

Before the
Administrative Hearing Commission
State of Missouri



DEPARTMENT OF HEALTH AND SENIOR)
SERVICES, BUREAU OF EMERGENCY)
MEDICAL SERVICES,)
)
Petitioner,)
)
vs.)
)
MICHAEL D. PRATTE,)
)
Respondent.)

No. 13-1720 DH

DECISION

Michael D. Pratte is subject to discipline because he pled guilty to a crime reasonably related to his profession and a crime involving moral turpitude, and because he assaulted his patient's wife in their home.

Procedure

On October 1, 2013, the Department of Health and Senior Services, Bureau of Emergency Medical Services ("the Department") filed a complaint seeking to discipline Pratte. On October 3, 2013, we served Pratte with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. On October 3, 2013, Pratte filed an answer in which he stated that he wished to surrender his license and that he did not deny the charges. On January 15, 2014, the Department filed a motion for summary decision. Regulation 1 CSR 15-

3.446(6) provides that we may decide this case without a hearing if the Department establishes facts that Pratte does not dispute and entitle the Department to a favorable decision.

We gave Pratte until January 31, 2014, to respond to the motion, but he did not respond. Therefore, the following facts are undisputed.

Findings of Fact

1. Pratte is licensed as an emergency medical technician (“EMT-Basic”). His license is, and was at all relevant times, current and active.

2. On May 29, 2013, Pratte was working as an EMT-Basic, employed by the Schuyler County Ambulance District, when he was dispatched to an ambulance call at 706 N. Olive St., Queen City, Missouri, for a possible overdose of a male patient.¹ C.B, the wife of the patient, had some medication that her husband might have taken. Pratte asked to see the bottle, and C.B. gave the bottle to him. C.B. asked to see the bottle of medication again and tried to grab it. Pratte grabbed her arm, shoved his elbow into her side, and pulled her to the floor. Two other members of the ambulance crew pulled Pratte away from C.B. and removed him from the house. C.B. was transported to the hospital.

3. A probable cause statement, information and request for summons were filed on June 5, 2013, in the Circuit Court of Schuyler County, Missouri. The information states:

COMES NOW, Prosecuting Attorney of Schuyler County, State of Missouri, being duly sworn upon oath and upon information and belief, and states that there is probable cause to believe that on or about the 29th day of May, 2013, in the County of Schuyler, State of Missouri, the accused [Michael Dwayne Pratte] committed the following crimes:

ASSAULT IN THE THIRD DEGREE: a class A Misdemeanor, in violation of Section 565.070, RSMo, CC

¹ We do not know the time of the ambulance call, but the Schuyler County Sheriff’s Office was contacted for assistance at 11:27 p.m.

1304113, punishable upon conviction under Sections 558.011 and 560.016, RSMo, in that on or about the 29th day of May, 2013, in the County of Schuyler, State of Missouri, the Defendant, MICHAEL DWAYNE PRATTE, recklessly caused physical injury to [C.B.] by grabbing her arm, shoving his elbow into her side and pulling her on the floor which resulted in her being transported to the hospital.[²]

4. On September 11, 2013, in the Circuit Court, Pratte pled guilty to the charge of assault in the third degree, a Class A misdemeanor. The Circuit Court suspended imposition of the sentence and Pratte was ordered to serve two years' probation, perform 40 hours of community service within 120 days, complete a psychological evaluation, and pay court costs.

Conclusions of Law

We have jurisdiction to hear this complaint.³ The Department has the burden of proving that Pratte has committed an act for which the law allows discipline.⁴ Pratte pled guilty to third-degree assault and the Circuit Court suspended imposition of sentence. A guilty plea resulting in a suspended imposition of sentence does not collaterally estop the issue of whether Pratte committed a criminal offense.⁵ A guilty plea is evidence of the conduct charged. The plea constitutes a declaration against interest, which the defendant may explain away.⁶ Pratte did not do so, and, in his answer, specifically stated that he did not deny the charges. Thus, we find, not only that Pratte pled guilty to the criminal offense, but that he committed the underlying conduct.

The Department alleges cause for discipline under § 190.165:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate, permit or license required by sections 190.100 to 190.245 or any person who has failed to renew

² Exhibit 2, p. 5.

³ Section 621.045. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

⁴ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁵ *Director of the Department of Public Safety v. Bishop*, 297 S.W.3d 96 (Mo. App., W.D. 2009).

⁶ *Nichols v. Blake*, 418 S.W.2d 188, 190 (Mo. 1967).

or has surrendered his or her certificate, permit or license for failure to comply with the provisions of sections 190.100 to 190.245 or any lawful regulations promulgated by the department to implement such sections. Those regulations shall be limited to the following:

(2) Being finally adjudicated and found guilty, or having entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to sections 190.100 to 190.245, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any activity licensed or regulated by sections 190.100 to 190.245;

(12) Violation of any professional trust or confidence;

(16) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public[.]

The Department promulgated Regulation 19 CSR 30-40.365, which provides:

(2) The department may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate, permit or license required by the comprehensive emergency medical services systems act or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of the comprehensive emergency medical services systems act or for any of the following reasons:

(B) Being finally adjudicated and found guilty, or having entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to the comprehensive emergency medical services systems act, for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(E) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any activity licensed or regulated by the comprehensive emergency medical services systems act;

(L) Violation of any professional trust or confidence;

(P) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public[.]

I. Criminal Offense

Pratte pled guilty to assault in the third degree under § 565.070:⁷

1. A person commits the crime of assault in the third degree if:
 - (1) The person attempts to cause or recklessly causes physical injury to another person; or
 - (2) With criminal negligence the person causes physical injury to another person by means of a deadly weapon; or
 - (3) The person purposely places another person in apprehension of immediate physical injury; or
 - (4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to another person; or

⁷ RSMo 2000.

