STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. LUCIE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 13-0410TTS

JOHN CONTOUPE,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case before Edward T. Bauer, an Administrative Law Judge of the Division of Administrative Hearings, on June 7 and August 23, 2013, by video teleconference at sites in Tallahassee and Port St. Lucie, Florida.

APPEARANCES

For Petitioner: Leslie Jennings Beuttell, Esquire
David Miklas, Esquire
Richeson and Coke, P.A.
Post Office Box 4048
Fort Pierce, Florida 34948

For Respondent: Thomas L. Johnson, Esquire
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STATEMENT OF THE ISSUE

Whether just cause exists to terminate Respondent's employment with the St. Lucie County School Board.

PRELIMINARY STATEMENT

On or about January 8, 2013, Petitioner St. Lucie County School Board ("Petitioner" or "School Board") provided written notification to Respondent that it intended to initiate proceedings to terminate his employment. Thereafter, Petitioner executed a "Statement of Charges and Petition for Termination" ("Complaint"), which alleged, among other things, that Respondent was guilty of misconduct in office, immorality, and/or gross insubordination; the Complaint further alleged that Respondent had run afoul of multiple School Board rules. Respondent timely requested a formal administrative hearing to contest Petitioner's action, and, on January 24, 2013, the matter was referred to the Division of Administrative Hearings ("DOAH") for further proceedings.

As noted above, the final hearing was held on June 7 and August 23, 2013, during which Petitioner presented the testimony of six witnesses (Mary Boyle, Marianne McCullough, Susan Ranew, Gail Richards, Dr. Mark Rendell, and Dr. Jennifer Lawrence McQuiddy) and introduced 40 exhibits: 1 through 21; 22 (pages 392-393 and 396-399); 23A (pages 14-16); 24A; 26 through 38; 39 (pages 72-74); 40; and 41. Respondent testified on his own behalf, called one other witness (James Hall), and introduced eight exhibits: 3; 4; 6 through 10; and 12. At the conclusion of the hearing, the undersigned granted the parties'

request to extend the proposed recommended order deadline to 30 days from the filing of the transcript with DOAH.

The final hearing Transcript was filed on September 13, 2013. Both parties timely filed proposed recommended orders, which the undersigned has considered in the preparation of this Recommended Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the specific conduct at issue.

FINDINGS OF FACT

I. The Parties/Background

1. Petitioner is the entity charged with the duty to operate, control, and supervise the public schools within St. Lucie County, Florida.

2. In or around 1987, Respondent graduated from Florida Atlantic University with a bachelor of science degree in education. It is undisputed that Respondent holds no other professional degree, much less one that would permit him to utilize the title "doctor." (The significance of this point will be illustrated shortly.)

3. The following year, in 1988, the School Board hired Respondent as a classroom teacher, a position he has held since that time. By all appearances, Respondent's employment with the School Board proceeded without incident for more than 20 years,

during which period he earned favorable performance evaluations and received no disciplinary sanctions.

4. In October of 2011, and as a minor bump in the road, the principal of Port St. Lucie High School ("PSLHS"), Dr. Mark Rendell, issued Respondent a "letter of concern" after he received information that Respondent had criticized a PSLHS graduate in a Facebook posting. Among other things, Dr. Rendell's letter cautioned Respondent that communications with members of the public should be "carried out in an ethical and professional manner," and that educators are held to a "higher standard than other citizens."

5. Respondent's real troubles with the School Board began on May 18, 2012, with his arrest in Okeechobee County in connection with several criminal offenses——charges to which he would later plead no contest. The conduct that led to the arrest is fully explicated below; suffice it to say for the moment that Respondent allegedly utilized an inauthentic animal inspection certificate in connection with his sale (and shipment) of a dog to an out-of-state purchaser, Gail Richards.

6. The School Board's ensuing investigation into Respondent's behavior, which culminated in the filing of the instant Complaint, uncovered other instances of alleged wrongdoing, namely: that Respondent had sold and shipped animals with bogus inspection records in two transactions that preceded

the sale to Ms. Richards; and that, in connection with his service as a dog judge for the American Kennel Club, Respondent had misrepresented his educational qualifications by using the title "doctor." The undersigned begins with the facts relating to Respondent's transactions with Ms. Richards and the other purchasers.

