

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
1 Congress Street, 11th Floor
Boston, MA 02114
www.mass.gov/dala**

Department of Public Health,
Petitioner

v.

Docket No. PHET-17-878

Cory J. Stebbins,
Respondent

Appearance for Petitioner:

James M. Strong, Esq.
Department of Public Health
250 Washington Street
Boston, MA 02018-4619

Appearance for Respondent:

Cory J. Stebbins
Pro se

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF RECOMMENDED DECISION

Emergency medical technician (EMT) pled guilty to four firearm crimes. On his application for recertification, he denied having pled guilty to any crimes. Therefore, recommendation is that Department of Public Health (DPH) may continue to suspend and may temporarily revoke EMT's certification for his false statement. DPH did not prove and recommendation is that DPH may not continue to suspend and may not temporarily revoke EMT's certification on the grounds that his firearms crimes related to the performance of his duties or that his convictions endangered the public health or safety.

RECOMMENDED DECISION

The petitioner, Cory J. Stebbins, appeals the action of the Department of Public Health

(DPH) immediately suspending and proposing to temporarily revoke Mr. Stebbins's certification as an emergency medical technician.

I held a hearing on November 29, 2017, which I recorded digitally. The hearing was on both the DPH's immediate suspension and proposed temporary revocation of Mr. Stebbins's certification. Mr. Stebbins represented himself and called no other witness. DPH called Brendan Murphy, Compliance Investigator and Emergency Preparedness Coordinator, DPH's Office of Emergency Medical Services (OEMS).

I accepted into evidence seven exhibits. DPH submitted a post-hearing brief; Mr. Stebbins did not.

Findings of Fact

1. Mr. Stebbins was certified as an Emergency Medical Technician (EMT)-Basic. (Murphy testimony; Ex. 7.)

2. Mr. Stebbins was first certified as an EMT-Basic in June 2015, and last recertified on April 4, 2017. His certification was not interrupted between those times. (Ex. 7.)

3. On August 14, 2015, a Middlesex County grand jury indicted Mr. Stebbins on four counts:

A. Knowingly possessing or having under his control in a vehicle, a large capacity weapon, that is, an assault rifle, without having a firearms identification card authorizing him to do so, summarized on the indictment as "possession of a large capacity weapon" in violation of G.L. c. 269, § 10(m). (Initial capitals reduced to lower case.)

B & C. Knowingly possessing or having under his control in a vehicle, a large capacity feeding device, that is, a 30-round capacity magazine, without having a firearms identification card (FID) authorizing him to do so, summarized on the indictment as "possession

of a large capacity feeding device,” in violation of G.L. c. 269, § 10(m).

D. Owning, possessing, or transferring possession of ammunition without an FID, summarized on the indictment as “possession of ammunition,” in violation of G.L. c. 269, § 10(h). (Ex. 3)(initial capitals reduced to lower case.)¹

4. On August 19, 2016, Mr. Stebbins pled guilty to four counts:

A. Possessing a firearm without an FID, in violation of G.L. c. 269, § 10(h).

B & C. Carrying a dangerous weapon, in violation of G.L. c. 269, § 10(b) (misdemeanors).

D. Possessing a firearm without an FID, in violation of G.L. c. 269, § 10(h). (Ex. 4.)²

5. EMTs respond to medical emergencies. Many of the people who need EMTs are vulnerable due to incapacitation and mental health and substance abuse issues. EMTs often find themselves in people’s homes. (Murphy testimony.)

6. Massachusetts expects that EMTs have a high level of integrity that members of the public can trust. That is why Massachusetts does not want to certify EMTs with criminal backgrounds. (Murphy testimony.)

7. DPH assumes that when members of the public call 911 for emergency medical

¹ Despite the certification that the indictments were on file in Superior Court (Ex. 3), Mr. Stebbins denied at the hearing that he had been charged with the first three counts. He admitted that he had been charged with the fourth count.

