

**MAINE EMS
INVESTIGATIONS COMMITTEE MEETING
WEDNESDAY, AUGUST 18, 2010
CHAMPLAIN CONFERENCE ROOM, AUGUSTA
RATIFIED BY THE MAINE EMS BOARD ON SEPTEMBER 1, 2010
MEETING MINUTES**

Present: Rick Doughty, Paul Knowlton, Bob Hand, Lori Metayer, and Steve Leach

Staff: Dawn Kinney and Alan Leo

Board:

AAG: Dennis Smith, AAG

1. **Call To Order:** The meeting was called to order at 9:05 a.m.
2. **Business:** The Committee: reviewed case numbers 09-30, 09-43, and 08-10; and held informal conferences and made the recommendations outlined below on case numbers 10-22, 10-30, and 10-37.
3. **Additions to agenda:** Case number 09-30
3. **Application:** The Committee conducted a review of the initial license application of Joshua Delay, and made the recommendation outlined below.
4. **Other:** None
5. **Next Meeting:** The next meeting is scheduled for Wednesday, October 6, 2010 at 9:00 a.m.
6. **Adjourn:** The meeting was adjourned at 2:00 p.m.

COMPLAINT/INVESTIGATIONS CASES:

The committee entered executive session for the purpose of reviewing investigation and discussing case numbers 09-43, 09-30 and 08-10. Motion: To enter executive session pursuant to 32 M.R.S.A. §92 and 1 M.R.S.A. §405(6)(E) & (F), to receive legal advice and review of confidential material concerning case numbers 09-43, 09-30, and 08-10. (Doughty; Hand – motion carried). The committee entered executive session at 10:15 a.m. and returned to public session at 10:55 a.m. During executive session, the committee discussed options for disposition of case numbers 09-43, 09-30, and 08-10.

1. CASE # 09-43 – Licensee not present.

Case Summary and Rules Violation: After discussion, Doughty moved to recommend that the Board resolve case # 09-43 by dismissing the complaint and issuing a letter of guidance to the licensee regarding the need to ensure proper licensure before engaging as an emergency dispatch service provider. On May 5, 2010, the EMS Board had referred this complaint back to the committee on the advice from the AAG in order to review information that was not available at the time of the informal conference on April 7, 2010.

Aggravating Circumstances:

- None

Mitigating Circumstances:

- Additional information presented by Maine EMS staff.

RECOMMENDED ACTION:

Due to the additional information provided by EMS staff, the Investigation Committee recommended that this case be resolved by dismissal with a letter of guidance, as the violation does not rise to the level to warrant disciplinary action. Letter of guidance to be maintained in Licensee's file for (3) three years.

The Committee will consider case # 09-43 resolved and closed upon the ratification by the Board of its dismissal and the issuance of a letter of guidance. (Doughty: Leach - motion carried).

2. **CASE # 09-30 – Licensee not present.** Licensee knew of review. Lorie Metayer recused herself.

Case Summary and Rules Violation: After discussion, Leach moved to recommend that the Board reduce the fine recommended to the Board during the Investigation Committee meeting on June 2, 2010, from \$100.00 per incident to \$50.00 per incident for a total of \$450.00. This recommendation was based on the request of the attorney with the mitigating circumstances listed below.

Aggravating Circumstances:

- None

Mitigating Circumstances:

- The tardy response was solely the fault of the attorney (who apologized to Board staff), not the service;
- Service self- reported to Maine EMS;
- Service immediately re-billed third party payers appropriately;
- Service has a new system in place to prevent this from recurring in the future; and
- Another licensed facility was fined \$50.00 per incident for a similar occurrence.

RECOMMENDED ACTION:

The Investigation Committee recommended that this case be resolved by reducing the fine to \$50.00 per incident for a total of \$450.00

The committee will consider case # 09-30 resolved and closed upon the ratification by the Board of the recommended consent agreement and its execution by all parties. If these conditions are not met, the committee recommends that the Licensee be notified of its right to request an adjudicatory hearing and any proposed action of the Board, in accordance with Maine EMS Rules, Chapter 12, § 1 (4)(B) (Leach; Hand - motion carried).

3. CASE # 08-10 – Licensee not present. Licensee knew of review and advised staff to proceed with the review in her absence. Steve Leach disclosed that he knew the Licensee on a professional basis, but stated that this knowledge would not affect his ability to decide the matter impartially based only on the information provided to them by EMS staff.

Case Summary and Rules Violation: After discussion, Doughty moved to recommend that the Board resolve case # 08-10 by offering the licensee a consent agreement that includes a reprimand and agreement not to apply for any license under the purview of Maine EMS. The complaint was based upon a January 2010 conviction for Criminal Attempt to Acquire Drugs by Deception (Class E) in violation of 17-A M.R.S.A. § 152(1)(D), which constitutes a violation of Maine EMS Rules (dated October 1, 2009) Chapter 11 §(1)(4)(“ Any criminal conviction, subject to the limitations of Maine statute.”); §(1)(14) “Violation of any standard established in the profession”); §(1)(17)(“Diverting drugs, supplies or property of patients, patient’s families, or healthcare providers”), and Chapter 2-B § 90-A(5)(G)[Conviction of a crime that involves dishonesty or false statement].

