STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0049

In the Matter of the Short Call Substitute Teaching License
Application of Jeronimo Yanez.

Filed November 28, 2022
Reversed and remanded
Segal, Chief Judge

Minnesota Professional Educator Licensing and Standards Board

Robert J. Fowler, Fowler Law, L.L.C., Little Canada, Minnesota (for relator Jeronimo Yanez)

Keith Ellison, Attorney General, David Cullen, Nicholas Lienesch, Assistant Attorneys General, St. Paul, Minnesota (for respondent Minnesota Professional Educator Licensing and Standards Board)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Wheelock, Judge.

SYLLABUS

To avoid constitutional infirmity, "immoral character or conduct" that is grounds for denial of an application for a teaching license under Minn. Stat. § 122A.20, subd. 1(a)(1) (2020), must relate to professional morals in the occupation of teaching and indicate that the individual is unfit to teach.

OPINION

SEGAL, Chief Judge

In this certiorari appeal, relator Jeronimo Yanez challenges a decision by respondent Minnesota Professional Educator Licensing and Standards Board (the board) denying his application for a short-call substitute teaching license. While working as a police officer,

Yanez fatally shot Philando Castile, a St. Paul school district employee, in 2016. The board denied the license on the grounds that the fatal shooting, and the traffic stop that preceded it, evidenced "immoral character or conduct" within the meaning of Minn. Stat. § 122A.20, subd. 1(a)(1).

Yanez asserts three arguments on appeal. First, he argues that the board erred by placing the burden of proof on him. Second, he argues that the statutory standard allowing denial of a teaching license for "immoral character or conduct" is unconstitutionally vague. Third, he maintains that the board's decision is not supported by substantial evidence, is arbitrary and capricious, and is affected by other legal errors. We reject Yanez's arguments regarding the burden of proof and other legal errors but agree that the "immoral character or conduct" standard is impermissibly vague. We conclude, however, that this defect can be cured by a narrowing construction, and we reverse and remand for reconsideration of Yanez's application in light of the narrowing construction.

FACTS

In February 2020, Yanez applied to the board for a three-year short-call substitute teaching license. At the time he submitted the application, Yanez had a part-time position teaching Spanish at a parochial school. One of the questions on the license application asked: "Have you ever been acquitted or found not guilty of a criminal offense involving sexual conduct, homicide, assault or any other crime involving violence?" Yanez answered yes and indicated that he "was involved in a Deadly Use of Force Situation" when he was on patrol as a peace officer with the City of St. Anthony in July 2016, that he was criminally charged as a result, and that he was acquitted of those charges in July 2017. Yanez also

answered yes to a question about whether he had "ever voluntarily surrendered an education or other occupational license" and indicated that he had voluntarily surrendered his peace officer's license.

The board referred Yanez's application to its disciplinary committee for investigation. The committee asked Yanez for additional information about the criminal case. In his reply, Yanez stated that he had been "wrongly accused of a crime while on duty as a St. Anthony Police Officer . . . and was acquitted." Yanez further stated that he "decided to retire from police work" after the criminal trial, that "[s]econd chances are important in education and life," and that "[w]orking as a substitute teacher certainly would be for [him]."

The committee sent Yanez a letter several months later informing him that "[t]he Committee intends to recommend denial [of the application] because it believes that [Yanez's] involvement in the shooting and death of Philando Castile is misconduct which is a ground for the Board to refuse to issue a teaching license." The letter also informed Yanez that he had the right to administratively appeal the decision.

Yanez appealed, and an administrative-law judge (ALJ) held a contested-case hearing in July 2021. At the hearing, the ALJ heard testimony from six witnesses, including expert witnesses. The board submitted a report and testimony by Joseph Gothard, Ed.D., the superintendent of the St. Paul Public Schools, as an expert "in the educational field and in the ethics of the educational profession." Yanez submitted expert testimony from an experienced, retired police sergeant, Gary Cayo, as a "police morality

expert." The board also submitted the transcript and exhibits from Yanez's criminal trial, along with several television and print media stories.

The evidence and testimony at the contested-case hearing reflect that Yanez stopped Castile's car because Yanez thought Castile, a Black man, looked like a suspect in an armed robbery of a convenience store that had occurred in the area a few days earlier. Yanez radioed right before the stop that "the two occupants . . . just look like the . . . people that were involved in our robbery" and then specified that "[t]he driver looks more like one of our suspects, just [be]cause of the wide set nose."

