

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

IN THE MATTER OF

ERIC BOEL
1000 N PARK CIRCLE
GRIMES IA 50111-1120

DOCKET NO. 08DPHES015
PROPOSED DECISION

Certification # PS-17-014-02

STATEMENT OF THE CASE

On November 27, 2007, Kirk E. Schmitt, EMS Bureau Chief, issued a Notice of Proposed Action - Probation. Eric Boel (Appellant) filed a timely appeal and requested a hearing on the proposed action. The matter was continued three times at the parties' request.

A telephone hearing was held on October 22, 2008. The Appellant participated in the hearing. Heather Adams, Assistant Attorney General, represented the Department of Public Health. Testimony was received from Joe Ferrell, Iowa Department of Public Health the Appellant.

The following exhibits were admitted into the record:

- Ex. 1: 641 IAC 131.7;
- Ex. 2: Notice of Proposed Action: Probation, 11/27/07;
- Ex. 3: Certification Information, Eric Boel;
- Ex. 4: Board of Pharmacy, Statement of Charges, 1/16/07;
Board of Pharmacy, Statement of Charges, 1/26/07;
- Ex. 5: Board of Pharmacy, Findings of Fact, Conclusions
of Law, Decision and Order, 10/25/07;
- Ex. 6: Request for Hearing, 12/14/07.

FINDINGS OF FACT

The Appellant is certified by the Iowa Department of Health with the classification of EMT-Paramedic Specialist with Certification # PS-17-014-02. The Department of Public Health served him with the Notice of Proposed Action: Probation, issued on November 27, 2007. The Probation

order was based upon the Iowa Board of Pharmacy's decision dated October 25, 2007. The Board of Pharmacy found that the Respondent improperly delegated pharmacist functions that constituted professional incompetency, made inappropriate sexual comments while the Pharmacist in charge, and participated in a false prescription and billing practice that constituted unethical conduct.

The Board found that the Respondent allowed non-licensed employees to perform the duties of a pharmacist while the Respondent was on emergency calls in his position as a paramedic specialist. The Board found that the Respondent engaged in conduct that constitutes improper sexual contact. The Respondent inappropriately touched employees and made sexual statements.

The Board's Findings of Fact, Conclusions of Law, Decision and Order suspended the Respondent's license to practice pharmacy for six months. The suspension was stayed, and he was placed on probation for five years with specified terms and conditions.

The Respondent testified that any improper actions that occurred happened while on his watch, as the pharmacist in charge, but he did not participate in the actions. He also testified that there were no complaints concerning his EMS practice, nor were there any allegations that he engaged in inappropriate sexual contact with any patients or co-workers in the EMS field.

The Respondent also argued that the code section that the Department is relying upon relates only to disciplinary actions from another state, not from another Iowa agency.

The Respondent stated that if his EMS license is placed on probation he will lose his employment.

CONCLUSIONS OF LAW

The Department of Health proposed issuing a citation and warning for 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. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

. . . .

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

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. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or 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.

641 IAC 131.7(2).

The question in this appeal is whether the Board of Pharmacy's discipline of the Respondent can be used by the Department of Public Health to place his EMS license on probation. After reviewing the applicable code statutes and the administrative rules the undersigned finds that the Department of Public Health can proceed against the Respondent's EMS license based upon the Board of Pharmacy action.

The Respondent's reading of the Iowa Code is found to be too narrow. The code section reads, "or having other disciplinary action taken by a licensing or certifying authority of another state, territory, or country." Iowa Code § 147A.7(1)k. It would not make sense to allow the Department of Public Health act only if the Respondent is disciplined by another state, territory or country but not another Iowa licensing authority.

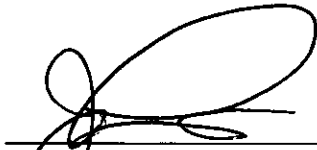
The evidence establishes that the Respondent has been disciplined by the Board of Pharmacy. The basis of the discipline was the finding that the Respondent engaged in unethical conduct in allowing non-licensed employees act as a pharmacist and participated in a false prescription and billing practice and the Respondent engaged in improper sexual conduct and remarks to employees, and the Respondent.

The undersigned finds that the Appellant's actions constituted unethical conduct or practice harmful or detrimental to the public.

DECISION

IT IS THEREFORE ORDERED that the disciplinary action proposed by the Department of Health concerning the Respondent's EMS Certificate #PS-17-014-02 is hereby AFFIRMED. The Respondent's EMS certification is hereby placed on PROBATION. The terms of probation outlined in the Proposed Action shall be upheld.

DATED THIS 5TH DAY OF NOVEMBER 2008.



John M. Priester
Administrative Law Judge

Cc: Eric Boel, CERTIFIED

Heather Adams, AAG

Kirk Schmitt, DPH
Lucas Building

Betty Maxwell, 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.