Aggravating Circumstances:

- Licensee was dishonest with the police investigation;
- Licensee was not forthright with the committee; and
- The conviction was for a crime of deception.

Mitigating Circumstances:

- None

RECOMMENDED ACTION:

The Investigation Committee recommended that this case be resolved by offering the Licensee a consent agreement, which includes the following specific conditions:

- 1) A Reprimand; and
- 2) Licensee agrees not to reapply for any type of license issued by the Board of EMS.

The committee will consider case # 08-10 resolved and closed upon the ratification by the Board of the recommended consent agreement and its execution by all parties. If these conditions are not met, the committee recommends that the Licensee be notified of her right to request an adjudicatory hearing and any proposed action of the Board, in accordance with Maine EMS Rules, Chapter 12, § 1 (4)(B) (Doughty; Hand - motion carried).

INFORMAL CONFERENCES:**1. CASE # 10-22 - Licensee present.**

The committee entered executive session for the purpose of reviewing investigation and discussing case # 10-22. **Motion:** To enter executive session pursuant to 32 M.R.S.A. §90 (A)(3) and 1 M.R.S.A. §405(6)(E) & (F) to receive legal advice and to conduct an informal conference concerning case # 10-22. (Doughty; Knowlton – motion carried). The committee entered executive session at 09:15 a.m. and returned to public session at 10:00 a.m. During executive session, the committee met with the Licensee and discussed options for disposition of case # 10-22.

Case Summary and Rules Violation: After discussion, Metayer moved to recommend that the Board resolve case # 10-22 by offering the licensee a consent agreement. The complaint was based upon her November 2009 conviction for Domestic Violence Assault that she disclosed on her renewal application dated March 30, 2010. Such a conviction violates Chapter 11 §1(4) (“Any criminal conviction, subject to the limitations of Maine statute”) and §1(5) (“Acting in ways that are dangerous or injurious to the licensee or other persons”).

Aggravating Circumstances:

- Age of victim
- Severity of the assault

Mitigating Circumstances:

- Licensee was forthright and cooperative with the Committee;
- Licensee was remorseful;
- Licensee fully compliant with criminal probation and conditions; and
- Licensee provided (7) seven positive references.

RECOMMENDED ACTION:

The Investigation Committee recommended that this case be resolved by offering the Licensee a consent agreement for re-licensure with probation for (6) six years, which includes the following specific conditions:

- 1) Licensee will notify Maine EMS within (10) ten days if she is charged in any state or federal court with any criminal violation. If criminal charges are filed against Licensee in any state or federal court, Licensee will immediately surrender any license issued by Maine EMS pending resolution of any EMS investigation into the conduct unless Licensee can show good cause as to why the license should continue pending the investigation;
- 2) Licensee will notify Maine EMS of any investigation initiated by Department of Health and Human Services (DHHS); and
- 3) A Letter of Guidance, to be sent separately.

The committee will consider case # 10-22 resolved and closed upon the ratification by the Board of the recommended consent agreement and its execution by all parties. If these conditions are not met, the committee recommends that the Licensee be notified of its right to request an adjudicatory hearing and any proposed action of the Board, in accordance with Maine EMS Rules, Chapter 12, § 1 (4)(B) (Metayer; Knowlton - motion carried).

2. CASE # 10-30 - Licensee present. Rick Doughty and Paul Knowlton disclosed that they knew the Licensee on a professional basis, but stated that this knowledge would not affect their ability to decide the matter impartially based only on the information provided to them by EMS staff. Licensee had no objections to their participation.

The committee entered executive session for the purpose of reviewing and discussing case # 10-30. Motion: To enter executive session pursuant to 32 M.R.S.A. §90 (A)(3) and 1 M.R.S.A. §405(6)(E) & (F) to receive legal advice and to conduct an informal conference concerning case # 10-30. (Doughty; Knowlton – motion carried). The committee entered executive session at 11:10 a.m. and returned to public session at 11:30 a.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 10-30.

Case Summary and Rules Violation: After discussion, Leach moved to recommend that the Board resolve case # 10-30 by dismissing the complaint with a letter of guidance. The complaint was based upon the service responding to (1) one call with an expired license on April 25, 2010, (License expired on March 31, 2010) in violation of Maine EMS Rules (dated October 1, 2009) Chapter 11 § (1)(30)(“ Providing treatment at a level for which a person is not licensed or for which a service is not licensed or permitted”).

Aggravating Circumstances:

- None

Mitigating Circumstances:

- Service sent renewal application in a timely manner, however it was incomplete;
- Service was cooperative with committee and Board staff;
- Service only responded to one call;
- Service took corrective action regarding communication; and
- Service has a lack of town resources regarding mail.

