

**COMMONWEALTH OF MASSACHUSETTS
PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

IN THE MATTER OF)
ROBERT AVERY)

Case No. 2025-011

SUSPENSION AND RETRAINING ORDER

The Respondent Robert Avery has entered into a Suspension Agreement (“Agreement”), attached hereto and incorporated herein, under which he has agreed to the suspension of his certification as a law enforcement officer in the Commonwealth of Massachusetts for a period of five days, beginning on the date of execution of the Agreement by the Massachusetts Peace Officer Standards and Training Commission (“Commission”). The Respondent also agrees to undergo retraining and comply with certain conditions outlined in the Agreement. See M.G.L. c. 6E, §§ 3(a) and 10; M.G.L. c. 30A, §§ 10 and 13.

Failure of the Respondent to abide by the terms and conditions of the Agreement shall result in the Agreement becoming void and may result in the Commission initiating adjudicatory proceedings against the Respondent; and seeking discipline against the Respondent based on any ground supported by the evidence obtained in a preliminary inquiry, whether or not it was covered in the Agreement, up to and including the possible revocation of the Respondent’s certification and entry of his information into the National Decertification Index. The Respondent has waived all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the factual findings, conclusions of law, terms and conditions, and other provisions contained in the Agreement.

Accordingly, it is hereby ORDERED that, for the reasons stated in the Agreement:

- (a) The factual findings and conclusions of law set forth in the Agreement are hereby adopted;
- (b) The Respondent’s law enforcement certification is hereby suspended for a period of five days, beginning on February 13, 2024, subject to the agreed-upon conditions;
- (c) During the period of suspension, the Respondent shall not perform police duties or functions on behalf of any law enforcement agency. The Respondent shall also refrain from all conduct prohibited by the Commission during the period of suspension;
- (d) The Respondent shall undergo retraining on the appropriate use of force in a form to be approved by the Commission in consultation with the Municipal Police Training Committee; and
- (e) The Executive Director shall take the necessary steps to publish the Respondent’s name, suspension, and retraining in any publicly available lists and database published by the Commission.

By vote of the Commission on February 13, 2025.

Margaret R. Hinkle

Hon. Margaret R. Hinkle (Ret.), Chair

Notice: Amy L. Davidson, Esq., Respondent's Counsel
Shaun Martinez, Esq., Deputy Director, Division of Police Standards
Division of Police Standards
Lynn Police Department, Law Enforcement Agency
Collective Bargaining Unit

**COMMONWEALTH OF MASSACHUSETTS
PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the matter of Robert Avery

))))
Case No. 2025-011

SUSPENSION AGREEMENT

In the interest of resolving the above-captioned matter and consistent with the public interest and laws and regulations governing the Massachusetts Peace Officer Standards and Training Commission ("Commission"), including M.G.L. c. 6E, §§ 3(a), 8, and 10, and 555 C.M.R. §§ 1.01–1.10, the Respondent, Robert Avery, and the Commission hereby enter into this Voluntary Disposition Agreement:

Factual Findings

1. The Respondent has been employed as a police officer for the City of Lynn, Massachusetts, since February 4, 2003.
2. On July 1, 2021, the Respondent was automatically certified as a police officer in Massachusetts pursuant to St. 2020, c. 253 § 102, an Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth. His certification remains active.
3. On October 19, 2023, the Respondent and other officers were involved in the execution of a residential search warrant within the City of Lynn. During the execution of the warrant, an individual was detained and ultimately arrested. While the arrestee was inside the subject residence, he placed a small quantity of suspected narcotics, which had been recovered pursuant to the warrant, into his mouth. Officers, including the Respondent, immediately escorted the handcuffed arrestee into the hallway outside of the apartment. While officers were holding the arrestee against a wall and attempting to get the arrestee to expel the suspected narcotics, the Respondent delivered a closed-fisted strike to the side of the arrestee's head. The arrestee did not appear to sustain, nor did he report, any injuries as a result of the strike.
4. The Respondent's reported intent in striking the arrestee in the head was to dislodge the narcotics from the arrestee's mouth. However, based on a totality of the circumstances, the strike was not necessary or proportionate to effect an arrest, prevent escape from custody, prevent imminent harm, or defend against an individual who initiated force against an officer. *See* 555 C.M.R. § 6.04(1). As a result, the force used was excessive.
5. Due to the Respondent's above-described October 19, 2023, conduct, internal investigators determined that the Respondent violated the Lynn Police Department's applicable Use of Force Policy. The Respondent was required to attend a training meeting with a use of

force instructor and was suspended from duty for two days. In addition to this incident, throughout the Respondent's law enforcement career, internal investigators have sustained various allegations relating to his misconduct in June 2011, March 2022, and October 2023.

