

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

IN THE MATTER OF:) DIA NO. 15DPHES002
) CASE NO. 13-08-11
Jody Nelson)
307 Franklin Main Street)
West Point, IA 52656) PROPOSED DECISION
)
Certification: EMT-16-348-15)

On January 22, 2015, the Department of Public Health-Bureau of Emergency and Trauma Services (Department) served a Notice of Proposed Action-Suspension on Jody Nelson (Appellant). Mr. Nelson filed a timely Notice of Appeal. A telephone hearing was held before the undersigned administrative law judge on March 24, 2015. Assistant Attorney General Heather Adams represented the Department. Jody Nelson was self-represented and elected to have an open hearing, pursuant to Iowa Code section 272C.6(1).

ISSUES

The Department of Public Health proposes to suspend Appellant's EMS certification until he complies with the Department's Confidential Order for Evaluation. The issues for hearing are:

- Whether the Confidential Order for Evaluation was properly issued based upon probable cause;
- Whether the Appellant failed to timely comply with the Confidential Order for Evaluation; and, if so
- Whether the Department's Proposed Suspension is an appropriate sanction for the violation?

THE RECORD

The record includes the Notice of Telephone Hearing, testimony of Joe Ferrell and Jody Nelson, and Exhibits 1-13 (See Department's Exhibit Index for description).

FINDINGS OF FACT

1. Jody Nelson was initially certified by the Department as an EMT-Basic on February 10, 2010. On or about July 12, 2011, Mr. Nelson completed a Paramedic Specialist Program at Southeastern Community College, but he has not been issued certification as a Paramedic Specialist. Mr. Nelson has been certified as an EMT, however, since March 30, 2012. (Testimony of Joe Ferrell; Jody Nelson; Exhibits 7, 12)

2. Jody Nelson was employed by CARE Ambulance as an assistant manager from September 2, 2011 until his termination from this position on August 19, 2013. On August 20, 2013, the Department received information from CARE Ambulance stating that Mr. Nelson had been terminated for various reasons, including but not limited to creating a hostile work environment, bullying, and physical altercations in the workplace. (Testimony of Joe Ferrell; Exhibit 8, Exhibit 11, p. 50)

3. The Department issued a subpoena for Jody Nelson's personnel file and for any investigative records leading to his termination. The documentation obtained by subpoena included written statements from two of Jody Nelson's co-workers concerning the following physical altercations in the workplace:

- Office Manager Lori Smith prepared a written statement reporting a March 21, 2013 altercation between Jody Nelson and his wife, Denice, who was also employed by CARE Ambulance. Ms. Smith reported that she heard yelling between Jody and Denice Nelson, heard Mr. Nelson demanding his wife's cell phone, and then heard Denice Nelson yelling for Smith to call 911. Ms. Smith saw Denice Nelson cowering on the couch while Jody Nelson was over her grabbing at her phone. The police arrived and questioned both of them and then remained on the scene until Denice Nelson had safely left the property. (Exhibit 11, pp. 47, 54)
- Assistant Director Toby Hancock prepared a written statement dated "08-16-2003." Presumably the date is a typographical error and the incident occurred in 2013. Mr. Hancock reported that Jody Nelson was acting in an aggressive manner toward him during the discussion of a project, "chest-bumped" him three times, followed him into an office shutting the door behind him, and used vulgar language including the "f" word. When Mr. Hancock asked Mr. Nelson to stop and told him that children were present in the day room, Mr. Nelson responded that he could say whatever he wanted. (Exhibit 11, p. 52)

The documentation also included a May 15, 2013 statement addressed to "Jody" that was signed by Jody Nelson and by the owner of CARE Ambulance, Bob Libby. The statement notes that Mr. Nelson is a valuable part of Care Ambulance with "many assets" including "showing up for work, energetic, and fun to be with" but that there were "some issues on a personal level." The statement listed 6 changes that Mr. Nelson was expected to make or else he would be "finding other work opportunities." These included leaving his personal life at the door and no more slander, negative attitude, inappropriate talk with employees, or phone calls to "family" unless work related. (Exhibit 11, p. 53).

