

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DEPT. OF PUBLIC HEALTH, OFFICE
OF EMERGENCY MEDICAL SERVICES
Petitioner

Docket No. PHET-23-0269

v.

DAVID WALSH
Respondent.

Appearance for Petitioner:

Mathew Hatfield, Esq.
Assistant General Counsel
Mass. Dept. of Public Health

Appearance for Respondent:

David Walsh, *pro se*
Raynham, MA 02767

Administrative Magistrate:

Eric Tennen

SUMMARY OF RECOMMENDED DECISION

The Respondent, a licensed emergency medical technician, pled guilty to two criminal offenses: assault and battery on a household member and assault and battery with a dangerous weapon. He then failed to notify the Department of Public Health either in writing or within five days. Accordingly, the Department of Public Health may sanction the Respondent for violating three different regulatory provisions: commission of a criminal offense relating to the performance of his duties, engaging in conduct that endangers the health or safety of the public, and failing to meet his reporting requirements. *See* 105 Code Mass. Regs. §§ 170.940 (E), (F), and (P).

RECOMMENDED DECISION

On April 13, 2023, the Petitioner, Department of Public Health (“Department” or “DPH”), issued a Notice of Agency Action immediately suspending Respondent David Walsh’s Emergency Medical Technician (“EMT”) certification; the action also sought an order refusing to renew his certification as an EMT, which had expired a month prior. The Respondent timely appealed.

The parties filed a joint pre-hearing memorandum with some stipulated facts. I then held a hearing, virtually, via the WebEx platform on July 13, 2023. The Board offered one witness, Kenneth Long (a compliance investigator with DPH); the Respondent testified on his own behalf. I entered 20 exhibits into evidence without objection.¹

FINDINGS OF FACT

Based on the testimony, exhibits, and stipulated facts, I make the following findings of fact:

1. Respondent has been a certified EMT paramedic since he was 18 years old. (Respondent testimony.)
2. EMTs occupy a position involving a high degree of public trust. (Stipulated facts; Long testimony.)
3. An EMT’s duties include the duty to treat and transport the sick and injured, frequently in unsupervised settings. (Stipulated facts.)
4. By virtue of their positions, EMTs are required to interact with, and successfully manage, patients who are under stress or present with a variety of behavioral issues. Accordingly, the

¹ Just prior to the hearing, DPH filed a motion for summary decision. Because the hearing had already been scheduled, and there were still facts in dispute, I took no action on the motion and instead treated it as a memorandum of law. To the extent required, I hereby deny the motion.

ability to exercise sound judgement and maintain composure under stressful circumstances is paramount to public safety. (Stipulated facts; Long testimony.)

5. The public does not expect an EMT to respond to these adverse events with violence. (Long testimony.)

6. While his license was active, the Respondent was charged with criminal offenses in Taunton District Court. The facts of the offenses are as follows. (Ex. 3.)

7. The Respondent's wife had long-standing mental and emotional health problems. He had been supporting her as best as he could, including dealing with the fall-out of those problems. He also had other personal stresses during this time. (Respondent testimony.)

8. On the night in question, his wife was upset with him. She confronted him verbally. He initially removed himself from the situation and went downstairs. However, his wife followed him. (Respondent testimony.)

9. When she confronted him again, he explained she was the initial aggressor, yelling at him and then throwing things at him, including a cell phone and crutches. (Respondent testimony.)

10. The Respondent responded with violence. He took one of the crutches his wife had thrown at him and hit her over the head. The Respondent hit his wife so hard that when help arrived, she was unable to speak in full sentences or answer simple questions. She was bleeding profusely. She was cold and nauseous, and she uncontrollably urinated on herself. (Ex. 7.)

11. The Respondent immediately regretted it. He admitted his actions were reactive and displayed poor impulse control. (Respondent testimony.)

12. On October 25, 2022, the Respondent pled guilty to one charge of Assault and Battery on a Household/Family Member and one charge of Assault and Battery with a Dangerous Weapon. (Stipulated facts; Exs. 3-9.)

13. He was sentenced to two years of probation, with specific conditions including GPS monitoring and a requirement that he participate in an Intimate Partner Abuse Education Program. (Stipulated facts; Exs. 3-9.)

