PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed January 23, 2024

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-21-C-30049
	)	
SHANE FELTON LOOMIS,	)	OPINION AND ORDER
	)	
State Bar No. 247574.	)	
	)	

This is Shane Felton Loomis's first disciplinary proceeding as a result of his felony conviction in the Superior Court of California, County of Ventura. On December 2, 2020, Loomis pleaded nolo contendere to a felony violation of Penal Code section 191.5, subdivision (a) (gross vehicular manslaughter while intoxicated) with admitted special allegations of Penal Code section 1192.7, subdivision (c)(8) (committing a serious felony by personally inflicting great bodily injury on another person) and Vehicle Code section 23578 (driving with a blood alcohol concentration (BAC) of 0.15 percent or more). After his conviction was transmitted to us, we referred the case to the Hearing Department to determine only whether the facts and circumstances surrounding the conviction involved moral turpitude pursuant to Business and Professions Code section 6102, subdivision (c)(2).[1]

[1] Further references to sections are to this source unless indicated otherwise. Section 6102, subdivision (c)(2), was added as an additional summary disbarment circumstance to criminal convictions occurring on or after January 1, 2019, and provides for summary disbarment if an attorney is convicted of a felony offense and the facts and circumstances of the offense involve moral turpitude. (§ 6102, subd. (c)(2); see also *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51, 54.)

The hearing judge determined that the facts and circumstances surrounding Loomis's conviction involved moral turpitude and referred the case back to us for a summary disbarment recommendation. Loomis appeals, arguing that the judge's moral turpitude determination is erroneous and inconsistent with well-settled attorney disciplinary case law. He requests we remand this matter to the Hearing Department for further proceedings. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests we uphold the judge's decision.

Upon our independent review (Cal. Rules of Court, rule 9.12), we find that the facts and circumstances surrounding Loomis's felony conviction involved moral turpitude. Given this finding, and because Loomis was convicted of a felony in December 2020, his conviction meets the requirements of mandatory summary disbarment. (§ 6102, subd. (c)(2).) Therefore, we recommend that Loomis be summarily disbarred. (Rules of Proc. of State Bar, rule 5.343.)[2]

I. PROCEDURAL BACKGROUND

On January 21, 2021, OCTC transmitted Loomis's felony conviction record to this court. Pursuant to section 6102, subdivision (a), we ordered that Loomis be suspended from the practice of law, effective March 8. Upon finality of the conviction, we referred the matter to the Hearing Department on November 24 to determine only whether the facts and circumstances of the offense involved moral turpitude pursuant to section 6102, subdivision (c)(2). (Rules 5.343 and 5.344.)

On December l, 2021, the Hearing Department issued a Notice of Hearing on Conviction, and Loomis filed a response on January 10, 2022. Due to Loomis's incarceration, this matter was abated through June 27, 2022, until his release from custody. On November 14, the parties filed a stipulation as to facts and admission of documents (Stipulation). A one-day trial took place on November 29. Following the disciplinary trial and posttrial briefing, the hearing judge issued her

[2] All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.

decision on March 3, 2023. The judge found that the facts and circumstances surrounding Loomis's conviction involved moral turpitude.

Loomis requested review on March 30, 2023. After briefing was completed, we heard the parties' oral arguments on October 25, and the matter was submitted on November 6, 2023.

II. FACTUAL BACKGROUND[3]

Loomis was admitted to practice law in California on December 1, 2006, and has no prior disciplinary record. This case involves a fatal traffic collision due to Loomis's intoxication, which caused the death of his passenger, Amanda Gannon. Loomis and Gannon met in January 2019 and went on approximately four or five dates between January and March 2019. On the evening of March 16, 2019, Loomis drank alcohol at three separate establishments and drove while significantly impaired with a BAC nearly twice the legal limit. While Loomis asserts he has no prior history of alcohol or substance abuse, he testified during the disciplinary trial that he was arrested for public intoxication around 20 years ago.[4]

A. Loomis Drives While Intoxicated and Causes a Fatal Collision

On March 16, 2019, Loomis started drinking at around 5:00 p.m. Throughout the evening, he drove to three different locations to consume alcohol prior to the fatal collision that happened at approximately 11:54 p.m., causing Gannon's death. We note the record does not account for what occurred during a nearly three-hour period—including the time from when Loomis and Gannon left their last location (Wades Wines around 9:15 p.m.) and when the

[3] The facts are based on the parties' Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules of Procedure of the State Bar, rule 5.155(A).)