II. Transactions at Issue

7. At all times relevant to this proceeding, Respondent bred and sold animals——specifically, cats and longhaired dachshunds——under the moniker "Aviance Show Dogs." Respondent's activities in this regard, which occurred during his employment with the School Board, occasionally involved the shipment of animals by commercial aircraft to out-of-state purchasers.

8. The School Board alleges, and Respondent does not dispute, that an animal shipped from state to state via a commercial airline must be accompanied by a health inspection certificate, a document formally known as a "Certificate for Interstate or International Movement of Small Animals" (hereinafter "inspection certificate"). The pre-printed language of an inspection certificate solicits, among other information, the name and contact information of the animal's owner, a description of the animal, the identity and address of the purchaser, and, most important, a certification from a licensed veterinarian that the animal has been vaccinated for rabies, as

well as examined and found to be free from clinical signs of contagious disease.

9. As alluded to previously, the School Board contends that, in connection with three separate transactions that occurred over a span of 19 months, Respondent utilized inspection certificates that were fraudulent or otherwise illegitimate. The first transaction in question, which took place in late February or early March of 2009, involved Respondent's sale and shipment of a dachshund (named "Uno") to co-purchasers who resided in the state of Texas. Oddly, the dachshund, which Respondent shipped from Florida by commercial airline, was accompanied by a "State of California Department of Food and Agriculture" inspection certificate. Even more peculiar is the fact that, notwithstanding Respondent's admission in this proceeding that Uno had never been to California, the inspection certificate's handwritten entries indicated: that Uno was evaluated for signs of contagious disease at the Santa Clara Pet Hospital on February 28, 2009; that "Jennifer W. Lawrence," a California veterinarian, performed the examination (the inspection certificate bears what purports to be her signature); that Dr. Lawrence holds California license number 12620; and that, on the date of the examination, a rabies vaccine was administered.

10. As it happens, there *is* a Dr. Jennifer Lawrence who holds license number 12620 and practices veterinary medicine at

the Santa Clara Pet Hospital in Santa Clara, California; the problem, though, is that Dr. Lawrence——who, prior to this proceeding, had never heard of Respondent——credibly testified that she neither examined Uno nor signed the inspection form. What is more, Dr. Lawrence's testimony establishes that Uno has never been examined or treated by *any* veterinarian employed at the Santa Clara Pet Hospital. In other words, the veterinary information handwritten on the face of Uno's inspection certificate is false.

11. Three months later, on June 5, 2009, Respondent shipped a cat named "Beau" by commercial aircraft from Florida to a purchaser in Texas. The "State of California" inspection certificate accompanying the shipment listed Respondent's name and address, the purchaser's contact information, and the cat's name, age, and gender. Although the inspection certificate's handwritten notations also indicate that Dr. Jennifer Lawrence examined Beau at the Santa Clara Pet Hospital (on June 4, 2009, a day Respondent concedes[1/] he was not in California), Dr. Lawrence's credible testimony establishes, once again, that she did not sign the certificate, and, further, that the animal in question had never been evaluated or vaccinated by any veterinarian at her clinic.

12. By all appearances, the two transactions discussed above did not result in any direct, adverse consequences to

Respondent; the same cannot be said for the next sale at issue, which involved Respondent's shipment of a dachshund (identified as "Jackson") to Ms. Richards. It is undisputed that, on or about October 16, 2010, Respondent shipped Jackson by commercial airline from Florida to Missouri, where Ms. Richards resided. As with the other sales, Jackson was accompanied by a "State of California" inspection certificate that included Respondent's name and contact information, the name of the purchaser, and a description of the dog. The face of the inspection certificate also indicated that "Dr. Drew Lawrence" had examined and vaccinated Jackson at the "San Jose Animal Hospital" on October 14, 2010. (Whether such a veterinarian or clinic actually exists is of no moment, for Respondent admits that Jackson was never examined by a "Drew Lawrence" in the state of California or anywhere else.[2/])

13. The peculiarities of Jackson's inspection certificate did not go unnoticed: a short time after delivery, Ms. Richards contacted Respondent and inquired about the handwritten notations regarding the dog's purported examination and vaccination. Dissatisfied with Respondent's explanation, Ms. Richards ultimately filed a complaint with the Florida Department of Agriculture.

