

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

IN THE MATTER OF:

Cindy Ortiz
11903 Esplande Ct. #715
Bellevue NE 68123-1372

DOCKET NO. 09DPHES004

PROPOSED DECISION

Certification # B-08-253-11

STATEMENT OF THE CASE

On May 6, 2009, Kirk Schmitt, EMS Bureau Chief, issued a Notice of Proposed Action - REVOCATION. Cindy Ortiz (Appellant) timely appealed the proposed action. The matter came on for a telephonic hearing on June 23, 2009.

The Appellant failed to participate in the hearing. Notice of hearing was sent to the Appellant by first class mail, however she did not call in as the notice instructed. Heather Adams, Assistant Attorney General, represented the Department of Public Health. Testimony was received from Joe Ferrell, Education Coordinator and Investigator with the Department of Public Health.

The following exhibits were admitted into the record:

- Ex. 1: 641 Iowa Administrative Code 131;
- Ex. 2: Notice of Proposed Action: Revocation, 5/6/09;
- Ex. 3: Certification Information;
- Ex. 4: Notice of Proposed Action: Denial, 6/08/06;
- Ex. 5: Consent Agreement, 1/12/07;
- Ex. 6: Probation Reporting Form & Documentation, 7/15/07;
- Ex. 7: Notice of Proposed Action: Probation, 8/02/07;
- Ex. 8: Probation Reporting Form & Documentation, 4/08/09;
- Ex. 9: Substance Abuse Evaluation, 3/18/09 (CONFIDENTIAL);
- Ex. 10: Appeal Letter, 5/15/09;
- Ex. 11: Agreed Settlement-State of Nebraska, 4/09/09.

FINDINGS OF FACT

The Appellant is licensed as a paramedic-basic. Her certification is not current as it expired on March 31, 2009.

The Appellant entered into a Consent Agreement with the Department on January 12, 2007. The Consent Agreement placed her EMT-Basic certification on probation for a period of 2 years. The Consent Agreement was due to the Appellant's May 5, 2005 Third Degree Assault conviction and the findings in her substance abuse evaluation indicating amphetamine dependence and cannabis abuse. The terms of the Consent Order required that the Appellant not consume alcohol or any mood altering chemicals or drugs, attend structured recovery meetings and obtain a sponsor. The Department reserved the right to impose further appropriate discipline if the Appellant failed to comply with the terms or conditions of probation.

The Appellant reported to the Department on her probation report that she had consumed alcohol on two occasions, failed to attend AA, NA or other similar structured recovery support group meetings and failed to obtain a sponsor until March 15, 2007.

On August 2, 2007, the Department extended the Appellant's probation to a period of 4 years. The extension was due to the Appellant's failure to comply with the terms of the Consent Order. The extension of probation notice informed the Appellant that the Department may initiate appropriate action to revoke or suspend the Appellant's certification if she failed to comply with any of the terms of her probation.

On April 8, 2009, the Appellant reported that on February 22, 2009, she was charged with Operating While Intoxicated. She had a blood alcohol level of 0.155. The Appellant provided a substance abuse evaluation that indicated that the Appellant met the criteria for alcohol and amphetamine dependence.

The Department notified that it was revoking her EMT-basic certification based upon the violations of her probation, for violating a statute of the state of Iowa, and for being addicted to alcohol or drugs. The Appellant filed a timely appeal but did not participate in the hearing.

CONCLUSIONS OF LAW

The Department of Health proposed revoking the Appellant's EMT certificate. The authority for this action is found in Iowa Code section 147A.7 and 641 IAC 131.7(2). The relevant Iowa Code 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. . . . engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Habitual intoxication or addiction to the use of drugs.

...

j. 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.

The Department has promulgated administrative rules that cover the suspension or revocation of an EMT certification. The rules provide that the Department may revoke a certification for "failure to comply with the terms of a department order or the terms of a settlement agreement or consent order." 641 IAC 131.7(2)(i).

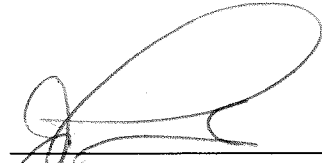
The Appellant received an OWI on February 22, 2009 in Nebraska. The Appellant's substance abuse evaluation had a diagnosis of alcohol and amphetamine dependence. The Appellant has not been able to maintain an extended period of sobriety. This shows habitual intoxication with alcohol. The Appellant violated the terms of her probation and the Consent Agreement.

The Department has carried its burden of proof to establish the violations outlined in the Notice of Proposed Action: Revocation. The revocation shall be affirmed.

DECISION

IT IS THEREFORE ORDERED that the REVOCATION of the Appellant's EMS certification proposed by the Department of Health concerning the Appellant's EMT certificate # B-08-253-11 is hereby UPHELD.

DATED THIS 14TH DAY OF JULY 2009.



John M. Priester
Administrative Law Judge

Cc: CINDY ORTIZ, CERTIFIED
11903 ESPLANDE CT., #715
BELLEVUE NE 68123-1372

HEATHER ADAMS, AAG

MEGGAN VAN GUNDY, DIA

JOE FERRELL, DPH
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5th FLOOR LUCAS BUILDING

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.