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OCT 20 2015

Bureau of Emergency
and Trauma Services

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


Iowa Dept. of Public Health
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OCT 20 2015

Bureau of Emergency
and Trauma Services

IN THE MATTER OF:

DIA NO. 15DPHES010

CASE NO. 15-02-08

Jonathon Richard
1314 2nd Ave. S
Denison, IA 51442-1451

PROPOSED DECISION

Certification: PM-13-1601-11

On May 20, 2015, the Department of Public Health-Bureau of Emergency and Trauma Services (Department) served a Notice of Proposed Action-Citation and Warning on Jonathon Richard (Respondent). The Department alleged that Respondent functioned as a Paramedic and performed Paramedic level skills from December 29, 2014 through January 28, 2015 when he was only certified as an Emergency Medical Technician. Respondent filed a timely Notice of Appeal, and a telephone hearing was held before the undersigned administrative law judge on October 8, 2015. Assistant Attorney General Heather Adams represented the Department. Respondent was self-represented and elected to have a closed hearing, pursuant to Iowa Code section 272C.6(1).

THE RECORD

The record includes the Notice of Telephone Hearing, Notice of Rescheduled Telephone Hearing, testimony of Joe Ferrell, Respondent, and Stephanie Strubbe, Department Exhibits 1-20 and Respondent Exhibits A and B.

FINDINGS OF FACT

Respondent completed his EMT-Basic training program at Iowa Western Community College in Council Bluffs in January 2013. The Iowa Department of Public Health-Bureau of Emergency and Trauma Services (Department) certified Jonathon Richard (Respondent) as an Emergency Medical Technician (EMT) on February 8, 2013. (Department Exhibits 3, 9; Ferrell, Respondent testimony)

Joe Ferrell is a nationally registered and state certified Paramedic who is employed by the Department to oversee the certification of EMS personnel and to participate in the investigation and discipline of certified EMS providers. In order to obtain certification as a Paramedic in Iowa, an applicant must successfully complete an approved Paramedic course, must complete the National Registry of Emergency Medical Technicians examination, and must submit the completed Paramedic certification application and certification fee to the Department. The Department issues the state certification following its review of the application and background check. State certification as a Paramedic is not the same as national registration. (Ferrell, Respondent testimony; Department Exhibit 9)

On or about July 30, 2014, Respondent completed the program requirements for the Paramedic course at Iowa Western Community College. On September 4, 2014, Respondent's training program official completed and signed the training program's portion of Respondent's Certification Application as a Paramedic. The training program then gave the certification application to Respondent. It was Respondent's responsibility to complete the remainder of the application captioned "TO BE COMPLETED BY THE STUDENT" and to submit the completed application to the Iowa Department of Public Health for processing, along with the certification fee. The application form clearly states: "THIS FORM MUST BE SUBMITTED TO THE BUREAU OF EMS WITH A \$30 CERTIFICATION FEE."

The certification application form asked the applicant to:

- provide personal information (social security number, date of birth, address, and phone number);
- answer five questions concerning the applicant's medical conditions, use of illegal drugs, criminal history, prior license discipline, and prior malpractice lawsuits; and
- sign a certification that the information provided was true and correct and acknowledging that providing false or misleading information could result in certification denial or discipline.

(Exhibit 17; Respondent, Ferrell testimony)

Respondent took the Paramedic Certification Application home, but he did not complete the student's portion of the application, and he did not submit the application

and certification fee to the Department for processing until January 28, 2015. (Respondent testimony)

On November 19, 2014, Respondent submitted an employment application to Crawford County Hospital for a position as an EMT-B. On his application, Respondent wrote that he was "working on his paramedic right now" and planned to work as a paramedic "once I have my testing done." At hearing, Respondent explained that he wanted to begin working as an EMT-B while waiting for his national test results. (Department Exhibit 13, p. 55; Ferrell, Respondent testimony)

At his employment interview on December 11, 2014, Respondent stated that he would be taking the National Registry test on December 13, 2014. On December 15, 2014, the college's website posted a message congratulating Respondent on passing the test. On December 16, 2014, Crawford County Hospital extended a written offer of employment to Respondent for a full-time Paramedic position. The written employment offer instructed Respondent to call to schedule a health assessment and to bring all of the completed employment forms and his Iowa professional license (if applicable) with him when he reported for the health assessment. Respondent accepted the hospital's offer of employment on December 17, 2014. (Department Exhibit 11, Exhibit 13, pp. 50-51).

