

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

**DEPARTMENT OF PUBLIC HEALTH,
OFFICE OF EMERGENCY MEDICAL
SERVICES,**

Petitioner,

v.

SEBASTIAN PESSINI,

Respondent

Representative for Petitioners:

Jon A. Ciraulo, Esq.
3282 Main Street, P.O. Box 930
Barnstable, MA 02630

Attorney for Respondent:

James M. Strong, Esq.
Department of Public Health
250 Washington Street
Boston, MA 02108

Administrative Magistrate:

Angela McConney Scheepers, Esq.

SUMMARY OF RECOMMENDED DECISION

The DPH has established sufficient grounds under 105 CMR 170.940(E), 105 CMR 170.940(F) and 105 CMR 170.940(P) to revoke immediately and suspend temporarily the Respondent's certification as an Emergency Medical Technician. The Respondent pled guilty to two counts of assault and battery on a household member, failed to notify OEMS of his convictions within five days, and presents a danger to public health or safety. I recommend that the decision of the DPH to suspend immediately and temporarily revoke his certification at all levels be affirmed.

RECOMMENDED DECISION

On March 29, 2016, the Petitioner, Department of Public Health (DPH), issued a Notice of Agency Action pursuant to 105 CMR 170.760 suspending immediately and revoking temporarily Respondent Sebastian Pessini’s EMT certification at all levels of training after he was convicted of criminal offenses. On February 11, 2016, Mr. Pessini pled guilty to two charges of the offense of assault and battery on a household member, and was placed on supervised probation until February 9, 2018. G.L. c. 265, § 13M(a).¹ The court further ordered that Mr. Pessini stay away from the victim and complete a batterers’ program. (Exhibit 1.)

In the Notice of Action, DPH set out the following grounds for the immediate suspension and proposed temporary revocation of Mr. Pessini’s EMT certification:

- A. Respondent’s actions constitute the commission of criminal offenses relating to the performance of duties, as set forth in 105 CMR 170.940(E).
- B. The Respondent’s actions violate the public trust and, thus, endanger the health and safety of the public, as set forth in 105 CMR 170.940(F).
- C. Respondent failed to meet reporting obligations in accordance with 105 CMR 170.937, as set forth in 105 CMR 70.940(P).

I held a hearing on September 23, 2016 at the Division of Administrative Law Appeals (DALA), One Congress Street, Boston, MA. The parties offered ten exhibits into evidence (Exhibits 1-10). The Petitioner called Investigator Brendan Murray, the Office of Emergency Services compliance investigator and emergency compliance investigator. Mr. Pessini called the following Dennis Fire Department personnel: Chief Mark Dellner; John Adelizzi, the EMS coordinator and Captain Wayne Conlon. Mr. Pessini also testified on his own behalf. The hearing was digitally recorded.

¹ A third charge of witness intimidation was dismissed at the request of the Commonwealth. G.L. c. 268, §13B. *Commonwealth v. Pessini*, Docket No. 1525CR1838 , Barnstable District Ct. (Exhibits 1 and 3.)

The parties submitted their Post-Hearing Briefs on November 10, 2016, whereupon the administrative record closed.

FINDINGS OF FACT

Based upon the testimony and documents presented at the hearing and reasonable inferences from them, I hereby render the following findings of fact:

1. DPH is responsible for both the certification and oversight of those who meet the qualifications to become emergency medical technicians, or EMTs. Its responsibilities include the authority to investigate complaints and to initiate enforcement actions, including issuance of letters of clinical deficiency and correction orders, and revocation or suspension of certifications. 105 CMR 170.940. (Exhibit 1; Testimony of Murray.)

2. Mr. Pessini was hired as a firefighter/paramedic by the Dennis Fire Department (DFD) in August 2013. The DFD operated on ten-man shifts, with an eight-man minimum. (Testimony of Pessini; Testimony of Chief Dellner.)

3. Mr. Pessini was certified as an EMT-Paramedic No. 879666 with an expiration of April 1, 2017. (Exhibits 1 and 13; Testimony of Pessini.)

