

**MAINE EMS
INVESTIGATIONS COMMITTEE MEETING
WEDNESDAY, NOVEMBER 18, 2009
GAMBLING BOARD ROOM, AUGUSTA
RATIFIED BY THE MAINE EMS BOARD ON JANUARY 6, 2010
MEETING MINUTES**

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

Board Member: Judy Gerrish

Staff: Dawn Kinney and Alan Leo

AAG: Laura Yustak Smith, AAG

1. **Call To Order:** The meeting was called to order at 9:10 a.m.
2. **Business:** The Committee held informal conferences on cases #09-01, #9-24, #09-15, #09-40, #09-27, #09-34 and #09-36 and made the recommendations outlined below:
3. **Application:** The committee reviewed one new application and made the recommendations outlined below:
4. **Other:** Laura Yustak Smith provided an overview of the format for Informal Conferences for the committee members.
5. **Next Meeting:** The next meeting is scheduled for Wednesday, December 2, 2009 at 9:00 a.m.
6. **Adjourn:** The meeting was adjourned at 4:00 p.m.

COMPLAINT/INVESTIGATIONS CASE:

1. NONE

INFORMAL CONFERENCES:

1. **CASE # 09-01 - Licensee present**

The Committee entered executive session for the purpose of reviewing investigation and discussing case #09-01. **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 # 09-01. (Doughty; Leach – motion carries). The committee entered executive session at 09:15 a.m. and exited at 09:55 a.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 09-01.

Case Summary and Rules Violation: After discussion, Leach moved to recommend that the Board issue applicant's license subject to a Consent Agreement for his failure to disclose a pending charge of Assault in July 2008 on his December 11, 2008 renewal application. Licensee did disclose a pending Operating Under the Influence and was convicted of Driving to Endanger on April 28, 2009. Licensee's underlying conduct is in violation of Maine EMS Rules (dated October 1, 2009) Chapter 11§ (1)(5) – Acting in ways that are dangerous or injurious to the licensee or other person.

Aggravating Circumstances:

- A minor was in the vehicle during the incident that resulted in the Driving to Endanger conviction.

Mitigating Circumstances:

- Licensee was cooperative and forthright with the committee;
- Licensee has eleven months of sobriety;
- Licensee had three letters of recommendation; and
- Licensee voluntarily attended counseling.

RECOMMENDED ACTION:

Due to the mitigating circumstances, the Investigation Committee recommends that the Board find that Licensee has been sufficiently rehabilitated to warrant the public trust and recommends that this case be resolved with a Consent Agreement for seven years that includes the following conditions:

- 1) The Licensee will report to Maine EMS any criminal charges filed against Licensee in any state or federal court within 10 days of charges being docketed. 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) A reprimand.

The Committee will consider case # 09-01 resolved and closed upon the ratification by the Board of the Consent Agreement and execution of the Consent Agreement by the parties. If these conditions are not met, the Committee recommends that the Licensee be notified of his right to request an adjudicatory hearing and any proposed action of the Board, in accordance with Maine EMS Rule, Chapter 12, § 1 (4)(B) (Leach; Hand - motion carries).

2. CASE # 09-24 - Licensee was present.

The committee entered executive session for the purpose of reviewing investigation and discussing case # 09-24. 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 # 09-24. (Doughty; Leach – motion carries). The committee entered executive session at 10:11 a.m. and exited at 11:05 a.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 09-24.

Case Summary and Rules Violation: After discussion, Leach moved to recommend that the case be continued for two weeks to allow Licensee time to send letters of recommendation. (Leach; Hand - motion carries).

3. CASE # 09-15 - Licensee present. Steve Leach disclosed that he knew the Licensee, but stated that this knowledge would not affect his ability to decide the matter impartially based only on the evidence of record. Licensee had no objection to Mr. Leach participating in the informal conference.

The committee entered executive session for the purpose of reviewing investigation and discussing case # 09-15. Motion: To enter executive session pursuant to 1 M.R.S.A. §405(6)(E),(F) to receive legal advice and to conduct an informal conference. (Doughty; Leach – motion carries). The committee entered executive session at 11:25 a.m. and executed at 12:25 p.m. During executive session, the committee met with Licensee and discussed options for disposition of case # 09-15.

Case Summary and Rules Violation: After discussion, Doughty moved to recommend that the Board find that the conduct underlying Licensee's offense of Imprudent Speed violates Maine EMS Rules (dated October 1, 2009) Chapter 11 §(1)(5) – Acting in ways that are dangerous or injurious to the licensee of other persons; Chapter 11 §(14) Violation of any standard established in the profession. The standard is established in Title 29-A MRSA 2054, Emergency and auxiliary lights; sirens; privileges. . Pursuant to subsection 2054(7), Duty to drive with due regard for safety, “Subsections 4, 5 and 6 do not relieve the operator of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons”; and Chapter 11 § 22, Incompetent practice: “A licensee or applicant shall be deemed incompetent in the practice if the licensee or applicant has: A. Engaged in conduct which evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client, patient, or the general public; or B. Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which he is licensed. Specifically, the Licensee was driving an ambulance to an accident scene at an excessive rate of speed for the conditions, endangering the welfare of the patient and other first responders, and was adjudicated to have committed the civil violation of Imprudent Speed as a result.