14. Thereafter, on June 7, 2012, the State of Florida charged Respondent by information with three criminal offenses,

all of which related to the transaction with Ms. Richards. In particular, Respondent was charged with: forgery of a certificate of veterinary inspection, a third degree felony[3/] (Count I); failure to inoculate a dog or cat transported/offered for sale, a first degree misdemeanor (Count II); and failure to include a health certificate with a dog or cat offered for sale, a first degree misdemeanor[4/] (Count III). Some six months later, on December 5, 2012, Respondent reached a plea agreement with the State, the terms of which called for the dismissal of Count II and the entry of no contest pleas to Counts I and III. Pursuant to the terms of the agreement, Respondent was adjudicated guilty of the misdemeanor charge and sentenced to a probationary term of 12 months. With respect to the felony offense, the adjudication of guilt was withheld and Respondent was placed on probation for five years; as a special condition of that probation, Respondent was ordered to make restitution to Ms. Richards in the amount of $2,050——Jackson's approximate purchase price.

15. Although Respondent does not deny that the three inspection certificates at issue contained illegitimate veterinary information, he asseverates that the inauthentic entries were made without his knowledge or involvement. In particular, Respondent claims that the three animals in question were examined at his residence (in Okeechobee County) by a

veterinarian who operated a mobile clinic; that the veterinarian supplied the inspection certificates; that he (Respondent) filled out some of the information on each of the forms, such as his name and address, the identities of the purchasers, and the names of the animals; and that the mobile veterinarian was responsible for the bogus vaccination and examination entries, which Respondent asserts he never saw.

16. For a multitude of reasons, Respondent's explanation is rejected. First, Respondent's claim that he has no recollection of the mobile veterinarian's identity or the name of the clinic (a business he purportedly used on at least three occasions over a span of more than 19 months) is dubious at best. Further, it is highly improbable that Respondent could have managed to fill out some of the information at the top of each form——which he concedes he did——without taking notice of the headers reading "State of California." If that were not enough, Respondent's version of the events contemplates, incredibly, that the mobile veterinarian, on his or her own accord and without Respondent's involvement, affixed (to two of the forms) "Jennifer Lawrence" and "Santa Clara Pet Hospital"——a veterinarian and animal clinic used by Margaret Peat, a longtime acquaintance of Respondent's and a person with whom Respondent has co-owned various animals.[5/]

17. Finally, the record contains written statements from Respondent, albeit in connection with different transactions than

the three at issue in this matter, which reflect his willingness to utilize illegitimate inspection certificates. For instance, on March 1, 2010, Respondent posted, via Facebook, the following message to Ms. Peat concerning an impending shipment of two dogs, "Blossom" and "Dimitri":

> That would be the perfect home for Blossie. I have a show 12-14 of March but I can run her to the airport any other day. I'd like to ship Dimitri at the same time to you so that I can combine the trip and the shipping. . . . PBI is the airport, use West Palm Beach and use Continental or Delta. I think both do prepay. I will use two of the blank health certificates you gave me so there will not be a charge for that . . . .

Petitioner's Exhibit 23A, p. 16 (emphasis added). Subsequently, on April 19 and May 3, 2011, Respondent wrote as follows to a buyer identified as Jacqulyn Waggoner:

> Sorry for the delay. . . . I can have [the dog] out this Friday. The crate you used is way too small so I'll buy the next size up. I will do a health certificate from another dog so expenses will stay at a minimum.
>
> * * *
>
> So is [the flight] paid and confirmed? I'm sending [the dog] with a fake health certificate so you don't have a charge on that.

Petitioner's Exhibit 22, pp. 392-393; 399 (emphasis added).[6/]

18. Based upon the findings detailed above, it is determined that Respondent was aware of, and responsible for, the

illegitimate notations to the three inspection certificates in question.[7/]

III. Other Allegations

19. As noted previously, the Complaint further alleges that Respondent has inappropriately utilized the title "doctor" in connection with his service as a dog judge for the American Kennel Club ("AKC"), and that such conduct occurred during his term of employment with the School Board.

