

**Grievance Hearing Synopsis
Regarding the Termination Grievance of
Mr. Mike Koch
EMS**

25 JUL 2012

By: Pamela Lancaster, Hearing Officer

Description of Issues

- Whether City was justified to terminate the Grievant after the EMS Medical Director revoked his credentials

Relevant Policies

- City of Austin progressive discipline guidelines

Grievant's Position

- I was an excellent paramedic with successful SSPR history and multiple commendations
- I knew nothing of the complaint and had no opportunity to participate in the review or read documents
- I first learned of the complaint when the MD called me in for an interview but told me I was fired
- The MD did not conduct a fair and complete review as required by the COG (clinical operating guidelines) nor has he complied with Medical Board rules requiring him to work with the Director in making decisions about paramedics
- The MD does not have authority to terminate me

Department's Position

- The paramedics operate under the MD's medical license and he has complete discretion to make decisions about paramedic credentials
- The MD can ignore the performance review process set out in the COG
- The Director had no choice but to terminate the Grievant when he lost his credentials because he couldn't work any longer as a paramedic
- The Director couldn't find a substitute position

Significant Findings of Fact

- Grievant was an excellent employee with a successful SSPR history and multiple commendations
- The MD has the authority to decide who maintains credentials under his medical license
- The MD has authority to ignore the performance review process
- The MD did not follow the COG, nor did he comply with the Medical Board Rules
- The MD did not allow the Grievant to participate in the review process as described in the COG
- The Director did not try to find a substitute position for the Grievant

Hearing Officer's Recommendation

- Reverse: reinstate the Grievant with back pay and benefits and make an effort to find a substitute position; allow the Grievant to receive HR assistance in locating a substitute position, or allow him to resign.
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FACT FINDING REPORT
FOR THE TERMINATION GRIEVANCE
Of

23 JUL 2010 10:52

Mr. Michael Koch
EMS

By: Pamela Lancaster
Hearing Officer
316 W 12th, Suite 207
Austin, TX 78701
512.452.1800

I. HISTORY OF THE DISPUTE

Grievant, a 15-year Paramedic with the Austin Travis County EMS System (hereinafter referred to as EMS), was terminated on January 12, 2012, after the Medical Director (hereinafter referred to as MD) revoked the Grievant's credentials to practice medicine under the MD's license.

Grievant argued that the Director and the MD had failed to develop an agreement required by the Texas Medical Board rules intended to outline the process for withdrawal of employee credentials. According to Grievant, the fair review required by the clinical operating guidelines (hereinafter referred to as COG) did not occur, as Grievant was not informed of the fact of a medical incident review, nor given any chance to respond before his termination.

The City argued that the MD has absolute authority to determine who he will credential to practice under his medical license, and that the application to the State of Texas to approve the EMS service satisfied the Medical Board requirement for a formal agreement outlining the process for dec credentialing.

II. DOCUMENTARY EVIDENCE

The City submitted a work history and statement of facts, a witness list, and relevant documents.

The Grievant submitted relevant documents.

III. TESTIMONIAL EVIDENCE

1. Mr. Ernesto Rodriguez, Director, EMS, testified to the following:

- EMS employs both EMTs and paramedics, who must be both licensed and credentialed.
- The state of Texas issues the license, whereas the MD has the authority to determine who will be given credentials to practice medicine (as a paramedic) under the MD's license.
- My duties as Director do not overlap the MD's duties; I oversee the administration of the EMS; the MD oversees the medical care and credentialing decisions.

- Each MD of an EMS system issues credentials for only that system; a paramedic does not lose his license if his credentials are suspended.
- The MD investigates complaints about EMS medical care (a Clinical Event Review) with a designated team
- The MD was not required to consult with me before he decided to revoke the Grievant's credentials.
- I terminated the Grievant because he could not work as a paramedic once his credentials were suspended.
- I had no substitute positions into which I could have placed the Grievant.
- I have placed other paramedics into substitute positions after their credentials have been suspended.
- The MD and I do not have an agreement outlining our specific responsibilities and authority as required by the Texas Medical Board Rules.
- I think the application we filed with the State of Texas for approval of the EMS system meets the requirement for an agreement.
- Grievant's credentials were revoked without any collaboration with me as Director.
- I don't know anything about the MD's investigation.
- I am not concerned that the medical care complaint came several months after the incident and may have coincided with the patient's receipt of his bill.
- The other medic on this call was not terminated.

2. Mr. Michael Koch, Grievant, testified to the following:

- I worked two years as an EMT, and then was promoted in 1999 to paramedic, which is an EMT with advanced training.
- I was not aware on January 6 when I met with the MD of any medical review or problem with my actions.
- I had no recall of the incident when the MD met with me on January 6; it was a call from two months prior.
- The MD told me I was fired but questioned me, and told me he would "shoot me on the spot" if I lied to him. He provided me the "run form" at the meeting and I began to recall some of the incident. The meeting lasted about 30 minutes; I wasn't prepared or provided an opportunity to explain what happened.
- I recall that the patient interaction was not unpleasant; we were offered cookies before we left.
- I did not refuse transport to a patient; it would have taken ten minutes to transport the patient, and I have never refused transport to a patient.
- I don't think anyone investigated why the complaint wasn't filed until two months after the incident; it's common that a complaint comes after the patient receives the bill.
- The MD did not put together a clinical review group for the complaint.

