

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
DIVISION OF ADMINISTRATIVE HEARINGS  
WALLACE STATE OFFICE BUILDING  
DES MOINES IOWA 50319

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IN THE MATTER OF:

ANISA SMITH  
1310 23RD STREET  
ELDORA IA 50627-1525

DOCKET NO. 06DPHES013  
PROPOSED DECISION

Certification # F-06-326-10

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STATEMENT OF THE CASE

On August 4, 2006, Kirk Schmitt, EMS Bureau Chief, issued a Notice of Proposed Action - REVOCATION. Anisa Smith (Appellant) timely appealed the proposed action. After numerous continuances by both parties, the matter came on for a telephonic hearing on December 15, 2008. The hearing was **CLOSED** to the public.

The Appellant participated in the hearing. Heather Adams, Assistant Attorney General, represented the Department of Public Health. Testimony was received from Joe Ferrell, Education Coordinator and Investigator with the Department of Public Health.

The following exhibits were admitted into the record:

- Ex. 1: Notice of Proposed Action: Revocation, 8/4/06;
- Ex. 2: 641 IAC 131.7;
- Ex. 3: Certification Information;
- Ex. 4: Smith v. Iowa Dept. of Human Services, 755 N.W.2d 135 (Iowa 2008);
- Ex. 5: Letter, Ferrell to Smith, 5/24/06;
- Ex. 6: Letter, Cutler to Ferrell, 6/1/06;
- Ex. 7: Iowa Dept. of Inspections and Appeals, Comprehensive Abuse Memo, DHS Registry No. 43461;
- Ex. 8: Iowa Dept. of Inspections and Appeals, Comprehensive Abuse Memo, DHS Registry No. 43462;
- Ex. 9: Letter, De Moss to Smith, 2/3/06;
- Ex. 10: Request for Hearing.

FINDINGS OF FACT

The Appellant was certified as an EMT First Responder with the State of Iowa. Her certification expired on September 30, 2007.

The Appellant was a certified nursing assistant (CNA). She was working in a nursing facility in 2005. After an investigation by the Department of Human Services a founded dependent abuse report was filed against the Appellant. The Appellant filed a report with the Department requesting that the founded report be expunged. The matter was heard by an administrative law judge and the request for expungment was denied. After an appeal to the Director of the Department of Inspections and Appeals was denied the case was affirmed by the Iowa Supreme Court in Smith v. Iowa Dept. of Human Services, 755 N.W.2d 135 (Iowa 2008).

The allegations of adult abuse were founded on sexual exploitation. The allegation was that the Appellant developed a close relationship with resident E.M. He was often depressed so the Appellant would stop in to try to cheer him up. E.M. became very attached to the Appellant and expressed his affection for her verbally and physically.

Previously the Appellant testified that E.M. put his hand between her legs, on her inner thigh. She tried to verbally redirect E.M. to take his hand away. The Appellant believed that if she physically touched M.E. this could constitute adult abuse. On another occasion E.M. tried to touch her breast.

On March 18, 2005, the Appellant brought her concerns to A.W., the Director of Nursing at the facility. The Appellant indicated that E.M. was making advances towards her. A.W. told her to avoid any contact with E.M. A.W. testified that in the past another worker had similar problems with E.M. and was given the same advice. That worker stayed away from E.M. and never reported any further issues.

On March 20, 2005, the Appellant was scheduled to work at the facility. She was not scheduled, however, to work on E.M.'s hall at the facility. The previous night some staff had heard allegations of inappropriate activity between

E.M. and the Appellant. Someone heard E.M. tell the Appellant, "That was a good round." Because of this the staff was on the lookout for anything occurring between E.M. and the Appellant.

K.R., a LPN at the facility, was walking outside E.M.'s room. K.R. heard E.M. say "When are we going to have night like last night?" The Appellant was giggling. Other staff arrived and they walked into E.M.'s room together.

