

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY EMERGENCY)
MEDICAL SERVICES, OFFICE OF THE)
MEDICAL DIRECTOR,)
)
Petitioner,)
)
vs.) Case No. 07-2587
)
STANLEY GAMMAGE,)
)
Respondent.)
)

)
PINELLAS COUNTY EMERGENCY)
MEDICAL SERVICES, OFFICE OF THE)
MEDICAL DIRECTOR,)
)
Petitioner,)
)
vs.) Case No. 07-2588
)
TRECO MILLER,)
)
Respondent.)
)

)
PINELLAS COUNTY EMERGENCY)
MEDICAL SERVICES, OFFICE OF THE)
MEDICAL DIRECTOR,)
)
Petitioner,)
)
vs.) Case No. 07-2589
)
ANTHONY STEWART,)
)
Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in these consolidated cases on October 30, 2007, in St. Petersburg,

Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Desiree Demonbreun, Esquire
Ford and Harrison LLP
101 East Kennedy Boulevard, Suite 900
Tampa, Florida 33602

For Respondents: Stanley Gammage, pro se
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St. Petersburg, Florida 33711

Treco Miller, pro se
1350 Franklin Street
Clearwater, Florida 33756

Anthony Stewart, pro se
Post Office Box 15101
St. Petersburg, Florida 33733

STATEMENT OF THE ISSUE

The issue in this case is whether the wheelchair transport driver certifications of each of the Respondents should be revoked.

PRELIMINARY STATEMENT

On or about March 27, 2007, the Pinellas County Emergency Medical Services, Office of Medical Director (hereinafter, "Director"), conducted an internal formal investigation to determine if certain individuals--including but not limited to the three Respondents--had fraudulently obtained wheelchair transport driver certifications. As a result of the investigation, Respondents, Stanley Gammage ("Gammage"),

Treco Miller ("Miller"), and Anthony Stewart ("Stewart"), had their certifications revoked by the Director. Each Respondent individually appealed, and the cases were forwarded to DOAH, where they were consolidated.

At the final hearing held in this matter, each Respondent represented himself, pro se. Counsel for the Director offered Exhibits 1, 2, 3a, 3b, 3c, 4a, 4b, 4c, 5, 6a, 6b, 6c, 7a, 7b, and 7c into evidence; each was accepted. Respondents did not introduce any other documentary evidence. The Director called two witnesses: David Lock, quality assurance manager for Pinellas County Emergency Medical Services; and Dr. Laurie Romig, M.D., the medical director. Each Respondent testified on his own behalf, but did not call any other witnesses. Petitioner asked that the record be kept open for the purpose of submitting a portion of the transcript from the preliminary hearing held at the Office of the Medical Director. The stated purpose of that submission was to rebut a statement made by one of the Respondents at the final hearing. However, no such evidence was submitted.

At the close of hearing, the parties advised the undersigned that a transcript of the final hearing would be ordered. The parties were given ten days after the transcript was filed at DOAH to submit proposed recommended orders. The Transcript was filed on November 19, 2007. As of November 29,

2007, only Petitioner had filed a Proposed Recommended Order; it was duly-considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Director is responsible for, inter alia, providing wheelchair transport driver certifications in Pinellas County.

2. Gammage, Miller, and Stewart were each certified by the Director to be a wheelchair transport driver. Each of the Respondents worked for Wheelchair Transport Service, Inc. (the "Employer").

3. The process by which drivers obtain a certification from the Director is as follows: The Employer hires an individual to be a driver. It is the responsibility of the Employer to make sure each driver applicant has been fingerprinted. The Employer must also forward each driver's application to the Florida Department of Law Enforcement ("FDLE") for a criminal background check. When the background check is complete, the Employer must certify to the Director by way of an affidavit that the applicant for certification: (1) has not been convicted of a felony; (2) has not been convicted of a misdemeanor directly related to his or her employment; and (3) has not pled nolo contendere to any charge of felony. The Employer must also affirm that it has attempted to contact the applicant's prior employers, that the applicant

is of good moral character, and that the Employer has contacted three non-related individuals to attest to the applicant's morality.

4. Once this process is complete, the Employer provides the Director with the driver's application along with an "Affidavit As To Background" for the driver. Upon receipt of this information, the Director would issue a certification to the applicant. The Director does not normally do an independent background check on the applicants. Rather, it relies upon the affidavit from the employing entity.

5. In January 2006, the Director received a copy of an anonymous letter that had been sent to a local hospital which provided services to a large number of Veteran's Administration patients. The letter alleged improprieties by the Employer, specifically that it was hiring unqualified drivers. The qualifications of drivers are important to the Director because drivers are transporting the most vulnerable members of society, i.e., the sick, weak, infirm, and elderly.

