

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

IN THE MATTER OF:	) DIA NO. 10DPHES020
	) CASE NO. 10-11-04
Jamie Jess	)
500 Myra Place	)
Clinton, Iowa 52732	) PROPOSED DECISION
	)
Certification: B-09-418-07	)

On November 17, 2010, the Department of Public Health-Emergency Medical Services Bureau (Department) issued a Notice of Proposed Action-Denial to Jamie Jess (Appellant), notifying him of the Department's proposed denial of his application for EMS certification. The Appellant filed a timely Notice of Appeal. A Notice of Telephone Hearing was issued on December 16, 2010, scheduling the hearing for January 10, 2011 at 9:00 a.m. The telephone hearing was held before Administrative Law Judge Margaret LaMarche on December 16, 2010 at 9:12 a.m. The Department was represented by Assistant Attorney General Heather Adams. The Appellant failed to appear for hearing.

THE RECORD

The record includes the Notice of Telephone Hearing, testimony of Joe Ferrell, and Department Exhibits 1-9 (See Exhibit Index for description).

FINDINGS OF FACT

1. On or about August 16, 2010, Appellant completed an Emergency Medical Services (EMS) Registration form in connection with his enrollment in an EMT-Basic course. Appellant was 18 years old when he completed the enrollment form and has recently turned 19. Appellant answered yes to question 3 which asked if he was ever convicted, pled guilty or entered a plea of no contest to any felony or misdemeanor crime, other than a minor traffic violation with a fine of less than \$100. The convictions and guilty pleas were required to be reported even if they had been expunged or deferred. Appellant disclosed a number of charges and convictions, both as a juvenile

and as an adult. He provided a letter of explanation and some documentation of his criminal record. (Testimony of Joe Ferrell; Department Exhibits 3, 4)

2. Joe Ferrell is the EMS Regulation Manager for the Department of Public Health. After reviewing the Appellant's registration form, Joe Ferrell sent Appellant a letter requesting additional information, including:

- The charging orders and court disposition for his criminal mischief, assault, theft, operating vehicle without consent, and burglary convictions; and
- A description of the circumstances leading to the curfew and possession of alcohol under legal age convictions, with an explanation of why the possession of alcohol conviction was not previously reported.

(Testimony of Joe Ferrell; Department Exhibit 5)

3. The Appellant provided some additional documentation by facsimile on August 31, 2010 but did not provide the charging documents for the criminal mischief, assault, or theft. (Testimony of Joe Ferrell; Department Exhibit 6)

4. The documents in this record show that the Appellant has the following convictions and deferred judgments in adult court:

- a. August 2, 2010: Possession of Alcohol Under Legal Age; fined.
- b. February 12, 2010: Criminal Mischief in the 5th Degree; pled guilty, fined and ordered to pay restitution.
- c. September 17, 2009: Assault (2 Counts), pled guilty and fined.
- d. July 23, 2009: Criminal Mischief in the 3rd Degree; pled guilty, given deferred judgment and ordered to pay court costs, attorney's fees and a civil penalty.
- e. July 23, 2009: Simple Assault, pled guilty, sentenced to 5 days in jail, placed on probation for six months, and required to complete an anger management program at Bridgeview Community Mental Health.
- f. September 25, 2008: Curfew, pled guilty, fined.

The record documents that the Appellant has the following juvenile adjudications:

- a. September 30, 2008: Appellant admitted to Theft in the Fourth Degree (serious misdemeanor), Criminal Mischief in the Third Degree (aggravated misdemeanor), and Burglary in the Third Degree (aggravated misdemeanors). Appellant was ordered to continue on probation supervision and was required to pay restitution, continue employment, complete GED requirements, and perform 30 hours of community service.
- b. October 10, 2007: Appellant admitted to Criminal Mischief in the Fourth Degree and Operation of a Motor Vehicle Without Owner's Consent. Appellant was adjudicated delinquent and placed on probation.

(Department Exhibits 6, 7; Testimony of Joe Ferrell)

5. On September 1, 2010, Joe Ferrell wrote to Appellant and asked him to provide the charging documents for the assault, criminal mischief, and burglary charges as well as documentation of his completion of the court ordered anger management program. Appellant did not respond to this request. (Testimony of Joe Ferrell; Department Exhibit 6)

6. The Department obtained Appellant's charging documents from the Clinton County Juvenile Court Services. Appellant was charged with three separate physical assaults which including physically pushing and threatening one person and threatening to "kick the ass" of another person; striking a person in the face and knocking him to the ground; and punching and kicking a person and giving him two black eyes, a bloody nose, a small laceration to the right elbow, and a scuffed up right hand. Appellant eventually pled guilty to these three assaults on July 23, 2009 and September 17, 2009. Appellant was required to complete an anger management course as a result of the Assault conviction on July 23, 2009. The Department has not obtained any verification that Appellant completed the anger management course. (Testimony of Joe Ferrell; Department Exhibit 6)

7. On November 17, 2010, the Department issued its Notice of Proposed Action-Denial of Appellant's application for EMS certification. The denial was based on the Appellant's record of convictions/deferred judgments, his failure to report the possession of alcohol conviction, and his failure to provide documentation of his completion of the court ordered anger management program. The Notice of Proposed

Action-Denial was served on Appellant by restricted certified mail on November 27, 2010. (Testimony of Joe Ferrell; Department Exhibit 1)

