



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. HLT 6755-09

AGENCY DKT. NO. HLT 6755-09

**THE DEPARTMENT OF HEALTH  
AND SENIOR SERVICES,**

Petitioner,

v.

**SCOTT DONNENBERG,**

Respondent.

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**Michael Kennedy**, Deputy Attorney General, for petitioner (Paula T. Dow,  
Attorney General of the State of New Jersey)

**Scott Donnenberg**, respondent, pro se

Record Closed: May 23, 2011

Decided: July 12, 2011

BEFORE **ANA C. VISCOMI**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Respondent appeals from an August 17, 2009, Notice of Proposed Revocation of his EMT (Emergency Medical Technician)-Basic Certification, because he failed to disclose a felony conviction on the EMT certification application. The matter was transmitted to the Office of Administrative Law (OAL) on October 14, 2009, for a hearing as a contested case pursuant to N.J.S.A. 52:14F-1 to -13 and N.J.S.A. 52:14B-1 to -15.

The parties met to try to resolve this matter. On July 13, 2010, the Department of Health and Senior Services, Office of Emergency Medical Services issued an Amended Notice of Proposed Revocation of EMT-Basic Certification. The matter was heard on May 2, 2011, and the record remained open until receipt of post-hearing summations on May 23, 2011.

### **FACTUAL DISCUSSION**

The following facts are undisputed and they shall constitute my preliminary findings of fact.

Respondent is 37 years old. He has been a volunteer EMT with the Bloomsbury Rescue Squad for the past five years. He has worked as an EMT with other rescue squads since 1994. At the age of 26, he was arrested and charged with various counts of theft. Those charges were resolved on December 10, 1999, when respondent was convicted of two counts of theft by computer access in the third degree in violation of N.J.S.A. 2C:20-25. (P-3). He was arrested less than one year later and charged with theft and falsifying records. He pled guilty to one count of theft in the third degree, a violation of N.J.S.A. 2C:20-3a. (P-4). On July 5, 2002, the sentencing judge, the Honorable Theodore Bozonelis, P.J.S.C., indicated the following on the Judgment of Conviction:

This 28 year old defendant has pled guilty to 3<sup>rd</sup> degree theft when working for Oxford Environmental, Inc., by selling items without permission and keeping the proceeds, stealing a projector and making personal charges on the company credit card. He has a prior criminal history consisting of a theft conviction on 10/29/99 for which he was given three years probation and a PTI on theft charges. He is in need of probationary supervision. In lieu of incarceration, community service is necessary to deter further criminal activity. He has maintained employment at EPS Environmental in NY. In this regard, aggravating factors 3 (risk of reoffense (sic)) 5 (prior criminal history) and 9 (deterrence) apply and are outweighed by mitigating factors 6 (restitution) and 10 (response to probation). (P-4).

On October 18, 2003, respondent completed an EMT Basic Application. (P-5). Respondent indicated that the highest level of education he had completed was a

graduate degree. (P-5). In response to a category of questions printed in larger type font and captioned "Felony Statement," he responded "no" to the following question: "have you ever been convicted of a felony." (P-5). Respondent completed an application, dated March 1, 2006, to work with the Hampton Emergency Squad. (P-6). He represented that he had never been arrested and that he had never been convicted or pled guilty to a crime other than a motor vehicle violation. (P-6).

In the August 17, 2009, Notice of Proposed Revocation letter, Karen Halupke, Director of the Office of Emergency Medical Services (OEMS), noted her office had received a complaint on or about August 10, 2007, that respondent had a criminal record. (P-7). This letter further indicates that as a result of the complaint, OEMS staff interviewed the respondent on September 20, 2007, and that he admitted that he "broke the law in order to provide for (his) family." (P-7). The letter further referred to the 2003 EMT certification application (P-6) in which respondent not only indicated that he had never been convicted of a felony but also noted his signature below the following statement, "I hereby affirm and declare that the above information on this application is true and correct and that any fraudulent entry may be considered a sufficient cause for rejection or subsequent revocation." (P-7). Respondent had submitted an EMT-Basic recertification application dated July 1, 2009, in which he truthfully responded to the question regarding a criminal background, but this was completed during the course of a meeting with OEPS personnel. (R-1). Director Halupke indicated that the Department was seeking the revocation because respondent made a material misrepresentation or provided false information on the EMT-B certification. (P-7). In the amended notice of July 13, 2010, Director Halupke indicated that the Department considered respondent's application for certification pursuant to the guidelines in the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1, et seq, which prohibits disqualification from licensure or certification because of a conviction unless it relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought. (P-8). Undertaking this analysis, the Department concluded as follows:

