

**BEFORE THE STATE OF DELAWARE  
FIRE PREVENTION COMMISSION**

**IN RE:** )  
 )  
**MATTHEW ROSEBOROUGH** )  
 ) **Consolidated with**  
 )  
**IN RE:** )  
 )  
**KYLIE ROSEBOROUGH** )  
 )

**STATEMENT OF THE CASE**

An evidentiary hearing was held before the Delaware State Fire Prevention Commission (the “Commission”) on April 11, 2011, after due notice to Matthew Roseborough and Kylie Roseborough, in accordance with the orders dated February 15, 2011 issued by the Commission temporarily suspending the Emergency Medical Technician-B (“EMT-B”) certifications of Matthew Roseborough and Kylie Roseborough and scheduling a final hearing pursuant.

Pursuant to Commission regulation 710, section 14.4.1.4 an EMT-B may lose their certification to provide patient care if the EMT-B violated Statewide Basic Life Support Treatment Protocols (“BLS Protocols”).

A quorum of the Commission members deliberated and voted on the decertifications of Matthew Roseborough and Kylie Roseborough. Matthew Roseborough and Kylie Roseborough (collectively, the “Roseboroughs”) were not present, nor represented by counsel or other representative. Erika Y. Tross, Deputy Attorney General presented the case on behalf of the State of Delaware (“State”). Elio Battista, Jr., Deputy Attorney General, advised the Commission.

## PRELIMINARY MATTERS

On Friday, April 8, 2011, at approximately 3:00 p.m. the Rosebroughs left a voice mail at the office of the Commission and sent a facsimile requesting a continuance of the hearing scheduled for the morning of Monday, April 11, 2011. The only justification given by the Rosebroughs for the continuance was, without any further explanation, a family emergency.

Due to the requirements of 16 *Del. C.* §6603(b) and the time the request for continuance was received, a quorum of Commissioners could not be assembled to rule on the request. The executive specialist for the Commission, Sherry Lambertson, telephoned the Rosebroughs and left a voice mail explaining that the Commission would be unable to meet prior to Monday, April 11, 2011 to rule on the request for a continuance. Ms. Lambertson informed the Rosebroughs that the Commission would rule on the request on April 11, 2011 as a preliminary matter prior to the hearing and that the Rosebroughs could appear either personally or through a representative acting on their behalf.

On April 11, 2011, prior to commencement of the hearing the Commission addressed the request for a continuance. The Commission was advised of the nature, timing and justification given for the request. Counsel for the State opposed the request on the grounds that the Rosebroughs did not explain what the family emergency was and why it prevented them from being present. Counsel for the State also noted that all other parties and witnesses were present and prepared to testify and had taken appropriate steps with their employers to ensure their availability for the hearing. Counsel for the State further objected on the grounds that the Rosebroughs had approximately two months in which to prepare for the hearing.

Sherry Lambertson, executive specialist for the Commission, was sworn and testified. Ms.

Lambertson testified that notice of the hearing was provided to the Roseboroughs pursuant to 29 *Del. C.* §10122 by certified mail return receipt requested. Ms. Lambertson further testified that the notice also included copies of the February 15, 2011 orders issued by the Commission pursuant to 16 *Del. C.* §6712(c)(2). Ms. Lambertson further testified that signed returned receipts for both Matthew Roseborough and Kylie Roseborough were received by the Commission on February 23, 2011.

After hearing the testimony and the arguments presented, the Commission unanimously voted to deny the request for a continuance.

On March 23, 2011, the State filed with the Commission a motion to consolidate the hearings of Matthew Roseborough and Kylie Roseborough. The motion was also served on the Roseboroughs on March 23, 2011. The State filed the motion to consolidate on the grounds that both hearings will involve most of the same evidence, testimony and witnesses. The State further argued that consolidation would prevent witnesses from having to testify twice and multiple presentation of the same evidence.

