

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

DOCKET NO. DI-20-049

**DIANE KASHUBA-MONTELIOUS,
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

Diane Kashuba-Montelius (“Respondent”) holds an Instructional I certificate in the area of Social Studies 7-12 and a Private School Teacher certificate in the area of Social Studies: Sec. Ed. 9-12. The Department initiated disciplinary proceedings against Respondent with the filing of a Notice of Charges on August 6, 2020. The Notice of Charges alleges that Respondent was convicted of the crimes of Medicaid Fraud, Forgery, and Theft by Deception, 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 her convictions.

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 March 15, 2021. Respondent appeared *pro se*. While she acknowledged her convictions, she explained the circumstances that led to her poor choices and requested that the Commission consider those circumstances and not revoke her certificates.

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 October 17, 2012, Respondent was convicted in the Court of Common Pleas of Schuylkill County, Pennsylvania of Medicaid Fraud, 62 P.S. § 1407(a)(1) and (4), Forgery, 18 Pa.C.S. § 4101(a)(2), and Theft by Deception, 18 Pa.C.S. § 3922(a)(1). The facts underlying Respondent's convictions are that she falsified documents to receive payment for services she did not provide while working as a behavioral specialist consultant and mobile therapist.

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 Medicaid Fraud, Forgery, and Theft by Deception. The Commission has previously examined the elements of Medicaid Fraud,² Forgery, and Theft by Deception and determined that these crimes constitute crimes of moral turpitude. See Department of Education v. Strachan, PSPC Docket No. DI-20-045; Dep't of Educ. v. Hesselgesser, PSPC Docket No. DI-04-30; Dep't of Educ. v. Coleman-Brown, PSPC Docket No. DI-99-06. 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).³ Therefore, the Commission finds that Respondent has been convicted of crimes of moral turpitude.

2. 62 P.S. § 1407(a)(1).

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

In her statement to the Commission, Respondent identified some potentially mitigating circumstances surrounding her convictions. However, the determination whether a crime involves moral turpitude is “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. Therefore, the Commission may not consider the information provided by Respondent at this time. Such information *may* be relevant to a future reinstatement application should Respondent avail herself of that option.

Because Respondent has been convicted of crimes involving moral turpitude, the Commission must direct the Department to revoke Respondent’s certificates and employment eligibility. 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).⁴

ORDER

AND NOW, this 16th day of April 2021, upon consideration of the Department of Education’s Motion for Summary Judgment, 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

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

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 until her 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: April 16, 2021