

Substance Abuse Policy

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I. INTRODUCTION

Boston Emergency Medical Services (“the Department”) is a public health and public safety service that provides and manages the pre-hospital care system for the City of Boston. As part of their regular duties, Emergency Medical Technicians (“EMTs”) at Boston EMS receive, process, and respond to calls for emergency medical care, operate departmental ambulances and other departmental vehicles, and provide emergency medical care to patients, including life-saving treatment when necessary. Illegal drug use and abuse of alcohol by employees pose a threat to patients, Boston EMS employees, and the general public. This policy is intended to detect and prevent any illegal drug use and abuse of alcohol by EMTs at Boston EMS and to assist in the rehabilitation of employees when possible. Treatment and discipline are both important aspects of this policy. The following policy and procedures provide the Department with reasonable measures to ensure that illegal drug use and abuse of alcohol do not jeopardize the public and Boston EMS employees or interfere with the delivery of emergency medical services.

It is the general intent of the policy to create a humanitarian program which includes the following principles:

- 1) emphasis on treatment and counseling rather than just discipline in many cases;
- 2) use of drug and alcohol testing procedures in great part to overcome the user’s denial that a problem exists, to protect the public, and to provide help and treatment as appropriate; and
- 3) require all uniform personnel to attend comprehensive awareness and training programs.

The testing components of the program will not be instituted until this policy has been in effect for 90 days. Prior to the implementation of this policy, all employees will receive up to three hours educational training in the effect of drugs and alcohol in general as well as in the workplace. The training shall also include a review of this policy. All such training will occur on Department time.

The Commission reserves the right to modify, amend, rescind, and replace this policy and the procedures set forth herein, provided that the Commission will give the Union notice and an opportunity to bargain about such changes.

II. DEFINITIONS

- A) Controlled Substances – any drug included in Schedules I through V, as defined by Section 802(6) of Title 21 of the United States Code (21 USC 802(6)), the possession of which is unlawful under Chapter 13 of that title, or any drug included within the definition of “Controlled substance” in Chapter 94C of the Massachusetts General Laws (for example, but not limited to: cocaine, marijuana, valium, morphine, anabolic steroids). The term does not include the use of prescribed drugs which have been legally obtained and are being used for the purpose for which they were prescribed.
- B) Illegally-Used Drug – any prescribed drug which is legally obtainable but has not been legally obtained or is not being used for prescribed purposes, all designer drugs not listed in the Controlled Substances Act (for example, but not limited to: MDA, fentanyl), and any other over-the-counter or non-drug substances (for example, but not limited to: airplane glue) being used for other than their intended purpose.
- C) Alcohol – colorless, volatile and flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes, but is not limited to, beer, wine and liquor. It does not include alcohol used in chemical processing, cleaning or testing.
- D) Department Property – includes buildings, offices, facilities, equipment, vehicles, land, and parking lots owned, loaned, utilized or leased by the Department. It also includes any other site at which business of the Department is transacted whether on or away from Department owned, loaned, or leased property.
- E) Accident – an unplanned, unexpected and unintended event, including but not limited to a motor vehicle accident involving a departmental vehicle or ambulance, which a) occurs on Department property, on Department business, or during working hours, and b) initially appears to have been caused wholly or partially by an EMT, and c) results in either i) a fatality; ii. bodily injury requiring medical treatment away from the scene of the event, or iii) damage to property in excess of \$2,500.
- F) Drug Paraphernalia - any item which is clearly intended for use for the administering, transferring, manufacturing, testing or storing of a controlled substance.
- G) Reasonable Suspicion of Drug and/or Alcohol Use - the reasonable suspicion standard for drug testing of uniformed personnel is based upon a specific

objective fact(s) and reasonable inferences drawn from that fact(s) in light of experience that the individual may be involved in the use of any illegally-used drug, controlled substance, or alcohol. Examples would include one or more of the following:

