

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

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|-------------------------|---|--------------------|
| IN THE MATTER OF: |) | CASE No. 15-06-08 |
| |) | DIA No. 15DPHES011 |
| Madrid Fire Department |) | |
| 303 South Water Street |) | |
| Madrid, Iowa 50156-1333 |) | PROPOSED DECISION |
| |) | |
| Service #9088100 |) | |

On June 9, 2015, the Department of Public Health-Bureau of Emergency and Trauma Services (Department) issued a Notice of Proposed Action-Citation and Warning to the Madrid Fire Department (Appellant). An appeal was filed by the Fire Department's Chief, Ed Pecenka. A telephone hearing was held before the undersigned administrative law judge on August 20, 2015. Assistant Attorney General Heather Adams represented the Department at hearing. The Madrid Fire Department was self-represented by Ed Pecenka, and he elected to have a closed hearing, pursuant to Iowa Code section 272C.6(1).

At the beginning of the hearing, the Department moved to rescind the last two paragraphs on page 1 of the Notice of Proposed Action-Citation and Warning beginning with "A service program seeking ambulance authorization shall: IAC 641-132.8(1)" and ending at the top of page 2 with "641 IAC 132.8(1)(c)." Appellant did not object to the state's motion, and it was granted. The references to 641 IAC 132.8(1), which requires a currently licensed driver, are rescinded from the Notice of Proposed Action and are no longer at issue in this proceeding.

THE RECORD

The record includes the Appeal and Request for Hearing, Notice of Telephone Hearing, testimony of Joe Ferrell and Ed Pecenka, and Department Exhibits 1-4 and 7-8. Department Exhibits 5-6 and 9 were not offered into evidence.

FINDINGS OF FACT

Joe Ferrell is an Executive Officer with the Iowa Department of Public Health-Bureau of Emergency and Trauma Services (Department) and is responsible for regulatory oversight of the Department's Emergency Medical Services (EMS) Authorized Service Programs. A "service program" or "service" means any medical care ambulance service or nontransport service that has received authorization from the department under Iowa Code section 147A.5.¹ (Joe Ferrell testimony)

The Department oversees approximately 900 authorized service programs in Iowa, and each service program must be inspected at least once every three years. The Department employs four regional EMS Coordinators, each of whom is responsible for performing approximately 80 on-site service program inspections each year. The purpose of an on-site inspection is to determine whether the service program is compliant with all of the standards established by the Department in its administrative rules at 641 Iowa Administrative Code (IAC) chapter 132. (Joe Ferrell testimony)

The Madrid Fire Department is certified as a nontransport service at the EMT-B level. Nontransport services are responsible for stabilizing patients at the scene until an ambulance arrives to transport the patient. (Joe Ferrell; Department Exhibit 3)

Ellen McCardle Woods is Department's Regional EMS Coordinator for the region that includes the Madrid Fire Department. On April 13, 2015, Ms. McCardle Woods conducted an on-site inspection and prepared an Onsite Inspection Report, which documented 9 deficiencies for the Madrid Fire Department's EMS service program. The deficiencies cited in the report included the following: 1) the current application was deficient due to a need to update the system registry concerning expired dates on EMS providers' drivers' licenses and CPR certifications; 2) the driving policy was deficient because it needed to be updated; 3) the protocols for the current year needed to be signed and have changes filed; and 4) continuous quality improvement (CQI) policy pertaining to medical audits; measurable outcomes; skills competency; follow-up-loop closure/resolution; type and frequency of review, action plan and f/u; and appointment of assistants in writing were all deficient because Madrid Fire

¹ Iowa Code section 147A.1(8)(2015).

Department needed to submit the county policy. (Testimony of Joe Ferrell; Department Exhibit 4)

Following the on-site inspection, Ellen McCardle Woods met with Chief Ed Pecenka to review her findings and to explain what the service program needed to do to come into compliance. Ms. McCardle Woods explained that the Madrid Fire Department needed to submit the county CQI Policy, submit the protocols, and update the system registry within 30 days or by May 13, 2015. (Department Exhibit 4; Testimony of Joe Ferrell)

Although Madrid Fire Department resolved most of the nine deficiencies by the deadline of May 13, 2015, two of the deficiencies were not resolved by the deadline and no extension of time had been requested or granted. One of the two remaining deficiencies (the update of the driving policy) was resolved on June 9, 2015. The second deficiency (updating the system registry/application to correct expired dates for the EMS providers' driver's licenses and CPR certifications) was still unresolved as of June 9, 2015. Two of Madrid Fire Department's volunteer providers continued to be listed on the Service Roster with expired CPR certificates and four EMS providers were listed with expired driver's licenses. (Testimony of Joe Ferrell; Department Exhibits 4, 8)

