

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
WALLACE STATE OFFICE BUILDING
DES MOINES IOWA 50319

IN THE MATTER OF

JASON VAN NEVEL
301 E MAIN STREET
HILLS IA 50845-8848

DOCKET NO. 09DPHES003

PROPOSED DECISION

Certification #: B-10-374-12

STATEMENT OF THE CASE

On February 24, 2007, Kirk E. Schmitt, EMS Bureau Chief, issued a Notice of Proposed Action - Revocation. Jason Van Nevel (Appellant) filed a timely appeal and requested a hearing on the proposed action.

A telephone hearing was held on April 7, 2009. The Appellant participated in the hearing. Heather Adams, Assistant Attorney General, represented the Department of Public Health. Testimony was received from Joe Ferrell, with the Department of Public Health.

The hearing was OPEN to the public.

The Respondent's exhibits 1-16 were admitted into the record.

FINDINGS OF FACT

The basic facts in this appeal are not in dispute. The Appellant is certified as an EMT-Basic with the Department of Public Health. His certification was issued on October 8, 2006 and expires on March 31, 2011.

The Department learned that the Appellant was convicted of Possession of Alcohol by a Person Under the Age on October 24, 1995. The Appellant never disclosed this fact on any of his applications with the Department.

On August 28, 2005 the Appellant filled out an EMS Student Registration form. On Question #3 it asked, "Have you ever been convicted of, found guilty of, or entered a plea of no contest to a felony or misdemeanor crime?" The Appellant responded, "No." Likewise, when the Appellant filled out his EMS Certification Application for the First Responder or EMT-Basic Question #3 asked if he had ever been convicted of a felony or misdemeanor. The Appellant answered "No" to

that question also. He certified on March 23, 2006, that the application was true and correct.

On June 22, 2006 and September 9, 2006 the Appellant filled out EMS Certification Written Examination Retest Applications. On these applications he again certified that he was never convicted of a felony or misdemeanor.

The Appellant was charged with the Felony of Theft in the Second degree on June 30, 2005. The Appellant misappropriated approximately \$9,819.22 from the Hills Ball Association. On November 20, 2007, he was granted a Deferred Judgment. The Appellant is on probation for this offense until November 20, 2009.

The Department of Public Health revoked the Appellant's EMS certification based upon his repeated failure to disclose his prior criminal record and for the Theft in the Second Degree deferred judgment. The Appellant filed a timely appeal of the Notice of Revocation.

The Appellant testified that he takes full responsibility for his actions. He acknowledged that he failed to disclose his Possession of Alcohol conviction, but he had forgotten about the offense. Regarding the Theft charge, the Appellant acknowledged his wrong-doing. The Appellant really loves being an EMT and wants to keep his certification so he can help people.

The Appellant's probation officer, Patrick Butler, testified on the Appellant's behalf. Mr. Butler explained that the Appellant has not been a problem while on probation. The Appellant has taken a high level of accountability, is a low probability to reoffend, and has committed no new offenses. The Appellant will be discharged early from probation because of his good conduct.

CONCLUSIONS OF LAW

The Department of Health proposed denying the Appellant's EMT certificate application. The authority for this action is found in Iowa Code section 147A.7. The relevant section is as follows:

147A.7 Denial, suspension or revocation of certificates--hearing--appeal.

1. The department may deny an application for issuance or renewal of an emergency medical care provider certificate, or suspend or revoke the certificate when it finds that the applicant or certificate holder is guilty of any of the following acts or offenses:

...

f. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of the profession or engaging in

unethical conduct or practice harmful or detrimental to the public.
Proof of actual injury need not be established.

The Department of Public Health has promulgated administrative rules to govern the discipline of emergency medical care personnel. The rules provide that 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 representations 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 misdemeanor, which relates to the provision of emergency medical care.

641 IAC 131.7(2).

The evidence clearly establishes that the Appellant failed to fully disclose his criminal record on numerous applications. If this were the only transgression alleged, the Appellant would be placed on probation and his certification would not be revoked. This was not the only problem though.

The Appellant's recent felony criminal activity, for which he is still on probation, clearly indicates that at this time he is not appropriate for licensure with the Department of Public Health as an EMT. The public expects that when an EMT comes to their house to provide emergency medical care that EMT will not currently be on probation for a felony. EMTs must work unsupervised in patient's homes. A level of trust exists, and when an EMT commits a felony that erodes the trust.

As Mr. Ferrell testified in the hearing, this revocation is not permanent. If the Appellant can provide evidence to the Department of rehabilitation, including successfully completing his probation, then the Appellant will be able to reapply. The Appellant will have the burden to show rehabilitation at the time of his reapplication.

DECISION

IT IS THEREFORE ORDERED that the disciplinary action proposed by the Department of Health concerning the Appellant's EMT-B certificate # B-10-374-12 is hereby AFFIRMED.

DATED THIS 21ST DAY OF APRIL 2009.



John M. Priester
Administrative Law Judge

Cc: Jason Van Nevel, CERTIFIED

Heather Adams, AAG

Kirk Schmitt, DPH
Lucas Building

Meggan Van Gundy, DIA

This decision shall be final, unless within ten (10) days from the date you receive this Order, you or any interested party appeal to the Director, Department of Public Health, 6th Floor Lucas State Office Building, Des Moines, IA 50319, clearly stating the grounds upon which such appeal is based.