

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY EMERGENCY)
MEDICAL SERVICES, OFFICE OF)
THE MEDICAL DIRECTOR,)
)
Petitioner,)
)
vs.)
)
ADAM C. BAGINSKI)
)
Respondent.)
_____)

DOAH Case No. 07-4713
(R. Bruce McKibben, Judge)

ORDER

Pursuant to notice, a final hearing was conducted in this case on January 9, 2008, 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 Respondent: Robert G. Walker, Jr., Esquire
Robert G. Walker, P.A.
1421 Court Street, Suite F
Clearwater, Florida 33756

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Adam C. Baginski ("Baginski") committed the activities for which his certification was indefinitely revoked and whether his conduct constituted just cause for the revocation.

PRELIMINARY STATEMENT

On September 25, 2007, the Pinellas County Emergency Medical Services, Office of the Medical Director (hereinafter, "Director"), conducted an internal formal investigation to thoroughly investigate and document allegations of unprofessional conduct against Respondent. As a result of the investigation, the Director permanently revoked Respondent's Pinellas County paramedic certification. Respondent timely filed a challenge to the revocation, and this proceeding ensued.

At the final hearing held in this matter, the Director offered Exhibits 1 through 17 into evidence; each was accepted without objection. The Director called five witnesses: David Lock, quality assurance manager for Pinellas County Emergency Medical Services; William Newcomb, the patient whose complaint had initiated the investigation; Kristin Burns, an emergency medical technician (EMT), who had been teamed with Respondent on occasion; Victoria Glenn, the education and training director for Respondent's employer; and Dr. Laurie A. Romig, M.D., the medical director. Respondent testified on his own behalf but did not call any other witnesses. Respondent did not introduce any documentary evidence. The record was kept open for Respondent to file a response to any information contained on the audio tapes introduced (as Exhibits 1 and 2) during the final hearing. No response was filed as of the date the proposed recommended orders were due.

At the closing of the hearing, the parties advised that a transcript of the final hearing would be ordered. The parties were given ten days after the filing of the transcript at DOAH to submit proposed recommended orders. The transcript was filed on January 25, 2008. The Director and Respondent each timely filed a Proposed Recommended Order, and they were duly-considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Director is responsible for, inter alia, providing paramedic certifications in Pinellas County.

2. Respondent, Adam C. Baginski, was duly-certified as a paramedic by Pinellas County in February, 2005. Respondent was employed by Sunstar, n/k/a Paramedics Plus (hereinafter referred to as "Sunstar"), and had filed an application through his employer for certification by Pinellas County.

3. Respondent had first entered the general health care field as a lifeguard; he then became an EMT in 1994. After training received at the University of Toledo, Respondent became a paramedic in 2001. He held three positions in Ohio before coming to Florida, where he became employed by Lee County. After approximately nine months, he resigned his position with Lee County and went to work with Sunstar.

4. The application process in Pinellas County to obtain a paramedic certification entails a training seminar and a background check. The requisite background check is performed and attested to by the employer. At the training seminar, applicants are required to submit written responses to a two-page questionnaire. The questionnaire contains the following preface:

Please answer the following questions so that we may gather the necessary data to provide a positive, educational and stress-free learning experience. All information will be confidential.

At the end of the questionnaire, this statement is found:

By signing this release, I understand that any falsification, incomplete or misleading information contained on this application or in any documents presented to obtain County certification may be grounds for immediate suspension and/or revocation of my [sic] County Certification.

5. The Director processed Respondent's application for certification by first reviewing the questionnaire. On the first page of the questionnaire, Respondent listed all of his work experience in Ohio, but did not list his Lee County experience. He does not remember why he omitted that employment history, but thinks it may have been due to lack of adequate space on the line provided.¹ A cursory review of the questionnaire would show that appropriate space is provided. Notwithstanding the omission, this was not discovered until after the incident which triggered the original investigation, the Director issued a paramedic certification to Respondent.²

6. Upon receipt of his certification, Respondent began performing paramedic services for Pinellas County through his employer. He was generally partnered with one particular EMT for ambulance runs, but sometimes had a different partner if circumstances so dictated. (E.g., if his partner was ill or on vacation, he may be temporarily assigned to another EMT. It was generally the duty of the EMT to drive the ambulance and for the paramedic to perform direct care to the patient.)

7. On July 11, 2007, Respondent was on duty with Kristin Burns as his EMT for that shift. Respondent cannot remember why his regular partner was not there on that day.³ Respondent and Burns were responding to an emergency call when they were interrupted by dispatch and told to go to a different location. The new location was a doctor's office located at 929 First Avenue North in downtown St. Petersburg.

