drive home because if he did he would be pulled over.[3] Deputy O'Kelley testified at the administrative hearing that Cpl. Cronic told him that both Mr. Jones and Petitioner tested positive for the presence of alcohol. (Tr. 75, 83, 122-25, 150-51.)

15.

Petitioner got a ride home from his cousin. Before leaving, he offered to get a blood test to prove that he was not under the influence, but was advised by Ms. Elrod or Ms. Hill that it would not make a difference. Petitioner ultimately resigned his position at East Jackson Middle. He has been offered a teaching position in Stephens County, but he did not accept it because he wanted to get the PSC matter resolved before returning to teaching. Even though he denies being under the influence at school, Petitioner recognizes the consequences that flowed from drinking the night before a school day and has not had any alcoholic beverages since that night. Moreover, other than this incident, Petitioner has had no negative performance reviews, and by all accounts, was well-regarded by his students, fellow teachers and administrators. (Tr. 60-62, 106-108, 124-25, 135, 149, 178-79; Statement of Matters Asserted, ¶ 8.)

III. CONCLUSIONS OF LAW

The Commission asserts that it is authorized to revoke Petitioner's educator's certificate on the grounds that he engaged in unethical conduct by violating Standard 3 (Alcohol and Drugs) and Standard 10 (Professional Conduct) of the Code of Ethics for Educators. (Statement of Matters Asserted, ¶ 9.)

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[3] Cpl. Cronic could not remember giving any instructions about what should be done with the teachers that tested positive, and no one was arrested as a result of the tests. Similarly, Deputy O'Kelley testified that he did not give Petitioner any instructions after the test was conducted. (Tr. 84, 93.)

1.

Pursuant to OSAH Rule 7, the Commission bears the burden of proof. GA. COMP. R. & REGS. r. 616-1-2-.07(1). OSAH Rule 21 provides that the standard of proof is preponderance of the evidence. GA. COMP. R. & REGS. r. 616-1-2-.21(4).

2.

The Commission has adopted the Code of Ethics for Educators that sets forth the ethical standards for educators in Georgia. See GA. COMP. R. & REGS. r. 505-6-.01(3). If an educator violates the Code of Ethics, disciplinary sanctions may include revocation or suspension of a certificate, reprimand, warning or monitoring. GA. COMP. R. & REGS. r. 505-6-.01 and O.C.G.A. 20-2-984.5.

3.

The Commission asserts that Petitioner violated Standard 3 of the Code of Ethics for Educators. Commission Rule 505-6-.01(3)(c) provides, in pertinent part:

> (c) **Standard 3: Alcohol or Drugs** – An educator shall refrain from the use of alcohol . . . during the course of professional practice. Unethical conduct includes but is not limited to:
>
> . . .
>
> 2. Being on school premises or at a school-related activity while under the influence of . . . alcohol.

Both parties agree that the phrase "under the influence" is not defined in the Code of Ethics for Educators and that this Court should look to case law regarding "driving under the influence" ("DUI") for guidance on the proof required to show that Petitioner was in violation of Standard 3.

4.

In the DUI context, it is unlawful for a person to drive while under influence of alcohol "to the extent that it is less safe for the person to drive." O.C.G.A. § 40-6-391(a)(1).[4] "There is no requirement that the person actually commit an unsafe act." Lanier v. State, 237 Ga. App. 875 (1999). In 1970, the Georgia Supreme Court addressed the term "under the influence" under the 1968 version of the DUI statute, and observed that the General Assembly "recognized that 'under the influence' means more than having consumed the smallest amount of alcohol possible to imagine." Anderson v. State, 226 Ga. 35, 36 (1970).

> As has been recognized by court decisions, the operator of a motor vehicle must be under the influence of an intoxicant to the extent that it is less safe for him to operate a motor vehicle than if he were not so affected.... Obviously, a driver who is less safe is less efficient. He is less skillful, less competent, less able, less qualified, less proficient, and less efficient. Each of the words would convey the same message to the jury. The driver must be so affected by the intoxicant that it adversely affected his operation of the motor vehicle.