Yanez ran the vehicle's license plate and discovered that the car was registered to Castile, it had not been reported stolen, and there were no warrants for Castile. The vehicle, however, had an inoperable brake light. Yanez initiated a traffic stop, and Castile pulled over. Castile, his girlfriend D.R., and D.R.'s four-year-old daughter were in the vehicle. Yanez informed Castile that he pulled the vehicle over because of the inoperable brake light. After Yanez asked Castile for his license and insurance, Castile responded, "Sir, I have to tell you I do have a . . . firearm on me." The following exchange then occurred:

Yanez:	Don't reach for it then.
Castile:	I'm, I, I was reaching for—
Yanez:	Don't pull it out.
Castile:	I'm not pulling it out.
D.R.:	He's not—
Yanez:	Don't pull it out.

At that point, Yanez fired his weapon seven times. Five of the shots hit Castile and caused his death. The two other shots lodged in the car, including one that passed through the

back seat. The spot where the bullet hit the back seat was only 16 or 17 inches from where the four-year-old child was sitting in her car seat.

D.R. used her cellphone to broadcast on Facebook part of the incident shortly after Castile was shot. The video shows Castile covered in blood, struggling to breathe. Yanez can be seen with his firearm still aimed at Castile, while D.R. provides a narrative of the traffic stop and shooting. The video was widely viewed online.

The fatal shooting of Castile caused a strong public reaction and received extensive media coverage. Multiple protests occurred in response to the shooting, including one in which protesters shut down Interstate 94. The shooting and subsequent protests were covered in both local and national news, and Governor Mark Dayton and President Barack Obama made statements regarding the shooting.

In November 2016, Yanez was charged with one count of second-degree manslaughter and two counts of intentional discharge of a firearm that endangered safety. At trial, expert witnesses offered opposing views on whether Yanez's shooting of Castile was reasonable and justified. The jury acquitted Yanez on all charges. Shortly after the trial, the City of St. Anthony reached a civil settlement with Castile's family. Yanez entered into a voluntary separation agreement with the City of St. Anthony and left his employment with the police department.

At the contested-case hearing before the ALJ, the board's expert, Gothard, testified that he

> believe[d] that [Yanez's] actions were hurtful and offensive to the community on three fronts. One, on the prejudgment that was made by [Yanez] in pulling Mr. Castile over and the

> subsequent descriptions; two, on the hurt that was caused to the community that continues to be reverberated today; and, finally, the fact that no safety plan or procedures would adequately fulfill the duty of licensed educators in the state of Minnesota to keep [the] school community, students, staff and the community at large safe.

He further opined that, as a result, he did not "believe [Yanez] should be granted a substitute teacher's license."

Gothard also provided a written report that was admitted into evidence. In that report, he noted that "Castile was a beloved employee of the Saint Paul Public Schools," and that the pain of Castile's death remained. He opined that Yanez "took a life that he should not have taken," "endangered the lives of others when he shot and killed Philando Castile," and that "[n]o school-aged child should have a licensed educator who took the life of a Black man in the way [Yanez] did when he killed Mr. Castile." Gothard acknowledged on cross-examination that he is not an expert in law-enforcement matters.

Yanez's expert, Cayo, testified at the hearing that the stop of Castile by Yanez, based on an inoperable brake light, was lawful, and that Yanez had a sufficient basis to suspect that Castile may have been involved in the recent armed robbery. He noted that Yanez had seen a video image of the suspects and that Yanez had thought Castile looked like one of the robbers. Cayo further testified that he agreed with the opinion of Yanez's use-of-force expert from Yanez's criminal trial, that Yanez's use of deadly force was reasonable. Finally, he acknowledged that he has no expertise in the field of education.

The principal of the parochial school where Yanez was employed part-time as a Spanish teacher testified in support of Yanez's application for the teaching license. He

noted that there were no incidents between Yanez and students or staff members relating to the shooting of Castile. The principal relayed that Yanez received an excellent performance rating for the school year and had strengthened the Spanish program. The principal testified that he rarely gave out top ratings to new teachers, but he gave one to Yanez based on his job performance and hoped that Yanez would be able to continue to teach at the school. On cross-examination, the principal acknowledged that 75-80% of the student body at the school was White.