1. Observable phenomena, such as direct observation of on-duty alcohol use or possession and/or direct observation of on-duty or off-duty use or possession of illicit drugs, and/or the on-duty display of behaviors which appear to be indicative of the use of any illegally-used drug, controlled substance, or alcohol and are not attributable to other factors;
2. a pattern of abnormal conduct, erratic behavior or deteriorating work performance, including but not limited to, frequent absenteeism, excessive tardiness, or frequent accidents, not attributable to other factors and which appears to be related to drug and/or alcohol abuse;
3. arrest, indictment, or conviction for a drug-related offense;
4. newly discovered evidence that the EMT has tampered with a prior drug/alcohol test;
5. repeated or flagrant violations of the Department's rules and procedures which are determined by a supervisor to pose a substantial risk of injury or property damage and which are not attributable to other factors and appear to be related to drug and/or alcohol abuse;

The above examples are not all inclusive, but are intended to be illustrative. The symptoms of being affected by a drug or by alcohol are not confined to those consistent with misbehavior or to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. Although reasonable suspicion does not require certainty, mere "hunches" are not sufficient to meet this standard. Any member ordered to undergo reasonable suspicion drug and alcohol testing under this policy may request to consult with a union representative before submitting to the test, but the inability to secure a union representative shall not delay the collection of specimens from the employee or administration of the tests.

- H) Under the Influence of an Unauthorized Controlled Substance. Illegally-used Drug and/or Alcohol - The presence of a .04 alcohol content in the blood, or a verified positive drug test, at levels specified by the National Institute of Drug Abuse (NIDA), for an unauthorized controlled substance or an illegally-used drug.
- I) Medical Review Officer (MRO) – A licensed physician responsible for receiving laboratory drug testing results who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate a positive test relative to the employee's medical history and other relevant biomedical information.

- J. Emergency Medical Technicians or "EMT" - For the purposes of this policy shall mean all Emergency Medical Technicians at the Department, including but not limited to employees in the titles of Emergency Medical Technician, Emergency Medical Technician Intermediate, Emergency Medical Technician Recruit, Emergency Medical Technician Paramedic, Senior Emergency Medical Technician, Principal Emergency Medical Technician, Emergency Medical Technician Training Supervisor, and any other uniformed personnel covered by this policy.
- K) Supervisor – A uniformed member of the Department ranked at any operational level above the entry level position of emergency medical technician, except that employees in the title of Emergency Medical Technician-Paramedic shall not be considered supervisors for the purposes of this policy.

III. **AUTHORIZED USE OF PRESCRIPTION MEDICINE; EXPOSURE TO ILLEGAL DRUGS**

EMTs undergoing prescribed medical treatment with any drug that may affect their ability to perform their duties as an EMT must report the drug used to the licensed physician designated by the Department. EMTs exposed to illegal drugs during their work shall report and disclose their exposure to a licensed physician designated by the Department so that a determination can be made as to the EMT's ability to perform his/her duties.

IV. **PROHIBITED CONDUCT**

The following conduct by uniformed personnel is prohibited:

- A) Unauthorized use, possession, manufacture, distribution, dispensation or sale of a controlled substance, illegally-used drug, drug paraphernalia, or alcohol on Department property, on Department business, in Department supplied vehicles, in vehicles being used for Department purposes, or during work hours;
- B) Unauthorized storage in a desk, locker, automobile or other repository on Department property of any illegally-used drug, controlled substances, drug paraphernalia, or alcohol;
- C) Being under the influence of an unauthorized controlled substance, illegally-used drug or alcohol on Department property, on Department business, in Department supplied vehicles or vehicles being used for Department business or during working hours;
- D) Possession, use, manufacture, distribution, dispensation or sale of illegally-used drug or controlled substances while off duty;

