



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO HLT 11542-10

AGENCY DKT. NO. 514114

**NEW JERSEY DEPARTMENT OF
HEALTH AND SENIOR SERVICES,**

Petitioner,

v.

DAVID JONES,

Respondent.

Michael J. Kennedy, Deputy Attorney General, appearing for petitioner (Jeffrey S. Chiesa, Acting Attorney General of New Jersey, attorney)

Richard D. Koppenaal, Esq., appearing for respondent

Record Closed: December 9, 2011

Decided: January 6, 2012

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent David Jones (Jones) appeals from the determination of petitioner the Department of Health and Senior Services (DHSS) revocating his certification as an emergency medical technician–basic (EMT–Basic). Respondent’s appeal was transmitted to the Office of Administrative Law, where it was filed on October 15, 2010,

for a hearing. The hearing was held on November 18, 2011, and the record remained open to permit the parties to submit post-hearing submissions, after which the record was closed.

FINDINGS OF FACT AND FACTUAL DISCUSSION

I **FIND** the following undisputed background **FACTS**:

Jones was convicted of endangering the welfare of a child on May 17, 2000. The offense occurred January 8, 2000, through May 12, 2000. Respondent obtained a sentence of five years' probation; subject to Megan's Law; and compliance to Community Supervision for Life. On January 15, 2008, Jones received a Special Condition Imposition prohibiting him from the use of social networking web sites and use of chat rooms. On March 4, 2008, Jones received a Special Condition Imposition requiring him to submit to a polygraph examination on at least an annual basis. On July 1, 2009, as part of the DHSS's EMT-Basic renewal process, Jones applied to the DHSS for recertification as an EMT. Respondent answered "yes" to a question as to whether he had a criminal record. On September 17, 2010, DHSS revoked his certification for emergency medical technician-basic based upon respondent's conviction for endangering the welfare of a child.

Having had an opportunity to consider the evidence and testimony, I **FIND** the following additional **FACTS** in this case:

Respondent was arrested for a violation of N.J.S.A. 2C:24-4A, endangering the welfare of a child, on May 17, 2000. Subsequently, on August 3, 2000, respondent entered a guilty plea and was convicted of same wherein he admitted that from January 8, 2000, through May 12, 2000, Jones engaged in repeated sexual conduct with a child under the age of sixteen at a time when he was the age of 23 years 75 days. It is the responsibility of the OEMS, the licensing authority for EMTs, to ascertain whether the Rehabilitated Convicted Offenders Act (Act) applies. The Act states that a person shall not be disqualified from licensure unless the conviction related adversely to the occupation, trade, vocation, profession or business for which the license or certificate is

sought. The work of an EMT–Basic is part of an unsupervised two-person team to respond effectively to emergencies. It requires EMTs to make important medical assessments and carry out pre-hospital interventions at motor vehicle accidents, in resident’s homes, and at other difficult field locations. In order to effectively carry out their duties, EMTs must unconditionally be trusted by one another as well as police officers, fire fighters, doctors, and other professionals. In addition, EMTs may not select which type of cases they will handle and, in fact, they may have to deal with patients of all ages, from infants to the elderly. In addition, EMTs may be required to perform physical exams and may be required to remove the patient’s clothing regardless of age. Thus, EMTs can be placed in a position of authority and influence over vulnerable and/or frightened individuals, including minor children. Jones is registered under Megan’s Law and thus is prohibited from contact with children. Jones is subject to community supervision for life. Jones’s presence on a licensed vehicle poses a threat to the health, safety and welfare of the public utilizing these services. This places Jones as a liability for the medical provider. Based on the conviction of this crime, Jones lacks the high moral character and integrity needed for an individual to be an EMT.

LEGAL ANALYSIS AND CONCLUSION

N.J.S.A. 2A:168A-2 provides:

Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, no State, county or municipal department, board, officer or agency, hereinafter referred to as “licensing authority” authorized to pass upon the qualifications of any applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business or for admission to an examination to qualify for such a license or certificate may disqualify or discriminate against an applicant for a license or certificate or an application for admission to a qualifying examination on the grounds that the applicant has been convicted of a crime, or adjudged a disorderly person, except that a licensing authority may disqualify or discriminate against an applicant for a license or certificate if N.J.S.A. 2C:51-2 is applicable or if a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought. In determining that

a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought:

- a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
- b. Nature and seriousness of the crime;
- c. Circumstances under which the crime occurred;
- d. Date of the crime;
- e. Age of the person when the crime was committed;
- f. Whether the crime was an isolated or repeated incident;
- g. Social conditions which may have contributed to the crime;
- h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

EMTs have close, hands on, contact with the injured—including both children and elderly people at a time when they are at their most vulnerable. Respondent's conviction is troubling because the individuals he would be interacting with include a group he is barred from having contact, i.e., children. Although he has no other convictions, he was unable to present evidence that he has made any strides toward rehabilitation other than the testimony of himself, his wife, and other people closely related to him. Jones testified that he completed a counseling program during probation; however, he is still on parole and subject to Megan's Law and Community Supervision For Life, which includes a prohibition of initiating, establishing or maintaining contact with any minor. The duties of an EMT do not fall within the exceptions set forth in exhibit P-5, DHSS 14. While respondent is on parole, he must comply with the rules of parole, which includes Megan's Law and Community Supervision For Life or suffer possible imprisonment. Respondent failed to present credible evidence proving that he is rehabilitated.

Based on the foregoing, I **CONCLUDE** that petitioner properly denied respondent's request for recertification as an EMT-Basic because respondent has not provided enough evidence to show that he is rehabilitated and the restrictions he is currently under make it impossible for him to fulfill the duties of an EMT.

ORDER

I hereby **ORDER** that the determination of the Department of Health and Senior Services to revoke the respondent's certification as an EMT-Basic be **AFFIRMED**. I further **ORDER** that respondent's appeal be and hereby is **DISMISSED**.

I hereby **FILE** my Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF HEALTH AND SENIOR SERVICES** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF HEALTH AND SENIOR SERVICES**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Health and Senior Services does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF HEALTH AND SENIOR SERVICES, John Fitch Plaza, P.O. Box 360, Room 805, Trenton, New Jersey 08625-0360**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 6, 2012
DATE


MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

WITNESSES

For Petitioner:

Christopher Ryan

For Respondent:

David Jones

Heather Jones

EXHIBITS

For Petitioner:

P-1 Request for Criminal History

P-2 Judgment of Conviction, Superior Court Law Division-Criminal Bergen County

P-3 Special Condition Imposition: Participation in Polygraph Examination,
Community Supervision for Life

P-4 Special Condition Imposition: Social Networking Web Site and Chat Room Use
Prohibited, Community Supervision for Life

P-5 Notice of Proposed Revocation: EMT–Basic Certification

For Respondent:

R-1 Letter from Victor Incorvaia, dated August 11, 2010

R-2 Letter from Captain Christopher Perrelli, undated

R-3 Letter from Eileen Librizzi, dated August 12, 2010

R-4 Letter from Alexandra R. Diakos, dated August 12, 2010