

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

IN THE MATTER OF:	)	DIA NO. 09DPHES007
	)	CASE NO. 09-03-10
Nathanial Overturf	)	
2984 Union Avenue	)	
Adair, IA 50002-5867	)	PROPOSED DECISION
	)	
Certification: B-19-310-01	)	

On June 4, 2009, the Department of Public Health-Emergency Medical Services Bureau (Department) served a Notice of Proposed Action-Revocation on Nathanial Overturf (Respondent). Respondent filed a timely Notice of Appeal on July 1, 2009. An in-person hearing was held before Administrative Law Judge Margaret LaMarche on September 25, 2009 at 1:30 p.m. Assistant Attorney General Heather Adams represented the Department. Respondent 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, State's Motion to Continue, Notice of Rescheduled Telephone Hearing, Notice of In-Person Hearing, testimony of the witnesses, and the following exhibits:

Department Exhibit 1:	641 IAC 131.7
Department Exhibit 2:	Notice of Proposed Action: Revocation, 6/4/09
Department Exhibit 3:	Certification Information
Department Exhibit 4:	Preliminary Investigative Report, 5/6/09
Department Exhibit 5:	Investigative Report, 5/21/09
Department Exhibit 6:	Telephone Log
Department Exhibit 7:	Email (Saylor Fire Department to McCardle-Woods)
Department Exhibit 8:	Email, Filipp to Ferrell
Department Exhibit 9:	Subpoena to Mercy College of Health Sciences and Records Received in Response

Department Exhibit 10:	Subpoena to Saylor Township and Records Received in Response
Department Exhibit 11:	Request for Hearing
Respondent Exhibit A:	Letters of Recommendation
Respondent Exhibit B:	Class & Work Schedules
Respondent Exhibit C:	August 15, 20008 Graduating Paramedic Class, Mercy College
Respondent Exhibit D:	Mercy College Schedule Change Form
Respondent Exhibit E:	Mercy College Final Grade Report
Respondent Exhibit F:	Email and Facebook Conversations with faculty and students
Respondent Exhibit G:	Summary of 2008-2009 State of Iowa EMS Disciplinary Reports, imposing probation or citations and warnings

ISSUES

Whether Respondent's EMT-B certification should be revoked because he filed falsified preceptor evaluations while enrolled in the Mercy College Paramedics Specialist Course?

Whether Respondent's EMT-B certification should be revoked for taking gasoline and a laptop computer from the Saylor Fire Department and for taking a digital camera that was the personal property of one of the fire department volunteers?

FINDINGS OF FACT

Certification as an EMT-B and Relevant Work History

Nathanial Overturf (Respondent) began working for Fraser Medical Services as a dispatcher and wheelchair van driver in March 2005. (Testimony of Respondent; Respondent Exhibit A, p.2) Respondent later joined the Saylor Township Volunteer Fire/Rescue Department as a volunteer firefighter in or about December 2005. (Testimony of Respondent; DPH Exhibit 10, p. 8) On July 18, 2007, the Department certified Respondent as an EMT-Basic. He continued to work for Fraser Medical Services and with the Saylor Fire Department as an EMT-B. The Director of

Operations for Fraser Medical Services wrote a very positive letter of recommendation for Respondent on December 7, 2007. (Testimony of Respondent; DPH Exhibit 3; Respondent Exhibit A, p.2) In August 2008, Respondent was hired at Mercy Medical Center to work full-time as an Emergency Room technician, as position that requires EMT-B certification. (Testimony of Respondent) During most times relevant to this proposed decision, Respondent was employed full-time at both Fraser Medical Services and Mercy Medical Center while also serving as a volunteer firefighter and EMT-B for the Saylor Fire Department. (Testimony of Respondent; Respondent Exhibit B; DPH Exhibit 11)

Enrollment/Participation In The Paramedic Specialist Program at Mercy College

On or about October 1, 2007, Respondent enrolled in the Paramedic Specialist Program night classes at Mercy College of Health Sciences. Paramedic Specialist training includes both classroom study and a clinical component. Following completion of the classroom component, the student was required to complete the clinical component and take the final exam. The clinical component includes both a hospital rotation and an ambulance rotation. Students work with preceptors who essentially serve as their clinical instructors. The preceptors review and verify the student's clinical work. During the hospital rotation, only a registered nurse or a physician can serve as the preceptor. In the ambulance rotation, the preceptor must be certified as a Paramedic Specialist. (Testimony of David Filipp; Respondent; DPH Exhibit 3)

