

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

**Department of Public Health, Office of Emergency Medical Services,
Petitioner**

v.

Docket No. PHET-22-0618

**Andrew Westgate,
Respondent**

Appearance for Petitioner:

Mathew A. Hatfield, Esq.
Assistant General Counsel
Massachusetts Department of Public Health
250 Washington Street
Boston, MA 02108

Appearance for Respondent:

Andrew Westgate
5002 Tilden Avenue
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Administrative Magistrate:

Kenneth Bresler

SUMMARY OF RECOMMENDED DECISION

Recommendation is that Department of Public Health may discipline emergency medical technician for falsifying attendance roster for training session.

RECOMMENDED DECISION

The petitioner, Andrew Westgate, appeals the proposed discipline against him by the Department of Public Health (DPH), including temporary revocation of his certification as an emergency medical technician (EMT).

I held a hearing on March 28, 2023 by Webex, which I recorded. Mr. Westgate represented himself and testified. DPH called the hearing's other two witnesses: Kenneth Long, a compliance investigator with DPH, and Stephen Medeiros, a former employee of STAT New England, an ambulance company.

I admitted Joint Exhibits 1 to 10, and Respondent's Exhibits 1 to 5. Exhibit 9 is 105 CMR 170; the version that I admitted at the hearing was the one in effect at the time of the hearing. After the hearing, DPH submitted an Amended Exhibit 9, which was the version of 105 CMR 170 in effect at the time of Mr. Westgate's alleged violation of the regulation. (The only difference in the versions of the relevant regulation was a letter designating it; there is no substantive difference.) After the hearing, I admitted Joint Exhibit 11, Mr. Westgate's request for a hearing.

DPH submitted a post-hearing brief on April 24, 2023. At the hearing, I gave Mr. Westgate the option of submitting a post-hearing brief or presenting an oral closing argument; he chose to argue orally at the end of the hearing.

Findings of Fact

1. STAT New England is an ambulance company.¹

2. All EMTs are subject to initial training and continuing education requirements.

(Stipulation)

3. On May 17, 2022 Mr. Medeiros, a paramedic and part-time employee of STAT NE held a training session on Statewide Treatment Protocols (STP) for some of STAT NE's EMTs.

(Exs. 1, 3, Westgate testimony, Stipulation)

¹ If STAT is an acronym, it is apparently not in evidence. *See also* Joint Ex. 1 (referring to STAT Ambulance Service of New England). "STAT NE" is apparently the common way of referring to the company in writing. That's the reference that I will use.

4. The EMTs needed the training to continue working on STAT NE's ambulances as of June 1, 2022. They also needed it for their recertification as EMTs. (Medeiros testimony)

5. Although eight EMTs attended the training session, Mr. Medeiros discovered ten names, signatures, and EMT numbers on the roster when he reviewed it the next morning. (Medeiros testimony)

6. The class's attendance roster was a DPH/Office of Emergency Medical Services form. (Joint Ex. 3)

7. Mr. Westgate is certified as an EMT at the EMT-Basic level. (Stipulation)

8. Mr. Westgate's name, signature, and EMT number appeared in the sixth numbered row on the form. (Joint Ex. 3)

9. The names, purported signatures, and EMT numbers of the two EMTs who did not attend the training session appeared in the fifth and seventh numbered rows on the form. That is, one appeared before Mr. Westgate, and one appeared after him on the form. (Joint Ex. 3) (Because DPH has decided not to proceed against the two EMTs, this recommended decision calls them EMT #5 and EMT #7.)

10. On or around May 18, 2022 Mr. Medeiros whited out the names and related information of EMTs #5 and #7 from a copy of the roster. (Joint Ex.4, Medeiros testimony)

11. Eventually, DPH received both versions of the roster, one with the names and related information of EMTs #5 and #7, and one with their names and related information whited out. (Joint Ex. 3, p. 3, Long testimony)

12. On May 18, 2022, the day after the training session, Mr. Medeiros called Mr. Westgate about the appearance of the names and related information of EMTs #5 and #7 on the roster even though they did not attend the training session. (It is unclear why Mr. Medeiros

called Mr. Westgate and whether he called other attendees.) (Medeiros testimony)

13. During the telephone conversation, Mr. Westgate made statements that could be interpreted as implicating him in placing the names and related information of EMTs #5 and #7 on the roster. (Medeiros and Westgate testimony) (I discuss Mr. Medeiros's and Mr. Westgate's testimony about that telephone conversation below.)