Following the hearing, the ALJ issued findings of fact, conclusions of law, and a recommendation that the board deny Yanez's application. The ALJ found that Yanez "took a life that he should not have taken, and endangered the lives of others, when he shot and killed Mr. Castile." The ALJ further found that the "act was based upon [Yanez's] prejudging of Mr. Castile as a robbery suspect" because Castile had a "wide set nose," a "'deer in headlights expression' on his face, and allegedly had an odor of marijuana in the car,"[1] and that Yanez's "prejudgments of Mr. Castile are indicative of racial bias, microaggressions, and negativity bias that are detrimental to students, especially students of color." The ALJ concluded that Yanez "failed to establish that his use of deadly force against Mr. Castile was objectively reasonable and necessary" under Minn. Stat. § 609.066, subd. 2 (2014),[2] that Yanez's "pretextual stop, racial profiling, and killing of Mr. Castile

[1] Marijuana was found in the car.

[2] That statute governs the use of deadly force by peace officers in the line of duty. The statute has been amended, but at the time of Castile's death, it provided as relevant here that "the use of deadly force by a peace officer in the line of duty is justified only when

constitute immoral conduct [that was] morally wrong, and deeply hurtful and offensive to the community," and that Yanez had "failed to establish that his application should be granted." The ALJ consequently recommended that the board affirm the committee's denial of Yanez's application.

Yanez submitted written exceptions to the ALJ's recommendation. The board convened to consider the matter and, in December 2021, issued a decision that adopted the ALJ's findings of fact and conclusions of law and denied the application. The decision states that the board "agrees and concurs with the Committee's decision, and the ALJ's recommendation, that [Yanez's] application be denied for immoral conduct pursuant to Minnesota Statutes section 122A.20, subdivision 1(a)(1)." Yanez petitioned for judicial review by writ of certiorari.

ISSUES

I. Which party bears the burden of proof?

II. Is the phrase "immoral character or conduct" in Minn. Stat. § 122A.20, subd. 1(a)(1), unconstitutionally vague and, if so, can it be cured by a narrowing construction?

III. Is Yanez entitled to a reversal of the denial and an instruction to the board to issue him a teaching license?

ANALYSIS

The statutes governing teacher licensure authorize the board to deny an application for a teaching license on the ground of "immoral character or conduct." Minn. Stat.

---

necessary . . . to protect the peace officer or another from apparent death or great bodily harm." Minn. Stat. § 609.066, subd. 2.

§ 122A.20, subd. 1(a)(1). An applicant who has been denied a license has the right to appeal, and the board must then initiate, as occurred here, a contested-case proceeding under the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2020 & Supp. 2021). The scope of judicial review of an agency decision following a contested-case proceeding is limited to determining whether the agency decision is:

> (a) in violation of constitutional provisions; or
> (b) in excess of the statutory authority or jurisdiction of the agency; or
> (c) made upon unlawful procedure; or
> (d) affected by other error of law; or
> (e) unsupported by substantial evidence in view of the entire record as submitted; or
> (f) arbitrary or capricious.

Minn. Stat. § 14.69.

We divide our analysis into three sections. First, we address Yanez's claim that the burden of proof should have been placed on the board. Second, we address Yanez's vagueness challenge. Third, we address the balance of Yanez's arguments in light of our analysis of the vagueness challenge.

I. The burden is on Yanez to demonstrate that the board should grant his application.

Yanez argues that the board improperly assigned him the burden of proving that his application should be granted. "Identification of the applicable burden and standard of proof presents questions of law, which [appellate courts] review de novo." *C.O. v. Doe*, 757 N.W.2d 343, 352 (Minn. 2008).

The administrative rules governing contested-case hearings under MAPA provide that "[t]he party proposing that certain action be taken must prove the facts at issue by a

preponderance of the evidence, unless the substantive law provides a different burden or standard." Minn. R. 1400.7300, subp. 5 (2021). Yanez contends that, under this rule, the board should be treated as the "party proposing that certain action be taken" because it is the board that proposed to deny his application on a permissive ground—that Yanez engaged in immoral conduct. He argues that the burden of proof should therefore have been placed on the board to establish that his application should be denied on that ground.