- E) Switching or adulterating any sample for testing;
- F) Refusing consent to testing or refusing to submit a breath, urine, hair, or blood sample for testing (except as regards "Condition of Promotion" testing);
- G) Failing to adhere to the terms of any Rehabilitation Agreement (sample attached) which the EMT has signed;
- H) Conviction under any drug or alcohol statute;
- I) Failure to immediately notify the Department of any arrest or conviction under the drug or alcohol statute;
- J) Failure to notify the licensed physician designated by the Department of the use of a prescription drug that affects the EMT's ability to perform his/her duties as an EMT;
- K) Refusing to sign a) a receipt for the Department's Substance Abuse Policy, b) the Consent and Release Form, c) the Chain of Custody Form, or d) a Rehabilitation Agreement.

V. TESTING

Uniformed personnel of the Department will be tested for drugs and/or alcohol under the following circumstances:

- A) Reasonable Suspicion of Drug and/or Alcohol Use: Uniformed personnel will be tested for drugs and/or alcohol when a supervisor who has been trained in making determinations of reasonable suspicion has made such a determination. Referrals for reasonable suspicion testing will be made using the procedure set forth in Appendix A of these procedures. Where reasonable suspicion exists to test for alcohol, the EMT shall be given the option of submitting to either a breath screen test or a blood alcohol test. All breath screen tests shall be administered by a certified collection site facility utilizing DOT approved equipment and DOT procedures. All blood alcohol tests shall be administered by a certified collection site facility following procedures with reasonable identification and chain-of-custody safeguards.
- B) Follow-up Testing – EMTs referred by the Department to treatment will be subject to unannounced testing for a period of five (5) years following a return to full duties.
- C) Pre-Employment Testing – All applicants for the position of EMT will be required to submit to a drug test. All applicants for the position of EMT will be advised in

connection with their application for employment that, prior to being offered a position, they will be required to submit to a drug screen. Failure to consent to such a test, or a verified positive result, will disqualify the applicant for employment as an EMT.

- D) Probation Period Testing – All probationary personnel are subject to drug testing during their post-hire probation period without prior warning and at random intervals.
- E) Condition of Promotion/Rating/Appointment Testing – EMTs who are offered a promotion/appointment to the positions of Senior EMT, Principal EMT, Paramedic, or EMT Training Supervisor will be required to submit to a drug test, provided the employee did not receive his/her annual drug test as required by subsection F within sixty (60) days prior to the offer. A negative test result shall be a condition of such promotion/appointment. Such EMTs may refuse to submit to such a drug test without penalty or risk of disciplinary procedures, however such refusal shall be considered a declination of the offer of promotion/appointment.
- F) Annual Drug Testing (Hair) - In a joint desire to achieve and maintain a work force that is 100% drug free, the parties agree that all EMTs shall be subject to an annual drug test to be conducted through a hair analysis testing system in accordance with this policy. Each EMT shall submit to an annual test on or within thirty (30) calendar days of each EMTs birthday as directed by the Department. The Department will send employees written notice within thirty (30) days of the start of their annual testing period under this paragraph to remind them of the provisions of this paragraph. A general notice to all employees shall be sufficient. Failure to provide the written notice described in this paragraph shall not excuse an employee from submitting to the annual drug test as directed or prevent the Department from enforcing the provisions of this policy in the event of a positive test result.
- G) Post-Accident. The operator of a departmental vehicle/ambulance involved in an accident as defined in Section II(E) of this policy will be subject to drug and alcohol testing. The collection of specimens for testing shall occur as soon as possible following the accident and before the employee is relieved of duty, except that necessary medical treatment shall not be delayed in order to collect the specimen.
- H) Procedures for Drug Testing. The Commission will adhere to written specimen collection and testing guidelines established or approved by the laboratory that will perform the drug test to ensure the accuracy and integrity of the test and process. The Commission will give the Union notice and an opportunity to bargain about such guidelines, except that the parties agree that the Boston Police Department specimen collection and testing guidelines, as set forth in Appendix C and Appendix D of the Boston Police Department Rule 111, shall

apply if the Boston Police Department administers specimen collection and testing under this policy. Copies of the specimen collection and testing guidelines shall be given to the Union, and the Union shall be notified promptly in writing of any new or amended procedures that occur after this policy takes effect. The procedures for testing on hair shall include the following:

1. Three hair samples will be collected at the time of testing. Two samples will be sent under applicable chain of custody standards to the testing lab. The third sample will be maintained under secure storage conditions by the Department.

