

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**MARK A. BUSKELL,
Respondent.**

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DOCKET NO. DI-21-067

ORDER GRANTING DEFAULT JUDGMENT

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.

BACKGROUND AND PROCEDURAL HISTORY

The Department initiated disciplinary proceedings against Mark A. Buskell (“Respondent”) with the filing of a Notice of Charges on July 6, 2021. The Notice of Charges alleges that Respondent smoked marijuana and a mixture of catnip and chamomile tea with students and had inappropriate physical contact with a student while working as a contracted medical aide. The Notice of Charges also alleges that Respondent’s conduct constitutes immorality, intemperance, and negligence under the Educator Discipline Act (“Act”) and the Commission’s regulations and requests the revocation of Respondent’s certificates and employment eligibility.

Respondent’s response to the Notice of Charges was due on or before August 5, 2021. When no response was filed, on August 18, 2021, the Department filed a Motion for Judgment on Default, requesting that the Commission find Respondent in default and issue an order directing the Department to revoke his certificates and employment

eligibility. The Commission considered the Motion at its September 13, 2021, meeting. Respondent, though properly notified in advance of the date and time of the meeting and his right to be heard by the Commission, did not appear.

FINDINGS OF FACT

1. Respondent currently holds an Instructional I certificate in the area of Elementary K-6. Respondent was also issued Day-to-Day Substitute Emergency Permits in the area of All Instructional Areas PK-12.
2. At all times relevant, Respondent was employed by the Oxford Area School District ("District") as a medical aide and substitute teacher.
3. Respondent solicited students to smoke marijuana with him. More specifically, Respondent was observed smoking marijuana with M.A., a 7th grade student and with J.K., a 9th grade student. Moreover, on at least one occasion, when Respondent smoked "marijuana" with M.A., then twelve years of age, the substance was not marijuana but instead a mixture of catnip and chamomile tea. Respondent admitted to law enforcement that he smoked the catnip and chamomile tea substance with student M.A.
4. Prior to the allegations involving marijuana use with students, Respondent worked as a contracted medical aide for the District. Respondent's contract, however, was terminated for allegedly engaging in inappropriate physical contact with a student.
5. Respondent received the Notice of Charges and all other notices in this matter.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter.

2. Respondent is in default under 1 Pa. Code § 35.37. 22 Pa. Code § 233.115(c)(1).
3. 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); Kinniry v. Professional Stds. & Practices Comm'n, 678 A.2d 1230 (Pa. Cmwlth. 1995).
4. Immorality is conduct which offends the morals of the Commonwealth and is a bad example to the youth whose ideals a professional educator or charter school staff member has a duty to foster and elevate. 22 Pa. Code § 237.3.
5. Respondent is guilty of Immorality.
6. Intemperance is a loss of self-control or self-restraint, which may result from excessive conduct. 22 Pa. Code § 237.5.
7. Respondent is guilty of Intemperance.
8. Negligence is a continuing or persistent action or omission in violation of a duty. 22 Pa. Code § 237.8(a).
9. A duty may be established by law, by promulgated school rules, policies or procedures, by express direction from superiors or by duties of professional responsibility, including duties prescribed by Chapter 235 (relating to Code of Professional Practice and Conduct for Educators). 22 Pa. Code § 237.8(b).
10. Respondent is guilty of Negligence.
11. Respondent is subject to discipline under the Act. 24 P.S. § 2070.9c(a)(1), (3), and (5).

DISCUSSION

Under 22 Pa. Code § 233.115(a), a Notice of Charges is to be treated as an order to show cause under 1 Pa. Code § 35.14. If the educator timely responds in writing to the Notice of Charges, setting forth the facts upon which he or she is relying and stating concisely the matters of law relied upon, in compliance with 1 Pa. Code 35.37, the Commission will appoint a hearing officer to conduct an evidentiary hearing on the matter. 22 Pa. Code § 233.115(d). If, however, 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); Kinniry v. Professional Stds. & Practices Comm'n, 678 A.2d 1230 (Pa. Cmwlth. 1995).

Here, the Department mailed a copy of the Notice of Charges to Respondent by first class mail on July 6, 2021. The first-class mail was not returned. Depositing in the post office of a properly addressed letter with prepaid postage raises a natural presumption that the letter reached its destination by due course of mail. In re Rural Route Neighbors, 960 A.2d 856, 861 (Pa. Cmwlth. 2008). After laying out the charges against Respondent and calling for the revocation of his certificates and employment eligibility, the Notice of Charges stated:

If you contest any factual assertion made in this Notice, you have a right to request, in writing, a hearing. The proceedings shall be in the nature of a formal hearing conducted in accordance with the procedures described in 24 P.S. § 2070.13. Your response and request for a hearing must include specific admissions and denials of the factual assertions, as well as a concise reference to the facts and matters of law relied upon.

