

In support of its Motion, the Department attached certified copies of the pertinent court documents reflecting Respondent's conviction. Respondent, having been served by certified mail with the Notice of Charges and the Motion for Summary Judgment, failed to respond to either pleading. Accordingly, the facts alleged in the Notice of Charges are deemed admitted. 22 Pa. Code §233.13(e)(1)(iii); 1 Pa. Code §35.28.

In the instant case, there is no dispute that Respondent was convicted of the crimes of Battery and Infliction of Injury on Spouse. Thus, the only question before the Commission is whether these crimes, or any of these crimes, constitute crimes involving moral turpitude. The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime or misdemeanor. The facts underlying the charges are not relevant to the issue of moral turpitude. 22 Pa. Code §237.9(b); Startzel v. Commonwealth, Department of Education, 128 Pa. Commonwealth Ct. 110, 114, 652 A.2d 1005, 1007 (1989).

The California Penal Code defines "Battery" as "any willful and unlawful use of force or violence upon the person of another." Cal. Penal Code §242. The crime of Infliction of Injury on Spouse is defined as: "[a]ny person who willfully inflicts upon a person who is his or her spouse ... corporal injury resulting in a traumatic condition, is guilty of a felony." Cal. Penal Code §273.5. In comparison, moral turpitude includes the following:

- (1) That element and personal misconduct in the private and social duties which a person owes to his fellow human beings or to society in general, which characterizes the act done as an act of baseness, vileness or depravity, and contrary to the accepted and customary rule of right and duty between two human beings.
- (2) Conduct done knowingly contrary to justice, honesty or good morals.

- (3) Intentional, knowing or reckless conduct causing bodily injury to another or intentional, knowing or reckless conduct which, by physical menace, puts another in fear of imminent serious bodily injury.

22 Pa. Code §237.9(a).

Juxtaposing the elements of the California crimes of Battery and Infliction of Injury on Spouse, the Commission finds that such crimes involve moral turpitude. Accordingly, there is no genuine issue as to any material fact and revocation of Respondent's teaching certificate will be ordered as a matter of law.

ORDER

AND NOW, this 13th day of September, 2000, upon consideration of the Motion for Summary Judgment filed by the Department of Education, it is hereby ORDERED that the professional teaching certificate issued to Respondent Daniel G. Poole shall be REVOKED by the Department pursuant to section 5(a)(11) of the Teacher Certification Law, *as amended*, 24 P.S. § 2070.5(a)(11). In addition, the Commission finds that Respondent is deemed to have admitted that he is a danger to the health, safety and welfare of the students of this Commonwealth. Thus, the revocation shall be effective IMMEDIATELY.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY: _____

Richard D. Hupper
Chairperson

ATTEST: _____

Carolyn Angelo
Executive Director

Date Mailed: