



State of New Jersey

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CHRISTINE GRANT, JD, MBA
Commissioner

NEW JERSEY DEPARTMENT OF
HEALTH AND SENIOR SERVICES,

PETITIONER,

v.

ROBERT SKLAR,

RESPONDENT.

ADMINISTRATIVE ACTION
FINAL AGENCY DECISION

OAL DKT. NO. HLT-08128-99

INTRODUCTION

Respondent, Mr. Robert Sklar, brought this appeal from the Department of Health and Senior Services' notice of intent to revoke his Emergency Medical Technician (EMT) - Basic certification. That notice was grounded on the conclusion that the respondent had administered medication beyond the authorized scope of practice for a New Jersey certified EMT-Basic. The petitioner, New Jersey Department of Health and Senior Services, contested the respondent's appeal, and a hearing was held on September 19, 2000 at the Office of Administrative Law (OAL). Thereafter, on December 27, 2000, the Honorable Joseph Lavery, Administrative Law Judge (ALJ) ordered that respondent's EMT-Basic certification be permanently revoked.

PROCEDURAL HISTORY

On July 26, 1999, the New Jersey Department of Health and Senior Services, Office of Emergency Medical Services (OEMS) served Mr. Robert Sklar with a Notice of Proposed



Revocation of EMT-Basic Certification. As set forth in that Notice, Mr. Sklar was reminded that by letter dated April 20, 1999, he had been advised that staff of OEMS had received a complaint alleging that on January 23, 1999, while serving on the Rusling EMS & Rescue Squad, he had inappropriately administered medication during a response to a patient in cardiac arrest. Mr. Sklar was further reminded that it was the intent of OEMS staff to conduct an investigation into the matter and that he would be notified when that investigation was complete. The July 26, 1999 Notice went on to advise Mr. Sklar that OEMS had completed its investigation into the matter and that, based on written and oral documentation provided by the Capital Health System EMT-Paramedics that had been on-scene on January 23, 1999, OEMS staff had concluded that the complaint was, in fact, valid. Specifically, OEMS staff found that Mr. Sklar had removed a pre-filled syringe of Epinephrine (1:10,000) from the EMT-Paramedics' medication kit and administered the medication to the patient. Since Mr. Sklar was only certified as an EMT-Basic, his administration of said medication was clearly outside his approved scope of practice.

On August 25, 1999, Mr. Sklar requested a hearing to contest the proposed revocation and the matter was transmitted to the OAL, where it was filed and declared a contested case on September 14, 1999. Thereafter, following various conferences and adjournments for cause, the case was heard on September 19, 2000. Post-hearing briefs and submissions were filed, and on November 13, 2000, ALJ Lavery advised the parties that the record had closed.

ALJ Lavery issued an Initial Decision on December 27, 2000, ordering that Mr. Sklar's EMT-Basic certification be permanently revoked. Mr. Sklar filed exceptions to ALJ Lavery's Initial Decision, which were received by OEMS staff on or about January 16, 2001. Thereafter, on or about January 25, 2001, OEMS received a letter brief dated January 17, 2001 in response to Mr. Sklar's exceptions. Finally, on February 9, 2001, OEMS received a letter dated January 31, 2001, from Mr. Sklar, responding to the January 17, 2001 letter brief. On February 13, 2001,

the Commissioner requested and thereafter received an extension of time within which to render a Final Agency Decision until March 26, 2001.

FACTUAL BACKGROUND

Mr. Sklar was employed by Rusling EMS & Rescue Squad as an EMT-Basic when, on January 23, 1999, the basic life support team for Rusling EMS & Rescue Squad responded to a call for a patient in cardiac arrest. Also called to the scene that day was the advanced life support team from Capital Health System, which included EMT-Paramedics William Vandegrift and L. Sydney Peck. As noted in ALJ Lavery's Initial Decision, "[i]t is not disputed that the victim of the cardiac incident was in dire condition. Ms. Peck found the patient on the floor in his residence in full cardiac arrest, not breathing and lacking a heartbeat. Applying CPR, the collective crews revived him, and the patient was intubated down the trachea to his lungs, while Mr. Vandegrift sought peripheral IV access. The IV was not working. Consequently, Ms. Peck attempted jugular access with success, and having done that, indicated aloud that epinephrine should be administered. It is not in dispute that after Ms. Peck's comment, respondent [Mr. Sklar] announced that he had administered the epinephrine." It is also undisputed that the Epinephrine, in the amount of 1:10,000, was taken from a pre-filled syringe and was administered intravenously.