4. Mr. Pessini was involved in incidents of domestic violence on May 3, 2015 and July 11, 2015. On May 3, 2015, Mr. Pessini grabbed both of his girlfriend's arms as she was trying to leave their home. As she got in her vehicle to leave, Mr. Pessini followed her to the vehicle. As she was driving, Mr. Pessini grabbed the steering wheel and swerved the vehicle into oncoming traffic. Although, the girlfriend preferred to go to her parents' home, she returned home with Mr. Pessini. (Exhibits 1 and 3.)

5. On July 11, 2015, the girlfriend went to a movie with some family and friends. When she returned home, Mr. Pessini "got in her face" and called her names, including "slut."

The girlfriend attempted to leave, and Mr. Pessini prevented her by grabbing her arms and wrists and shoving her against the wall a few times. (Exhibits 1 and 3.)

6. The girlfriend texted a friend that Mr. Pessini was “getting physical with her.” When Mr. Pessini realized she texted someone, he snatched the cell phone away and would not return it. The girlfriend tried to leave on at least eight occasions, but Mr. Pessini physically prevented her each time. When the girlfriend tried to get into her vehicle, Mr. Pessini picked her up and threw her over his shoulder. He also threw her on the hood of his truck. (Exhibits 1 and 3.)

7. Mr. Pessini placed his hands around the girlfriend’s neck, but did not attempt to strangle her. The girlfriend fought back, repeatedly swinging and flailing her arms in Mr. Pessini’s face, and kneeling him in his midsection. After she was able to hit Mr. Pessini in the mouth, he said, “... you chipped my tooth ... [y]ou’re going to be six feet under. I’m going to bury you.” Mr. Pessini ripped the car keys from his girlfriend’s hand. They returned to the home. When Mr. Pessini fell asleep, the girlfriend went to her parents’ home. (Exhibits 1 and 3.)

8. When Mr. Pessini arrived later at the girlfriend’s parents’ home, her father asked him to leave. When he did not leave right away, her father threatened to call the police. After Mr. Pessini left, the girlfriend and her father drove to the Yarmouth police station. (Exhibits 1 and 3.)

9. A police officer took the girlfriend’s statement and she was granted an emergency restraining order. (Exhibits 1 and 3.)

10. The police called Mr. Pessini and asked him to come to the station. At the station, Mr. Pessini denied the allegations, only admitting to “picking a fight” and calling her a “bitch, among other names.” Mr. Pessini told the police officer that the girlfriend had been drinking and

that she was the first to hit, striking him in the face. Mr. Pessini said that he had only grabbed the girlfriend to stop her from hitting him. He denied preventing her from leaving the home, and denied taking her cell phone and car keys. (Exhibits 1 and 3.)

11. The following Monday, July 13, 2015, the girlfriend went to court had the emergency restraining order extended for the period of one year. (Exhibit 3; Testimony of Pessini.)

12. Mr. Pessini was arraigned on July 13, 2015 on two counts of assault and battery on a household member and one count of witness intimidation. G.L. c. 265, § 13M(a); G.L. c. 268, §13B. (Exhibits 1 and 3.)

13. On February 11, 2016, Mr. Pessini pled guilty to two counts of assault and battery on a household member. The Commonwealth dismissed the charge of witness intimidation. Mr. Pessini was ordered to stay away from the girlfriend and ordered to complete a batterers' program. He was placed on supervised probation until February 9, 2018. (Exhibit 1; Testimony of Pessini.)

14. The fire department was aware of Mr. Pessini's charges. Captain Wayne Conlan went to court with Mr. Pessini on February 11, 2016, and telephoned John Adelizzi, the DFD OEMS coordinator, from the courthouse with the resolution of the matter. Mr. Adelizzi informed Chief Mark Dellner of the outcome. (Exhibit 1; Testimony of Pessini.)