After hearing the testimony and the arguments presented, the Commission unanimously voted to consolidate the hearings of Matthew Roseborough and Kylie Roseborough.

### **SUMMARY OF THE EVIDENCE**

The Commission considered the following exhibits, admitted without objection and made part of the record:

1. Incident History for Case Number 06387 on February 1, 2011.
2. February 1, 2011 e-mail from John Farrell RE: Possible Violation of a BLS Protocol by Kylie Roseborough.
3. Incident History for Case Number 07039 on February 4, 2011.

4. Incident History for Case Number 07029 on February 4, 2011.
5. Patient Care Report for Incident 07029 dated February 4, 2011.
6. Patient Care Report for Incident 07068 dated February 5, 2011.
7. February 14, 2011 Memorandum from Dr. Timothy Shiuh, Associate EMS Medical Director, RE: Millcreek Incident 07029 on February 4, 2011.
8. February 7, 2011 Letter from Dr. Patrick J. Matthews to Matthew and Kylie Roseborough RE: Notification of Emergency Suspension of all EMS Privileges in the State of Delaware.
9. February 21, 2011 Administrative Hearing Decision Upholding Emergency Suspension of Matthew Roseborough and Kylie Roseborough.
10. Excerpt of Delaware Basic Life Support Standing Orders for Prehospital and Interfacility Patients effective November 1, 2008.
11. EMT-B Certification print-out for Matthew Roseborough and Kylie Roseborough.

John Farrell, IV, was sworn and testified. Mr. Farrell testified that he has been employed as an EMT-B for the Millcreek Fire Company for over the past five years and has served as an EMT-B on an ambulance for various fire companies for approximately forty-two (42) years.

Mr. Farrell testified that on February 1, 2011 he was assigned to work with Kylie Roseborough and that Kylie Roseborough was designated as the lead EMT-B.

Mr. Farrell testified that on the morning of February 1, 2011, he and Kylie Roseborough were dispatched to a residence in Mendenhall Village in response to a forty-three year old female who had fallen.

Exhibit 1 was shown to Mr. Farrell. Mr. Farrell testified that this document was a print-out

that showed the received, entered and dispatch times for February 1, 2011. Mr. Farrell testified that the print-out gave basic information about the patient taken from the emergency phone call from the residence that he and Kylie Roseborough were dispatched to on February 1, 2011. Mr. Farrell testified that the incident was coded as 17 Bravo 1 which is a person who has fallen and that the Bravo indicated a possible dangerous body area.

Mr. Farrell testified when he and Kylie Roseborough arrived at the residence on February 1, 2011 he observed a forty-three year old female conscious and alert, lying on her right side on a couch in the first floor living room. The patient stated that she had gone outside, slipped on the ice, fallen and struck her back. The patient stated that she had to crawl back into the house. The patient was asked if Kylie Roseborough could examine the injured area and in attempting to turn and expose the injured part of her back winced in pain. Mr. Farrell testified that when Kylie Roseborough attempted to touch the patient, the patient cried out in pain. At this point, Mr. Farrell left the residence to retrieve a stretcher from the ambulance in anticipation of transporting the patient to the hospital. When Mr. Farrell returned to the residence he testified that Kylie Roseborough was exiting the residence and stated that the stretcher wasn't needed and the patient wasn't going to the hospital and would seek assistance from her chiropractor.

Mr. Farrell testified that Kylie Roseborough stated that the patient told her she only called an ambulance to see if she had any bruising and did not want to be taken to the hospital.

Mr. Farrell testified that upon returning to the ambulance, Kylie Roseborough picked-up the radio and reported that the dispatch should be cleared as a service call. Mr. Farrell explained that a service call is when you are assisting a person and not a patient in some manner. Mr. Farrell stated that there was no doubt in his mind that the individual was in fact a patient and should have been

transported to the hospital. Mr. Farrell explained to the Commission that unless a patient is altered mentally they can refuse service. If this occurs the BLS Protocols require a patient refusal form to be completed, signed by the patient and witnessed. In addition, the patient's vital signs must be documented.

