

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

IN THE MATTER OF:) DIA NO. 15DPHES008
) CASE NO. 14-12-08
Gary Krause)
15707 310th Street)
Conrad, Iowa 50621) PROPOSED DECISION
)
Certification: PM 17-300-07)

On March 5, 2015, the Department of Public Health-Bureau of Emergency and Trauma Services (Department) served a Notice of Proposed Action-Suspension/Probation on Gary Krause (Appellant). Appellant filed a timely Notice of Appeal. A telephone hearing was held before the undersigned administrative law judge on May 18, 2015. Assistant Attorney General Heather Adams represented the Department. Appellant was self-represented and elected to have a closed hearing, pursuant to Iowa Code section 272C.6(1). On April 14, 2015, the Department filed a Motion to Amend the Notice of Proposed Action: Suspension/Probation to correct the date of the underlying incident. Appellant did not object, and the amendment was granted at the time of the hearing.

THE RECORD

The record includes the Notice of Telephone Hearing, Motion for Continuance, Motion to Amend, Notice of Rescheduled Hearing, the testimony of Joe Ferrell and Appellant, Department Exhibits 1-7 (See Exhibit Index for description), and Appellant Exhibits A and B.

FINDINGS OF FACT

1. Appellant was initially certified by the Department as a First Responder in 1987. Appellant was issued certificate Number P-17-300-07 as an EMT-Paramedic on March 4, 2002. Appellant's EMR certificate is current and expires on March 31, 2016. (Testimony of Joe Ferrell; Exhibit 3)

2. Joe Ferrell is an Executive Officer with the Department's Bureau of Emergency and Trauma Services, and he is responsible for overseeing the certification and discipline of EMS providers. Mr. Ferrell has been a certified Paramedic since 1992. On November 10, 2014, the Department received an email from Jared Rickabaugh, who is the ER/EMS Director of Marshalltown Medical and Surgical Center. Mr. Rickabaugh reported that Appellant was no longer working at their facility after an incident of unethical conduct. Following the receipt of this report, the Department subpoenaed records from the hospital and conducted an investigation. (Department Exhibits 4, 5; Ferrell testimony)

3. At all times relevant to this Proposed Decision, Appellant was employed as a Paramedic with the Marshalltown Area Paramedic Service (MAPS). On October 15, 2014, Appellant and his partner, Kim Youker, were dispatched to the Marshalltown VA clinic to pick up a post-seizure patient and to transport the patient to the hospital. Firefighters from the Marshalltown Fire Department (MFD) were also dispatched to the VA Clinic to assist with the same patient.

When the firefighters arrived at the VA Clinic, Appellant and Kim Youker were gathering information about the patient from his doctor, nurse and mother. The patient had been instructed to sit on the cart, but he appeared confused and restless. The patient got himself on the cart but continued to be very restless and was moving around a lot as he was being pushed to the front door.

The patient continued to struggle and to become more agitated after being placed in the ambulance. Two firefighters (Dan Oswald and Keri Larsen) and Appellant's partner tried to restrain the patient so that Appellant could start an IV to medicate the patient. During this time, all three witnesses observed Appellant climb on the patient and place both of his hands around the patient's throat. Kim Youker reported that Appellant was also yelling at the patient to calm down. Both firefighters reported that Appellant was choking the patient. Firefighter Oswald estimated that Appellant's hands were on the patient's throat for at least five seconds, and Kim Youker estimated that Appellant's hands were on the patient's throat for no longer than 20 seconds. The firefighters further reported that Appellant placed his knee on the patient's chest/neck area. Firefighter Larsen and Kim Youker were trying to place restraints on the patient. A third firefighter then entered the ambulance to help restrain the patient, and the patient was successfully medicated with IV benzodiazepines. (Ferrell, Appellant testimony; Department Exhibits 4-6)