6. On February 15, 2024, the Commission, pursuant to M.G.L. c. 6E, §§ 8(c)(1) and 8(c)(2) and 555 C.M.R. §§ 1.02(3)(c) and 1.02(4), authorized the Division to conduct a preliminary inquiry into allegations of misconduct against the Respondent regarding the October 19, 2023, incident. On May 17, 2024, the Division submitted its report of preliminary inquiry to the Commission. Subsequently, on May 22, 2024, the Commission authorized the initiation of disciplinary proceedings against the Respondent.

Applicable Law

7. Pursuant to M.G.L. c. 6E, § 3(a):

The [C]ommission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to:

- (1) act as the primary civil enforcement agency for violations of [chapter 6E]; . . .
- (4) deny an application or limit, condition, restrict, revoke or suspend a certification, or fine a person certified for any cause that the commission deems reasonable; . . .
- (23) restrict, suspend or revoke certifications issued under [chapter 6E];
- (24) conduct adjudicatory proceedings in accordance with chapter 30A;

8. Pursuant to M.G.L. c. 6E, § 10(a)(x), "[t]he [C]ommission shall [...] revoke an officer's certification if the [C]ommission finds by clear and convincing evidence that [...] the officer used force in violation of section 14."

9. Pursuant to M.G.L. c. 6E, § 14(a):

A law enforcement officer shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to: (i) effect the lawful arrest or detention of a person; (ii) prevent the escape from custody of a person; or (iii) prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm; provided, however, that a law enforcement officer may use necessary, proportionate and non-deadly force in accordance with the regulations promulgated jointly by the commission and the municipal police training committee.

10. Pursuant to M.G.L. c. 6E, § 10(b)(iv), "[t]he [C]ommission may [...] suspend or revoke an officer's certification if the [C]ommission finds by clear and convincing evidence that

the officer was suspended or terminated by their appointing agency for disciplinary reasons, and any appeal of said suspension or termination is completed.”

11. Pursuant to M.G.L. c. 6E, § 10(b)(v), “[t]he [C]ommission may [...] suspend or revoke an officer's certification if the [C]ommission finds by clear and convincing evidence that the officer has repeated sustained internal affairs complaints, for the same or different offenses.”

12. Pursuant to M.G.L. c. 6E, § 10(d)(iii), “[t]he [C]ommission may, after a hearing, order retraining for any officer if the [C]ommission finds substantial evidence that the officer used excessive force.”

13. Pursuant to M.G.L. c. 6E, § 10(h), the Commission may institute a disciplinary hearing after an officer's appointing agency has issued a final disposition on the alleged misconduct.

14. Pursuant to M.G.L. c. 30A, § 10, “[u]nless otherwise provided by law, agencies may . . . make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement, consent order or default.”

Resolution

In view of the foregoing, the Commission has determined that the public interest would best be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions which have been agreed to by the Respondent:

15. The Respondent acknowledges that, once this Agreement is executed, the Commission will issue an Order of Suspension adopting all of the factual findings and conclusions of law set forth in this Agreement.

16. The Respondent agrees to the suspension of his law enforcement officer certification in the Commonwealth of Massachusetts, based on the above factual findings and pursuant to M.G.L. c. 6E §§ 3(a), 10(b)(iv), and 10(b)(v), for a period of five days, beginning on the date this agreement is executed by the Commission.

17. During the five-day suspension period, the Respondent shall not perform police duties or functions on behalf of any law enforcement agency. The Respondent shall also refrain from all conduct prohibited by the Commission during the period of suspension.

18. In addition to the five-day suspension, the Respondent agrees to receive retraining regarding the appropriate use of force, pursuant to M.G.L. c. 6E, § 10(d)(iii). The retraining will be approved by the Commission and coordinated through the Municipal Police Training Committee.

19. The Respondent agrees that, if he should fail to abide by any of the terms and conditions of this agreement during his suspension, this agreement shall become void, and the Division may, without prior notice to the Respondent, take the following steps:

- a. initiate adjudicatory proceedings against the Respondent;
- b. seek discipline against the Respondent based on any ground supported by the evidence in its preliminary inquiry, including grounds beyond those covered by this agreement; and
- c. seek any level of discipline supported by the evidence, up to and including the revocation of the Respondent's certification and the entry of his information onto the National Decertification Index.

20. The Respondent waives all rights to contest the factual findings, conclusions of law, terms and conditions, or other provisions contained in this agreement in any administrative or judicial forum to which the Commission is or may be a party.

21. The Respondent acknowledges that, once this Agreement and any Order of Suspension issued by the Commission are executed, they will be public documents and will be published on the Commission's website pursuant to M.G.L. c. 6E, § 10(g). Furthermore, the status of the Respondent's certification will be publicly available on certain lists and databases published by the Commission.

22. This Agreement shall be effective as of the date it is approved by the Commission.

2/4/25
Date


Respondent

2/13/2025
Date

Margaret R. Hinkle
Margaret R. Hinkle, Chair