Mr. Farrell testified that as soon as he and Kylie Roseborough returned to the Millcreek Fire Company, he prepared a memorandum to his immediate supervisor and the Emergency Medical Service Administrator for the Millcreek Fire Company. Mr. Farrell was shown Exhibit 2 and confirmed that it was the memorandum he had prepared. Mr. Farrell testified that he prepared the memorandum to preserve his integrity regarding the standards for patient care. Mr. Farrell stated in the memorandum that if he had been in the residence when the decision to leave without obtaining a proper refusal had been made he would have stepped in and changed the course of events. However, due to the fact that he did not realize that a proper refusal was not obtained by Kylie Roseborough until they were driving away from the residence he was left with no recourse but to prepare the memorandum.

Upon questioning by the Commission, Mr. Farrell testified that he did not see the patient sign a refusal form, did not see a signature on a refusal form at any point nor did he see the signature of a witness on a refusal form. Mr. Farrell further testified that it was his belief that Kylie Roseborough violated the BLS Protocols by not obtaining a proper patient refusal.

Michael Lennon, Emergency Medical Service Administrator for Millcreek Fire Company, was sworn and testified. Mr. Lennon testified that he has held his current position since 2006 and has served in the emergency medical services field for approximately thirty-five years.

Mr. Lennon testified that he was made aware of two dispatches on February 4, 2011 which

were both reported as non-transports. Mr. Lennon testified that he was concerned that the dispatch call at 10:50 a.m. for incident number 07039 indicated that the ambulance crew was on the scene for approximately one hour and the dispatch was reported as a patient refusal. Mr. Lennon testified that he was concerned why the ambulance crew was present for such a long period of time and why there was a patient refusal. Mr. Lennon testified that the Roseboroughs were both the EMT-B's dispatched for incident number 07039.

Mr. Lennon testified that due to his concerns, he along with Bob Collins, a supervisor, and David Brown, the Emergency Medical Service Captain for Millcreek Fire Company determined it was necessary to visit the home where the ambulance was dispatched. Mr. Lennon testified that he visited the home later the same day of February 4, 2011 at approximately 12:30 p.m.

Mr. Lennon testified that he met with a Ms. Carol Moser and explained that the reason for this visit was a quality control follow-up check on her emergency 911 call. Ms. Moser explained to Mr. Lennon that she had awoken that morning with severe back pain and in fact had a history of back pain issues. Ms. Moser further explained to Mr. Lennon that her back spasms that morning were so intense that she was unable to move from her bathroom sink and it was her daughter that placed the emergency 911 call.

Mr. Lennon testified that Ms. Moser told him that when the Roseboroughs arrived she explained to them that she had a severe history of back problems and she could not take the pain anymore. Mr. Lennon further stated that Ms. Moser told him that Kylie Roseborough stated that if she went to the hospital she would sit in a hallway for eight to twelve hours, there was nothing they could do for a back injury and she would need to follow-up with her primary care physician and request some pain medication. At which point the Roseboroughs suggested that Ms. Moser call her

doctor while they waited.

Mr. Lennon testified that the Rosebroughs' actions were unacceptable and violated the BLS Protocols. Mr. Lennon explained that EMT-B's are not permitted to dispense any kind of medical advice. Mr. Lennon further explained if a person is confronted and they have a complaint then that person becomes a patient. Ms. Moser had a legitimate complaint of a back injury and therefore was a patient. Thus, the Rosebroughs should have immediately offered to transport her to the hospital and make the patient feel comfortable that the hospital is the best choice.

Mr. Lennon testified that he asked Ms. Moser when the emergency 911 call was made was it her intent to go to the hospital. Ms. Moser responded that it was her intent to go to the hospital however she felt belittled that she was bothering the ambulance crew. Mr. Lennon testified that Ms. Moser stated that she never signed any forms nor was offered anything to sign before the Rosebroughs left her home.