14. In October 2022, the Respondent was working for the Swansea Ambulance Corps. He notified his employer of his plea verbally on the day it happened. (Ex. 14.)

15. However, the Respondent did not notify the Department of his guilty pleas until March 9, 2023, when he applied to renew his EMT certification. (Stipulated facts.)

16. The Respondent believed he had a duty to report only certain offenses, and his offenses did not fall under those requirements. However, he now recognizes his belief was mistaken and the regulations required him to report his convictions in writing within five days. (Respondent testimony.)

17. By all accounts, the Respondent is a compassionate and caring person. He submitted numerous unwavering letters of support from people who have known him (and his wife) for a long time. Many are aware of the difficulties his marriage presented. (Exs. 1 & 14). For example, his son, who was present that night and saw the aftermath of his actions, still thinks his dad "is an uncommon example of character, model of integrity, service to others." (Ex. 14.)

18. Similarly, the Respondent appears to be a dedicated and hard-working EMT. His most current employer, even aware of his criminal case, attests to that and allowed him to keep working after his plea (until his license was suspended). (Ex. 14.)

19. The Respondent has no prior criminal record or any prior complaints against him. (Respondent testimony.)

20. On April 13, 2023, the Department issued an Agency Action immediately suspending the Respondent's license and proposing to refuse renewal of his certification as an EMT. It listed

three grounds: Commission of any criminal offense relating to the performance of duties, actions endangering the health or safety of the public, and failure to meet reporting obligations in accordance with 105 CMR 170.937. The Department proposed refusing renewal until, at a minimum, October 23, 2024 and only after the Respondent completed a list of requirements. (Ex. 19.)

21. The Respondent timely appealed. (Ex. 20.)

CONCLUSION AND ORDER

The Department has the burden of proof by a preponderance of the evidence that it has grounds to revoke, suspend, and/or fail to renew the Respondent's certification. *See DPH v. Potter*, PHET 22-0077, *7 (DALA Sep. 23, 2022). A finding that the Respondent's actions or omissions violate any of the alleged grounds must result in a decision affirming DPH's actions. *See DPH v. Mailloux*, PHET-22-0589, *4 (DALA June 6, 2023); 105 Code Mass. Regs. § 170.770 (B). DPH has met its burden in this case for each ground proposed.

DPH proposed three grounds for its actions in this case:

- (E) Commission of any criminal offense relating to the performance of duties including any conviction relating to controlled substances violations;
- (F) Any condition or action that endangers the health or safety of the public;
- (R) Failure to meet reporting obligations in accordance with 105 CMR 170.937.²

105 Code Mass. Regs. § 170.940.³

² 105 Code Mass. Regs. § 170.937 provides, in part, "(A) Each EMT or EFR shall file a written report with the service in conjunction with which he or she provides EMS, and with the Department within five calendar days of the following: (1) The EMT's . . . conviction of a misdemeanor or felony in Massachusetts[.]"

³ The regulations were recently updated and some renumbered. The notice of suspension cited the prior regulations in effect at that time of the Respondent's conduct. My decision cites

First, the Respondent did not report this discipline in writing or in a timely matter. He did notify his employer immediately, though not in writing. He argues that he believed only certain offenses had to be reported, but not his; he also argues the regulations are a little confusing. I believe the Respondent told his employer, and I agree the regulations could probably be clearer. However, the regulations make no exception for the defenses the Respondent urges. Rather, they unambiguously require two things: that he file a written report with the Department, and that he do so within five days of a conviction. He did neither. Accordingly, he violated 105 Code Mass. Regs. § 170.940(R). *See DPH v. Pessini*, PHET-16-162 (DALA Mar. 3, 2017) (EMT/Firefighter notifying fire department not enough; must also notify OEMS.)

Second, the Respondent's criminal actions endangered the health and safety of the public. He very clearly endangered the health and safety of his wife. Even given the context of that evening, there is little doubt he seriously injured her (she was unable to speak in full sentences or answer simple questions). His actions also endanger the public because he responded to a violent situation with escalated violence.

