

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**EVAN R. BRAITHWAITE,
Respondent.**

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DOCKET NO. DI-19-085

MEMORANDUM

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 May 29, 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 indefinitely suspend Respondent’s Pennsylvania educator certification and employment eligibility. The Department served the Notice of Charges on Respondent by certified and first-class mail at his last-known address. The first-class mail was not returned, and the certified mail was signed for on June 3, 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); ¹ Kinniry v. Professional 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 Social Studies 7-12 and Special Education 7-12. Respondent drove under the influence of a controlled substance, namely Fentanyl, on January 18, 2015 and again on October 14, 2016. On both occasions, Respondent was found behind the wheel of his car slumped over the wheel, and in one case, having a seizure. On both occasions EMT's had to revive Respondent using Narcan. As a result, on September 13, 2017, Respondent was criminally convicted of DUI: Controlled Substance – Schedule 2 or 3 – 2nd Offense.

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

(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).

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 he as a teacher is supposed to foster. Respondent’s conduct is inconsistent with attempts to discourage students from drug use and driving under the influence and impacts Respondent’s ability to serve as an effective role model. Respondent’s conduct also put 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 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. Cmwlth. 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. Cmwlth. 2018)(teacher’s two DUI convictions offended the morals of the community and served as a bad example to youth justifying his dismissal).²

Loss of self-control or self-restraint is the main element of intemperance.³ A single episode can be sufficient to establish intemperance. Gow v. Department of Education, 763 A.2d 528 (Pa. Cmwlth. 2000). Respondent unquestionably exhibited a

2. 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.

3. Intemperance is a loss of self-control or self-restraint, which may result from excessive conduct. 22 Pa. Code § 237.5.

loss of self-control and self-restraint when he elected to drive while under the influence of Fentanyl on two separate occasions. Therefore, we find that Respondent is guilty of intemperance.⁴

Educators have a duty to act as role models for children. This requires them to exhibit a degree of self-restraint and controlled behavior rarely requisite to other types of employment. Respondent's actions are clearly inconsistent with his 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 indefinitely suspend Respondent's Pennsylvania educator certification and employment eligibility. By defaulting, Respondent has forfeited the opportunity to mitigate the sanction. Therefore, we agree with the Department that an indefinite suspension is the appropriate sanction for Respondent's misconduct and accordingly enter the following:

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

ORDER

AND NOW, this 28th day of October 2019, 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 SUSPEND the educator certification and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member of EVAN R. BRAITHWAITE in accordance with the foregoing Memorandum. To have the suspension of his educator certification and employment eligibility lifted, Respondent must apply to the Commission for an order lifting the suspension pursuant to 24 P.S. § 2070.16. 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:



Myron Yoder
Chairperson Pro Tempore



ATTEST:

Shane F. Crosby
Executive Director

Date Mailed: October 28, 2019