

By: Angel Saucedo
Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DIVISION OF ADMINISTRATIVE HEARINGS

DATE 10/11/11

FILED

Department of Health, Bureau
of Emergency Medical Services,
Petitioner,

vs.

Julio R. Colon,
Respondent.

DOH case nos.: 2009-19750
2009-20051
DOAH case no.: 11-0065PL

FINAL ORDER

This is an adjudicatory proceeding pursuant to sections 120.57(1), Florida Statutes. A recommended order having been received, this matter is before Department of Health (Department) for disposition.

The Bureau's amended administrative complaint¹ filed May 12, 2011, notified the Respondent, a certified paramedic, of the Bureau's intent to revoke both certification as a paramedic and eligibility for certification as an emergency medical technician². The amended administrative complaint (hereinafter the administrative complaint) cites the Respondent for unprofessional conduct in violation of section 401.411(1)(g), Florida Statutes. The Respondent filed a petition for a formal hearing, and this proceeding ensued. The Respondent **did not appear** in person or by counsel at the final hearing held on June 29, 2011. To date the Respondent has not contacted the Department regarding his failure to appear.

The Administrative Law Judge (hereinafter ALJ) made detailed findings of fact on the Respondent's history of public exposure of his sexual organs (formerly known as indecent exposure) including criminal convictions and such an incident at a school. The ALJ then concludes in her findings of law that because none of the incidents occurred in the context of "actual practice of a paramedic or an emergency medical technician", the series of incidents of public exposure do not constitute unprofessional conduct, and recommends that this disciplinary proceeding be dismissed. This conclusion

¹ Incorporated by reference as composite exhibit B.

² See section 401.411(2), Florida Statutes.

and recommendation are rejected. See *Miles vs. Florida A and M University*, 813 So.2d 242 (Fla. 1st DCA 2002) for the deference to be accorded to an agency's interpretation of a statute it is charged with enforcing. In *Bell vs. School Board*, 681 So.2d 843, (Fla. 3rd DCA 1996) the Court held that the School Board was not bound by the hearing officer's interpretation of the School Board's rule as to whether undisputed misconduct constituted "conduct unbecoming a School Board employee". In *Ashe v. Department of Professional Regulation*, 467 So.2d 814, (Fla. 1st DCA 1985), the Court noted that "even though the appellant's fraudulent acts involving gambling do not relate to the technical ability to practice" his profession, public accounting, and did not arise out of misconduct in the office setting; discipline was properly imposed.

The Department concludes that the plain language of section 401.411(1)(g), does not limit the definition of unprofessional conduct to acts committed in the actual practice of a paramedic or emergency medical technician. The statutory language ". . . including, but not limited to . . ." allows the Department to utilize adjudication to flesh out the scope of misconduct constituting unprofessional conduct. See section 120.54(1)(a)2.b., Florida Statutes; cf., *Dept. of Legal Affairs vs. Father and Son Moving & Storage, Inc., et al.*, 643 So.2d 22 (Fla. 4th DCA 1994), *review den.*, 651 So.2d 1193 (Fla. 1995). Here, the Administrative Law Judge's findings of fact (paragraphs 2 through 6 of the Recommended Order) regarding the Respondent's history of public exposure of his sexual organs is more than sufficient to constitute unprofessional conduct under section 401.411(1)(g), Florida Statutes.

In a disciplinary proceeding, the penalty to be imposed resides within the discretion of the agency so long as the penalty imposed is within the range authorized by law, based on the record, and not arbitrary. See *Criminal Justice Standards and Training Commission vs. Bradley*, 596 So.2d 661, 664 (Fla. 1992).

The entire record of this proceeding has been reviewed. Counsel for the Department seeks revocation of the Respondent's certification and the

imposition of a fine of at least three thousand dollars (\$3,000). I concur as to revocation. The pattern of misconduct described by the ALJ suggests the possibility of an element of compulsion in the behavior. I strongly recommend that the Respondent obtain counseling before seeking reinstatement pursuant to section 401.411(3), Florida Statutes.

The recommended order of August 23, 2011, is adopted and incorporated herein, except where rejected or modified in this final order. The recommended order is marked as exhibit A and incorporated by reference.

Based on the foregoing, the Respondent, Julio Colon, is disciplined as follows: his certification as a paramedic, and eligibility for EMT certification are revoked.

DONE and **ORDERED** this 10th day of October 2011 in Tallahassee, Leon County, Florida.

H. Frank Farmer, Jr., MD, PhD, FACP
State Surgeon General

By: 

Steven G. Harris, MD, MSc
Deputy State Health Officer

NOTICE

A PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. A JUDICIAL REVIEW PROCEEDING IS GOVERNED BY THE RULES OF APPELLATE PROCEDURE. JUDICIAL REVIEW IS COMMENCED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. A NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING OF THIS FINAL ORDER.