The Appellant was sitting in a reclining chair with her perched up in the air on E.M.'s walker. E.M. was sitting in his wheelchair next to her, facing the other way, with his hands between the Appellant's legs. When the staff walked in the room the Appellant took E.M.'s hand from her inner thigh and said "No."

The staff intervened and removed the Appellant from the room. E.M. became very distraught, saying it was his fault and not the Appellant's. After the incident E.M. became more depressed, expressing guilt that he had cheated on his deceased wife.

Based upon the founded adult abuse incident, the Department of Inspections and Appeals notified the Appellant on February 3, 2006, that her Nurse Aide/Direct Care Worker Registry card was no longer valid.

The Department issued a Notice of Proposed Action: Revocation to the Appellant on August 4, 2006. The basis of the revocation was that the Appellant engaged in unethical conduct or practice harmful to the public, engaged in improper sexual contact with a patient, and having disciplinary action taken by a licensing or certifying authority of another state. The Appellant filed a timely appeal.

The Appellant testified that there is a shortage of emergency medical services personnel in her part of the state. She wants to still be an EMT as she likes to take care of people. She would not have fought as long as hard as she did with the adult abuse case if she was not innocent.

CONCLUSIONS OF LAW

The Department of Health proposed revoking the Appellant's EMT certificate. The authority for this action is found in Iowa Code section 147A.7. The relevant section is as follows:

**147A.7 Denial, suspension or revocation of certificates--hearing--appeal.**

1. The department may deny an application for issuance or renewal of an emergency medical care provider certificate, or suspend or revoke the certificate when it finds that the applicant or certificate holder is guilty of any of the following acts or offenses:

. . . .

f. . . . engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

The Department of Public Health has promulgated administrative rules to govern the discipline of emergency medical care personnel. The rules provide that the "department may deny an application for issuance or renewal of an emergency medical care provider certificate, including specialty certifications, or place on probation, or issue a citation and warning, or suspend or revoke the certificate when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

. . . .

f. . . . engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts which may constitute unethical conduct include, but are not limited to:

. . . .

(2) Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient or coworker.

. . . .

p. An EMS provider shall not sexually harass a patient, student, or supervisee. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

. . . .

u. Having certification to practice emergency medical care suspended or revoked, or having other disciplinary action taken by a licensing or certifying authority of another state, territory or country. . . .

641 IAC 131.7(2).

The Appellant engaged in unethical conduct when she engaged in the sexually-charged conduct with her patient. This resulted in a founded adult abuse report that was affirmed by the Iowa Supreme Court. This constitutes improper sexual contact with a patient. On this basis alone the Appellant's certification can be revoked.

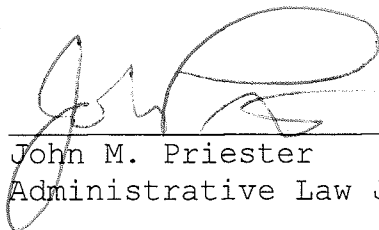
The Appellant's Nurse Aide/Direct Care Worker Registry was also canceled. This constitutes disciplinary action taken by another licensing authority. Based upon this the Department could also revoke the Appellant's certification.

These two grounds taken together require that the Appellant's EMT First Responder certification be revoked.

DECISION

IT IS therefore ORDERED that the Department of Health's proposed REVOCATION of the Appellant's EMT-First Responder certificate # F-06-326-10 is hereby UPHeld.

DATED THIS 26<sup>th</sup> DAY OF DECEMBER 2008.

  
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John M. Priester  
Administrative Law Judge

Cc: ANISA SMITH, CERTIFIED  
1310 23<sup>RD</sup> STREET  
ELDORA IA 50627-1525

HEATHER ADAMS, AAG

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MEGGAN VAN GUNDY, DIA

This decision shall be final, unless within ten (10) days from the date you receive this Order, you or any interested party appeal to the Director, Department of Public Health, 6th Floor Lucas State Office Building, Des Moines, IA 50319, clearly stating the grounds upon which such appeal is based.