

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

IN THE MATTER OF:)
)
Johnathon Penry)
PO Box 202)
Malvern, Iowa 51551-0202) PROPOSED DECISION
)
Certification: B-13-370-02)

On March 3, 2010, the Department of Public Health-Emergency Medical Services Bureau (Department) served a Notice of Proposed Action-Revocation on Johnathon Penry (Respondent). Respondent filed a timely Notice of Appeal on March 24, 2010. A telephone hearing was held before Administrative Law Judge Margaret LaMarche on April 26, 2010 at 11:00 a.m. Assistant Attorney General Heather Adams represented the Department. Respondent was self-represented and elected to have an open hearing, pursuant to Iowa Code section 272C.6(1).

THE RECORD

The record includes the Notice of Telephone Hearing, testimony of the witnesses, and the following exhibits:

Department Exhibit 1:	641 IAC chapter 131
Department Exhibit 2:	Notice of Proposed Action: Revocation, 3/3/10
Department Exhibit 3:	Certification Information
Department Exhibit 4:	Letter from Doug Shere
Department Exhibit 5:	Criminal History Information Unauthorized Use of Credit Card
Department Exhibit 6:	Personnel File
Department Exhibit 7:	Request for Hearing, 3/18/2010
Department Exhibit 8:	Prior Contested Case Decisions

FINDINGS OF FACT

In January 2009, Johnathon Penry ("Respondent") joined the Malvern Volunteer Rescue Department as a First Responder. Respondent was eighteen years old at the time. On July 16, 2009, the Department certified Respondent as an EMT-Basic. Following his certification, Respondent continued as a volunteer EMT-B with Malvern Rescue Department. (Testimony of Respondent; Department Exhibits 3, 6)

In late October 2009, the treasurer for Malvern Rescue noticed an unusually high fuel bill for the previous month and requested an itemized billing from the gas station that provided gas for the rescue units. The itemized billing revealed a large number of unleaded gas purchases for the prior month. This was unusual because both of the rescue units used only diesel fuel. The Chief had only approved the purchase of 3-4 tanks of unleaded gas for uses related to the Malvern Rescue Department. The members of the Malvern Volunteer Rescue Department were interviewed. Respondent admitted that he had filled his personal vehicle, without appropriate authorization, using the Malvern Rescue credit card. (Testimony of Joe Ferrell; Department Exhibit 4)

Respondent was suspended from the Malvern Rescue Department on October 26, 2009. He was later charged with two counts of Forgery by Unauthorized Use of a Credit Card (a class "D" felony), in violation of Iowa Code section 715A.6(2)(b). On December 10, 2009, Respondent entered a guilty plea to one count and was granted a Deferred Judgment by the Mills County District Court. Respondent was placed on supervised probation for a period of one year and ordered to pay court costs and \$1473.85 in restitution. Respondent will be on probation until December 10, 2010. (Department Exhibits 4, 5, 6; Testimony of Joe Ferrell)

Respondent explained the circumstances of his violations. Respondent used his personal vehicle for Malvern Rescue business on 3-4 occasions while he was still a First Responder. On those occasions, the Chief authorized Respondent to use the Malvern Rescue credit card to purchase gas for his personal vehicle. However, Respondent continued to use the credit card for personal gas purchases after that time, even though he was not authorized to do so. Respondent estimates that he used the Malvern Rescue credit card for unauthorized gas purchases approximately 25-30 times between June 2, 2009 and October 9, 2009. (Respondent testimony)

Prior to his offenses, Respondent had an exemplary record with the Malvern Rescue Department and had been the Department's second highest responder. The Chief believed that Respondent's age was a factor in his poor decision making and hopes that Respondent has learned from his mistakes. (Department Exhibit 6)

CONCLUSIONS OF LAW

The legislature has directed the Department to adopt rules pertaining to the examination and certification of emergency medical care providers.¹ The Department has adopted rules at 641 IAC chapter 131.

641 IAC 131.7(2) provides, in relevant part:

131.7(2) The department may deny an application for issuance or renewal of an emergency medical care provider certificate, including specialty certifications, or place on probation, or issue a citation and warning, or suspend or revoke the certificate when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

...

f. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. ...

...

t. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or a misdemeanor, which relates to the provision of emergency medical care, including but not limited to a crime involving dishonesty, fraud, theft, embezzlement,.... A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

The preponderance of the evidence established that Respondent used the Malvern Rescue Department's credit card to purchase gasoline for his personal vehicle on 35-40 occasions. These thefts began just before Respondent was certified as an EMT-B and continued for months after he was certified. Based on this record, it appears that

¹ Iowa Code section 147A.4(2)(2007).

Respondent would have continued his unauthorized use of the Malvern Rescue credit card if the unauthorized credit card use had not been discovered. The thefts were not an isolated occurrence and clearly constitute unethical conduct, in violation of Iowa Code section 147A.7(1)(f) and 641 IAC 131.7(2)(f).

In addition, Respondent entered a guilty plea to Forgery by Unauthorized Use of a Credit Card, which is a felony level offense. Pursuant to statute and the Department's rules, the entry of a guilty plea is conclusive evidence of a violation. Iowa Code section 147A.7(1)(j) and 641 IAC 131.7(2)"t." This is true even though the court granted Respondent a deferred judgment, and even though Respondent will not have a conviction on his record if he successfully completes his probationary period.

The Department proposes revocation of Respondent's EMT-B certification based on the violations established in this record. The circumstances justify revocation. The violations raise very serious concerns about Respondent's honesty and trustworthiness and reflect poorly on his fitness to continue as a certified EMS provider in the state of Iowa. Based on this record, it appears that Respondent would have continued his unauthorized use of the credit card if he had not been caught. EMTs frequently work in environments with little supervision and with high levels of stress. EMTs have access to persons who are vulnerable due to illness or injury, as well as access to their homes and their belongings. It is essential that certified EMTs are honest individuals who merit the trust and confidence of their supervisors, co-workers, and the public.

In addition, the Department previously revoked the certification of a paramedic who used his service's credit card to purchase gasoline for his personal vehicle on 11 occasions for purchases totaling \$425.18. Respondent's violations involve many more incidents and a significantly higher dollar amount. (Department Exhibit 8, Case No. 06-06-10).

It is likely that immaturity was a factor in Respondent's violations. However, the Department points out that the revocation is not permanent. Respondent may apply for reinstatement in the future if he can show that that the basis for the revocation no longer exists and that it is in the public interest for his certification to be reinstated. See 641 IAC 131.9.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Revocation issued by the Department to Respondent Johnathon Penry on March 3, 2010 is hereby AFFIRMED.

Dated this 12th day of May, 2010

Margaret LaMarche

Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
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cc: Johnathon Penry
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This proposed decision and order becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director of the Department of Public Health is taken as provided in subrule 131.12(11). Any appeal to the director for review of this proposed decision and order shall be filed in writing and mailed to the director of the Department of Public Health by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be sent to the administrative law judge. Any request for appeal shall state the reason for the appeal. 641 IAC 131.12(11).