6. Based on the allegations in the anonymous letter, the Director undertook an independent investigation. Despite its limited financial resources, the Director performed a background check on all drivers for the Employer. The investigation found that seven drivers, including the three Respondents, had disqualifying criminal histories.

7. For Gammage, the Employer had provided an affidavit to the Director stating that Gammage met all the criteria for certification and had no disqualifying criminal background. The affidavit was signed by Gammage and by a representative of the Employer. The affidavit was notarized, but it is unclear whose signature was being affirmed by the notary.

8. Gammage, despite the representations in the affidavit, did have a disqualifying criminal history. He had two felonies, a burglary in 1994 and a sale of cocaine conviction in 1997. He served time in jail for at least one of the felonies. Nonetheless, the Director relied upon the affidavit from the Employer and issued Gammage a certification.

9. After receiving his certification, Gammage worked for the Employer driving wheelchair transport vehicles for approximately seven years. He has been recertified every two years and has a clean employment record.

10. The affidavit for Miller also affirmed that a background check had been done, that Miller had no felonies or other disqualifying criminal history, and that he was of good moral character. Miller's affidavit is not signed by the Employer, but "Wheelchair Transport Service, Inc." is stamped or typed on the signature line. The affidavit is notarized, presumably affirming Miller's signature since it is the only actual signature on the affidavit.

11. Miller, too, actually had felonies in his background. He was found guilty of dealing in stolen property in 1994. Another felony charge, cruelty to a child, had been reduced to a misdemeanor, but it may also be a disqualifying event due to the nature of the crime.

12. Miller's application and affidavit were provided to the Director, and a certification was duly issued.

13. Stewart also applied for certification through the Employer. Stewart's affidavit affirmed his qualifications to be a wheelchair transport driver, i.e., the absence of a disqualifying criminal history and that he was of good moral character. The affidavit introduced into evidence was not signed or stamped by the Employer, nor was it notarized. According to Stewart, this was one of several affidavits he had done for his Employer.

14. However, Stewart had a disqualifying criminal history as well. His record included battery on a police officer in 1991 and robbery with a deadly weapon in 1992. Despite this fact, the Director issued a certification for Stewart.¹

15. All of the Respondents testified that they had told the Employer about their criminal backgrounds, but the Employer indicated to them that it didn't matter. All of the Respondents believed that the Employer was able to "take care of the problem" so that they could become certified. None of the three

Respondents directly told the Director that they had no criminal history. In fact, under the certification process, it was solely the Employer's duty to advise the Director.

16. It is clear the Employer--not the Respondents--intentionally misled the Director concerning the criminal history of the three Respondents. Nonetheless, the Director continues to use the Employer to provide wheelchair transport services because "they have changed the way they do things." Apparently, the Employer now provides an FDLE background check along with the application and affidavit.

17. Gammage, Miller, and Stewart have proven they are good employees. Each has a clean record with the Employer (Gammage for seven years or more), and each continues to work for the Employer outside Pinellas County.

18. The medical director was kind in her praise of the three men, but firm in her stance that they were not eligible to have wheelchair transport driver certifications.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2007).

20. The Rules and Regulations of the Pinellas County
Emergency Medical Services Systems (the "Rules") include the
following pertinent sections:

V. County Certification of Clinical
Personnel

A. Extension of Clinical Privileges

1. The Medical Director extends clinical privileges for individuals to participate in patient care as a part of the Pinellas County EMS System through issuance of County certification. These clinical privileges may be extended to individual, EMTs, paramedics, emergency medical dispatchers, critical care transport nurses, critical care transport paramedics, medical officers, and EMS physicians, as well as to wheelchair transport drivers. Eligibility to obtain and maintain clinical privileges in the Pinellas County EMS System shall meet both State of Florida and Pinellas County requirements, including those for levels of patient contact as determined by the Medical Director.

2. Compliance with the criteria for County certification shall be maintained continuously. If at any time a County certified individual fails to maintain all requirements, this shall be cause for the Medical Director to take corrective action as outlined in Section XIII.

3. Provider agencies shall submit an affidavit, using a form provided by the Office of the Medical Director, in the form of Exhibit A, which itemizes the background checks that have been performed by the provider agency and which results reveal there are no causes for concern regarding extension of clinical privileges.

* * *

J. Wheelchair Transport Drivers

1. Certification

Wheelchair transport drivers seeking to obtain initial County certification for clinical privileges shall meet the following requirements prior to participating in transportation activities:

* * *

d. Submission by employer of a satisfactory background check (same as required by the Metropolitan Planning Organization).

