

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals
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Docket No. PHET-22-0077

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

Petitioner

v.

STEVEN POTTER,

Respondent

Attorney for Petitioner:

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Department of Public Health
250 Washington Street
Boston, MA 02108

Attorney for Respondent:

Kenneth Anderson, Esq.
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Administrative Magistrate:

Angela McConney Scheepers, Esq.

SUMMARY OF RECOMMENDED DECISION

The Department of Public Health has established sufficient grounds to revoke immediately and suspend temporarily the Respondent's certification as an Emergency Medical Technician. 105 C.M.R. §170.940(E), 105 C.M.R. § 170.940(F) and 105 C.M.R. § 170.940(P). The Respondent admitted to sufficient facts to one count of assault and battery and one count of assault; failed to notify OEMS of his admissions 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 February 7, 2022, the Petitioner, Department of Public Health (Department or DPH), issued a Notice of Agency Action, pursuant to 105 C.M.R. § 170.760, suspending immediately and revoking temporarily Respondent Steven Potter's EMT certification at all levels of training, after he admitted to sufficient facts for two criminal offenses. On December 16, 2021, Mr. Potter admitted to sufficient facts to one count of assault and battery¹ and one count of assault² in Norfolk Superior Court. The matter was continued without a finding (CWOFF) for two years, upon conditions that he complete an anger management program and 80 hours of community service.

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

- A. Respondent's actions constitute the commission of criminal offenses relating to the performance of duties, as set forth in 105 C.M.R. § 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 C.M.R. § 170.940(F).
- C. Respondent failed to meet reporting obligations in accordance with 105 CMR §170.937, as set forth in 105 C.M.R. § 70.940(P).

I held a hearing on June 16, 2022 at the Division of Administrative Law Appeals (DALA) in Malden. The Petitioner called Investigator Brendan Murray, the Office of Emergency

¹ He was originally charged with assault and battery causing serious bodily injury, but the charge was reduced at the change of plea hearing. *Commonwealth v. Potter*, Docket No. 1982-CR-00431, Norfolk Sup. Ct. (Exhibits 4 and 5).

² A third charge of assault and battery was dismissed at the request of the Commonwealth. *Commonwealth v. Potter*, Docket No. 1982-CR-00431, Norfolk Sup. Ct. (Exhibits 4 and 5).

Services compliance investigator and emergency compliance investigator. Mr. Potter testified on his own behalf.

The parties offered six exhibits into evidence.³ The hearing was digitally recorded.

The parties submitted their Post-Hearing Briefs on August 4, 2022, 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 (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 C.M.R. § 170.940. (Exhibit 1; Testimony of Murray.)

2. Mr. Potter received his EMT license on July 6, 2011. (Exhibit 3; Testimony of Potter).

3. Mr. Potter was certified as an EMT-Paramedic No. #E890868 with an expiration of March 31, 2022. (Exhibits 1 and 3; Testimony of Potter.)

4. On January 26, 2019, Mr. Potter and his brother, Matthew, were involved in a physical altercation with several other men. They attended a fundraiser that night at the American Legion Post; they had been drinking. At the end of the night, Mr. Potter and Matthew began arguing with two men who also happened to be brothers. (Exhibits 4 and 5).

³ The parties originally offered seven exhibits, with Respondent offering as an exhibit a CD of a witness interview preliminarily marked as Exhibit 6. Following the hearing, through counsel, he withdrew Exhibit 6 from evidence.

5. Mr. Potter and his brother continued arguing as they were escorted out of the bar. (Exhibits 4 and 5).

6. Mr. Potter waited in the parking lot. When M.S. exited, Mr. Potter attempted to punch him, but missed. That was the basis for the assault charge. (Exhibit 5).

7. As someone attempted to calm Mr. Potter down, his brother, Matthew, began fighting with a different set of men. Others intervened and separated them. However, Matthew hit (or pushed) Christopher McCallum, who fell flat on his back; his head hit the pavement and he was unconscious, bleeding profusely and having difficulty breathing. He ultimately passed away. (Exhibits 4 and 5).

8. As Mr. McCallum lay there, Mr. Potter returned to the scene. When he noticed the person on the ground was not his brother, he stepped around him and ran to the manager, J.D., who was coming out to check on Christopher McCallum. Mr. Potter punched J.D. in the head, knocking him to the ground. The manager ultimately suffered an injury, a concussion. That was the basis for the assault and battery charge. (Exhibits 4 and 5).

9. Mr. Potter was aware that there was someone in need of aid and he did not come to that person's aid; rather, he actively avoided helping and instead physically assaulted someone else. (Exhibits 4 and 5; Testimony of Murray).⁴

10. Mr. Potter returned the next day to retrieve his belongings. He spoke with a State Trooper. He said he had been hit by someone, which caused a laceration on his face, but he refused to say who it was. He then declined to make any further statements. (Exhibits 4 and 5).

