

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Department of Public Health,  
Petitioner

v.

Docket No. PHET-21-0627

Mark Swaine,  
Respondent

Appearance for Petitioner:

Matt A. Murphy, Esq.  
Office of the General Counsel  
Department of Public Health  
250 Washington Street  
Boston, MA 02108

Appearance for Respondent:

Mark Swaine, *Pro se*

Administrative Magistrate:

James P. Rooney

**Summary of Decision**

Unopposed motion to amend Notice of Agency Action to reflect an EMT's second conviction is allowed. Unopposed motion to grant Department summary decision based on the two convictions is also allowed.

**RECOMMENDED DECISION**

On November 19, 2021, the Department of Public Health, Office of Emergency Medical Services, issued a Notice of Agency Action immediately suspending emergency medical technician Mark Swaine and proposing to revoke his EMT license for at least one year.

The suspension is based on two criminal cases. First, the Department contended that Mr. Swaine failed to disclose the full circumstances behind his guilty plea in 2013 to three counts of assault and battery, one count of witness intimidation, four counts of assault with a dangerous weapon (his truck), and one count of leaving the scene of property damage. Second, Mr. Ellis was charged in 2021 with indecent assault and battery on a person 14 or older. That criminal charge was still pending when Mr. Elis appealed the Notice of Agency Action. His appeal was stayed to await the result of the second criminal charge.

On September 11, 2024, the Department moved to amend its Notice of Agency action to reflect that the 2021 criminal case involved sexually inappropriate touching a co-worker on the job and that on May 29, 2024, Mr. Swaine had pled guilty to an amended charge of assault and battery. In its motion for summary decision, the Department also asked that Mr. Swaine's EMT license be permanently revoked.

I gave Mr. Swaine until October 24, 2024 to file a written response. At his request, I also scheduled a motion hearing for November 20, 2024. Mr. Swaine did not file a response to the motion for summary decision or the motion to amend. He also did not attend the motion hearing.

Instead, he sent two email responses on November 20, 2024. The first read:

I will not be attending this meeting. After how OEMS, and their attorneys have treated me, with turning a 4 page document into a dissertation on the troubles I've had in my life, the still incorrect information, and the injuries I received on my last call. I have no interest or intention of ever being involved in EMS in Massachusetts ever again.

The second described the injuries he suffered on his last call. They were:

4 herniated cervical discs with one touching my spinal cord  
3 muscles in my left shoulder with tendonousis causing increased early arthritis

Tennis elbow, Lateral Epicondylitis resulting in needing surgery to correct back to only 90%

All causing decreased strength with numbness and tingling from my neck to my finger tips.

All on the left side. But no one from OEMS ever inquired about the injuries sustained as the victim of the last patient violently attacking me.

So whatever decision they come up with, I have resigned to never work for them again.

A. Ruling on Motion to Amend

The proposed amendment reflects Mr. Swaine's guilty plea to the 2021 charge and describes the circumstances that led to his arrest. This unopposed motion is allowed.

B. Ruling on Summary Decision Motion

The Department asserts that there are no material facts in dispute with respect to the charges that Mr. Swaine violated three agency regulations. The Department supported its motion with the docket from the 2013 and 2021 criminal charges against Mr. Swaine, including both the charges and the resolutions. (Exs. A and C.) It also included the explanation Mr. Swaine gave to the Department about the 2013 charges. In it, he acknowledged a fistfight with his stepson but failed to mention that he threw his now ex-wife across the room when she attempted to intervene or that he fled the scene and was arrested only after a high-speed chase. (Ex. B.) Mr. Swaine did not file a formal response to this motion and the emails he sent refer to injuries he suffered on the job, not the two different charges he faced and his two convictions.

The criminal charges of 2013 and 2021 both involved assaults. The Division of Administrative Law Appeals has recognized that assaultive behavior by an EMT is inconsistent with EMT's role. The first assault occurred at Mr. Swaine's home, while the second occurred on

the job. Regardless of whether an assault occurred on the job or not, assaultive behavior is so inimical to the duties of an EMT that the Department may discipline an EMT who is convicted of assault. *See Department of Public Health v. Potter*, PHET-22-0077 (Div. Admin. L. App., Sept. 22, 2022).

Similarly, the Department had grounds to discipline Mr. Swaine for taking actions that “endanger[] the health and safety of the public.” *See* 105 CMR 170.940(F). EMTs must be “level-headed at all times.” *Id.* Violent acts that lead to assault convictions are inconsistent with this job requirement, for an “individual who is prone to violence is not fit to work with patients who may be difficult.” *Id.*

The third charge brought by the Department was that Mr. Swaine “provided knowingly false and/or misleading information to the Department.” *See* 105 CMR 170.940(P). The Department asserts that when Mr. Swaine applied in 2020 for a temporary EMT certification, he was not entirely forthcoming about the circumstances surrounding the 2013 charges. He indicated on the application that he had a criminal history but failed to describe it. When asked to clarify, he included some details but left out others, including a high-speed chase by the police after he fled the scene. Leaving out this and other details is sufficient to show that Mr. Swaine violated this regulation.

The Department having made and supported its motion for summary decision, the unopposed motion is allowed.

**Conclusion**

I recommend that the Board affirm the grants of the motion to amend and the motion for summary decision and impose discipline on Mr. Swaine.

DIVISION OF ADMINISTRATIVE LAW APPEALS

***James P. Rooney***

James P. Rooney  
First Administrative Magistrate

Dated: *1-3-2025*