

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Lucas State Office Building  
Des Moines, Iowa 50319

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IN THE MATTER OF:

DIA NO. 10DPHES008

CASE NO. 10-03-16

Julie Wells

Certification #PS-01-307-19

PROPOSED DECISION

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On May 20, 2010, the Department of Public Health-Emergency Medical Services Bureau (Department) issued Julie Wells (Appellant) a Notice of Proposed Action-Revocation of her certification as an EMT-Paramedic Specialist. The proposed revocation was based on Appellant's alleged behavior while responding to a September 12, 2009 emergency and on Appellant's alleged admission that she had consumed 5-6 beers and had taken prescribed benzodiazepines prior to responding. The Department asserts that Appellant's actions violated Iowa Code section 147A.7(1)"f," 641 IAC 131.7(2)"f," and 131.7(2)"q"(1).<sup>1</sup> Appellant filed a timely Notice of Appeal. A telephone hearing was held on July 9, 2010 before the undersigned administrative law judge. Assistant Attorney General Heather Adams represented the Department. Attorney David W. Leifker represented Appellant. Appellant elected to have a closed hearing, pursuant to Iowa Code section 272C.6(1)(2009).

#### THE RECORD

The record includes the Notice of Proposed Action-Revocation, Notice of Appeal, Notice of Telephone Hearing, Motion to Continue, Notice of Rescheduled Telephone Hearing; and Department Exhibits 1-16 (See Exhibit Index for description). The Department presented the testimony of Chris Kramer, Joe Ferrell, and Jason Staner. The Appellant presented her own testimony and the testimony of Janet Pappas.

#### FINDINGS OF FACT

The Department certified Appellant as an EMT-Basic on March 5, 1999 and as a Paramedic Specialist on July 27, 2009. (Exh. 3) From May 2008 until July 27, 2009,

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<sup>1</sup> The parties agreed that the Notice of Proposed Action should be amended to correct the citation from 641 IAC 131.7(2)"q"(2) to 131.7(2)"q"(1).

Appellant was a volunteer EMT-B with Bi-County Ambulance, Inc. (Bi-County) in Dyersville, Iowa. Bi-County paid for Appellant to attend the Paramedic-Specialist course at Northeast Iowa Community College. From July 28, 2009 until September 24, 2009, Appellant was a volunteer EMT-Paramedic Specialist with Bi-County. (Exh. 15)

Chris Kramer has been certified as an EMT-B for more than 12 years. He joined Bi-County in or about January 2008. In September 2009, Mr. Kramer was functioning as the Administrative Officer for Bi-County and was responsible for legal and financial issues. Prior to September 12, 2009, Chris Kramer had attended approximately 50 service calls with the Appellant. (Kramer testimony)

On Saturday, September 12, 2009 at 2:42 a.m., Bi-County received a mutual aid call from Worthington, Iowa. Chris Kramer was the first to respond and he got the ambulance ready to go while he waited for at least one other volunteer to join him. Appellant contacted Kramer by radio to tell him that she was en route and would be there in a few minutes. In the meantime, EMT-B Jason Staner also arrived and got in the back of the ambulance to prepare for the patient. Staner had been certified as an EMT-B since 2005, but he had only been with Bi-County since August 1<sup>st</sup>. When Appellant drove up a couple of minutes later, she got in the back of the ambulance with Jason Staner. Chris Kramer drove the ambulance, but once they were on their way, Staner climbed into the front passenger seat to watch for deer. (Kramer, Staner testimony; Exh. 7, 8, 13)

It took approximately ten minutes for them to reach the scene of the emergency, which was a private home. Appellant stayed in the ambulance for a few minutes to prepare an IV while Chris Kramer and Jason Staner went to the home's basement, where the patient was located. Two Worthington First Responders, Joe Cusic and Amanda Kalb, were already at the scene. They explained that the 45 year old patient, who had hernia surgery three days earlier, had awoken from sleep with severe pain in her right lower abdomen that radiated to her shoulder. Chris Kramer questioned the patient about her symptoms and performed his usual assessment. (Kramer, Staner testimony; Exh. 7, 13)

As the Paramedic-Specialist, Appellant was in charge of the emergency response. Appellant came down the basement stairs a few minutes later, and Chris Kramer and Jason Staner both noticed that she was not wearing any shoes. Kramer testified that he was taken off guard by this and did not know what to do or say. Kramer told Appellant what had already been reported to them, and Appellant proceeded to question and to assess the patient. It was not unusual for Appellant to ask the patient

some of the same questions that others had already asked because emergency personnel generally prefer to obtain pertinent information directly from the patient. However, both Chris Kramer and Jason Staner later reported that Appellant repeatedly asked the patient the same questions. (Kramer; Staner testimony; Exh. 7)