The preceptor must personally observe the students while they are providing care to patients. At the end of each shift, the student must document the care that they provided to particular patients (e.g. assessing patients, starting IV's) on a Clinical Evaluation Form. (See, e.g., DPH Exhibit 9, pp. 19-21) Patients are not identified on these forms by name in order to protect patient confidentiality. Rather, the student identifies the patient by providing their age, sex, ethnicity, principal pathology, and complaint. The student signs the form and must obtain their preceptor's signature on the form. By signing the form, the preceptor is verifying that the treatment was provided by the student. The preceptor also provides an evaluation of the student's work and performance skills, and the student provides an evaluation of the preceptor's performance. (Testimony of David Filipp; DPH Exhibit 9)

David Filipp has been the Program Chair for the Mercy College Paramedic Specialist Program since November 2007. On January 29, 2009, preceptor Christy Soll contacted

Mr. Filipp to report that she suspected Respondent had falsified information on his clinical preceptor forms. Respondent had submitted preceptor evaluation forms and student evaluation forms purportedly signed by Ms. Soll for shifts on August 21, 2008 and September 4, 2008. Ms. Soll was not working on either of these shifts and the signatures on the forms do not match her other signatures on forms maintained by the college. Ms. Soll's signature is very fluid and consistent; the signatures on the August 21st and September 4th preceptor forms showed hesitation and almost appeared to be traced. (DPH Exhibit 9, pp. 2, 11-17; Testimony of David Filipp)

The Academic Dean for Mercy College recommended further audit of all of Respondent's clinical paperwork. The audit identified additional dates when Respondent submitted Clinical Evaluation Forms with questionable signatures from preceptors who were not working on the shifts when they purportedly reviewed Respondent's clinical work. (DPH Exhibit 9, pp. 7-10, 18-21, 27-28) Preceptor Becky Strom reported that the signature appearing on an EMS Field Preceptor Evaluation dated March 13, 2008 was not her signature. (DPH Exhibit 9, pp. 37-42)

In addition, a number of patients listed on Respondent's preceptor forms did not match any of the patients in the hospital's electronic data base (Lynx) who were treated at the hospital on those shifts. (Testimony of David Filipp)

- None of the four patients listed on Respondent's Clinical Evaluation Form for August 18, 2008 had been treated on that shift. (DPH Exhibit 9, pp. 18-21).
- None of the six patients listed on Respondent's form for August 20, 2008 had been treated at the hospital on that shift. (DPH Exhibit 9, pp. 24-26).
- None of the four patients listed on Respondent's Clinical Evaluation Form for August 21, 2008, matched patients who were treated at the hospital on that shift. Respondent listed a 98 year old patient on his form, but the hospital did not treat any 98 year olds between August 18 and August 23, 2008. (DPH Exhibit 9, pp. 11, 13-15).
- Only one of the four patients listed on Respondent's September 2, 2008 clinical form could be matched to a patient actually treated at the hospital. (DPH Exhibit 9, pp. 18, 27-28)
- None of the six patients that Respondent listed on his clinical form for September 4, 2008 had been treated at the hospital during that shift. (DPH Exhibit 9, pp. 11-12A)

(Testimony of David Filipp)

On February 11, 2009, David Filipp and the EMS Program Co-Medical Director met with Respondent and showed him two of his clinical preceptor forms that appeared to have invalid signatures. Respondent could not explain how he had preceptor signatures for days when the preceptor was not working. Respondent was also asked why the hospital had no record for many of the patients that he listed on his clinical forms. Respondent replied that he took the patient information from his flipbook and he may have been looking at the wrong page when he filled out the form. (Testimony of David Filipp; DPH Exhibit 9, p. 3)

Respondent was asked to provide his flipbook and any other documentation relevant to the discrepancies by February 13, 2009. Respondent did not provide any documentation explaining the discrepancies to the college. (Testimony of David Filipp; DPH Exhibit 9, p. 43). Respondent later told an investigator for the EMS Bureau that he had lost a lot of his notes and his flip books. (DPH Exhibit 5)

