

BEFORE THE BOARD OF MEDICAL EXAMINERS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-10-0037-MED REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 419-2010
TREATMENT OF THE LICENSE OF)	
MARK RECK, EMT-F,)	
License No. 5230.)	
)	

**PROPOSED FINDINGS OF FACT;
CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**

I. INTRODUCTION

The Business Standards Division (BSD) filed a complaint against licensee Mark Reck alleging violations of Admin. R. Mont. 24.156.2705 and Mont. Code Ann. § 37-1-316(18).

Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on December 14, 2009. Michael Fanning, agency legal counsel, represented BSD. Reck failed to appear at the hearing despite proper notice of the date, time, and place of the hearing. The matter proceeded in his absence.

Jeannie Worsach and Lavelle Potter testified under oath. BSD's Exhibits 1 through 7 were admitted into evidence. Based on the evidence adduced at hearing, the following findings of fact, conclusions of law and recommended decision are made.

II. FINDINGS OF FACT

1. Reck became licensed in Montana as an Emergency Medical Technician (EMT) first responder in January 2004. He was eligible to qualify for renewal of that license by presenting proof that he had completed a 16 hour United States Department of Transportation (USDOT) curriculum refresher course or by showing proof that he had become registered with the National Registry of Emergency Medical Technicians (NREMT). An EMT licensed after July 2004 can only renew a

license by presenting proof that he has been registered with NREMT. Admin. R. Mont. 24.156.2717.¹

2. In order to prevent expiration of a license, every two years a licensee must submit a license renewal form and proof showing that the licensee has completed administratively required training. Failure to do so will result in the license expiring. Mont. Code Ann. § 37-1-141.

3. An expired license can be reactivated provided that the reactivation is accomplished within two years after the license expires. Admin. R. Mont. 24.156.2719. Failure to reactivate the license within the two year period will result in the termination of the license. Mont. Code Ann. § 37-1-141(8). After termination of the license, the terminated license cannot be reactivated and a new original license, which includes undertaking all steps necessary for original licensing, must be obtained. *Id.*

4. When his 2004 license came due for renewal, Reck failed to submit an application for renewal showing that he had obtained the required training. As a result, his license lapsed and then expired in 2006.

5. Because his license had expired, Reck had until March 31, 2008 to reactivate his license or the license would terminate. On March 10, 2008, Reck submitted a renewal application for his 2006 through 2008 license in order to reactivate his expired license. Exhibit 2. As part of the application, Reck indicated that he had completed a 16 hour USDOT curriculum refresher course. Exhibit 2, page 1. In fact, he had not done so. He also indicated that he did not have current registration from the National Registry of Emergency Medical Technicians at the first responder level. Exhibit 2, page 1.

6. Based on Reck's representation that he had completed the USDOT refresher requirements, the Board erroneously reactivated Reck's license for the biennium period of 2006 through 2008.

¹ Jeannie Worsach, Executive Director of the Board of Medical Examiners, testified that Reck had a "grand fathered" license that would permit him to obtain renewal by either the NREMT registration or by participating in a USDOT Board approved refresher course. The documentary evidence (Exhibit 1), however, appears to indicate that he received his license after January 1, 2004 (on January 15, 2004) which would appear to restrict him to renewal by proof that he had become NREMT registered. Regardless of this discrepancy, it is clear that Reck neither obtained NREMT registration nor completed a USDOT Board approved refresher course. So, regardless of whether or not his license is "grand fathered", it is clear that his license expired because he failed to obtain renewal or reactivation in accordance with the applicable administrative rules.

7. On March 13, 2008, Board of Medical Examiners licensing specialist Sheila Pfeifer sent Reck a letter stating that Reck needed to submit additional fees and that Reck needed to submit a copy of the refresher courses he had attended. Exhibit 3. The letter also indicated that the fees and information needed to be received by the Board before March 31, 2008, the date his license terminated.

8. On March 26, 2008, licensing specialist Pfeiffer sent Reck another letter stating that the documentation Reck had submitted was insufficient to comply with the rules and that he would have to submit proof showing that he had completed the required training necessary to renew his license. The documentation which Reck submitted did not show that he had completed the USDOT refresher course as required nor did it show that he become NREMT registered.

9. On April 28, 2008, Reck submitted an outline of continuing education courses that he had taken. These courses were not the USDOT mandated refresher courses required to renew his license. In fact, many of these courses had nothing to do with EMT training at all.