[4] We are not drawing any inferences regarding Loomis's prior arrest for the purpose of our moral turpitude analysis.

collision occurred. At trial, Loomis testified he had "no recollection of anything after getting to Wades."

1. First Location—Los Agaves Restaurant (Westlake, California)

At around 5:00 p.m., on March 16, 2019, Loomis drove his father's Porsche 911 Carrera to meet his sister and her family for dinner at a Los Agaves Restaurant in Westlake. While at Los Agaves, Loomis drank at least two margaritas and ate tacos with chips and salsa. About an hour later, at 5:59 p.m., he texted a friend inviting the friend to join him for a beer. When Loomis did not receive an immediate response, he texted Gannon and invited her to join him for the evening. During their text exchange at around 6:11 p.m., Loomis mentioned he was already "two drinks in" and suggested Gannon meet him at Ladyface Ale Companie in 30 minutes. The gist of their text messaging indicated they were meeting for the purpose of having drinks.

2. Second Location—Ladyface Ale Companie (Agoura Hills, California)

Gannon agreed to meet Loomis at Ladyface Ale Companie (Ladyface). Loomis drove from Los Agaves to Ladyface—a 5.5 miles distance—arriving at approximately 7:10 p.m. While at Ladyface, Gannon and Loomis each drank one pint of beer and shared a macaroni and cheese dish. They left Ladyface together at around 8:00 p.m. Loomis testified that at that point there would have been no reason for him to call rideshare because he was not feeling the effects of the alcohol. He drove Gannon to the next location, Wades Wines, which was approximately 3.3 miles from Ladyface, to continue drinking.

3. Third Location—Wades Wine (Westlake Village, California)

Loomis and Gannon arrived at Wades Wine at around 8:15 p.m. Wades Wine is a liquor store with an adjoining tasting room—food is not served there. While at Wades Wine, they each drank at least one glass of wine. Loomis testified that, while he could not recall the events of the night after arriving at Wades Wine, he believed that he and Gannon stayed there for about an

hour. He further testified that he had no recollection of where he and Gannon were between 9:15 p.m. and the time of the collision just before midnight.

4. Fatal Collision in Thousand Oaks, California

At approximately 11:54 p.m., Loomis was driving along a curved segment in a residential neighborhood of Erbes Road in Thousand Oaks, with Gannon riding in the front passenger seat. The weather that night was clear and dry with normal visibility. There was a posted speed limit of 45 miles per hour on Erbes Road; however, Loomis was driving well in excess of that speed. During the disciplinary trial, Kelvin Rautiola, a Ventura County Sheriff's Office service technician, testified that when he performed a collision reconstruction analysis, he concluded Loomis was driving at minimum 73 miles per hour. Loomis stipulated that he was speeding. Considering the surrounding facts detailed below, we have sufficient facts to determine Loomis was traveling 73 miles per hour or above.[5]

While driving on Erbes Road, Loomis lost control of the Porsche and hit the raised concrete curb causing the vehicle to travel on the curb for approximately 57 feet before colliding into a large tree. The significant impact caused the right front fender and right-side passenger door to be sheared off the body of the car completely. In fact, the impact was so great that the right front passenger seat and seatbelt retainer were ripped from the floorboard, and the seatbelt cut in half. Gannon was violently ejected into the intersection of Erbes Road and Westland Avenue. The car spiraled down Erbes Road for another 224 feet, hitting other plants, shrubs, trees, and poles, leaving debris from parts of the car in the street along the way. Once the car finally stopped along the curb, the detached passenger seat was found in the street just ahead of

[5] While the hearing judge concluded that Loomis was speeding, she did not find that the expert testimony clearly established how fast Loomis was driving.

the vehicle. Given the extensive damage, investigators were unable to complete a full inspection of the Porsche's mechanical systems.

