

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Department of Public Health,
Petitioner

v.

Docket No. PHET-23-0462

John Arsenault,
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:

Nourhene Chtourou, Esq.
Barrault and Associates, LLC
3 Boulevard Street
Milton, MA 02186

Administrative Magistrate:

James P. Rooney

Summary of Decision

Unopposed motion to amend Notice of Agency Action to reflect an EMT's second conviction is allowed. Unopposed motion to grant Department summary decision based on the two conviction is also allowed.

RECOMMENDED DECISION

On September 8, 2023, the Department of Public Health, Office of Emergency Medical Services issued a Notice of Agency Action immediately suspending emergency medical technician John Arsenault and proposing to temporarily revoke his EMT license for six months.

The suspension based on his plea to sufficient facts on April 23, 2023 to two charges of assault and battery on ambulance personnel after he had become combative while visiting his father at Massachusetts General Hospital. He was placed on probation until April 3, 2024. The agency also mentioned that Mr. Arsenault was arraigned seven days later for operating under the influence.

On January 12, 2024, the Department filed a motion to amend the Notice of Agency Action and a motion for summary decision. The motions were received by the Division of Administrative Law Appeals (DALA) on January 17, 2024. Mr. Arsenault was given fourteen days from his receipt of these motions to file any opposition. DALA has not received any responses from him.

A. Ruling on Motion to Amend

The proposed amendment reflects that in November 2023, Mr. Arsenault admitted to sufficient facts in connection with the operating under the influence charge. His probation was extended until November 13, 2024. The agency now proposes to extend the temporary revocation period to November 13, 2024.

This unopposed motion is allowed.

B. Ruling on Summary Decision Motion

The Department asserts that there are no material facts in dispute with respect to the charges that Mr. Arsenault violated three agency regulations.

Mr. Arsenault was charged with failure to report his two criminal convictions to the Department within five days, as required by 170 CMR 170.937. The Department asserts that

Mr. Arsenault can produce no facts to show that he met the five day reporting requirement. A failure to meet this requirement subjects an EMT to suspension or revocation of his license. 170 CMR 940(R).

Mr. Arsenault was subject to having his license suspended or revoked for commission of a crime relating to the performance of his EMT duties, including a conviction relating to controlled substances violations. 105 CMR 170.940(E). Department counsel cited to a prior decision upholding the Departments's ability to find that an admission to sufficient facts in connection with an assault charge was a sufficient basis for the agency to determine that an EMT had violated 105 CMR 170.940(E). Here, where the assault took place in a hospital, that is even more obvious.

As for the operating under the influence plea, no claim has been made that the Department is without authority to discipline and EMT for operating under the influence.

Finally, an EMT may be disciplined for a condition or action that endangers the health or safety of the public. 105 CMR 170.940(F). Drunk driving and assaultive behavior each have the potential to put the health and safety of members of the public at risk.

The Department having made and supported its motion, the unopposed motion is allowed.

Conclusion

I recommend that the Board affirm the grants of the motion to amend and the motion for

summary decision and impose discipline on Mr. Arsenault.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

James P. Rooney
First Administrative Magistrate

Dated: **MAR -7 2024**