

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BUREAU OF
EMERGENCY MEDICAL SERVICES,

Petitioner,

vs.

Case No. 21-1363PL

ANDRES PEREZ, E.M.T.-P.,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted before Administrative Law Judge (“ALJ”) Mary Li Creasy by Zoom conference on September 30, 2021.

APPEARANCES

For Petitioner: Kimberly Lauren Marshall, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: Gary Ira Rosenberg, Esquire
Gary Rosenberg P.A.
1555 North Park Drive, Suite 103
Weston, Florida 33326

STATEMENT OF THE ISSUE

Whether Respondent violated section 401.411(1)(b), Florida Statutes (2019), by entering a plea of nolo contendere to crimes related to his practice as an emergency medical technician (“EMT”) and paramedic (jointly referred to as an “EMT-P”).

PRELIMINARY STATEMENT

Respondent, Andres Perez, an EMT-P, licensed in Florida, entered a plea of nolo contendere on March 5, 2020, to three counts of child abuse with no great bodily harm, third-degree felony violations of section 827.03(2)(c), Florida Statutes, and adjudication was withheld. On October 27, 2020, an Administrative Complaint was filed by Petitioner, Department of Health, Bureau of Emergency Medical Services, alleging that Child Abuse/No Great Bodily Harm is a crime related to the practice, or ability to practice, Respondent's profession, and his nolo plea warrants a penalty in accordance with section 401.411(1)(b).

Petitioner timely challenged the Administrative Complaint. The matter was referred to the Division of Administrative Hearings ("DOAH") on April 22, 2021. Petitioner filed an Unopposed Motion to Continue Final Hearing from June 23, 2021, which was granted. The final hearing was held on September 30, 2021.

Petitioner presented the deposition testimony of James Tucker, EMT-P, who was proffered as an expert but was accepted only as a fact witness. Petitioner's Exhibits 1 and 2 were admitted into evidence. Respondent testified on his own behalf and offered no exhibits.

The Transcript was filed on November 4, 2021. Both parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order. Unless otherwise indicated, citations to the Florida Statutes refer to the version in effect at the time of the alleged violation.¹

¹ This refers to the entry of the nolo contendere plea, not the date of the alleged crimes.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating EMTs and paramedics pursuant to section 20.43 and chapters 401 and 456, Florida Statutes.
2. Section 401.411(1)(b) provides that being found guilty of, or pleading nolo contendere to, regardless of adjudication in any jurisdiction, a crime that relates the practice as an EMT or paramedic, or to practice in any other occupation, constitutes grounds for discipline.
3. At all times material to this proceeding, Respondent was licensed as an EMT in Florida, who was issued certificate number EMT 519105 on or about August 27, 2007; and as a paramedic, who was issued certificate number PMD 515150 on or about July 3, 2008.
4. On April 13, 2019, Respondent was arrested by the Miami-Dade Police Department, Special Victims Unit, for lewd and lascivious molestation on a child under 12, in violation of section 800.04(5)(b), Florida Statutes.
5. On March 5, 2020, in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, in case number F19-007289, Respondent entered a plea of nolo contendere to three counts of child abuse with no great bodily harm, third-degree felony violations of section 827.03(2)(c), and adjudication was withheld.
6. Prior to his arrest, Respondent served in a variety of capacities as an EMT-P. Most recently, Respondent was employed as a technician in the adult emergency room of Jackson Memorial Hospital since 2013. Until the instant proceeding, Respondent's license was never previously disciplined.
7. Respondent admits that some, but not all, of his experiences as an EMT-P placed him in the presence of children. However, in the positions held by Respondent immediately prior to his arrest, he had no contact with children as part of his job duties. In fact, Respondent declined an opportunity to work in the pediatric emergency room of Jackson Memorial Hospital

because he believes handling emergencies with children is much more difficult and does not care for that work.

8. Both Petitioner's witness, James Tucker, and Respondent agreed that EMT-Ps who work in a firehouse or on an ambulance crew are often called to emergencies involving children or where children may briefly be supervised by EMT-Ps if their parents are taken to the hospital.

9. However, Respondent provided a description of several EMT-P roles that can be performed other than working on a rescue truck that would preclude contact with children. These include working in a long-term geriatric care facility, adult emergency room, or medical imaging center.

10. Respondent's terms of probation include a prohibition from having unsupervised contact with minors without the court's permission. The plea agreement specifies that supervised contact "does not include situations where an adult is present but is unaware that the Defendant is prohibited by law from unsupervised contact with minors, or who is unaware that the Defendant has been convicted of child abuse." The plea agreement further specifies that "supervised contact does not include situations where the purported supervisor cannot or does not see the Defendant the entire time that the minor child is in the presence of the Defendant."

11. Under the terms of the plea agreement, Respondent is prohibited from "entering into any profession, taking any job, volunteering, or becoming involved in any activity or hobby which involves the teaching of, supervision of, baby-sitting of, care of, custody of, control over, contact with, or tends to place him in contact with minor children." The terms of Respondent's plea agreement also prohibit Respondent from "working or volunteering at any place where children regularly congregate, including, but not limited to, schools, child care facilities, parks, playgrounds, pet stores, libraries, zoos, theme parks, and malls."

12. Respondent acknowledged EMTs and paramedics frequently visit schools and daycares to pick up patients or put on educational events. Young

children frequently visit EMTs' and paramedics' place of employment to see fire trucks and ambulances.

13. Respondent is aware of the adverse consequences of violating probation and has no intention of doing so in the future by working with children.

14. Respondent's plea agreement prohibits him from wearing a uniform "at any time for any purpose." Mr. Tucker and Respondent both testified that wearing a uniform is a standard component of an EMT's and paramedic's job.