Copy furnished to each of the following:

Hon. Susan B. Kirkland	John Bixler, Chief
Administrative Law Judge	Department of Health
Division of Administrative Hearings	Bureau of Emergency Medical Services
1230 Apalachee Parkway	4052 Bald Cypress Way, bin C-18
Tallahassee, Florida 32399-3060	Tallahassee, Florida 32399-1738

Julio Colon
1070 Providence Lane
Oviedo, Florida 32765

Gail Curry
Department of Health
EMT/Paramedic/Rad Tech Certification
4052 Bald Cypress Way, bin C-85
Tallahassee, Florida 32399-1741

Richard McNelis, Esquire
Department of Health
4052 Bald Cypress Way, bin A-02
Tallahassee, Florida 32399-1703

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing FINAL ORDER has been served by ordinary mail via the United States Postal Service, inter-office mail, electronic transmission, or by hand delivery to each of the above-named persons this 11th day of October 2011.

Angel Sardenas

Deputy Agency Clerk
Department of Health
4052 Bald Cypress Way, bin C-01
Tallahassee, Florida 32399-3251
phone: (850)245-4121

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BUREAU
OF EMERGENCY MEDICAL SERVICES,

Petitioner,

Case No.: 2011 – 0065PL
2009 - 19750
2009 - 20051

v.

JULIO R. COLON,

Respondent.

AMENDED ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health (Department), by and through its undersigned attorney, and files its Amended Administrative Complaint against

Respondent JULIO R. COLON (Colon) and alleges:

1. Department is the state agency charged with regulating emergency medical services pursuant to section 20.43, Florida Statutes, and Chapters 120, and 401, Florida Statutes.
2. At all times material hereto, Colon has been eligible for EMT licensure and licensed as a Paramedic, license numbers EMT 501526 and PMD 510323.
3. All classifications of EMS licensure held by Colon are subject to any Final Order which issues in this case, as provided by section 410.411(2), Florida Statutes.
4. Colon's address of record is 1070 Providence Lane, Oviedo, Florida 32765.
5. When transporting patients who need emergency medical care, typically the Paramedic rides in the back of the ambulance with the patient to provide necessary medical care, while the EMT drives the ambulance.

6. On January 15, 2010, Colon pled nolo contendere and had adjudication of guilt withheld for exposing his sexual organs to T.A., a misdemeanor in the first degree, in Case No. 09-003621-MMM-A. Composite Exhibit A.
7. Colon was sentenced to one (1) year probation and 25 hours of community service in connection with Case No. 09-003621-MMM-A.
8. Colon's January 15, 2010 nolo plea and criminal sentence in Case No. 09-003621-MMM-A violated section 401.411(1)(g), Florida Statutes, because Colon committed a crime that is unprofessional conduct.
9. On January 15, 2010, Colon also had adjudication of guilt withheld for exposing his sexual organs to C.M., a misdemeanor in the first degree, in Case No. 09-003622-MMM-A. Composite Exhibit A.
10. Colon was sentenced to one (1) year probation and 25 hours of community service, to run concurrently with the sentence in Case No. 09-003621-MMM-A.
11. Colon's January 15, 2010 nolo plea and criminal sentence in Case No. 09-003622-MMM-A violated section 401.411(1)(g), Florida Statutes, because Colon committed a crime that is unprofessional conduct.
12. Section 401.411(1)(a), Florida Statutes, provides that a licensee may be disciplined for violation of section 401.411(1)(g), Florida Statutes.

CLAIM FOR RELIEF

WHEREFORE, Department respectfully requests the DOAH presiding officer enter a recommended order finding that Colon's misconduct is unprofessional conduct, unacceptable for EMS licenseholders as charged above, and recommending, pursuant to section 401.411(1), Florida Statutes, that Colon be disciplined by the following measures:

- a. Revocation of his EMS licensure;

- b. An administrative fine of at least \$3000.00 – \$1000.00 for each offense, the total amount to be determined by the presiding officer based on Colon's admissions to law enforcement during his September 2009 interview;
- c. Strict compliance with any Final Order imposing professional discipline for misconduct alleged in this matter. Any material deviation from or failure to comply with any provision of the Final Order in this case shall constitute unprofessional conduct within the meaning of sec. 401.411(1)(g), Florida Statutes, and may result in renewed prosecution and imposition of additional discipline for such unprofessional conduct. If Colon is revoked as a disciplinary sanction, Colon shall pay all administrative fines relevant thereto before seeking reinstatement.

Dated this ____ day of _____, 20__.

Respectfully submitted,

RICHARD MCNELIS
Assistant General Counsel

Richard P. McNelis
Assistant General Counsel
Bin #C18
4052 Bald Cypress Way
Tallahassee FL 32399-1703
Telephone: 850-245-4028
Florida Bar #0990485

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of this Amended Administrative Complaint was furnished by hand delivery/U.S. Postal Service delivery to Respondent Julio R. Colon or counsel for Colon at his address of _____

_____ on this
____ day of _____, 20____.

Richard P. McNelis
Assistant General Counsel

IN THE COUNTY COURT, 5th JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FL

ORDER

STATE OF FLORIDA VS. COLON, JULIO R
PROSECUTOR: LEHMAN, RICHARD A
ATTORNEY: HYSLOP, PEYTON
CASE NUMBER: 09003621MMMA

DEF D.O.B:

