

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF TEACHING

In the Matter of the Application  
of L.C.

**POST-HEARING ORDER TO AMEND  
NOTICE AND ORDER FOR HEARING  
AND PERMIT ADDITIONAL  
PROCEEDINGS**

This matter came on for an evidentiary hearing before Administrative Law Judge LauraSue Schlatter on July 18, 2016, at the Office of Administrative Hearings in St. Paul, Minnesota. Following presentation of their cases, the parties made their closing statements orally.

Nathan J. Hartshorn and Corinne Wright-MacLeod, Assistant Attorneys General, appeared on behalf of the Disciplinary Committee of the Minnesota Board of Teaching (Committee). L.C. (Applicant)<sup>1</sup> appeared on her own behalf without representation.

During preparation of the Findings of Fact, Conclusions of Law, and Recommendation, the Administrative Law Judge determined that the Notice and Order for Hearing in this matter was defective.

Therefore, based upon the record and all of the files and records in this proceeding, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

**ORDER**

1. By **4:30 p.m. on Friday, August 26, 2016**, the Committee shall file with the Office of Administrative Hearings and serve on the Applicant an Amended Notice and Order for Hearing and Prehearing Conference (Amended Notice) to include the allegations concerning the Applicant's November 28, 2011 conviction for careless driving and her March 11, 2011 conduct underlying that conviction. The Amended Notice shall amend both the Allegations and the Issues sections of the Notice and Order for Hearing and Prehearing Conference. No new or additional amendments may be added.

2. Failure by the Committee to file an Amended Notice consistent with this Order shall result in exclusion from the record of all evidence and testimony regarding the Applicant's 2011 conviction and her conduct underlying the conviction.<sup>2</sup>

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<sup>1</sup> The Applicant's name is replaced with initials to protect sensitive medical information at the Applicant's request.

<sup>2</sup> Specifically, Exhibits 2, 3, 7 and 8, as well as testimony regarding the 2011 incident.

3. If the Committee chooses to file an Amended Notice, the Applicant shall have an opportunity to respond. By **4:30 p.m. on Friday, September 2, 2016**, the Applicant shall either: 1) file with the Office of Administrative Hearings and serve on the attorney for the Committee a substantive written response to the Amended Notice; or 2) file with the Office of Administrative Hearings and serve on the attorney for the Committee a letter requesting additional hearing time, including a statement of the reasons that additional hearing time is needed and will not result in repetitious testimony or argument.

4. If the Applicant files a substantive written response to the Amended Notice, the Committee shall have **ten working days** to respond in writing.

5. Any document filed with the Office of Administrative Hearings, or which a party wishes to make part of the record in this matter, may be filed with the Office of Administrative Hearings in any one of the following ways: (1) **by e-Filing** through the Office of Administrative Hearings' e-Filing system at <http://mn.gov/oah/forms-and-filing/efiling/>; (2) **by mail**; (3) **by fax**; or (4) **by personal delivery**. See 2015 Minn. Laws ch. 63, sec. 7 (2016); Minn. R. 1400.5550, subp. 5 (2015). Attorneys representing government agencies are encouraged to e-File. Any party filing proposed hearing exhibits using the e-Filing system or by fax shall also provide a paper copy of the proposed hearing exhibits to the Administrative Law Judge on the same date the exhibits are faxed or e-Filed. Filings are effective on the date the Office of Administrative Hearings receives the filing. See Minn. R. 1400.5550, subp. 5; .5500 J, Q (2015).

6. This Order is issued pursuant to Minn. R. 1400.5500-.5600 (2015).

Dated: August 15, 2016



LAURASUE SCHLATTER  
Administrative Law Judge

## MEMORANDUM

During the introductory proceedings at the beginning of the July 18, 2016 hearing, the Administrative Law Judge reviewed the issues in the case. The issues identified were: 1) whether the Applicant's 2013 DWI conviction constitutes immoral conduct; and 2) whether the Applicant's descriptions to the Board of her conduct during the September 2013 incident that led to that conviction constitutes fraud or misrepresentation. The Administrative Law Judge asked the parties whether they agreed with that statement of the issues. At that point, Mr. Hartshorn, speaking on behalf of the Committee, stated that the Committee had relied upon an additional incident involving the Applicant which occurred in 2011 in making its denial decision. Mr. Hartshorn added that the Committee intended to submit evidence concerning the 2011 incident. The Administrative Law Judge asked Mr. Hartshorn whether the incident was cited in the Board's letter denying the

Applicant's license renewal application (denial letter), which is the Committee's Exhibit 11. A few minutes later, Mr. Hartshorn reported that the 2011 incident was included in the denial letter.

When asked whether the Administrative Law Judge had properly identified the issues, Mr. Hartshorn failed to request permission to amend the Notice and Order for Hearing to include the issue of the 2011 incident as part of the basis for the finding of immoral conduct. Such a motion should have been made and would have been proper under Minn. R. 1400.5600, subp. 5. Without such an amendment, the 2011 incident is not properly an issue in this case.<sup>3</sup> Had Mr. Hartshorn made an oral motion to amend the Notice and Order for Hearing during the preliminary proceedings on the morning of the hearing, the Administrative Law Judge would have granted it, subject to the Applicant's right to request a delay or continuance had the Applicant felt the need for one.

The Applicant was aware of the issue of the 2011 incident. It was in the denial letter, and the Applicant addressed it in her written response to the denial letter, as shown in the Applicant's Exhibit 104. Nonetheless, based on the requirements in Minn. R. 1400.5600, subp. 5, and basic notions of due process, the Administrative Law Judge would have permitted the Applicant a reasonable amount of time to prepare an additional response had she requested it.

Therefore, because the hearing was allowed to continue as though the original Notice and Order for Hearing had been amended, the Administrative Law Judge is permitting the Committee an opportunity to retroactively cure its defective pleading by amending the Notice and Order for Hearing to include the 2011 conviction and the conduct underlying the conviction. However, to ensure the Applicant's rights are fully protected, she will have the opportunity to submit additional written argument, or the opportunity to request additional hearing time if she can demonstrate that is necessary to present testimony.

**L. S.**

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<sup>3</sup> Minn. R. 1400.5600, subp. 2