CARE Ambulance also provided documentation of Jody Nelson's August 19, 2013 termination for the following reasons:

- creating a hostile work environment to the point of staff not wanting to work with him;
- bullying staff to take runs and do tasks assigned to him;
- making false accusations about his boss and two co-workers;
- two instances of physical aggression against co-workers (Denice and Toby) while clocked in;
- failure to do assigned tasks;
- bragging about the use of narcotics (oxycodone and cocaine);
- excessive speed in a company vehicle;
- sexually inappropriate behavior to staff; and
- impersonating a paramedic

(Testimony of Joe Ferrell; Exhibit 8; Exhibit 11, p. 50, 51)

4. After receiving this documentation, the case was referred to the Department of Inspections and Appeals (DIA) for further investigation. In January 2014, DIA Investigator Jerry Viers interviewed Jody Nelson, Bob Libby, and five of Mr. Nelson's former co-workers.

a) The owner of CARE Ambulance, Bob Libby, reported that he suspected Jody Nelson was a substance abuser because he openly bragged about using cocaine and Oxycontin. Mr. Libby stated that Mr. Nelson was a suspect when 60 mg of morphine came up missing from an ambulance in January 2013 but that no charges were ever filed. Mr. Libby further reported that Mr. Nelson had made threats against him and

that he believed that criminal charges for Harassment in the First Degree would be filed. Mr. Libby reported that Mr. Nelson had been inappropriate with female employees by making sexually charged comments and by inappropriate touching. He further reported that Mr. Nelson was always loud and acted in a "bullying" manner in the workplace and that a number of employees have complained about intimidation.

Bob Libby further reported that Jody Nelson had told a number of people and the Des Moines Register that Mr. Libby is mentally unstable and under investigation for child molestation. Mr. Libby also reported the incident when the police had to be called to the workplace for the altercation between Mr. Nelson and his wife and reported the chest-bumping incident with Assistant Director Toby Hancock in August 2013. Mr. Libby told Investigator Viers that the fact he was presently dating Jody Nelson's ex-wife had further "complicated matters."

Bob Libby further reported that in June 2013, Jody Nelson and Toby Hancock were transporting a patient in a non-emergency transport, and Mr. Nelson was running with the emergency lights on and was driving 80 mph. When Toby Hancock asked Mr. Nelson to slow down and turn off the emergency lights, Mr. Nelson slammed on the brakes causing the patient to lurch forward in the back of the ambulance.

Mr. Libby further reported that when he did a post-employment check on Jody Nelson he found a civil action in Linn County that showed that Mr. Nelson had been fired by the phone company for sexual harassment. (Exhibit 9, pp. 29-32)

b) Toby Hancock, Assistant Director of CARE Ambulance, corroborated Mr. Libby's statements and described the "chest bump" incident. He described Jody Nelson as a bully who did not get along with anyone. He stated that Mr. Nelson was loud, boisterous, and constant using sexual innuendos, although he could not cite any specific sexual comments. (Exhibit 9, p. 33)

c) Paramedic Dylan Reed reported an incident in the Spring of 2013 when Jody Nelson insisted on administering Benadryl to a patient during a flight transport. Mr. Reed stated he had to remind Mr. Nelson that he was in charge and flatly tell him that no Benadryl would be administered. When asked if he had observed any incident of sexual harassment or sexually charged statements, Mr. Reed recalled overhearing Jody Nelson ask a lesbian nurse if they could do a "three way." He did not know if Mr. Nelson was joking. Mr. Reed stated that he had heard Mr. Nelson make sexual

suggestions to other employees and he did it all the time, but he could not be specific. (Exhibit 9, p. 34)

