

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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DEPARTMENT OF HEALTH

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OFFICE OF THE CLERK

IN RE: City of Orlando/Orlando Fire Department

Petition for Declaratory Statement.

DOH 2009-0028

FINAL ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

January 9, 2009, the City of Orlando/Orlando Fire Department (OFD) filed the attached Petition for Declaratory Statement ("Petition") pursuant to section 120.565, Florida Statutes and chapter 28-105, Florida Administrative Code. Department deems the facts as asserted by OFD in the Petition sufficient to trigger this Declaratory Statement. Wherever possible this statement will avoid restating that which is already contained in the Petition.

FINDINGS OF LAW

A. "Licensee" means any basic life support service, advanced life support service, or air ambulance service licensed under Chapter 401, Part III. §401.23(13), F.S.

B. Each licensee must document that each of its drivers of its vehicles has not, within the past 3 years, been convicted of reckless driving. §401.281(1)(c), F.S.

C. Each licensee unable to document that each of the drivers of its vehicles has not, within the past 3 years, been convicted of reckless driving is subject to disciplinary action under Part III of Chapter 401. §401.281(2), F.S.

D. Drivers subject to section 401.281(1)(c), Florida Statutes are also subject to additional requirements under rule. Ch. 64J-1.013, F.A.C.

E. The Department may deny, suspend, or revoke a license, certificate, or permit or may reprimand or fine any person operating under this part for pleading nolo

contendere to a crime relating to practice in any occupation when operating under this part. §401.411(1)(b), F.S.

F. Reckless driving is the driving of a vehicle in willful or wanton disregard for the safety of persons or property. §316.192(1)(a), F.S.

G. Reckless driving is a crime. §§318.13; 318.17-.18, F.S.

H. Reckless driving is a misdemeanor. Hurl v. State, 670 So.2d 1144, 1145 (Fla. 1st DCA 1996).

DISCUSSION

A section 401.281 driver is "operating under this part" for purposes of section 401.411(1)(b), Florida Statutes. Reckless driving is a crime relating to the practice of driving a vehicle under this part. §401.281, F.S.

Unlike licensees, emergency medical technicians, paramedics and medical directors, who can be operating under this part at any time, section 401.281 drivers only operate under this part while driving licensee's vehicle. Reading sections 401.281 and 401.411(1)(b), Florida Statutes, together reveals the following:

1. A section 401.281 driver pleading nolo contendere for reckless driving while operating licensee's vehicle exposes him or herself to sanction. §401.411(1)(b), F.S; and

2. A person pleading nolo contendere for the crime of reckless driving while operating licensee's vehicle exposes the licensee to disciplinary sanction should the licensee permit that person to be a section 401.281 driver before three years have elapsed after adjudication of the crime. §401.281(2), F.S.

This declaratory statement does not include any statement that the relevant charge of reckless driving resulted from actions taken while driving a vehicle.

Under Chapter 401, Part III, "conviction" and "convicted" are chameleon-like terms drawing meaning from statutory context. see Cottom v. Department of Health, Bureau of Emergency Medical Services, Rendition No. DOG-04-1449-FOI-HSEM citing State v. McFadden, 772 So.2d 1209, 1215 (Fla. 2000). The impact of pleading no contest (nolo contendere) while operating under Chapter 401, Part III or applying for certificates as Emergency Medical Technician or Paramedic is clear and arises from express statutory instruction. §401.35(5), F.S., Ch. 64J-1.017, F.A.C.

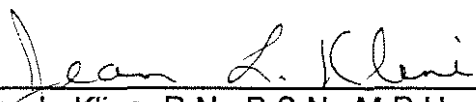
There is no similar context for pleas of nolo contendere regarding non-felony crimes such as reckless driving that resulted from actions taken by section 401.281 drivers or those that want to be section 401.281 drivers when not driving a vehicle governed by section 401.281, Florida Statutes. Accordingly, absent statutory or rule direction, the Department does not presently find that the definition of conviction for such specific actions encompasses court orders of adjudication of guilt withheld.