20. The first documented instance of such behavior occurred in 2002, when Respondent submitted several applications to the AKC for placement on its registry of dog judges. In one of the applications, dated March 28, 2002, Respondent wrote his name as: "John S. Contoupe, DR." The other application reads, similarly, "John S. Contoupe DR." Not surprisingly, the AKC identifies Respondent in its directory of judges as "Dr. John S. Contoupe."

21. Subsequently, in late 2010 or early 2011, Respondent traveled to Russia to judge a dog show for an international organization. Upon his return, Respondent drafted an article (for a hunting publication of some sort) in which he described his overseas experience. The article, which Respondent disseminated to the publisher by e-mail using his School Board account, contained the following closing: "Respectfully, Dr. John S. Contoupe."[8/]

22. Respondent's inappropriate use of the title "doctor" has not been limited to written expression. Indeed, an acquaintance of Respondent's in the dog show community, Marianne McCullough, credibly testified that, during their first meeting in or around 2010, Respondent introduced himself as "doctor." Ms. McCullough further recounted, again credibly, that she has observed other persons address Respondent as "doctor" on various occasions and that Respondent never corrected them. Another witness called by the School Board, Mary Boyle (who likewise met Respondent at a dog show roughly four years ago), testified truthfully that she believed——erroneously, as she later found out——that Respondent held a doctoral degree, that she would introduce him to others as "doctor," and that Respondent never corrected her.

IV. Ultimate Findings

23. It is determined, as a matter of ultimate fact, that Respondent is guilty of misconduct in office by virtue of his violation of School Board Policy 6.301(3)(b)(vii), a provision that subjects an employee to discipline, including termination, upon a conviction for any criminal act that constitutes a misdemeanor.

24. It is determined, as a matter of ultimate fact, that Respondent is not guilty of immorality, as that offense is defined by the State Board of Education. Although Respondent's

use of the title "doctor" and falsification of the inspection certificates were unquestionably dishonest, there has been no showing that such behavior, which occurred outside the presence of students, brought the education profession into public disgrace or impaired Respondent's service to the community.

25. It is determined, as a matter of ultimate fact, that Respondent is not guilty of gross insubordination.

26. It is determined, as a matter of ultimate fact, that the disposition of Respondent's criminal offenses did not involve a conviction for, or plea of guilty to, a crime involving moral turpitude.

CONCLUSIONS OF LAW

I. Jurisdiction

27. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this case pursuant to sections 120.569 and 120.57(1), Florida Statutes.

II. The Burden and Standard of Proof

28. A district school board employee against whom a disciplinary proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although the notice "need not be set forth with the technical nicety or formal exactness required of pleadings in court," it should "specify the [statute,] rule, [regulation, policy, or collective bargaining provision] the [school board] alleges has been

violated and the conduct which occasioned [said] violation." Jacker v. Sch. Bd. of Dade Cnty., 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983)(Jorgenson, J., concurring).

29. Once the school board, in its notice of specific charges, has delineated the offenses alleged to justify termination, those are the only grounds upon which dismissal may be predicated. See Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Dep't of Bus. & Prof'l Reg., 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

30. In an administrative proceeding to suspend or dismiss a member of the instructional staff, the school board, as the charging party, bears the burden of proving, by a preponderance of the evidence, each element of the charged offense. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995). The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000); see also Williams v. Eau Claire Pub. Sch., 397 F.3d 441, 446 (6th Cir. 2005)(holding trial court properly defined the preponderance of the evidence standard as "such evidence as, when considered and compared with that opposed to it, has more convincing force and

produces . . . [a] belief that what is sought to be proved is more likely true than not true").

31. The instructional staff member's guilt or innocence is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

III. The Charges Against Respondent

32. Pursuant to section 1012.33(6)(a), Florida Statutes, Petitioner is authorized to suspend or dismiss a member of its instructional staff for "just cause." Among other things, "just cause" includes "immorality, misconduct in office, gross insubordination . . . or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude." § 1012.33(1)(a), Fla. Stat. In addition, the violation of a school board rule can supply just cause for an educator's dismissal. St. Lucie Cnty. Sch. Bd. v. Baker, Case No. 02-973, 2002 Fla. Div. Adm. Hear. LEXIS 1335, *61 (Fla. DOAH Dec. 31, 2002)("[O]ther wrongdoing, such as the violation of a district school board rule, may also constitute 'just cause'").

