

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

IN THE MATTER OF:) DIA NO. 10DPHES017
) CASE NO. 10-07-10
Jody Holtz)
1675 Hwy 136)
Lost Nation, IA 52254) PROPOSED DECISION
)
Certification: B-08-226-36)

On July 28, 2010, the Department of Public Health-Emergency Medical Services Bureau (Department) served a Notice of Proposed Action-Suspension on Jody Holtz (Appellant). The Appellant filed a timely Notice of Appeal. A telephone hearing was held before Administrative Law Judge Margaret LaMarche on November 23, 2010. Assistant Attorney General Heather Adams represented the Department. The Appellant was self-represented and elected to have an open hearing, pursuant to Iowa Code section 272C.6(1).

THE RECORD

The record includes the Notice of Telephone Hearing, testimony of Joe Ferrell and Appellant, and Department Exhibits 1-8 (See Exhibit Index for description)

FINDINGS OF FACT

1. Appellant has been a very active volunteer with the Lost Nation EMS since 1994 and she has been attending approximately 85% of the emergency calls. Appellant was initially issued Certification B-08-226-36 as an EMT-Basic on April 24, 1997. (Testimony of Appellant; Exhibit 3)
2. EMT providers must renew their certification with the Department every two years. In order to renew, EMT-Bs are required to show that they have completed 24 hours of continuing education, including at least 12 hours of "formal" continuing education. "Formal" education hours are those hours that are reflective of patient care, e.g. airway management, patient assessment, trauma assessment, OB/GYN, and

pediatrics. Continuing education hours that have been approved as formal education have the designation "fe" following the course number. All other continuing education hours are considered "optional education" and are designated with an "oe." (Testimony of Joe Ferrell; See 641 IAC 131.4(6)"d.")

3. On March 17, 2010, Appellant submitted an application to renew Certification B-08-226-36 for the certification period from April 1, 2008 through March 31, 2010. Appellant indicated on her application that she had completed the 24 hours of continuing education during the current certification period. She further indicated that at least 12 of those hours were designated as formal education. The Appellant certified that the "information provided is true and correct to the best of my knowledge. I understand that providing false and/or misleading information may result in citation and warning, denial, probation, suspension or revocation of my certification." Based on the information that she provided, Appellant's certification was renewed and is now current through March 31, 2012. (Testimony of Joe Ferrell; Appellant; Department Exhibit 3)

4. On June 2, 2010, the Department notified Appellant that her certification renewal was being subjected to a random audit. Appellant was required to provide documentation showing the date of each program attended, the program sponsor number, the title of the program, the number of approved hours, and the appropriate supervisor signatures if clinical or practical evaluator hours were claimed. (Testimony of Joe Ferrell; Department Exhibit 4)

5. On July 14, 2010, the Department received the completed audit reporting form from Appellant, which listed 9 hours of formal continuing education and 16.5 hours of optional education. Appellant did not have the minimum number of formal hours of continuing education (12) required to renew her certification. (Testimony of Joe Ferrell; Department Exhibits 5, 6)

6. On July 28, 2010, the Department issued its Notice of Proposed Action-Suspension, which provided that the Appellant's certification would be suspended and remain suspended until she meets the following conditions and the Department approves her reinstatement:

- Submit an EMS Reinstatement Application and the applicable fees;
- Meet all applicable eligibility requirements;

- Complete a refresher course or equivalent approved by the department;
- Pass the EMT-B practical and cognitive certification examinations.

The Department's proposed action imposed the same requirements on Appellant that apply to all EMT providers who permit their certification to expire because they do not have enough hours of continuing education. (Testimony of Joe Ferrell; Department Exhibits 1, 8)

7. Appellant is not paid for her work as an EMS and must take vacation time from her employment to attend continuing education. Appellant did not realize that she was missing 3 credit hours of formal education when she filed her application to renew her certification on March 17, 2010. If she had recognized this, she would have had sufficient time to complete the 3 hours before the renewal application was due on March 31, 2010. When Appellant realized that she was short by 3 credit hours she asked Joe Ferrell if there was anything that she could do to keep working as a volunteer EMT with Lost Nation (e.g. make up the hours or drop down to First Responder status). Mr. Ferrell advised Appellant that she could not make up the hours after the expiration of the renewal period. He further advised her that her request to drop down to certification as a First Responder had to be made prior to March 31, 2010. (Testimony of Appellant, Joe Ferrell)

CONCLUSIONS OF LAW

The legislature has directed the Department to adopt rules pertaining to the examination and certification of emergency medical care providers.¹ The Department has adopted rules at 641 IAC chapter 131.

An Emergency Medical Services (EMS) certificate shall be valid for two years from issuance unless specified otherwise on the certificate or unless sooner suspended or revoked.² All continuing education requirements must be completed during the certification period prior to the certificate's expiration date. Failure to complete the continuing education requirements prior to the expiration date shall result in an expired certification.³

¹ Iowa Code section 147A.4(2)(2009).

² 641 IAC 131.4(3)"a."

³ 641 IAC 131.4(3)"b."

To be eligible for renewal through continuing education, an Emergency Medical Technician-Basic (EMT-B) must complete a current course in CPR and 24 hours of approved education.⁴ At least 50 percent of the required hours for renewal shall be formal continuing education including, but not limited to, refresher programs, seminars, lecture programs, scenario-based programs, conferences, and Internet-delivered courses provided by CECBEMS and shall meet the criteria established in paragraph 131.4(6)"d."⁵

Courses approved as formal education must meet the following criteria:

- (1) Involve live interaction with an instructor or be an Internet-delivered course approved by CECBEMS; and
- (2) Be based on the appropriate department curricula for EMS providers and include one or more of the following topic areas: airway, patient assessment, trauma assessment and management, medical assessment and management, behavioral emergencies, obstetrics, gynecology, pediatrics, or patient care record documentation.⁶

An individual who has not completed the required continuing education during the certification period or who is seeking to reinstate an expired, inactive, or retired certificate shall:

- (1) Complete a refresher course or equivalent approved by the department.
- (2) Meet all applicable eligibility requirements.
- (3) Submit an EMS Reinstatement Application and the applicable fees to the department.
- (4) Pass the appropriate practical and written certification examinations.⁷

In addition, the Department may deny an application for issuance or renewal of an emergency medical care provider certificate, including endorsement, or place on probation, or issue a citation and warning, or suspend or revoke a certificate when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

...

⁴ 641 IAC 131.4(4)"b"(2).

⁵ 641 IAC 131.4(4)"c."

⁶ 641 IAC 131.4(6)"d."

⁷ 641 IAC 131.4(3)"f."

d. Fraud in procuring certification or renewal including, but not limited to:

(1) An intentional perversion of the truth in making application for a certification to practice in this state;

...

s. Willful or repeated violations of Iowa Code chapter 147A or these rules.

...

v. Falsifying certification renewal reports or failure to comply with the renewal audit request.

The preponderance of the evidence established that the Appellant did not have the required hours of formal continuing education required for renewal of her EMT-B certification on March 31, 2010. The Appellant was required to have at least 12 hours of formal education but completed only 9 hours of formal continuing education within the certification period. The Department's rules clearly provide that the continuing education must be completed within the certification period prior to the certification expiration date and that failure to do so results in an expired certification.⁸ Therefore, the Department was correct when it rejected the Appellant's offer to make up the credits. The rules do not permit providers to make up continuing education hours outside the certification period.

However, the preponderance of the evidence failed to establish that the Appellant knowingly or willfully falsified her renewal certification report, in violation of 641 IAC 131.7(2)"d," "s," or "v." The Appellant credibly testified that she believed she had completed the necessary hours of formal education, as claimed on her renewal application, but failed to review the courses carefully before submitting her certification renewal. Although the Appellant's mistake concerning her accumulated hours of formal continuing education does not excuse her failure to comply with the mandatory continuing education requirements, it does provide a defense to the allegation that she knowingly falsified the renewal application.

Regardless of whether the Appellant intentionally or negligently failed to complete the required hours of continuing education, the outcome is the same. The Appellant may not retain her EMT-B certification when she failed to complete the required hours of

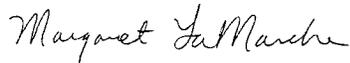
⁸ 641 IAC 131.4(3)"b."

formal continuing education within the certification period. The Department's rules require the Appellant to fulfill the steps leading to reinstatement set out in 641 IAC 131.4(3)"f." This includes completing the EMT-B refresher course and retaking and passing the EMT-B practical and cognitive certification examinations.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Suspension issued by the department to Appellant Jody Holtz on July 28, 2010, is hereby AFFIRMED.

Dated this 15th day of December, 2010.



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

cc: Jody Holtz, 1675 Highway 136, Lost Nation, IA 52254 (CERTIFIED)
Heather Adams, Assistant Attorney General, Hoover Building- (LOCAL)
Kirk Schmitt, Department of Public Health, Lucas 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). 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).