RECOMMENDED ACTION:

Due to the above mitigating circumstances, the Investigation Committee recommended that this case be resolved by dismissal with a letter of guidance, as the violation does not rise to the level to warrant disciplinary action, and to issue the license renewal. Letter of guidance to be maintained in Licensee’s file for (3) three years and address the need of the licensee to ensure timely and complete applications for renewal, as well as the need to be aware of the status of the license to ensure no unlicensed practice occurs.

The Committee will consider case # 10-30 resolved and closed upon the ratification by the Board of its dismissal and the issuance of a letter of guidance. (Leach; Metayer - motion carried).

3. CASE # 10-37 - Licensee present.

The committee entered executive session for the purpose of reviewing investigation and discussing case # 10-37. **Motion:** To enter executive session pursuant to 32 M.R.S.A. §90 (A)(3) and 1 M.R.S.A. §405(6)(E) & (F) to receive legal advice and to conduct an informal conference concerning case # 10-37. (Doughty; Knowlton – motion carried). The committee entered executive session at 1:10 p.m. and returned to public session at 1:30 p.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 10-37.

Case Summary and Rules Violation: After discussion, Leach moved to recommend that the Board resolve case # 10-37 and grant the Licensee's renewal application by offering the Licensee a consent agreement based upon his unlicensed practice for providing emergency medical treatment to two patients at a time when his license was expired (the Licensee's license expired on June 30, 2010) in violation of Maine EMS Rules (dated October 1, 2009) Chapter 11 § (1)(3) ("Violating any of the provisions of 32 M.R.S.A., Chapter 2-B"), and § (1)(30) ("Providing treatment at a level for which a person is not licensed or for which a service is not licensed or permitted").

Aggravating Circumstances:

- Licensee did not self report.

Mitigating Circumstances:

- Licensee forthright and cooperative with committee;
- Licensee had all the training required at the time of renewal; and
- Licensee's first renewal and he was not familiar with the renewal process.

RECOMMENDED ACTION:

The Investigation Committee recommended that this case be resolved by granting the Licensee's renewal application by offering a consent agreement which includes the following specific conditions:

- 1) The Licensee shall pay a fine of \$50.00 per violation for a total of \$100.00, with \$50.00 suspended due to the fact that he did not transport the patient. The fine will be due at the time of execution of the consent agreement; and
- 2) A Reprimand.

The committee will consider case # 10-37 resolved and closed upon the ratification by the Board of the recommended consent agreement and its execution by all parties. If these conditions are not met, the committee recommends that the Licensee be notified of its right to request an adjudicatory hearing and any proposed action of the Board, in accordance with Maine EMS Rules, Chapter 12, § 1 (4)(B) (Leach; Knowlton - motion carried).

APPLICATIONS:**1. Joshua Delay– Informal Review – Applicant present**

Application for Initial Licensure: After discussion, Metayer moved to recommend that the Board grant Mr. Delay's application for initial licensure by offering him a consent agreement for conditional licensure based upon the applicant's criminal conviction for Assault (Class D) in December 2002, and the admitted underlying facts of a pending Domestic Violence criminal charge that occurred in February 2010 (currently under a Deferred Disposition until February 24, 2011, and if in strict compliance with deferred agreement, the state will recommend withdrawal for dismissal of charge). The underlying conduct violates Maine EMS Rules (dated October 1, 2009) Chapter 11 §(1)(5) ("Acting in ways that are dangerous or injurious to the licensee or other persons") and constitutes grounds for the denial of licensure.

Aggravating Circumstances:

- Two Assault charges within a (7) seven year period.

Mitigating Circumstances:

- Applicant shows remorse and acceptance of responsibility;
- Applicant attends counseling and exceeds the court requirements;
- Applicant has (5) five letters of recommendation from business and community leaders; and
- Applicant was cooperative with staff and committee.

RECOMMENDED ACTION:

The Investigation Committee recommends that the case be resolved by issuing the license with a consent agreement for conditional licensure for the next (6) six years and that includes the following specific condition:

- 1) The Applicant will notify Maine EMS within (10) ten days if he is charged in any state or federal court with any criminal violation. If criminal charges are filed against Applicant in any state or federal court, Applicant will immediately surrender any license issued by Maine EMS pending resolution of any EMS investigation into the conduct unless Applicant can show good cause as to why the license should continue pending the investigation.

The committee will consider Mr. Delay's pending license application resolved and closed upon the ratification by the Board of the recommended consent agreement and its execution by all parties. If these conditions are not met, the committee recommends that the Licensee be notified of its right to request an adjudicatory hearing and any proposed action of the Board, in accordance with Maine EMS Rules, Chapter 12, § 1 (4)(B) (Metayer; Hand; (Knowlton abstained) - motion carried).

Respectfully submitted,

Dawn Kinney, EMT-P
Licensing Agent