On February 13, 2009, Respondent met with David Filipp and submitted a course drop form and a letter withdrawing from the Paramedic Specialist Program. Respondent asked that "all paperwork, and verbal words, be left here at the college and not go outside the walls of the college." However, Mr. Filipp informed Respondent that the results of the clinical audit would be forwarded to the Department. (Testimony of David Filipp; DPH Exhibit 9, pp. 4, 6, 8, 47; Exhibit 6)

Thefts from Saylor Fire Department

On February 16, 2009, the Saylor Fire Department notified the Department that the Respondent had resigned from their service rather than face termination following an internal investigation into a number of thefts. Respondent had admitted taking 30 gallons of gasoline and a laptop computer from the Saylor Fire Department. He further admitted stealing a digital camera that was the personal property of a co-worker. (DPH Exhibits 7, 10; Testimony of Scott Cross)

As a governmental entity, the Saylor Fire Department is able to purchase gas without paying all of the usual taxes. The gas stored at the fire department is only for use in the fire department's vehicles. After determining that gas was missing from its inventory, the Saylor Fire Department used its detailed gas inventory records and electronic key

entry records to determine that Respondent was the only member of their service who entered the fire department on the dates when gas was taken without authorization. When confronted with this information, Respondent admitted that he had used the fire department's gas in his personal vehicle. Respondent offered to pay for the gas he had taken. (Testimony of Scott Cross)

At hearing, Respondent admitted taking gas from the Saylor Fire Department on three occasions. In 2006, Respondent pulled into the fire station after running out of gas and put 10 gallons of the fire department's gas into his personal vehicle. Respondent claimed that he paid for the gas at fair market value, including taxes, after getting his paycheck later that week. He testified that the fire chief at the time, Jan Shafer, told him that if he did it again it had to be for an emergency and not to make a habit of it. (Testimony of Respondent)

Respondent also admitted taking gas without authorization on two more occasions. On one occasion, he realized that he did not have sufficient gas in his vehicle to get home and did not have money to buy gas. Respondent put 15 gallons of gas from the fire department into his personal vehicle. Respondent testified that he "meant to tell the fire chief but never did." Respondent further admitted taking gas again on another occasion because he did not have the money to buy gas. Respondent testified that he intended to repay the fire department for the gas after he received his unemployment or tax refund check. However, Respondent did not tell the fire department that he had taken the gas until he was confronted about it. (Testimony of Respondent)

Respondent also admitted taking the fire department's laptop with the intention of pawning it. Respondent was having a lot of financial difficulties and intended to use the money to pay his rent. Respondent also admitted taking a digital camera that belonged to another member of the Saylor Fire Department. After he was confronted about these thefts, Respondent returned the laptop computer and the digital camera. (Testimony of Respondent; Scott Cross)

Respondent Current Employment/Work as EMT-B

Respondent resigned his full-time position with Fraser Medical sometime in the fall of 2008 in order to have more time with his family. He was laid off from his full-time position with Mercy Medical Center on January 26, 2009. As of the date of the hearing, Respondent was living and working at his sister's farm raising show horses. He is also

functioning as an EMT-B as a volunteer member of the Adair Fire Rescue and would like to become an EMS instructor. (Testimony of Respondent; Respondent Exhibit A, p. 1)

CONCLUSIONS OF LAW

I. Applicable Rules

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.

641 IAC 131.7(2) provides, in relevant part:

131.7(2) The department may deny an application for issuance or renewal of an emergency medical care provider certificate, including specialty certifications, or place on probation, or issue a citation and warning, or suspend or revoke the 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:

...

(3) Attempting to file or filing with the Iowa department of public health or training program any false or forged diploma or certificate or affidavit or identification or qualification in making an application for certification in this state.

f. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts which may constitute unethical conduct include, but are not limited to:

...

(5) Falsification of medical records.

¹ Iowa Code section 147A.4(2)(2007).

II. Falsification of Preceptor Reports

The preponderance of the evidence established that Respondent committed fraud in procuring certification as a Paramedic Specialist when he filed falsified preceptor evaluations with his training program, in violation of 641 IAC 131.7(2)"d" and "f." The evidence established that Respondent knowingly submitted Clinical Evaluation Forms bearing forged or falsified signatures and signatures of preceptors who were not working during the shift for which they were purportedly verifying Respondent's care of patients. The evidence further established that Respondent submitted care documentation for patients that were never treated at the hospital on the dates and times reflected on Respondent's clinical forms.