We disagree. Minnesota courts have consistently held that an applicant bears the burden of proof to show that an application should be granted. *See In re License Application of Rochester Ambulance Servs.*, 500 N.W.2d 495, 498-99 (Minn. App. 1993) (citing Minn. R. 1400.7300, subp. 5, and stating that the applicant "bears the burden of proof in this case to show that the Commissioner should have granted the license"); *accord N. Mem'l Med. Ctr. v. Minn. Dep't of Health*, 423 N.W.2d 737, 739 (Minn. App. 1988).

Yanez cites *In re Teaching License of Issa*, an administrative decision, as support for his assertion. 2021 WL 784614 (Minn. Off. Admin. Hrgs. Feb. 5, 2021). Such decisions are not binding on this court and, regardless, *Issa* is distinguishable. *Issa* involved a situation where the board sought to revoke a teacher's license. *Id.* at *1. It was the board in *Issa* that was seeking to change the status quo—to revoke a license—and it was thereby the board that was "proposing that certain action be taken." The board thus rightly had the burden of proof in *Issa.*

By contrast here, it is Yanez who is seeking to change the status quo by asking the board to grant him a license and, under Minn. R. 1400.7300, subp. 5, Yanez is therefore the "party proposing that certain action be taken." Minn. R. 1400.7300, subp. 5.

Consequently, the board did not err in determining that Yanez had the burden of proof to establish that he satisfied the statutory criteria to be granted a license.

II. The phrase "immoral character or conduct" is unconstitutionally vague, but the infirmity can be cured by applying a narrowing construction.

Yanez contends that Minn. Stat. § 122A.20, subd. 1(a)(1), is unconstitutionally vague. The statute provides that the board may "refuse to issue, refuse to renew, suspend, or revoke a teacher's license to teach for . . . immoral character or conduct." Minn. Stat. § 122A.20, subd. 1(a)(1). The phrase "immoral character or conduct" is not defined by statute. The ALJ defined the phrase to mean "conduct which offends the morals of the community in which it occurred."[3] Yanez argues that the standard is "impermissibly vague and nearly impossible to quantify or delineate."

Statutes that are impermissibly vague run afoul of constitutional due-process protections. *State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985); *see also City of Edina v. Dreher*, 454 N.W.2d 621, 622 (Minn. App. 1990), *rev. denied* (Minn. June 15, 1990). "A statute is void due to vagueness if it defines an act in a manner that encourages arbitrary and discriminatory enforcement, or the law is so indefinite that people must guess at its meaning." *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001) (quotation omitted); *see also In re Minn. Dep't of Nat. Res. Special Permit No.*

[3] This wording is derived from a Minnesota Supreme Court decision, *Falgren v. State Board of Teaching*, that involved the revocation of a teacher's license for engaging in immoral conduct based on nonconsensual sexual contact with a minor student. 545 N.W.2d 901, 908 (Minn. 1996). The constitutionality and meaning of the phrase "immoral character or conduct" was not, however, at issue in the case. The supreme court commented that the meaning of the phrase was "nebulous," but did not otherwise address the issues asserted in this case. *Id.*

16868, 867 N.W.2d 522, 532-33 (Minn. App. 2015) (stating that "a party may bring a void-for-vagueness challenge if the statute at issue encompasses constitutionally protected conduct or if there is a potential for arbitrary and discriminatory enforcement"), *rev. denied* (Minn. Oct. 20, 2015).

In *State v. Hensel*, the Minnesota Supreme Court explained there are "two possibilities" when addressing a constitutionally infirm statute. 901 N.W.2d 166, 175 (Minn. 2017). "First, if the statute is readily susceptible to a narrowing construction, [a court] could adopt such a construction if it remedies the statute's constitutional defects. If no reasonable narrowing construction remedies the statute's overbreadth problem, then the remaining option is to invalidate the statute." *Id.* (quotation omitted).

No Minnesota caselaw has addressed the question of whether the phrase "immoral character or conduct" in Minn. Stat. § 122A.20, subd. 1(a)(1), is unconstitutionally vague. But courts in other jurisdictions have addressed vagueness challenges to similar provisions, as we discuss below.