8. Joe Ferrell explained the Department's reasoning for denying the Appellant's application for certification. Mr. Ferrell reviewed the Appellant's entire criminal record, including the circumstances of Appellant's three assault convictions in 2009 and his 2008 burglary conviction. Mr. Ferrell explained that emergency medical service providers work in high stress situations with limited supervision. They often have access not only to vulnerable patients but also to their belongings and homes. Emergency medical service providers are expected to be persons who are trustworthy and who can be relied on to exercise good judgment under these circumstances. The Department had serious concerns about Appellant's good judgment and trustworthiness based on his criminal record. In addition, Appellant failed to disclose his most recent conviction for Possession of Alcohol and failed to provide documentation that he has completed the court ordered anger management program. The denial was based on all of these considerations and is consistent with prior department decisions. (Testimony of Joe Ferrell; Department Exhibit 9)

CONCLUSIONS OF LAW

I. Failure to Appear

The Department of Public Health served Appellant with its Notice of Proposed Action-Denial by restricted certified mail, as required by the Department's rules. See 641 IAC 131.12(6); Department Exhibit 1. Appellant requested a hearing (Department Exhibit 8) and the appeal was transmitted to the Iowa Department of Inspections and Appeals for hearing. The Department of Public Health's rules are silent as to the service of the Notice of Hearing but provide that the hearing shall be conducted in accordance with the procedural rules of the department of inspections and appeals found in 481 IAC chapter 10. See 641 IAC 131.12(9).

481 IAC 10.5(2) provides that the notice [of hearing] shall be sent by first-class mail unless otherwise required by statute or rule, or agreed to pursuant to subrule 10.5(1). The Notice of Telephone Hearing was issued on December 16, 2010 and was sent to Appellant by first-class mail at the address he provided in his appeal. The notice was not returned by the post office, and Appellant failed to appear for hearing. 481 IAC 10.22(1) provides that if a party fails to appear after proper service of notice, the ALJ

may proceed with the hearing and issue a decision in the absence of the party. In this case, the telephone hearing proceeded when Appellant failed to appear.

II. Grounds for Denial of Certification Application

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 is guilty of any of the following acts or offenses:

- Engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established;
- Violating a statute of this 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.

Iowa Code section 147A.7(1)(f), (j)(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:

...

d. Fraud in procuring certification or renewal, including but not limited to:

...

(2) False representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a certification in this state;...

...

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

...

h.failure to cooperate with an investigation of the department.

...

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, including but not limited to a crime involving dishonesty, fraud, theft, embezzlement, controlled substances, substance abuse, assault, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

The Department of Public Health's statute and rule (Iowa Code section 147A.7(1)(j) and 641 IAC 131.7(2)"t") both refer to "violating" a statute. Either a record of conviction or a "plea of guilty" is conclusive evidence of the "violation." The statute and rule were clearly written to permit the Department to review and consider deferred judgments and juvenile adjudications, as well as convictions.

The record in this case supports the Department's decision to deny Appellant's application. The Department was authorized to consider Appellant's record of guilty pleas and convictions. The crimes involving dishonesty, theft and assault are all clearly related to the provision of emergency medical care. Iowa Code section 147A.7(1)(j); 641 IAC 131.7(2)"t." These crimes are all relatively recent and raise serious concerns about whether the Appellant can be relied upon to provide emergency medical services in a safe and competent manner. In addition, Appellant's failure to disclose his most recent conviction, for Possession of Alcohol under the Legal Age, provides additional support for the denial as the concealment of that which should have been disclosed when making application for certification. 641 IAC 131.7(2)"d." Finally, Appellant failed to respond to the Department's request for the charging documents for the assault, criminal mischief and burglary charges and also failed to provide documentation of his completion of the court ordered anger management program. This constituted a failure to cooperate with the Department's investigation, in violation of 641 IAC 131.7(2)"h."

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Denial, issued by the Department of Public Health-Emergency Medical Services Bureau to Jamie Jess on November 17, 2010, is hereby AFFIRMED.

Dated this 19th day of January, 2011.

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: Jamie Jess
500 Myra Place
Clinton, Iowa 52732 (CERTIFIED)

Heather Adams, Assistant Attorney General
Hoover State Office Building (LOCAL)

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Lucas State Office Building (LOCAL)

Appeal Rights-Motion to Vacate

The rules of the Department of Public Health provide that default decisions or decisions rendered on the merits after a party fails to appear or participate in a contested case hearing become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal on the merits¹ is timely initiated. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure

¹ The separate procedure for an appeal on the merits is described below.

to appear or participate in the contested case hearing. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion. 641 IAC 173.22(3).

The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 641 IAC 173.22(4).

Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response. 641 IAC 173.22(5). "Good cause" for the purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rules of Civil Procedure 236. 641 IAC 173.22(6). [Please note Iowa Rule of Civil Procedure 236 has since been renumbered to Iowa Rule of Civil Procedure 1.977]

Appeal on the Merits

641 IAC 131.12(11) provides the procedure for appealing the proposed decision on its merits. Unlike a motion to vacate, an appeal on the merits does not provide the opportunity to request a new hearing or to present additional evidence. An appeal on the merits provides only for review of the existing hearing record and the proposed decision by the Director of the Department of Public Health. An appeal on the merits must be filed within ten days after the proposed decision is received. A proposed decision 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) (or unless a motion to vacate is filed within 15 days as provided by 641 IAC 173.22). 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).