33. In the Complaint, the School Board alleges that Respondent is guilty of misconduct in office, immorality, gross insubordination, a crime of moral turpitude, and/or violations of

multiple School Board rules, and that, as a consequence, just cause exists to terminate his employment. Each offense is discussed separately below, beginning with the charge of misconduct in office.

A. Misconduct in Office

34. In its Proposed Recommended Order, the School Board argues, inter alia, that Respondent is guilty of misconduct in office by virtue of his December 5, 2012, misdemeanor conviction. The disposition date of Respondent's criminal case is significant, for the current definition of misconduct in office, which took effect five months before the conviction, encompasses violations of adopted school board rules:

> (2) "Misconduct in Office" means one or more of the following:
>
> (a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6B-1.001, F.A.C.;
>
> (b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C.;
>
> (c) A violation of the adopted school board rules;
>
> (d) Behavior that disrupts the student's learning environment; or
>
> (e) Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

Fla. Admin. Code R. 6A-5.056(2)(emphasis added).[9/]

35. In turn, and likewise in effect at the time of Respondent's misdemeanor conviction, was School Board Policy 6.301(3)(b)(vii), which provides that employees of the St. Lucie County Public Schools are subject to disciplinary action, including termination, upon a "[c]onviction for a criminal act that constitutes a misdemeanor."

36. Returning to the facts at hand, it is undisputed that, on December 5, 2012, Respondent was adjudicated guilty of a misdemeanor offense (specifically, section 828.29(3), Florida Statutes). By virtue of that conviction, Respondent violated School Board Policy 6.301(3)(b)(vii) and, as a necessary consequence, rule 6A-5.056(2)——a provision which, as noted above, defines misconduct in office to include a violation of an adopted school board rule. As such, Respondent is guilty of misconduct in office.[10/] See Miami-Dade Cnty. Sch. Bd. v. Brown, Case No. 13-1890, 2013 Fla. Div. Adm. Hear. LEXIS 689, *12-13 (Fla. DOAH Sept. 30, 2013)("Pursuant to rule 6A-5.056(2)(c), the violation of the foregoing School Board policies constitutes misconduct in office."). In light of this conclusion, the undersigned need not address the School Board's alternative arguments in support of this charge.

B. Immorality

37. The School Board alleges, next, that Respondent's conduct vis-à-vis the inspection certificates and his use of the

title doctor constitute acts of "immorality," which is defined as:

> [C]onduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

Fla. Admin. Code R. 6B-4.009(2).[11/]

38. Accordingly, in order to sustain a charge of immorality, the School Board must demonstrate: a) that he engaged in behavior "inconsistent with the standards of public conscience and good morals, and b) that the conduct was sufficiently notorious so as to [1] disgrace the teaching profession *and* [2] impair [Respondent's] service in the community." McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996).

39. The initial prong of the foregoing test has been satisfied, as Respondent's falsification of the inspection certificates is plainly incongruous with accepted moral principles. See Filippi v. Smith, Case No. 07-4628, 2008 Fla. Div. Adm. Hear. LEXIS 726 (Fla. DOAH June 20, 2008)(observing that deceptive conduct is in conflict with widely accepted moral principles); Miami-Dade Cnty. Sch. Bd. v. Singleton, Case No. 07-0559, 2006 Fla. Div. Adm. Hear. LEXIS 614, *29 (Fla. DOAH June 21, 2007)("[H]onesty and truth-telling are transcendent

principles of good behavior——precepts of public morality——which are violated by deceptive behavior."). As explained above, however, this does not end the inquiry: the charge of immorality also requires evidence that the misconduct was sufficiently notorious so as to bring the teaching profession into disgrace and impair Respondent's service in the community.

