BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

CLAUDIA GERBER,	:	
Petitioner,	:	
	:	
v.	:	**Docket No.:**
	:	**OSAH-DDS-DUIRISK-1624258-28-Brown**
DEPARTMENT OF DRIVER SERVICES,	:	
Respondent.	:	

FINAL DECISION

I. Introduction

Petitioner Claudia Gerber requested a hearing after Respondent, the Georgia Department of Driver Services (hereinafter "DDS" or "the Department"), denied her application for recertification as a DUI Alcohol or Drug Use Risk Reduction Director and Instructor. The hearing on this matter was held before the undersigned Administrative Law Judge on February 24, 2016, at the Office of State Administrative Hearings in Atlanta, Georgia. Archie L. Speights, Esq., represented Ms. Gerber in this matter, and Ms. Vicki Judd, Assistant General Counsel, DDS, represented the Department. For the reasons indicated below, the Department's action is **AFFIRMED**.

II. Findings of Fact

The following facts are not in dispute:

1. During the period relevant to this Final Decision, Ms. Gerber was certified by the Department as a DUI Alcohol or Drug Use Risk Reduction Director and Instructor. She has held such certification for approximately thirteen years. (Testimony of Claudia Gerber).

2. Ms. Gerber was arrested on December 13, 2014 on misdemeanor charges of Theft by Shoplifting, Simple Battery, and Disorderly Conduct. (Exhibit R-4; Testimony of Claudia Gerber).

3. On or about August 18, 2015, Ms. Gerber pled guilty to one count of misdemeanor theft by shoplifting in the State Court of Cherokee County. Ms. Gerber was sentenced under the First Offender Act to serve twelve (12) months' probation, and was further ordered to pay a fine of $500.00, complete forty hours of community service, and submit to a mental health evaluation. Ms. Gerber has completed six months of probation without incident. (Exhibit R-4).

4. Ms. Gerber submitted a Director/Instructor recertification application to the Department on or about September 30, 2015. On the recertification application, Ms. Gerber answered "Yes" to the following question: "Have you been convicted of, plead guilty to, or plead nolo contendere to

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any crime, whether felony or misdemeanor, in this state, in any other state, or in the federal system within the past ten (10) years." She included the notation "I'm including paperwork that my plea was NOT a conviction Shoplifting-First Offender Act. See Attached." (Exhibit R-1).

5. In a letter dated October 23, 2015, the Department notified Ms. Gerber that it was required by law to deny her recertification application because she had been convicted of shoplifting, a crime of moral turpitude. Ms. Gerber appealed the denial of her application in a letter dated November 3, 2015. (Exhibits R-2, R-3).

6. At the hearing of this matter, Ms. Gerber, through counsel, asserted that shoplifting did not meet the definition of crime of moral turpitude. The Department contended that shoplifting was a crime of moral turpitude, citing the 1999 Georgia Supreme Court case of Sapp v. State. Ms. Gerber disputed the continued applicability of Sapp, citing the 2007 Georgia Court of Appeals case of Adams v. State.

III. Conclusions of Law

1. Because this case concerns the Department's termination of Ms. Gerber's DUI Alcohol or Drug Use Risk Reduction Director and Instructor certification, it bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R & Regs. 616-1-2-.21.

2. Code Section 40-5-82 gives the Department the authority to "promulgate rules and regulations regarding certification requirements, including restrictions regarding misdemeanor convictions." O.C.G.A. § 40-5-82(e). Pursuant to this authority, the Department promulgated Ga. Comp. R. & Regs. 375-5-6-.05 and -.06 in 2009. These regulations provide that "No person with a conviction of a . . . crime of moral turpitude . . . shall be certified by the Department as a Program Director [or Instructor] unless he or she has received a pardon and can produce evidence of same." Ga. Comp. R. & Regs. 375-5-6-.05(1)(a), -.06(1)(a). Under the regulations, "'first offender' sentences imposed pursuant to O.C.G.A. § 42-8-60, et seq., shall be considered a conviction." Id.

3. In this case, the propriety of the Department's decision turns on the meaning of the term "moral turpitude" as it is used in the pertinent regulations. Unfortunately, the term is not defined in the governing statute or regulations. In the broadest sense, moral turpitude encompasses "[c]onduct that is contrary to justice, honesty, or morality." BLACK'S LAW DICTIONARY 1101 (9th ed. 2009). At the time the regulation was promulgated, its drafters undoubtedly intended the term to carry its contemporary meaning under Georgia law. At that time, as the Supreme Court identified in Sapp v. State, shoplifting was a crime of moral turpitude. 271 Ga. 446, 448 (1999). Accordingly, the question becomes whether the definition of moral turpitude was altered by statute or caselaw.