d) Office Manager Lori Smith told Investigator Viers that she had only been employed by CARE Ambulance for about a year and did not know Jody Nelson very well. She stated that she had observed Mr. Nelson "bully" and "belittle" fellow employees and observed that he seemed to have anger issues. She further stated that Mr. Nelson would always engage in "sexual language" in the workplace. She described one incident when a friend of hers who was considering working for CARE Ambulance shadowed her for a day. Mr. Nelson entered the office and started stroking the hair of her friend, who he did not know, and commenting on her hair style. Smith's friend chose not to work at CARE Ambulance because of this incident. Ms. Smith also reported that she observed the incident when Mr. Nelson "chest-bumped" Toby Hancock. Ms. Smith reported that other employees had told her that "either he (Mr. Nelson) goes or I go." (Exhibit 9, p. 35)

e) Flight Nurse Julie Davis had worked at CARE since July 2013 and had minimal contact with Jody Nelson. She told Investigator Viers that Mr. Nelson used sexually charged language and was always loud and boisterous. She could not recall Mr. Nelson's exact words but recalls him commenting on other women's body parts and bragging about his sexual conquests while he was married. She had let it be known that she would not partner with Mr. Nelson on any trips. (Exhibit 9, p. 36)

f) EMT Wendy Vannevel had been employed at CARE since April 2013 and knew Jody Nelson. She reported that Mr. Nelson was constantly "bullying" other employees, trying to engage in violent horseplay, and habitually used sexually charged language. When asked about specific incidents, Ms. Vannevel could only recall an incident when she overheard Mr. Nelson say "I got him his first piece of ass." She could not recall who he was speaking to or who he was talking about. (Exhibit 9, p. 37)

g) During his interview, Jody Nelson denied any current use of drugs and stated that he may have mentioned in passing that he smoked marijuana at parties in high school. He admitted that he may have done cocaine but stressed it was a youthful indiscretion. Mr. Nelson recalled a loud discussion with Toby Hancock. He initially denied that he "chest-bumped" Hancock but later said that he didn't recall but that there may have been some physical contact because Mr. Hancock chose to stand too close to him. He denied driving recklessly or speeding in the CARE Ambulance.

When asked if he had ever misrepresented his criminal record on his certification forms, Mr. Nelson became irate and responded "What is this shit about?" and "Why are you asking me all this stuff?" Mr. Nelson stated that he could not recall every little question on those forms. Mr. Nelson denied threatening any physical violence towards Bob Libby. He told Investigator Viers that Mr. Libby had an affair with his now ex-wife while they were still married. He stated that he suspected an affair in December 2012 and found numerous calls on his wife's phone to Mr. Libby's personal phone at all hours. He reported that his wife admitted the affair in January or February 2013 and their divorce was final in July 2013.

Investigator Viers noted that it was difficult to keep Jody Nelson on topic, that he was evasive with his answers and would drift into unrelated subjects, and that he seemed to be a very excitable, talkative, and loquacious person. (Exhibit 9, pp. 38-41)

5. On or about January 13, 2014, Bob Libby filed a harassment complaint against Jody Nelson with the Iowa City Police Department and alleged, in part, that Mr. Nelson had stated he was going to kill him. Iowa City Detective Kevin Bailey interviewed Jody Nelson by telephone because Mr. Nelson refused to speak to him in person. In his Supplemental Report, Detective Baily noted that Jody Nelson was difficult to follow because he would become upset to the point of yelling and then calm down, only to escalate again. Mr. Nelson denied threatening Bob Libby or harassing employees of CARE Ambulance. Detective Bailey told Nelson that the Iowa City Police Department would not be able to investigate the harassment reports because they occurred outside of Iowa City. (Exhibit 10)

6. On February 6, 2014, Jody Nelson sent a letter and some documentation to the Department's EMS Bureau in response to the allegations that had been made against him by his former employer and co-workers. In relevant part, Mr. Nelson stated that he and Toby Hancock had many disagreements in the past but it was "never violent" or "to the extreme." He further stated that there were cameras at CARE Ambulance, and he would like to see the tape of the "belly bump." He further stated that he was unclear as to where the sexual harassment allegations were coming from, that he was never written up or reprimanded, and that he was unsure how to defend actions that he was unaware were in question. He stated that he tried to keep his work demeanor "light but professional." He further stated that Bob Libby had mixed his personal and business lives together by engaging in an affair with Mr. Nelson's wife, who was also an employee. He stated that he was currently working for a competitor company of

