

**MAINE EMS
INVESTIGATIONS COMMITTEE MEETING
WEDNESDAY, OCTOBER 6 2010
CHAMPLAIN CONFERENCE ROOM, AUGUSTA
RATIFIED BY THE MAINE EMS BOARD ON NOVEMBER 3, 2010
MEETING MINUTES**

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

Staff: Dawn Kinney and Alan Leo

Board: Tim Beals for informal review from 10:30 to 11:00

AAG: Laura Yustak Smith, AAG 9:00 to 12:30, Dennis Smith, AAG 12:30 to 3:30

1. **Call To Order:** The meeting was called to order at 09:00 a.m.
2. **Business:** The Committee held informal conferences on case numbers 10-21, 10-40, 10-43, 10-33, 10-32, 10-07 and 10-50, and made the recommendations outlined below.
3. **Additions to agenda:** None
3. **Applications:** The Committee held informal reviews on applications for Benjamin Murphy and James Robichaud and made the recommendations outlined below.
4. **Other:** None
5. **Next Meeting:** The next meeting is scheduled for Wednesday, December 1, 2010 at 9:00 a.m.
6. **Adjourn:** The meeting was adjourned at 3:30 p.m.

COMPLAINT/INVESTIGATIONS CASE

1. NONE

INFORMAL CONFERENCES

1. **CASE # 10-21- Licensee present**

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 number 10-21 (Doughty; Knowlton – motion carried). The committee entered executive session for the purpose of reviewing investigation and discussing case 10-21. The committee entered executive session at 9:50 a.m. and returned to public session at 10:20 a.m. During executive session, the committee discussed options for disposition of case number 10-21.

Case Summary and Rules Violation: After discussion, Metayer moved to recommend that the Board resolve case # 10-21 by dismissing the complaint with a letter of guidance. The complaint was based upon the service's non compliance with run reporting in violation of Maine EMS Rules (dated October 1, 2009) Chapter 3 § (9) ("For each request for service, or for each patient when more than one patient is involved in a call, a service must complete and submit an electronic Maine EMS patient care report, as specified by Maine EMS, within three business days.").

Aggravating Circumstances:

- None

Mitigating Circumstances:

- Service took steps to bring the run reports into current compliance;
- Service was cooperative with committee and staff;
- Service made an effort to locate and report backlog of reports; and
- Service Chief resigned during investigation and new Chief took over to bring Service into compliance.

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. Letter of guidance to be maintained in Licensee's file for three (3) years.

The Committee will consider case # 10-21 resolved and closed upon the ratification by the Board of its dismissal and the issuance of a letter of guidance. (Metayer; Knowlton - motion carried).

2. CASE # 10-40 – Licensee present.

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 number 10-40 (Doughty; Knowlton – motion carried). The committee entered executive session for the purpose of reviewing investigation and discussing case 10-40. 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 discussed options for disposition of case number 10-40.

Case Summary and Rules Violation: After discussion, Metayer moved to recommend that the Board resolve case # 10-40 by dismissing the complaint with a letter of guidance based upon the Licensee's completion of his deferred disposition of a pending criminal charge for Theft by Unauthorized Taking or Transfer on January 31, 2010. This deferred disposition dismissed the Theft charge.

Aggravating Circumstances:

- None

Mitigating Circumstances:

- Licensee was forthright and honest with the Committee;
- Licensee will provide staff with letters of recommendation.

RECOMMENDED ACTION:

Due to the above mitigating circumstances, the Investigation Committee recommended that this case be resolved by dismissal with a letter of guidance. Letter of guidance to be maintained in Licensee's file for three (3) years.

The Committee will consider case # 10-40 resolved and closed upon the ratification by the Board of its dismissal and the issuance of a letter of guidance. (Metayer; Knowlton - motion carried).

- 3. CASE # 10-43 – Licensee present.** Rick Doughty 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.

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 # 10-43. (Doughty; Knowlton – motion carried). The committee entered executive session for the purpose of reviewing investigation and discussing case # 10-43. The committee entered executive session at 11:45 a.m. and returned to public session at 12:15 p.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 10-43.

Case Summary and Rules Violation: After discussion, Metayer moved to recommend that the Board resolve case # 10-43 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 thirty patients at a time when his license was expired (the Licensee's license expired on July 31, 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:

- Number of offences;
- Licensee did not self report; and
- Length of time Licensee was not licensed.

Mitigating Circumstances:

- Licensee was forthright and cooperative with committee;
- Licensee suffered a financial hardship
- Licensee was licensable at the time of expiration.

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 condition:

- 1) The Licensee shall pay a fine of \$50.00 per violation, with all but \$100.00 suspended. The fine will be due by December 31, 2010.

The committee will consider case # 10-43 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) (Doughty; Metayer - motion carried).

