

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

IN THE MATTER OF:

DIA NO. 13DPHES004
CASE NO. 13-05-12

John Scully
739 Michaels Street, Apt. 65
Iowa City, Iowa 52240

PROPOSED DECISION

Certification: B-18-352-18

On June 6, 2013, the Department of Public Health-Emergency Medical Services Bureau (Department) served a Notice of Proposed Action-Probation on John Scully (Respondent). Respondent filed a timely Notice of Appeal. A telephone hearing was held before the undersigned administrative law judge on July 25, 2013. Assistant Attorney General Heather Adams represented the Department. Respondent was self-represented and elected to have a closed hearing, pursuant to Iowa Code section 272C.6(1).

THE RECORD

The record includes the Notice of Telephone Hearing; the testimony of Joe Ferrell, Shawn Patrick Mercer, and John Scully; Department Exhibits 1-11 (See Exhibit Index for description); and Respondent Exhibits A-B.

FINDINGS OF FACT

In May 2009, Respondent John Scully filed an initial application for certification as an Emergency Medical Technician Basic (EMT-B) with the Iowa Department of Public Health-Emergency Medical Services Bureau. During the application process, Mr. Scully disclosed that he had three criminal convictions in January 2009: Consumption/Intoxication, Interference with Official Acts, and Public Urination. Mr. Scully was a college student in Iowa City at the time of these offenses and was also underage (age 19). He was arrested on January 23, 2009 after he urinated in public and tried to run away from police officers. Mr. Scully was given fines on all three convictions. At hearing, Mr. Scully testified that he was also placed on probation for

two years, although this is not apparent from the Iowa Courts Online records. (Testimony of Joe Ferrell, John Scully, Shawn Mercer; Department Exhibits 3, 5, 8)

After reviewing the circumstances of Mr. Scully's 2009 convictions, the Department decided that this was an isolated occurrence that could be addressed with a Confidential Letter of Warning. The Department certified John Scully as an EMT-B in June 2009. He was sent a Confidential Letter of Warning informing him that it was important for him to "maintain continued abstinence from alcohol and illegal drugs." The Letter of Warning cautioned Mr. Scully that any future violations could result in formal charges and disciplinary action against his certificate. (Testimony of Respondent; Joe Ferrell; Department Exhibits 8-10)

On May 17, 2011, John Scully was hired as an EMT-B by Advance Medical Transport of Iowa. Mr. Scully disclosed his 2009 convictions to his employer. (Testimony of Respondent, Shawn Mercer)

On August 28, 2011, John Scully was arrested in Iowa City for Consumption/Intoxication. He pled guilty to this offense on or about August 30, 2011 and was fined \$100. (Department Exhibit 5; Testimony of John Scully; Joe Ferrell)

On October 8, 2011, John Scully was arrested again for Consumption/Intoxication. Mr. Scully underwent a substance abuse evaluation at the University of Iowa Hospitals and Clinics (UIHC) on October 10, 2011. The evaluator recommended individual counseling to address his drinking habits, completion of an extended outpatient program at UIHC, and Alcoholics Anonymous (AA) meetings. (Department Exhibits 5, 7; Testimony of Joe Ferrell)

On November 9, 2011, John Scully pled guilty to Consumption/Intoxication and was sentenced to serve 10 days in the Johnson County Jail. The sentencing court suspended the jail sentence and placed Mr. Scully on probation for a period of one year. The conditions of probation included completion of a substance abuse evaluation and treatment, as well as any recommended aftercare. Mr. Scully was also required to abstain from the consumption of alcohol and to obey all laws. In making the sentencing determination, the court considered: 1) Mr. Scully's age; 2) his prior criminal record that included two public intoxication convictions; and 3) the aggravating facts and circumstance of his case. (Department Exhibit 5; Respondent Exhibit A; Testimony of John Scully; Joe Ferrell)