15. According to 105 CMR 170.937(A)(1), EMTs must report all convictions within five days. OEMS learned of Mr. Pessini's convictions when Mr. Adelizzi notified OEMS of Mr. Pessini's convictions via a February 23, 2016 email to Cameron Silva. Mr. Silva requested a copy of the court docket, the disposition and the Board of Probation conditions. (Exhibit 10; Testimony of Pessini.)

16. 105 CMR 170.940 sets forth the grounds on which DPH may suspend, revoke, or refuse to renew a certification. On March 29, 2016, by certified mail and by first class mail, OEMS issued to Respondent a Proposed Notice of Agency Action, in which it stated that OEMS intended to suspend immediately and temporarily revoke his EMT certification. The immediate suspension and proposed temporary revocation was based upon evidence that Mr. Pessini: 1) pled guilty to multiple criminal charges as set forth below; 2) failed to report his convictions, as required; and 3) presents a danger to the public health or safety. (Exhibits 1, 3-9.)

17. In order to terminate the revocation of Mr. Pessini's certification on or after February 9, 2018, OEMS set forth the following requirements:

1. Pessini must submit a written request to OEMS to terminate the revocation of his EMT certification. The request must include the following documentation:
 - a. Certified copies of records indicating that he had complied with the terms of discipline rendered to him and the terms of probation as a result of his guilty pleas entered in *Commonwealth v. Pessini*, Barnstable District Court Docket # 1525CR1838.
 - b. A written assessment deemed satisfactory by the Department, from Pessini's supervising probation officer AND a Department-approved qualified mental health professional², that the Respondent does not pose a risk to the public health and safety;
 - c. Documentation that Pessini successfully completed an EMS ethics course;³
 - d. Copies of current CPR and ACLS cards;

² Qualified Mental Health Professional: A psychiatrist license to practice medicine under G.L. c. 112, § 2 a psychologist licensed under G.L. c. 112, §118 through 121, or an independent clinical social worker licensed under G.L. c. 112, §130 through 132; provided that he or she has at least 1,000 hours of experience over a minimum of two years involving assessment, treatment, and consultation concerning individuals with behavior that presents a risk of harm to others in the community, in the workplace, in treatment setting, or in correctional facilities; provided further that he or she has not provided treatment to the candidate. *See 101 CMR 15.04.*

³ Pessini shall ensure that a written description of the proposed remediation program outlined in (i) be sent, for prior approval, to Renee Atherton, OEMS Compliance Coordinator, Department of Public Health, Office of Emergency Medical Services, 99 Chauncy Street, Boston, MA 02111.

- e. Authorization for a Criminal Offender Record Information (CORI) report to be released to OEMS by the Massachusetts Division of Criminal Justice Information Services (a government-issued photo ID must be provided for verification);
 - f. Certified information from the licensing or certification board for each jurisdiction in which Pessini has ever been licensed or certified as an EMT, sent directly to OEMS, identifying his license or certification status and discipline to function as an EMT is in good standing and free of any restrictions or conditions;
 - g. An individualized application to renew certification late, which Pessini will obtain directly from ...OEMS...;
 - h. Money order or certified bank check ... for the certification renewal fee;
 - i. Documentation that Pessini has completed all continuing education required for recertification.
2. Respondent shall immediately surrender his EMT certification to the Department in accordance with 105 CMR 170.760(c)
 3. Pessini shall bear any cost associated with the requirements of the conditions required for termination of the revocation period.
 4. The Department will notify Pessini of its decision on the request to terminate the temporary revocation period. The Department reserves the right to impose probationary conditions on Pessini's EMT certification that are reasonably necessary to protect the public health and safety.

(Exhibit 1.) (Emphasis supplied.)

18. On April 1, 2016, Chief Dellner issued an order, effective May 1, 2016, that Mr. Pessini be no longer counted as "shift strength." The order prohibited Mr. Pessini from responding on emergency overtime coverage, or filling shift vacancies on other groups. Thus Mr. Pessini could not serve as the eighth man on a minimum shift, the DFD would have to fill the eighth position with an overtime assignment. Working as a firefighter only, Mr. Pessini could respond to fires and other department emergencies not involving EMS. (Exhibit 12.)

