

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Robert Buckley,
Petitioner

Docket No. PHET-26-0201

v.

**Department of Public Health, Office of Emergency
Medical Services,**
Respondent

Appearances:

For Petitioner: Kevin Mullen, Esq.

For Respondent: Matt A. Murphy, Esq.

Administrative Magistrate:

Judi Goldberg

SUMMARY OF DECISION

Petitioner appeals respondent's suspension of, and proposed refusal to renew, his EMT certification. 105 CMR 170.750, .760. Respondent provided two regulatory bases for its action; first, that petitioner's involvement in an altercation that led to his arrest and guilty plea creates a danger to the public, and second, that he failed to report the guilty plea in a timely manner. Because the facts relating to the altercation are disputed, summary decision cannot enter on that ground. Because the facts relating to his failure to timely report the guilty plea are undisputed, summary decision enters on that ground alone.

DECISION ON MOTION FOR SUMMARY DECISION

Petitioner Robert Buckley timely appealed, under 105 CMR 170.750(A), respondent Department of Public Health, Office of Emergency Medical Services' (the Department) Notice of Agency Action: Immediate Suspension and Proposed Refusal to Renew his certification as an emergency medical technician (EMT). The Department filed a motion for summary decision,

which Mr. Buckley opposed. The Department included three exhibits with its motion and Mr. Buckley included an affidavit in support of his opposition.

The following facts are undisputed. Robert Buckley is an EMT. He has been a Boston firefighter for approximately twenty years and has been an EMT for about the same amount of time. There is no evidence in the record that Mr. Buckley has had any past disciplinary issues relating to his work. On December 4, 2022, Mr. Buckley was off duty. He was involved in a verbal and physical altercation (the December 2022 incident). The facts about what happened and the reasons why the events happened are disputed. Mr. Buckley was arrested and charged with two crimes. Mr. Buckley reported the incident to his employer, the Boston Fire Department, soon after the incident occurred.

On March 6, 2026, Mr. Buckley pled guilty to misdemeanor assault and battery.¹ The assistant district attorney filed a nolle prosequi for the more serious charge of assault and battery with a dangerous weapon. The court issued a suspended sentence and ordered probation for two years and six months.

On March 24, 2026, Mr. Buckley submitted his EMT certification renewal application to the Department. That application asked whether the applicant had been convicted of a misdemeanor or felony since their last application. Mr. Buckley described the December 2022 incident in his application and disclosed that he had pled guilty to misdemeanor assault and battery.

¹ The summary decision record does not include the transcript from the plea colloquy.

The Department suspended and proposed to refuse to renew Mr. Buckley's EMT certification based on two regulatory provisions. The first provision allows suspension for "[a]ny condition or action that endangers the health or safety of the public[.]" 105 CMR 170.940(F). The second provision allows suspension for "[f]ailure to meet reporting obligations in accordance with 105 CMR 170.937[.]" which in turn requires an EMT to file a written report with their employer and the Department within five calendar days of the EMT's conviction of a misdemeanor or felony, including a guilty plea. 105 CMR 170.937(A)(1), .940(R).

The Department filed a motion for summary decision, which in administrative proceedings is the functional equivalent of summary judgment in civil proceedings. *See Jack King and Nat'l Refrigeration, Inc. v. Office of the Att'y Gen., Fair Lab. Div.*, LB-12-367, LB-12-407, at *7 (Div. Admin. L. App. Jan. 29, 2014) (citing *Catlin v. Board of Registration of Architects*, 414 Mass. 1, 7 (1992)). Summary decision is appropriate when there are no genuine issues of material fact and the case may be decided as a matter of law. *See, e.g., Calnan v. Cambridge Ret. Bd.*, CR-08-589, at *3-4 (Div. Admin. L. App. Feb. 17, 2012); 801 CMR 1.01(7)(h).

Turning to the two regulatory provisions at issue here, as noted above, the first regulation allows suspension for "[a]ny condition or action that endangers the health or safety of the public[.]" 105 CMR 170.940(F). The Department states that the December 2022 incident constitutes a danger to the health and safety of the public, that Mr. Buckley "cannot be trusted to safely care for patients at this time[.]" and that "the public health and safety require[] that his EMT certification be suspended pending adjudication" of the instant matter. The Department categorically asserts that "assaultive behavior" involving an EMT that occurs at any time in their day (while they are on or off duty) endangers the health and safety of the public.

