

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

IN THE MATTER OF:) DIA NO. 09DPHES010
) CASE NO. 09-07-12
Jody Droigk)
903 West Street)
Reinbeck, Iowa) PROPOSED DECISION
)
Certification: I-07-300-03)

On August 12, 2009, the Department of Public Health-Emergency Medical Services Bureau (Department) served a Notice of Proposed Action-Suspension on Jody Droigk (Appellant). The Appellant filed a timely Notice of Appeal. A telephone hearing was held before Administrative Law Judge Margaret LaMarche on October 12, 2009 at 1:00 p.m. Assistant Attorney General Heather Adams represented the Department. The Appellant was self-represented and elected to have a closed hearing, pursuant to Iowa Code section 272C.6(1).

THE RECORD

The record includes the Notice of Telephone Hearing, testimony of the witnesses, and the following exhibits:

Department Exhibit 1:	Notice of Proposed Action: Suspension
Department Exhibit 2:	641 IAC chapter 131;
Department Exhibit 3:	Certification Information
Department Exhibit 4:	Certification Renewal
Department Exhibit 5:	Audit Reporting Form, Received 5/20/09
Department Exhibit 6:	Letter, Ferrell To Appellant, 6/25/09
Department Exhibit 7:	Audit Reporting Form, Received 7/15/09
Department Exhibit 8:	Request for Hearing

FINDINGS OF FACT

1. Appellant was issued Certification I-07-300-03 as an EMT-Intermediate on February 3, 2003. Appellant has been an active volunteer firefighter with the Reinbeck Fire Department for nine years. Appellant also works full-time as a truck driver for a construction company. Through this employment, Appellant worked extensively on flood prevention and flood recovery efforts throughout northern Iowa during the last half of 2008. (Testimony of Appellant; Department Exhibits 3, 8)
2. On March 9, 2009, Appellant submitted an application to renew Certification I-07-300-03 for the certification period from April 1, 2007 through March 31, 2009. Appellant indicated on his application that he had completed the 36 hours of continuing education during the current certification period. He further indicated that at least 18 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." (Testimony of Joe Ferrell; Appellant; Department Exhibit 4)
3. The Department notified Appellant that his certification renewal was being subjected to a random audit. On May 20, 2009, the Department received the completed audit reporting form from Appellant, which listed 15.5 hours of formal continuing education and 19.5 hours of optional education. (Testimony of Joe Ferrell; Department Exhibit 5)
4. On June 25, 2009, the Department sent Appellant a letter notifying him that his audit reporting form did not document 18 hours of formal education and did not include authorized signatures or certificates of completion for optional education not approved by an Iowa EMS training program. On July 15, 2009, Appellant submitted a second audit reporting form. The second form documented only 11.5 hours of formal education, but documented 32 hours of optional education. (Testimony of Joe Ferrell; Appellant; Department Exhibits 6, 7)
5. The EMS Regulation Manager reviewed Appellant's documentation and noticed that Appellant failed to include two of his formal education courses from his first report auditing form on his second auditing form. The EMS Regulation Manager gave Appellant credit for those two formal courses: Diabetic Emergencies and Environmental

Emergencies. Each of these courses was one hour, giving Appellant a total of 13.5 hours of formal education.¹ Appellant was still short 4.5 hours of formal continuing education. (Testimony of Joe Ferrell; Department Exhibits 5, 7)

6. On August 12, 2009, the Department issued its Notice of Proposed Action-Suspension, which provided that the Appellant's certification would be suspended and remain suspended until he meets the following conditions and the Department approves his 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-Intermediate 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 Exhibit 1)

7. Appellant completes nearly all of his continuing education in-house at the Reinbeck Fire Station. When he submitted his certification renewal on March 9, 2009, he knew that he had more than enough total hours of continuing education. However, Appellant neglected to go through all of his continuing education hours to make sure that he had a sufficient number of formal hours. Appellant credibly testified that he did not intentionally misrepresent his formal continuing education hours. Appellant later completed four additional hours of formal education: S.T.A.R.T. Triage – 2 hours (090700056) on May 11, 2009 and Environmental Emergencies and Allergic Reactions – 2 hours (09070069-FF). These hours were not completed within the certification period. (Testimony of Joe Ferrell; Appellant; State Exhibit 8)

¹ The Department's Notice of Proposed Action states that Appellant had 14.5 hours of formal education but this was an error. (Testimony of Joe Ferrell; Department Exhibit 1)

CONCLUSIONS OF LAW

The legislature has directed the Department to adopt rules pertaining to the examination and certification of emergency medical care providers.² 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.³ 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.⁴

To be eligible for renewal through continuing education, an Emergency Medical Technician-Intermediate (EMT-I) must complete a current course in CPR and 36 hours of approved education.⁵ 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."⁶

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.⁷

² Iowa Code section 147A.4(2)(2009).

³ 641 IAC 131.4(3)"a."

⁴ 641 IAC 131.4(3)"b."

⁵ 641 IAC 131.4(4)"b"(3).

⁶ 641 IAC 131.4(4)"c."

⁷ 641 IAC 131.4(6)"d."

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.⁸

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:

...

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 his EMT-I certification on March 9, 2009. The Appellant was required to have at least 18 hours of formal education but completed only 13.5 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.⁹ Therefore, the Department was correct when it rejected the Appellant's offer to make up the

⁸ 641 IAC 131.4(3)"f."

⁹ 641 IAC 131.4(3)"b."

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 his renewal certification report, in violation of 641 IAC 131.7(2)"d" and "v." The Appellant credibly testified that he believed he had completed the necessary hours of formal education, as claimed on his renewal application, but failed to review the courses carefully before submitting his certification renewal. Although the Appellant's mistake concerning his accumulated hours of formal continuing education does not excuse his failure to comply with the mandatory continuing education requirements, it does provide a defense to the allegation that he 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 his EMT-I certification when he failed to complete the required hours of 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-I refresher course and retaking and passing the EMT-I practical and cognitive certification examinations.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Suspension issued by the department to Appellant Jody Droigk on August 12, 2009, is hereby AFFIRMED.

Dated this 9th day of November, 2009.



Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
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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).