4. Jared Rickabaugh questioned Appellant following this incident. Appellant told Rickabaugh that he became concerned about "excited delirium" while they were trying to get the patient under control, and he placed his hands on the patient's throat to see how the patient would react. Appellant told Rickabaugh that it is a sign of a problem if excited delirium patients do not try to protect their airway, and the patient would need large doses of benzodiazepines. Appellant denied occluding the patient's airway, and stated that he was only trying to elicit a reaction to determine the diagnosis and appropriate treatment. Rickabaugh asked Appellant if he had literature or practice standards to back up this theory, and Appellant admitted that he did not. Appellant stated that in hind sight, his actions were not warranted, and he should not have put his hands around the patient's throat. (Ferrell testimony; Department Exhibits 5, 6)

5. Additional records from the hospital indicated that Appellant was allowed to resign following the hospital's review of this incident. The hospital's decision to allow Appellant to resign, rather than face termination, was apparently based on Appellant's unblemished employment record and his willingness to take responsibility for his actions. (Department Exhibits 4, 6)

6. Appellant was contacted on February 13, 2014, during the Department's investigation of this incident. Appellant was specifically asked about the incident at the VA Clinic on October 15th when he allegedly placed his hands on the throat of a combative patient. At that time, Appellant claimed that he did not remember the call or the incident. (Department Exhibit 5)

Following review of the investigative file, the Department issued its Notice of Proposed Action: Suspension/Probation. The Department determined that Appellant had choked a patient while responding to a medical call. The Department proposed to suspend Appellant's Paramedic certification for a period of six (6) months, followed by a two (2) year period of probation. The Notice of Proposed Action included the following additional requirements:

a) During the period of suspension, Appellant is required to complete six (6) hours of approved continuing education in the area of ethics and three hours of approved continuing education in the area of assessment and treatment of mental health issues, including agitated delirium.

b) During the probationary period, Appellant is required to participate in quarterly meetings with the service director to review treatment decisions of all calls on which Appellant responded as an emergency care provider for any patient with cardiac dysrhythmia. At hearing, Mr. Ferrell testified that the reference to "cardiac dysrhythmia" in this section of the notice was an error and should have been "behavioral emergencies." Appellant was also required, in part: to submit quarterly reports, make personal appearances before the bureau upon request, obey all laws pertaining to emergency medical services, and notify any current or prospective employers and any EMS training program that he enrolls in of the terms and conditions of probation.

The Department's staff considered proposing revocation of Appellant's certification based on the facts of the violation and based on the need to protect patients and the public's perception of EMS providers. The Department's decision to impose the suspension and probationary period, rather than a revocation, was based upon Appellant's 28 year history of providing emergency medical services. (Department Exhibit 1; Ferrell testimony)

7. Appellant submitted letters of support from another EMT-Paramedic (Don Weitzell) and from a physician (Lance M. VanGundy, M.D.), who have known and worked with Appellant for a number of years. Both of them state that Appellant is a skilled paramedic who has demonstrated professionalism in the field. Both report that Appellant is remorseful and has accepted responsibility for his actions on October 15, 2014. (Appellant Exhibits A, B)

Don Weitzell is the Administrator of the Tama Ambulance Service, which provides EMS coverage at the Iowa Premium Beef Plant in Tama, where Appellant is currently employed. Weitzell would like to place Appellant on the roster of the Tama Ambulance Service and is confident that Appellant would provide excellent care and act professionally in all situations. (Appellant Exhibit A) Dr. VanGundy described Appellant as one of the most highly skilled medics that he has ever worked with, and he stated that he would allow Appellant to take care of his own family. (Appellant Exhibit B)

8. In the opinion of Joe Ferrell, Appellant's choking of the patient on October 15, 2014 constituted physical abuse and was a violation of Appellant's ethical obligations as a certified Paramedic. In addition, Mr. Ferrell testified that Appellant's actions violated

the standard of care for treating agitated patients. According to Mr. Ferrell, the applicable standard of care required Appellant to: 1) take steps to make sure that the patient and the emergency care providers at the scene were safe; 2) assess the patient and determine if there was a medical cause for the patient's combative behaviors, such as low blood sugar or a medication overdose; and 3) administer appropriate anti-psychotic medications, several of which can be given intramuscularly rather than intravenously. (Ferrell testimony)

9. Appellant admits that he climbed on the combative patient when he was in the back of the ambulance and further admitted that he put his hands around the patient's throat. Appellant denies, however, that he occluded the patient's airway. Appellant agrees that his actions that day were inconsistent with the standard of care for treating a combative patient.

