

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY EMERGENCY)
MEDICAL SERVICES, OFFICE OF THE)
MEDICAL DIRECTOR,)
)
Petitioner,)
)
vs.) Case No. 07-4713
)
ADAM C. BAGINSKI,)
)
Respondent.)
_____)

RECOMMENDED 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.

APPEARANCES

For Petitioner: Desiree Demonbreun, Esquire
Dawn Siler-Nixon, 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 Petitioner wrongfully revoked the Respondent's Pinellas County paramedic certification.

PRELIMINARY STATEMENT

On September 25, 2007, the Pinellas County Emergency Medical Services, Office of Medical Director (hereinafter, "Director"), conducted an internal formal investigation to thoroughly investigate and document allegations of unprofessional conduct charged 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 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 close of hearing, the parties advised that a transcript of the final hearing would be ordered. The parties were given ten days after filing of the transcript at DOAH to submit proposed recommended orders. The Transcript was filed on January 24, 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 Sun Star, n/k/a Paramedics Plus (hereinafter referred to as "Sun Star"), 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 life guard; 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 Sun Star.

4. The application process in Pinellas County to obtain 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, 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 telephone/radio reports 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 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.

9. Upon arrival, Respondent talked to a firefighter and was told that the patient believes he has had a seizure and wants to go to the VA hospital. It was again confirmed that the situation was not an emergency. The patient had walked to his eye doctor's office because he was having vision impairment. When the doctor could not see him, the patient called 911 and asked for an ambulance to take him to the hospital. There was no distress noted by the firefighters or Respondent.

10. The patient came out of eye doctor's office building and, using a walker, walked himself directly towards the waiting ambulance. Respondent began to question the patient at that time, attempting to assess his condition. All he was able to ascertain was that the patient wished to go to the VA hospital. The cot was taken out of the ambulance, the patient was strapped in, and the ambulance headed toward the VA hospital.⁴

11. During the trip to the VA hospital, Respondent and the patient were in the rear of the ambulance; Burns was driving. Respondent was seated in the "CPR seat" which is the seat to the right of 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 actually see Respondent provide any care to the patient (but it is unclear how well she could have seen into the rear of the vehicle due to its configuration).

12. Newcomb does not remember what care was rendered to him during the trip to the hospital. He believes his pulse and temperature may have been taken; his oxygen level was taken. He does not specifically remember what else was done. He cannot remember who helped him into the ambulance or much else about the trip. He does maintain that Respondent talked to him a lot about Newcomb's not needing the ambulance, but remembers little other than that. Newcomb signed the patient care report (twice) acknowledging Sun Star's billing practices and receipt of--or offer of--a Notice of Privacy Rights.

13. The patient care report filled out by Respondent to officially record the Newcomb case indicates Newcomb's vital signs were taken three times in the ambulance trip. In addition, a visual check was done to track any changes in the patient's eyesight. Respondent noted that Newcomb had no facial droops, he was speaking clearly, and he was using purposeful movements of his extremities. Each of these is a visual means of ascertaining a hostile patient's condition. Newcomb doesn't remember the trip well, and Burns did not see Respondent taking vital signs, but Respondent maintains he took the vital signs,

and they are recorded on the patient care report. There is no clear evidence as to whether that happened or not.

14. The conversations between Respondent and Newcomb were only partially overheard by Burns. She was driving an ambulance with a diesel engine in mid-day traffic. The window between the cab of the ambulance and the back was not open. There was no radio communication between Burns and Respondent during the ride to the VA hospital.

15. Burns could maintain some partial visual contact with Respondent during the ride. She could see through the window by turning her head around or she could glance in the rear view mirror. She remembers seeing Respondent sitting in the CPR seat at the patient's head. Respondent remembers sitting in the CPR seat at the patient's side. Newcomb remembers Respondent sitting at his right side. Whether Burns was able to see substantially all of Respondent's actions was not well established in the record.

16. When the ambulance reached the VA hospital, Newcomb walked under his own power to the triage area in the emergency room. Respondent walked in front of Newcomb, Burns walked behind. Whether Newcomb walked voluntarily or because Respondent told him to do so is not clear. Burns testified that Respondent told the patient to walk; the patient testified that he was more or less able to get out of the ambulance on his own

and walk; and Respondent testified that the patient moved out of the cot on his own accord. What actually transpired is unclear, but Newcomb expressed several times that EMT Burns was attentive to him. There is no evidence that he asked Burns for a wheelchair or other assistance.