14. On the roster, the handwriting of the EMT numbers of Mr. Westgate and EMTs #5 and #7 is similar. (Joint Ex. 3)²

15. On the roster, the handwriting of the names of Mr. Westgate and EMTs #5 is similar. (Joint Ex. 3)

16. The handwriting of only two EMTs, #1 and #2 on the roster, is distinctive from the handwriting for the other eight names. (Joint Ex. 3)

17. In Mr. Long's opinion and that of DPH's compliance policy manager, the numeral 6 in the EMT numbers of Mr. Westgate and EMTs #5 and #7 is similar; the lower-case d in Mr. Westgate's name and EMT #5 is similar. (Long testimony; Joint Ex. 2, p. 3)

18. Mr. Long is not a handwriting expert. (Long testimony)

19. All names and related information on the roster were written in black ink, except for the last name and related information, which was written in blue ink.³ (Medeiros testimony.)

20. DPH investigated who wrote the names and related information of EMTs #5 and #7 on the roster. (Joint Ex. 1, Long testimony)

21. EMTs #5 and #7 denied the following: attending the training session, asking anyone

² I make this and the next two findings as a layperson who has no expertise or training in analyzing handwriting.

³ That is, the color ink of the handwriting on the roster is not probative. It is not the case, for example, that all names and related information were written in black ink except for those of Mr. Westgate and EMTs #5 and #7, which were written in red ink.

to place their names and related information on the roster, and knowing who placed their names and related information. (Joint Ex. 1, p. 3; Joint Ex. 2, p. 2)

22. EMT #5 told Mr. Long that he did not attend the training session because of a family emergency. When Mr. Long asked if EMT #5 asked anyone to put his name and related information on the roster, he answered, “No, I was dealing with a family emergency.” (Joint Ex. 2, p. 2)

23. EMT #7 told Mr. Long that she did not attend the training session on May 17, 2022 but attended an STP training session on a different date. (Joint Ex. 2, p. 3)

24. Of the eight EMTs who attended the training session, DPH was able to contact only two. (Joint Ex. 1)

25. The two EMTs whom DPH contacted denied the following: seeing EMTs #5 and #7 in the training session, placing the names and related information of EMTs #5 and #7 on the roster, and knowing who placed the names and related information on the roster. They asked to remain anonymous. (Joint Ex. 1; Joint Ex. 2, p. 3)

26. DPH was unable to reach Mr. Westgate, despite numerous attempts by telephone and email. (Joint Exs. 1, 7 (email June 3, 2022), 8 (email July 20, 2022))

27. On December 15, 2022 DPH sent Mr. Westgate a Notice of Agency Action. On December 21, 2022 DPH sent Mr. Westgate a corrected Notice of Agency Action that which corrected typographical errors. (Joint Ex. 1)

28. In the corrected notice, DPH proposed to temporarily revoke Mr. Westgate’s certification as an emergency medical technician (EMT). (Joint Ex. 1)

29. Also on December 21, 2022 DPH sent Mr. Westgate a Proposed Temporary Revocation of Certification as an Emergency Medical Technician. (Joint Ex. 1)

30. In the Proposed Temporary Revocation, DPH proposed to temporarily revoke Mr. Westgate's certification for a minimum of six months and to require him to "complete remediation." (Joint Ex. 1)⁴

31. The Proposed Temporary Revocation stated that DPH's investigation had revealed the following:

A. STAT NE had conducted an STP update class.

B. Two STAT NE EMTs did not attend the class, but their names were entered on a DPH attendance roster.

C. Mr. Westgate entered the names of the two EMTs who did not attend the class on the roster.

29. The Proposed Temporary Revocation accused Mr. Westgate of having knowingly made omissions of fact and/or false statements in a document filed with or obtained by the Department or any other entity in the EMS system in violation of 105 CMR 170.940(M).

(Joint Ex. 1)⁵

30. On December 20, 2022 Mr. Westgate emailed Mr. Hatfield, DPH's lawyer in this case. He referred to their telephone conversation that day and asked for a "hearing to appeal the written letter and statements within it, sent to me." (Joint Ex. 11)⁶

⁴ The record does not explain what remediation is. Presumably, it is a form of training. *See* 105 CMR 170.300(A)(6) (referring to "remediation, training and retraining"). *See also* Joint Ex. 1, p. 4 (referring to "remediation relative to ethics and proper professional conduct issues" and "the proposed remediation program").

⁵ As of this writing, the former 105 CMR 170.940(M) is 105 CMR 170.940(O).

⁶ Mr. Westgate sent this email on the day before DPH dated its Proposed Temporary Revocation of EMT Certification. I assume that he and Mr. Hatfield discussed the Proposed Temporary Revocation and Mr. Westgate's right to a hearing, which Mr. Westgate exercised before receiving the Proposed Temporary Revocation.