² The criminal statutes that Mr. Stebbins pled guilty for violating do not correspond exactly to those for which he was indicted. That may account for Mr. Stebbins’s denying that he was indicted on three of the four counts for which he was indicted. In a criminal case, the lack of correspondence between the indictments and the guilty pleas may or may not matter. But in this administrative case, what matters is that Mr. Stebbins pleaded guilty to criminal charges.

At the hearing, Mr. Stebbins admitted to having pled guilty to the first and second charges, but denied having pled guilty to the third and fourth charges.

attention, they have a high level of trust in the EMTs who respond. DPH also assumes that if members of the public hesitate to call 911, it diminishes public health and safety. (Murphy testimony.)³

8. As part of his 2017 recertification process, Mr. Stebbins was asked various questions, including:

Since the last time you submitted an application for EMT certification or recertification, have you a) been convicted of; b) entered a guilty plea, nolo contendere, or no contest to; or, c) admitted to sufficient facts, in connection with a felony or misdemeanor in any jurisdiction, other than a minor traffic violation, even if the matter was continued without a finding or the court withheld adjudication so that you would not have a record or conviction? For purposes of this question, driving under the influence or driving while impaired is not a minor traffic violation. With regard to charges of criminal offenses, convictions, and disciplinary proceedings provide documentation, including, but not limited to, that which fully describes the offense, copies of relevant court documents or administrative proceedings, dispositions and current status.

(Ex. 5.)⁴

9. Mr. Stebbins answered no. (Ex. 5.)⁵

10. The National Registry of Emergency Medical Technicians (NREMT) is a private organization that Massachusetts and most states affiliate with. It ensures that EMTs have achieved certain training standards. For EMTs to become recertified in Massachusetts, they must receive training through NREMT. (Murphy testimony.)

11. When DPH became aware that Mr. Stebbins had been convicted, it looked at Mr. Stebbins's application information with NREMT. (Ex. 6.)

³ Mr. Murphy testified, not that DPH assumes these things, but that they are true. I have qualified them as DPH's assumptions because DPH did not prove them.

⁴ This is the text of Question 9. It appears to be also the text of Question 10. If the two questions differ, I cannot discern how. Mr. Stebbins also answered no to Question 10. (Ex. 5.)

⁵ At the hearing, Mr. Stebbins admitted that he should have answered yes to this question. He also admitted that DPH was correct that he answered this question inaccurately.

12. Mr. Stebbins’s application information with NREMT indicated that in 2017, Mr. Stebbins had not reported a criminal conviction. It read, “Criminal Conviction: No.” (Ex. 6.)

13. On September 15, 2017, DPH immediately suspended Mr. Stebbins as an EMT. The Notice of Agency Action: Immediate Suspension and Proposed Temporary Revocation of Certification as an Emergency Medical Technician alleged that Middlesex Superior Court documents

reveal that on August 19, 2016, Stebbins pled guilty to two (2) counts of possession of a firearm without an FID [firearm identification] card and two (2) counts of carrying a dangerous weapon.

As a result of his convictions, Stebbins was sentenced to two and a half years in the House of Correction[], which was suspended for four (4) years. Stebbins was also placed on risk/need probation for four (4) years, with a number of conditions (e.g., urine screens, stay away/no contact order) placed on him.

On or around October 2, 2016, Stebbins filed an application for recertification with OEMS. In the application, Stebbins provided false information to the Department. Specifically, Stebbins checked “no” to the question: “Since the last time you submitted an application for EMT certification or recertification in Massachusetts, have you...entered a plea of guilty [to]...a felony or misdemeanor in any jurisdiction[]?”⁶

On or around March 29, 2017, Stebbins submitted a second application for EMT recertification in which he again checked “no” to the criminal history question quoted in [the previous] paragraph....⁷

As required by 105 CMR 170.000 et seq., Stebbins holds a certification from the National Registry of EMTs (“NREMT”).

On or around March 13, 2017, Stebbins applied for NREMT recertification. In his application, Stebbins falsely checked “no” to the question: “Since your last certification, have you been convicted of a criminal offense []?”⁸

⁶ This application is not in evidence.

