

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

IN THE MATTER OF:)	DIA NO. 08DPHES019
)	CASE NO. 08-10-06
Jennifer Christoph)	
308 North Street)	PROPOSED DECISION
Preston, MN 55965)	

On November 17, 2008, the Department of Public Health-Emergency Medical Services Bureau (Department) served a Notice of Proposed Action-Citation and Warning on Jennifer Christoph (Appellant). The Appellant filed a timely Notice of Appeal on December 5, 2008. A telephone hearing was held before Administrative Law Judge Margaret LaMarche on February 18, 2009 at 9:00 a.m. 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 the witnesses, and the following exhibits:

Department Exhibit 1:	641 IAC chapter 131
Department Exhibit 2:	Notice of Proposed Action: Citation and Warning, 11/10/08
Department Exhibit 3:	Certification and Service Information
Department Exhibit 4:	Telephone Log
Department Exhibit 5:	EMS Endorsement/Reciprocity Application, 9/8/08
Department Exhibit 6:	Subpoena Duces Tecum, 10/13/08 Confidential Patient Care Reports; Personnel Records
Department Exhibit 7:	Regional Health Services/Howard County Notice of Proposed Action: Citation and Warning, 11/10/08
Department Exhibit 8:	Letter, Spalla to EMS Bureau, 11/21/08
Department Exhibit 9:	Notice of Appeal
Department Exhibit 10:	Prior Similar Actions

FINDINGS OF FACT

1. On June 15, 1993, the Iowa Department of Public Health-Emergency Medicine Services Bureau (Department) issued the Appellant an EMT-Ambulance level certification, #A-01-121-02. Certification A-01-121-02 expired on December 31, 1996, and the Department no longer issues certifications at the EMT-Ambulance level. The Appellant moved to Minnesota and obtained certification in Minnesota as an Emergency Medical Technician-Basic (EMT-B). (Testimony of Joe Ferrell; Appellant; Department Exhibit 3)

2. On May 14, 2008, Regional Health Services of Howard County in Cresco, Iowa hired the Appellant as a part-time EMT-B. At the time she was hired, the Appellant had a current certification from the National Registry of Emergency Medical Technicians (NREMT), Registry No. B1588215, and a current certification from the Minnesota Emergency Medical Services Regulatory Board, EMT-Basic No. 924373. Both certifications expire on March 31, 2009. (Testimony of Joe Ferrell; Appellant; Department Exhibits 3, 5, 6)

The Appellant's supervisor at Regional Health Services of Howard County was Service Director Larry Spalla. Mr. Spalla told the Appellant that she could begin work immediately even though she was not currently certified as an EMT-B in Iowa, so long as she had national certification and was enrolled in a transition/refresher course. The Appellant relied on Mr. Spalla's advice and began work as an EMT-B, providing patient services in Iowa. The Appellant did not attempt to personally review the Department's rules regarding certification and EMT practice. (Testimony of Appellant; Department Exhibits 6, 8)

3. The Appellant attended the EMT transition course in July 2008. She thought she sent a reciprocity application to the Department at that time and believes that it somehow got lost. The Appellant was off work for a period of time during the summer for brain surgery. (Testimony of Appellant)

4. On September 8, 2008, the Appellant called Joe Ferrell, the Department's EMS Regulation Manager. According to Mr. Farrell's contemporaneously created telephone log, the Appellant called to request information concerning reciprocity. The Appellant testified that she was calling to check up on her earlier

application for reciprocity. The Appellant told Mr. Ferrell that she was currently working in Cresco at Regional Health Services as an EMT attending calls and taking care of patients under her national registration. Mr. Ferrell told the Appellant that the national registration does not give permission to practice. He later called the Appellant's supervisor, Larry Spalla, and confirmed that the Appellant had been hired in May 2008 and had been attending calls. (Testimony of Joe Ferrell; Department Exhibit 4)