Discussion

Under 105 CMR 170.940 (M), which was in effect on May 17, 2022, an EMT may not:

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.

DPH proceeded on the theory that Mr. Westgate allegedly falsified the roster with the names and related information of EMTs #5 and #7 (Joint Ex. 3), and DPH obtained it. (Long testimony) DPH has proven that theory by a preponderance of the evidence.

Mr. Medeiros's testimony⁷

Mr. Medeiros testified as follows: When he called Mr. Westgate on the day after the training session, Mr. Westgate said that EMTs #5 and #7 had not been able to attend the training session. Mr. Westgate said that he had put the names and related information of EMTs #5 and #7 on the roster so that they could continue working on the ambulances. Mr. Westgate said more than once that he had added the names.

Mr. Westgate's testimony

Mr. Westgate testified as follows:

By the time that the training session was held on May 17, 2022, he had already told STAT NE that July 15, 2022 would be his last day. He planned to leave the company, the EMT profession, and Massachusetts.

Toward the end of the training session, Mr. Westgate answered test questions. He then wrote his name and EMT number on the roster and signed it. He was the first to do so. He wrote

⁷ If a summary of a witness's testimony appears in the "Discussion" section of this recommended decision and not in the "Factual Findings," I do not find that testimony as factual. I either do not know what happened, as with what Mr. Westgate told Mr. Medeiros, or I do not credit it, as, for example, with Mr. Westgate's testimony about aspects of the case that don't make sense.

in row 6 because he likes even numbers, referring to his like in the context of OCD (obsessive-compulsive disorder). It was unclear whether he meant OCD literally. After writing his name and related information on the roster, he left the training room before anyone else. He looked for Mr. Medeiros's children, whom Mr. Medeiros's wife had been trying to find. (Mr. Westgate and Mr. Medeiros had known each other for years.) Mr. Westgate found Mr. Medeiros's children in their father's truck. Thus, Mr. Westgate did not know if the attendees circulated the roster or whether they went to the roster individually and added their names and related information. Mr. Westgate did not know who added the names and related information for EMTs #5 and #7; he was not in the training room when it happened.

On the next day, When Mr. Medeiros called him, Mr. Medeiros said that he would throw out the entire class, that is, not give any of the attendees credit for the training session. Mr. Westgate's position with STAT NE entailed scheduling EMTs. He feared that he could not staff ambulances past June 1, 2022. He just wanted EMTs to be able to work and wanted to get past this "little hiccup."

So he told Mr. Medeiros: You can tell the state that I did it, meaning that Mr. Westgate added the names and related information for EMTs #5 and #7 to the roster.

Mr. Westgate never told Mr. Medeiros: I wrote the names. Rather, he said: I don't care if you say I wrote the names.

Mr. Westgate told Mr. Medeiros to just say that he wrote the names "in a moment of yapping."

STAT NE decided to make him the fall guy, and told Mr. Long that Mr. Westgate no longer worked there.

Other of Mr. Westgate's testimony combined with his argument

DPH's Complaint Investigation Report, by Mr. Long, summarizes two interviews with STAT NE's owner, Kevin Santos. Mr. Santos told Mr. Long that Mr. Westgate refused to cooperate with the inquiry into the roster, simply stopped appearing for work at STAT NE, and was terminated. (Ex. 2, p. 2) (The report is not dated. Nor does it include dates for the interviews with Mr. Santos.) Mr. Westgate testified that he continued to work for STAT NE through September 2022, having decided not to leave on July 15, 2022 and because STAT NE could not find a replacement for him. He continued to work remotely. He contended that text messages (Resp. Ex. 3, 4) demonstrate that he continued to work through September 2022, but they do not speak for themselves, and he did not explain them.

Mr. Westgate seemed to argue that because DPH's investigation report was incorrect on the point of when and how he left STAT NE, its investigation was deficient, and thus, he did not falsify the roster. This apparent argument has two flaws. The report did not state when Mr. Westgate left STAT NE. And DPH's investigation could have been deficient and its investigation report could have been incorrect in some respects, and he still could have falsified the roster.

Mr. Westgate objected to DPH's evidence that it could not reach him, pointing out that it could not reach 6 of the 8 attendees, and objecting to what he contended was DPH's inference that he was avoiding its investigator. This argument has this flaw: Mr. Westgate was not simply an attendee. He was the subject of an investigation. He testified that he told Mr. Medeiros that Mr. Medeiros could tell the state that he, Mr. Westgate, had added the names and related information of EMTs #5 and #7. Thus, he knew that the Commonwealth of Massachusetts was or could be investigating the incident.

