

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

IN THE MATTER OF:

DIA NO. 14DPHES002

CASE NO. 13-07-26

Ian Gannon
731 Westwinds Drive, Apt. 4
Iowa City, Iowa 52246-4016

PROPOSED DECISION

Certification: EMT-10-1027-18

On February 5, 2014, the Bureau Chief for the Department of Public Health-Center for Disaster Operations and Response (Department) served a Notice of Proposed Action-Probation on Ian Gannon (Respondent). Mr. Gannon filed a timely Notice of Appeal. A telephone hearing was held before the undersigned administrative law judge on March 27, 2014. Assistant Attorney General Heather Adams represented the Department. Ian Gannon 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 and Ian Gannon; and Department Exhibits 1-11 (See Exhibit Index for description).

FINDINGS OF FACT

In May 2013, Respondent Ian Gannon filed an initial application for certification as an Emergency Medical Technician (EMT) with the Department. During the application process, Mr. Gannon answered "yes" to the question that asked:

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 \$100.00) You must answer "yes" even if the matter was deferred or expunged from the record.

The application directed applicants to include the date, location, charge, court disposition and current status (i.e. probation) for each charge. Mr. Gannon's signature appears after the following statement:

I hereby certify that the information provided on this application form is true and correct to the best of my knowledge. I understand that providing false or misleading information may result in the denial, probation, suspension, or revocation of my certification(s)...

(Exhibit 4; Testimony of Joe Ferrell)

In an email dated June 17, 2013, Mr. Gannon disclosed to the Department that he had the following criminal history:

- Possession Under Age (10/9/2004);
- Operating Vehicle While Intoxicated (OWI)/1st Off (SRMS)(1/11/2006);
- OWI 2nd Offense (6/8/2013);
- Public Intoxication/Consumption (10/30/2005)
- Public Intoxication/Consumption (10/30/2005)

(Testimony of Joe Ferrell; Exhibit 5)

Joe Ferrell is the Regulation Manager for the Department's Bureau of Emergency Medical Services and is responsible for overseeing EMS certifications. Mr. Ferrell logged on to Iowa Courts Online to verify the criminal history information provided by Ian Gannon with his application. After reviewing those records, Mr. Ferrell determined that Mr. Gannon had failed to report two convictions with his application: Violation-Financial Liability-Accident on November 29, 2004 and a Possession Under Age - Second or Subsequent Offense on November 10, 2004. (Testimony of Joe Ferrell; Exhibit 9)

On June 21, 2013, the Department sent a letter to Ian Gannon requesting a copy of his most recent substance abuse evaluation and for the treatment recommendations made by the evaluator. The letter also asked Mr. Gannon to explain why the (two) unreported convictions were not included in his initial email. Mr. Gannon was informed that he would not be eligible for certification until the information was

received, processed and approved by the EMS Bureau. (Exhibit 6; Testimony of Joe Ferrell)

Ian Gannon responded to the Department in writing on July 3, 2013. He provided the substance abuse treatment recommendations and reported that he would begin treatment on July 8, 2013. Mr. Gannon stated that he missed reporting the Violation of Liability-Accident conviction because it was not listed on the report that he obtained. He further stated that he missed the second underage possession conviction because he did not go through his records thoroughly. (Exhibit 7)

In connection with his recent OWI charge, the court required Ian Gannon to complete a substance abuse evaluation at MECCA Services. Mr. Gannon completed the evaluation on June 19, 2013 and was diagnosed with Alcohol Abuse. MECCA recommended that Mr. Gannon complete intensive outpatient treatment. Mr. Gannon completed the intensive outpatient treatment program at MECCA on August 6, 2013 and was encouraged to stay engaged with sober support. (Exhibits 8, 9)

After reviewing Ian Gannon's criminal history and his substance abuse treatment record, the Department determined that Mr. Gannon'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, Ian Gannon 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;
- comply with all 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;
- file quarterly reports with the Department; and
- make personal appearances when requested.