EVENT DATE: 01/15/2010
JUDGE: DES SCAGLIONE, DONALD E
HEARING TYPE: PRE TRIAL & MOTN HRG
CUSTODY LOCATION: PROBATION

80003

EXPOSURE OF SEXUAL ORGANS LEV: M DEG: F

MOTIONS/WAIVERS:

CONTINUANCES:

DEFENDANT PRESENT

PLEA/DISPOSITION:

BOND ACTION:

CNT: [1] FINAL PLEA: NOLO CONTENDERE
CNT: [1] DISP: WITHHELD

SU-AA09746533: 1,000.00 GENE HOOD BAIL BONDS
SURETY BOND AA09746533 RELEASED \$1000.00

SENTENCE PROVISIONS/NOTES/MONETARY OBLIGATIONS:

CNT: [1] REPORTING PROBATION FOR 001 YRS 00 MOS 00 DYS
CNT: [1] SENTENCE IS CONCURRENT WITH 09003622MMMA 1
CNT: [1] COMMUNITY SERVICE FOR 25 HOURS

CHRG 1 NO EARLY TERMINATION
CHRG 1 APRX FINES/COSTS \$388.50 DEF TO CONT WITH
COUSLING CAN REPORT BY MAIL
PREVIOUS PLEA WITHDRAWN
MAY BUY OUT COMM SRV HRS AT \$10 PER HOUR
CLOSED CASE

CERTIFIED TO BE A TRUE COPY
KAREN NICOLAI
CLERK OF THE CIRCUIT COURT



BY: *E. J. Millett* D.C.

THIS 7 DAY OF July A.D. 2010

*** If the defendant is not placed on probation, he/she must report immediately to Room 136, Hernando County Government Center to establish a payment plan with the Clerk of Courts if unable to pay in full when sentenced. If incarcerated, the defendant shall report to Room 136 within 72 hours of release from custody to establish a payment plan.

FAILURE TO COMPLY MAY RESULT IN A CAPIAS/WARRANT/RCO BEING ISSUED FOR YOUR ARREST AND WILL RESULT IN FORFEITURE OF ANY BOND

DEFENDANT/ATTORNEY FOR DEFENDANT

DONE AND ORDERED IN OPEN COURT/CHAMBERS, ON 01/15/2010.

Ranelle A. Morse

[Signature]

DEPUTY CLERK

JUDGE

CLERK

SAO

PD/ATTORNEY

PROBATION

DEFENDANT/JAIL

BONDSMAN

JAIL

IN THE COUNTY COURT, 5th JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FL

ORDER

STATE OF FLORIDA VS. COLON, JULIO R
PROSECUTOR: LEHMAN, RICHARD A
ATTORNEY: HYSLOP, PEYTON
CASE NUMBER: 09003622MMMA

DEF D.O.B:

EVENT DATE: 01/15/2010
JUDGE: DES SCAGLIONE, DONALD E
HEARING TYPE: PRE TRIAL & MOTN HRG
CUSTODY LOCATION: PROBATION

80003

EXPOSURE OF SEXUAL ORGANS LEV: M DEG: F

MOTIONS/WAIVERS:

CONTINUANCES:

DEFENDANT PRESENT

PLEA/DISPOSITION:

BOND ACTION:

CNT: [1] FINAL PLEA: NOLO CONTENDERE
CNT: [1] DISP: WITHHELD

SU-AA09746534: 1,000.00 GENE HOOD BAIL BONDS
SURETY BOND AA09746534 RELEASED \$1000.00

SENTENCE PROVISIONS/NOTES/MONETARY OBLIGATIONS:

CNT: [1] REPORTING PROBATION FOR 001 YRS 00 MOS 00 DYS CHRG 1 NO EARLY TERMINATION
CNT: [1] SENTENCE IS CONCURRENT WITH 09003621MMMA 1 CHRG 1 APRX FINES/COSTS \$388.50 DEF TO CONT WITH
CNT: [1] COMMUNITY SERVICE FOR 25 HOURS COUNSELING CAN REPORT BY MAIL
PREVIOUS PLEA WITHDRAWN
MAY BUY OUT COMM SRV HRS AT \$10 PER HOUR
CLOSED CASE

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DEFENDANT/ATTORNEY FOR DEFENDANT

By: *Ranelle A. Mouse*

DEPUTY CLERK

DONE AND ORDERED IN OPEN COURT/CHAMBERS, ON 01/15/2010.

CLERK

SAO

PD/ATTORNEY ✓

PROBATION

DEFENDANT/JAIL ✓

JUDGE

BONDSMAN ✓

JAIL



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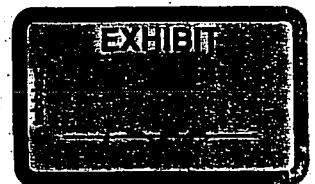
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Julio R. Colon
 1070 Providence Lane
 Oviedo, Florida 32765

EMS Case Nos.: 2009-19750 & 2009-20051
 DOAH Case No.: 2011-0065