2. To be identified as positive, the initial test must have:

Minimum of 5ng/10mg of cocaine; and
Contain nor cocaine (1ng); or
Contain Benzyleconine at a ratio of 5% or greater.

3. If the initial test is positive, the lab will perform a second test on the second hair sample. If the result of that test is within 30% of the result of the first test, the result of the first test will be deemed confirmed, provided that the result meets the minimum standard set forth in Section 2. Otherwise, the test will be deemed negative.

4. A bargaining unit member whose two test results are positive may, at the EMT's expense, have the third hair sample tested at Quest Laboratories at the laboratory's limit of detection for the substance(s) in question (50 ng/mg for all drugs except marijuana which is 0.05 ng/mg). The employee must request the third hair sample be tested within seventy (72) hours of being notified of the positive test. If the test result does not meet that laboratory's limit of detection for the substance(s) in question, the test shall be deemed negative.

Drug tests will consist of determinations of the presence of these five drugs, classes of drugs, or their metabolites: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine (PCP), and amphetamines. In the course of testing for Reasonable Suspicion of Drug and/or Alcohol Use or post-accident testing, other drugs or their metabolites may be tested for if their particular use is suspected. Such other drugs may include, but need not be limited to: lysergic acid diethylamide (LSD), methaqualone, barbiturates, and benzodiazepines. Drug tests shall consist of an initial screening such as immunoassay and, if the initial screening is positive at the cut offs used by the laboratory performing the test, shall be confirmed using "GC/MS" (gas chromatography/mass spectrometry) or some equally reliable methodology at the cut off levels used by the laboratory performing the test. In a GC/MS test, the specimen is heated and the vapors are passed through a column of absorbent material, where traces of the drugs separate into colored bands (gas chromatography). A mass spectrometer then analyzes the precise chemical composition of each band. GC/MS is generally considered to be the most conclusive method of confirming the presence of a drug in urine. GC/MS results are accepted as evidence in criminal cases. Positive

GC/MS results are first communicated to a Medical Review Officer (MRO) who investigates the possibility of a legitimate explanation of the test result.

VI. CONSEQUENCES OF A POSITIVE TEST

ILLEGAL DRUGS

EMTs who receive a verified positive test result for illegal drugs will be subject to termination. However, where the EMT's only violation is a positive test for illegal drug use and it is the EMT's first offense, the Department shall offer voluntary submission to the following alternative program:

- up to a 45 day suspension without pay.
- Execution of a Rehabilitation Agreement and submission to treatment/rehabilitation.
- Temporary reassignment by the Department.
- Submission to follow-up testing as described in section V(B) above.

Note that failure to comply with the terms of the Rehabilitation Agreement either during or after the suspension period would constitute a separate violation of this policy and shall result in termination.

ALCOHOL OR ILLEGALLY-USED DRUGS

EMTs who test positive for alcohol or illegally-used drugs shall be subject to disciplinary procedures up to and including termination. However, the first time, an EMT tests positive for alcohol or illegally used drugs, the EMT shall be offered and the EMT shall sign a Rehabilitation Agreement and the EMT shall receive up to a 5 day suspension. Note that refusing to sign the Rehabilitation Agreement under these circumstances constitutes a separate violation of this policy. EMTs who sign the Rehabilitation Agreement and undergo treatment may be assigned administrative duties until such time as they are certified, by the treatment provider, to be recovering and able to safely perform their duties. They will also be subject to follow-up drug testing as described in Section V(B) above.