As further noted in ALJ Lavery's Initial Decision, "[a]fter the crews took the patient to St. Francis Medical Center in Trenton, Rusling EMS had already left when Ms. Peck began writing her report. She sought the certification number for respondent's paramedic status on the relevant list, and not finding it, asked Mr. Vandegrift about its absence. Mr. Vandegrift answered that he was not sure that respondent was still a paramedic. Consequently, Ms. Peck put down her own number as authorization for administration of the epinephrine. Later, in an addendum, she explained to her medical coordinator and the State officials questioning the

event why she did so.” Ultimately, Mr. Vandegrift filed a report with officials at Capital Health System / Mobile Intensive Care Program, who subsequently reported the violation to OEMS.

LEGAL CONTENTIONS

Mr. Sklar contends that since he was recognized as an EMT-Paramedic by the National Registry of Emergency Medical Technicians (NREMT) and since he held certifications as an EMT-Paramedic from the states of Maryland and Pennsylvania, that he did not act improperly. In addition, Mr. Sklar contends that since the Capital Health System EMT-Paramedics made no objections when he administered the Epinephrine, that he was acting under their authority.

The Department insists that Mr. Sklar was clearly acting outside the approved scope of practice of an EMT-Basic, and that Mr. Sklar was acutely aware of the fact that his New Jersey EMT-Paramedic certification had been summarily suspended by OEMS, effective May 8, 1998. Therefore, it was clearly unreasonable for Mr. Sklar to believe that he was authorized to act in the capacity of a New Jersey certified EMT-Paramedic on January 23, 1999.

A.L.J. FINDINGS AND EXCEPTIONS

ALJ Lavery found that Mr. Sklar “was aware that his suspended paramedic status left him without authority to administer epinephrine” and that although EMT-Paramedic Peck made the statement “Let’s get some epi on board, down through the tube” directly to EMT-Paramedic Vandegrift, “[n]either Ms. Peck nor Mr. Vandegrift at any point made statements or gestures which respondent could reasonably have interpreted as directing him personally, or others generally, to administer epinephrine to the patient.” ALJ Lavery went on to conclude that Mr. Sklar had clearly violated N.J.A.C. 8:40A-9.5(a)3 by engaging in willful or negligent practice beyond the scope of practice defined by the program curriculum in Chapter 40A.

ALJ Lavery further concluded that that “[t]he believable testimony was that of MICP’s [sic] Peck and Vandegrift. They were credible in their testimony that Ms. Peck’s statement

during the emergent medical treatment of the [patient] could not have been construed as anything more than a medical judgment shared with her partner Mr. Vandegrift that they, as the presiding team having sole authority to do so, should begin administering epinephrine.

Respondent, well experienced, and having been licensed and certified in at least three states, had to have understood this. It is not believable that, after he went to a medical box not his own, withdrew a medical syringe and put it to a proscribed use, he was ignorant of his professional overreaching. Reliance on the slim reed of Ms. Peck's ostensible authorization is insufficient to overcome the preponderating proofs that respondent administered epinephrine with full understanding that this act was beyond his legal authority." (Emphasis supplied).

In his exceptions, Mr. Sklar contends that he had never received EMT-Basic certification, but rather he was acting as an EMT-Basic under the authority of the National Registry of Emergency Medical Technicians. As such, he contends, "the Department does not have the authority to revoke a certification it never issued." Mr. Sklar also contends that he did not violate N.J.A.C. 8:40-A-9.6(a)3 because he did not "take time to decide to willfully violate the regulations." (Emphasis supplied). Additionally, Mr. Sklar contends that since he was licensed as an EMT-Paramedic by the State of Pennsylvania at the time, that he "acted in good faith in accordance with the professional responsibilities and duties of the Health Care profession." Interestingly, however, Mr. Sklar acknowledges that he was not licensed as an EMT-Paramedic by the State of New Jersey when he states, "I acted in accordance with the paramedic profession and am [sic] licensed and qualified, although not specifically in New Jersey at the time, I was nevertheless acting in accordance with the accepted standards of the paramedic profession." Finally, Mr. Sklar contends that the fact that his New Jersey EMT-Paramedic certification had been suspended should not be used as a ground for revocation of his New Jersey EMT-Basic certification.

In response to Mr. Sklar's exceptions, counsel for the Department first pointed out that Mr. Sklar's exceptions were untimely filed and should, therefore, be rejected. Counsel then

addressed Mr. Sklar's arguments, the first of which was the issue of whether Mr. Sklar held New Jersey EMT-Basic certification. As counsel noted, "Robert Sklar's contention that he never applied for certification as an EMT and, further, that his certification is both automatic and mandatory is misguided, implausible and irrelevant." Counsel goes on to note that "[n]o matter how an EMT becomes certified or eligible to provide basic life support services, EMT's [sic] authorized to practice in New Jersey are still required to adhere to the regulatory requirements governing EMT practice."