Mr. Westgate argued that Mr. Long could have reached him through U.S. mail, as DPH had done successfully in the past. That did not strike me as credible for a few reasons. Mr. Westgate's argument means that he provided DPH with contact information – email and phone number – that would not actually contact him. I doubt that Mr. Westgate, in his role of scheduling EMTs at STAT NE, communicated with fellow EMTs by U.S. mail. I assume that he was responsive to phone calls.

Aspects of the incident that remain murky

If Mr. Westgate left the training room to look for and find Mr. Medeiros's children, the two men were professionally or personally closer than Mr. Medeiros gave any indication of.

Mr. Westgate testified as follows: When Mr. Long called Mr. Santos, STAT NE's owner, for one of two conversations, Mr. Santos had Mr. Westgate go to another room and listen on the phone so that Mr. Santos and Mr. Westgate could coordinate their "stories." If the testimony is correct, then the incident and reaction to the investigation may have been more complex than has been revealed.

Aspects of the case that don't make sense

At the hearing, Mr. Westgate seemed to object that STAT NE had made him the "fall guy" for the falsified roster. Yet Mr. Westgate volunteered to Mr. Medeiros to be the fall guy.

Mr. Westgate testified that he told Mr. Medeiros: I don't care if you say I wrote the names. But Mr. Medeiros does care. He is defending himself in this proceeding. He submitted five of his EMT cards as an exhibit (Resp. Ex. 5), and argued that he has not been in trouble during his career as an EMT and therefore would not have falsified the roster.

Other aspects of the case that don't make sense follow.

Mr. Westgate's credibility

Mr. Westgate diminished his credibility by testifying about aspects of the case that do not make sense, about aspects of the incident that remain murky, and factual allegations that appear in "Other of Mr. Westgate's testimony combined with argument" above, especially that DPH should have contacted him by U.S. mail, rather than email.

Evidence against Mr. Westgate

1. The EMT numbers, names, and signature and purported signatures of EMT #5, Mr. Westgate, and EMT #7 appear sequentially, as if added at the same time.

If all three names and related information were *not* added at the same time, that means that one or two people, but probably one person, added the names and related information of EMTs #5 and #7 – and just happened to sandwich them around Mr. Westgate's name and related information. That is possible, but not plausible.

2. The handwriting in the sequence of EMT #5, Mr. Westgate, and EMT #7 appears to be the same handwriting.

3. Mr. Westgate had the opportunity and motivation to falsify the roster. The opportunity: He filled in the roster for himself and could have done so for EMTs #5 and #7. The motivation: He was responsible for scheduling EMTs on ambulances and was concerned that he would be unable to do so if not enough of them had completed training by June 1, 2022.

4. Mr. Medeiros testified that Mr. Westgate admitted to falsifying the roster. Mr. Westgate testified that he told Mr. Medeiros that Mr. Medeiros could *tell* the state that he, Mr. Westgate, falsified the roster, that he did not care (because he was leaving the company, the EMT field, and the state).

If Mr. Medeiros is correct, then Mr. Westgate admitted falsifying the roster. If Mr.

Westgate is correct, then he semi-admitted falsifying the roster. Mr. Westgate either incriminated himself or was willing to be incriminated.

DPH must prove by a preponderance of the evidence that Mr. Westgate falsified the roster. That is, DPH must prove that it was more likely than not, *Sargent v. Massachusetts Accident Co.*, 307 Mass. 246, 250 (1940), that Mr. Westgate falsified the roster. With the names and related information of EMT #5, Mr. Westgate, and EMT #7 in a sequence; with the handwriting of all three EMTs resembling each other; with Mr. Westgate having had the opportunity and motivation to falsify the roster; and with Mr. Westgate admitting or semi-admitting falsifying the roster, it is more likely than not that Mr. Westgate falsified the roster.

What is the evidence that Mr. Westgate did not falsify the roster? His denial. But the weight of his denial is reduced by his diminished credibility and by his willingness to be incriminated.

Conclusion and Order

Either Mr. Westgate falsified the roster or facilitated deceiving a state investigator about who had falsified the roster, thus bringing an investigation to an end without identifying the true perpetrator. Either way, Mr. Westgate trampled on DPH's need for accurate information to perform its important duties of regulating EMTs and the EMS system and protecting public health. 105 CMR 170.001. A falsified document in the EMS system is not a "little hiccup," as Mr. Westgate called it.

DPH proved by a preponderance of the evidence that Mr. Westgate falsified the roster, thereby violating 105 CMR 170.940 (M). I recommend that DPH may proceed against him as it has proposed.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth Bresler
Kenneth Bresler
Administrative Magistrate

Dated:

JUL 21 2023