

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Department of Public Health,
Petitioner

v.

Docket No. PHET-18-0041

Joseph Amello,
Respondent

Appearance for Petitioner:

Matt A. Murphy, Esq.
Office of the General Counsel
Department of Public Health
250 Washington Street
Boston, MA 02108

Appearance for Respondent:

Joseph Amello, pro se

Administrative Magistrate:

James P. Rooney

Summary of Decision

The Department of Public Health summarily suspended an EMT's license and proposed to revoke it. The Department's motion for summary decision is granted, insofar as it sought to temporarily revoke the EMT's license, as there is no dispute that the EMT pled guilty in federal court to acquiring a controlled substance by deception or subterfuge and tampering with a consumer product, namely Fentanyl. The EMT failed to report the conviction. The facts related to the conviction show that his actions endangered public health, were gross misconduct by an EMT, and showed that he failed to exercise reasonable care in the performance of his duties. The motion to summarily suspend the EMT's license is moot as his license expired in 2018.

RECOMMENDED DECISION

On December 28, 2017, the Department of Public Health, Office of Emergency Medical Services (OEMS) issued a Notice of Agency Action immediately suspending emergency medical technician Joseph Amello and proposing to revoke his EMT license.¹ The suspension was based on his guilty plea to federal charges that he had obtained controlled substances by deception and had tampered with a consumer product. Mr. Amello appealed. The matter was stayed while Mr. Amello served a federal prison term. I held a prehearing conference on February 21, 2024.

The Department has now filed a motion for summary decision, which included Exhibits A - D. I add the Statement of Allegations as Exhibit E and Mr. Amello's answer as Exhibit F. The exhibits are listed in an appendix. Mr. Amello filed an opposition.

Findings of Fact

I make the following factual findings based on the exhibits and reasonable inferences from them:

1. In 2015, Joseph Amello, who was certified as an EMT, was working for Armstrong Ambulance Service as a field supervisor and narcotics officer. His certificate was to expire on April 1, 2018. (Ex. E.)
2. Lahey Clinic supplies controlled substances to Armstrong Ambulance. Its pharmacist told Armstrong Ambulance that the clinic was supplying a higher volume than normal of

1. The heading of the letter to Mr. Amello informing him of the Notice of Agency Action and the first paragraph of the letter state that the agency seeks to temporarily revoke Mr. Amello's license. The Notice of Agency Action itself proposes that his license be permanently revoked. Department counsel, in the motion for summary decision, states that the Department is seeking temporary revocation of Mr. Amello's EMT license. How long such revocation will last is not mentioned in any of the Department's documents.

Fentanyl to the ambulance service and that some of the patient care reports Mr. Amello had provided to justify a request for Fentanyl appeared false or altered. Armstrong Ambulance conducted an internal audit and determined that 410 fentanyl vials, 116 morphine vials, 27 Ativan² vials, 5 Versed³ vials, and 4 Valium vials were unaccounted for. The audit also discovered missing expired narcotic medications that should have been returned to Lahey and missing needles, syringes, tourniquets, and IV catheters. (Ex. E.)

3. On August 7, 2015, Armstrong representatives met with Mr. Amello. He admitted diverting Fentanyl. A drug test taken that day revealed that Mr. Amello had been taking benzodiazepines, a type of prescription medicine used to treat anxiety. (Ex. E.)

4. On June 5, 2017, Mr. Amello was charged in U.S. District Court with two criminal violations: acquiring a controlled substance by deception or subterfuge in violation of 21 U.S.C. § 843(a)(3) and tampering with a consumer product in violation of 18 U.S.C. § 843(a)(3). The later charge, which was based on the FDA's Forensic Chemistry Center's analysis of vials from Armstrong and Lahey, asserted that Mr. Amello removed "Fentanyl from the vials and replac[ed] the removed liquid with another solution." (Exs. E and A.)

5. On June 22, 2017, Mr. Amello pled guilty to the two charges. He was placed on probation prior to sentencing and required to "[c]ontinue to participate in mental health treatment and comply with all treatment recommendations." Mr. Amello did not report his conviction to

2. Ativan is a benzodiazepine used to treat anxiety.

<https://www.mayoclinic.org/drugs-supplements/lorazepam-oral-route/side-effects/drg-20072296?p=1>.

3. Versed is another benzodiazepine used to treat anxiety. It is also used to cause drowsiness before a surgical procedure.

<https://my.clevelandclinic.org/health/drugs/19616-midazolam-injection>.

the Department of Public Health within five days. On November 30, 2017, he was sentenced to thirty months in federal prison followed by three years of probation. (Ex. A and E.)