Both of the First Responders at the scene also noticed that Appellant was not wearing shoes. One of them noted that Appellant asked the patient strange questions, like "why did you elect to have surgery at this time," when the patient had already answered the question twice. The First Responders also reported that Appellant repeatedly got in the way when they were trying to move the patient to the cot. Both of them felt that Appellant was unprofessional on the call. (Exh. 9, 10)

Appellant and Jason Staner rode in the back of the ambulance with the patient during the 20 minute trip to a Dubuque hospital. Jason Staner later told Chris Kramer that he had concerns about Appellant's behavior in the back of the ambulance. He reported that Appellant continued to ask the patient repetitive questions about why she called the ambulance, where the pain was, what could have caused it, and what kind of surgery she had. Staner had opened an IV start pack for Appellant (only an EMT-Paramedic could start the IV), and he had to point this out to her when she pulled out another IV start pack. It appeared to Staner that Appellant was having difficulty finding a vein and deciding what needle to use. Once she inserted the needle, Staner did not see any blood fill the capsule and after moving the needle a couple of times, Appellant gave up on trying to place the IV. Staner felt this was unusual because IV's are usually established within the first 10 minutes, and the road was no bumpier than usual. When Staner was cleaning up the ambulance after delivering the patient to the hospital, he found Appellant's needle sitting on the bench. Staner picked up the needle and put it in the sharp's container where it belonged. He felt that Appellant had sufficient time to properly dispose of the needle. (Staner, Kramer testimony; Exh. 7, 13)

On the way back to the ambulance garage, Appellant rode in the front passenger seat of the ambulance. Jason Staner later reported that Appellant fell asleep on the return trip. Chris Kramer did not remember Appellant falling asleep but thought that she may have "drifted off a little bit." (Exh. 7; Kramer testimony) At one point, Kramer thought he might have smelled alcohol on Appellant, but he was not sure. Kramer asked Staner if he smelled alcohol. Staner reported he did not smell alcohol on Appellant but also reports that he has a poor sense of smell and has difficulty smelling alcohol. When they arrived back at the ambulance garage, Staner told Kramer that he had concerns

about Appellant's care of the patient during the ride to the hospital. Kramer told Staner to document what he witnessed, but neither of them confronted Appellant at that time or asked her to explain her behavior. (Exh. 7, 8; Kramer, Staner testimony)

Later that same day, Chris Kramer and Jason Staner reported their concerns about Appellant's behavior to Sandy Neyen, who was the Assistant Administrative Officer for Bi-County. They both prepared written statements, and the two Worthington first responders were also contacted and provided written statements. Kramer and Neyen decided that Appellant should be dismissed from the service and made plans to ask her for her resignation. Neyen left a message for the service's medical director, Dr. Snyder, to call her but he was out of the country at the time.

On Monday, September 14, 2009 at 8:30 a.m., Neyen left a message for Appellant. When Appellant eventually returned the call at 6:00 p.m. that evening, they made arrangements to meet with Chris Kramer at 6:30 p.m. (Exh. 7-11; Kramer testimony) At that meeting, Sandy Neyen asked Appellant if she knew why she was there. Appellant acknowledged that it was probably for the call on early Saturday morning. When Neyen asked Appellant if she had been drinking, Appellant admitted that she had. Appellant then told Kramer and Neyen that she had consumed 5-6 beers that evening at her sister's house and then took two sleeping pills when she went to bed. When she was unable to sleep, she took two more sleeping pills. Appellant told Kramer and Neyen that she had a tolerance to alcohol and that she had gone on other calls after drinking alcohol and had no problems. However, Appellant also told them she had never previously mixed alcohol with sleeping pills. Kramer and Neyen told Appellant that she would be suspended for one month but also informed her that there could be further disciplinary action taken against her. Chris Kramer and Sandy Neyen each prepared a written summary of the meeting. (Kramer testimony; Exh. 11)

Bi-County has a written alcohol and drug policy that applies to every member of the service. Pursuant to that policy:

- Members must report for calls, trainings, drills, meetings, special events, or any other official business or duty of the organization "free of drugs, intoxicants, narcotics or any other controlled substance;"
- At no time may members have a blood alcohol level exceeding .02;

- At no time may any member drive or operate department vehicles if they have consumed alcohol or have taken prescription mind-altering medications within eight hours prior to driving or operating the vehicle;
- Members may be disciplined, up to and including termination, for violation of the policy;
- It is the member's responsibility to notify the department if he or she is taking legal prescription drugs which may cause mind-altering effects.