4. CASE 10-33 - Licensee present.

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 # 10-33. (Doughty; Knowlton – motion carried). The committee entered executive session for the purpose of reviewing investigation and discussing case # 10-33. The committee entered executive session at 12:50 a.m. and returned to public session at 1:25 p.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 10-33.

Case Summary and Rules Violation: After discussion, Leach moved to recommend that the Board resolve case # 10-33 by dismissing the complaint with a Letter of Guidance, based upon the Center allowing six Emergency Medical Dispatchers to perform without licenses from May 31, 2009 to June 4, 2010. The Board could find the Center committed a technical violation of Maine EMS Rules (dated October 1, 2009) Chapter 11 §(1)(2) – (“Violating a lawful order, rule or consent agreement of the Board”); Chapter 11§(1)(3), (“Violating any of the provisions of 32 M.R.S.A., Chapter 2-B”); Chapter 11 §(1)(35), (“Delegation of practice, skills or treatment to a person who is not licensed or qualified to perform said practice, skills or treatment”); and 32 MRSA §82 (1)(“ License required [emergency medical dispatch center or emergency medical dispatcher may not operate or practice unless duly licensed by the Emergency Medical Services’ Board pursuant to this chapter]”).

Aggravating Circumstances:

- Length of time of unlicensed practice
- Number of calls

Mitigating Circumstances:

- Licensee was cooperative with staff and Committee;
- The dispatchers were licensable at the time; and
- The Center took immediate action and developed a policy to prevent this from happening in the future which included Quality Assurance.

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 conduct does not rise to the level of disciplinary action to be maintained in Licensee’s file for three (3) years.

The Committee will consider case # 10-33 resolved and closed upon the ratification by the Board of its dismissal and the issuance of a letter of guidance. (Leach; Hand; 4-1 - motion carried).

5. **CASE 10-32 – Licensee present.** Lori Metayer, Steve Leach and Robert Hand disclosed that they know the Licensee both on a professional and personal 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.

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 # 10-32. (Doughty; Knowlton – motion carried). The committee entered executive session for the purpose of reviewing investigation and discussing case # 10-32. The committee entered executive session at 1:45 a.m. and returned to public session at 2:00 p.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 10-32.

Case Summary and Rules Violation: After discussion, Metayer moved to recommend that the Board resolve case # 10-32 by dismissing the complaint with a Letter of Guidance, based upon the Center allowing an Emergency Medical Dispatcher to perform without a license from October 1, 2009 to January 27, 2010. The Board could find the Center committed a technical violation of Maine EMS Rules (dated October 1, 2009) Chapter 11 §(1)(2) – (“Violating a lawful order, rule or consent agreement of the Board”); Chapter 11§(1)(3), (“Violating any of the provisions of 32 M.R.S.A., Chapter 2-B”); Chapter 11 §(1)(35), (“Delegation of practice, skills or treatment to a person who is not licensed or qualified to perform said practice, skills or treatment”); and 32 MRSA §82 (1)(“ License required [emergency medical dispatch center or emergency medical dispatcher may not operate or practice unless duly licensed by the Emergency Medical Services’ Board pursuant to this chapter]”).

Aggravating Circumstances:

- Length of time of unlicensed practice
- Number of calls

Mitigating Circumstances:

- Licensee was cooperative with staff and Committee;
- The dispatcher was licensable at the time; and
- The Center took immediate action and developed a policy to prevent this from happening in the future which included Quality Assurance.

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 conduct does not rise to the level of disciplinary action to be maintained in Licensee’s file for three (3) years.

The Committee will consider case # 10-32 resolved and closed upon the ratification by the Board of its dismissal and the issuance of a letter of guidance. (Metayer; Leach; - motion carried).

6. CASE # 10-07 – Licensee present.

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 # 10-07. (Doughty; Knowlton – motion carried). The committee entered executive session for the purpose of reviewing investigation and discussing case # 10-07. The committee entered executive session at 2:15 p.m. and returned to public session at 2:30 p.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 10-07.

Case Summary and Rules Violation: After discussion, Metayer moved to recommend that the Board resolve case # 10-07 by dismissing the complaint with a Letter of Guidance, based upon the Center allowing an Emergency Medical Dispatcher to perform without a license from February 1, 2010 to February 12, 2010. The Board could find the Center committed a technical violation of Maine EMS Rules (dated October 1, 2009) Chapter 11 §(1)(2) – (“Violating a lawful order, rule or consent agreement of the Board”); Chapter 11§(1)(3), (“Violating any of the provisions of 32 M.R.S.A., Chapter 2-B”); Chapter 11 §(1)(35), (“Delegation of practice, skills or treatment to a person who is not licensed or qualified to perform said practice, skills or treatment”); and 32 MRSA §82 (1)(“ License required [emergency medical dispatch center or emergency medical dispatcher may not operate or practice unless duly licensed by the Emergency Medical Services’ Board pursuant to this chapter]”).

