

Before the Iowa Department of Public Health

IN THE MATTER OF  Michael J Freshwater 19426 296 <sup>th</sup> Ave Udell IA 52593	Case Number: 2010-07-01  ORDER IMPOSING PROBATION FOR LEAD ABATEMENT CONTRACTOR CERTIFICATION
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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 imposing a one-year probation on your certification as a lead abatement contractor.

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."

The department may place a lead abatement worker's certification on probation when it finds that the worker has committed any of the following acts listed in Iowa Administrative Code 641—70.10(1):

*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.

1. The inability of a lead professional to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

2. The excessive use of drugs which may impair a lead professional's ability to practice with reasonable skill or safety.

3. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

On June 17, 2010, the Department received your application for certification as a lead abatement contractor. In 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 have been convicted of the following crimes:

- 2006 Public intoxication and possession of drug paraphernalia
- 2007 Possession of controlled substance—marijuana

Your probation as a certified lead abatement contractor 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.
- 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.

On August 6, 2010, the Department sent you a Notice of Proposed Probation for Lead Abatement Contractor Certification. On August 10, 2010, you signed for this letter. You did not request a hearing concerning the Notice of Proposed Probation for Lead Abatement Contractor

Certification. Since you did not request a hearing with the twenty (20) day time period, the disciplinary action proposed in the Notice of Proposed Probation of Lead Abatement Contractor Certification is now effective and is final agency action. Your certification as a Lead Abatement Contractor is subject to a one-year probation.

*Rita M Gergely*

Rita Gergely  
Chief  
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*1/18/2011*

Date