CARE Ambulance and that Mr. Libby's reasons for not wanting him to be working in the Iowa City area were personal, not professional. (Exhibit 12)

7. On May 9, 2014, the Department issued a Confidential Order for Evaluation to Jody Nelson, which required him to complete a comprehensive mental health evaluation concerning his fitness to function as an emergency medical care provider and to address his ability to provide emergency medical services with reasonable skill and safety. The Order stated that the Bureau of EMS had received multiple reports of Mr. Nelson being threatening to, making personal threats toward, or bullying co-workers, that reports indicated Mr. Nelson had been physically aggressive with the assistant director of the service he worked for, and that Mr. Nelson was sexually inappropriate with female co-workers and the staff of health facilities he interacted with. The Order required Mr. Nelson to:

- Within fifteen (15) days, submit the name of a proposed facility to conduct the evaluation. Mr. Nelson was required to have Bureau approval for the evaluating facility before scheduling and completing the evaluation;
- Schedule the evaluation within fifteen (15) days of receiving approval for the evaluating facility and then complete the evaluation, at his own expense, within thirty (30) days;
- Contact the Bureau no less than three (3) days before the evaluation was scheduled to begin and provide the evaluating facility with copies of the Board's Order; and
- Cause the evaluating facility to send evaluation reports directly to the Bureau.

The Evaluation Order further stated that if the Bureau had not received a report from the evaluating facility in the time specified, then the Bureau would review Mr. Nelson's case and may take disciplinary action based on the information currently on file. (Exhibit 4; Testimony of Joe Ferrell)

8. On May 20, 2014, Jody Nelson submitted the name and resume of Michael Rae Davis, LISW, as the proposed mental health evaluator. Joe Ferrell, an Executive Officer with the EMS Bureau, contacted Mr. Davis for additional information. Mr. Davis mentioned that he was performing the evaluation as a courtesy to Mr. Nelson because of their business relationship. Mr. Davis told Joe Ferrell that Jody Nelson shoots horses for him. Joe Ferrell was concerned that the business relationship between Nelson and

Davis was a conflict of interest under the Department's rules for social workers.¹ After Joe Ferrell asked Michael Davis if the business relationship was a conflict of interest, Mr. Davis withdrew his name and said he did not want to conduct the evaluation. (Exhibits 4, 6; Testimony of Joe Ferrell; Jody Nelson)

9. After Michael Davis withdrew his name, Joe Ferrell decided to look for a suitable evaluator. Mr. Ferrell eventually identified Lance Clemson, LISW, who is employed by the University of Iowa Hospitals and Clinics (UIHC). UIHC is used by other licensing boards for similar types of evaluations. On October 21, 2014, the Department issued a new Confidential Order for Evaluation to Jody Nelson, which required him to schedule an evaluation with Lance Clemson, LISW, within fifteen (15) days of receiving the Order. The Order was sent to Mr. Nelson by certified mail but was returned by the post office as unclaimed. The Order was personally served on Jody Nelson on November 17, 2014. (Testimony of Joe Ferrell; Exhibits 5, 6)

10. Joe Ferrell did not personally inform Jody Nelson that Michael Davis had withdrawn his name as the proposed evaluator because he assumed that Jody Nelson knew that Mr. Davis had withdrawn. Mr. Ferrell admits that he had no contact with Mr. Nelson from May to October 2014. (Testimony of Joe Ferrell)

11. Jody Nelson did not complete the mental health evaluation as required by the October 21, 2014 Evaluation Order. On January 22, 2015, the Department issued a Notice of Proposed Action: Suspension of Jody Nelson's EMT Certification pending his completion of the mental health evaluation. Mr. Nelson filed an appeal on February 9, 2015. (Testimony of Joe Ferrell; Exhibits 1, 13)

