

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

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MAR 27 2012

Iowa Dept of Public Health
Office of Deputy Director

IN THE MATTER OF:

DIA NO. 12DPHES002

CASE NO. 11-12-05

Steven Brown
1206 West Williams Street
Ottumwa, Iowa 52501-4946

PROPOSED DECISION

Certification: EMT-15-1000-07

On January 18, 2012, the Department of Public Health-Emergency Medical Services Bureau (Department) served a Notice of Proposed Action-Probation on Steven Brown (Respondent). Respondent filed a timely Notice of Appeal on February 15, 2012. A telephone hearing was held before the undersigned administrative law judge on March 19, 2012 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 Joe Ferrell and Steven Brown, and Department Exhibits 1-9 (See Exhibit Index for description).

FINDINGS OF FACT

Respondent Steven Brown has been a volunteer firefighter for the past eighteen years. In 2011, Respondent enrolled in the Emergency Medical Technician (EMT) program at Indian Hills Community College. (Testimony of Respondent) On September 6, 2011, Respondent submitted his student registration for certification as an emergency medical provider at the EMT level to the Department. Respondent answered "yes" to the questions on the application that asked if he had any criminal convictions and if any of his licenses had ever been disciplined. (Testimony of Respondent; Joe Ferrell; Department Exhibits 3, 4)

Joe Ferrell is the EMS Regulation Manager for the Department. After learning that his certification application had been placed on Hold Status, Respondent sent Mr. Ferrell an email explaining his "yes" answers on the application. Respondent disclosed the following convictions:

- On June 2, 1999, Respondent pled guilty to Operating While Intoxicated (OWI)-1st Offense in Story County, Iowa and was granted a deferred judgment. He completed a substance abuse evaluation, and his driver's license was revoked for six months. This is why Respondent answered "yes" to the license discipline question.
- On March 13, 2006, Respondent was convicted of 4th Degree Theft, a serious misdemeanor, in Story County, Iowa. Respondent was initially charged with Theft 1st Degree, a felony, but pled guilty to the lesser charge. Respondent was sentenced to one year in the Story County Jail, but the sentence was suspended and he was placed on probation for a period not to exceed one year. Respondent was required to pay restitution in the amount of \$10,927.03 plus court costs and surcharge.

(Testimony of Respondent; Joe Ferrell; Department Exhibits 4-7)

The record includes information about the factual basis for Respondent's 2006 guilty plea and conviction. Respondent was employed part-time by an armored car company from November 10, 2004 through July 18, 2005. In this position, he was responsible for collecting and delivering business deposits in the Ames area. On three different days in July 2005, Respondent signed documentation verifying that he picked up 8 deposit bags from two different businesses but then delivered only 7 deposit bags. The three missing deposit bags contained a total of \$10,927.03. (Testimony of Respondent; Department Exhibits 6, 7)

Respondent denies that he collected 8 deposit bags on those three dates and denies taking any of the money. Respondent testified that on each occasion he failed to actually verify the number of deposit bags and just signed the documentation given to him when he picked up the deposits. Respondent testified that he pled guilty because his wife was overseas and he was responsible for their three children. He felt he could not prove that he did not take the money, and he did not want to risk a felony conviction by going to trial. (Testimony of Respondent)

Respondent has had no further charges or convictions, although he has had several jobs where he has had unsupervised access to homes or businesses. Respondent has been making regular restitution payments of \$92.00 a month but still owes approximately \$5600 in restitution and other court costs for his 2006 Theft conviction. Although Respondent must continue making restitution payments, the court has released him from criminal probation. (Testimony of Respondent; Joe Ferrell)

Respondent is currently enrolled in the paramedic training program at Indian Hills Community College where he has been given a scholarship. He anticipates completing the program in August 2013. Respondent is concerned that his probationary status may interfere with his ability to find employment as an EMT or as a paramedic. (Testimony of Respondent)

Joe Ferrell presented all of the information concerning Respondent's convictions to his supervisor. The supervisor decided to grant Respondent certification as an EMT but then to recommend placing his certification on probation for a period of two years. Respondent's application would likely have been denied if he was still on criminal probation. This would be consistent with the Department's past decisions. The decision was made to place Respondent's certification on probation for several reasons. Respondent's crime occurred while he was employed in a position of trust, which raises questions about his honesty, trustworthiness, and judgment. The public must have trust in persons who are certified by the Department as emergency medical providers. Emergency medical service providers are provided access to people's homes, businesses, and belongings at a time when people are vulnerable and in need. Granting Respondent's certification without any restriction or oversight could diminish the public's trust of the EMS profession or of the Department. (Testimony of Joe Ferrell; Department Exhibit 9)

Under the terms of the proposed probation, Respondent is required to be law abiding, to file quarterly reports with the Department, and to make personal appearances when requested. Respondent is also required 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, Respondent'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)

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:

...

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 4th Degree Theft. Although Respondent denies committing the crime, he did plead guilty to it. This is not the proper forum for Respondent to challenge the basis for his conviction, and the Department must accept the conviction as an established fact. Pursuant to 641 IAC 131.7(3)"t", Respondent's theft conviction relates to his provision of emergency care. 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.

¹ Iowa Code section 147A.4(2)(2011).

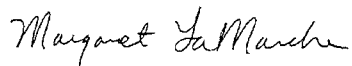
Respondent has been honest and truthful with the Department and has fully disclosed his criminal history. Nevertheless, the facts underlying his theft conviction constitute "unethical conduct" and/or "practice harmful or detrimental to the public," in violation of 641 IAC 131.7(3)"f."

The Department had ample legal authority for its decision to place Respondent's certification on probation. The proposed probation is a reasonable sanction to address the concerns raised by Respondent's conviction. Respondent has completed his criminal probation but has not yet finished paying his restitution. It makes sense for the Department to maintain oversight of Respondent during his first two years as an emergency medical services provider and to ensure that his employers and training programs are aware of his criminal history and probationary status. This oversight is for the protection of the public and not to further punish Respondent.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Probation, issued on January 18, 2012 to Respondent Steven Brown, is hereby AFFIRMED. The two year period of probation shall commence when this Proposed Decision becomes final.

Dated this 26th day of March, 2012.



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: Steven Brown, 1206 West Williams St., Ottumwa, IA 52501-4946 [CERTIFIED]

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

Gerd Clabaugh, 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).