John Scully complied with the terms of his criminal probation and the treatment recommendations. He entered the Extended Outpatient Treatment Program at UIHC on November 14, 2011 and completed the program on February 29, 2012. He also attended AA meetings. Mr. Scully's Chemical Dependency Discharge Summary states, in part, that he was an integral part of the group, gave good feedback to his peers, has not consumed alcohol since his last public intoxication, and has no plans to return to drinking because of the negative consequences and impact on his relationships as well as school. (Testimony of John Scully; Department Exhibit 7)

John Scully reported his 2011 convictions to his employer but did not report these convictions to the Department. At hearing, Mr. Scully testified that he believed that his employer would report the convictions to the Department. (Testimony of John Scully, Shawn Mercer, Joe Ferrell)

In March 2013, John Scully filed an application with the Department to renew his EMT-B certification. Mr. Scully answered "yes" to the question on the application that asked if he had any criminal convictions since his certification was initially issued. In response to the Department's request for additional information, Mr. Scully provided documentation of his two Consumption/Intoxication convictions in 2011. (Testimony of John Scully, Joe Ferrell; Department Exhibits 3-5; Respondent Exhibit A)

Joe Ferrell is the Regulation Manager for the Department's Bureau of Emergency Medical Services. After reviewing John Scully's most recent convictions and his substance abuse treatment record, the Department determined that Mr. Scully's certification should be placed on probation for a period of two years. (Testimony of Joe Ferrell; Department Exhibit 9)

Under the terms of the proposed two year probation, John Scully is required to:

- abstain from using alcohol and mood altering chemicals;
- abstain from using prescription medication unless prescribed and dispensed by a physician in an appropriate manner;
- follow all treatment and aftercare recommendations made by the facility where he received his substance abuse evaluation;
- provide a specimen of blood or urine when requested and sign necessary releases of information;

- be law abiding;
- file quarterly reports with the Department; and
- make personal appearances when requested.

The probation proposed by the Department also requires John Scully to provide notification of his probationary conditions to any current or prospective employers (including direct supervisors, service directors, and medical directors) and to any EMS training program in which he enrolls. Within fifteen days after the probation takes effect, or within fifteen days of undertaking new employment or enrolling in an EMS training program, John Scully's direct supervisor, service director, training program director, and medical directors must report to the Department acknowledging that they have read the Notice of Proposed Action-Probation and understand it. (Testimony of Joe Ferrell; Department Exhibit 1)

At hearing, Joe Ferrell explained that the Department considered the number of alcohol related convictions and the fact that Mr. Scully had two additional arrests and convictions for public intoxication after receiving the Department's Letter of Warning. Mr. Ferrell testified that it is unusual for EMS providers to have additional convictions after receiving a Letter of Warning. The Department also considered the fact that Mr. Scully was diagnosed with Alcohol Abuse and that he was required to complete extended outpatient treatment. The Department typically takes disciplinary action against the EMS provider's certificate under these circumstances and would typically impose a four year period of probation for substance abuse. In this case, the Department is imposing a two year period of probation because Mr. Scully is already two years into his recovery. (Testimony of Joe Ferrell)

According to Joe Ferrell, the Department's disciplinary action in this case and in other cases involving repeated alcohol related convictions is based on the following concerns:

- EMS providers may be called on, at any time of the day or night, to respond to medical emergencies in private homes or other locations where they are essentially unsupervised. It is crucial that EMS providers are sober and safe to practice and that they have the impulse control to abstain from alcohol at times when they may be called into service; and
- Public confidence in the quality of the state's EMS services and the Department's effective protection of the public may be diminished if the Department does not

take steps to provide additional oversight of EMS providers who have multiple alcohol related convictions.

(Testimony of Joe Ferrell)

John Scully has been promoted to Assistant Manager at Advance Medical Transport of Iowa. Mr. Scully's supervisor, Shawn Mercer, submitted a very complimentary letter of recommendation for Mr. Scully and also testified on his behalf at hearing. According to Mr. Mercer, John Scully has exhibited a high degree of professionalism while employed by Advance Medical Transport. Mr. Mercer describes Mr. Scully as relating well with patients, providing excellent care, a leader, and 100% dependable. Mr. Scully has been given the responsibility for training new employees. During his employment, Mr. Scully has been randomly selected¹ for drug and alcohol testing on four occasions and all results were negative. In Mr. Mercer's opinion, John Scully has learned from his mistakes and additional probation would not serve any beneficial purpose.

