

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

DEPARTMENT OF EDUCATION,	:	
Petitioner,	:	
	:	
	:	
v.	:	DOCKET NO. DI-21-052
	:	
PHYLLIS L. EMERY,	:	
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

Phyllis L. Emery (“Respondent”) holds an Instructional II certificate in the area of Music PK-12. The Department initiated disciplinary proceedings against Respondent with the filing of a Notice of Charges on June 3, 2021. The Notice of Charges alleges that Respondent was convicted of, *inter alia*, Involuntary Manslaughter. 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 her conviction.

As required, the Department mailed copies of the Notice of Charges and Motion for Summary Judgment to Respondent at her last-known address. Respondent did not

file an answer to either pleading.

The Commission heard oral argument at its regularly scheduled meeting on September 13, 2021. 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 April 15, 2021, Respondent was convicted in the Court of Common Pleas of Lancaster County, Pennsylvania of Involuntary Manslaughter, 18 Pa.C.S. § 2504(a). The facts underlying Respondent's conviction are that Respondent was texting and driving when she hit and killed a bicyclist.

DISCUSSION

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

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 are deemed admitted and incorporated herein by reference. 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).

School Code of 1949 or a crime involving moral turpitude 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 Involuntary Manslaughter, which is a crime set forth in section 111(e)(1) of the Public School Code of 1949 and a crime involving moral turpitude *per se*. 24 P.S. § 1-111(e)(1); 22 Pa. Code § 237.9(c)(1). Therefore, the Commission must direct the Department to revoke Respondent's certificate and employment eligibility.³ 24 P.S. § 2070.9b(a)(2); *See also* Bowalick v. Dep't. of Educ., 840 A.2d 519, 522 (Pa. Cmwlth. 2004) (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).

ORDER

AND NOW, this 8th day of October 2021, upon consideration of the Department of Education's Motion for Summary Judgment, 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.

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

3. An appeal of the Commission's adjudication 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.

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. In accordance with 24 P.S. § 2070.16(c), the Commission shall not reinstate Respondent's certificate and employment eligibility for the time 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: October 8, 2021