4. Both Adams v. State and Sapp concern the impeachment of witnesses through evidence of prior convictions. Originally in Georgia, a witness could be impeached by proof of general bad character or by proof that the witness had been convicted of a crime of moral turpitude. It was

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under this standard that the Supreme Court held that shoplifting was a crime of moral turpitude for impeachment purposes in Sapp.

5. With the passage of O.C.G.A. § 24-9-84.1 (which later became O.C.G.A. § 24-6-609) the Georgia legislature chose not to codify the "moral turpitude" impeachment standard, but to instead adopt the federal rules of evidence standard. Adams v. State, 284 Ga. App. 534, 539 (2007); see O.C.G.A. § 24-6-609(a)(2). According to the federal rule, a witness could be impeached by establishing that the elements of the crime for which the witness had been convicted required proof or admission of "an act of dishonesty or making a false statement." Fed. R. Evid. 609(a)(2). The new "act of dishonesty" standard thereby replaced the "moral turpitude" standard for impeaching a witness. Adams, 284 Ga. App. at 539. As the Court of Appeals pointed out in Adams, inasmuch as the elements of theft, robbery, or shoplifting did not require proof or admission of an act of dishonesty or making a false statement, evidence of convictions therefor could no longer be used to impeach a witness. Id. at 537. However, while Adams made it clear that Sapp no longer articulated the standard for impeachment by prior conviction, the Sapp Court's interpretation of "moral turpitude" to include shoplifting remained untouched. See id. at 539–40. The Adams court had no occasion to define moral turpitude because moral turpitude was no longer the standard by which prior convictions could be used to impeach a witness. Id. In other words, the updated impeachment law did not change the definition of moral turpitude, but abandoned the moral turpitude standard altogether. Id. at 539. ("Instead of expressly codifying the existing law, the legislature adopted the language of the federal rule, thus using 'dishonesty or false statement' instead of 'moral turpitude.' Had the legislature intended for the new law to be applied in the same manner as the existing law, it seems logical that it would have used the same language.").

6. However, the relevant DDS regulations did not abandon the phrase "moral turpitude." See Ga. Comp. R. & Regs. 375-5-6-.05(1)(a), -.06(1)(a). Nothing has altered the Georgia Supreme Court's determination that shoplifting is a crime of moral turpitude. Accordingly, because the regulation prohibits recertification of individuals who are convicted of crimes of moral turpitude, and authoritative caselaw holds that shoplifting is a crime of moral turpitude, the prohibition applies to individuals who have been convicted of shoplifting. Therefore, inasmuch as Ms. Gerber was convicted for shoplifting, the Department's denial of her application for recertification was proper.

IV. Decision

IT IS HEREBY ORDERED that the decision of the Department to deny Ms. Gerber's recertification application is **AFFIRMED**.

SO ORDERED, this 15th day of March, 2016.

Barbara A. Brown

BARBARA A. BROWN
Administrative Law Judge

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BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

CLAUDIA GERBER, Petitioner,	:	Docket No.: OSAH-DDS-DUIRISK-1624258-28-Woodard
v.	:	Driver's License No.: 1624258
DEPARTMENT OF DRIVER SERVICES, Respondent.	:	

NOTICE OF FINAL DECISION

This is the Final Decision of the Administrative Law Judge (Judge) in the case. This decision is not reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek judicial review of this decision by the superior court.

FILING A MOTION WITH THE JUDGE AT OSAH

The motion must be filed within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing a petition for judicial review.** *See* O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH Clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Jenna Judy, jjudy@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

PETITION FOR JUDICIAL REVIEW

A petition for judicial review must be filed within thirty days (30) after service of this Final Decision in the Superior Court of Fulton County or in the superior court of the county of the appealing party's residence. If reconsideration or rehearing is requested and granted, then a petition for judicial review must be filed within thirty (30) days after service of that decision. O.C.G.A. §§ 50-13-19 and 50-13-20.1. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the party maintains its principal place of doing business. A copy of the petition must be served simultaneously upon all parties of record and filed with the OSAH Clerk. OSAH Rule 616-1-2-.39.