The California Supreme Court's opinion in *Morrison v. State Board of Education* is a seminal decision on this issue. 461 P.2d 375 (Cal. 1969). In *Morrison*, a teacher's credentials were revoked on the grounds of "immoral and unprofessional conduct and acts involving moral turpitude," as set out in the California statutes. *Id.* at 377. Morrison had worked as a teacher in the California schools for many years, but his credentials were revoked after it was discovered that he had engaged in a physical relationship with another male teacher. *Id.* at 377-78. The court reversed the revocation, holding that the terms "immoral conduct" and "moral turpitude" must be given a narrowing construction so that

the objectionable conduct "indicated an unfitness to teach." *Id.* at 382-83, 387-89. The court reasoned that "[w]ithout such a reasonable interpretation the terms would be susceptible to so broad an application as possibly to subject to discipline virtually every teacher in the state." *Id.* at 382-83.

Numerous other courts have followed suit.[4] *Alford v. Ingram* is particularly instructive. 931 F. Supp. 768 (M.D. Ala. 1996). In that case, a federal district court cited *Morrison* with approval and reached the same conclusion in interpreting a statute which provided that a certificate to teach may be revoked "when the holder has been guilty of immoral conduct or indecent behavior." *Id.* at 769. In *Alford*, the court observed that "[w]hile these words may have had certain concrete meanings in simpler times, this court

[4] *See, e.g.*, *Thompson v. Sw. Sch. Dist.*, 483 F. Supp. 1170, 1181 (W.D. Mo. 1980) (limiting "immoral conduct" to mean conduct "rendering [a teacher] unfit to teach"); *Keene v. Bd. of Acct.*, 894 P.2d 582, 587 (Wash. Ct. App. 1995) (determining that the challenged statute "prohibits conduct indicating unfitness to practice the particular profession"); *Hainline v. Bond*, 824 P.2d 959, 967 (Kan. 1992) (interpreting "immorality" to mean "such conduct that by common judgment reflects on a teacher's fitness to engage in his or her profession"); *Cochran v. Bd. of Educ. of Mex. Sch. Dist. No. 59*, 815 S.W.2d 55, 64 (Mo. Ct. App. 1991) (requiring "that there be some nexus between the immoral conduct shown in the evidence and fitness to teach"); *Haley v. Med. Disciplinary Bd.*, 818 P.2d 1062, 1074 (Wash. 1991) (interpreting statute prohibiting conduct involving "moral turpitude" as "prohibiting conduct indicating unfitness to practice the profession"); *Ross v. Robb,* 662 S.W.2d 257, 259 (Mo. 1983) (determining that the phrase "immoral conduct" is not unconstitutionally vague when interpreted as meaning "conduct rendering plaintiff unfit to teach" (quotation omitted)); *Clarke v. Bd. of Educ. of Sch. Dist. of Omaha*, 338 N.W.2d 272, 276 (Neb. 1983) (stating "in order for a teacher's conduct to be immoral within [the statute] such conduct must be directly related to a teacher's ability to teach, and indicate an unfitness to do so"); *Golden v. Bd. of Educ. of Harrison Cnty.*, 285 S.E.2d 665, 668 (W. Va. 1981) (stating that to be disciplined for "immoral conduct" the "conduct in question must indicate unfitness to teach"); *Weissman v. Bd. of Educ. of Jefferson Cnty. Sch. Dist. No. R—1*, 547 P.2d 1267, 1272 (Colo. 1976) (stating that "actions cannot constitute immorality within the meaning of the statute unless these actions indicate [an] unfitness to teach").

has serious doubts as to whether these terms currently provide fair warning of the proscribed conduct or sufficient guidance to persons who are required to apply those terms and make important decisions about teachers' futures." *Id.* at 771.

