

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

IN THE MATTER OF:) DIA NO. 15DPHES001
) CASE NO. 14-10-07
Brian Ward)
PO Box 238)
Ladora, Iowa 52251) PROPOSED DECISION
)
Certification: EMR-21-209-09)

On December 17, 2014, the Department of Public Health-Bureau of Emergency and Trauma Services (Department) served a Notice of Proposed Action-Suspension/Civil Penalty on Brian Ward (Appellant). The Appellant filed a timely Notice of Appeal. A telephone hearing was held before the undersigned administrative law judge on February 17, 2015. Assistant Attorney General Heather Adams represented the Department. The Appellant 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, testimony of Joe Ferrell and Appellant, and Department Exhibits 1-8 (See Exhibit Index for description)

FINDINGS OF FACT

1. Appellant was initially certified by the Department as a First Responder in 1998. Appellant was issued certificate Number EMR-21-209-09 as an Emergency Medical Respondent (EMR) on August 1, 2012. Appellant's EMR certificate is current and expires on September 30, 2016. (Testimony of Joe Ferrell; Exhibit 3)
2. EMS providers must renew their certification with the Department every two years. In order to renew, EMRs are required to complete 12 hours of continuing education, which must include at least 6 hours of "formal" continuing education. EMRs are also required to have a current certification in CPR. "Formal" continuing education courses must be approved by the Continuing Education Coordinating Board for

Emergency Medical Services (CECBEMS) and must meet specific criteria established by Board rule. Continuing education hours that have been approved as formal education have the designation "fe" following the course number. All other continuing education hours are considered "optional education" and are designated with an "oe." (Testimony of Joe Ferrell; See 641 IAC 131.4(5)"b"(1) and 131.4(5)"c.")

3. On September 30, 2014, Appellant submitted an application to renew Certification EMR-21-209-09 for the period from September 30, 2014 through September 30, 2016. Appellant indicated on his application that he had completed the 12 hours of continuing education during the current certification period. Appellant answered "yes" to the question that asked him "Have you completed at least 6 approved formal CEH's during your certification period?" Appellant certified that the "information provided is true and correct to the best of my knowledge. I understand that providing false and/or misleading information may result in citation and warning, denial, probation, suspension or revocation of my certification." Based on the information that Appellant provided on his renewal form, his EMR certification was renewed and is now current through September 30, 2016. (Testimony of Joe Ferrell; Appellant; Department Exhibits 3, 4)

4. Appellant's renewal application was audited after the Department received information that Appellant did not have the required number of hours of continuing education to renew his certification. Appellant was notified of the audit and the audit reporting requirements on October 21, 2014. Appellant was required to provide documentation showing the date of each program attended, the program sponsor number, the title of the program, the number of approved hours, and the appropriate supervisor signatures if clinical or practical evaluator hours were claimed. (Testimony of Joe Ferrell; Department Exhibits 5, 6)

5. On November 5, 2014, the Department received the completed audit reporting form from Appellant, which listed 6 hours of formal continuing education and 8.0 hours of optional education. Under the column entitled "Formal" Appellant reported two three credit courses: Protocol of Annual Meds, Sponsor Number 13-1800-191FE and Child & Adult Abuse, Sponsor Number 32119 FE. The first course had a proper sponsor number indicating that it had been approved as formal education, but the second course raised concerns because it did not have a proper sponsor number. (Testimony of Joe Ferrell; Department Exhibits 5, 6)

6. In response to a request for further information, Appellant provided a certificate of completion for the course entitled: "Iowa: Abuse of Dependent Adults." The date of completion was February 5, 2013. The sponsor was "ATrain Education, Inc." of Willits, California. The certificate indicates that ATrain Education, Inc. is accredited as a provider of continuing nursing education by the American Nurses Credentialing Center's Commission on Accreditation. It further indicates that ATrain has been approved as a provider by various Physical Therapy Boards in California, New York, and Florida, and by the Oregon Board of Pharmacy. The certificate did not state that ATrain has been approved as a provider by the Iowa Department of Public Health. (Exhibit 6; Testimony of Joe Ferrell; Appellant)

At hearing, Appellant explained that he took the Dependent Adult Abuse course online in order to renew his coaching authorization through the Department of Education. Appellant testified that he believed that the course would be approved by the Department of Public Health because it was recognized by the Board of Education. In a separate letter, Appellant asked the Department of Public Health to let him use the course because otherwise he would be 3 hours short on his formal education. Appellant further stated that he would like to continue serving his community on the Ladora First Responders. (Appellant testimony; Exhibit 6)

Appellant testified that he did not review the Department's rules or the Continuing Education Guidelines for EMS providers, both of which are readily available on the Department's website, prior to deciding which continuing education courses to attend in fulfillment of his continuing education requirements or prior to submitting his responses to the audit of his continuing education. (Appellant testimony; See Exhibits 2, 7)

7. Following review of the information submitted by Appellant in response to the audit, the Department determined that the Dependent Adult Abuse course was not approved and did not meet the Department's requirements for formal education. Appellant was therefore three credits short on the formal education required for the certification period. (Joe Ferrell testimony)

8. On December 17, 2014, the Department issued its Notice of Proposed Action-Suspension/Civil Penalty, which provided that the Appellant's certification would be suspended until the Department receives, reviews, and approves the following:

- \$100 civil penalty
- Documentation of 3 formal education hours. Hours completed between the date of receipt of the Notice of Proposed Action and reinstatement of Appellant's certification may not be used for any other renewal period.