12. As of the date of the hearing, Jody Nelson had not scheduled or completed a mental health evaluation with Lance Clemson, LISW. Mr. Nelson testified that when he did not hear back from the Department between May and October 2014 he just assumed that the matter had been dropped. (Testimony of Joe Ferrell, Jody Nelson)

13. At hearing, Joe Ferrell testified that the Department's issuance of the Confidential Order for mental health evaluation was consistent with its past actions for reports of aggression, bullying and sexual behaviors in the work place. (Testimony of Joe Ferrell)

¹ See 645 IAC 282.2(8) Dual relationships and conflicts of interest.

14. At hearing, Jody Nelson denied that he behaved inappropriately toward Mr. Libby or his co-workers. He testified that he was never arrested or charged with harassing Bob Libby. Mr. Nelson contends that the allegations against him were a “set-up” by Mr. Libby who was looking for a reason to terminate him due to his relationship with his wife. (Testimony of Jody Nelson)

CONCLUSIONS OF LAW

I. Applicable Law

Each licensee of a licensing board, as a condition of licensure, is under a duty to submit to a physical, mental, or clinical competency examination when directed in writing by the board for cause.² The licensing board, upon probable cause, shall have the authority to order a physical, mental, or clinical competency examination, and upon refusal of the licensee to submit to the examination the licensing board may order the allegations pursuant to which the order of physical, mental, or clinical competency examination was made be taken to be established.³ “Licensing board” or “board” includes the director of public health in certifying emergency medical providers and emergency medical care services pursuant to Iowa Code chapter 147A.⁴

Probable cause is not defined in the statute or by the Department’s rules,⁵ but the Iowa Supreme Court has applied the criminal definition of probable cause in the administrative context.⁶ The Supreme Court has defined probable cause as a “reasonable ground for belief” in the proposition asserted.⁷

In addition, the Department may impose any of the disciplinary sanctions provided in subrule 131.7(2) when it finds that an applicant or certificate holder has committed any of the following acts or offenses....Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.⁸

² Iowa Code section 272C.9(1)(2013, 2015).

³ *Id.*

⁴ Iowa Code section 272C.1(6)(ad)(2013, 2015).

⁵ The Department’s current rules do not address confidential evaluation orders.

⁶ *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553, 557 (Iowa 1999). *See also*, *Doe v. Iowa Board of Pharmacy*, Slip Copy, 2014 WL 6682050 (Table)(Iowa App.)(Final Publication Decision Pending).

⁷ *Id.*

⁸ 641 IAC 131.7(3)“i.”

II. Analysis

The Department contends that the information obtained during its investigation provided it with probable cause to require Jody Nelson to submit to a comprehensive mental health evaluation. The Department asserts that the evaluation is necessary to determine if Mr. Nelson is fit to function as an emergency medical care provider and to determine if he is able to provide emergency medical services with reasonable skill and safety. The Department asserts that requiring a confidential mental health evaluation was a reasonable response to the information that was gathered from Mr. Nelson's co-workers during the investigation. The Department further contends that the proposed suspension is a reasonable sanction for Mr. Nelson's failure to complete the evaluation as ordered.

The investigative information includes interviews of four of Jody Nelson's co-workers, who report observing Mr. Nelson displaying physically aggressive or bullying behavior in the work place, and six co-workers who reported overhearing sexually inappropriate comments made by Mr. Nelson in the workplace. The co-workers described two specific incidents of physical aggression by Jody Nelson, including one incident involving Mr. Nelson's wife when the police were called. The co-workers also described two specific inappropriately sexual comments in the work place (comment about a "three-way" and "piece of ass") and an inappropriate touching of a visitor's hair. In addition, Bob Libby filed a complaint with the Iowa City Police Department in which he claimed that Jody Nelson had threatened to kill him, although no charges were filed as a result of the complaint.