40. Regarding the question of notoriety, the record is devoid of proof that Respondent's conduct was generally or widely known by students, parents, or other residents of St. Lucie County.[12/] Broward Cnty. Sch. Bd. v. Deering, Case No. 05-2842, 2006 Fla. Div. Adm. Hear. LEXIS 367, *13-14 (Fla. DOAH July 31, 2006)(explaining, in the context an immorality charge, that the term "notorious" means "generally known and talked of" or "widely and unfavorably known."). At best, the evidence merely demonstrates that Respondent's conduct was known by a few School Board employees, select members of the dog show community (none of whom reside in St. Lucie County), and an out-of-state veterinarian.[13/]

41. Even assuming, arguendo, that Respondent's conduct generated the requisite degree of notoriety, the School Board has failed to prove that Respondent's service in the community has been impaired——an element of the offense that cannot be inferred in cases where, as here, the purported immoral conduct occurred neither in the classroom nor in the presence of students. See

Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127, 128 (Fla. 2d DCA 2000)(explaining that impairment cannot be inferred where conduct was of a "private immoral nature"); Crist v. Mitchell, Case No. 02-2999PL, 2003 Fla. Div. Adm. Hear. LEXIS 263, *24-25 (Fla. DOAH Mar. 14, 2003)("[I]mpairment may be inferred if the immoral conduct occurred in the classroom or in the presence of students, but not if the misconduct was of a private nature not involving students."). The School Board's principal evidence regarding the issue of impairment——the testimony of Dr. Rendell, who opined that he has "lost confidence" in Respondent's ability to carry out the duties of an educator and would not "feel comfortable" returning him to the classroom——is plainly insufficient to discharge the School Board's burden.[14/] See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 478 (Fla. 2d DCA 1996)(reversing final order of dismissal where evidence failed to demonstrate teacher's impaired effectiveness in the community; testimony from school officials was unsupported by "specific information from students, parents, or coworkers"); MacMillan v. Nassau Cnty. Sch. Bd., 629 So. 2d 226, 230 (Fla. 1st DCA 1993)(holding superintendent's conclusory testimony that teacher's effectiveness had been seriously reduced was insufficient to prove impairment); Okaloosa Cnty. Sch. Bd. v. McIntosh, Case No. 08-3630, 2009 Fla. Div. Adm. Hear. LEXIS 1455, *32, 49 (Fla. DOAH Apr. 1, 2009)(finding teacher not guilty of

immorality where school board "did not present a single parent, student or community resident . . . which would support a claim that any misconduct was so serious as to impair his effectiveness as an employee . . . . Rather, [the school board] relied upon . . . conclusory testimony concerning lost effectiveness by [teacher's principal and the school board's human resources officer]").

42. For the reasons elucidated above, Respondent is not guilty of immorality.

C. Gross Insubordination

43. As an additional charge, it is alleged in the Complaint that Respondent is guilty of gross insubordination, an offense that, during the time period relevant to this proceeding, was defined as:

> [A] constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

Fla. Admin. Code R. 6B-4.009(4).

44. In its Proposed Recommended Order, the School Board contends that Respondent's falsification of the inspection certificates and use of the title "doctor" ran afoul of Dr. Rendell's directive that dealings with members of the public be "carried out in an ethical and professional manner."

45. The undersigned rejects this argument, for Dr. Rendell's directive, although plainly reasonable, was issued on October 19, 2011, after the behavior at issue took place. (As detailed earlier, the three transactions occurred on March 7, 2009, June 5, 2009, and October 16, 2010; the AKC applications were submitted in 2002; the e-mail in which Respondent referred to himself as "doctor" was sent in February 2011; and, with respect to Respondent's oral use of "doctor," the witness testimony merely establishes a general timeframe of 2010 or later——that is, the record does not support a specific finding that Respondent engaged in such behavior on or after October 19, 2011.) As it is impossible to intentionally violate a directive that, at the time of the conduct in question, had yet to be issued, Respondent is not guilty of gross insubordination. See Forehand v. Sch. Bd. of Gulf Cnty., 600 So. 2d 1187, 1193 (Fla. 1st DCA 1992)(holding that gross insubordination requires proof that the educator deliberately violated the directive at issue).[15/]

D. Moral Turpitude

46. Turning to the School Board's final charge, it is necessary to recite, once again, the outcome of Respondent's criminal prosecution. As detailed previously, Respondent entered pleas of no contest to two criminal offenses: failure to include a health certificate with a dog offered for sale, a first degree

misdemeanor (section 828.29(3), Florida Statutes); and forgery of a certificate of veterinary inspection, a third degree felony (section 585.145(3), Florida Statutes). The sentencing court adjudicated Respondent guilty of the misdemeanor offense, but withheld the adjudication of guilt with respect to the felony charge. According to the School Board, this disposition resulted in a conviction of a crime involving moral turpitude. The undersigned disagrees.