Aggravating Circumstances:

- The violation itself

Mitigating Circumstances:

- Licensee was cooperative with staff and Committee;
- The dispatcher was licensable at the time; and
- The Center took immediate action and developed a policy to prevent this from happening in the future which included Quality Assurance.

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 conduct does not rise to the level of disciplinary action to be maintained in Licensee’s file for three (3) years.

The Committee will consider case # 10-07 resolved and closed upon the ratification by the Board of its dismissal and the issuance of a letter of guidance. (Metayer; Leach; - motion carried).

7. CASE # 10-50 – Licensee present

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 # 10-50. (Knowlton: Hand – motion carried).The committee entered executive session for the purpose of reviewing investigation and discussing case # 10-50. The committee entered executive session at 2:35 p.m. and returned to public session at 2:55 p.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 10-50.

Case Summary and Rules Violation: After discussion, Doughty moved to recommend that the Board resolve case # 10-50 by dismissing the complaint with a Letter of Guidance, based upon the Center allowing two Emergency Medical Dispatchers to perform without licenses from September 1, 2009 to August 18, 2010. The Board could find the Center committed a technical violation of Maine EMS Rules (dated October 1, 2009) Chapter 11 §(1)(2) – (“Violating a lawful order, rule or consent agreement of the Board”); Chapter 11§(1)(3), (“Violating any of the provisions of 32 M.R.S.A., Chapter 2-B”); Chapter 11 §(1)(35), (“Delegation of practice, skills or treatment to a person who is not licensed or qualified to perform said practice, skills or treatment”); and 32 MRSA §82 (1)(“ License required [emergency medical dispatch center or emergency medical dispatcher may not operate or practice unless duly licensed by the Emergency Medical Services’ Board pursuant to this chapter]”).

Aggravating Circumstances:

- Length of time of unlicensed practice
- Number of calls

Mitigating Circumstances:

- Licensee was cooperative with staff and Committee;
- The dispatchers were licensable at the time; and
- The Center took immediate action and developed a policy to prevent this from happening in the future which included Quality Assurance.

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 conduct does not rise to the level of disciplinary action to be maintained in Licensee’s file for three (3) years.

The Committee will consider case # 10-50 resolved and closed upon the ratification by the Board of its dismissal and the issuance of a letter of guidance. (Doughty; Leach; - motion carried).

APPLICATIONS:

1. Benjamin Murphy– Informal Review – Applicant present. *

Application for Initial Licensure: After discussion, Metayer moved to recommend that the Board grant Mr. Murphy’s application for initial licensure by offering him a non disciplinary consent agreement for a conditional licensure based upon the applicant’s criminal convictions for Operating Under the Influence on November 30, 2003 and on January 9, 2007 and for Operating After Suspension on June 2, 2007. 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 convictions of Operating Under the Influence in four (4) years.

Mitigating Circumstances:

- Applicant was honest and forthright with the committee;
- Applicant attends University of New England full time for physician's assistant with a 3.3 grade average;
- Applicant will obtain a minimum of 2 letters of reference and submit them to staff; and
- Applicant was cooperative with staff and committee.

RECOMMENDED ACTION:

The Investigation Committee feels applicant has been sufficiently rehabilitated to warrant the public trust and recommends that the case be resolved by issuing the license with a non-disciplinary consent agreement for conditional licensure for the next (3) three years and that includes the following specific condition:

- 1) The Applicant shall refrain from excessive use of alcohol.

The committee will consider Mr. Murphy'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).

2. **James Robichaud– Informal Review – Applicant not present and was noticed of the review.**
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. Rick Doughty and Paul Knowlton recused themselves.

Application for Initial Licensure: After discussion, Metayer moved to recommend that this review be tabled to allow time for staff to collect additional documents. This was a tied vote. After discussion Beals recommended that the Board deny Mr. Robichaud's application for initial licensure based upon the applicant's criminal conviction for Theft by Unauthorized Taking or Transfer in September 2009. The conviction violates Maine EMS Rules (dated October 1, 2009) Chapter 11 § 1(4) ("Any criminal conviction, subject to the limitations of Maine statute"); 32 M.R.S.A. Chapter 2-B 5.F. Violation of any reasonable standard of professional behavior, conduct or practice that has been established in the practice for which the licensee is licensed; and 32 M.R.S.A. Chapter 2-B 5.G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty, and constitutes grounds for the denial of licensure.

Aggravating Circumstances:

- The victim of the theft was a fire department.

Mitigating Circumstances:

- None

RECOMMENDED ACTION:

The Investigation Committee feels applicant has not been sufficiently rehabilitated to warrant the public trust and recommends that the case be resolved by denying the license.

The committee will consider Mr. Robichaud's pending license application resolved and closed upon the ratification by the Board of the recommended denial and the Applicant 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) (Beals; Leach; (3-1) - motion carried).

Respectfully submitted,

Dawn Kinney, EMT-P
Licensing Agent

* See Maine EMS Board minutes of November 3, 2010