Gannon suffered multiple injuries; she was lying unconscious in the road when a witness called 9-1-1. Gannon was transported by ambulance to Los Robles Hospital where she later was pronounced dead from her injuries at 1:23 a.m. on March 17, 2019. Loomis was extracted from the car and transported by ambulance to Los Robles Hospital. Upon testing by law enforcement at 1:36 a.m. on March 17, 2019, Loomis had a BAC of 0.186 percent.

B. Loomis Was Convicted of Gross Vehicular Manslaughter While Intoxicated

On March 22, 2019, Loomis was charged with one count of violating Penal Code section 191.5, subdivision (a) (gross vehicular manslaughter while intoxicated), a felony. The felony criminal complaint also alleged two enhancements pursuant to Penal Code section 1192.7(c)(8) (personally inflicting great bodily injury on another person)[6] and Vehicle Code section 23578 (driving with a BAC of 0.15 percent or higher). The complaint specifically charged that Loomis "did unlawfully kill Amanda Gannon, a human being, without malice aforethought, in the driving of a vehicle in violation of Vehicle Code Sections 23140, 23152[,] and 23153[,] and the killing was the proximate result of the commission of an unlawful act."

On December 2, 2020, Loomis pleaded nolo contendere to a felony violation of Penal Code section 191.5, subdivision (a), and admitted both enhancements. He agreed that the superior court could consider the police reports and probation report as proof of the factual basis for his plea. The superior court accepted Loomis's plea and found both admitted enhancements

[6] We note that OCTC's transmittal confirming finality incorrectly states Loomis's conviction included "admitted special allegations of Penal Code §§ 667 and 1192.7 (serious felony) . . . ." However, the conviction record itself confirms that the conviction did not include an enhancement under Penal Code section 667 (enhancement for defendant who has previously been convicted of serious felony).

to be true. On February 3, 2021, Loomis was sentenced to a four-year term in state prison. The superior court also ordered, among other things, for Loomis to participate in a drug or alcohol counseling and education program and that he pay restitution to Gannon's family. After serving 14 months, Loomis was released from prison.

III. FACTS AND CIRCUMSTANCES INVOLVE MORAL TURPITUDE

At oral argument, Loomis's counsel asserted the hearing judge's moral turpitude analysis did not adhere to the Supreme Court's moral turpitude framework defined in *In re Lesansky* (2001) 25 Cal.4th 11, 16. Loomis's position is that part of the judge's rationale relied upon the elements of Penal Code section 191.5, subdivision (a), which is equivalent to presuming moral turpitude existed at the outset. As fully discussed below, we reject Loomis's argument and find he conflates the elements of the crime with the moral turpitude standard. Notwithstanding the seriousness of a conviction, our moral turpitude analysis is not restricted to examining elements of a particular crime but considers the whole course of misconduct. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935.)

For the purpose of attorney discipline, Loomis's conviction is conclusive proof of the elements of his crime. (§ 6101, subds. (a) & (e).) Thus, his felony conviction establishes that he acted with gross negligence by driving while intoxicated, in violation of the law, causing the death of Gannon. (Pen. Code § 191.5, subd. (a).)[7] Loomis's gross vehicular manslaughter

[7] The superior court's record of conviction does not specify whether Loomis violated Vehicle Code sections 23140, 23152, and/or 23153 in connection with his Penal Code section 191.5 offense. The hearing judge concluded that based on the facts and circumstances of the crime, Loomis's conduct was in violation of Vehicle Code sections 23152, subdivisions (a) (driving under the influence of alcohol) and (b) (driving with BAC of 0.08 percent or more), and 23153, subdivisions (a) (driving under the influence of alcohol and committing unlawful or negligent act causing bodily injury to other person) and (b) (driving with BAC of 0.08 percent or more and committing unlawful or negligent act causing bodily injury to other person). Considering Loomis was over age 21 at the time of the accident, the judge determined he could

conviction included two special enhancements in which he admitted to (1) committing a serious felony by personally inflicting great bodily injury on another person (Pen. Code § 1192.7, subd. (c)(8)) and (2) driving with a BAC of 0.15 percent or greater (Veh. Code § 23578). The sole issue before us is whether the facts and circumstances surrounding Loomis's conviction, which was not committed in the practice of law, demonstrate moral turpitude.