47. Pursuant to section 1012.33(1)(a), "just cause" to suspend or terminate employment includes instances where an educator was "convicted or found guilty of, or enter[ed] a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude." In turn, Florida Administrative Code Rule 6A-5.056(8), which was in effect on the date of Respondent's sentencing, defines "crime involving moral turpitude" as follows:

> (8) "Crimes involving moral turpitude" means offenses listed in Section 1012.315, F.S., and the following crimes:
>
> (a) Section 775.085, F.S., relating to evidencing prejudice while committing offense, if reclassified as a felony.
>
> (b) Section 782.051, F.S., relating to attempted felony murder.
>
> (c) Section 782.09(1), F.S., relating to killing of unborn quick child by injury to mother.
>
> (d) Section 787.06, F.S., relating to human trafficking.

> (e) Section 790.166, F.S., relating to weapons of mass destruction.
>
> (f) Section 838.015, F.S., relating to bribery.
>
> (g) Section 847.0135, F.S., relating to computer pornography and/or traveling to meet a minor.
>
> (h) Section 859.01, F.S., relating to poisoning of food or water.
>
> (i) Section 876.32, F.S., relating to treason.
>
> (j) An out-of-state offense, federal offense or an offense in another nation, which, if committed in this state, constitutes an offense prohibited under Section 1012.315(6), F.S.

(emphasis added).

48. By its plain terms, rule 6A-5.056(8) provides an exhaustive list of "crimes of moral turpitude"——i.e., the offenses identified in paragraphs (8)(a) through 8(j) or those listed in section 1012.315, Florida Statutes. As neither crime to which Respondent pleaded no contest is specifically enumerated in section 1012.315 or the body of the rule, the instant charge fails.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the St. Lucie County School Board enter a final order finding Respondent: guilty of violating School Board

Policy 6.301(3)(b)(vii); guilty of violating Florida Administrative Code Rule 6A-5.056(2); not guilty of immorality; not guilty of gross insubordination; and not guilty of a crime of moral turpitude. It is further RECOMMENDED that the School Board terminate Respondent's employment.

DONE AND ENTERED this 7th day of November, 2013, in Tallahassee, Leon County, Florida.

EDWARD T. BAUER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of November, 2013.

ENDNOTES

[1/] See Petitioner's Exhibit 24A, p 63.

[2/] See Petitioner's Exhibit 24A, pp. 45-46.

[3/] § 585.145(3), Fla. Stat. (2010).

[4/] § 828.29(3), Fla. Stat. (2010).

[5/] See Petitioner's Exhibit 24A, p. 154; Final Hearing Transcript, p. 313.

[6/] Respondent's testimony that his statements to Ms. Peat and Ms. Waggoner were merely "jokes" is rejected without further discussion.

[7/] In reaching this determination, the undersigned has refrained from comparing the known examples of Respondent's handwriting (e.g., the entries to the inspection certificates concerning Respondent's address and the purchasers' identities) and the illegitimate veterinary notations. See Charles W. Ehrhardt, Ehrhardt's Florida Evidence, § 901.4 (2008 ed.)(explaining that a factfinder's comparison of a disputed writing with a genuine exemplar is permitted only where an expert or skilled witness has testified that the disputed writing and the exemplar were written by the same person); see also Proctor v. State, 97 So. 3d 313, 315 (Fla. 5th DCA 2012).

[8/] See Petitioner's Exhibit 13.