REHABILITATION

1. Leave of Absence. An employee who is on an approved leave of absence for the purpose of receiving substance abuse treatment must use accrued paid leave in accordance with Department policy and may also use compensatory time or holiday time. If the employee has exhausted all such paid leave, he/she may apply for additional paid leave from the Catastrophic Illness Leave Bank (CILB) in accordance with the CILB policy. In the event the

employee receives no compensation and is receiving substance abuse treatment the employee's health insurance coverage shall remain in place during his/her leave of absences and the employee will be responsible for his/her share of the health insurance premium. If the employee fails to pay his/her share of the health insurance premium, the Commission may recoup any payments made on the employee's behalf by payroll deduction from any monies owed to the employee.

2. Treatment Expenses For Employees Who Test Positive. If an employee who tested positive for drugs is required to receive substance abuse counseling or treatment pursuant to a Rehabilitation Agreement and the cost of such treatment exceeds the coverage of any health insurance or disability coverage available to the employee, the Department will contribute an amount not to exceed five thousand dollars (\$5000.00) towards the cost of the employee's required treatment, except that the Department's total annual contribution to employees under this paragraph shall not exceed fifty thousand dollars (\$50,000.00) in any fiscal year.

VIII. CONSEQUENCES OF VIOLATION OF THE POLICY

Any violation of the Substance Abuse Policy shall lead to disciplinary action up to and including termination. The severity of the action chosen will depend on the circumstances of each case. The Chief of the Department may at his discretion, suspend any disciplinary action while an EMT is undergoing substance abuse treatment subject to a Rehabilitation Agreement (see: Consequences of a Positive Test: above). Refusing to sign a Rehabilitation Agreement shall result in termination.

Refusing to submit to a drug or alcohol test (except as regards Condition of Promotion testing), or switching or adulterating any blood or urine sample, shall result in termination.

Failure to adhere to the terms of the rehabilitation agreement shall result in disciplinary action up to and including termination.

APPENDIX A

REFERRAL PROCEDURES FOR SUPERVISORS

The Department's supervisors are responsible for being alert to declining job performance, erratic behavior or other symptoms of possible substance abuse. Whenever a supervisor who has been trained in the making of determinations of reasonable suspicion of drug and/or alcohol use (as defined in Section II of these procedures) makes such a determination the following steps will be taken:

- A) The supervisor will document in writing all circumstances, information and facts leading to and supporting his/her suspicion. At a minimum, the report will include appropriate dates and times of suspect behavior, reliable/reliable sources of information, rationale leading to referral for testing and the actions(s) taken.
- B) Prior to referring an EMT for testing, the supervisor will discuss the problem with the EMT in a private location with one witness, preferably another supervisor present. Caution will be taken not to accuse the EMT of substance abuse, but the EMT will be presented with instances of questionable behavior. If the EMT does not have an acceptable explanation for his questioned behavior, the supervisor will continue with the procedures set forth in this section. Nothing in this procedure is intended to prevent the EMT from invoking any Weingarten rights the EMT may have.
- C) The supervisor shall consult with a second supervisor of a higher rank and they shall jointly decide whether to refer an EMT for testing. If, after consultation, there is a decision to test, both supervisors shall file a joint report as set forth in paragraph A. All persons involved in the decision-making process will have received training in the identification of actions, appearance, and conduct which are indicative of the use of alcohol and/or drugs.
- D) In those cases where the supervisor determines that the person's behavior causes a potential threat of harm to himself or others, the EMT will be immediately removed from the work site and where there is no other misconduct resulting in suspension the EMT shall be placed on administrative leave and shall be subject to customary restrictions of such leave.
- E) Once a determination has been made to refer an EMT for testing, it will be the responsibility of the supervisor to advise the EMT of such decision and to escort the EMT to a collection facility. The supervisor should remain with the EMT at the collection site facility until testing is concluded. In the event that leaving the scene and/or remaining with the EMT is not feasible, the supervisor will 1) arrange transportation to the collection facility (the EMT will be instructed not to drive a vehicle), 2) notify the collection facility that the EMT is being sent for testing, 3) request that the collection facility notify the supervisor when collection procedures are completed, 4) arrange transportation for the EMT following the collection process, and 5) notify the EMT that he or she is not to return to work pending receipt of the test result by the Department.
- F) Upon conclusion of the examination the supervisor will ensure that the EMT is escorted to his destination. The supervisor will direct the EMT not to drive himself/herself to his destination. The EMT will be relieved from duty pending receipt by the Department of the test results and the EMT will be notified of this change in status.

