

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Dep't of Public Health,
Petitioner

Docket No. PHET-20-0388

February 7, 2025

v.

Christopher Monteiro,
Respondent

Appearance for Petitioner:

Ryan T. Gibbons, Esq.
Deputy General Counsel
Dep't of Public Health
250 Washington St., 2nd fl.
Boston, MA 02108-4619

Appearance for Respondent:

Christopher Monteiro, pro se
18 Malcolm Rd.
Stoughton, MA 02072

Administrative Magistrate:

Mark L. Silverstein, Esq.

SUMMARY OF DECISION

EMT License Suspension and Temporary Revocation by Massachusetts Department of Public Health, M.G.L. c. 111C, §§ 1-24 and 105 C.M.R. § 170 - Emergency Medical Technician (EMT) Certification - Failure to disclose prior criminal charges, conviction or nolo contendere plea - Uncontested suggestion of EMT's death during prehearing

proceedings - Dismissal of appeal for mootness upon Department's motion.**DECISION***Background*

On September 11, 2020, the Massachusetts Department of Public Health (DPH) issued a notice of agency action immediately suspending, and proposing to temporarily revoke, the certification of respondent Christopher Monteiro as an Emergency Medical Technician (EMT) for a minimum of two years, pursuant to M.G.L. c. 111C, §§ 1-24 and 105 C.M.R. § 170.940. DPH alleged, among other things, that in his 2017 application for initial EMT certification in Massachusetts, Mr. Monteiro had failed to disclose that in a 2011 Rhode Island criminal case he had entered a plea of nolo contendere regarding a first degree arson charge against him related to a fire at his mother's house; that he had been sentenced to ten years of probation by that Court; and that his Rhode Island EMT license was suspended for failure to disclose the criminal case and its resolution to that state's licensing authority.

On September 24, 2011, Mr. Monteiro timely filed a request for an adjudicatory hearing regarding DPH's proposal to suspend and temporarily revoke his Massachusetts EMT certification. He asserted mitigating circumstances that included disabling post-traumatic stress disorder stemming from injuries sustained while serving as a first responder during and following the September 11, 2001 World Trade Center attack in New York; his mother's attempted suicide and resulting house fire; and his entrance of a nolo plea to the Rhode Island arson charge based on his emotional state at the time. Mr. Monteiro also contended that his application for initial EMT certification in Massachusetts was filed in 2005, not in 2017—

implying, although not asserting specifically, that he could not have withheld information about his 2011 nolo plea from his initial Massachusetts EMT certification application six years earlier. Mr. Monteiro also asserted that he had more than 20 years of experience in pre-hospital care as a licensed EMT in three states, including experience in advanced level (EMT-cardiac) care, and had never been the subject of a patient complaint; and that he had worked in both private and public emergency medical services, demonstrating a record of “service consistent with the principles of emergency pre-hospital care,” including service at New York City’s World Trade Center site in response to the terrorist attacks of September 11, 2001; and that he had been recognized for his life-saving actions.

On September 29, 2020, DPH transferred its notice of agency action to DALA for adjudication pursuant to M.G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. § 1.01 *et seq.* See 105 C.M.R. § 170.770. I began a prehearing conference on December 3, 2020, with both Mr. Monteiro and DPH participating by telephone. During the conference session, DPH expressed a willingness to consider the Rhode Island criminal case record, if it were produced, as potentially mitigating with respect to the period of license suspension the Department sought. Based upon my discussion with the parties during the conference, I stated my willingness to allow Mr. Monteiro a reasonable opportunity to obtain a copy of his criminal case record if the Rhode Island court allowed him to do so. To give Mr. Monteiro time to access and copy his criminal case file, I did not conclude the prehearing conference. Instead, I ordered that Mr. Monteiro file and serve a status report on his efforts to access and copy his criminal case record.

Those efforts proved frustrating because the Rhode Island Courts had been closed on account of the ongoing COVID-related health emergency declared in that state. On December 30, 2020, Mr. Monteiro filed a status report in which he stated that while the Rhode Island Court

Records Office had sent him a list of the documents included in his criminal case record, that office remained closed and was, therefore, unable to produce the file for his inspection and copying. He requested additional time to obtain his criminal case record and file the documents it included in support of the mitigating circumstances he claimed. I allowed his request while he continued to seek his Rhode Island criminal case records.

No further status reporting by Mr. Monteiro followed. On May 7, 2021, he filed a motion to dismiss DPH's EMT license certification suspension and revocation proceeding against him and reinstate his Emergency Medical Technician License on the grounds that the Commonwealth had seized his property (meaning his EMT certification) without affording him a timely hearing or disclosing the evidence it intended to present against him. DPH opposed the motion, asserting that Mr. Monteiro had sought and obtained additional time to obtain the criminal case record he needed to present his case, but had encountered difficulties in obtaining his Rhode Island criminal case record for which DPH was not responsible.