⁷ This application is Exhibit 5.

⁸ This application is not in evidence. As stated above, Mr. Stebbins’s application information with NREMT *indicated* that in 2017, Mr. Stebbins had not reported a criminal conviction. (Ex. 6.) DPH has not alleged that this sentence, if proved, violated a Massachusetts regulation.

EMTs hold an important place of public trust in their communities. An EMT's duties include care and treatment of patients in emergency situations, often in unsupervised settings. This includes responding to the homes of patients who are vulnerable, in distress, may be unconscious, and whose possessions are often unattended and/or in plain sight. Stebbins' conviction relative to firearms crimes – as well as his dishonesty in submitting information to the Department and NREMT⁹ – constitute violations of the public trust. Further, Stebbins' actions show that he is unfit to be an EMT at this time, and continued certification would endanger the public health and safety.

The Department believes that Stebbins cannot be safely authorized to respond to patients in supervised settings until he successfully meets the conditions placed on him as a result of his convictions.

Stebbins' current EMT certification makes him eligible to seek work as an EMT at any ambulance service.

The Commissioner finds that the conduct described herein endangers the public health and safety and that immediate suspension, pending final adjudication of the temporary suspension action, is necessary to prevent endangering the public health and safety.

(Ex. 1)(paragraph numbers omitted).

14. The September 15, 2017 cover letter to the Notice of Agency Action gave Mr. Stebbins 14 days to request a hearing. (Ex. 1.)

15. On September 28, 2017, DPH timely received Mr. Stebbins's request for a hearing. (Ex. 2.)¹⁰

Discussion

Criminal records

At the hearing, Mr. Stebbins testified as follows: He went to Middlesex Superior Court before Thanksgiving 2017 to examine records to determine what he had pled guilty to. The clerk-

⁹ Again, what Mr. Stebbins submitted to NREMT is not in evidence.

¹⁰ Mr. Stebbins's letter is dated October 25, 2017 – which is after the date indicated in DPH's date stamp. I assume that Mr. Stebbins incorrectly dated his letter. At the hearing, Mr. Stebbins refuted some of his letter's content, testifying that he had written the letter hastily to meet the deadline. However, the content of the letter, which is one-and-one-half pages, single-spaced, and detailed, indicates that it was carefully composed.

magistrate gave him documents that contradict the indictments and docket sheet (Exs. 3, 4) and prove them incorrect. He did not receive them until after November 21, 2017. He missed the November 22, 2017 deadline in the prehearing report to submit exhibits.¹¹ He did not bring them with him to the hearing because he thought they were inadmissible.

On December 20, 2017, I issued an order that stated in part:

At the hearing on November 29, 2017, Mr. Stebbins testified that: he received from the Middlesex Superior Court documents that demonstrate that Exhibits 3 and 4 are erroneous; he did not mail them to me or the Department of Public Health because the deadline in the Prehearing Conference Report had passed; and he did not bring them to the hearing because he thought that they were inadmissible.

By December 29, 2017, Mr. Stebbins will send the documents to me and Mr. Strong....

If Mr. Stebbins is unable to send the documents or satisfactorily explain why not, it will affect the believability of his testimony on November 29, 2017.

I have not heard further from Mr. Stebbins. I did not receive the documents. To the extent that Mr. Stebbins's credibility matters, I find him not credible.

Ultimately, it does not matter what Mr. Stebbins was *charged with*. (Ex. 3.) It matters what he *pled guilty to*. (Ex. 4.)

105 CMR 170.940(E)

DPH proceeded against Mr. Stebbins on three legal grounds. The first is as follows:

The Department may suspend or revoke certification, or refuse to renew certification, of any EMT on the following grounds:

....