YOUR RESPONSE MUST BE RECEIVED BY THE COMMISSION WITHIN THIRTY (30) DAYS AFTER THE DATE OF SERVICE. IF YOU FAIL TO

FILE A RESPONSE TO THIS NOTICE OR TO REQUEST A HEARING WITHIN THIRTY (30) DAYS AFTER SERVICE. ALL OF THE FACTUAL ASSERTIONS STATED IN THE ABOVE NOTICE MAY BE CONSIDERED ADMITTED AND DISCIPLINE MAY BE IMPOSED WITHOUT A HEARING. ADDITIONALLY, IF YOU FAIL TO RESPOND AND/OR MAINTAIN A CURRENT ADDRESS WITH THE DEPARTMENT AND COMMISSION, DISCIPLINE MAY BE IMPOSED BY THE PROFESSIONAL STANDARDS AND PRACTICES COMMISSION WITHOUT FURTHER NOTICE TO YOU AND WITHOUT THE NEED FOR YOUR PRESENCE.

Notice of Charges, pages 3-4.

Respondent's response to the Notice of Charges was due on or before August 5, 2021. Despite the clear directive in the Notice of Charges, Respondent did not file a response. Therefore, Respondent is in default 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 without scheduling an evidentiary hearing.

The Act empowers the Commission to "*direct the Department to discipline any educator in accordance with section 9b, 9c, 9d or 9e.*" 24 P.S. § 2070.5(a)(11.1). Section 9c provides, in pertinent part, that the Commission shall direct the Department to impose discipline against any educator for conduct found by the Commission to constitute immorality, intemperance, or negligence. 24 P.S. § 2070.9c(a)(1), (3), and (5). The Act does not define these terms, but rather directs the Commission to establish definitions. 24 P.S. § 2070.9c(b).

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 and elevate. The dangers to our

youth posed by drugs are well-known. Studies show that misperceptions of the extent and acceptability of drug-abusing behaviors in school, peer, and community environments may influence a young person in the decision to start abusing drugs. Where a teacher is involved in illegal drugs students may view such conduct as a desirable example to follow because of the significant influence teachers exert over the intellectual, moral and psychological development of children. See Westmoreland Intermediate Unit #7 v. Westmoreland Intermediate Unit #7 Classroom Assistants Educational Support Personnel Association, et al., 977 A.2d 1205 (Pa. Cmwlth. 2009). Therefore, Respondent is guilty of immorality.

Intemperance is a loss of self-control or self-restraint, which may result from excessive conduct. 22 Pa. Code § 237.5. “Conduct that extended over a period of time, whether it is hour upon hour or day after day, may be considered excessive.” Gow v. Department of Education, 763 A.2d 528, 534 (Pa. Cmwlth. 2000). “Excessive is defined as ‘exceeding the usual, proper, or normal.’” Id. Respondent’s conduct was unquestionably excessive and evidences a loss of self-control or self-restraint. Therefore, Respondent is guilty of intemperance.

Negligence is a continuing or persistent action or omission in violation of a duty. 22 Pa. Code § 237.8(a). A duty may be established by law, by promulgated school rules, policies or procedures, by express direction from superiors or by duties of professional responsibility, including duties prescribed by Chapter 235 (relating to Code

of Professional Practice and Conduct for Educators (“Code”)).¹ 22 Pa. Code § 237.8(b). By engaging in illegal conduct, Respondent violated duties established by the General Assembly’s enactment of the criminal laws. Additionally, among the duties prescribed for educators by the Code is the requirement that educators impart to students principles of good citizenship and societal responsibility. 22 Pa. Code § 235.4(b)(6). Respondent’s actions are inconsistent with these principles. Educators also have a duty to make reasonable efforts to protect students from conditions which interfere with learning or are harmful to their health and safety. 22 Pa. Code § 235.4(b)(10). Exposing students to illegal drugs is both harmful and interferes with learning. Therefore, Respondent is guilty of negligence.

The Department has requested that the Commission issue an order directing it to revoke Respondent’s certificates and employment eligibility. By defaulting, Respondent has forfeited the opportunity to provide the Commission with evidence in mitigation of any sanction. Accordingly, the Commission agrees that the revocation of Respondent’s certificates and employment eligibility is warranted.

ORDER

AND NOW, this 8th day of October 2021, upon consideration of the Department’s Motion for Judgment on Default, it is hereby Ordered:

1. The Motion is granted.
2. The Department is directed to revoke Respondent’s certificates and his eligibility to be employed as a charter or cyber charter school staff member or

1. The Code was amended effective August 21, 2021. For purposes of this Order, the Commission will apply only those provisions of the Code that were in existence at the time Respondent’s misconduct occurred.

- contracted educational provider staff member. The revocation of Respondent's certificates and employment eligibility 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.
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: October 8, 2021