The policy also notes that a supply of alcohol is maintained on the services' premises for the social use of members and guests but that no member is to respond to calls under the influence of an alcoholic beverage or other drug. (Exh. 14; Kramer testimony)

On May 20, 2008, Appellant signed a statement that she had received a copy of the rules and regulations of Bi-County Ambulance Service, had read them, and agreed to abide by them. Appellant never notified Bi-County that she had been prescribed benzodiazepines for restless leg syndrome. (Exh. 15; Kramer testimony) At hearing, Appellant testified that she was not aware of the alcohol and drug policy although she knew she should not go on a call after consuming alcohol. Appellant testified that Dr. Snyder was the physician who prescribed the clonazepam for her, and the other EMTs knew that she was taking clonazepam because she talked to them about her "crazy legs." (Appellant testimony)

Appellant met with Chris Kramer and Sandy Neyen again on September 18, 2009 at 9:30 a.m. Kramer and Neyen notified Appellant that Dr. Snyder had determined that she would not be allowed to practice under his medical license. Appellant was given the option of resigning her position with Bi-County or being terminated. Appellant told them that she only had herself to blame for what happened and that she would resign. (Exh. 11, 15; Kramer testimony)

On September 18, 2009 at 1:15 p.m., Appellant sent an email to Sandy Neyen. Appellant wrote that she finally got herself to the point where she could stop crying and she wanted to thank Neyen properly for everything she did for her. Appellant further wrote that she was "absolutely sick about what I did to Bi-County and Dr. Snyder." She also wrote, in part:

...I am SO SO sorry for all of this. I cannot reiterate enough that I would never intentionally put any one in harm's way, that I would never, ever

willingly hurt the service and I would never intentionally put Dr. Snyder's license in jeopardy. But I did all those things and am paying the ultimate price...

Appellant submitted her written resignation on September 24, 2009. (Exh. 15)

Appellant has been employed part-time by Paramount EMS since September 23, 2009. On April 3, 2010, Appellant was certified as an EMT-CCP (Critical Care Paramedic). (Appellant testimony) After Bi-County learned that Appellant had accepted a position as a paramedic specialist with another EMS provider, they decided to report the September 12, 2009 incident to the Department. Sandy Neyen filed the complaint on October 29, 2009. (Exh. 5, 6, 15)

Joe Ferrell, who is the Department's EMS Regulation Manager, investigated the complaint by collecting documents and interviewing witnesses. In an April 19, 2010 interview, Appellant told Ferrell:

- that she began drinking at 4:30 p.m. on September 11, 2009 and had five beers between 4:30 and 8:30 p.m.;
- that she went home at 9:00 p.m. and went to bed;
- that she took clonazepam for restless leg syndrome. Appellant denied knowing that clonazepam is a benzodiazepine or that she should not drink alcohol with it;
- that the amount she drank and the period when she drank it was not an issue, although it may have affected someone else;
- that she was barefoot because she normally wears flip-flops and keeps a pair of shoes in her car for ambulance calls;
- that when she arrived at the ambulance garage and realized that she did not have any shoes, she asked Chris Kramer if she should still go on the call, and Kramer told her to forget about it and get in the ambulance.

Ferrell was surprised by Appellant's statement that she did not realize that clonazepam is a benzodiazepine because Paramedic-Specialists are authorized to administer benzodiazepines and are expected to know and understand them. He was also surprised that Appellant did not know she should not drink alcohol when taking clonazepam because the drug carries a warning that you should not drink alcohol while taking it. (Ferrell; Appellant testimony; Exh. 5)

At hearing, Chris Kramer denied that Appellant spoke to him about not having shoes while they were still at the ambulance garage or that she asked him if she should go on the call. Kramer reiterated that he did not notice that Appellant was not wearing shoes until they were at the patient's home. Kramer insisted that he would not have told Appellant to go on the call without shoes because it is unprofessional and could be dangerous because you never know what the physical environment will be when you arrive at the scene of an emergency. (Kramer testimony)

During her interview by Joe Ferrell, Appellant denied that Bi-County told her to resign or be terminated. Appellant claimed that she only resigned because she was upset about the allegations being made against her and by the non-participatory way that Bi-County was being operated. (Ferrell testimony; Exh. 5) These statements are inconsistent with Appellant's statements in the September 18, 2009 email she sent to Sandy Neyen. (Exh. 15)

At hearing, Appellant provided testimony that was inconsistent with her prior statements. Contrary to her prior statement to Joe Ferrell, Appellant claimed that she stopped drinking at 4:30 p.m. on September 11, 2009. Appellant also claimed that she remembered when she stopped drinking after talking to her sister about what happened that day. (Appellant testimony)

