

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BUREAU OF)
EMERGENCY MEDICAL SERVICES,)
)
Petitioner,)
)
vs.) Case No. 11-0065PL
)
JULIO R. COLON,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on June 29, 2011, in Orlando, Florida, before Susan Belyeu Kirkland, f/n/a Susan B. Harrell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Richard McNelis, Esquire
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399

For Respondent: (No appearance)

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated section 401.411(1)(g), Florida Statutes (2009),^{1/} and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On November 19, 2010, Petitioner, Department of Health (Department), filed an Administrative Complaint against Respondent, Julio R. Colon (Mr. Colon), alleging that he violated section 401.411(1)(g). Mr. Colon filed a Petition for Formal Hearing, requesting an administrative hearing. The case was forwarded to the Division of Administrative Hearings on January 10, 2011, for assignment to an Administrative Law Judge.

The final hearing was scheduled for March 25, 2011. On February 16, 2011, Mr. Colon filed Respondent's Consent Motion to Continue Final Hearing. The final hearing was rescheduled for May 10, 2011.

On April 27, 2011, counsel for Mr. Colon requested to withdraw. On April 29, 2011, the Department filed Department's Motion to Amend Administrative Complaint Based on Newly Discovered Evidence, attaching the Amended Administrative Complaint. On May 12, 2011, an Order was entered granting the motion to amend the Administrative Complaint, and the Amended Administrative Complaint was deemed filed as of the date of the Order. On May 6, 2011, an Order was issued granting the request to withdraw as counsel, and an Order was entered continuing the final hearing to June 29, 2011.

The final hearing was scheduled to commence at 9:00 a.m. on June 29, 2011, and Mr. Colon had been provided notice of the

hearing date and time. At the appointed time, Mr. Colon did not appear nor did any representative of Mr. Colon appear on his behalf. The commencement of the final hearing was delayed for 30 minutes to give Mr. Colon to an opportunity appear, but he did not. To date, Mr. Colon has not contacted the Division of Administrative Hearings concerning his failure to appear.

At the final hearing, the Department called George A. Ralls, M.D., as its witness. Petitioner's Exhibits 1 through 5 were admitted in evidence. No witnesses or evidence were presented on behalf of Mr. Colon.

The Transcript was filed on August 11, 2011. The Department filed its proposed recommended order on August 15, 2011. No post-hearing submittal was filed by Mr. Colon.

FINDINGS OF FACT

1. Mr. Colon is eligible for Emergency Medical Technician (EMT) licensure, license number EMT 50126, and is licensed as a paramedic, license number PMD 510323.

2. On January 15, 2011, Mr. Colon pled nolo contendere to a charge of exposure of sexual organs in Case No. 09-003621-MMM-A in the County Court, Fifth Judicial Circuit in and for Hernando County, Florida. Adjudication was withheld, and Mr. Colon was placed on probation for one year and sentenced to 25 hours of community service.

3. On January 15, 2011, Mr. Colon pled nolo contendere to a charge of exposure of sexual organs in Case No. 09-003622-MMM-A in the County Court, Fifth Judicial Circuit in and for Hernando County, Florida. Adjudication was withheld, and Mr. Colon was placed on probation for one year and sentenced to 25 hours of community service. The sentence in Case No. 09-003622-MMM-A ran concurrently with the sentence in Case No. 09-003621-MMM-A.

4. One of the cases dealt with an argument that Mr. Colon had with a young lady. Mr. Colon had made a u-turn into the drive way of a mobile home park, and saw a young lady walking by. Mr. Colon and the young lady had words, and the young lady make a remark that Mr. Colon considered derogatory. He got out of his car sans his lower garments; showed the young lady his anatomy, bare from the waist down; and told her to kiss his ass. He got back into the car, knowing that he had done a very stupid thing, and drove off. The young lady took a picture of Mr. Colon's bareness with her telephone.

5. The other case dealt with Mr. Colon again lowering his pants at a school. Mr. Colon admitted to an officer of the Hillsborough County Sheriff's office that the incidents were identical as far as the amount of clothing that he was not wearing. Again, Mr. Colon's nakedness was caught by a camera.