We are guided by the Supreme Court's definition of moral turpitude: "a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky*, *supra*, 25 Cal.4th at p. 16.) Convictions of driving under the influence (DUI) and vehicular manslaughter while intoxicated do not establish moral turpitude per se; however, moral turpitude can be shown based on the particular circumstances surrounding such convictions. (*In re Kelley* (1990) 52 Cal.3d 487, 493; *In re Gross* (1983) 33 Cal.3d 561, 566 [misconduct, not conviction, warrants discipline]; see also (*In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110, 115 ["wide ambit of facts surrounding the commission of a crime is appropriate to consider in a conviction referral proceeding"].)

The hearing judge acknowledged a lack of published case law analyzing a gross vehicular manslaughter while intoxicated conviction to guide how the facts surrounding this crime reveals the presence of moral turpitude. The judge analyzed several cases involving DUI and alcohol-related convictions to conclude that Loomis's decision to repeatedly drive while significantly

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not have been found guilty of violating Vehicle Code section 23140 (prohibiting person under age 21 from driving with BAC of 0.05 percent or more). We affirm the hearing judge's findings.

impaired, in an exceedingly reckless manner which caused Gannon's death, was a serious breach of his duties owed to Gannon and society. She further determined Loomis's reckless driving while impaired, and in excess of the speed limit, illustrated his wanton disregard for the law, societal norms, and public safety. Like the judge, we also find that the facts and circumstances surrounding Loomis's conviction involve moral turpitude for the reasons discussed *post*.

A. DUI and Alcohol-Related Case Law Supports a Moral Turpitude Finding

First, we review relevant DUI and alcohol-related conviction case law. The Supreme Court has recognized that drunk driving is inherently dangerous to human life (*In re Kelley*, *supra*, 52 Cal.3d at p. 494); and the Court has emphasized the "horrific risk posed by those who drink and drive." (*Burg v. Municipal Court* (1983) 35 Cal.3d 257, 262, superseded by statute on other grounds.) However, a conviction for driving while intoxicated does not involve moral turpitude per se—DUI convictions are classified as crimes which may or may not involve moral turpitude. (*In re Kelley*, *supra*, 52 Cal.3d at p. 494.) Similarly, we have determined that a conviction for gross vehicular manslaughter while intoxicated (Pen. Code § 191.5, subd. (a)) does not involve moral turpitude per se. (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214, citing *In the Matter of Van Dusen* (1989) SO09736 (minute order) [Supreme Court has determined that the crime of gross vehicular manslaughter while intoxicated does not per se involve moral turpitude].)

We found that the facts surrounding the DUI convictions in *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768 and *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402 involved moral turpitude under both prongs of *Lesansky* (i.e., revealing deficiencies in an attorney's honesty and candor or demonstrating a flagrant disrespect for the law or societal norms) as analyzed below. (*In re Lesansky*, *supra*, 25 Cal.4th 11, 16.)

In *In the Matter of Caplin*, *supra* 5 Cal. State Bar Ct. Rptr. 768, we concluded that the facts and circumstances surrounding Caplin's misdemeanor DUI conviction—involving elaborate lies to law enforcement, a BAC of nearly twice the legal limit, and property damage, revealed moral turpitude. (*Id*. at pp. 776-777.) Our moral turpitude determination was not limited to Caplin's deceit; we also found that his significant impairment with a BAC of 0.15 percent and the resulting property damage he caused, exhibited a lack of respect for the law and public safety. (*Id*. at pp. 774, 776-777.) *In the Matter of Guillory*, *supra*, 5 Cal. State Bar Ct. Rptr. 402, involved an attorney with four alcohol-related convictions; the earliest conviction was for reckless driving under the influence of alcohol and occurred while Guillory was in law school and resulted in the death of his cousin, the passenger. (*Id*. at p. 405.) We based our moral turpitude finding on Guillory's repeated attempts to leverage his position as a prosecutor to avoid arrest, lies to the police about his intoxication and that he was permitted to drive on a suspended license, violations of his probation, and driving with 0.24 percent BAC in his most recent DUI arrest. (*Id*. at p. 408.) We characterized the facts and circumstances surrounding Guillory's convictions as exhibiting contempt for the law and a complete disregard for public safety—behavior which constituted moral turpitude. (*Ibid*.)