The September 8th telephone conversation was the first conversation Joe Ferrell could recall having with the Appellant and was the only conversation for which he had a telephone log. He typically only creates a telephone log when a conversation causes him to initiate an investigation. The Appellant testified that she had a prior conversation with Joe Ferrell in May 2008 as soon as she got the job in Cresco. She recalled telling Mr. Ferrell that she had previously held an EMT-A certification in Iowa and asking if she could just reinstate the EMT-A rather than have to pay \$50 to obtain certification by reciprocity. She recalled that Mr. Farrell told her she could not do that because the EMT-A and EMT-B were two different things. While the Appellant's recollection of the conversation seemed credible, it is unlikely that she told Mr. Farrell that she was already performing EMT-B services at that time. (Testimony of Joe Ferrell; Appellant)

5. On September 16, 2008, the Department processed the Appellant's EMS Endorsement/Reciprocity Application and \$50 endorsement fee. The Department issued the Appellant Certification #B-08-254-25 as an EMT-B on October 2, 2008. Certification #B-08-254-25 will expire on March 31, 2011. (Department Exhibit 5; Testimony of Joe Farrell)

6. On November 10, 2008, the Department issued Notices of Proposed Action: Citation and Warning to the Appellant and to Regional Health Services/Howard County. Both proposed actions were based on the Appellant's employment as an EMS provider from May 14, 2008 through September 8, 2008 when she was not certified by the Department. A citation and warning does not affect the EMT's ability to practice and only serves as a public record that the violation occurred and as public warning that the conduct should not be repeated in the future. These disciplinary actions were consistent with past cases before the

Department. (Testimony of Joe Ferrell; Department Exhibits 2, 7, 10)

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.

The Department may deny an application for issuance or renewal of an emergency medical care provider certificate, including endorsement, or place on probation, or issue a citation and warning, or suspend or revoke a certificate when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

...

l. Representing oneself as an EMS provider when one's certification has been suspended or revoked, or when one's certification is lapsed or has been placed on inactive status.

...

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 EMS provider is not certified at such level.²

"*Emergency medical care provider*" means an individual who has been trained to provide emergency medical care and nonemergency medical care as a first responder, EMT-basic, EMT-intermediate, EMT paramedic, paramedic specialist, or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department.³

An emergency medical care provider who holds an active certification issued by the department may render, via on-line

¹ Iowa Code section 147A.4(2) (2007).

² 641 IAC 131.7(2).

³ 641 IAC 131:1.

medical direction, emergency and nonemergency medical care in the area for which the emergency medical care provider is certified as part of an authorized service program.⁴

The preponderance of the evidence established that the Appellant engaged in the practice of emergency medical care and held herself out to be an emergency care provider in Iowa from May 14, 2008 through September 8, 2008, in violation of 641 IAC 131.7(2)"1" and "aa." It does not appear that the violation was willful. The violation was only repeated to the extent that the Appellant practiced EMT-B without certification for multiple days.

The Appellant knew that she was not certified as an EMT-B in the state of Iowa and knew that her certification as an EMT-A had expired. The Appellant received incorrect information from her supervisor indicating that it was permissible for her to practice as an EMT-B in Iowa prior to obtaining her certification. Although this is a mitigating factor, it does not relieve Appellant of her personal responsibility to ensure that she obtained the necessary certification prior to providing EMS services in this state. The department's proposed action is consistent with past agency precedent and consistent with the action taken against the Appellant's employer. A citation and warning is proportionate to the violation because it does not restrict the Appellant's ability to practice as an EMS provider but serves the important purpose of establishing a public record of the violation.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Citation and Warning, issued by the department to Appellant Jennifer Christoph on November 10, 2008, is hereby AFFIRMED.

⁴ 641 IAC 131.3(1).

Dated this 2nd day of March, 2009.

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: Jennifer Christoph
308 North Street
Preston, MN 55965 (CERTIFIED) and (FIRST-CLASS MAIL)

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

Kirk Schmitt, 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).