The Respondent argues that he had never done anything like this before, either personally or professionally. He says he is a man of good character, and that shows he did not endanger the public. By all accounts the Respondent is a man of good character. It is clear he was under a lot of personal stress at the time of this incident. That is why he needed to demonstrate he can keep his cool under these circumstances. An EMT could easily be called into a situation with a verbally and/or physically assaultive patient. It would be equally unacceptable to respond to that patient the way he responded to his wife.

the current regulations. To be clear, basis for the suspension has not changed, only the citation to the regulations.

He should be commended for his longtime, incident-free service. Yet, DPH is allowed to rely on this episode as it does—as evidence that the Respondent is not able to control his impulses as much now as he had in the past. It may be that this was an isolated incident; indeed, I believe it probably was. But maybe it is not, which is why DPH can find it endangers the health and safety of the public. *See* 105 Code Mass. Regs. § 170.940(F); *Potter, supra*.

Finally, the Respondent's criminal offenses related to the performance of his duties. The Respondent argues they did not, because they did not take place while he was on duty. To be sure, "[t]he regulation refers to crimes related to an EMT's duties, not an EMT's crimes in general." *See DPH v. Stebbins*, PHET-17-878, *6 (DALA Mar 15, 2018). Thus, not every crime will fall under this regulation. Yet, DPH still has broad authority to discipline in this context:

When an occupation involves a position of special public trust, an agency has the discretion to remove that person if she commits misconduct outside her normal duties. *Dupree v. School Committee of Boston*, 15 Mass. App. Ct. 535, 538-539 (1983). That is because:

[t]here 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), quoting *Dupree*, 15 Mass. App. Ct. at 537

DPH v. Pard, PHET-15-548, *4-5 (Mar. 30, 2018); *see Potter*, at *8. DALA has found that a variety of crimes relate to the performance of an EMT's duties. These include larceny, *see Pard*, narcotics violations, *see DPH v. Johnston*, PHET 11-112 (DALA Jan 31, 2012), sexual offenses, *see DPH v. Napolitano*, PHET-09-199 (DALA Jul. 20, 2010), and violent crimes, *see Potter*, including assault and battery on a household member. *See Pessini, supra*. In almost all these cases, the offenses took place while the Respondents were off duty.

Here, the Respondent's conduct fits squarely within these precedents. I credit the Respondent's testimony that his actions were an impulsive reaction to stressful conditions. I credit his testimony that his wife had emotional/mental health issues. That, however, does not excuse his criminal conduct nor take away from the fact that he pled guilty to the charges (admitting in open court he did what he was accused of). Both things can be true—that his wife had mental health issues and that he also committed a violent criminal act against her. His actions relate to the performance of his duties because, as an EMT, he cannot respond to a violent situation with violence, let alone escalate the violence, regardless of what is going on in his personal life.

DPH has proven by a preponderance of the evidence that the Respondent violated the enumerated regulations: 105 C.M.R. §§ 170.940 (E), (F) & (R). It is for the Department to decide if there are mitigating circumstances justifying a different sanction. *See* 105 Code Mass. Regs. § 170.760(C) (“After hearing or waiver thereof, the Department may modify a license, certification, certificate of inspection, designation or other form of approval, revoke or refuse to renew a license, certification, certificate of inspection or other form of approval”).⁴

⁴ DPH's proposed sanction includes refusing to renew the Respondent's certification until, at a minimum, October 23, 2024 (which is when his probation in the criminal case is set to expire). This is in line with how DPH usually treats cases involving criminal convictions; it tethers the length of the suspension to the length of probation. *See Potter* (“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.”); *Pessini, supra*. Yet, nothing prevents DPH from exercising discretion and proposing shorter (or even longer) suspension periods based on the individual facts before it. The regulations appear to grant it broad discretion. *See* 105 Code Mass. Regs. § 170.760(C). I therefore urge DPH to evaluate the mitigating factors in this case in arriving at an appropriate sanction.

I recommend that the initial agency action be **affirmed** and DPH impose the appropriate sanction consistent with the findings in this decision.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

AUG - 1 2023

Eric Tennen
Administrative Magistrate