6. On December 28, 2017, the Department of Public Health issued a Statement of Allegations reciting the facts related to Mr. Amello's diversion of drugs and his subsequent conviction. It stated five grounds to immediately suspend Mr. Amello's EMT certificate and then revoke it:

A. Mr. Amello's actions endanger the health and safety of the public. 105 CMR 170.940(F)

B. Mr. Amello committed gross misconduct in the exercise of his duties as an EMT. 105 CMR 10.940(D).

C. Mr. Amello failed to exercise reasonable care, judgment, knowledge, or ability in the performance of duties. 105 CMR 170.940(C).

D. Mr. Amello committed crimes related to the performance of his duties as an EMT. 105 CMR 170.940(E).

E. Mr. Amello failed to meet reporting obligations in accordance with 105 CMR 170.937 in violation of 105 CMR 170.940(P).⁴

(Ex. E.)

7. Mr. Amello filed an appeal on January 1, 2018. He began his appeal letter by stating that he has a PTSD diagnosis and that his primary care doctor had mishandled his treatment for anxiety and depression. He declared that:

4. Section 170.940(P) is now found at Section 170.940[R].

I am being committed to a federal medical facility in Lexington Kentucky. This allows me [to] continue medical treatment for my work related PTSD as well as additional treatment for narcotics use.

Although I have not worked as a paramedic since August 7, 2015, I was never informed by the DPH or OEMS that I was not allowed to work as a paramedic. I was also not informed that I needed to notify the DPH or OEMS that I needed to report my conviction within 5 days.

I would like to note that the benzodiazepines that were found in my system on August 7th 2015 were all being prescribed by my psychiatrist that I started seeing in May of 2015.

I admitted to narcotics use from the day of my discovery, I would like the opportunity to discuss what [led] to my use of narcotics and to clarify the inaccuracies withing this notification.

Since August of 2015, I have been receiving medical treatments related to my PTSD and subsequent narcotics use. I have regular sessions with a psychologist, psychiatrist, [and] a new primary care doctor. I have stayed multiple times at On Site Academy in Westminister MA. On Site specializes in the treatment for first responders. I have participated in outpatient treatment at Arbour Hospital in Woburn MA. I can provide you with all my medical documentation related to my diagnosis and treatment since August of 2015.

...

I would like to stress to you that during my unblemished 25 plus years in EMS [emergency medical services] I have never had any issues nor has my license ever been suspended.

(Ex. F.)

Discussion

Mr. Amello's EMT license expired after April 1, 2018, hence summary suspension no longer presents a live dispute. I will address only the grounds advanced by the Department to revoke Mr. Amello's EMT license. That too is problematic because the Department has not been clear as to whether it sought to revoke his license temporarily or permanently. Any

temporary license revocation would have ended by April 1, 2018. Had it wished to revoke his license permanently it would have to have been clearer about it, so that Mr. Amello would have had notice of this. Still, because any type of revocation would likely have an impact should Mr. Amello seek to apply for an EMT license in the future, I will address whether the Department had grounds to temporarily revoke his license in 2017.

In the main, Mr. Amello does not contest that the person he was in 2015 was subject to discipline on the grounds asserted. He argues instead that nearly nine years later, he is a different person and capable of once again resuming his role as an EMT. The Department's decision was made in 2017 and there is nothing in the record to show that it has revalauted Mr. Amello many years laer, something that would not likely arise unless Mr. Amello applied to be relicensed.

A. *Endanger the health and safety of the public*

The Department's Emergency Medical Services regulations give it the authority to suspend or revoke an EMT license for "[a]ny condition or action that endangers the health or safety of the public." 105 CMR 170.940(E). Tampering with Fentanyl vials and substituting some unknown fluid might at the very least mean that an EMT who unknowingly used a tampered vial would fail to relieve a patient's pain and would not know why the medication failed to work. This is a clear example of an action that potentially endangered the health and safety of he public.

B. *Gross misconduct in the exercise of duties as an EMT*

The Department may also discipline an EMT for "[g]ross misconduct in the exercise of duties including, but not limited to . . . a drug-related offense" 105 CMR 170.940(D). Mr.

Amello took a large number of vials of Fentanyl and other drugs and equipment that are commonly related to drug use. He was a narcotics officer for an ambulance service and he misused that position to obtain more Fentanyl vials than the ambulance service needed, attempted to cover his tracks by submitting false patient care reports to justify the volume of Fentanyl vials he was requesting, and tampered with some of those vials by extracting Fentanyl and substituting an unknown liquid in its place. This is most certainly gross misconduct.