(E) Commission of any criminal offense relating to the performance of duties

¹¹ The chronology does not quite make sense. Thanksgiving in 2017 was on November 23. The logistics do not quite make sense either, because Mr. Stebbins was unclear whether the clerk-magistrate gave him the documents when he visited the court or later mailed or otherwise provided them. Ultimately, these points are not significant.

including any conviction relating to controlled substances violations;

....

105 CMR 170.940(E).

The regulation refers to crimes *related* to an EMT's duties, not an EMT's crimes in general. Mr. Stebbins committed crimes, but DPH has not offered evidence, such as a police report, proving or even indicating that the crimes were related to the performance of his duties as an EMT. DPH may not continue to suspend and may not temporarily revoke Mr. Stebbins's EMT certification on this ground.

105 CMR 170.940(M)

The second legal ground is as follows:

The Department may suspend or revoke certification, or refuse to renew certification, of any EMT on the following grounds:

....

(M) Knowingly make an omission of a material fact or a false statement, orally or in any application or other document filed with or obtained by the Department or any other entity in the EMS system;

....

105 CMR 170.940(M).

For purposes of this appeal, this regulation has three elements. DPH may proceed against an EMT if he or she:

1. knowingly
2. omits a material fact or makes a false statement
3. in an application or document filed with DPH or any other entity in the EMS system.

Mr. Stebbins made a false statement about his criminal record (element 2). A certified docket sheet proves that he pled guilty to four crimes. (Ex. 4.) He did not provide documents that

proved that the docket sheet was inaccurate. Furthermore, he admitted at the hearing to having pled guilty to two of those crimes. In his appeal letter, dated October 15, 2017, he admitted to having pled guilty to crimes. Yet, when asked if he had pled guilty in an application submitted to DPH (element 2), he answered no. (Ex. 5.)

(The regulation would apply to Mr. Stebbins if he filed “any application or other document” with “any other entity in the EMS system.” The definition of “EMS System” in 105 CMR 170.020 does not clearly include NREMT. For that reason, and because DPH did not present evidence about what Mr. Stebbins submitted to NREMT, DPH may not proceed against Mr. Stebbins for submitting a false statement to NREMT.)

As for the remaining element, knowingly, Mr. Stebbins admitted at the hearing that he should have answered yes to this question. He also admitted that DPH was correct that he answered this question inaccurately. As for whether he knew that his answer was false when he made it, he wrote in his appeal letter that his firearm offenses were “similar to that of a misdemeanor motor-vehicle charge” and that they were “misdemeanor and victim-less crimes” and therefore “exempt” from an answer of yes. (Ex. 2, p. 2.)

The wording of the question to which Mr. Stebbins answered no was well-crafted and clear, better crafted and clearer than many questions on government forms. The question was designed to eliminate ambiguity, unintended exceptions, and latitude. Mr. Stebbins proceeded to create his own latitude and exceptions where none existed. His own personal reasoning took some amount of effort, demonstrating, despite his contrary intent, that he indeed knew that he was answering the question falsely.

DPH may continue to suspend and may temporarily revoke Mr. Stebbins’s EMT certification on this ground.

105 CMR 170.940(F)

The third legal ground is as follows:

The Department may suspend or revoke certification, or refuse to renew certification, of any EMT on the following grounds:

....

(F) Any condition or action that endangers the health or safety of the public;

....

105 CMR 170.940(F).

DPH has alleged that members of the public would hesitate to call 911 if they knew that an EMT who responded had committed crimes and that hesitation would endanger the public's health or safety. (Murphy testimony.) However, DPH has not proved this allegation. DPH may not continue to suspend and may not temporarily revoke Mr. Stebbins's EMT certification on this ground.

Conclusion and Order

I recommend that DPH may continue to suspend and may temporarily revoke Mr. Stebbins's EMT certification because he made a false statement about pleading guilty. I recommend that DPH may not continue to suspend and may not temporarily revoke Mr. Stebbins's EMT certification on the grounds that his firearms crimes related to the performance of his duties or that his convictions endangered the public health or safety.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kenneth Bresler
Administrative Magistrate

Dated: March 15, 2018