CONCLUSIONS OF LAW

Applying the findings of fact and law and the discussion above, reveals the following answers:

1. If the charge of reckless driving resulted from facts derived from the driving of licensee's vehicle, adjudication of guilt withheld means the driver was convicted of reckless driving for purposes of section 401.281, Florida Statutes.
2. If the charge of reckless driving resulted while driving a vehicle other than licensee's vehicle, a determination of adjudication of guilt withheld means the driver was not convicted of reckless driving for purposes of section 401.281, Florida Statutes.

DONE AND ORDERED this 8 day of April, 2009.



Jean L. Kline, R.N., B.S.N., M.P.H.
Deputy Secretary for Health
State Public Health Nursing Director
Florida Women's Health Officer

Attachment

Copies to:

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Office of the General Counsel
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4052 Bald Cypress Way, Bin A-02
Tallahassee 32399-1703

NOTICE OF RIGHTS

This is final agency action. Review of final agency action may only be had by filing notices of appeal in both the appellate district where the petitioner resides and with the clerk of the Department within 30 calendar days after the date of execution. §120.68, F.S.; Fla. R. App. P. 9.110.

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**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA DEPARTMENT OF HEALTH**

IN THE MATTER OF:

OFFICE OF THE CLERK

CITY OF ORLANDO/
ORLANDO FIRE DEPARTMENT

Case No.: 2009-0028

PETITION FOR DECLARATORY STATEMENT

Petitioner, CITY OF ORLANDO, pursuant to Section 120.565, Florida Statutes, Rule Chapter 28-105, Florida Administrative Code, Chapter 401, Florida Statutes – Medical Telecommunications and Transportation, hereby request a declaratory statement from the Florida Department of Health and as grounds therefore states the following:

1. Petitioner's Name and Address:

Name City of Orlando/Orlando Fire Department
Address 400 South Orange Ave., Orlando, FL 32802
Telephone Number (407) 246-3470
Facsimile Number (407) 246-2854
e-mail address (if any) Amanda.Green@cityoforlando.net

2. Name and Address of Petitioner's Attorney or Qualified Representative, if any:

Name (Attorney/Qualified Representative) Amanda J. Green, Assistant City Attorney/John Miller, Deputy Chief (Administrative) Orlando Fire Department
Address 400 South Orange Ave., Orlando, FL 32802
Telephone Number (407) 246-3470
Facsimile Number (407) 246-2854
e-mail address (if any) Amanda.Green@cityoforlando.net

3. Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on which the Declaratory Statement is sought:

Section 401.281(1)(d), Florida Statutes which provides that a licensee must, at a minimum, document that each of its drivers has not "within the past 3 years, been convicted of reckless driving or driving under the influence of alcohol or controlled substances and has not had a driver's license suspended under the point system provided for in chapter 322[.]"

Licensee is defined in section 401.23(13), Florida Statutes, to mean any "basic life support service, advanced life support service, or air ambulance service licenses pursuant to" Part III, Chapter 401, Florida Statutes.

4. Description of How the Statute(s), Agency Rule(s), Agency Order(s), and/or Code Section(s) May Substantially Affect the Petitioner in the Petitioner's Particular Set of Circumstances:

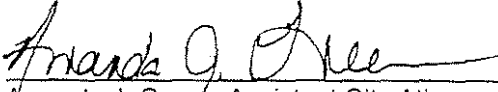
Petitioner is a licensee under Section 401.281(1) (d), Florida Statutes. Petitioner's driver has indicated that he is contemplating accepting a plea for reckless driving (non alcohol related) with a withhold of adjudication of guilt, and has asked petitioner if such a plea would cause him to lose his privilege to drive, pursuant to 401.281(1)(d), Florida Statutes.

The petitioner must decide if the driver should be disallowed from driving an emergency vehicle for the next three years. This statute substantially affects the petitioner's decision and any labor and/or administrative implications that may result from such decision.

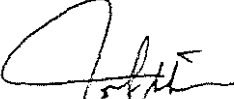
5. Question

Whether licensee (Orlando Fire Department) may allow an engineer, who accepts a plea of non-alcohol related reckless driving (adjudication of guilt withheld), to operate as a driver pursuant to section 401.28(1) (d), Florida Statutes?

Respectfully submitted this 7th day of January, 2009.



Amanda J. Green, Assistant City Attorney



John Miller, OFD Deputy Chief
Representative for Orlando Fire Department