C. *Failure to exercise reasonable care, judgment, knowledge, or ability in the performance of EMT duties*

The Department may discipline an EMT for “[f]ailure to exercise reasonable care, judgment, knowledge, or ability in the performance of [EMT] duties.” 105 CMR 170.940(C). By his own account, Mr. Amello had been an EMT for 25 years. He knew or should have known how narcotics and other medicines should be handled by an EMT. His acts of drug theft and vial tampering were the antitheses of reasonable care and judgment.

D. *Commission of crimes related to the performance of duties as an EMT*

The Department may discipline an EMT for the “[c]ommission of any criminal offense relating to the performance of duties including any conviction relating to controlled substances violations.” 105 CMR 170.940(E). This regulation reflects that the crime most likely to be committed by an EMT connected to his work would be a drug crime. Mr. Amello’s theft of Fentanyl and other medications meant for use by EMTs and his tampering with Fentanyl vials were the bases for the two federal charges to which he pled guilty. Thus, his guilty plea to two drug offenses is a basis for discipline.

E. *Failure to meet reporting obligations*

An EMT is obligated to report to the Department within five days a “conviction of a misdemeanor or felony” in Massachusetts. 105 CMR 170.937(A). Failure to meet this reporting requirement subjects an EMT to discipline under the 105 CMR 170.940(P) (now 170.940[R]). Mr. Amello acknowledges that he did not report his conviction timely, but argues that there are over 100 regulations applicable to EMTs and it is unrealistic to think that an EMT would know them all. He also offers that he understood that the Department was aware of his situation because his attorney was contacted by the Department when it inquired about his continuing to work for an ambulance company. These arguments may go toward mitigating the discipline imposed, but they do not change the fact that Mr. Amello failed to inform the Department within five days of his federal convictions.

The evidence thus establishes that Mr. Amello is subject to discipline and that the Department had grounds to revoke it for a period of time. Since Mr. Amello’s license expired in 2018, it has already been effectively revoked for six years.

Mr. Amello wants to get his license back. What that would entail would be a new application for an EMT license. While I have held that the Department has established ground to revoke his license, Mr. Amello in his answer, his brief in opposition to the motion for summary decision, and his comments at the prehearing conference has presented an argument that he should again be allowed to be an EMT.⁵

5. Mr. Amello also objected to certain language in the Department’s motion that he thinks does not accurately represent his current state of fitness to work as an EMT. One of the comments was a quote from an earlier decision; it does not refer to Mr. Amello. The other one - “an individual who cannot control their emotions or has a continued struggle with addiction should not be allowed to practice medicine - may reflect counsel’s opinion, but Mr. Amello’s present mental and emotional state were not examined in this proceeding.

I recite Mr. Amello's position but note that there is no evidence that the Department has evaluated his statements and, in the absence of a hearing, they have not been tested. As his license has already lapsed, there is no point now in holding a hearing to test them as no result of a hearing could lead Mr. Amello to be granted a new license when his license has already expired.

According to Mr. Amello, he had an unblemished 25 year career as an EMT prior to his use of Fentanyl. Once he was confronted by Armstrong Ambulance personnel about the missing drugs, he immediately admitted that he had been diverting Fentanyl for his own use. He claims to have stopped using Fentanyl that day and has not used it in the nine years since. He acknowledges that he had benzodiazepines in his system, but says that they were prescribed to him by a psychiatrist how he began treating with for work-related PTSD a few months before Armstrong Ambulance confronted him.

He claims that he decided to immediately cease practicing as an EMT, long before the Department became involved. He went to work for Action Ambulance in its dispatch unit as a "chair car call taker" until he was sent to federal prison in 2017.

He was sent to a federal medical facility in Lexington Kentucky where he was treated for PTSD and for narcotics use. He was released early from prison. He was subjected to random drug tests in prison and after his release. He has never failed a drug test.

He continues to treat with a psychologist, a psychiatrist and a new primary care doctor for his PTSD and subsequent narcotics use. He has stayed a number of times at On Site Academy, which specializes in the treatment of first responders who have PTSD. He has also

undergone outpatient treatment at Arbour Hospital, which treats both psychiatric and substance abuse disorders.

Since Mr. Amello's release from prison, he has been employed by the man who owns Action Ambulance and a school bus company. He works at the bus company as a supervisor.

I do not decide what impact Mr. Amello's statements may have on any future licensing decision. That will be up to the Department of Public Health should he reapply for an EMT license.

Conclusion

I recommend that the Board affirm the grant of summary decision and declare that the Department had grounds to temporarily revoke Mr. Amello's EMT license before it expired.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

James P. Rooney
First Administrative Magistrate

Dated: **OCT - 2 2024**