21. The affidavit adopted by reference in the Rules is critical to the issue of whether the Respondents committed fraud, so it is set forth in its entirety below:

AFFIDAVIT AS TO BACKGROUND

The undersigned duly authorized representative of

("Provider")
hereby certifies as follows:

1. _____ [EMT, Paramedic, CCTN, circle one] ("Applicant") is currently employed by Provider and has been employed since [Date]_____.

2. In connection with the employment of Applicant, Provider conducted such inquiries and investigations necessary to determine that:

[a] Applicant has been fingerprinted by the employing agency or supporting law enforcement agency. Such fingerprint card has been transmitted to the Florida Department of Law Enforcement criminal history service unit; and

[b] Applicant (i) has not been convicted of a felony, (ii) has not been convicted of a misdemeanor directly related to his/her employment, or (iii) has not pled nolo contendere to any charge of felony; and

[c] The employing agency has attempted inquiry to all former employers of the applicant preceding application for county certification; and

[d] Applicant has good moral character and has been determined in accordance with Section 633.34, Florida

Statutes, and FAC 4A-37.036 regulations issued pursuant thereto; and
[e] The employing agency has contacted three persons (not relatives) from whom information relating to the applicant's morality can be obtained.

3. In connection with Applicant's application for clinical privileges in the Pinellas County Emergency Medical Services System ("EMS System"), Provider has reviewed the inquiries and investigations described in Paragraph 2.

4. Provider has found nothing in the inquiries and investigations described in Paragraph 2, or otherwise, which would give Provider reasonable cause to believe that Applicant should be denied clinical privileges in the EMS System.

Signed and dated this ____ day of _____, 19____

[Provider]

BY: _____

Sworn to before me this ____ day of _____, 19____.

NOTARY

22. It is clear Respondents did not have the responsibility of notifying the Director concerning their criminal background. Rather, as set forth in the affidavit, that was the responsibility of the Employer. Further, the affidavit as created by Petitioner did not even include a place for the applicant to sign; the Employer obviously added that requirement to the affidavit unilaterally. (The versions admitted into evidence for each driver included a signature line for them, as applicant.) There can be no finding of fraud as to the Respondents as a result of the affidavits.

23. However, there was obviously fraud or deceit in the filing of the affidavits to the Director, even if the fraud was

committed by the Employer rather than Respondents. Under Section V. M. 3. a. of the Rules, the Director is allowed to revoke certification if there is "fraud or deceit in applying for or obtaining a clinical certification." There is no explanation in the Rules as to who must commit the fraud, but it is the Director's position that any fraud committed by any person is sufficient to warrant revocation. Its interpretation, although somewhat draconian under the present facts, is reasonable.

24. Interestingly, the affidavit references Subsection 633.34, Florida Statutes, which actually addresses only firefighters, but includes this disqualification provision:

Any person applying for employment . . .
must:

* * *

(2) Neither have been convicted of a felony or of a misdemeanor directly related to the position of employment sought, nor have pled nolo contendere to any charge of a felony. If an applicant has been convicted of a felony, such applicant must be in compliance with s. 112.011(2)(b). If an applicant has been convicted of a misdemeanor directly related to the position of employment sought, such applicant shall be excluded from employment for a period of 4 years after expiration of sentence. If the sentence is suspended or adjudication is withheld in a felony charge or in a misdemeanor directly related to the position or employment sought and a period of probation is imposed, the applicant must have been released from probation.

25. The Rules employed by the Director to revoke Respondents' licenses do not include any similar exemption provision. Nor do the Rules allow for exception after passage of time following the felony conviction. Thus, the revocation provision is a strict standard and must be applied without exception.

26. The licenses of each Respondent was revoked in accordance with the Rules and done according to the procedures outlined therein.

27. The absence of fraud on the part of the Respondents themselves, individually, does not alter the fact that their licenses must be revoked under the strictly construed Rules.²

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Pinellas County Emergency Medical Services, Office of the Medical Director, revoking the certifications of each Respondent.

DONE AND ENTERED this 11th day of December, 2007, in
Tallahassee, Leon County, Florida.

S

R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of December, 2007.

ENDNOTES

^{1/} The affidavit upon which the Director relied to approve Stewart's application was not introduced into evidence. Therefore there can be no determination of whether it contained false information. However, for the reasons set forth herein, that does not alter the Conclusions of Law or Recommendation in this matter.

^{2/} Obviously, if the Director's office deems any of its Rules to contain a forgiveness or exemption policy, it may take action to rescind the revocation of Respondents' certifications notwithstanding the findings herein.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.