Appellant testified that the only medication that was available to him in the ambulance to treat a combative patient was IV Versed. On cross-examination, however, Appellant admitted that the Versed could have been administered intramuscularly, but it would have taken longer to take effect. He reports that the service's protocol was to give Versed intravenously.

Appellant further testified that he experienced a "sudden burst of anger" that day, although he testified that the anger was from "somewhere else" and was not directed at the patient. Appellant apologized for his actions and asked for the Department's forgiveness. Following this incident, Appellant completed a four hour on-line anger management class that included a discussion group. Appellant reports that he is better able to deal with his anger after completing the class. Appellant has also read some on-line studies and discussions concerning the proper assessment and treatment of agitated patients, but he has not completed any courses that are certified for credit. (Appellant testimony)

CONCLUSIONS OF LAW

The legislature has directed the Department to adopt rules pertaining to the examination and certification of emergency medical care providers.¹ The Department has adopted rules at 641 IAC chapter 131. Pursuant to Iowa Code section 147A.7 and

¹ Iowa Code section 147A.4(2)(2013).

641 IAC 131.7(3), the Department is authorized to impose disciplinary sanctions when it finds that the certificate holder has committed any of the following acts or offenses:

- a. Negligence in performing emergency medical care.
- ...
- e. Professional incompetency. Professional incompetency includes, but is not limited to:
 - (1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.
 - (2) A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other emergency medical care providers in the state of Iowa acting in the same or similar circumstances.
 - (3) A failure to exercise the degree of care which is ordinarily exercised by the average emergency medical care provider acting in the same or similar circumstances.
 - (4) Failure to conform to the minimal standard of acceptable and prevailing practice of certified emergency medical care providers in this state.
- f. Knowingly making misleading, deceptive, untrue or fraudulent representations 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. Acts which may constitute unethical conduct include, but are not limited to:
 - (1) Verbally or physically abusing a patient or coworker.

The preponderance of the evidence established that Appellant violated Iowa Code section 147A.7 and 641 IAC 131.7(3) "a," "e," and "f," when he placed his hands around the throat of a combative patient in a choking manner and when he placed his knee on the patient's chest/neck area. Although Appellant initially claimed to have a medical reason for his actions towards the patient, at hearing Appellant admitted that he had a "sudden burst of anger" and that his actions were inconsistent with the standard of care. Although he was faced with a very challenging situation, Appellant's response to the situation was unreasonable and constituted negligence, professional incompetence, and unethical conduct in the performance of emergency medical care. Appellant's actions that day also constituted a physical abuse of the patient, as prohibited by 641 IAC 131.7(3) "f"(1). His actions were not in conformance with the minimal standard of

acceptable and prevailing practice of certified emergency medical care providers in this state, in violation of 641 IAC 131.7(3)"e"(4).

This incident was not characteristic of Appellant's past practice and long history as a paramedic. Appellant has accepted responsibility for his actions, and he has expressed remorse and has asked for forgiveness. The Department took these mitigating circumstances into consideration when it decided not to revoke Appellant's certification but to impose a period of suspension, some additional education, and a period of probation with monitoring and oversight. The Department's proposed action is entirely reasonable, given the very serious nature of Appellant's violation and the Department's important responsibility to protect the public and to deter others from engaging in similar behavior.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Suspension/Probation issued by the Department to Appellant Gary Krause on March 5, 2015, is hereby AFFIRMED.

Dated this 27th day of May, 2015.

Margaret LaMarche

Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building-Third Floor
Des Moines, Iowa 50319

cc: Gary Krause, 15707 310th Street, Conrad, Iowa 50621 (RESTRICTED CERTIFIED)
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).