Further guidance is provided by *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536 and *In re Alkow* (1966) 64 Cal.2d 838, two cases involving convictions for vehicular manslaughter, without gross negligence. In *Peters*, an attorney was convicted under Penal Code section 191.5, subdivision (b), of felony vehicular manslaughter while intoxicated, without gross negligence. (*In the Matter of Peters*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 540-541.) At the time of the collision, Peters had a history of prescription drug abuse. (*Id*. at p. 541.) Peters had exceeded her prescribed dose of medication and, while driving at a high speed, she veered across four lanes and ultimately collided with a vehicle stopped at a red light. (*Id*. at pp.

541-542.) Both the driver and passenger in the stopped vehicle were severely injured and were transported to the hospital; the passenger died hours later. (*Id*. at p. 542.) Peter's erratic driving caused a separate three-car collision, resulting in injuries to two other victims. (*Ibid*.) Peters was dishonest with the arresting officers about her prescription medication dose at the time of the collision. (*Id*. at pp. 542.) Also, when Peters met with her probation officer during the presentencing phase of her trial, she claimed that she was not driving while impaired and failed to inform the probation officer that she had been abusing her prescription medication. (*Id*. at pp. 542-543.) We found that the facts and circumstances surrounding Peter's conviction involved moral turpitude based on both her lack of candor and the serious breach of duty owed to society by driving while she was significantly impaired. (*Id*. at p. 544.)

In *Alkow*, *supra*, 64 Cal.2d at p. 839, an attorney was convicted of vehicular manslaughter, without gross negligence, after striking a pedestrian. (*Id*. at p. 839.) At the time of the collision, Alkow was driving without a license and had defective vision. (*Id*. at p. 841.) The Supreme Court stated that because Alkow knew his vision was defective—he had previously attempted to secure a driver's license, but it was refused due to his vision—he reasonably must have known that injury to others was a possible if not probable result of his driving. (*Id*. at p. 840.) Also, Alkow had previously been convicted of more than 20 traffic violations, 11 of which were for driving without a license. (*Id*. at pp. 839-840.) Considering the totality of the circumstances surrounding his conviction, the Supreme Court held that his conduct involved moral turpitude as it demonstrated a "complete disregard for the conditions of his probation, the law, and the safety of the public." (*Id*. a p. 841.)

B. Loomis's Conduct Was Reckless, Lacked Respect for the Law, and Disregarded the Safety of Others

On review, Loomis raises several arguments to dispute the hearing judge's moral turpitude finding. He argues the judge improperly relied on facts that establish the elements of Penal Code section 191.5, subdivision (a), to support moral turpitude. Loomis contends that his decision to drive while intoxicated on three separate occasions over the course of the evening does not show a wanton disregard for the law, as the judge found. Lastly, he asserts that his testimony during the disciplinary trial regarding the seriousness of a DUI offense does not reveal moral turpitude.[8] OCTC requests we affirm the hearing judge's finding, arguing that Loomis's conduct during the evening of the collision involved moral turpitude under the second prong of *Lesansky* for several reasons—his BAC of more than twice the legal limit, his conscious decisions to continue driving while intoxicated to three different locations, and his failure to take precautions such as arranging rideshare transportation. As shown by clear and convincing evidence in the record,[9] we find that the facts and circumstances surrounding Loomis's gross vehicular manslaughter while intoxicated conviction establishes moral turpitude because it