19. Mr. Pessini filed an undated Answer to the Notice of Agency Action and Request for Adjudicatory Hearing. (Exhibit 2.)

20. On May 18, 2016, Chief Dellner sent a letter to OEMS in support of Mr. Pessini's appeal for termination of the revocation of his certification. (Exhibit 13; Testimony of Chief Dellner.)

21. Captain Donald Babineau sent an undated letter, written on DFD letterhead, to the OEMS in support of Mr. Pessini's appeal for termination of the revocation of his certification. (Exhibit 14.)

22. After his conviction, Mr. Pessini reported to probation every fourteen days for seven months. Thereafter, he reported to probation on a monthly basis. (Exhibit 15.)

23. Mr. Pessini also attended the batterers' program every Thursday, which was scheduled to end in January 2017. On the date of the hearing, he had attended 27 out of 40 classes. (Testimony of Pessini.)

CONCLUSION AND ORDER

Mr. Pessini appeals the Department of Public Health's (DPH) decision to revoke immediately and temporarily suspend his EMT certification.

105 CMR 170.940 sets forth the grounds on which DPH may suspend, revoke or refuse to renew an EMT's certification. According to the Notice of Action, DPH based its decision to immediately suspend and temporarily revoke Mr. Pessini's EMT certification on the following grounds: 105 CMR 170.940(E) (commission of criminal offenses relating to the performance of duties); 105 CMR 170.940(F) (those violate the public trust and, thus, endanger the health and safety of the public); and 105 CMR 70.940(P) (failure to meet reporting obligations).

A finding that Mr. Pessini's actions or omissions violate any of these provisions must result in a decision affirming the action initiated by the DPH. G.L. c. 11C, §16, 105 CMR 170.770 (B).

DPH derives its regulatory authority to certify EMTs and control their licensing from G.L. c. 111C, § 9. DPH, through its Office of Emergency Medical Services (OEMS), certifies EMTs at three skill levels. An EMT-Basic may provide basic life support patient care. 105 CMR 170.810. An EMT-Intermediate and an EMT-Paramedic may provide advanced life support patient care. 105 CMR 170.820 and 105 CMR 170.840. All EMTs must receive ongoing training in accordance with the regulations. 105 CMR 170.810(C), 105 CMR 170.820(C), 105 CMR 170.840 (C).

DPH is empowered to investigate complaints and to initiate enforcement action. As relevant here, it may suspend immediately and revoke temporarily an EMT's certification. G.L. c. 111C, §16; 105 CMR 170.760.

DPH has met its burden of proving that the certification of Sebastian Pessini as an EMT, at any level, should be suspended immediately and revoked temporarily. First, Mr. Pessini was convicted of criminal offenses related to violence, as set forth in 105 CMR 170.940(E). The Barnstable District Court docket in evidence shows that on February 11, 2016, Mr. Pessini pled guilty to two counts of assault and battery on a household member. Another charge of witness intimidation was dismissed at the request of the Commonwealth. Mr. Pessini is currently on court supervised probation, which is scheduled to last until February 9, 2018.

Mr. Pessini does not dispute that he has convictions. But he disputes that the events of May 3, and July 11, 2015 transpired exactly as reported in the police incident reports. He contends that he informed his fire department of his convictions on the day he pled guilty and so provided OEMS with notice; and that he does not present a danger to the public. DALA is not the forum for Mr. Pessini to dispute the police incident reports. He pled guilty in open court to

the offenses as charged as evidenced by the court docket. The court docket also shows that Mr. Pessini filed a motion to revise and revoke sentence on February 12, 2016.

Second, DPH has proven that Mr. Pessini's actions violate the public trust and, thus endanger the health and safety of the public, as set forth in 105 CMR 170.940(F). EMTs hold position of public trust. This includes responding to the homes of patients who are vulnerable, in distress and may not even be conscious, at all hours of the day and night. Often the scenes of these emergencies are very stressful, with patients and bystanders who are upset and combative. EMTs must exercise patience, restraint and level-headedness at all times. It makes good sense therefore that the Department carefully scrutinizes the criminal records of its applicants for EMT licenses.