It is certainly possible that the allegations and statements made by Bob Libby were prompted or influenced by the ongoing personal issues between Jody Nelson, Denice Nelson, and Mr. Libby. Nevertheless, the Department's investigation also included interviews of a number of Mr. Nelson's co-workers who corroborated some of Mr. Libby's allegations and who reported their own concerns about Mr. Nelson's problematic behaviors in the workplace. In this appeal the Department is not required to prove (by a preponderance of evidence) that Mr. Nelson has been physically aggressive and sexually inappropriate in the workplace. The Department's burden is to show probable cause (or a reasonable basis to believe) that Jody Nelson has exhibited behaviors warranting a mental health evaluation to determine whether he is able to provide emergency medical care with reasonable skill and safety. The information obtained in the investigation was sufficient to meet this burden.

The preponderance of the evidence established that Jody Nelson failed to complete the comprehensive mental health evaluation required by the Department's Evaluation Orders that were issued on May 9, 2014 and on October 21, 2014. Jody Nelson timely submitted the name of an evaluator in response to the first Order. After the Department raised legitimate concerns about the evaluator's potential conflict of interest, the evaluator decided to withdraw his name from consideration. Although the Department did not notify Mr. Nelson that his proposed evaluator had withdrawn his name, Mr. Nelson was likely aware of this fact since he took no further steps to follow up with the Department and schedule his evaluation. The Department did not have any further communication with Mr. Nelson until October 2014, when Mr. Nelson was issued a second Evaluation Order that included the name of the approved evaluator. The second Evaluation Order required Mr. Nelson to schedule the evaluation within fifteen (15) days and to complete the evaluation within thirty (30) days. Mr. Nelson has not scheduled or completed the evaluation.

Jody Nelson did not appeal the evaluation orders and only appealed the imposition of the suspension. This is understandable, however, because neither the evaluation orders nor the Department's rules provided him notice of an opportunity to appeal the evaluation orders. At hearing, the Department conceded that the hearing was Mr. Nelson's opportunity to appeal both the basis for the evaluation orders and the proposed suspension. In light of these circumstances, it is appropriate to now give Mr. Nelson the opportunity to comply with the most recent evaluation order before the suspension of his certification for failure to comply.

ORDER

IT IS THEREFORE ORDERED that the May 20, 2014 and the October 21, 2014 Confidential Orders for Evaluation, issued by the Department to Appellant Jody Nelson, are hereby AFFIRMED.

IT IS FURTHER ORDERED that the January 22, 2015 Notice of Proposed Action-Suspension is hereby AFFIRMED, in part, and MODIFIED, in part. The Notice of Proposed Action-Suspension shall be STAYED for a period of thirty (30) days to allow Jody Nelson a further opportunity to complete the mental health evaluation with the approved evaluator (Lance Clemens, LISW) and to cause a report to be submitted directly from the approved evaluator to the Department. If the evaluation report has not been received by the Department within thirty (30) days of the final Order on this

appeal, then the previously ordered suspension will go into effect. Jody Nelson's certification will then remain suspended until the Department receives the mental health evaluation report directly from the approved evaluator. Upon receipt of the required evaluation report, the Department shall provide notice to Mr. Nelson that his certification is reinstated.

Dated this 7th day of April, 2015.

Margaret LaMarche

Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
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cc: Jody Nelson, 307 Franklin Main Street, West Point, Iowa 52656-9427 (CERTIFIED MAIL) and (FIRST-CLASS MAIL)
Heather Adams, Assistant Attorney General, Hoover Building (LOCAL)
Steve Mercer and Rebecca Curtiss, Department of Public Health, Lucas Building- (LOCAL)

This proposed decision and order becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director of the Department of Public Health is taken as provided in subrule 131.12(11). Any appeal to the director for review of this proposed decision and order shall be filed in writing and mailed to the director of the Department of Public Health by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be sent to the administrative law judge. Any request for appeal shall state the reason for the appeal. 641 IAC 131.12(11).