A federal district court expressed a similar sentiment in *Burton v. Cascade School District Union High School No. 5*, which declared impermissibly vague an Oregon statute that allowed teachers to be dismissed for "immorality." 353 F. Supp. 254, 255 (D. Or. 1973). The court aptly observed that "[i]mmorality means different things to different people," the statute "fails to give fair warning of what conduct is prohibited," and "permits erratic and prejudiced exercises of authority." *Id.*

We too are concerned that the phrase "immoral character or conduct" in Minn. Stat. § 122A.20, subd. 1(a)(1), fails to "give fair warning of what conduct is prohibited" and "permits . . . prejudiced exercises of authority." *Id.* The meaning of the phrase is, at a minimum, "nebulous" as observed by the Minnesota Supreme Court in *Falgren*, 545 N.W.2d at 908, and is vulnerable to the caprice of ever-changing public opinion and the potential for arbitrary, biased enforcement. We therefore conclude that the phrase is impermissibly vague.[5]

[5] The board argues that we cannot reach this issue because Yanez has no vested property interest in being granted an occupational license. *See, e.g.*, *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 658 (Minn. 2012) (stating that "[h]istorically, we have limited the property rights that are entitled to due process to real property rights, final judgments, and certain vested statutory rights"). Applicants for an initial license may not have the same level or type of due-process rights as license holders facing revocation, but applicants do have a due-process right to pursue employment in the public sector without interference from arbitrary or vague statutes. *See, e.g.*, *Obara v. Minn. Dep't of Health*, 758 N.W.2d 873, 878-89 (Minn. 2008) (holding that individuals have a protected property interest in pursuing a career in a job in the public sector and that constitutional interest "demands that

While we conclude that the "immoral character or conduct" provision of the licensing statute is impermissibly vague, we also hold, like other courts, that the statute may avoid constitutional infirmity through a narrowing construction. In *Alford*, the court reasoned that numerous courts have held that similar statutes are constitutional with a narrowing construction, and "[i]n all of these cases, the courts have interpreted the words in the statutes to imply an unfitness to teach." 931 F. Supp. at 773. We are persuaded by this analysis and agree that, to be constitutional, the grounds for the refusal to issue a teaching license under Minn. Stat. § 122A.20, subd. 1(a)(1), based on "immoral character or conduct," must indicate an unfitness to teach.[6]

---

a statute not be an unreasonable, arbitrary or capricious interference" with a person's right to not be disqualified from the opportunity for such employment (quotation omitted)); *cf. BFI Waste Sys. of N. Am., LLC v. Bishop*, 927 N.W.2d 314, 325 (Minn. App. 2019) (stating that "[t]he general purpose of the void-for-vagueness doctrine is to assure that ordinary people are put on notice of what conduct is prohibited and to discourage arbitrary and discriminatory law enforcement" (quotation omitted)), *rev. denied* (Minn. June 26, 2019); *In re Minn. Dep't of Nat. Res.*, 867 N.W.2d at 532-33 (stating that "a party may bring a void-for-vagueness challenge if the statute at issue encompasses constitutionally protected conduct *or* if there is a potential for arbitrary and discriminatory enforcement" (emphasis added)).

[6] The board argues that this court has declined to apply the holding in *Morrison* and related cases that a narrowing construction is appropriate. The board cites, as its authority for this proposition, *Fisher v. Independent School District No. 622*, 357 N.W.2d 152, 156 (Minn. App. 1984). *Fisher* cannot be read so broadly. In *Fisher*, this court rejected a school principal's argument that his discharge for sexually abusing a student was improper because the abuse had occurred over ten years earlier and was therefore too remote. 357 N.W.2d at 153, 155. We referenced *Morrison*, noting that the California Supreme Court had identified "proximity or remoteness in time" as a factor to be considered in determining whether alleged immoral conduct indicated an unfitness to teach. *Id.* at 156. We then observed that the *Morrison* test would mandate the same conclusion, that the teacher's discharge was proper because "the adverse effect upon students and the degree of that adverse effect easily outweigh the remoteness of the conduct charged." *Id.* We never declined to adopt a narrowing construction.

We are also persuaded by the analysis applied by the Minnesota Supreme Court in the context of attorney licensing in the case of *In re Peterson*, 274 N.W.2d 922 (Minn. 1979), regarding the analogous requirement that lawyers be of good "moral character." The supreme court required in *Peterson* that "moral character" in the arena of attorney licensing be judged not as a question of "personal morality," but only "in a professional context as it relates to one's capacity to serve the public in the practice of law." 274 N.W.2d at 925 (stating that "[a] distinction must be drawn between personal . . . and professional moral character" and that "[t]he responsibility . . . to formulate ethical principles and standards of professional conduct and to enforce those standards on the lawyers of this state does not give . . . license to make judgments as to a lawyer's personal morality, but only with regard to that lawyer's professional moral character").