The Department relies on *Department of Public Health v. Swaine*, PHET-21-0627, 2025 WL 68667 (Div. Admin. L. App. Jan. 3, 2025) and *Department of Public Health v. Potter*, PHET-22-0077 (Div. Admin. L. App. Sept. 22, 2022) in support of its position. These cases, however, occurred in different procedural postures than the current case. Specifically, the motion for summary decision in *Swaine* was unopposed and the Department's facts went unchallenged; the decision in *Potter* came after a full evidentiary hearing.² In the instant case, the facts underlying the December 2022 incident are contested; Mr. Buckley's version of events about the December 2022 incident and why those things happened is significantly different from that which the Department put forward in its Notice of Agency Action.

There may be merit in many cases to the statement that "assaultive behavior by an EMT is inconsistent with an EMT's role[,]" *Swaine, supra*, which the Department cites in support of its action. However, the underlying facts still matter, especially when an EMT contests the Department's understanding of the events leading to the proposed disciplinary action.³ In this

² In *Swaine*, the Department presented evidence about two criminal cases that involved the EMT. The first case resulted in the EMT pleading guilty to three counts of assault and battery, one count of witness intimidation, four counts of assault with a dangerous weapon, and one count of leaving the scene of property damage. The second case involved indecent assault and battery. *Swaine*, 2025 WL 68667 at *1. In *Potter*, the EMT and his brother were involved in an altercation outside of a bar, the EMT "actively avoided" helping someone in need of aid, and one man ultimately died as the result of injuries sustained in the altercation. *Potter, supra*, at *2-3.

³ Examples of other cases involving EMTs include: *Department of Public Health v. Amello*, PHET-18-0041, 2024 WL 4475619 (Div. Admin. L. App. Oct. 2, 2024) (EMT pled guilty in federal court to acquiring controlled substance by deception or subterfuge and tampering with Fentanyl that belonged to his ambulance company); *Department of Public Health, Office of Emergency Medical Services v. Walsh*, PHET-23-0269, 2023 WL 5170541 (Div. Admin. L. App. Aug. 1, 2023) (EMT hit wife with crutch so hard that she was unable to speak in full sentences or answer simple questions, was bleeding profusely, felt cold and nauseous, and urinated on herself); *Department of Public Health v. Perry*, PHET-08-486, 2009 WL 5947579 (Div. Admin. L. App. Mar. 19, 2009)

case, the Department is the moving party and has failed to demonstrate the absence of issues of material fact. Therefore, summary decision cannot enter on this ground and I make no factual findings relating to the December 2022 incident.

The second provision under consideration is 105 CMR 170.940(R), allowing suspension for “[f]ailure to meet reporting obligations in accordance with 105 CMR 170.937[,]” which in turn requires an EMT to file a written report with their employer and the Department within five calendar days of a conviction of a misdemeanor or felony (including a guilty plea). 105 CMR 170.937, 940(R). It is undisputed that Mr. Buckley pled guilty on March 9, 2026. It is also undisputed that Mr. Buckley disclosed his guilty plea to the Department in his renewal application, which he submitted on March 24, 2026. Thus, it is undisputed that Mr. Buckley disclosed his plea more than five days after it occurred as required by 105 CMR 170.937. And under 105 CMR 170.940(R), failure to comply with this reporting requirement can form the basis for disciplinary action. The Department’s motion for summary decision is granted on this ground.

RULING

For the reasons set forth above, the Department’s motion for summary decision based on whether Mr. Buckley engaged in “[a]ny condition or action that endangers the health or safety of the public” pursuant to 105 CMR 170.940(F) is DENIED. The Department’s motion for summary

(EMT application denied for person convicted of operating a vehicle under the influence of alcohol three times in five years and had not recently participated in any substance use rehabilitation program).

decision based on Mr. Buckley's failure to notify the Department within five days of his plea agreement is ALLOWED.

Within fifteen (15) days of the date of this Decision, the Department shall decide whether it wishes to proceed to an evidentiary hearing on whether Mr. Buckley engaged in "[a]ny condition or action that endangers the health or safety of the public[.]" 105 CMR 170.940(F). If so, the Department shall confer with Mr. Buckley's counsel and propose three dates on which both parties are available to attend a prehearing conference. If not, the Department may propose the form of a recommended decision to formally dispose of the case.

Dated: September 4, 2026

/s/ Judi Goldberg

Judi Goldberg

Administrative Magistrate

DIVISION OF ADMINISTRATIVE LAW APPEALS

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