[9/] The current version of rule 6A-5.056 took effect on July 8, 2012, and therefore applies to Respondent's December 5, 2012, misdemeanor conviction. See Miami-Dade Cnty. Sch. Bd. v. Mobley, Case No. 12-1852, 2013 Fla. Div. Adm. Hear. LEXIS 225, *11 n.4 (Fla. DOAH Apr. 17, 2013)("The most recent amendment to rule 6A-5.056, adopted on July 8, 2012 . . . .").

[10/] To be clear, and in response to a concern raised by Respondent in his Proposed Recommend Order, the undersigned has not concluded that the misdemeanor conviction renders him "ineligible" for employment; rather, Respondent's conviction subjects him to discipline by the School Board, which may include the termination of his instructional position. In the event Respondent is ultimately terminated in this matter, he would be free——and statutorily eligible——to seek employment with another school district.

[11/] On July 8, 2012, rule 6B-4.009 was revised and renumbered as Florida Administrative Code Rule 6A-5.056. However, as rule 6A-5.056 was not in effect at the time of the alleged immoral acts (i.e., Respondent's creation of the illegitimate certificates and use of the title "doctor"), rule 6B-4.009 controls with respect to this particular charge. See Miami-Dade Cnty. Sch. Bd. v. Mobley, Case No. 12-1852, 2013 Fla. Div. Adm. Hear. LEXIS 225, *11 n.4 (Fla. DOAH Apr. 17, 2013)("The most recent amendment to rule 6A-5.056, adopted on July 8, 2012, does not apply to this proceeding because the conduct at issue occurred before the amendment's effective date."). However, and as noted elsewhere

in this Order, rule 6A-5.056 applies to Respondent's misdemeanor conviction, which occurred on December 5, 2012.

[12/] Susan Ranew, the School Board's assistant superintendent for human resources, conceded that Respondent's arrest "didn't make the paper in St. Lucie County," and, moreover, that the School Board received no complaints from parents or students regarding his behavior. See Final Hearing Transcript p. 207, line 19; p. 216. Likewise, Dr. Rendell testified as follows:

> Q So you do have instances where parents of students would come to you and share some concerns about a teacher?
>
> A Yes.
>
> Q Was any of this ever one of those times? Did anybody come to you and say Mr. Contoupe is holding himself out as a doctor?
>
> A No.
>
> Q Did anybody ever come to you and say Mr. Contoupe is out there forging health certificates?
>
> A No.

Final Hearing Transcript, p. 299.

[13/] During the final hearing, the School Board attempted, unsuccessfully, to introduce the May 23, 2012, edition of the Okeechobee News, which included a brief mention——in the bottom corner of page seven——of Respondent's arrest. (The undersigned excluded the article due to the absence of evidence that the Okeechobee News is circulated in St. Lucie County.) Even assuming the article was admissible, the record evidence would nevertheless remain far short of establishing notoriety. See Okaloosa Cnty. Sch. Bd. v. McIntosh, Case No. 08-3630, 2009 Fla. Div. Adm. Hear. LEXIS 1455, *44-45 (concluding reports of teacher's behavior in a "limited number of newspaper articles" were insufficient to demonstrate notoriety); endnote 12, supra.

[14/] The School Board also presented the testimony of Susan Ranew, who speculated, unpersuasively, that Respondent's conduct "could" lead to reduced effectiveness if students learned of his behavior. See Final Hearing Transcript, p. 207, line 23.

However, the record is devoid of evidence that any student was aware of Respondent's criminal offenses, the underlying misdeeds that led to the charges, or his inappropriate use of the title "doctor."

[15/] Although not specifically argued by the School Board, it should be noted that Respondent's entry of no contest pleas (on December 5, 2012, after the issuance of the directive) did not rise to the level of gross insubordination. There is no evidence that Respondent entered the plea with the deliberate intent to violate Dr. Rendell's directive, see Forehand v. School Board of Gulf County, 60 So. 2d 1187, 1193 (Fla. 1st DCA 1992), and, in any event, an isolated act does not constitute a continuing pattern of behavior. See Smith v. Sch. Bd. of Leon Cnty., 405 So. 2d 183, 185 (Fla. 1st DCA 1981)("[Appellant's] actions did not meet the definition of 'gross insubordination' since they were . . . isolated . . . and could not have been deemed 'constant or continuing.'").

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.