Respondent received his formal notification from the National Registry of Emergency Medical Technicians (NREMT) that he had passed the national examination. Respondent was sent an NREMT certificate, a certification card with an expiration date of 03/31/2017, and an embroidered emblem with NREMT's registered seal. The final paragraph of the notification letter from NREMT stated, in part: "Please contact your state EMS office for instructions on how to obtain your state license/certification to practice EMS." (Department Exhibit 16; Respondent testimony)

Bruce Musgrave is Crawford County Hospital's Ambulance Services Director. In a letter dated February 20, 2015, Mr. Musgrave stated that he and the hospital's Human Resources Assistant spoke to Respondent and instructed him to complete the necessary paperwork to obtain his Iowa Paramedic certification. Mr. Musgrave further stated that it was his understanding of the Iowa certification process that Respondent would immediately be certified as an Iowa Paramedic when he submitted the required documentation. (Department Exhibit 11)

At hearing, Respondent testified that he recalled "pulling everything out of his wallet" when Bruce Musgrave asked him for his credentials. When Mr. Musgrave asked Respondent if he had a Paramedic card, Respondent answered "yes" and gave Musgrave his National Registry Paramedic Card. According to Respondent, Mr. Musgrave did not ask him for his state Paramedic card. (Respondent testimony)

Respondent was hired by Crawford County Memorial Hospital and began working in the emergency room and on the hospital's ambulance service on December 29, 2014. Respondent was introduced to his co-workers as a Paramedic. His employee badge identified him as a Paramedic, and the Crawford County Memorial Hospital website described him as a Paramedic. (Respondent testimony; Department Exhibits 4, 5, 6, 7, 8)

From December 29, 2014 through January 28, 2015, Respondent performed Paramedic level skills while treating more than 20 patients in the hospital's emergency room or ambulance. The Paramedic level skills that were performed by Respondent included intravenous (IV) and intramuscular (IM) medication administration, establishing IVs, interpretation of EKGs, and providing breathing treatments. (Ferrell, Respondent testimony; Department Exhibits 4-6, Department Exhibit 9, pp. 27-31; Exhibit 12, pp. 48-49; Exhibits 14, 15, 18; Respondent Exhibit A)

On January 29 and 30, 2015, the Department received three complaints from Respondent's co-workers who had recently discovered that Respondent did not have his state certification as a Paramedic. The Department confirmed that Respondent was only certified as an EMT-B and an investigation was initiated. (Ferrell testimony; Department Exhibits 3-6, 18)

Prior to January 29, 2015, Respondent mistakenly believed that he had the necessary certification to practice as an Iowa Paramedic. On January 29, 2015, one of Respondent's co-workers called Respondent and asked him if he had an Iowa Paramedic card. Respondent replied that he only had the National Registry card. After he got off the phone, Respondent found the incomplete state Paramedic Certification Application with the paperwork from his school. Respondent testified that when he was certified as an EMT-B, the school had submitted the certification application to the Department for him. Respondent did not realize that he was responsible for submitting the Paramedic certification application to the Department. Respondent immediately contacted Bruce Musgrave, who told him to get the paperwork submitted to the

Department the next day. Respondent immediately ceased functioning as a Paramedic. (Respondent testimony; Department Exhibits 9, 11)