Mr. Colon thinks that the reason that he showed himself on this occasion was a result of a bet that he lost.

6. Mr. Colon admitted to the officer of the Hillsborough County Sheriff's Office that on at least three to four other occasions that he has disrobed while outdoors. He contends that these occasions happened late at night when he was drunk and stupid.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 & 120.57, Fla. Stat. (2010).

8. The Department has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

9. The Department has alleged that Mr. Colon violated section 401.411(1)(g), which provides:

(1) The department may deny, suspend, or revoke a license, certificate, or permit or may reprimand or fine any licensee, certificateholder, or other person operating under this part for any of the following grounds:

* * *

(g) Unprofessional conduct, including, but not limited to, any departure from or failure to conform to the minimal prevailing standards of acceptable practice as an

emergency medical technician or paramedic, including undertaking activities that the emergency medical technician or paramedic is not qualified by training or experience to perform.

10. The Department contends that crimes to which Mr. Colon pled nolo contendere were acts of unprofessional conduct.

Section 401.411(1)(g) lists certain conduct which is considered to be unprofessional. The conduct that is listed pertains to the actual practice of a paramedic or an emergency medical technician. In determining whether the plea of nolo contendere to crimes of exposure of sexual organs in situations in which the practice of a paramedic or an emergency medical technician is not involved constitutes unprofessional, the doctrine of ejusdem generis is applicable. "This doctrine means that 'where an enumeration of specific things is followed by some more general word or phrase, such general word or phrase will usually be construed to refer to things of the same kind of species as those specifically enumerated.'" Arnold v. Shumpert, 217 So. 2d 116, 119 (Fla. 1968), citing Children's Bootery v. Sutker, 107 So. 345 (Fla. 1926).

11. In the instant case, the general term, "including, but not limited to," is referring to conduct that deals with conduct involving the practice of a paramedic or an emergency medical technician. While Mr. Colon's conduct may have been immoral, section 401.411 does not provide for discipline for immoral acts

not committed in the practice of a paramedic or an emergency medical technician.

12. The Department has failed to establish that Mr. Colon violated section 401.411(1)(g).

13. In its proposed recommended order, the Department contends that Mr. Colon lied to the officer of the Sheriff's Department who interviewed Mr. Colon. No allegations in the Amended Administrative Complaint refer to Mr. Colon lying to law enforcement officials.

14. In its proposed recommended order, the Department contends that Mr. Colon is impaired and is unfit to perform his duties as a paramedic or an emergency medical technician. No such allegations were alleged in the Amended Administrative Complaint.

15. Violations not alleged in the Amended Administrative Complaint cannot form a basis for disciplining Mr. Colon. To find a respondent guilty of a violation for which he was not charged is a violation of due process. Wray v. Dep't of Prof'l Reg., 435 So. 2d 312, 315 (Fla. 1st DCA 1983).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered dismissing the Amended Administrative Complaint against Mr. Colon.

DONE AND ENTERED this 23rd day of August, 2011, in
Tallahassee, Leon County, Florida.

Susan Belyen Kirklund

SUSAN B. KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of August, 2011.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida
Statutes are to the 2009 version.

COPIES FURNISHED:

Richard McNelis, Esquire
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399

Julio Colon
1070 Providence Lane
Oviedo, Florida 32765

Vicki R. Grant, Executive Director
Council on Medical Physicists
Department of Health
Certification Unit
4052 Bald Cypress Way, Bin C07
Tallahassee, Florida 32399-3257

Nicholas Romanello, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1701

Wayne Mitchell, General Counsel
Council on Medical Physicists
Department of Health
Fort Knox Building Three
2727 Mahan Drive
Tallahassee, Florida 32308-5403

R. S. Power, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, FL 32399-1701

H. Frank Farmer, M.D., Ph.D., Secretary
State Surgeon General
Department of Health
4052 Bald Cypress Way, Bin A00
Tallahassee, Florida 32399-1701

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.