10. In February 2009, the Board of Medical Examiners screening panel took up the complaint which forms the basis of this case. At that time, the screening panel voted to table this action for a period of six months to permit Reck to get NREMT registered so that he could get his license back. Reck did nothing in that time period to complete his NREMT registration. As a result, the screening panel issued the instant complaint on August 9, 2009.

III. CONCLUSIONS OF LAW²

A. *Reck Violated Professional Standards.*

1. The Department bears the burden of proving by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

² Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

2. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(18) conduct that does not meet generally accepted standards of practice.

3. Admin. R. Mont. 24.156.2705 provides in pertinent part that the following conduct by a licensee is unprofessional conduct:

(1)(k) failing to maintain continuous NREMT registration while licensed as an EMT in the State of Montana;

(1)(n) failing to furnish to the Board information that is requested by the Board;

(1)(p) failing to comply with any statute or rule promulgated by the Board of Medical Examiners;

(1)(ab) any act, whether or not specifically enumerated that in fact constitutes unprofessional conduct.

4. An EMT first responder must renew his license every two years. Admin. R. Mont. 24.156.2717(1). An EMT first responder licensed prior to January 1, 2004 can renew his license by either completing a 16 hour Board of Medical Examiners approved USDOT refresher course or becoming NREMT registered. An EMT first responder licensed after January 1, 2004 can only renew his license by submitting a current NREMT registration. Admin. R. Mont. 24.156.2717(3) and (4).

5. Reck failed to provide any proof that he comported with USDOT refresher requirements for maintaining his EMT first responder license and failed to provide evidence that he obtained NREMT registration. He thus violated Admin. R. Mont. 24.156.2705(1)(k).

6. When asked to provide proof that he had completed required refresher training, he failed to do so. He thus violated Admin. R. Mont. 24.156.2705(1)(n). By failing to provide proof that he comported with refresher requirements for maintaining his EMT first responder license or was NREMT registered, Reck violated Admin. R. Mont. 24.156.2705(1)(p) because in doing so he did not comport with

rules promulgated by the medical board. His violation of certain provisions of Admin. R. Mont. 24.156.2705(1) also violates Mont. Code Ann. § 37-1-316(18).

7. By failing to meet the requirements for renewal of his 2006 through 2008 license, Reck's license should have terminated on March 31, 2008 by operation of Mont. Code Ann. § 37-1-141(8).

8. Although Reck's license should have terminated on March 31, 2008, the Board's erroneous reactivation prevented the license from terminating on March 31, 2008. Instead, by erroneously reactivating the license, the Board essentially extended the expired status of the license (i.e., the two year period during which the license could be renewed) for a period of two years from the date of the reactivation. Because the license is expired and not terminated, the Board retains jurisdiction to impose sanctions upon Reck's license for unprofessional conduct. *Gilpin v. Board of Nursing* (1992), 254 Mont. 308, 837 P.2d 1342.³

9. A regulatory board may impose any sanction provided for by Montana Code Annotated Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Montana Code Annotated § 37-1-312 provides that a regulatory board may revoke a license.

10. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the Board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

11. It is apparent from the evidence presented that Reck did not follow the mandated requirements of license renewal. These requirements are designed to ensure the protection of the public from persons who are not qualified to act as EMT's. Reck's failure to follow any Board of Medical Examiners' method of ensuring continued competence for renewal, be it through USDOT refresher training or by becoming NREMT registered, places the public at risk. Without such training, the risk he presents to the public cannot be averted by any measure short of revocation.

³ If Reck's license had terminated on March 28, 2008, then the Board would lack jurisdiction to impose sanctions against the license by operation of Mont. Code Ann. § 37-1-141(9) since the complaint in this matter was not filed until 2009. In such a circumstance, however, any effort to impose sanctions would be superfluous since the terminated license could not be renewed and the licensee would have to go through an original licensing process in order to obtain a license. Mont. Code Ann. § 37-1-141(8).

IV. RECOMMENDED ORDER

Based upon the foregoing, the hearing examiner recommends that the Board revoke Reck's license. In conformity with Mont. Code Ann. § 37-1-314, his license should not be reinstated until such time as he can demonstrate that he has met all requirements for licensure mandated by statute and administrative rule which shall include proof that he has obtained current NREMT registration at a level equal to or greater than the license level for which he is applying.

DATED this 26th day of January, 2010.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.