- I met with the Assistant Director for my pretermination meeting and told him my concerns about how my credentials were revoked without notice or review. He said he could do nothing about my termination.
- I have always met or exceeded expectations in my SSPRs; my supervisor said that my partner and I got the most commendations.
- The MD does not have authority to terminate me.
- I told the MD I wanted to appeal his decision to terminate me.

3. Mr. Tony Marquardt, EMS paramedic and President, ATCEMS Association, testified to the following:

- I have been a paramedic for 13 years.
- I am familiar with practices and procedures within the department; employees bring their concerns to me.
- I understand that the MD has authority to decide how and whether to withdraw credentials, but the staff has concerns about the inconsistency of his withdrawal decisions.
- The staff is also concerned about the review process that leads to dec credentialing.
- The MD has not told me about his decisions in other cases.
- I agree that it is a job requirement for a paramedic to be credentialed.
- I think employees don't appeal dec credentialing because they think it's pointless to appeal to the same person who made the decision in the first place.

IV. FINDINGS OF FACT

1. Grievant was an employee in good standing at the time his credentials were revoked and at the time of his termination.
2. Grievant was employed 15 years as an EMT and paramedic.
3. Grievant had an excellent SSPR history and numerous commendations.
4. A paramedic practices medicine under the authority of the MD's medical license and is credentialed by that MD.
5. A complaint was filed January 3, 2012, by a patient treated by the Grievant and his partner on November 8, 2011.
6. The EMS MD revoked Grievant's credentials on January 9, 2012 for failing to provide transport to a patient.
7. The Grievant was not notified of the complaint until he met with the MD January 6, 2012; he was not allowed to participate in investigating the concern nor review any related documents.
8. The EMS MD did not follow the Provider Clinical Performance Review Process as described in the current Clinical Operating Guidelines in reaching his decision to revoke the Grievant's credentials.
9. The EMS MD is authorized to revoke credentials without utilizing the OMD Clinical Performance Review process.

10. The EMS MD has failed to comply with Texas Medical Board Rules 197.3(b) (8); he has not developed an agreement with the EMS Director outlining the specific responsibilities and authority each will hold.
11. The EMS MD has failed to comply with Texas Medical Board rules 197.3(b) (9) when he did not take remedial measures for EMS personnel in conjunction with local EMS administration.
12. The EMS application for approval to the State of Texas is not an agreement as contemplated by the Texas Medical Board rules 197.3(b) (8).
13. The Director failed to try to find a substitute position for the Grievant.

V. DISCUSSION OF THE FACTS

Several authorities address the Medical Director's duties with regard to providers such as the Grievant: the Medical Board rules require the MD to have a contract with the Director about how their responsibilities will be divided, and to make decisions about providers in conjunction with the Director. The MD's own Clinical Operating Guidelines (COG) state the MD will conduct a fair review of a clinical concern, will be able to substantiate a decision to revoke through a process of appropriate investigation and review, will allow the provider to participate fully, openly and honestly, allow the provider to review pertinent documents utilized in the review process, and require him to maintain the confidentiality of review proceedings. The focus of a performance review, according to the COG, is to ensure that it is complete, accurate and objective. These rules plainly require the Grievant to be notified of the complaint and to participate in the process as it pertains to his performance.

The MD did not follow the COG nor has he complied with the Medical Board rules. He made a decision about the event without complete information. In spite of those failures, he has the authority to give and take credentials. He has the authority to ignore the Provider Clinical Performance Review process and simply revoke credentials. Although he has failed to produce a contract outlining responsibilities between him and the Director, the Director did not complain of the MD's decision process nor was he claiming to have been usurped of his own power to negotiate the contract terms. Paramedics operate under the MD's medical license, and the rules give him the authority to decide who is credentialed. His failure to follow his own guidelines or the Medical Board rules may be better addressed in the MD's SSPR or in cooperation with the Medical Board in an administrative law proceeding. This hearing officer does not have the authority to take action regarding the MD's credentialing decision.

Once decredentialed, the Grievant could no longer operate as a paramedic in the Austin Travis County EMS system. The Director testified that termination was a disciplinary action, yet there was no evidence regarding any wrongdoing or policy violation on the Grievant's part; in fact, there was testimony that a decredentialed paramedic may not have committed any bad act. The Director stated that he had no substitute position into which he could place the Grievant, and therefore concluded that termination was the only possible outcome. The Director provided no testimony to demonstrate the effort he made to determine whether another position was available either in his department or another, why he couldn't have allowed the employee time to search for another position in the City, or why, at the very least, he didn't allow the

employee to resign rather than be terminated. This Grievant was an excellent employee of 15 years as demonstrated by his SSPR record and numerous commendations. In this instance, the Director improperly identified this matter to require a disciplinary response, and he failed to adhere to City of Austin policy which encourages placement of employees in substitute positions.

VI. RECOMMENDATION

After careful review and consideration of all evidence presented at this hearing, this Hearing Officer respectfully submitted the following decisions, considerations, and recommendation:

The Department did not comply with policy in handling the personnel action being grieved.

The facts that were presented support the conclusion stated above.

Recommendation: To Reverse. Reinstatement the Grievant to his position with back pay and benefits and attempt to find a substitute position for him. Provide HR assistance to the Grievant so that he may also search for a substitute position. Allow the Grievant to resign if he so chooses.

Respectfully submitted,



Pamela Lancaster

7/25/2012