15. No details were provided regarding the nature of allegations against Respondent and the underlying criminal charges. Respondent asserted that the arrest and plea were the result of an angry family member and had no basis in fact. Respondent claims he accepted a plea to avoid the risks of a trial.

CONCLUSIONS OF LAW

16. DOAH has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2021).

17. This is a disciplinary proceeding against Respondent's license. As such, Petitioner bears the burden, by clear and convincing evidence, to establish the grounds for discipline against Respondent's license. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987); *Coke v. Dep't of Child. & Fam. Servs.*, 704 So. 2d 726 (Fla. 5th DCA 1998).

18. In *Evans Packing Company v. Department of Agriculture and Consumer Services*, 550 So. 2d 112 (Fla. 1st DCA 1989), the court defined clear and convincing evidence as follows:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and

explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief of conviction, without hesitancy, as to the truth of the allegations sought to be established.

Id. at 116 n.5 (citing *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

19. Disciplinary statutes and rules “must be construed strictly, in favor of the one against whom the penalty would be imposed.” *Munch v. Dep’t of Pro. Regul., Div. of Real Estate*, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992).

20. The grounds proving Petitioner’s assertion that Respondent’s license should be disciplined must be those specifically alleged in the Administrative Complaint. *See e.g., Trevisani v. Dep’t of Health*, 908 So. 2d 1108 (Fla. 1st DCA 2005); *Kinney v. Dep’t of State*, 501 So. 2d 129 (Fla. 5th DCA 1987); and *Hunter v. Dep’t of Pro. Regul.*, 458 So. 2d 842 (Fla. 2d DCA 1984).

21. Section 401.411(1)(b) authorizes Petitioner to impose discipline against a licensee for “being found guilty of, or pleading nolo contendere to, regardless of adjudication in any jurisdiction, a crime that relates to practice as an EMT or paramedic, or to practice in any other occupation, when operating under this part.”

22. Respondent admits that he is licensed as an EMT-P and that he entered a plea of nolo contendere to three felony counts of child abuse.

23. The central issue in this matter is whether, under these circumstances, the crime of child abuse is related to the practice of an EMT and paramedic. It is well founded that a crime need not be related to the technical practice of a profession to serve as the basis for discipline. *Greenwald v. Dep’t of Pro. Regul.*, 501 So. 2d 740 (Fla. 3d DCA 1987). Additionally, the potential danger that the particular crime poses to the public is to be considered. *See Dep’t of Health v. Gustavo B. Borges, D.D.S.*, Case No. 12-0005PL (Fla. DOAH Mar. 12, 2013; Fla. DOH June 17, 2015).

24. The conviction of, or plea of nolo contendere to, a crime which contemplates the use of force or violence against a person may, depending on the surrounding facts and circumstances, evidence a “warped judgment and a disregard for human life” obligating the revocation of the healthcare practitioner’s license. *Dep’t of Health v. Joseph Forlizzo, D.C.*, Case No. 98-4865PL (Fla. DOAH Oct. 27, 2000; Fla. DOH Jan. 29, 2021).

25. On numerous occasions, ALJs have found that the crime of possession of child pornography relates to the practice of healthcare professions.² If possession of child pornography is related to the practice of a healthcare profession, it stands to reason that child abuse, involving direct harm to an actual child, is also related, and indeed may be even more serious. This is particularly true when, as in the present matter, that abuse was sexual in nature and perpetrated against a young child.

26. The practice of an EMT and paramedic often places a practitioner in contact with children or in places where children congregate. This practice also includes extended, unsupervised contact with children. Additionally, many EMT and paramedic positions, including the position to which Respondent purportedly aspires to return, require the wearing of a uniform, another condition that is prohibited by Respondent’s probation.

27. The terms of Respondent’s probation are irreconcilable with the environments, situations, and way EMTs and paramedics practice their professions.

28. The appropriate penalty in this case is revocation and is supported by consideration of the following factors:

a. Respondent’s crime demonstrates disregard for the safety of vulnerable individuals;

² See, e.g., *Dep’t of Health v. Christopher S. Carter, M.D.*, Case No. 12-1575PL (Fla. DOAH Nov. 26, 2012; Fla. DOH Feb. 12, 2013); *Dep’t of Health v. David Allen Bressette, L.D.O.*, Case No. 20-3419PL (Fla. DOAH Oct. 27, 2020; Fla. DOH Jan. 29, 2021); *Dep’t of Health v. Isaac A. Levinsky, Ph.D.*, Case No. 20-0447PL (Fla. DOAH Oct. 23, 2020; Fla. DOH Feb. 22, 2021).

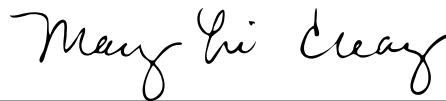
- b. Abuse of children presents a grave danger to the public;
- c. Respondent has shown no remorse and has not taken any responsibility for his criminal conduct; and
- d. Because unsupervised contact with minors is a frequent and often unavoidable part of the practice of EMTs and paramedics, there is no way to prevent Respondent from further endangering the public.

29. Neither Respondent's length of time practicing without a complaint nor the effect of the penalty on his livelihood outweigh the circumstances warranting revocation of his EMT and paramedic licenses.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Health enter a final order finding Respondent guilty of violating section 401.411(1)(b) as charged in the Administrative Complaint; revoking Respondent's licenses to practice as an EMT and paramedic; and imposing costs of the investigation and prosecution of this case.

DONE AND ENTERED this 15th day of December, 2021, in Tallahassee, Leon County, Florida.



MARY LI CREASY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of December, 2021.

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.