

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

DEPARTMENT OF EDUCATION,	:	
Petitioner,	:	
	:	
	:	
v.	:	DOCKET NO. DI-20-045
	:	
LOUIS D. STRACHAN,	:	
Respondent.	:	

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

Louis D. Strachan (“Respondent”) was issued a LT Sub Emergency Permit with Educational Obligation in the area of Mentally and/or Physically Handicapped K-12 on April 1, 1998 and October 1, 1998. The Department initiated disciplinary proceedings against Respondent with the filing of a Notice of Charges on June 25, 2020. The Notice of Charges alleges that Respondent was convicted of the crimes of Theft by Deception, Medicaid Fraud, Forgery, and Tampering with Public Records or Information, which the Department asserts are crimes involving moral turpitude. 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 certificates and employment eligibility based upon his convictions.

On August 25, 2020, Respondent filed a Response to Notice of Charges and Reply to Motion for Summary Judgment, in which he admits that he has been convicted of crimes of moral turpitude but argues that section 9b(a)(2) of the Educator Discipline Act ("Act") is unconstitutional as applied to him, as violative of his substantive due process rights.

The Commission heard oral argument at its regularly scheduled meeting on January 11, 2021. Respondent was represented by Brendan Lynch, Esquire. The Department was represented by Kathryn Coyne, Assistant Counsel. Following oral argument, the Commission voted unanimously to grant the Department's motion.

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. On February 27, 2006, Respondent was convicted in the Court of Common Pleas of Delaware County, Pennsylvania of Theft by Deception, 18 Pa.C.S. § 3922(a)(1), Medicaid Fraud, 62 P.S. § 1407(a)(1), Forgery, 18 Pa.C.S. § 4101(a)(1), and Tampering with Public Records or Information, 18 Pa.C.S. § 4911(a)(1).

DISCUSSION

The Department seeks the revocation of Respondent's certificates and employment eligibility pursuant to section 9b(a)(2) of the 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 involving moral turpitude upon the filing of a certified copy of the verdict, judgment or sentence of the court with the Commission.¹ Id. The Commission's regulations define moral turpitude, in relevant part, as follows:

(a) *Definition.* Moral turpitude includes the following:

(1) That element of 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.

...

22 Pa. Code § 237.9. Similarly, the Commonwealth Court has defined moral turpitude as "anything done knowingly contrary to justice, honesty, or good morals." Gombach v. Department of State, Bureau of Comm'ns, Elections & Legislation, 692 A.2d 1127, 1130 (Pa. Cmwlth. 1997). A crime of moral turpitude requires a reprehensible state of mind or *mens rea*. Bowalick v. Commonwealth, 840 A.2d 519, 523-24 (Pa. Cmwlth. 2004). Crimes in which fraud is an ingredient have always been regarded as involving moral turpitude. Moretti v. State Board of Pharmacy, 277 A.2d 516 (Pa. Cmwlth.1971); *citing*

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

Jordan v. DeGeorge, 341 U.S. 223, 71 S.Ct. 703 (1951) (fraud is the touchstone of moral turpitude).

Here, the Department has presented the Commission with certified court records of Respondent's convictions for Theft by Deception, Medicaid Fraud, Forgery, and Tampering with Public Records or Information. The Department seeks a determination that these crimes involve moral turpitude. The Commission is required to make its assessment "based solely upon the elements of the crime." 22 Pa. Code § 237.9(b); See *also* Startzel v. Commonwealth, Department of Education, 562 A.2d 1005, 1007 (Pa. Cmwlth.1989). The underlying facts or details of a conviction are not relevant to the issue of moral turpitude.