The probation proposed by the Department also requires Ian Gannon 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, Ian Gannon'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)

The Iowa Courts Online records submitted by the Department at hearing document the following criminal history for Mr. Gannon:

- Violation Financial Liability-Accident/Adjudicated Guilty and Sentenced on 11/29/04 (Date of Offense-9/3/04);
- Possession Alcohol Under Age-2nd or Subsequent Offense/ Adjudicated Guilty and Sentenced on 11/10/04 (Date of Offense-10/12/04);
- Consumption/Intoxication/ Adjudicated Guilty and Sentenced on 3/20/06 (Date of Offense 1/11/06). The Iowa Courts Online records indicate that Mr. Gannon was originally charged with OWI-1st Offense, but pled guilty to a lesser offense of Public Intoxication;
- OWI-1st Offense (Date of Offense- 6/8/13- granted deferred judgment and placed on 1 year probation on 10/7/13) The Iowa Courts Online records indicate that Mr. Gannon was also charged with a count of OWI-2nd Offense, but he was not adjudicated on the OWI-2nd Offense charge.

(Exhibit 9) These Iowa Courts Online records do not include the first Underage Possession Conviction (10/9/04) or the first Public Intoxication/Consumption conviction (10/30/05) that Mr. Gannon reported to the Department of June 17, 2013. Nevertheless, Mr. Gannon has admitted having two Underage Possession convictions and two Public Intoxication/Consumption convictions. (Exhibits 5, 9; Testimony of Ian Gannon).

At hearing, Joe Ferrell testified the number of Mr. Gannon's alcohol related violations reflects poorly on his judgment and raises safety concerns about possible impairment while practicing as an EMT. The Department also considered the fact that Mr. Gannon was diagnosed with Alcohol Abuse and that he was required to complete extended outpatient treatment. In Mr. Ferrell's opinion, the Department's proposed two year probation for Mr. Gannon is consistent with actions the Department has taken in other, similar cases. (Testimony of Joe Ferrell; Exhibit 11)

Ian Gannon does not think that it is necessary to place his EMT certification on probation in order to protect the public. Mr. Gannon became a father in September, and he reports that he has been trying to straighten his life out. He completed the recommended outpatient treatment and also completed a weekend Drunk Driving Course for the Department of Transportation. He is attending Alcoholics Anonymous (AA) about once a month. Mr. Gannon is on criminal probation until October 2014. The criminal probation does not specifically require Mr. Gannon to abstain from alcohol, but he is prohibited from going to drinking establishments and to remain law abiding. Any alcohol or drug screening will be at the discretion of Mr. Gannon's probation officer, but Mr. Gannon believes it is unlikely he will be subject to screening. (Testimony of Ian Gannon; Exhibits 8, 9)

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 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:

...

d. Fraud in procuring certification or renewal including, but not limited to:...(2) False representations of material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for certification in this state...

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public...

...

¹ Iowa Code section 147A.4(2)(2013).

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 was insufficient to establish that Ian Gannon committed fraud or was knowingly deceptive when he filed his application for certification. Mr. Gannon reported a number of alcohol related convictions with his application, including some that do not appear on Iowa Courts Online. Mr. Gannon provided a credible explanation for his failure to include one of his Underage Possession convictions and the conviction for Financial Liability on his initial response to the Department. Based on this record, it appears that the failure to include these two convictions was an oversight and not intentional misrepresentation.

The preponderance of the evidence established that Ian Gannon 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.” The testimony and exhibits show that Ian Gannon, who is only 28 years old, has had five alcohol related criminal convictions, including two convictions for Underage Possession of Alcohol, two convictions for Public Intoxication/Consumption, and one conviction for Operating While Intoxicated. At his court ordered substance abuse evaluation, Mr. Gannon was diagnosed with Alcohol Abuse. As a result of the evaluation, Mr. Gannon was required to complete extended outpatient substance abuse treatment.

The Department is authorized to impose disciplinary sanctions on Mr. Gannon’s EMS certificate under these circumstances. The Department’s legitimate public safety concerns justify its decision to monitor Mr. Gannon’s EMS practice through a two year period of probation subject to monitoring and reporting requirements. The proposed conditions of probation are consistent with public safety and with the Department’s actions in similar cases. (See Department Exhibit 11)

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Probation, issued by the Iowa Department of Public Health to Respondent Ian Gannon, is hereby AFFIRMED. The two year period of probation shall commence when this Proposed Decision becomes final.

Dated this 1st day of April, 2014.

Margaret LaMarche

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: Ian Gannon, 731 Westwinds Drive, Apt. 4, Iowa City, Iowa 52246-4016
[CERTIFIED]

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

Rebecca Curtiss and Joe Ferrell, 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).