(5) The person knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative; or

(6) The person knowingly causes physical contact with an incapacitated person, as defined in section 475.010, RSMo, which a reasonable person, who is not incapacitated, would consider offensive or provocative.

2. Except as provided in subsections 3 and 4 of this section, assault in the third degree is a class A misdemeanor.

3. A person who violates the provisions of subdivision (3) or (5) of subsection 1 of this section is guilty of a class C misdemeanor.

4. A person who has pled guilty to or been found guilty of the crime of assault in the third degree more than two times against any family or household member as defined in section 455.010, RSMo, is guilty of a class D felony for the third or any subsequent commission of the crime of assault in the third degree when a class A misdemeanor. The offenses described in this subsection may be against the same family or household member or against different family or household members.

A. Reasonably Related

Reasonable relation is a low threshold. To relate is to have a logical connection.⁸ An EMT-Basic is “a person who has successfully completed a course of instruction in basic life support as prescribed by the department and is licensed by the department in accordance with standards prescribed by sections 190.001 to 190.245 and rules adopted by the department pursuant to sections 190.001 to 190.245.”⁹ EMTs render emergency care to patients. The Department’s evidence includes the affidavit of Les Jobe, Bureau Chief at the Department, who oversees the training of EMTs. He states that EMTs are trained to ensure the safety of the crew, patients and bystanders, and are trained to act in stressful, traumatic situations.¹⁰

⁸ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).

⁹ Section 190.100(16).

¹⁰ Exhibit 3.

An EMT's duties include the responsibility for injured patients in potentially traumatic, stressful and even dangerous situations. The EMT must act calmly to improve the situation, not make it worse by assaulting a bystander. We agree that assault in the third degree is reasonably related to the duties of an EMT-Basic. There is cause for discipline under § 190.165.2(2) and 19 CSR 30-40.365(2)(B).

B. Involving Moral Turpitude

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals."¹¹

In *Brehe v. Missouri Dep't of Elementary and Secondary Education*,¹² a case that involved discipline of a teacher's certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹³

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and
- (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

¹¹ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

¹² 213 S.W.3d 720 (Mo. App., W.D. 2007).

¹³ *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

Assault in the third degree is a Category 3 crime.¹⁴ The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.¹⁵ While on duty and on an ambulance run, Pratte assaulted the patient’s wife in their home. Instead of meeting the requirements set forth above to remain calm and assist others in handling stress, Pratte exacerbated the situation. Pratte grabbed C.B’s arm, shoved his elbow into her side, and pulled her to the floor. Two other members of the ambulance crew had to pull Pratte away from C.B. and remove him from the house. The factual circumstances in this case convince us that Pratte committed a crime involving moral turpitude.

There is cause for discipline under § 190.165.2(2) and 19 CSR 30-40.365(2)(B).

II. Professional Standards

The Department alleges that Pratte committed misconduct when he assaulted C.B. Misconduct is the intentional commission of a wrongful act.¹⁶ We may infer the requisite mental state from the conduct of the licensee “in light of all surrounding circumstances.”¹⁷

Pratte grabbed C.B’s arm, shoved his elbow into her side, and pulled her to the floor. Two other members of the ambulance crew had to pull Pratte away from C.B. and remove him from the house. He committed misconduct while performing his duties.

There is cause for discipline under § 190.165.2(5) and 19 CSR 30-40.365(2)(E).

III. Professional Trust

Professional trust is reliance on the special knowledge and skills that professional licensure evidences.¹⁸ It may exist not only between the professional and his clients, but also

¹⁴ *Department of Health & Senior Services v. Haywood*, No. 09-0915 DH (AHC Nov. 2009); *Director of Department of Public Safety v. Tillman*, No. 07-1919 PO (AHC Dec. 2008).

¹⁵ *Brehe*, 213 S.W.3d at 725.

¹⁶ *Grace v. Missouri Gaming Comm’n*, 51 S.W.3d 891, 900 (Mo. App., W.D. 2001).

¹⁷ *Duncan v. Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs*, 744 S.W.2d 524, 533 (Mo. App., E.D. 1988).

¹⁸ *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

between the professional and his employer and colleagues.¹⁹ Pratte’s patient and his employer relied on his professional skills as an EMT-Basic when he responded to the ambulance call. He violated that professional trust when he assaulted his patient’s wife while on that call.

There is cause for discipline under § 190.165.2(12) and 19 CSR 30-40.365(2)(L).

IV. Harmful or Dangerous Conduct

Harmful means “of a kind likely to be damaging : INJURIOUS[.]”²⁰ Dangerous means “able or likely to inflict injury or harm[.]”²¹ Conduct that “is or might be harmful or dangerous to the mental or physical health of a patient or the public” is conduct that is or might be *unreasonably* harmful or dangerous to the mental or physical health of a patient or the public.²²

Pratte’s assault was unreasonably harmful to the physical health of C.B., a member of the public.

There is cause for discipline under § 190.165.2(16) and 19 CSR 30-40.365(2)(P).

Summary

Pratte is subject to discipline under § 190.165.2(2), (5), (12), and (16) and under 19 CSR 30-40.365(2)(B), (E), (L), and (P). We grant the motion for summary decision and cancel the hearing.

SO ORDERED on February 20, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹⁹ *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).

²⁰ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 569 (11th ed. 2004).

²¹ *Id.* at 315.

²² *Albanna v. State Bd. of Regis’n for the Healing Arts*, 293 S.W.3d 423, 434 (Mo. banc 2009) (discussing identical language in § 334.100.2(5)).