I treated Mr. Monteiro's motion to dismiss as a motion for sanctions against DPH, since the motion asserted no ground to dismiss his own appeal, and I denied it as premature. I found no evidence of unreasonable delay on DPH's part in prosecuting its proposed suspension and temporary revocation of Mr. Monteiro's EMT certification; instead, Mr. Monteiro had been unable to obtain his Rhode Island Criminal Court records solely because the Court and its records office remained closed during the ongoing health emergency. However, I noted that the criminal case record was needed to substantiate his claims regarding the reasons for his nolo plea and the circumstances of the fire at his mother's house, and to support a possible resolution of the proposed EMT certification suspension by agreement. As a Rhode Island court reopening appeared possible at the time, I directed that Mr. Monteiro renew his effort to obtain a copy of his Rhode Island criminal case record, and to file and serve a report on the status of this effort by

April 8, 2022. I continued to defer the conclusion of the prehearing conference (including the finalization of a joint witness list the parties had agreed upon tentatively during the conference) pending the resolution of Mr. Monteiro's renewed effort to obtain a copy of his Rhode Island criminal case record. I directed that Mr. Monteiro continue to report the status of his efforts to obtain those records, and deferred further scheduling while he did so. *See Decision and Order on Motion to Dismiss and re Renewed Effort to Obtain Relevant Out-of-state Criminal Case Record* at 7-13 (Feb. 17, 2022).

No further filings by either party followed. On December 31, 2024, I issued an order to the parties to report the status of this appeal, including updated email and regular mailing addresses for each party or authorized representative, updated notices of appearance, and efforts to obtain Mr. Monteiro's Rhode Island criminal case record.

A response to this order was due by January 31, 2025. Mr. Monteiro did not file a response. On January 30, 2025, DPH reported that Mr. Monteiro had passed away on March 16, 2024. Its response included a copy of the EMT licensing profile that DPH's Office of Emergency Medical Services maintained for each EMT who held, or had held, a Massachusetts ENT certification. The information it showed for Mr. Monteiro included a notation that he had died on March 16, 2024. It also showed the status of his EMT certification as "expired" and "not renewable." DPH requested in its response that Mr. Monteiro's appeal be dismissed in view of his death.

DPH's response showed that the agency sent a copy of it to the email address Mr. Monteiro had supplied during the prehearing conference session without subsequent correction. DPH did not assert that the emailing had been rejected or returned. No other person or entity, such as Ms. Monteiro's estate (if any), has moved to be substituted for him in this proceeding or requested leave to intervene.

Discussion

I treat DPH's response to the prior order to file status report as a motion to dismiss Mr. Monteiro's appeal for mootness based upon a suggestion of his death. *See Bd. of Registration in Medicine v. Winterer*, Docket No. RM-17-1004, Recommended Decision (Jul. 2, 2020). I note that DPH requested specifically that the appeal be dismissed, rather than that the Division of Administrative Law Appeals issue a decision recommending dismissal. I also note that DPH's Office of Emergency Medical Services has already recorded both the expiration of Mr. Monteiro's Massachusetts EMT certification, his death on March 16, 2024, and the status of his Massachusetts EMT certification as "expired" and "not renewable."

The circumstances presented here show that no further prosecution of this appeal has occurred, or was even possible, since Mr. Monteiro's death nearly a year ago. As a result, there remains nothing further for DALA to adjudicate here, and the appropriate outcome is a decision dismissing the appeal as moot.¹

Disposition

For the reasons stated above, this appeal is dismissed for lack of jurisdiction, based upon its mootness, pursuant to 801 C.M.R. § 1.01(7)(g)3. As a result of this dismissal, the status of Mr. Monteiro's Massachusetts EMT certification is as it is currently shown by his DPH Office of Emergency Medical Services licensing profile: "expired" and "not renewable."

SO ORDERED.

^{1/} In circumstances other than the appealing party's death, a lengthy period of inaction in an EMT's appeal challenging the suspension and proposed temporary revocation of his EMT certification would suggest the appeal's abandonment and justify its dismissal for lack of prosecution on this ground. *See Dep't of Public Health v. McCauliff*, Docket No. PHET-20-0389, Decision (Mass, Div. of Admin. Law App., Jan. 3, 2025).

This is a final decision. The parties are hereby notified that any person aggrieved by this Decision may seek judicial review by filing, within 30 days of receiving notice of it, an appeal with the Superior Court pursuant to M.G.L. c. 30A, § 14. The parties are also hereby notified further that, within ten days from the date on which this Decision is sent to them, either of the parties to this proceeding may move for reconsideration, pursuant to 801 C.M.R. § 1.01(7)(1), in order to “correct a clerical or mechanical error in the decision or a significant factor that [DALA or the Administrative Magistrate] may have overlooked in deciding the case.”

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Mark L. Silverstein

Mark L. Silverstein
Administrative Magistrate

Dated: February 7, 2025