On June 9, 2015, the Department issued the Madrid Fire Department a Notice of Proposed Action-Citation and Warning for its failure to meet the requirements of Iowa Code chapter 147A and the Department's administrative rules and for its failure to correct deficiencies within the time frame established by the Department. The Madrid Fire Department was warned that continued violation of the Department's rules could result in further disciplinary action, including suspension or revocation of the service program's authorization. The Department's Proposed Action cited both the failure to timely update the driving policy and the failure to have an updated application on file. The reference to the driving policy as a basis for its Proposed Action has been rescinded at the Department's request. The failure to update the driving policy is no longer a basis for the Department's Proposed Action. (Department Exhibit 1; Joe Ferrell testimony)

A Citation and Warning has no impact on the service program's ability to provide emergency medical services. The Department has consistently issued Citation and Warnings to other service programs who had deficiencies that they failed to correct within the 30 day timeframe established by the Department. In

2014, the Department issued 45 Citation and Warnings to service programs. Thus far in 2015, the Department has issued 23 Citations and Warnings to service programs. (Joe Ferrell testimony)

On June 10, 2015, Ms. McCardle Woods sent an email to the Madrid Fire Department to remind them that they still needed to update the system registry to correct the expired/incomplete dates on the system registry. The Madrid Fire Department updated the dates in the Service Roster portion of its application on June 11, 2015. (Testimony of Joe Ferrell; Department Exhibits 4, 7)

Chief Ed Pecenka filed an appeal on behalf of the Madrid Fire Department. At hearing, Mr. Pecenka admitted that the Madrid Fire Department had expired/outdated CPR certificates and drivers' licenses listed for some of its EMS providers and also admitted that the Madrid Fire Department failed to update its application on the system registry within the 30 day timeframe specified by the Department on its Onsite Inspection Report. Chief Pecenka testified that the delay in compliance was due to the Fire Department's loss of two of its key personnel during the timeframe of the inspection and the 30 day window for compliance. The fire department's Rescue Captain and its Rescue Lieutenant had both taken leave during this time period. Chief Pecenka is asking for the Notice of Proposed Action to be dismissed or reversed due to these extenuating circumstances and due to Madrid Fire Department's history of compliance over the last thirty years. (Testimony of Ed Pecenka)

CONCLUSIONS OF LAW

The legislature has directed the Iowa Department of Public Health to adopt rules pertaining to the operation of ambulance, rescue, and first response services which have received authorization to utilize the services of emergency medical services providers.² The Department has adopted rules governing service programs at 641 IAC chapter 132.

641 IAC 132.7(1)"a" requires an ambulance or non-transport service that desires to provide emergency medical care in Iowa in the out-of-hospital setting to apply to the department for authorization to establish a program utilizing certified emergency medical care providers on forms provided by the department. The

² Iowa Code section 147A.4(1)(2015).

forms must be completed and submitted to the department at least 30 days prior to the anticipated date of the authorization.

The Department is authorized to issue a civil penalty not to exceed \$1000, to issue a citation and warning, to put a service program on probation, to suspend or revoke a service program authorization, or the otherwise discipline a program in accordance with Iowa Code chapter 147A and 641 IAC 132.10(3), for:

- ...
- f. Failure or repeated failure of the applicant or alleged violator to meet the requirements or standards established pursuant to Iowa Code chapter 147A or the rules adopted pursuant to that chapter.
- ...
- i. Failure to correct a deficiency within the time frame required by the department.

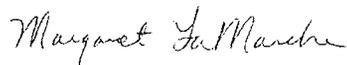
Pursuant to these rules, the Department was authorized to issue a Citation and Warning to the Madrid Fire Department for its failure to meet the requirements of 641 IAC 132.7(1)"a," in violation of 641 IAC 132.10(3)"f," and for its failure to correct this deficiency within the time frame required by the department, in violation of 641 IAC 132.10(3)"i."

The Madrid Fire Department was required to comply with all of the standards established in the Department's administrative rules for service programs and to correct any deficiencies within the time period established by the Department. The Madrid Fire Department was given fair notice of the need to update the expired dates on its system registry and ample opportunity to correct the deficiency. The Department did not receive any requests for an extension of the 30 day timeframe. Under the circumstances presented, the Department's Proposed Action was reasonable and should be affirmed. A Citation and Warning is proportionate to the violation, is consistent with the prior disciplinary actions taken by the Department for similar violations, and is the least serious discipline that can be imposed. The Citation and Warning does not interfere with the service program's ability to serve the public but creates a formal record of this violation in the event there are additional compliance issues in the future.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Citation and Warning, which was issued on June 9, 2015 to the Madrid Fire Department by the Iowa Department of Public Health, is hereby AFFIRMED.

Dated this 25th day of August, 2015.



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: Chief Ed Pecenka, c/o Madrid Fire Department, 303 South Water Street, Madrid, Iowa 50156 (RESTRICTED CERTIFIED MAIL);
Heather Adams, Assistant Attorney General, Hoover State Office Building, Des Moines, Iowa 50319 (LOCAL);
Rebecca Curtis and Steve Mercer, 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 132.10(9). 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. Any request for appeal shall state the reason for the appeal.