8. Before arriving on the scene, Respondent and Burns received a radio report indicating the fire department was already on the scene. Fire department employees had assessed the patient (William Newcomb) and determined him to be stable. As a result, the call

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was "downgraded" so that Respondent and Burns could proceed to the scene without lights or siren. A downgrade indicates the situation is no longer critical at that moment.

9. Upon arrival, Respondent talked to a firefighter and was told that the patient believed he might have a seizure and wanted to go to the VA Hospital. Respondent did not perform an initial medical assessment of the patient as required by the MOM Protocol. Moreover, although the patient informed Respondent that he was HIV positive, Respondent, again, did not perform any additional assessments to ascertain the patient's current health condition. Thereafter, the patient was secured on a stretcher, assisted into the ambulance, and transported to the Bay Pines VA Hospital. EMT Burns drove the ambulance and Respondent rode in the back with the patient. There is a window between the driver compartment and the back of the ambulance that allows some visual contact between the driver and the paramedic. Burns did not see Respondent provide any care to the patient.

10. Patient did not remember what care was rendered to him during the trip to the hospital. He did maintain that Respondent talked to him a lot about the patient not needing the ambulance. Newcomb signed the patient care report (twice) acknowledging Sunstar's billing practices and the receipt of – or offer of – a notice of privacy rights.

11. Despite Respondent's failure to provide any care to the patient, he completed a written patient care report documenting the following about Newcomb's health condition: (1) his airway was normal; (2) his breathing sounded clear on the right and left; (3) his temperature was normal; (4) his color was normal; (5) moisture was normal; and (6) his pupils, on the right and left, were normal.

12. When the ambulance reached the VA Hospital, EMT Burns was required to park farther than normal away from the front entrance doors because of ongoing construction and

other ambulances were ahead of her. Although EMT Burns informed Respondent that she was going to get the patient a wheelchair, Respondent told the patient to walk. Respondent provided no assistance to the patient.

13. Once inside the hospital, Respondent told the receptionist “[w]e were told to take him to triage. He basically wanted a free ride to the hospital, and I guess that’s what he got.” EMT Burns apologized to the patient for Respondent’s behavior and although EMT Burns had witnessed Respondent treat other non-critical patients unprofessionally, Respondent’s treatment of the patient was “the worst [she’s] ever seen.”

14. It is clear that Respondent failed to take the patient’s condition seriously. This is based upon the lack of documentation related to the patient’s symptoms and complaints, including virtually no information related to any assessments performed on the patient. Respondent failed to even attempt to ascertain the nature of the patient’s condition and despite admittedly knowing patient’s HIV status and that he could have been suffering from a stroke, Respondent failed to make a serious assessment of the patient’s medical condition. Further, Respondent failed to alert the hospital, as required, that the patient complained of suffering from a possible stroke or seizure. Instead, Respondent informed the hospital that “[h]e didn’t really tell me what his problem was . . . I wasn’t sure what exactly was going on.” Furthermore, rather than asking the patient about his medical condition, symptoms or performing assessments appropriate to the patient’s complaint, Respondent repeatedly questioned the patient telling him that he “didn’t need an ambulance.” Finally, Respondent provided no patient care whatsoever to the patient indicating that Respondent failed to take the patient’s condition seriously.

15. It is likewise clear that Respondent failed to adhere to established protocols to ascertain and provide a detailed assessment of the patient’s condition. Respondent did not

recognize or refused to consider the possibility that he needed to use MOM Protocol 5.34 (Stroke and Transient Ischemic Attack) to assess the patient. The stroke form, which Respondent readily admitted he failed to complete would have guided him through a series of questions to rule out the possibility of a stroke, and through a further assessment of the patient to determine the actual medical cause of the patient's complaint. Instead, Respondent gave more attention to "emphasizing that nothing was wrong [with Newcomb] than the possibility that there might be something wrong."

16. Respondent provided only partially accurate information on the patient care report related to the patient's condition. Respondent failed to document the very serious symptoms related by the patient, including "visual disturbances," "vertigo," "high-blood pressure, and possibly having a stroke."

17. Moreover, Respondent recorded three blood pressure results for the patient and represented that he performed the test by including his paramedic I.D. number next to the recorded treatment, but subsequently admitted that EMT Burns actually performed the initial set of vitals, a fact that he failed to record on the patient care report.

18. Respondent had previously been counseled by his employer regarding his relations with patients. Counseling came about as a result of complaints by patients, family members and other caregivers. Sunstar also disciplined Respondent based upon the Newcomb complaint, denying him a full week's worth of work shifts.

19. It is clear from the Respondent's demeanor that Respondent was not rehabilitated and that he treated Newcomb unprofessionally.

CONCLUSIONS OF LAW

20. 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).