At hearing, John Scully testified that he has never consumed alcohol when working or while on call as an EMS provider. He testified that he was on call 50 hours a week and when he had the opportunity to go out he tended to go overboard. He further testified that he was having a lot of family problems at the time of his last arrest. His parents had separated and his mother and sister had moved to the state of Washington. Mr. Scully testified that his blood alcohol level was extremely high when he was arrested on October 8, 2011 and that he almost died as a result. Mr. Scully testified that he does not want to drink alcohol anymore and is afraid to drink. He was placed on probation at the University of Iowa following this arrest and was able to graduate in the summer of 2012. Mr. Scully testified that he had good grades and hopes to become a physician assistant. He is concerned, however, that he may not be accepted into the physician assistant program if his EMT-B certification is placed on probation. (Testimony of Respondent)

¹ All employees of Advance Medical Transport of Iowa are subject to random alcohol and drug testing. (Testimony of Shawn Mercer).

CONCLUSIONS OF LAW

The legislature has directed the Department to adopt rules pertaining to the examination and certification of emergency medical care providers.² The Department has adopted such rules at 641 IAC chapter 131. 641 IAC 131.7(3) provides, in relevant part:

131.7(3) The department may deny an application for issuance or renewal of an emergency medical care provider certificate, including endorsement, or may impose any of the disciplinary sanctions provided in subrule 131.7(2) when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

...

q. Habitual intoxication or addiction to the use of drugs.

...

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 ... substance abuse,... A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

The preponderance of the evidence established that John Scully has been habitually intoxicated and that he has violated statutes that relate to the provision of emergency medical care, in violation of 641 IAC 131.7(3)"q" and "t." In 2011, Mr. Scully had two convictions for public intoxication within a period of two months, despite the fact that he had been issued a confidential Letter of Warning from the Department concerning his prior convictions for public intoxication, urinating in public, and interference. Mr. Scully admits to a dangerously high blood alcohol level at the time of his most recent arrest. At his court ordered substance abuse evaluation, Mr. Scully was diagnosed with Alcohol Abuse. As a result of the evaluation, Mr. Scully was required to complete extended outpatient treatment and attend Alcoholics Anonymous (AA). The Department was not aware of Mr. Scully's most recent convictions or his substance abuse evaluation and treatment until he filed his renewal application in March 2013.

² Iowa Code section 147A.4(2)(2013).

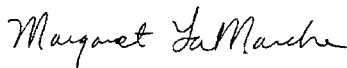
The Department is authorized to impose disciplinary sanctions on Mr. Scully's EMS certificate under these circumstances. The Department's legitimate public safety concerns justify its decision to monitor Mr. Scully's practice of emergency medical services through a two year period of probation.

John Scully should be commended for the progress that he has made since October of 2011. He has completed substance abuse treatment and has graduated from college while maintaining employment. It does appear that Mr. Scully continues to abstain from using alcohol. He is a highly valued employee who has been given substantial responsibilities at work. He has fully cooperated with the Department and has been candid and forthcoming. The probationary period is for the protection of the public and not to further punish Mr. Scully. Hopefully the probationary status of his EMT-B certificate will not disqualify Mr. Scully from admission to a physician assistant program should he otherwise qualify.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Probation, issued on June 6, 2013 to Respondent John Scully, is hereby AFFIRMED. The two year period of probation shall commence when this Proposed Decision becomes final.

Dated this 31st day of July, 2013.



Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building-Third Floor
Des Moines, Iowa 50319

cc: John Scully, 739 Michaels, Apt. 65, Iowa City, Iowa 52240 [CERTIFIED]

Heather Adams, Assistant Attorney General, Department of Justice, Hoover Building- [LOCAL]

Gerd Clabaugh, Department of Public Health, Lucas Bldg. [LOCAL]

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).