Mr. Pessini's convictions are for offenses of violence. An individual who is prone to violence is not fit to work with patients who can be difficult. In order for Mr. Pessini to function safely as an EMT, he must be fully rehabilitated and remediated. The fact that the offenses constitute domestic violence does not make them less serious than offenses against a complete stranger. Mr. Pessini's actions as described above represent a violation of that public trust, as well as a threat to the public health and safety.

When considering similar issues involving official misconduct, courts do not limit consideration only to misconduct occurring on the job. "There are ... circumstances where the crime charged, no matter where or when performed, is so inimical to the duties inherent in the employment that an indictment for that crime is for misconduct in office." *Attorney General v. McHatton*, 428 Mass. 790, 793 (1999). In *McHatton*, the SJC, in construing the phrase "misconduct ... in their offices" concerning the impeachment of state officers, rejected the view that the phrase excluded acts of misconduct that were "in no way

related to the office held or the duties of said office,” and stated that the phrase encompassed misconduct that “can be said reasonably to render [the officer] unfit to hold [his] office.” *Id.*

Third, DPH has proven that Mr. Pessini failed to meet the reporting obligations in accordance with 105 CMR 170.937, as set forth in 105 CMR 70.940(P) to report his convictions to OEMS within five days as required. Mr. Murray testified that OEMS needs the swift notification in order to assess the risk level posed by the certified. As it were, Mr. Pessini’s convictions were for violent offenses.

Mr. Pessini testified that he fulfilled his reporting requirement to DPH when he informed DFD OEMS coordinator on the day he was convicted. While the regulations do not prohibit anyone else from reporting convictions, the regulations do state that it is the responsibility of the certified individual to inform OEMS. This affirmative duty thus may not be discharged by informing a fire department. Mr. Adelizzi was late in disseminating the information; he informed OEMS twelve days after the convictions.

DPH has revoked temporarily Mr. Pessini’s EMT certification until February 9, 2018. By tying the suspension period to the end of the probationary period, DPH would be assured that all of the conditions and terms of Mr. Pessini’s sentence are completed and that he is rehabilitated, based on the court’s terms and monitoring. Mr. Murray testified that DPH would consider advancing the termination of suspension if the court moved up the probationary period.

In the Notice of Action, DPH set forth the conditions for ending the termination of the revocation of Mr. Pessini’s EMT certification. It required that Mr. Pessini submit the request in writing with certified copies of court records showing completion of the terms of probation, written assessments from the supervising probation officer and a Department-approved qualified mental health professional showing that Mr. Pessini does not pose a risk to the public health and

safety; proof of successfully completing an EMS ethics course; copies of current CPR and ACLS cards; authorization for a CORI check along with a copy of government-issued photo ID for verification; certified licensing information from each jurisdiction in which Mr. Pessini has ever been licensed or certified as an EMT (to be sent directly to OEMS); an individualized application to renew certification late (obtain directly from OEMS); a money order or certified bank check for the certification renewal fee; documentation that Mr. Pessini has completed all continuing education required for recertification. The Department reserved the right to impose other probationary conditions on Mr. Pessini's EMT certification in order to reasonably necessary to protect the public health and safety. These conditions are a reasonable exercise of DPH's enforcement authority. G.L. c. 111C, §16; 105 CMR 170.760.

By a preponderance of the evidence, the DPH has established sufficient grounds under 105 CMR 170.940(E), 105 CMR 170.940(F) and 105 CMR 70.940(P) to immediately suspend and temporarily revoke Sebastian Pessini's certification as an EMT. I recommend that the decision of the DPH to suspend immediately and revoke temporarily his certification at all levels be affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Angela McConney Scheepers
Administrative Magistrate

DATED: March 3, 2017