We thus conclude that the "immoral character or conduct" relied on by the board must relate to professional morals in the occupation of teaching and indicate that the individual is unfit to teach.

III. Yanez is entitled to a remand but not an instruction from this court directing the board to grant his application for a teaching license.

Yanez maintains that legal errors in the board's decision require that we not only reverse the decision to deny his license application, but also direct the board to grant his application for a teaching license. Yanez asserts that the board erred because it used an incorrect legal standard in judging use of force by a police officer and the legality of pretextual stops; the board's decision is barred by collateral estoppel or res judicata; and the decision violated his constitutional right to assert self-defense and the presumption of

innocence. Yanez also argues that the decision is not supported by substantial evidence and is arbitrary and capricious. The board contends that there is no merit to Yanez's arguments and urges us to affirm without remanding. We conclude that a remand is appropriate to allow the board to reconsider the evidence in light of the narrowing construction.

A. The legal issues asserted by Yanez either lack merit or are not sufficient to warrant reversal without a remand for reconsideration.

Yanez argues that the board erred by applying an incorrect legal standard for the use of deadly force. We disagree. The board concluded that, "[i]n 2016, the standard for justifiable use of deadly force in Minnesota was whether it was objectively reasonable under the totality of the circumstances and necessary to protect police or another from apparent death or great bodily harm." The latter part of this statement is an accurate recital of the standard set out in the Minnesota Statutes in effect at the time of Yanez's fatal shooting of Castile. *See* Minn. Stat. § 609.066, subd. 2(1). The earlier part—that the use of force must be "objectively reasonable under the totality of the circumstances"—is consistent with the federal constitutional standard articulated in *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Yanez maintains that the legal standard requires that the use of force be judged based on his subjective beliefs at the time. This is not accurate. While it is true that the *Graham* standard requires an assessment of what the officer knew and could observe at the time, the review is from the perspective of a *reasonable* police officer, not that of the involved officer. 490 U.S. at 396.

We also reject Yanez's argument that his acquittal in the criminal case collaterally estops or serves as a res judicata bar in this licensing case. The fact that Yanez was acquitted only means that the state failed to prove its case beyond a reasonable doubt, the high standard of proof in criminal cases. The acquittal effectively prevents the board from characterizing Yanez's use of force as criminal. But the acquittal does not collaterally estop or serve as a res judicata bar under the lower civil standard of proof in contested-case proceedings—preponderance of the evidence. *See Beaulieu v. Minn. Dep't of Human Servs.*, 825 N.W.2d 716, 724 (Minn. 2013) (stating that "[t]he doctrines of res judicata and collateral estoppel . . . do not preclude the State from offering in a civil case evidence of conduct alleged in an earlier criminal case that ended in an acquittal because the burden of proof in a criminal case is higher than the burden of proof in a civil case").

Yanez argues next that the board erred by relying on the fact that Yanez's articulated reason for stopping Castile (the inoperable brake light) was a pretext for his real reason (Yanez's belief that Castile fit the description of one of the people involved in a recent robbery). Yanez correctly points out that stops based on violations of law, such as an inoperable brake light, are not of themselves unlawful. *See State v. Battleson*, 567 N.W.2d 69, 69-70 (Minn. 1997) ("If a police officer has a reasonable, articulable suspicion of a violation of the law, an investigatory stop of a vehicle is valid and whether the officer has ulterior motives for the stop is irrelevant."); *see also State v. Beall*, 771 N.W.2d 41, 42 (Minn. App. 2009) (holding that "an inoperable center brake light constitutes a specific, articulable, and objective basis justifying a traffic stop"). He argues that it was thus improper for the board to conclude that the stop constituted immoral conduct.

