

**COMMONWEALTH OF PENNSYLVANIA  
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

**DEPARTMENT OF EDUCATION,  
Petitioner,**

**v.**

**PATRICIA TONER,  
Respondent.**

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**DOCKET NO. DI-19-091**

**MEMORANDUM AND ORDER**

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Department of Education’s (“Department”) Motion for Judgment on Default. For the reasons set forth below, the Motion is granted.

On September 20, 2019, the Department filed with the Commission a Notice of Charges alleging that Respondent engaged in conduct constituting immorality, intemperance, and negligence and requesting that the Commission enter an order directing the Department to issue a public reprimand to Respondent. The Department served the Notice of Charges on Respondent by certified and first-class mail at her last-known address. The first-class mail was not returned, and the certified mail was delivered and signed-for on September 24, 2019.

Under 22 Pa. Code § 233.115, a Notice of Charges is to be treated as an order to show cause under 1 Pa. Code § 35.14. If the educator fails to timely respond to the Notice of Charges, the educator is deemed to have defaulted under 1 Pa. Code § 35.37, and the Commission may deem admitted the relevant facts stated in the Notice of Charges and proceed to consideration of discipline based upon the admitted facts and exhibits to the Notice of Charges. 22 Pa. Code § 233.115(c)(1);<sup>1</sup> Kinniry v. Professional

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1. The Commission’s bylaws provide the following with respect to an educator’s failure to timely respond to a notice of charges:

Stds. & Practices Comm'n, 678 A.2d 1230 (Pa. Cmwlth. 1995). Here, despite the language in the Notice of Charges cautioning Respondent that failure to respond could result in the factual assertions being deemed admitted and the imposition of discipline without a hearing, Respondent declined to file an answer or otherwise respond to the Notice of Charges. Thus, all relevant facts stated in the Notice of Charges will be deemed admitted.

Accordingly, the Commission makes the following findings of fact: Respondent holds an Instructional I Pennsylvania teaching certificate in the areas of Elementary K-6 and Reading Specialist PK-12. On April 30, 2014, Respondent imbibed a sufficient amount of alcohol so as to render her incapable of operating a motor vehicle safely. On this occasion, police were dispatched for a two-vehicle accident after Respondent crashed into another vehicle at a red light. Respondent exhibited signs of intoxication and a preliminary breath test revealed that she had a Blood Alcohol Content (“BAC”) of .22% at the time she operated the vehicle.

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(c) *Failure to respond.*

(1) If the educator fails to timely respond to the notice of charges, the educator is deemed in default under 1 Pa. Code § 35.37 (relating to answers to orders to show cause), and the Commission may, upon motion of any party, deem admitted the relevant facts stated in the notice of charges and proceed to consideration of discipline based upon the admitted facts and exhibits, if any, to the notice of charges.

(2) The Commission will not in these cases appoint a hearing officer or hold a hearing unless the Commission determines that the appointment of a hearing officer is necessary for the Commission to decide the matter. In these cases, the Commission will determine the scope of the hearing officer's authority.

22 Pa. Code § 233.115(c)(1).

On May 12, 2015,<sup>2</sup> Respondent, for a second time, imbibed a sufficient amount of alcohol so as to render her incapable of operating a motor vehicle safely. On this occasion, Respondent was pulled over for a traffic stop. The police officer conducting the stop observed that Respondent appeared disoriented and confused and detected an odor of alcohol emanating from Respondent's person. While Respondent was pulled over and the police officer was talking to her, she put her vehicle in reverse and attempted to back up. A subsequent blood test revealed a BAC of .30%. As a result, Respondent was convicted of DUI: Highest Rate of Alcohol (BAC .16+) – 2<sup>nd</sup> Offense in Chester County, Pennsylvania on February 17, 2016.

Finally, on June 18, 2018, Respondent was convicted of Public Drunkenness (18 Pa.C.S. § 5505) in Chester County, Pennsylvania.<sup>3</sup>

The Commission has defined immorality as “conduct which offends the morals of the Commonwealth and is a bad example to the youth whose ideals a professional educator has a duty to foster and elevate.” 22 Pa. Code § 237.3. Respondent's conduct clearly offends the Commonwealth's morals and sets a bad example for the students whose ideals she as a teacher is supposed to foster. Respondent's conduct is inconsistent with attempts to discourage students from drinking and driving and impacts Respondent's ability to serve as an effective role model. Respondent's conduct also put

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2. The Department's Notice of Charges alleges that the incident occurred on May 20, 2015. However, the certified court documents attached to the Notice of Charges list the incident date as May 12, 2015.

3. A person is guilty of a summary offense if he appears in any public place manifestly under the influence of alcohol or a controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, except those taken pursuant to the lawful order of a practitioner, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity. 18 Pa.C.S. § 5505.

members of the public in danger. Therefore, the Commission has no difficulty concluding that Respondent is guilty of immorality. The Commonwealth Court has also found that convictions for driving under the influence of alcohol may constitute immorality and cause for termination under the Public School Code of 1949. See Zelno v. Lincoln Intermediate Unit No. 12 Bd. of Dirs., 786 A.2d 1022 (Pa. Cmwth. 2001)(three drunken driving convictions and two more for driving without a license amounted to a *per se* justification for dismissal); See also Moffitt v. Tunkhannock Area Sch. Dist., 192 A.3d 1214 (Pa. Cmwth. 2018)(teacher’s two DUI convictions offended the morals of the community and served as a bad example to youth justifying his dismissal).<sup>4</sup>

Loss of self-control or self-restraint is the main element of intemperance. 22 Pa. Code § 237.5. A single episode can be sufficient to establish intemperance. Gow v. Department of Education, 763 A.2d 528 (Pa. Cmwth. 2000). Respondent unquestionably exhibited a loss of self-control and self-restraint when she elected to drive while under the influence of alcohol on two separate occasions and when she appeared in a public place manifestly under the influence of alcohol or a controlled substance. Therefore, we find that Respondent is guilty of intemperance.<sup>5</sup>

Educators have a duty to act as role models for children. This requires them to

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4. Conduct constituting “immorality” is cause for termination of a tenured professional employee under the Public School Code of 1949. Immorality has been defined by courts as a course of conduct that offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate. Zelno at 1024. While not binding on the Commission, the court’s decisions in Zelno and Moffitt may be regarded as persuasive authority. See 22 Pa. Code § 237.1.

5. Having found Respondent guilty of immorality and intemperance, we need not decide whether Respondent’s conduct also constitutes negligence as alleged by the Department.

exhibit a degree of self-restraint and controlled behavior rarely requisite to other types of employment. Respondent's actions are clearly inconsistent with her responsibilities as a role model and cannot be countenanced by this Commission. The Department requests that the Commission enter an order directing the Department to issue Respondent a public reprimand. We agree with the Department that a public reprimand is the appropriate sanction and accordingly enter the following:

**ORDER**

AND NOW, this 31st day of January 2020, upon consideration of the Motion for Judgment on Default filed by the Department of Education, it is hereby ORDERED that the Motion is GRANTED and the Department is directed to issue a PUBLIC REPRIMAND to PATRICIA TONER in accordance with the foregoing Memorandum. This order shall be effective upon the conclusion of any appeal from this order or, if no appeal is timely taken, the expiration of the time prescribed for appeal.

PROFESSIONAL STANDARDS AND  
PRACTICES COMMISSION

By:



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Myron Yoder  
Chairperson Pro Tempore

ATTEST:



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Shane F. Crosby  
Executive Director

Date Mailed: January 31, 2020