Id. at 36-37. See Moran v. State, 257 Ga. App. 236, 239 (2002) (statute now does not require that the person actually commit an unsafe act to be considered DUI, as held in *Anderson*).

5.

Under the current DUI statute, impaired driving *ability* is required to prove DUI – less safe. Evans v. State, 253 Ga. App. 71, 76 (2001); Kevinezz v. State, 265 Ga. 68 (1995). "And of course impaired driving ability depends solely upon an individual's response to alcohol, regardless of his or her blood alcohol content." Id. Thus, it is not

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[4] The statute also prohibits a person from driving if their alcohol concentration is 0.08 grams or more within three hours after driving. O.C.G.A. § 40-6-391(a)(5). This is considered "per se DUI" and does not require proof of impaired driving ability. See Rigdon v. State, 270 Ga. App. 217 (2004).

necessary to prove a person's actual blood alcohol concentration in order to prove that a person was under the influence to the extent that it was less safe for the person to drive. Id., citing Bowden v. State, 202 Ga. App. 802, 803 (1992). As Cpl. Cronic acknowledged, officers use a variety of factors, in addition to field sobriety testing, to determine whether a driver is impaired to the extent that he or she is less safe to drive, including "the physical appearance of the driver, red or glassy eyes, an unsteady stance, the presence of the odor of alcohol, the existence of an accident, and any inculpatory statements made by the driver or witnesses." Hawkins v. State, 223 Ga. App. 34, 39 (1996) (both officers and juries appropriately consider such factors in determining whether a person is DUI less safe).

6.

In this case, in addition to other evidence of possible impairment, the Commission offered evidence relating to the results of the alco-sensor test administered by Cpl. Cronic on April 23, 2014. As both parties acknowledged in their post-hearing briefs, the alco-sensor test is an initial screening device used to show the presence of alcohol on the breath, not the amount of alcohol in the blood. See Gray v. State, 222 Ga. App. 626, 628 (1996). Moreover, "'[b]ecause individual responses to alcohol vary, the presence of alcohol in a defendant's body, by itself, does *not* support an inference that the defendant was an impaired driver.'" State v. Frost, 297 Ga. 296 (2015), quoting Baird v. State, 260 Ga. App. 661, 663 (2003) (emphasis in original).

7.

Petitioner objected to the admissibility of the positive test results because Respondent failed to prove that the device used by Cpl. Cronic was approved by the

Director of the Division of Forensic Sciences of the Georgia Bureau of Investigation ("GBI"). Turrentine v. State, 176 Ga. App. 145 (1985). This Court ruled that, in the administrative context, the issue of GBI-approval went to the weight of the evidence, not its admissibility. In assessing the weight of the test results now, the Court has considered that "there is no statutory scheme covering initial screening tests," but that administrative rules and regulations mandate that initial alcohol screening tests be conducted on approved breath testing devices during DUI investigations. Id. at 146 (citing former Department of Public Safety ("DPS") Rule 570-9-.06(3)).[5] See also Knapp v. State, 229 Ga. App. 175 (1997) (although trial court erred in allowing testimony of alco-sensor result without requiring minimum foundation that the device was GBI-approved, it was not reversible error given totality of evidence).

8.

The Georgia Court of Appeals has also held that the failure to prove that the alco-sensor was a GBI-approved device was not reversible error when the officer testified that the device was approved for use in the state, but he did not know who had approved it. Baker v. State, 252 Ga. App. 695, 703 (2001); Lewis v. State, 274 Ga. App. 440 (2000). See also Gray v. State, 222 Ga. App. 626 (1996) (proper foundation laid for alco-sensor test by testimony of officer that from his training and experience he knew that the GBI had approved the design of the alco-sensor for use in detecting the presence or absence of alcohol). In this case, however, the Commission failed to prove, either through Cpl.

