

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**BRIAN C. ANDERSON,
Respondent.**

:
:
:
:
:
:
:
:

DOCKET NO. DI-20-010

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Professional Standards and Practices Commission (“Commission”) on a Notice of Charges and Motion for Summary Judgment filed by the Department of Education (“Department”). After consideration of the record in this matter and the applicable law, the Commission finds that summary judgment in favor of the Department is appropriate and enters this Order as follows:

BACKGROUND AND PROCEDURAL HISTORY

Brian C. Anderson (“Respondent”) was issued a Day-to-Day Substitute Emergency Permit in the areas of Mathematics 7-12, English 7-12, Social Studies 7-12, and Spanish PK-12.

The Department initiated disciplinary proceedings against Respondent with the filing of a Notice of Charges on January 31, 2020. The Notice of Charges alleges that Respondent was convicted of the crime of Criminal Conspiracy to commit Manufacture, Delivery or Possession with Intent to Manufacture or Deliver a Controlled Substance. Certified copies of the pertinent court documents are attached to the Notice of Charges. Simultaneous with the filing of the Notice of Charges, the Department filed a Motion for Summary Judgment requesting that the Commission enter summary judgment in its

favor and revoke Respondent's certificate and employment eligibility based upon his conviction.

As required, the Department mailed copies of the Notice of Charges and Motion for Summary Judgment to Respondent at his last-known address. Respondent did not file an answer to either pleading.

The Commission heard oral argument at its regularly scheduled meeting on May 11, 2020. Respondent was not present.

SUMMARY JUDGMENT STANDARD

Summary Judgment is appropriate only when, after examining the whole record in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Snyder v. Department of Environmental Resources, 588 A.2d 1001 (Pa. Cmwlth. 1991).

MATERIAL FACTS

The material facts are not in dispute.¹ On June 10, 2005, Respondent was convicted in Philadelphia County, Pennsylvania of Criminal Conspiracy to commit Manufacture, Delivery or Possession with Intent to Manufacture or Deliver a Controlled Substance (18 Pa.C.S. § 903; 35 P.S. § 780-113(a)). The facts underlying Respondent's conviction are that he and another individual possessed marijuana and crack cocaine in sufficient quantity and/or under sufficient circumstances as to indicate an intent to deliver the substances.

DISCUSSION

1. Since Respondent did not file a responsive pleading, the only facts considered by the Commission are those alleged in the Department's Notice of Charges, which the Commission deems admitted. See 22 Pa. Code § 233.115(c)(1); 1 Pa. Code § 35.37; See also Kinniry v. Professional Standards and Practices Commission, 678 A.2d 1230 (Pa. Cmwlth. 1996).

The Department seeks the revocation of Respondent's certificate and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act ("Act"). 24 P.S. § 2070.9b(a)(2). That section mandates, in relevant part, that the Commission shall direct the Department to revoke the certificate and employment eligibility of an educator convicted of a crime set forth in section 111(e)(1) through (3) of the Public School Code of 1949, a crime involving moral turpitude, or the attempt, solicitation or conspiracy to commit such a crime upon the filing of a certified copy of the verdict, judgment or sentence of the court with the Commission. Id.²

Here, the Department has presented the Commission with certified court records of Respondent's conviction for Criminal Conspiracy to Commit Manufacture, Delivery or Possession with Intent to Manufacture or Deliver a Controlled Substance. Manufacture, Delivery or Possession with Intent to Manufacture or Deliver a Controlled Substance is a crime set forth in section 111(e)(2) of the Public School Code of 1949 and a crime involving moral turpitude *per se*.³ 24 P.S. § 1-111(e)(2); 22 Pa. Code § 237.9(c)(2). Therefore, the Commission must direct the Department to revoke Respondent's certificate and employment eligibility.⁴ 24 P.S. § 2070.9b(a)(2); See *also* Bowalick, 840 A.2d at 522 (revocation of a teaching certificate on summary judgment is appropriate upon proof of a conviction of a crime of moral turpitude); *citing* Kinniry v. Professional Stds. & Practices Comm'n, 678 A.2d 1230, 1234 (Pa. Cmwlth. 1996).

2. The term 'conviction' includes a plea of guilty or nolo contendere. 24 P.S. § 2070.9b(a)(2).

3. Section 111(e)(2) includes an offense designated as a felony under "The Controlled Substance, Drug, Device and Cosmetic Act" (35 P.S. § 780-101 et seq.). 24 P.S. § 1-111(e)(2).

4. An appeal shall not operate as a stay if the discipline is imposed under section 9b. 24 P.S. § 2070.15. Therefore, the revocation of Respondent's certificate and employment eligibility will be effective immediately.

ORDER

AND NOW, this 24th day of June 2020, upon consideration of the Department of Education's Motion for Summary Judgment and the lack of response thereto, it is hereby ORDERED:

1. The Motion is granted.
2. Pursuant to 24 P.S. § 2070.9b(a)(2), the Department is directed to revoke Respondent's certificate and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member effective on the date of this Order.
3. Respondent is not eligible to be employed in a school entity in a position requiring certification or as a charter or cyber charter school staff member or contracted educational provider staff member, or eligible for any certificate.
4. Pursuant to 24 P.S. § 2070.16(c), the Commission shall not reinstate Respondent's certificate or employment eligibility for the period set forth in 24 P.S. § 1-111(e).

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By:



Myron Yoder
Chairperson Pro Tempore



Attest:

Shane F. Crosby
Executive Director

Date Mailed: June 24, 2020