Mr. Lennon was shown Exhibit 3 and confirmed that it was a print-out from the fire board computer-aided dispatch system related to the call with Ms. Moser. Mr. Lennon testified that the print-out indicated that the Rosebroughs were present at Ms. Moser's home for approximately forty-nine minutes and the call was cleared with the dispatch fire board as a patient refusal. Mr. Lennon further testified that the Rosebroughs never completed the required Patient Care Report for the incident.

Mr. Lennon testified that it was his belief that the Rosebroughs violated the BLS Protocols by not obtaining a proper patient refusal.

Dr. Timothy Y. Shiuh, M.D., Delaware Office of Emergency Medical Services, Associate Medical Director for New Castle County, was sworn and testified. Dr. Shiuh testified that he has



held his current position since 2007 and has been an attending emergency physician at Christiana Care since 2006.

Dr. Shiuh testified that on February 4, 2011, he was the supervising physician for sixty-one year old patient, Mr. Hsu, who had suffered two grand mal seizures. Dr. Shiuh testified that Mr. Hsu came under his care as a result of being referred to him by one of the paramedics which transported him to the hospital. Dr. Shiuh testified that the paramedic explained to him that his was the second call to the same house for the same complaint and the first call was cleared without any transport and the paramedic was concerned given the patient's condition and history.

Dr. Shiuh testified that Mr. Hsu had suffered a severe stroke and was unable to communicate, however Mr. Hsu's wife was able to give the history and information. Dr. Shiuh testified that Mrs. Hsu initially placed the emergency 911 call and twice requested the patient be transported to Christiana Hospital because Mr. Hsu was shaking, bit his lip and his eyes looked funny. The Roseboroughs were assigned as the EMT-B's on the ambulance which was dispatched on the first call. Dr. Shiuh further testified he was told by Mrs. Hsu when the first ambulance arrived that the Roseboroughs quickly assessed Mr. Hsu and determined that he looked fine and asked Mrs. Hsu if she still wanted Mr. Hsu to go to the hospital. At which time, Mrs. Hsu replied if you think he looks fine I'll just keep him here.

Dr. Shiuh testified that making the statement he looks fine by an EMT-B is inappropriate because it could be falsely misleading to a patient by reassuring them there is nothing wrong. Dr. Shiuh testified that specifically in Mr. Hsu's case he was not fine. After the Roseboroughs had left Mrs. Hsu and her son were in the process of walking Mr. Hsu to the car to take him to Christiana Hospital when Mr. Hsu suffered a second seizure. A subsequent emergency 911 call was placed, a

different ambulance crew was dispatched and Mr. Hsu was transported to Christiana Hospital.

Dr. Shiuh was shown Exhibit 7 and confirmed that it was a memorandum he prepared for Dr. Patrick J. Matthews, the State Basic Life Support Medical Director; Dr. Ross Megargel, the State Emergency Medical Service Medical Director; and the paramedic administrator detailing the events surrounding the hospitalization of Mr. Hsu. Dr. Shiuh prepared the memorandum because he was severely concerned and felt there was a potential coerced refusal and failure to follow refusal of care protocol for patients. Mr. Hsu had many medical problems, including severe stroke, was on medication that could have caused inter-cranial bleeding and clearly presented symptoms of seizure.

Dr. Shiuh testified that based on BLS Protocols the Roseboroughs were required to convince Mr. Hsu and or Mrs. Hsu to go to the hospital and advise the Hsu's about the risks of staying home and not going to the hospital. The Roseboroughs did not attempt to encourage the Hsu's to be transported to the hospital

Dr. Shiuh testified he explained what a patient refusal form was and that Mrs. Hsu stated she had not been given anything to sign by the Roseboroughs. Dr. Shiuh asked Mrs. Hsu if the Rosboroughs had gone through the process to obtain an informed refusal and Mrs. Hsu said no.