[8] During the disciplinary trial, Loomis testified that he "wasn't worried about DUI. Who cares about that. That's a ticket." He further explained that "the nature of the problem is the impacts of driving under the influence . . . [i]t's the harm to other people that I'm worried about." The hearing judge concluded that Loomis's testimony demonstrates disrespect for the law itself. Loomis contends that the judge's conclusion was misguided because he believes that DUI laws exist to protect the public not only from harm resulting from impaired driving but also from the potential risk of injury. OCTC did not challenge Loomis's position on review. We do not adopt the judge's characterization of Loomis's testimony. We view his statements as reiterating his remorse for the most tragic aspect of his conviction, Gannon's death. (See *Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794 [when two equally reasonable inferences may be made from evidence, we must choose the one most favorable to the accused attorney].)

[9] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

demonstrates a flagrant disrespect for the law and societal norms and was a breach of his duty owed to Gannon and society.

The elements of Penal Code section 191.5, subdivision (a), require a finding of gross negligence. Gross negligence requires proof of "more than ordinary carelessness, inattention, or mistake in judgment" and necessitates a showing that a person "acted in a reckless way that creates high risk of death or great bodily injury." (CALCRIM No. 590.) Loomis's no contest plea to the conviction—which includes his admission to the special enhancement under Vehicle Code section 23578—establishes that he was significantly intoxicated (having a BAC of 0.15 percent or more) during the commission of the crime that ultimately caused Gannon's death.

Although the hearing judge concluded that the evidence does not establish what Loomis's BAC was at the time of the collision, the parties stipulated that less than two hours after the collision, his BAC was 0.186 percent. Our moral turpitude finding is not limited to evaluating Loomis's BAC at the precise time of the collision, instead we examine the "whole course of conduct." (*In the Matter of Oheb*, *supra,* 4 Cal. State Bar Ct. Rptr. at p. 935.) Loomis's argument that, because he had no prior history of alcohol abuse or DUI convictions, he was not "on notice" that his driving was "impaired and potentially dangerous to the public" is unavailing. During the evening leading up to the collision, Loomis drove to three separate locations to consume alcohol, which resulted in him becoming significantly impaired. As discussed *ante*, our holdings in *In the Matter of Caplin*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 776-777, and *In the Matter of Guillory, supra*, 5 Cal. State Bar Ct. Rptr. at p. 408, a driving while intoxicated conviction with facts establishing a BAC of nearly twice the legal limit exhibits contempt for the law and public safety, revealing moral turpitude.

Loomis argues the hearing judge improperly determined that his Penal Code section 191.5, subdivision (a), conviction was more serious than the *Alkow* and *Peters* vehicular

manslaughter cases because Loomis's conviction involved gross negligence and therefore required a lesser showing of "bad facts and circumstances" to demonstrate moral turpitude. He contends that using the seriousness of a crime in order to examine the "bad facts" needed to sustain a moral turpitude determination is inconsistent with case law precedent. However, the judge's reference to the seriousness of Loomis's gross vehicular manslaughter while intoxicated conviction was not improper. Certain crimes, although classified as convictions that may or may not involve moral turpitude, are closer to establishing the circumstances and conduct needed to prove moral turpitude than other crimes. For example, in *In the Matter of Anderson*, *supra, 2* Cal. State Bar Ct. Rptr. 208, we specified that in comparison to a drunk driving offense (i.e., DUI conviction), gross vehicular manslaughter while intoxicated is a "more serious crime" although both are classified as offenses that may or may not involve moral turpitude. (*Id*. at p. 214.) We find Loomis's reliance on the judge's examination of "bad facts" needed to support a moral turpitude determination in this case as opposed to *Alkow* and *Peters*, misconstrues the crux of her analysis which is that Loomis's conviction was more serious than the convictions in *Alkow* and *Peters*. The judge's characterization was accurate. In fact, Loomis's nolo contendere plea included an admission that his conviction was a "serious felony by personally inflicting great bodily injury on another person" within the meaning of section 1192.7, subdivision (c)(8).