21. Pursuant to Section 401.265, Florida Statutes (2007), a medical director is responsible for supervising and monitoring emergency medical technicians and paramedics. Subsection (2) states:

Each medical director shall establish a quality assurance committee to provide for quality assurance review of all emergency medical technicians and paramedics operating under his or her supervision. If the medical director has reasonable belief that conduct by an emergency medical technician or paramedic may constitute one or more grounds for discipline as provided by this part, he or she shall document facts and other information related to the alleged violation. The medical director shall report to the department any emergency medical technician or paramedic whom the medical director reasonably believes to have acted in a manner which might constitute grounds for disciplinary action. Such a report of disciplinary concern must include a statement and documentation of the specific acts of the disciplinary concern. Within 7 days after receipt of such a report, the department shall provide the emergency medical technician or paramedic a copy of the report of the disciplinary concern and documentation of the specific acts related to the disciplinary acts. If the department determines that the report is insufficient for disciplinary action against the emergency medical technician or paramedic pursuant to s. 401.411 the report shall be expunged from the record of the emergency medical technician or paramedic.

22. The Rules and Regulations of the Pinellas County Emergency Medical Services System (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.

* * *

D. Paramedics

1. Provisional Certification

Paramedics may obtain temporary extension of clinical privileges to provide ALS level patient care in the Pinellas County EMS System in the form of Provisional County Certification. Such provisional certification must be obtained by meeting the following criteria prior to participating in patient care at the ALS level:

* * *

2. Certification (Non-Provisional)

In addition to those requirements for provisional certification, Paramedics seeking to obtain County certification for full clinical privileges shall meet the following requirements:

- a. Current BTLS certification
- b. Passing score on the Medical Operation Manual (MOM) examination proctored by the Office of Medical Director.

- c. Successful completion of an interview with the Medical Director or designee.
- d. Submission of a request to obtain non-provisional County paramedic certification.
- e. Submission by the primary employing provider agency of a summary report of satisfactory completion of clinical orientation and demonstration of satisfactory patient care performance as documented in a manner specified by the Medical Director.
- f. Satisfactory completion of all required CME during the period since obtaining non-provisional certification status and on a continuous basis thereafter.
- g. Written approval by the Medical Director.

23. As part of the certification process, Respondent's employer submitted an affidavit in substantially the format dictated by the Director's Rules and Regulations. The affidavit stated:

AFFIDAVIT AS TO BACKGROUND

The undersigned duly authorized representative of Sunstar ("Provider") hereby certifies as follows:

1. Adam Baginski [Paramedic is circled] COUNTY EMS ID #747187 ("Applicant") is currently employed by Provider and has been employed by Provider since [Date] 1-17-05.

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 17 day of January, 2005.

[signed by Respondent] By: [signed by employer representative]
APPLICANT PROVIDER

Sworn to before me this 17 day of January, 2005.

[Signed and sealed by Notary Public]

24. The affidavit omitted one of the Respondent's places of employment which is material and relevant to his Pinellas County Certification, and which alone is sufficient to warrant revocation of his County certification.

25. The Director requires compliance with the Medical Operations Manual when dealing with certain types of patients. For patients exhibiting signs of a stroke or Transient Ischemic Attack, Section 5.34 of the manual is to be employed. That section directs the health care provider as to how to evaluate and intervene with stroke victims.

26. It is clear that the Director has the duty to invoke corrective action under provisions of rules and regulations a paramedic who does not conform to the rules and statutes governing their profession. The Director also has the burden of proof, by clear and convincing evidence, that the paramedic is guilty of violations. *Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co.*, 670 So. 2d 932 (Fla.

1996); *Ferris B. Turlington*, 510 So. 2d 292 (Fla. 1987); and *Pou v. Department of Insurance and Treasury*, 707 So. 2d 941 (Fla. 3d DCA 1998).

27. The evaluation of the patient conducted by Respondent was not in accordance with the Medical Operations Manual requirements as utilized by the Office of the Medical Director.

28. The evidence is clear and convincing that Respondent failed to take the patient's condition seriously, failed to adhere to established protocols and standards as established by the Office of the Medical Director to ascertain patient's condition, failed to successfully remediate his conduct/behavior toward patients despite several counseling and training sessions, failed to provide truthful information related to his employment background and that just cause exists warranting indefinite revocation of Respondent's Pinellas County Paramedic Certification.

ORDER

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

ORDERED, that the decision to terminate Respondents' certification as a paramedic in Pinellas County is hereby sustained.

DONE AND ENTERED this 3rd day of July, 2008 in Clearwater, Pinellas County, Florida.

PINELLAS COUNTY EMERGENCY MEDICAL
SERVICES, OFFICE OF THE MEDICAL
DIRECTOR

By: 
LAURIE A. ROMIG, M.D.
Medical Director

ENDNOTES

1/ Lee County job.

2/ The Director did not assert that it would not have certified Respondent if it knew he had omitted one of his prior places of employment.

Copies furnished to:

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