

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

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IN THE MATTER OF:	)	DIA NO. 10DPHES018
	)	CASE NO. 10-02-20
Ben Knudson	)	
4655 Wistful Vista Drive	)	
West Des Moines, IA 50265	)	PROPOSED DECISION
	)	
Certification: PS-990501-81	)	

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On August 18, 2010, the Department of Public Health-Emergency Medical Services Bureau (Department) served a Notice of Proposed Action-Revocation on Ben Knudson (Respondent). Respondent filed a timely Notice of Appeal on August 31, 2010. A telephone hearing was held before the undersigned administrative law judge on September 30, 2010 at 9:00 a.m. 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, testimony of the witnesses, Department Exhibits 1-16 (See Exhibit Index for description), and Respondent Exhibit A (Summary of Disciplinary Action Reports from the IDPH website)

#### FINDINGS OF FACT

In 1995, Ben Knudson ("Respondent") was initially certified as an EMT-Paramedic in Nebraska. In July 1997, Respondent was certified as an EMT-Paramedic (P-99-501-81) in Iowa. On November 3, 2000, Respondent was certified as a Paramedic Specialist (PS-99-501-81) in Iowa. Respondent's certification as a Paramedic Specialist is current and will expire on March 31, 2012. (Joe Ferrell; Respondent testimony; Department Exhibit 4) Respondent is currently employed full-time as a Paramedic Specialist with Dallas County Emergency Medical Services (EMS). Respondent is also employed, up to 40 hours per week, by the West Des Moines EMS. (Respondent testimony)

Joe Ferrell is the EMS Regulation Manager for the Department. Early in 2010, the Department's field staff notified Mr. Ferrell that criminal theft charges had been filed against Respondent. Mr. Ferrell checked Iowa Courts Online and saw that Respondent had been charged on January 14, 2010 with Third Degree Theft, an aggravated misdemeanor, based on a theft report filed by the president of Dallas County EMS Professionals. According to the criminal complaint, Respondent wrote a check for \$1500 out of the Dallas County EMS Professionals checking account and paid \$602.02 for approved expenditures. In a January 8, 2010 police interview, Respondent admitted using the remaining \$897.98 from the \$1500 check to pay his personal bills. Mr. Ferrell waited until the charges were resolved before contacting Respondent. (Ferrell; Respondent testimony; Department Exhibits 6, 7)

On April 22, 2010, Respondent entered a guilty plea to 3<sup>rd</sup> Degree Theft and admitted to converting funds of the Dallas County EMS Professionals while serving as its treasurer. (Department Exhibit 10) Respondent was granted a Deferred Judgment by the Dallas County District Court. Respondent was placed on supervised probation for a period of two years and ordered to pay court costs, restitution of \$1847.08, and a civil penalty of \$625.00. Respondent was also ordered to perform 25 hours of community service at a rate of \$7.25 per hour. Unless he is granted an early discharge, Respondent will be on probation until April 22, 2012. (Ferrell; Respondent testimony; Department Exhibit 11)

Respondent explained the circumstances of his conviction. Respondent had been the treasurer of Dallas County EMS Professionals, which is the collective bargaining unit for Respondent's fellow employees at Dallas County EMS. Respondent offered "no excuse" for his actions but explained that he took the money when he was facing a post holiday financial crisis. He was not terminated from his positions with Dallas County EMS and West Des Moines EMS but has been working to try to rebuild relationships with his co-workers. (Respondent testimony)

Respondent has not yet paid the restitution and fines that he owes, nor has he completed his community service. He explained that the restitution assessment included an extra \$950 for an audit of the Dallas County EMS Professionals account, presumably to ensure that no other funds had been misappropriated. Respondent has been placed on a \$250 a month payment plan by the court and made payments the last two months prior to his hearing. Respondent has been told that he may be released from probation as soon as he completes his community service and has paid the restitution and civil penalty.

CONCLUSIONS OF LAW

The legislature has directed the Department to adopt rules pertaining to the examination and certification of emergency medical care providers.<sup>1</sup> The Department has adopted rules at 641 IAC chapter 131. 641 IAC 131.7(2) provides, in relevant part:

**131.7(2)** 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 representation 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 a misdemeanor, which relates to the provision of emergency medical care, including but not limited to a crime involving dishonesty, fraud, theft, embezzlement,.... A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

Respondent has pled guilty to 3<sup>rd</sup> Degree Theft. Pursuant to 641 IAC 131.7(2)"t", Respondent's theft relates to Respondent's provision of emergency care. The preponderance of the evidence established that Respondent abused his position of trust when he converted funds belonging to Dallas County EMS Professionals for his personal use. EMS providers are granted access to the homes and possessions of patients at a time when the patients are extremely vulnerable. It is essential for the public to be able to trust persons who are certified EMS professionals in this state. In addition, EMS providers must be able to fully trust and rely on their EMS colleagues in dangerous and stressful situations. Respondent's theft significantly diminishes his trustworthiness and it constituted unethical conduct, in violation of Iowa Code section 147A.7(1)(f) and 641 IAC 131.7(2)(f).

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<sup>1</sup> Iowa Code section 147A.4(2)(2009).

Respondent does not deny that his guilty plea to 3<sup>rd</sup> Degree Theft relates to his practice as an EMS provider. Rather, Respondent asserts that the Department's proposed sanction – revocation – is overly harsh under the circumstances. Respondent asks the Department to consider a lesser sanction – probation and/or suspension – rather than revocation. Respondent has submitted some information from the Department's website showing that other EMS professionals have received lesser sanctions for violations of the same rules. (Respondent Exhibit A) However the website does not provide the factual details of those cases; it only provides the outcome. The limited information from the website does not allow a factual comparison of those cases to Respondent's case.

The Department provided copies of decisions issued in other appeals of disciplinary actions based on theft. (Department Exhibits 12-18) The Department argues that its proposed sanction of revocation is consistent with the outcomes in those cases. The Department also points out that the revocation is not permanent, and Respondent would be eligible to request reinstatement after one year.

None of the cases cited by the Department is identical to Respondent's case. As pointed out by Respondent, most of the cases cited by the Department involved felony theft (Exhibits 12, 13, 15, 16, 17, 18). Only one of the cases that resulted in revocation (McGowan) involved a misdemeanor level theft. (Exhibit 14) Mr. McGowan received a deferred judgment for 4<sup>th</sup> Degree Theft after using his employer's credit card for 11 personal gas purchases totaling \$425.18. Like Respondent, Mr. McGowan committed the thefts because of personal financial pressures. Like Respondent, Mr. McGowan was still on criminal probation at the time of the hearing. The only significant distinction between Respondent's case and Mr. McGowan's case is that Respondent had a single act of theft while Mr. McGowan had repeatedly used his employer's credit card. Based on the similarities between Respondent's situation and that of Mr. McGowan, the Department has reasonably determined that revocation is an appropriate sanction and is consistent with past precedent.

#### ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Revocation issued on August 18, 2010 to Respondent Ben Knudson is hereby AFFIRMED. Respondent may apply for reinstatement after one year if he can show that that the basis for the

revocation no longer exists and that it is in the public interest for his certification to be reinstated. See 641 IAC 131.9.

Dated this 13th day of October, 2010



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: Ben Knudson  
4655 Wistful Vista Drive 91 7108 2133 3936 7667 1876  
West Des Moines, IA 50265 (CERTIFIED)

Heather Adams, Assistant Attorney General  
Hoover State Office Building, Des Moines, Iowa 50319 (LOCAL)

Kirk Schmitt, Department of Public Health  
Lucas State Office Building, Des Moines, Iowa 50319 (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).