17. When the ambulance arrived at the hospital, Newcomb was reported to be stable with no apparent distress. He ended up remaining at the hospital for about three hours, after which he walked out on his own power (using his walker), caught a taxi, and went home.

18. Back at the doctor's office, Newcomb had advised either the firefighters or Respondent that he (Newcomb) was HIV positive. Newcomb is extremely emotional and sensitive about his condition. It appears he drew conclusions about Respondent's feelings concerning the condition even though it was not discussed in any detail. Respondent must deal with HIV positive and AIDS patients regularly in the course of his work; it is unlikely this particular situation was significantly repulsive to him.

19. The dialogue between Respondent and Newcomb during the ride to the hospital was sometimes loud, sometimes heated, and not necessarily friendly. Burns heard some words exchanged concerning whether the ambulance was necessary. Respondent remembers the patient as uncooperative; Newcomb's recollection

is that Respondent was rude. There is insufficient evidence to ascertain anything other than that Respondent and Newcomb were not on amicable terms as patient and caregiver.

20. Respondent's demeanor and "bedside manner" were considered relevant by the Director in making a decision to revoke the paramedic certification. Past allegations against Respondent were discussed but none of them were founded; thus, they have no weight in this proceeding. Respondent had, however, been counseled by his employer regarding his relations with patients. The counseling came about as a result of complaints by patients, family members, and other caregivers. Sun Star also disciplined Respondent based on the Newcomb complaint, denying him a full week's worth of work shifts. The basis of the discipline was that Respondent had allegedly treated Newcomb unkindly because of the fact that Newcomb was HIV positive.

21. It is clear from Respondent's demeanor in the final hearing that he may not be a "people person." However, he is very knowledgeable about his work and possesses all the necessary medical skills. There was no evidence to support the allegation that he treated Newcomb unprofessionally due to Newcomb's HIV status.

CONCLUSIONS OF LAW

22. 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).

23. 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 concern. 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.

24. The Rules and Regulations of the Pinellas County Emergency Medical Services Systems (the "Rules") includes 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

25. There does not seem to be any dispute that Respondent satisfied the basic requirements for certification.

26. 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, as 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]
APPLICANT

By: [signed by employer representative]
PROVIDER

Sworn to before me this 17 day of January, 2005

Signed and sealed by Notary Public]

27. The nature of the affidavit leaves no doubt that Respondent's prior employment record was both investigated and confirmed by Sun Star. The affidavit was then relied upon by the Medical Director as a basis for issuing certification to Respondent. The concern raised by the Director that Respondent omitted one of his places of employment in the questionnaire is without merit.

28. 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 supposed to be employed.

That section directs the health care provider as to how to evaluate and intervene with stroke victims.

29. It is clear that the Director has the duty to discipline 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. 3rd DCA 1998).

30. The evaluation of the patient conducted by Respondent, while admittedly not as full and complete as it might have been with a more cooperative subject, was nonetheless in accordance with the Medical Operations Manual requirements utilized by the Director's office.

31. The evidence in this case does not rise to the level of clear and convincing. Respondent may have some reticence to handling non-emergency cases. His bedside manner may not be what it could be. But, there is no evidence that, in the actions at issue in this proceeding, Respondent failed to meet the standards of professionalism.

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, reversing the decision to terminate Respondent's certification as a paramedic in Pinellas County.

DONE AND ENTERED this 14th day of February, 2008, 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 14th day of February, 2008.

ENDNOTES

^{1/} It should be noted that Respondent also submitted an affidavit from Sun Star indicating Sun Star had contacted all of Respondent's prior employers. The Sun Star application filed by Respondent did include the Lee County job; so, the fact it was left off the written questionnaire is not extremely pertinent. Besides, the omission of a prior employment on the questionnaire does not mandate discipline by the Director; it is purely discretionary by the Director depending on the intent of the applicant.

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.

3/ Respondent and Burns had been teamed together for approximately three other shifts prior to the incident at issue. Burns had never seen anything concerning Respondent's work that was outside the boundaries of professionalism.

4/ The VA hospital was not the closest facility to the scene, but the patient was adamant that he needed to go there. The response team acquiesced to his demand.

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.