On May 7, 2015, the Department issued Respondent his certification as a Paramedic in the state of Iowa. Respondent's state Paramedic certification will expire on March 31, 2017. On May 20, 2015, the Department issued Respondent the Notice of Proposed Action-Citation and Warning, which is at issue in this appeal. Joe Ferrell explained that the Department typically imposes Probation as a disciplinary sanction if a certified Emergency Medical Services provider performed skills outside their approved scope of practice. In this case, the Department decided to issue a Citation and Warning, which is the least onerous disciplinary sanction, because Respondent had completed the National Registry examination and was technically competent to practice as a Paramedic although he was not legally qualified to do so. The Department also considered Respondent's cooperation with the investigation when it determined an appropriate sanction. (Department Exhibit 1, 3; Ferrell testimony)

On May 20, 2015, the Department issued a Notice of Proposed Action-Citation and Warning to the Crawford County Ambulance for its violations of Department's rules by allowing a certified Emergency Medical Technician to function as a Paramedic from December 29, 2014 through January 28, 2015 and by allowing the person to perform Paramedic level skills. Crawford County Ambulance did not appeal this disciplinary action. (Department Exhibit 20; Ferrell 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 pertaining to Emergency Medical Services-Provider Education/Training/Certification at 641 IAC chapter 131.

641 IAC 131.3(3) pertains to the scope of practice for emergency medical care providers and states, in relevant part:

131.3(3) Scope of practice.

¹ Iowa Code section 147A.4(2)(2015).

a. Emergency medical care providers shall provide only those services and procedures that are authorized within the scope of practice for which they are certified.

641 IAC 131.7(3) pertains to disciplinary proceedings against certificate holders and provides, in relevant part:

131.7(3) 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:

...

s. Willful or repeated violations of Iowa Code chapter 147A or these rules.

...

aa. Practicing emergency medical services or using a designation of certification or otherwise holding oneself out as practicing emergency medical services at a certain level of certification when the emergency medical care provider is not certified at such level.

The preponderance of the evidence established that Respondent violated 641 IAC 131.7(3)(s) and (aa) when he practiced outside the permissible scope of practice for an EMT during the time period from December 29, 2014 through January 28, 2015. Respondent does not dispute that he functioned as a Paramedic and performed Paramedic-level skills at a time when he was not yet certified as a Paramedic, in violation of 641 IAC 131.3(3)"a" and 131.7(3)"aa." Respondent's main contention at hearing was that he did not willfully violated these rules because (1) he was under the mistaken belief that his Paramedic training program had submitted his certification application to the state; and (2) his employer's actions when hiring him led him to believe he was properly certified to practice as a Paramedic.

641 IAC 131.7(3)"s" authorizes the Department to impose discipline for "willful" or "repeated" violations of the administrative rules. Although the preponderance of the evidence supports Respondent's claim that he believed he was properly certified as a Paramedic, the fact remains that Respondent repeatedly violated the Department's scope of practice rules during his employment by Crawford Memorial Hospital. It was Respondent's responsibility to submit his certification application to the Department and to ensure that he was properly certified prior to functioning as a Paramedic and performing Paramedic-level skills.

Respondent was given every opportunity to comply with these requirements. Respondent's training program gave him the certification application with the school's portion already completed. Respondent apparently never reviewed the application or he would have readily seen that he needed to complete the application and submit it to the Department, along with his certification fee. In addition, when Respondent received notice of his national certification, the cover letter from the NREMT informed him that he needed to contact his state EMS office for instructions on how to obtain his state license/certification to practice EMS. Once again, Respondent took no action to verify that he had taken the necessary steps to become certified by the state. The fact that Respondent's employer failed to fulfill its responsibilities to ensure that Respondent was properly certified as a Paramedic does not diminish Respondent's legal responsibility for his own actions. The record amply supports the Department's decision to issue Respondent a Citation and Warning for his violation of the administrative rules pertaining to scope of practice.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Citation and Warning that was issued by the Department to Jonathon Richard on May 20, 2015 is hereby AFFIRMED.

Dated this 19th day of October, 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: Jonathon Richard, 1314 2nd Ave. S, Denison, IA 51442-1451 (CERTIFIED)

Heather Adams, Assistant Attorney General, Hoover State Office Building, Des Moines, Iowa 50319 (LOCAL)

Joe Ferrell and Rebecca Curtiss, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319 (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).