With respect to Mr. Sklar's argument that he did not willfully intend to violate the State's regulations, counsel for the Department argued, "Robert Sklar intended to do exactly what he did on January 23, 1999. Robert Sklar knew that his paramedic certification had been suspended and he also knew, and should have known, the limitations of his EMT-basic certification." Counsel also notes that "the scope of [New Jersey] EMT practice as defined by the program curriculum is defined at N.J.A.C. 8:40A-1.2" and that the Department's program curriculum is based upon the NREMT curriculum, which Mr. Sklar should have been familiar with, since he had both tested - and was registered - with the NREMT.

As to Mr. Sklar's argument that he acted in accordance with his professional responsibilities and duties, counsel for the Department correctly contended that there is no specific law, including the language set forth at N.J.S.A. 26:2K-20, that supports Mr. Sklar's argument. Finally, counsel for the Department addressed Mr. Sklar's final argument, which is that the suspension of his New Jersey EMT-Paramedic certification should not be used as a ground for revocation of his New Jersey EMT-Basic certification. Counsel noted that "Robert Sklar's [sic] fails to realize that the fact that his paramedic certification was suspended on May 8, 1998, is relevant in this matter because, based upon that suspension, Robert Sklar's status was reduced to an EMT with basic status only. Consequently, on January 23, 1999, when Robert Sklar administered one milligram of epinephrine to a patient, he exceeded [sic] the scope of his status as an EMT with basic status."

CONCLUSION

Having conducted a thorough and careful review of the entire record in this matter, including the Initial Decision of the Honorable Joseph Lavery, A.L.J., the documents in evidence presented to the Office of Administrative Law, and the exceptions and reply to exceptions submitted by each of the parties, for the reasons stated below I hereby **AFFIRM** the findings and conclusions of Judge Lavery. In so doing, I note that ALJ Lavery's findings and conclusions on the issues are well-grounded in the record before him, and my review of that record provides no reason to disturb the weight ascribed to the evidence on that issue.

I find that the Department's decision to permanently revoke Mr. Sklar's New Jersey EMT-Basic certification, as a result of his act on January 23, 1999 of administering Epinephrine to a patient, was reasonable. Mr. Sklar was clearly operating in the capacity of an EMT-Basic, having been granted that privilege pursuant to the Department's own regulations which allow for reciprocity when an individual has tested with and has been issued a card by the NREMT certifying to the fact that the individual meets the NREMT's requirements for registration. As succinctly noted by counsel for the Department in her reply brief, "it is uncontested that the provision of basic life support services, as provided by an EMT certified, or otherwise permitted to practice in New Jersey, is within the ambit of services under the jurisdiction of the New Jersey Department of Health and Senior Services pursuant to the Health Care Facilities Planning Act codified at N.J.S.A. 26:2H-1, and 26:2H-2b." Furthermore, [n]o matter how an EMT becomes certified or eligible to provide basic life services, EMT's [sic] authorized to practice in New Jersey are still required to adhere to the regulatory requirements governing EMT practice. N.J.A.C. 8:40A-9.5. It is simply implausible for an EMT to believe that his provision of basic life support services in New Jersey is somehow outside the scope of the Commissioner's authority to regulate based upon the method in which he obtained authorization or certification in which to provide those services." (Emphasis supplied). Simply put, Mr. Sklar clearly acted outside the scope of practice for an EMT-Basic when he administered the epinephrine, since EMT-Basics

are not permitted to administer medications of any kind within the State of New Jersey. In addition, I reject Mr. Sklar's argument that the previous suspension of his EMT-Paramedic certification has no bearing on the action to revoke his EMT-Basic certification. Clearly, the fact that Mr. Sklar's EMT-Paramedic certification had been revoked has a strong bearing on the current matter in that Mr. Sklar knew, or should have known, the scope of practice limitations for both EMT-Basics and EMT-Paramedics within the State of New Jersey. More importantly, there is no doubt that Mr. Sklar knew at the time he administered the epinephrine that his EMT-Paramedic certification had been suspended and, therefore, that he was willfully acting outside his approved scope of practice.

Finally, I would note that I reject Mr. Sklar's argument that N.J.S.A. 26:2K-20 prohibits construction so as to prevent a licensed and qualified member of the health care profession from performing the duties of an EMT-Paramedic, if those duties are consistent with the accepted standard of the member's profession. N.J.S.A. 26:2K-7 et seq. specifically speaks to New Jersey advanced life support providers and N.J.S.A. 26:2K-20 was clearly meant to address those members of the health care profession who hold licenses at a level higher than that of a New Jersey certified EMT-Paramedic (e.g., registered nurses, licensed physicians, etc.).

THEREFORE, it is on this 16th day of March, 2001;

ORDERED that the Initial Decision of Administrative Law Judge Joseph Lavery is hereby **AFFIRMED** and any and all privileges granted to Robert Sklar with respect to New Jersey EMT-Basic certification be, and hereby are, permanently revoked.



Christine Grant
Commissioner