The Commission has previously examined the elements of Theft by Deception, Forgery, and Tampering with Public Records or Information and determined that these crimes constitute crimes of moral turpitude. See Dep't of Educ. v. Coleman-Brown, PSPC Docket No. DI-99-06; Dep't of Educ. v. Hesselgesser, PSPC Docket No. DI-04-30; and Dep't of Educ. v. Sloane, PSPC Docket No. DI-16-131. The crime of Medicaid Fraud is defined, in relevant part, as follows:

(a) It shall be unlawful for any person to:

(1) Knowingly or intentionally present for allowance or payment any false or fraudulent claim or cost report for furnishing services or merchandise under medical assistance, or to knowingly present for allowance or payment any claim or cost report for medically unnecessary services or merchandise under medical assistance, or to knowingly submit false information, for the purpose of obtaining greater compensation than that to which he is legally entitled for furnishing services or merchandise under medical assistance, or to knowingly submit false information for the purpose of obtaining authorization for furnishing services or merchandise under medical assistance.

62 P.S. § 1407(a)(1). Certainly, these crimes require conduct “contrary to the accepted and customary rule of right and duty,” 22 Pa. Code § 237.9(a)(1), and conduct “done knowingly contrary to justice, honesty or good morals,” 22 Pa. Code § 237.9(a)(2), and thus a “reprehensible state of mind or *mens rea*.” Bowalick, 840 A.2d at 524. Fraud is also an essential ingredient of these crimes. The Commonwealth Court has also recognized that crimes involving theft are crimes of moral turpitude. See Krystal Jeep Eagle, Inc. v. Bureau of Prof'l & Occupational Affairs, 725 A.2d 846 (Pa. Cmwlth. 1999) (theft by deception and theft by failure to make required disposition of funds received); Ancharski v. Bureau of Prof'l & Occupational Affairs, State Bd. of Nursing (Pa. Cmwlth. No. 1765 C.D. 2010, filed June 21, 2011) (theft by unlawful taking or disposition); Spence v. Bureau of Prof'l & Occupational Affairs (Pa. Cmwlth. No. 1692 C.D. 2009, filed March 22, 2010) (theft by unlawful taking or disposition).² Therefore, the Commission finds that Respondent has been convicted of crimes of moral turpitude.

While Respondent does not contest the fact that he has been convicted of crimes of moral turpitude, he argues that, as applied to him, section 9b(a)(2) of the Act is unconstitutional as violative of his substantive due process rights because it creates an irrebuttable presumption that he is unfit to teach without regard to the passage of time and other factors affecting his current suitability to work as a teacher. Respondent cites several cases, all of which deemed specific statutory, criminal conviction-based employment bans to be unconstitutional as-applied on substantive due process grounds, in support of his argument. Respondent maintains that there is functionally no

2. Ancharski and Spence are cited herein for their persuasive value pursuant to 210 Pa. Code § 69.414(a).

difference between an indefinite revocation and the employment bans at issue in those cases, or a rational basis for imposing such a sanction upon him. Respondent's argument is without merit. The Commonwealth Court has held that the two-step process set forth in the Act (i.e., automatic revocation, followed by potential reinstatement upon application) "constitutes a rational way for the General Assembly to protect its children and further the State's legitimate interest in ensuring that state-certified educators are fit to work closely with students." Startzel, 562 A.2d at 1007-8; See also Bowalick, 840 A.2d at 522 ("Upon proof of a conviction of a crime of moral turpitude, revocation [of a teaching certificate and employment eligibility] on summary judgment does not violate due process.").³ Therefore, we will direct the Department to revoke Respondent's certificates and employment eligibility pursuant to section 9b(a)(2) of the Act.⁴

ORDER

AND NOW, this 15th day of January 2021, upon consideration of the Department of Education's Motion for Summary Judgment and the response thereto, it is hereby ORDERED:

1. The Motion for Summary Judgment is Granted.
2. Pursuant to 24 P.S. § 2070.9b(a)(2), the Department is directed to revoke Respondent's certificates and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff

3. We note that Respondent has already availed himself of the reinstatement process by filing an Application and Petition for Reinstatement on December 23, 2020.

4. Section 15 of the Act provides that an appeal shall not operate as a stay if the discipline is imposed under section 9b of the Act. 24 P.S. § 2070.15. Therefore, the revocation of Respondent's certificates and employment eligibility will be effective immediately.

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 until his certificates and employment eligibility are reinstated in accordance with the Act.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: 

Myron Yoder
Chairperson Pro Tempore

Attest: 

Shane F. Crosby
Executive Director

Date Mailed: January 15, 2021