[5] The DPS Rule cited in the *Turrentine* decision now relates to off-duty employment. See Ga. Comp. R. & Reg. 570-9-.06 ("Off-Duty Employer Responsibilities"). However, GBI's current rules provide that "[a]ll peace officers are declared qualified to administer the screening test for alcohol in the breath. Screening tests are not intended to be a quantitative measure of the specific amount of alcohol in a person's breath, but a presumptive test for the presence or absence of alcohol. A list of approved breath alcohol screening devices will be maintained by the Division of Forensic Sciences." Ga. Comp. R. & Regs. 92-3-.02(3).

Cronic's testimony or otherwise,[6] that the device used to test Petitioner's breath on April 23, 2014 was approved by any entity for use as an initial alcohol screening device.

9.

In the absence of such foundation and coupled with Cpl. Cronic's inability to specifically recall testing Petitioner or Petitioner's actual test results, the Court does not find the reported results of the alco-sensor test to be reliable evidence regarding the presence of alcohol in Petitioner's breath on April 23, 2014. Accordingly, the Court gives the results no weight. Nevertheless, the Court concludes that other factors, including Petitioner's admission to consuming alcohol the night before, his decision not to drive his own car that morning, his late arrival at school on the day of testing, his conduct in front of the school, including vomiting and failing to close the door when the car began moving, and his fatigue and general appearance of being unwell, proved by a preponderance of the evidence that he was under the influence of alcohol while on school premises in violation of Standard 3.

10.

Standard 10 of the Code of Ethics for Educators states in relevant part:

> (j) **Standard 10: Professional Conduct** - An educator shall demonstrate 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. r. 505-6-.01(3)(j). The Court concludes that there is sufficient evidence to support the Commission's allegation that Petitioner violated Standard 10. As

[6] Somewhat inexplicably, the Commission did not examine Cpl. Cronic on whether his alco-sensor device was approved by the GBI, nor did it seek to introduce the list of the GBI's approved devices.

Ms. Hill testified, even if Petitioner was not still under the influence of alcohol, he arrived at school late, exhausted, and hung over on an important day of CRCT testing. Moreover, the fact that Ms. Hill allowed Petitioner to return to the conference room to complete the testing after she spoke to Petitioner in the hall does not mean that Petitioner failed to follow generally-recognized professional standards or that his actions, particularly the act of vomiting in the front of the school while hanging out of a car, did not diminish the dignity of the teaching profession.

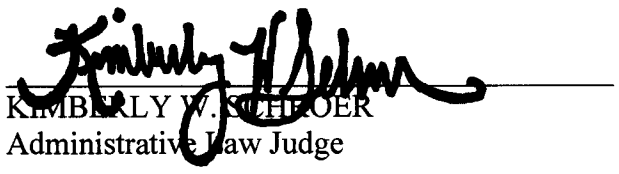
11.

As a result of his violations of Standards 3 and 10, the Court concludes that Petitioner's teaching certificate should be sanctioned. In determining the appropriate sanction, the Court has taken under consideration the isolated nature of this occurrence, Petitioner's otherwise unblemished work record and the high regard of his students and colleagues, and the adjustments to his lifestyle since the incident. Weighing these factors against the violations and Petitioner's failure to fully acknowledge his actions, the Court concludes that the appropriate sanction is a suspension of Petitioner's educator's certificate for a period of sixty contract days, with retroactive credit applied in accordance with the Commission's routine policies and procedures.

IV. DECISION

In accordance with the foregoing findings of fact and conclusions of law, the Court concludes that Petitioner violated the Code of Ethics for Educators and his appeal is **DENIED**. The Court further finds that the recommended sanction of a one-year suspension should be **REDUCED** to sixty contract days.

SO ORDERED THIS 14th day of July, 2016.



KIMBERLY W. SCHROER
Administrative Law Judge