G) In those cases where a supervisor discovers an EMT who possesses what appears to be a controlled substance, illegally-used drug or alcohol, he or she will proceed as described above for instances where reasonable suspicion exists, and, if the substance in question appears to be a controlled substance or illegally-used drug, will in addition perform the following steps:

- 1) Immediately confiscate the substance and all equipment or paraphernalia directly employed with the substance. Wrap them in any available clean material (e.g. paper towel, copier paper, handkerchief). The supervisor will keep the package on his or her person or where he or she can be absolutely sure it cannot be tampered with and shall strive to process the materials as soon as possible.
- 2) As soon as the supervisor can, he or she will put the wrapped materials, still in the wrapping, into a large envelope and seal the envelope completely. The supervisor's initials will be written over the seam of the envelope in several places.
- 3) The supervisor will write the EMT's name, his or her own name, and the date at the top of the envelope, will promptly notify his or her commanding officer, and will turn the envelope over as soon as possible to the Professional Standards Office. The supervisor will witness the signing and dating of the envelope by the person to whom he or she turns it over.
- 4) All employees who subsequently and for whatever reason have possession of the envelope will sign and date it in the presence of the previous supervisor.

APPENDIX B

REHABILITATION AGREEMENT

Name: _____

Date: _____

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Department: Boston EMS

Dear _____:

On _____, the Department agreed to your request to seek counseling and referral to a rehabilitation program for alcohol and/or drug abuse. The following conditions apply to your rehabilitation program.

1. You must authorize your treatment provider to provide proof to the Office of Professional Standards of enrollment in a rehabilitation program and proof of attendance at all required sessions on a monthly basis. Your attendance will be monitored closely.
2. You must adhere to all of the requirements of the drug or alcohol treatments or counseling program in which you are enrolled.
3. If you are absent from work during the rehabilitation period without prior authorization, you must promptly submit a written doctor's certificate explaining the reason for such absence. The Department will take disciplinary action if you are absent as a result of alcohol or drug use.
4. You will pay for all costs of rehabilitation which are not covered under your health plan or assumed by the Department pursuant to Section IV (B) (2) of the Substance Abuse Policy.
5. During the five (5) years following the completion of your rehabilitation program, the Department will test you for alcohol and/or drug use on a random basis. The Department will take prompt disciplinary action if you refuse to submit to testing or if you test positive during this period.
6. You must submit a fitness for duty certificate signed by a licensed physician confirming that you are fit to perform the duties of an EMT as a condition of returning to work.
7. Failure to comply with all of the above conditions will result in termination. Furthermore, rehabilitation personnel will notify the Department in writing or appear for testimony at administrative, civil service and superior court hearings in the event you have not complied with the designated rehabilitation program.

I hereby voluntarily agree to all of the above conditions and authorize my treatment provider to provide the Office of Professional Standards with proof of my enrollment and attendance at the recommended rehabilitation program. I sign this rehabilitation agreement of my own free will, and without duress.

EMT's Name

Department Representative's Name

EMT's Signature

Department Representative's Signature

Union Representative's Name

Union Representative's Signature

Date

Date