Appellant's sister, Janet Pappas, testified that Appellant came over to her house at 1:30 p.m. on September 11, 2009. Ms. Pappas testified that Appellant had her last beer at about 5:30 or 6:00 p.m. when their pizza arrived and did not appear to be under the influence when she went home at 9:00 p.m. Ms. Pappas testified that she was able to remember these details because she and her sister talked about it just 2-3 days later and they agreed on what time Appellant stopped drinking and what time she went home. Appellant's sister further reported that they discussed the day again in April 2010 and still felt that the times were correct. (Pappas testimony)

At hearing, Appellant testified that her husband told her she did not take any clonazepam the night of September 11-12, 2009. (Appellant testimony) This is inconsistent with what Appellant told Chris Kramer, Sandy Neyen, and Joe Ferrell. Appellant's husband did not testify at hearing.

Appellant denied that she was under the influence of alcohol and/or benzodiazepines when she responded to the emergency call on September 12, 2009. She also denied that

she ever previously went on a call while under the influence of alcohol and denied making this admission to Chris Kramer and Sandy Neyen. Although Appellant admitted that she told Kramer and Neyen that she can "hold a lot of alcohol," she explained that she said this because she is a large woman. (Appellant testimony)

Appellant also testified that she never saw "eye to eye" with Sandy Neyen, and that she believes that Kramer and Staner were both "put up to it" by Neyen. (Appellant testimony) However, both Chris Kramer and Jason Staner consistently reported that they discussed their concerns about Appellant's before they spoke to Sandy Neyen. Appellant's claim that she and Neyen did not get along was also contradicted by Appellant's email to Neyen on September 18, 2009, in which Appellant told Neyen that she had "nothing but the utmost respect" for her. (Exh. 15)

#### CONCLUSIONS OF LAW

The Department may impose a civil penalty not to exceed \$1,000, may place the emergency medical care certificate on probation, may issue a citation and warning, or may suspend or revoke the certificate when it finds that the EMS provider:

- Has engaged in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Iowa Code section 147A.7(1)(f)(2009); 641 IAC 131.7(2)"f."
- Is unable to practice with reasonable skill and safety by reason of excessive use of alcohol on a continuing basis. 641 IAC 131.7(2)"q"(1).

Responding to an emergency call while under the influence of alcohol and/or benzodiazepines is a practice that is inherently harmful or detrimental to the public and that constitutes unethical conduct. The provision of emergency medical care requires special training and skills, excellent concentration, sound judgment, and sharp reflexes, all of which could be impaired if a person was under the influence of alcohol and/or benzodiazepines.

Appellant's defense raises a factual issue, i.e. does the preponderance of the evidence in the record establish that she was in fact under the influence of alcohol and/or benzodiazepines when she responded to an emergency call on September 12, 2009? In order to resolve this factual issue it is necessary to assess both the nature of the evidence and the credibility of the witnesses.

Appellant asserts that her unusual behaviors that evening (i.e. arriving without shoes, asking repetitive questions, having difficulty starting the IV) had logical explanations and were misunderstood and/or misinterpreted by the witnesses. Appellant claims that she believed she had shoes in her car based on her usual practice and was surprised when she discovered that her husband had removed them in preparation for their planned trip to Iowa City. While this explanation could be plausible, it does not explain why she went on the call without shoes. Chris Kramer and Jason Staner could have taken the call without her.

Appellant told Joe Ferrell that Chris Kramer knew she did not have shoes before they left the ambulance garage and that Kramer told her to forget about it and get in the ambulance. However, when asked about this at hearing, Chris Kramer insisted that he did not notice Appellant was shoeless until she entered the basement at the patient's home and that it caught him completely off guard. Kramer also denied that he would ever tell Appellant to get in the ambulance for an emergency call if she did not have shoes. Mr. Kramer's testimony was supported by the testimony and written statement of Jason Staner, who also did not know that Appellant was not wearing shoes until they were at the patient's home. Neither Chris Kramer nor Jason Staner had any apparent motivation to lie about when they noticed that Appellant was not wearing shoes. The testimony and statements of Kramer and Staner concerning Appellant's lack of shoes at the scene were more plausible and far more credible than Appellant's explanations and claims.

Appellant also claimed that the other EMTs who were present did not understand why she asked the patient certain questions because they were not certified as Paramedic-Specialists. Appellant also claimed that she asked the patient about her elective surgery because she was trying to take the patient's mind off her pain and because she was personally interested because her own physician was encouraging her to have her hernia surgically repaired. It seems odd and unprofessional for an emergency medical provider to question a patient's medical history out of personal curiosity and not for purposes of treatment. Moreover, even if this was her purpose, this does not explain why Appellant repeatedly asked the patient the same questions, as credibly reported by Jason Staner.