(Exhibit 1)

9. The Department's proposed action included a \$100 civil penalty because EMS providers who do not complete their continuing education in a timely manner but who make a timely application for a 45 day extension are required to submit a \$50 extension fee. The Department determined that the penalty for a failed audit should be higher than the \$50 extension fee. The Department must be able to rely on EMS providers to submit truthful and accurate reports of their continuing education. Failed audits are administratively burdensome for the Department because they require the expenditure of additional time and resources. (Testimony of Joe Ferrell; Department Exhibit 1; 641 IAC 131.4(11))

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.

An Emergency Medical Services (EMS) certificate shall be valid for two years from issuance unless specified otherwise on the certificate or unless sooner suspended or revoked.² All continuing education requirements must be completed during the certification period prior to the certificate's expiration date. Failure to complete the continuing education requirements prior to the expiration date shall result in an expired certification, unless the emergency medical care provider requests an extension as described in 131.4(11)"b."³

To be eligible for renewal through continuing education, an Emergency Medical Responder (EMR) must complete a current course in CPR and 12 hours of approved

¹ Iowa Code section 147A.4(2)(2009).

² 641 IAC 131.4(4)"a."

³ 641 IAC 131.4(4)"b."

education.⁴ At least 50 percent of the required hours for renewal shall be formal continuing education including, but not limited to, refresher programs, seminars, lecture programs, scenario-based programs, conferences, and Internet-delivered courses provided by CECBEMS⁵ and shall meet the criteria established in paragraph 131.4(6)"d."⁶

Courses approved as formal education must meet the following criteria:

- (1) Involve live interaction with an instructor or be an Internet-delivered course approved by CECBEMS; and
- (2) Be based on the appropriate department curricula for EMS providers and include one or more of the following topic areas: airway, patient assessment, trauma assessment and management, medical assessment and management, behavioral emergencies, obstetrics, gynecology, pediatrics, or patient care record documentation.⁷

The Department may deny an application for issuance or renewal of an emergency medical care provider certificate or may impose any of the disciplinary sanctions provided in subrule 131.7(2) when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

- ...
- d.* Fraud in procuring certification or renewal including, but not limited to:
...
 - (3) Attempting to file or filing with the department or training program any false or forged diploma or certificate or affidavit or identification or qualification in making an application for certification in this state.
...
 - f.* Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the profession or engaging in unethical

⁴ 641 IAC 131.4(5)"b"(1).

⁵ "CECBEMS" means the continuing education coordinating board for emergency medical services. 441 IAC 131.1.

⁶ 641 IAC 131.4(5)"c."

⁷ 641 IAC 131.4(6)"d."

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

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

The preponderance of the evidence established that the Appellant did not have the required hours of formal continuing education required for renewal of his EMR certification on September 30, 2014. The Appellant was required to have at least 6 hours of formal education, but he completed only 3 hours of formal continuing education within the certification period. The 3 hour Dependent Adult Abuse course completed by Appellant and submitted by him as formal education clearly does not meet the Department's requirements for formal education because: (1) it was an online course that was not CECBEMS approved; and (2) it did not include the required content for a formal education course.

Appellant denies that he knowingly made misleading or untrue statements in filing his renewal application and submitting his audit requirements. Appellant's claim that he believed that the Dependent Adult Abuse course offered by ATrain Education, Inc. satisfied the Department's requirements for formal education was not credible. This was not the first time that Appellant has had to renew his certification and submit proof of continuing education. The Department's rules and the Department's Education Guidelines for EMS Providers clearly spell out the requirements for formal education. Appellant had no reasonable basis to believe that the Dependent Adult Abuse course would qualify as formal education.

Appellant submitted false information to the Department when he filed the certification renewal form and affirmatively stated that he had completed at least 6 approved formal CEH's during his certification period. The preponderance of the evidence in the record supports that conclusion that Appellant failed to complete 6 hours of approved formal education. The preponderance of the evidence also supports the conclusions that Appellant submitted false information when he renewed his certification and knowingly made untrue representations when he claimed completion of six hours of formal continuing education, in violation of 641 IAC 131.7(3)"d," "f," and "s."

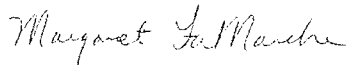
Appellant asserted that the assessment of a \$100 fine was unnecessary and excessive. The Department fully justified its decision to impose a \$100 civil penalty in addition to the suspension of Appellant's certification. EMS providers who timely request an

extension to complete their continuing education requirements are required to pay a \$50 extension fee. It is important that EMS providers who provide false information concerning their continuing education hours and who fail the continuing education audits are not given a less onerous sanction than those who timely request an extension. The \$100 civil penalty was reasonable and proportionate to the violation.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Suspension/Civil Penalty issued by the Department to Appellant Brian Ward on December 17, 2014, is hereby AFFIRMED.

Dated this 25th day of February, 2015.



Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
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cc: Brian Ward, PO Box 238, Ladora, Iowa 52251(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).