⁴ At the hearing, Mr. Potter disputed this fact. However, at the plea colloquy, while under oath, he agreed with the Commonwealth's recitation of the facts which included that he walked around Mr. McCallum as he lay on the floor. (Exhibit 5.)

11. Mr. Potter continued to work for Boston EMS following the incident, and only stopped after his November 2019 arrest. (Testimony of Potter).

12. When Mr. Potter was arrested in November 2019, he stopped working for Boston EMS. He was arraigned on November 6, 2019, on one count of assault and battery, causing serious bodily harm and two counts of assault and battery. G.L. c. 265, § 13A(b)(i); G.L. c. 268, §13A. (Exhibits 4 and 5).

13. On December 16, 2021, Mr. Potter admitted to sufficient facts to (1) one count of assault and battery and (2) one count of assault. The matter was continued without a finding (CWOFF) for two years upon the condition that he complete an anger management program and 80 hours of community service. (Exhibits 4 and 5).

14. Mr. Potter spoke to Boston EMS about his criminal case. However, Mr. Potter failed to inform the Department of the CWOFF within five business days. 105 C.M.R. § 170.937(A)(1). (Exhibit 1; Testimony of Murray).

15. Mr. Potter testified that he believed he had to disclose his criminal case to the Department upon renewal of his license, but not before. (Testimony of Potter).

16. On February 7, 2022 by certified mail and by first class mail, the DPH Office of Emergency Medical Services (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 for a minimum of two years. 105 C.M.R. § 170.940. OEMS based the immediate suspension and proposed temporary revocation on Mr. Potter's (1) admission to sufficient facts for multiple criminal charges; (2) his failure to report this, as required; and that (3) his conduct presented a danger to the public health or safety. (Exhibit 1).

17. In order to terminate the revocation of Mr. Potter's certification, OEMS set forth the following requirements:

1. Mr. Potter 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. Potter*, Norfolk Superior Court, Docket No. 1983-CR-00431, along with documentation that the case has been dismissed.
 - b. A written assessment deemed satisfactory by the Department, from a Department-approved qualified mental health professional⁵, that the Respondent has undergone a risk assessment and the results of that assessment;
 - c. Documentation reflecting that Potter has met continuing education requirements required for recertification in accordance with 105 CMR 170.810;
 - d. Copies of current CPR card;
 - e. An individualized application to renew certification late, which he will obtain directly from Dan Saxe, OEMS EMT Education and Certification Supervisor;
 - f. Money order or certified bank check ... for the certification renewal fee;
 - g. Authorization for a Criminal Offender Record Information (CORI) report to be released to OEMS by the Massachusetts Division of Criminal Justice Information Services (the Authorization must be notarized);
 - h. Certified information from the licensing or certification board for each jurisdiction in which Potter 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;
2. Mr. Potter shall bear any cost associated with the requirements of the conditions required for termination of the revocation period.
3. The Department will notify Mr. Potter of its decision on the request to terminate the temporary revocation period. The Department reserves the right

⁵ 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 C.M.R. § 15.04.

to impose probationary conditions on Potter's EMT certification that are reasonably necessary to protect the public health and safety.

(Exhibit 1).

18. On February 17, 2022 Mr. Potter timely filed an Answer to the Notice of Agency Action and Request for Adjudicatory Hearing. (Exhibit 2).

19. By the time of the June 16, 2022 DALA hearing, Mr. Potter had completed his anger management course, performed the 80 hours of community service, and paid all his fees and court costs. He continues contacting his probation officer once a month and has periodic home visits. (Testimony of Potter).

20. Mr. Potter also submitted several letters of support from various supervisors and colleagues and one letter from his brother's attorney. (Exhibit 7).

CONCLUSION AND ORDER

I affirm the Department's decision to revoke immediately and temporarily suspend Mr. Potter's EMT certification.

105 C.M.R. § 170.940 sets forth the grounds on which DPH may suspend, revoke or refuse to renew an EMT's certification. According to the February 7, 2022 Notice of Action, DPH based its decision to immediately suspend and temporarily revoke Mr. Potter's EMT certification on the following grounds: 105 C.M.R. § 170.940(E) (commission of criminal offenses relating to the performance of duties); and 105 C.M.R. § 70.940(P) (failure to meet reporting obligations) and 105 C.M.R. § 170.940(F) (actions violate the public trust and, thus, endanger the health and safety of the public).