Dr. Shiuh testified that upon review of the emergency 911 call and the audio tape of the radio communication, the call was cleared by the Roseboroughs as no services needed and approximately forty-eight hours after the incident a Patient Care Report prepared by the Roseboroughs appeared on the Emergency Dispatch Information Network. The Patient Care Report stated a refusal for transport was explained to Mr. and Mrs. Hsu and a signature was obtained from Mrs. Hsu.

Dr. Shiuh testified that he has never seen nor been able to locate the signed refusal form the Roseboroughs claim they obtained in the Patient Care Report.

Dr. Shiuh testified that it was his belief that the Roseboroughs violated the BLS Protocols regarding general patient care and refusal of service.

Dr. Patrick J. Matthews, M.D., Basic Life Support Medical Director for the State of Delaware, was sworn and testified. Dr. Matthews testified that he has held his current position since 2007 and has been an attending physician with Christiana Care since 2006.

Dr. Matthews testified that he is responsible for the oversight of the basic life support emergency medical technicians in the State and for maintaining quality assurance and adherence to protocols. If there is a circumstance where he determines that an EMT-B has exhibited behavior that would be dangerous towards the citizens of the State he has the right to immediately suspend that EMT-B.

Dr. Matthews was shown Exhibit 8 and confirmed that it was the suspension letters he issued to Matthew Roseborough and Kylie Roseborough. The basis for the suspension letters was failure to follow the BLS Protocols for general patient care, refusal of service, failure to document patient care, coercion of refusal and submission of an apparent false and/or misleading report.

Dr. Matthews testified that prior to the hearing he had conducted an investigation into the incidents involving the Roseboroughs. Dr. Matthews' investigation consisted of patient interviews, review of any patient care reports that were submitted by the Roseboroughs and speaking personally with the Roseboroughs.

Dr. Matthews testified that upon completing the investigation he had serious concerns regarding the Roseboroughs. In a very short period of time there were three incidents of patients seeking transportation to the hospital and which resulted in no transportation being provided and subsequent false and misleading reports, and even no reports, being submitted by the Roseboroughs.

Dr. Matthews testified that it was his belief that the Roseboroughs violated the BLS Protocols regarding general patient care, coercion of refusal and refusal of service.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Roseboroughs were provided with proper and timely notice pursuant to 16 *Del. C.* § 6604(4) and informed of their rights pursuant to 29 *Del. C.* §10122. No testimony or evidence was presented by, or on behalf of, the Roseboroughs.

Pursuant to Commission regulation 710, section 14.4.1.4 the Commission has the authority to decertify an EMT-B if that individual has violated the BLS Protocols.

The Commission considered the testimony and exhibits entered into evidence on behalf of the State. The Commission found the witnesses to be credible based on their testimony and considerable experience and expertise in their respective fields of patient care and medicine. The exhibits entered into evidence supported the testimony provided by the witnesses

Based on the exhibits and testimony, the Commission finds that substantial evidence has been presented to support decertification of both Matthew Roseborough and Kylie Roseborough.

### **CONCLUSION**

The Commission is authorized for the purpose of the public health, safety and welfare to impose sanctions against an EMT-B for violations of the Commission's regulations. Based on the foregoing findings and conclusions, the Commission, pursuant to Commission Regulation 710, section 14.4.4.4, by majority, voted to permanently revoke the EMT-B certifications of both Matthew Roseborough and Kylie Roseborough.

**IT IS SO ORDERED** this \_\_\_\_ day of, 2011.

**DELAWARE STATE FIRE PREVENTION COMMISSION**

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Alan Robinson, Vice Chairman

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Kevin Wilson, Commissioner

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Tom DiCristofaro, Commissioner

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Bob Ricker, Commissioner

Date Mailed: \_\_\_\_\_