Loomis claims the hearing judge should not have based her moral turpitude findings upon facts necessary to support "essential elements" of his conviction but should have considered "supplementary and particular circumstances not inherently supporting the elements of the offense." We find the judge appropriately considered the facts and circumstances surrounding the conviction—such as BAC level in excess of 0.15, grave injury resulting in fatality, repeated decision to drive while intoxicated—to support her determination that Loomis's extremely reckless behavior while driving impaired and traveling at speeds well beyond the speed limit,

illustrated his wanton disregard for the law, for societal norms, and for public safety, thus revealing moral turpitude. (See *In re Lesansky*, *supra*, 25 Cal.4th 11, 16.) The judge also correctly reiterated that Loomis's conviction alone conclusively established that he acted recklessly, creating a high risk of death or great bodily injury, of which a reasonable person would have been aware, showing "disregard for human life or indifference to the consequences" of his acts. (CALCRIM No. 590; see also *People v. Von Staden*, *supra*, 195 Cal.App.3d at p. 1429 [gross negligence for purposes of Penal Code section 191.5, subd. (a), "means the failure to exercise any care, or the exercise of so little care that you are justified in believing the defendant was wholly indifferent to the consequences of his conduct and to the welfare of others"].) Thus, the judge's analysis was proper because the court may not reach conclusions inconsistent with the conclusive effect of the attorney's conviction. (*In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

Next, Loomis attempts to distinguish his behavior as not revealing moral turpitude by claiming that unlike the attorneys in *Guillory*, *Peters*, *Alkow* or *Anderson*,[10] he has no history of an alcohol problem. He also argues that unlike in *Alkow* and *Guillory*, he wasn't driving under a suspended license. However, the existence—or lack thereof—of alcohol abuse or prior traffic violations when taken in isolation do not necessarily support or disprove a moral turpitude finding. Although we acknowledge certain facts surrounding Loomis's conviction differ from those present in other cases, this is not unusual because our moral turpitude analysis involves consideration of a "wide ambit of facts" surrounding a crime. (See *In the Matter of Miller*, *supra,* 5 Cal. State Bar Ct. Rptr. at p. 115.) Therefore, neither *Alkow*, *Guillory*, *Anderson*, nor

[10] *In the Matter of Anderson*, *supra,* 2 Cal. State Bar Ct. Rptr. at pp. 211-213, involved an attorney who had a history of drunk driving, including four DUIs over the span of five years; however, we determined the facts surrounding his conviction did not involve moral turpitude.

Peters establishes a floor for what facts must be shown in every instance to reveal moral turpitude.

Loomis also disputes the hearing judge's conclusion that his failure to arrange for alternative transportation, rather than drive while highly intoxicated, demonstrates a wanton disregard for the law and others. On review, he contends he had no legal duty to arrange for alternative transportation, such as rideshare, because his unrebutted testimony established that "he did not believe his driving was impaired" and he "felt fine to drive." But even if Loomis was not legally required to arrange alternative transportation, he was legally obliged to not drive while intoxicated, regardless of how he felt. The reckless and careless nature of Loomis's behavior is emphasized by his choice to repeatedly drink and drive throughout the course of the evening. Loomis reasonably should have known that injury to him and others was a high-risk possibility, as a result of his conduct.

Loomis claims there is no clear and convincing evidence in the record that "he made a conscious decision to drive impaired at any point during the evening." He is mistaken. There is no evidence in the record to suggest that Loomis was somehow forced to drive against his will or that he was incoherent. As stated *ante*, Loomis testified that he drove and "felt fine to drive." Although, he asserts he has no recollection of what happened during the evening after he arrived at Wades Wine, this does not negate the fact that he was intoxicated and consciously chose to drive to several locations that evening. He also argues that the speed he was driving after leaving Wades Wines was not established clearly and convincingly. As found in the factual section *ante*, based on Rautiola's expert testimony along with the impact of the collision—including the severity and magnitude of damage caused—we concluded that the record convincingly proves Loomis drove 73 mph or greater as the expert opined. Further, Loomis stipulated that he drove in excess of the posted speed limit on Erbes Road, which was 45 miles per hour. (Rules Proc. of

State Bar, rule 5.54(B) [stipulated facts are binding on the parties and evidence to disprove a stipulated fact is inadmissible].) We find that Loomis's excessive speed—well above the legal speed limit—enhanced the reckless nature of his misconduct. (*In re Craig* (1938) 12 Cal.2d 93, 97 [moral turpitude is act of baseness, vileness, or depravity in duties owed to others or society in general and is contrary to accepted and customary rule of right and duty between people].)