Aggravating Circumstances:

- The rate of speed of which the Licensee was operating the ambulance;
- Driver inattention; and
- Risk to the safety of the patient, crew and responders at the scene.

Mitigating Circumstances:

- Licensee has no history of any disciplinary action during 13 years of licensure;
- This was an isolated incident; and
- Licensee submitted two letters of recommendation.

RECOMMENDED ACTION:

The Investigation Committee recommends that this case be resolved with a seven year Consent Agreement to include the following conditions:

- 1) The Licensee will notify Maine EMS within 10 days if he is charged in any state or federal court with any criminal violation involving the criminally negligent or reckless operation of a motor vehicle. 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) A reprimand;
- 3) Suspension for 30 days; and

- 4) The Licensee will research and prepare a service-level educational program regarding ambulance safety and proper speed for operation of an ambulance. This program will be submitted to the Investigation Committee for approval.

The Committee will consider case # 09-15 resolved and closed upon the ratification by the Board of the Consent Agreement. (Doughty; Hand - motion carries).

4. CASE # 09-40 – Licensee not present.

The committee entered executive session for the purpose of reviewing investigation and discussing case # 09-40. 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 # 09-40. (Doughty; Leach– motion carries). The committee entered executive session at 1:05 p.m. and exited at 1:20 p.m. During executive session, the committee discussed options for disposition of case # 09-40.

Case Summary and Rules Violation: After discussion, Doughty moved to recommend that the Board find that the Service allowed an unlicensed provider to respond on its behalf, in violation of Maine EMS Rules (dated September 1, 2006) Chapter 11§ (1)(34) - Aiding the practice of emergency medical treatment by a person not duly licensed under 32 M.R.S.A., Chapter 2-B. Specifically, the service allowed an unlicensed provider to respond on its behalf on four calls.

Aggravating Circumstances:

- The provider was unlicensed for four months.

Mitigating Circumstances:

- The service is non-transporting and does not bill so there is no billing.

RECOMMENDED ACTION:

That this case be resolved with a Consent Agreement that includes the following conditions:

- 1) A reprimand.
- 2) A fine of \$25.00 per violation for a total of \$100.00 to be paid in full at the time of execution of the Consent Agreement by all the parties.
- 3) The service will develop a policy to prevent similar violations from happening in the future.

The Committee will consider case # 09-40 resolved and closed upon the ratification by the Board of the Consent Agreement and execution of the Consent Agreement by the parties. If these conditions are not met, the Committee recommends that the Licensee be notified of his right to request an adjudicatory hearing and any proposed action of the Board, in accordance with Maine EMS Rule, Chapter 12, § 1 (4)(B) (Doughty; Metayer; motion carries).

5. CASE # 09-27 - Licensee present. Steve Leach disclosed that he knew the Licensee, but stated that this knowledge would not affect his ability to decide the matter impartially based only on the evidence of record. Licensee had no objection to Mr. Leach participating in the informal conference.

The committee entered executive session for the purpose of reviewing investigation and discussing case # 09-27. Motion: To enter executive session pursuant to 32 M.R.S.A. §90 (A)(3) and 1 M.R.S.A. §405(6)(F) to discuss matters confidential by statute and to conduct an informal conference concerning case # 09-27. (Doughty; Knowlton – motion carries). The committee entered executive session at 1:25 p.m. and exited at 1:45 p.m. During executive session, the committee discussed options for disposition of case # 09-27.

Case Summary and Rules Violation: After discussion, Doughty moved to recommend that the Board find that the Service allowed an unlicensed provider to respond on its behalf, in violation of Maine EMS Rules (dated September 1, 2006) Chapter 11§ (1)(34) - Aiding the practice of emergency medical treatment by a person not duly licensed under 32 M.R.S.A., Chapter 2-B. Specifically, the service allowed an unlicensed provider to respond on its behalf on four calls.

Aggravating Circumstances:

- None

Mitigating Circumstances:

- The service self reported immediately;
- The service assumed responsibility;
- The service immediately removed provider from responding to calls;
- The service did not bill for any of the five calls;
- The service sustained a significant budget reduction due to overtime;
- The unlicensed provider had sufficient training to renew; and
- The service has an excellent policy now in place to prevent similar violations from happening in the future.

RECOMMENDED ACTION:

Due to the above mitigating circumstances, the Investigation Committee recommends that this case be resolved with a Letter of Guidance to be maintained in Licensee's file for five years.

The Committee will consider case # 09-27 resolved and closed upon the ratification by the Board of the Letter of Guidance. (Metayer; Leach - motion carries).

6. CASE # 09-34 - Licensee present. Rick Doughty and Paul Knowlton disclosed that they knew the Licensee, but stated that this knowledge would not affect their ability to decide the matter impartially based only on the evidence of record. Licensee had no objection to Mr. Doughty and Mr. Knowlton participating in the informal conference.