DPH derives its regulatory authority to certify EMTs and control their licensing from G.L. c. 111C, § 9. DPH, through OEMS, certifies EMTs at three skill levels. An EMT-Basic may provide basic life support patient care. 105 C.M.R. § 170.810. An EMT-Intermediate and an

EMT-Paramedic may provide advanced life support patient care. 105 C.M.R. § 170.820 and 105 C.M.R. § 170.840. All EMTs must receive ongoing training in accordance with the regulations. 105 C.M.R. § 170.810(C), 105 C.M.R. § 170.820(C), 105 C.M.R. § 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 C.M.R. § 170.760.

A finding that Mr. Potter'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 C.M.R. § 170.770 (B).

DPH has met its burden of proving that the certification of Steven Potter as an EMT, at any level, should be suspended immediately and revoked temporarily.

First, Mr. Potter admits that he did not report his CWOFF within five days of his change of plea. He argues—as justification or mitigation—that the five-day reporting requirement was not in place when he was first licensed but, rather, was included in the regulations later. He also testified that he believed he only had to report his misconduct upon renewal of his license. However, the reporting requirement has been in place since 2006, *see* 105 C.M.R. §170.000 *et seq*, 2006 version (Attachment A, Petitioner's Closing Brief). Moreover, all EMTs are obligated to be up to date on the most current regulations and comply with them. 105 C.M.R. § 170.800(D). Failure to report his CWOFF in a timely manner, alone, is enough to justify DPH's actions. 105 C.M.R. § 170.940(P).

Second, Mr. Potter committed criminal offenses relating to the performance of his EMT duties, as set forth in 105 C.M.R. §170.940(E). It is of no moment that his conduct occurred “off duty.” Because an EMT holds a position of trust, “an agency has the discretion to remove that

person if she commits misconduct outside her normal duties.” *Dept of Public Health v. Pard*, Docket No. PHET-1-548 (Division of Admin. Law App., Mar. 3, 2018), citing *Dupree v. School Comm. Of Boston*, 1 Mass. App. Ct. 535, 538-39 (1983). “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.*

Additionally, as investigator Brendan Murphy testified, Mr. Potter’s offense was related to the performance of his duties, because EMTs often find themselves in stressful situations with patients that can sometimes become combative. And, in this case, Mr. Potter did not come to the aid of someone in need.

Third, for largely the same reasons, DPH has proven that Mr. Potter’s actions violate the public trust and thus endanger the health and safety of the public, as set forth in 105 C.M.R. § 70.940(F). EMTs are in a position of public trust and Mr. Potter’s actions placed others in danger—not just Christopher McCallum but also his own victims. 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. Potter’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. Potter to function safely as an EMT, he must be fully rehabilitated and remediated. Mr. Potter’s actions as

described above represent a violation of that public trust, as well as a threat to the public health and safety.

While Mr. Potter acknowledges that he violated the EMT regulations, he takes issue with the severity of the sanction. He asserts that his conduct was out of character, but that he worked as an EMT without incident before and after his criminal behavior. He submitted several letters of support from colleagues and supervisors who uniformly believe he is a good EMT who should be reinstated. However, Mr. Potter has clearly violated several regulatory requirements, and DPH is in the best position to determine the length and conditions to impose.

Where an administrative agency imposes a penalty it is authorized to enforce, “neither a trial court nor an appellate court is free to substitute its own discretion as to the matter; nor can the reviewing court interfere with the imposition of a penalty by an administrative tribunal because in the court’s own evaluation of the circumstances the penalty appears to be too harsh.”

Mass. Elec. Co. v. Dept. of Public Utilities, 469 Mass. 53, 5 (2014), quoting *Vaspourakan, Ltd. v. Alcoholic Beverages Control Comm’n*, 401 Mass. 347, 355 (1987), in turn quoting *Levy v. Board of Registration & Discipline in Med.*, 378 Mass. 519, 529 (1979).

DPH has revoked temporarily Mr. Potter’s EMT certification for a minimum of two years. By running the suspension period contemporaneously with the probationary period, DPH would be assured that all the conditions and terms of Mr. Potter’s sentence are completed and that he is rehabilitated, based on the court’s terms and monitoring.


In the February 7, 2022 Notice of Action, DPH set forth the conditions for ending the termination of the revocation of Mr. Potter’s EMT certification. These conditions are a reasonable exercise of DPH’s enforcement authority. G.L. c. 111C, §16; 105 C.M.R. § 170.760.

By a preponderance of the evidence, the DPH has established sufficient grounds under 105 C.M.R. § 170.940(E), 105 C.M.R. § 170.940(F) and 105 C.M.R. § 70.940(P) to immediately

suspend and temporarily revoke Steven Potter'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: **SEP 23 2022**