Respondent provided confusing and unpersuasive explanations for the inaccuracies in his Clinical Evaluation Forms. He claimed that David Filipp gave him permission to obtain signatures from preceptors who did not observe his care of the patient, so long as he reviewed the patient care he provided with them before they signed the forms. However, Mr. Filipp credibly testified that he never gave permission for preceptors to sign the forms if they did not personally observe the care provided. Respondent further claimed that he was told that any of the nurses could sign his clinical forms and that he simply left the unsigned forms at the nurses' station with post-it notes asking someone to sign them for him. This explanation was also not credible and makes no sense since the student and the preceptor were required to evaluate each other's performance. Respondent also claimed that he just got mixed up when recording patient information on the forms because he was taking notes out of a flip book that he used to record all of his work as an EMS provider, including his work at Fraser. Respondent attributed this to tremendous stress he was under from working several jobs, financial pressures, and trying to find time to spend with his family. There is no doubt that Respondent had too many work, school, volunteer, and family commitments in the fall of 2008. Although Respondent was likely under significant stress while he was enrolled in the Paramedics Specialist course, this does not excuse or explain falsifying his clinical reports. Moreover, his claim that he just picked the patients from the wrong page of his flip book was not credible, given the number of inaccuracies and Respondent's failure to produce either the flip book or any clinical notes.

Respondent raised a lot of criticisms of the Mercy College Paramedic Specialist training program and its current Program Chair. Even if some or all of the criticisms were valid, it would not excuse or explain Respondent's submission of falsified preceptor forms. In

addition, although Respondent has been very critical of the Mercy College Program and its Program Chair in his recent communications with the EMS Bureau and in his testimony, he had previously made very positive comments about both the program and its chair. (See Respondent Exhibit F)

III. Thefts from Saylor Fire Department

The preponderance of the evidence established that Respondent took gasoline and a laptop computer without authorization from the Saylor Fire Department and also stole a co-member's personal digital camera. These thefts, which were committed while Respondent was working with the Saylor Fire Department as a volunteer firefighter and as an EMT-B, clearly constitute unethical conduct, in violation of Iowa Code section 147A.7(1)(f) and 641 IAC 131.7(2)(f). Difficult financial circumstances do not excuse theft. Four thefts constitutes a pattern of deceptive and unethical behavior and not isolated occurrences.

IV. Sanction

The Department is asking for revocation of Respondent's EMT-B certification based on the violations established in this record. The EMS Regulation Manager testified that the Department has previously revoked EMS certifications based on theft from an EMS service (using a service credit card to purchase gas for personal vehicle on three occasions) and for falsifying clinical documentation or forging preceptor signatures. (Joe Ferrell testimony) On the other hand, Respondent provided a summary of prior disciplinary actions where the EMS Bureau did not revoke the certifications of persons who had a variety of violations, including some that included false, misleading, deceptive or fraudulent representations in the practice of the profession, unethical conduct, and drug possession or use. However, Respondent's summaries have limited value in evaluating whether revocation is appropriate in this case because they do not include any description of the factual findings underlying those disciplinary actions. (Respondent Exhibit G)

The number and seriousness of Respondent's violations justify revocation of his EMT-B certification. He submitted numerous falsified preceptor forms to satisfy the requirements of the clinical portion of his training to become a Paramedic Specialist. He took gas for personal use from a volunteer fire department where he was a trusted member, and he took the fire department's laptop computer with the intention of

pawning it. He also stole one of his co-member's personal digital cameras. All of the violations raise very serious concerns about Respondent's honesty and trustworthiness and reflect poorly on his fitness to continue as a certified EMS provider in the state of Iowa. EMTs frequently work in environments with little supervision and high levels of stress. EMTs have access to persons who are vulnerable due to illness or injury, as well as access to their homes and their belongings. It is essential that certified EMTs are honest individuals who merit the trust and confidence of their supervisors, co-workers, and the public.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Revocation issued by the Department to Respondent Nathaniel Overturf on June 4, 2009, is hereby AFFIRMED.

Dated this 7th day of October, 2009.

Margaret LaMarche

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).