Appellant's explanation for her difficulties in establishing the IV was her lack of experience, since she had only been certified at the EMT-Paramedic Specialist level for a

little over a month at the time. Certainly inexperience could account for difficulty in establishing the IV. If this was Appellant's only problem that evening it would not have been significant. However, Appellant displayed a number of unusual behaviors that caused four experienced emergency responders to question her professionalism.

The most persuasive and compelling evidence that Appellant was in fact under the influence of alcohol and/or benzodiazepines during the call was her own admissions less than 48 hours after the incident. When asked if she had been drinking, Appellant admitted to Chris Kramer and Sandy Neyen that she had 5-6 beers that evening and took four sleeping pills. She also admitted that she had previously drunk alcohol before responding to a call. She did not qualify her admissions by claiming that she had stopped drinking by 4:30 p.m. or by stating that the beer was no longer in her system at the time of the call, as one would expect if this had been true. Rather, she qualified her admission by stating that she has a high tolerance for alcohol and that she had never mixed alcohol and sleeping pills before. Kramer and Neyen each prepared a written statement summarizing their meeting with Appellant. As the Administrative Officers for Bi-County they had no reason to fabricate Appellant's admissions, which reflected poorly on the professionalism of their service and which resulted in Bi-County's loss of a valuable volunteer Paramedic-Specialist.

Appellant's later attempts to retract her admissions were self-serving and lacked consistency and credibility. Appellant's sister testified that she and Appellant discussed the evening within a few days of Appellant receiving the first call. If Appellant had in fact stopped drinking alcohol by 4:30 p.m. and had not taken any medication that evening, she would have told Kramer and Neyen this right away when the entire weekend should have been fresh in her mind. Yet on September 18, 2009, Appellant sent an email to Neyen in which she admitted that she hurt the service, put someone in harm's way, and placed the Medical Director's license in jeopardy. Moreover, when she was interviewed by Joe Ferrell seven months later, Appellant stated that she stopped drinking at 8:30 p.m. and took her clonazepam for restless leg syndrome at bedtime. Then at hearing, Appellant testified that she stopped drinking at 4:30 p.m. and did not take any clonazepam that night. None of these confusing and inconsistent claims were credible.

The preponderance of the evidence established that Appellant violated Iowa Code section 147A.7(1)(f)(2009) and 641 IAC 131.7(2)"f" by engaging in unethical conduct and practice harmful or detrimental to the public when she responded to an emergency call

and rendered emergency care to a patient after consuming at least five beers and taking benzodiazepines earlier in the evening. Appellant's actions violated the alcohol and drug policy of her ambulance service and placed a patient's health and safety at risk. The Department is obligated to protect the public health, safety, and welfare, and it is irrelevant that no one was actually harmed by Appellant's actions.

However, the evidence in this record focused on September 11-12, 2009 and was insufficient to establish whether Appellant is unable to safely practice because she excessively uses alcohol on a continuing basis, as prohibited by 641 IAC 131.7(2)"q"(1). Nevertheless, Appellant's egregious violation of her professional ethical obligations on September 12, 2009 and her lack of candor at hearing justifies revocation of her license. As pointed out by the Department, revocation is not a permanent sanction. Appellant's certification may be reinstated in the future if she can establish that the basis for the revocation no longer exists and that it is in the public interest for her license to be reinstated. 641 IAC 131.9.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Revocation, issued by the department to Julie Wells on May 20, 2010 is hereby AFFIRMED.

Dated this 23rd day of July, 2010.

*Margaret LaMarche*

Margaret LaMarche  
Administrative Law Judge  
Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building-Third Floor  
Des Moines, Iowa 50319

91 7108 2133 3936 7673 5578

cc: David W. Leifker  
300 Main Street, Suite 325  
Dubuque, IA 52001 (CERTIFIED)

Heather Adams, Assistant Attorney General  
Hoover State Office Building (LOCAL)

Kirk Schmitt, Department of Public Health  
Lucas State Office Building (LOCAL)

This proposed decision and order becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director of the Department of Public Health is taken as provided in subrule 131.12(11). 641 IAC 131.12(10). Any appeal to the director for review of this proposed decision and order shall be filed in writing and mailed to the director of the Department of Public Health by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be sent to the administrative law judge. Any request for appeal shall state the reason for the appeal. 641 IAC 131.12(11).