The committee entered executive session for the purpose of reviewing investigation and discussing case

09-34. **Motion:** To enter executive session pursuant to 32 M.R.S.A. §90 (A)(3) and 1 M.R.S.A. §405(6)(F) to discuss matters confidential by statute and to conduct an informal conference concerning case # 09-34. (Doughty; Knowlton – motion carries). The committee entered executive session at 1:50 p.m. and exited at 2:15 p.m. During executive session, the committee discussed options for disposition of case # 09-34.

Case Summary and Rules Violation: After discussion, Leach moved to recommend that the Board find that the Service allowed an unlicensed provider to respond on its behalf, in violation of Maine EMS Rules (dated September 1, 2006) Chapter 11§ (1)(34) - Aiding the practice of emergency medical treatment by a person not duly licensed under 32 M.R.S.A., Chapter 2-B. Specifically, the service allowed an unlicensed provider to respond on its behalf on one call.

Aggravating Circumstances:

- None

Mitigating Circumstances:

- The service immediately removed provider from responding to calls;
- The service did not bill for the call at issue or an additional call where the provider was the driver only;
- Licensee was very cooperative and forthright with the committee;
- There was no harm to the patient;
- The unlicensed provider had sufficient training to renew and the provider was under the impression that his license had been renewed; and
- The service developed a policy now in place to prevent similar violations from happening in the future.

RECOMMENDED ACTION:

Due to the above mitigating circumstances, the Investigation Committee recommends that this case be resolved with a Letter of Guidance to be maintained in Licensee's file for five years.

The Committee will consider case # 09-34 resolved and closed upon the ratification by the Board of the Letter of Guidance. (Leach; Metayer; - motion carries).

7. CASE # 09-36- Licensee present with staff member. Lori Metayer and Robert Hand disclosed that they knew the Licensee, but stated that this knowledge would not affect their ability to decide the matter impartially based only on the evidence of record. Licensee had no objection to Mrs. Metayer and Mr. Hand participating in the informal conference.

The committee entered executive session for the purpose of reviewing investigation and discussing case # 09-36. **Motion:** To enter executive session pursuant to 32 M.R.S.A. §90 (A)(3) and 1 M.R.S.A. §405(6)(F) to discuss matters confidential by statute and to conduct an informal conference concerning case # 09-36. (Doughty; Hand – motion carries). The committee entered executive session at 2:35 p.m. and exited at 3:15 p.m. During executive session, the committee discussed options for disposition of case # 09-36.

Case Summary and Rules Violation: After discussion, Doughty moved to recommend that the Board find that the Licensee's license expired on June 30, 2009 and that the Licensee continued to respond and provide emergency medical treatment, in violation of Maine EMS Rules (dated September 1, 2006) 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. Specifically, the Licensee continued to respond to nine calls and provide emergency medical treatment to patients while Licensee's license was expired on five calls.

Aggravating Circumstances:

- The Licensee did not verify that the provider had renewed the license.

Mitigating Circumstances:

- The Licensee self-reported;
- The service immediately removed provider from responding to calls;
- The service did not bill for the calls;
- Licensee was very cooperative with the committee;
- Licensee lost revenue from billing and incurred overtime costs;
- The unlicensed provider had sufficient training to renew; and
- The service is currently revising its policy to prevent similar violations from happening in the future.

RECOMMENDED ACTION:

That this case be resolved with a Consent Agreement that includes a reprimand and a condition that Licensee submit a copy of its revised policy to Maine EMS at or before the date it executes the Consent Agreement.

The Committee will consider case # 09-36 resolved and closed upon the ratification by the Board of the Consent Agreement and execution of the Consent Agreement by the parties. If these conditions are not met, the Committee recommends that the Licensee be notified of his right to request an adjudicatory hearing and any proposed action of the Board, in accordance with Maine EMS Rule, Chapter 12, § 1 (4)(B) (Doughty; Hand - motion carries).

APPLICATIONS:

1. Ralph Felmey – Informal Review

Case Summary and Rules Violation: After discussion, Leach moved to recommend that the Board find that the Applicant's failure to disclose on his application of August 26, 2009, convictions for Assault in 1989, Criminal Threatening in 1992 and Criminal Threatening in 1999, violates Maine EMS Rules (dated September 1, 2006) Chapter 11 §(1)(1) – Obtaining a license or certification by fraud, by deceit, by misrepresentation, or by concealing material facts.

Aggravating Circumstances:

- None

Mitigating Circumstances:

- Over ten years from Applicant's last conviction, with no known evidence of subsequent criminal conduct;
- Applicant has shown that he has been sufficiently rehabilitated to warrant the public trust.

RECOMMENDED ACTION:

The Investigation Committee recommends that the case be resolved by issuing the license with a Letter of Guidance to be maintained in Applicant's licensing file for seven years.

The Committee will consider case resolved and closed upon the ratification by the Board. (Leach; Hand - motion carries).

Respectfully submitted,

Dawn Kinney, EMT-P
Licensing Agent