

Before the Iowa Department of Public Health

<p>IN THE MATTER OF</p> <p>Randy Eller Family Plan 2000 1340 8<sup>th</sup> Street Des Moines, IA 50314</p>	<p>Case Number: 2011-05-03</p> <p>NOTICE OF PROPOSED PROBATION FOR LEAD ABATEMENT WORKER CERTIFICATION</p>
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Pursuant to the provisions of Iowa Code Sections 135.105A and Iowa Administrative Code (IAC) 641—70.10(1), the Iowa Department of Public Health (Department) is proposing to impose a two-year probation on your certification as a lead abatement worker.

Iowa Code Section 135.105A(5) states: "The department shall adopt rules regarding minimum requirements for training programs, certification, work practice standards, and suspension and revocation requirements, and shall implement the training and certification programs."

Iowa Administrative Code section 641--70.10(1) states: "When the department finds that the applicant, certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm has committed any of the following acts, the department may . . . place on probation."

*d.* Obtaining certification through fraudulent representation.

*j.* Obtained certification through misrepresentation of certification requirements or related documents pertaining to education, training, professional registration, or experience.

*y.* Engaged in any conduct that subverts or attempts to subvert a department investigation.

*ab.* Been convicted of a felony or misdemeanor related to lead professional activities or the conviction of any felony or misdemeanor that would affect the ability of the firm or individual to perform lead professional activities. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

*ac.* Unethical conduct. This includes, but is not limited to, the following:

(6) Habitual intoxication or addiction to drugs.

On April 1, 2011, the Department received your application for certification as a lead abatement worker. On this application, you answered "yes" to the following question:

"Have you ever been convicted of, found guilty of, or entered a plea of no contest to a felony or misdemeanor crime (other than minor traffic violations with fines under \$100)?"

You disclosed information regarding a "felony OWI in the 1990's."

The Department discovered that you were also convicted of the following crimes, which you failed to disclose in the application process:

- 1995 – OWI 3<sup>rd</sup> (felony)
- 1995 – OWI 3<sup>rd</sup> (felony)
- 1998 – Driving while barred
- 1998 – Possession drug paraphernalia
- 1998 – 5<sup>th</sup> degree theft
- 2001 – Driving while barred
- 2002 – 5<sup>th</sup> degree theft
- 2005 – Consumption intoxication
- 2005 – Possession of controlled substance
- 2010 – 5<sup>th</sup> degree theft

Your probation as a certified lead abatement worker shall be subject to the following terms and conditions:

- a. You shall follow all treatment and aftercare recommendations made by the facility at which you received your substance abuse evaluation and treatment.
- b. You shall not consume alcohol or any mood altering chemicals or drugs and shall not use any prescription medication unless prescribed or dispensed by a physician in an appropriate manner.
- c. You shall immediately provide a specimen of blood or urine when requested to do so by a bureau investigator or designee. You shall sign all necessary release of information forms to ensure the bureau office receives results from the testing as soon as the results are available. The cost of all such tests shall be assessed to you.
- d. You shall submit quarterly reports to the bureau (filed no later than January 10, April 10, July 10, and October 10) which shall include the following information:
  - i. The time period covered by the report.
  - ii. Verification that you have complied with the terms of probation as specified in this Notice.
- e. You shall make a personal appearance before the bureau upon request. You shall be given reasonable notice of the date, time, and place of appearance.
- f. You shall obey all federal, state, and local statutes and rules governing the provisions of lead professional services.
- g. You shall notify any current or prospective employer, to include direct supervisors, of the terms, conditions, and restrictions imposed by this notice. Within fifteen days of this notice taking effect, or of undertaking new employment, your direct supervisor shall report to the bureau, in writing, acknowledging that the employer has read this document and understands it.
- h. You shall notify any lead professional training program you enroll in for courses leading to certification of the reasons for this probation.

- i. You shall notify the bureau of any change in address within one week of said change.
- j. In the event you violate or fail to comply with any of the terms or provisions of your probation, the department may initiate appropriate action to revoke or suspend your certification or to impose other appropriate discipline.
- k. This Notice shall be part of the permanent record of the bureau and shall be considered by the bureau in determining the nature and severity of any disciplinary action to be imposed in the event of future violations.

**You have the right to request a hearing concerning this Notice of Proposed Probation for Lead Abatement Worker Certification.** A request for a hearing must be submitted in writing to the Department by certified mail, return receipt requested, within twenty (20) days of this Notice of Proposed Probation for Lead Abatement Worker Certification. The written request must be sent to:

Iowa Department of Public Health  
Attention: Rita Gergely  
Bureau of Lead Poisoning Prevention  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319-0075

If the request is made within the twenty (20) day time limit, the proposed action is suspended pending the outcome of the hearing. Prior to or at the hearing, the Department may rescind the notice upon satisfaction that the reason for the action has been or will be removed.

**If no request for a hearing is received within the twenty (20) day time period, the disciplinary action proposed herein shall become effective and shall be final agency action.**

*Copy*  
\_\_\_\_\_  
Rita Gergely  
Chief  
Bureau of Lead Poisoning Prevention  
(515) 242-6340

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Date