OCTC points out that Loomis's conduct was hazardous because he was driving a "fast sportscar, well in excess of the speed limit . . . at night on a curved road." Whether Loomis perceived that he was impaired, he knew or should have known that by continuing to drink and drive to different locations, at night, in a Porsche he had recently acquired from his father, while intoxicated, was reckless and posed a risk of danger not only to Gannon but to others on the road as well. These circumstances should have alerted Loomis to the potential risk and prevented him from continuing to drive and thus endangering the public, yet they did not. We find Loomis's conduct—driving to three different locations while intoxicated with a BAC of twice the legal limit and at a high speed when the accident occurred—demonstrates contempt for the law and disregards the safety of others, therefore constituting moral turpitude. The tragic fact that his misconduct resulted in fatal consequences for Gannon is a "prime measure of the results of that disregard." (*In the Matter of Peters*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 545 [death of one victim and grave injuries to another were "a prime measure" of the results of attorney's disregard for duties to society].)

IV. SUMMARY DISBARMENT IS WARRANTED

As discussed *ante*, the facts and circumstances surrounding Loomis's felony gross vehicular manslaughter while intoxicated conviction involved moral turpitude, thus establishing that Loomis's offense meets the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c)(2) and "the attorney is not entitled to a State Bar Court

hearing to determine whether lesser discipline is called for." (See *In re Paguirigan* (2001) 25 Cal. 4th 1, 7 [discussing general application of section 6102(c) as summary disbarment statute].) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Shane Felton Loomis, State Bar Number 247574, be summarily disbarred from the practice of law in California and that his name be stricken from the roll of attorneys. We also recommend that Loomis be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.[11] (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of the Supreme Court order].) Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10 of the Business and Professions Code and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.[12]

V. MONETARY SANCTIONS

On October 29, 2021, OCTC filed its request for a hearing on whether the facts and circumstances surrounding Loomis's conviction warrants summary disbarment. OCTC also requested $5,000 in monetary sanctions pursuant to rule 5.137 of the Rules of Procedure of the

[11] Loomis must file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

[12] Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10 of the Business and Professions Code, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of applying for reinstatement or return to active status.

State Bar if Loomis is summarily disbarred. On November 8, 2021, Loomis responded stating a request for monetary sanctions is premature because monetary sanctions are to be guided by the facts and circumstances of the case which had not yet been determined. The guidelines for the imposition of monetary sanctions recommend a sanction of up to $5,000 for disbarment. (Rules Proc. of State Bar, rule 5.137(E)(2).)

Loomis pleaded nolo contendere to Penal Code section 191.5, subdivision (a) (gross vehicular manslaughter while intoxicated), with admitted special allegations of Penal Code section 1192.7, subdivision (c)(8) (committing a serious felony by personally inflicting great bodily injury on another person), and Vehicle Code section 23578 (driving with a BAC of 0.15 percent or more). He agreed that the superior court could consider the police reports and probation report as proof for the factual basis for his plea. The facts and circumstances surrounding Loomis's conviction—including driving to different locations while significantly impaired in an exceedingly reckless manner and well in excess of the speed limit that ultimately caused a fatality—was harmful and demonstrated a disregard for the law and his duty owed to others and society, revealing moral turpitude. Considering these facts, we agree with OCTC that there is no basis to deviate from the maximum monetary sanction presumed for disbarment. Accordingly, we recommend that Shane Felton Loomis be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar.[13]

[13] Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

VI. ORDER

The Review Department's November 24, 2021 order that Shane Felton Loomis be transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(5), effective December 20, 2021, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

HONN, P. J.

WE CONCUR:

McGILL, J.

RIBAS, J.