

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

IN THE MATTER OF:) DIA NO. 09DPHES009
) CASE NO. 09-07-02
Joshua Bethune)
808 East Main Street)
Fremont, Iowa 52561) PROPOSED DECISION
)
Certification: B-15-363-02)

On July 15, 2009, the Department of Public Health-Emergency Medical Services Bureau (Department) issued a Notice of Proposed Action-Denial to Joshua Bethune (Appellant), notifying him of the Department's proposed denial of his application for EMS certification. The Appellant filed a timely Notice of Appeal on July 30, 2009. The telephone hearing was held before Administrative Law Judge Margaret LaMarche on September 11, 2009 at 3:00 p.m. Assistant Attorney General Heather Adams represented the Department. The Appellant was self-represented.

THE RECORD

The record includes the Notice of Telephone Hearing, testimony of the witnesses, and the following exhibits:

Department Exhibit 1:	Notice of Proposed Action: Denial, 7/15/09
Department Exhibit 2:	641 IAC 131.7
Department Exhibit 3:	Certification Information
Department Exhibit 4:	Email, Appellant to Ferrell, 6/10/09
Department Exhibit 5:	Letter, Ferrell to Appellant, 6/12/09
Department Exhibit 6:	Complaint and Affidavit, 7/26/00 Judgment Entry, 11/17/00 Supplemental Order, 2/14/02
Department Exhibit 7:	Criminal History, Arson Second Degree
Department Exhibit 8:	Appeal Letter, 7/30/09
Department Exhibit 9:	Email and Attachments, Appellant to Ferrell, 8/4/09

FINDINGS OF FACT

1. On June 9, 2009, Appellant completed an electronic EMS Registration form in connection with his enrollment in an EMT-Basic course. Appellant answered "yes" to a question asking whether he had any misdemeanor or felony convictions. Appellant explained that he was convicted of second degree arson in 2000, that he completed his sentence and conditions of parole, and that he has had no further violations. (Testimony of Joe Ferrell; Appellant; Department Exhibits 3, 4).
2. Appellant later provided copies of the charging orders and disposition for his arson conviction at the Department's request. These documents disclose that Appellant was originally charged with three counts of First Degree Arson occurring on or about July 13 and July 18, 2000 at the Kool Apartments in Oskaloosa, Iowa. According to the criminal Complaint and Affidavit, Appellant told a police officer that he started fires at the Kool Apartments on three different occasions, that he resided at the apartments, and that he knew people were sleeping at the time of the fires. Appellant pled guilty to the lesser included offense of Arson in the Second Degree on October 5, 2000. He was sentenced to a prison term not to exceed ten (10) years and ordered to pay restitution of \$250.00 plus court costs and attorney fees. (Testimony of Joe Ferrell; Appellant; Department Exhibits 5, 6)
3. Appellant served approximately five years of his prison term before he was released on parole. Appellant successfully completed parole and was discharged on September 23, 2005. He paid his restitution and court fees through volunteer work with the Fremont Ambulance Unit in Fremont, Iowa. Appellant continues to volunteer with the Fremont Ambulance Unit and with the Ottumwa Police Department. He has had no further convictions. (Testimony of Appellant; Department Exhibits 4, 7, 9)
4. On July 15, 2009, the Department issued its Notice of Proposed Action-Denial of Appellant's application for EMS certification. The denial was based on the Appellant's arson conviction, which the Department also characterizes as engaging in unethical conduct or practice harmful or detrimental to the public. The Department considered the nature and circumstances of Appellant's conviction, including the fact that the arson put members of the public at risk for serious injury or death. (Testimony of Joe Ferrell; Department Exhibit 1)

5. Appellant was forthcoming about the circumstances of his offense. He admitted setting fire to a couch, a magazine, and a lampshade in the foyer of the Kool Apartments during the early morning hours. He was intoxicated at the time and set the fires for excitement. He recalled that it was "kind of like a rush" for him. The fire department responded to the fire after the smoke alarms went off and someone called 911. Appellant maintains that the arson was a single incident and denies setting fires on multiple dates as alleged in the criminal Complaint and Affidavit. Appellant reports having had some substance abuse treatment during his incarceration, but he did not submit documentation of any substance abuse evaluation or treatment. Appellant was uncertain whether he has had any mental status evaluation. (Testimony of Appellant)

6. Since his parole in 2005, Appellant has been employed by a fast food restaurant and as a telemarketer. He is currently unemployed and looking for work. Appellant continues to perform volunteer work in his community. (Testimony of Appellant).

CONCLUSIONS OF LAW

The Department of Public Health (Department) is authorized to deny an application for issuance of an emergency medical care provider certificate when it finds that the applicant has engaged in unethical conduct or practice harmful or detrimental to the public or when it finds that the applicant violated a statute of this state, without regard to its designation as either a felony or misdemeanor, which relates to the practice of an emergency medical care provider. Iowa Code section 147A.7(1)"f" and "t" (2009).

The legislature has authorized the Department to adopt rules required or authorized by Iowa Code chapter 147A pertaining to the examination and certification of emergency care providers. Iowa Code section 147A.4(2)(2009). The Department's rules relating to certification are found at 641 IAC 131.7. 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,...when it finds that the appellant...has committed any of the following acts or offenses:

...

f. ...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 practice of an emergency medical care provider. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

The preponderance of the evidence established that Appellant was convicted of the felony of Second Degree Arson on November 17, 2000. Arson is a practice harmful or detrimental to the public and it is a felony related to the practice of an emergency medical care provider. Therefore, both Iowa Code section 147A.7(1)(2009) and 641 IAC 131.7(2)"f" and "t" provide authority for the Department to deny Appellant's application for certification as an emergency medical care provider.

Arson is an offense that has direct bearing on a person's fitness to practice as an emergency medical care provider. As pointed out by the Regulation Manager for the EMS Bureau, a person committing the act of arson places people at risk of serious physical harm or death, and such an act is entirely inconsistent with the mission and ethical obligations of an EMS provider. The public must be able to rely on persons certified as EMS providers to come into their homes and businesses to provide emergency care at a time when they are ill or injured and vulnerable. The nature and circumstances of this particular crime also raises concerns about Appellant's mental health/stability. It is essential for the Department to screen applicants for certification as emergency medical providers in order to exclude persons who pose identifiable risks to public health, safety, and welfare.

It is true that this was a single conviction, which occurred nearly nine years ago. Appellant was only eighteen years old and was intoxicated when he committed the crime. Appellant has been law abiding since that time and appears sincere in his commitment to continue to make appropriate choices and to make a positive contribution to society. Nevertheless, the Department has reasonably determined that there has been insufficient time since Appellant's commission of the arson to permit his certification as an emergency medical care provider. Appellant was incarcerated or on parole for five of the last nine years. In addition, Appellant has provided insufficient documentation and assurance to establish that he has addressed any and all personal issues that may have contributed to his commission of the offense, including substance abuse and psychological issues.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Denial, issued by the Department of Public Health-Emergency Medical Services Bureau to Joshua Bethune on July 15, 2009, is hereby AFFIRMED.

Dated this 25th day of September, 2009.

Margaret LaMarche

Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
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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).