The board contends in its brief that it never labeled the pretextual stop as illegal and therefore committed no error. But, in both the board's decision and its brief, the board cites the pretextual nature of the stop as one of the grounds upon which it based its decision to deny the license. This is problematic because it labels as immoral a common practice in the job of policing that has been upheld by the courts. The pretextual reason for the stop, however, was just one of the reasons articulated by the board in reaching its decision, with no articulation of the weight accorded the various reasons. Thus, even if we were to conclude that the board erred in its application of the law concerning pretextual stops, we cannot discern that this was a determinative factor. We caution the board on remand, however, that a neutral review of Yanez's application requires that the board avoid even an appearance of bias and, therefore, it should decline to condemn lawful police practices. Such practices are a subject to be debated in other forums, not in a professional licensure proceeding.[7]

We are also not persuaded by Yanez's argument that the board's decision violated his rights to assert self-defense and to be presumed innocent. Neither are apposite in this

[7] We note in this regard the reference in the board's findings to the fact that Yanez said Castile had a "'deer in headlights' expression" on his face. The board relied on this as a factor in its conclusion that Yanez engaged in immoral conduct. But statements about a deer-in-the-headlights facial expression are commonplace in caselaw assessing whether a police officer has articulable, reasonable suspicion to justify a stop under the Fourth Amendment. There are over a dozen federal appellate decisions, including an opinion from the Eighth Circuit, where this phrase is cited as a factor that supports the constitutionality of a stop or search. *See, e.g.*, *United States v. Orth*, 873 F.3d 349, 352 (1st Cir. 2017); *United States v. Hall*, 193 F. App'x. 125, 127 (3d Cir. 2006); *United States v. Mays*, 643 F.3d 537, 542 (6th Cir. 2011); *United States v. Patton*, 705 F.3d 734, 739 (7th Cir. 2013); *United States v. Hill*, 1 F. App'x. 606, 608 (8th Cir. 2001); *United States v. Jensen*, 41 F. App'x. 346, 350 (10th Cir. 2002); *United States v. Jones*, 562 F.3d 768, 772 (6th Cir. 2008).

context because it is a civil, not a criminal, proceeding. In addition, Yanez testified at the contested-case hearing about his subjective belief that he was justified in using deadly force and his expert also testified that Yanez's use of deadly force was objectively reasonable.

B. Remand for reconsideration in light of the narrowing construction is the appropriate disposition.

Yanez argues that the board's decision is not supported by substantial evidence and that it is arbitrary and capricious such that this court should reverse the denial and direct the board to grant his application for a teaching license. The board argues that there is no need for a remand and that we should affirm the board's decision. We reject both parties' requests and conclude that it is appropriate for us to remand this case to the board to weigh the evidence and apply the relevant criteria in light of our narrowing construction.[8]

In doing so, we caution the board that the "immoral character or conduct" grounds for denying a teaching license must be used with great circumspection because, even with the narrowing construction, it is prone to misapplication. On remand, the board must identify which factors it is relying upon and the weight being accorded those factors in determining whether Yanez's conduct violated moral standards for the teaching profession. Our narrowing construction requires the board to then assess whether and how that conduct

[8] As part of his claim, Yanez argues that the board's decision is faulty because it was largely based on the impact of the fatal shooting in the St. Paul area when the license he is seeking is statewide. The board argues, somewhat inconsistently, that the conduct must be assessed according to the "morals of the community in which it occurred," but that it "is not limited to a community-based component" because, by granting a license, the board is "representing . . . that the applicant is fit to teach . . . in *each and every* school district in the state." In light of our decision to remand for reconsideration, however, we need not address this issue at this juncture.

relates to Yanez's fitness to teach in the public schools, again identifying the weight being accorded the factors it considers relevant.[9] In undertaking that evaluation, the board must avoid generalized critiques of policing practices—such as characterizing the practice of using a pretextual reason for a stop as immoral. The board's decision must focus exclusively on Yanez's conduct and his fitness to be a teacher, not fitness to be a police officer. We leave it to the discretion of the board to determine whether it is appropriate to remand the case to the ALJ and to reopen the record.

DECISION

The phrase "immoral character or conduct" in Minn. Stat. § 122A.20, subd. 1(a)(1), is constitutional with a narrowing construction. Pursuant to that narrowing construction, the "immoral character or conduct" must relate to professional morals in the occupation of teaching and indicate that the individual is unfit to teach. We reverse and remand for reconsideration in light of this narrowing construction.

Reversed and remanded.

[9] We further note that the board included in its findings a number of suppositions of questionable relevance. For example, the board, in an apparent attempt to discount the significance of the positive testimony by the parochial school principal about Yanez's performance as a teacher, found that the student body at the parochial school where Yanez was teaching "is primarily Catholic." Bereft of context, this finding could lead to the disturbing inference that the board believes that children who are Catholic may not be as impacted as children who are not Catholic.