EMT-Basics provide emergency medical care to patients in a pre-hospital setting and emergency medical transportation to appropriate health care facilities. EMT-Basics often have to work under pressure and take action that can save a person's life. EMT-Basics must make important medical

assessments and carry out appropriate medical interventions at motor vehicle accidents, in people's homes, and at other difficult field locations. In order to be effective, EMT-Basics must trust each other and be trusted by EMT-Paramedics, police officers, firefighters, doctors, and other professionals. EMT-Basics must treat patients of all ages, from infants to the elderly. They must place a high value on the health, safety, welfare and dignity of the patients they treat. EMT-Basics frequently have to enter bedrooms and other private areas of patients' homes to inventory medicine cabinets to determine what medications a patient is taking. EMT-Basics often enter hospitals where they are in close proximity to prescription drugs, including narcotics. In addition to caring for patients themselves, EMT-Basics are often called upon to temporarily safeguard the property of patients, including wallets, purses and jewelry. EMT-Basics who work for licensed providers must adhere to applicable laws and administrative rules. All of these duties require EMT-Basics to be law-abiding citizens of high moral character.

Your criminal history record is inconsistent with the duties of an EMT-Basic as described above. You pled guilty to several crimes involving theft and stolen property, which is very serious in nature. Theft is crimes that indicate dishonesty and lack of respect for personal boundaries and the property of others. Furthermore, you provided false information regarding your criminal history on your October 18, 2003 examination application from the NREMT. As stated above, it is important for EMT-Basics to be honest and to place a high value on the health, safety and welfare of patients. In addition, it is important for EMT-Basics to properly handle and respect prescription medications and personal property. Your convictions are dramatically inconsistent with the duties of an EMT-Basic.

This agency finds no special circumstances or social conditions that explain or mitigate your conduct. This agency finds that as a legal adult, you were old enough to understand and appreciate the wrongful nature of your conduct.

In consideration of the aforementioned, this agency has determined that you have violated N.J.A.C. 8:40A-10.2(b)2, 12, 15, 21, 23 and 24. Therefore as a result of this Investigation and in addition to the reason set forth in the August 13, 2009, Notice of Proposed Revocation of EMT-Basic Certification, please be advised that this Department Intends to revoke your Emergency Medical Technician-Basic certification. (P-8).

On May 25, 2010, respondent completed a New Instructor Application for the American Safety and Health Institute (ASHI). (P-10b). He indicated on that application that his license or certificate had never been suspended, revoked, or denied and that he had never been convicted of a felony. (P-10b). By letter dated February 9, 2011, ASHI advised respondent that a formal complaint had been filed against him. (P-10a).

Respondent was asked to respond to the charges by February 23, 2011. (P-10a). By letter dated March 1, 2011, ASHI advised respondent his Instructor and Training Center status was suspended for failure to respond to the complaint. (P-10f). By letter dated March 4, 2011, ASHI advised respondent that his status was being amended from suspended to revoked because he had not truthfully responded to the application (P-10b) question regarding whether his license had ever been suspended or revoked or whether he had been convicted of a felony. (P-10g).

This concludes my preliminary factual findings.

Respondent does not contest the accuracy of his criminal record. His competency is not at issue herein. Rather, the resolution of this matter hinges on the credibility determinations in consideration of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1, et seq. In that regard, petitioner offered the testimony of Chris Ryan, an OEMS investigator with the Department of Health and Senior Services since 2004, who investigated this matter. He has been an EMT for 20 years and a paramedic for 10 years.

Ryan testified that all EMTs have to be certified in the State of New Jersey or recognized through certification in neighboring states such as Pennsylvania, Delaware or New York. If respondent's certification is revoked, he cannot practice as an EMT in this state. The Department was not aware of the convictions at the time of the application. It was not until the Mayor of Hampton contacted DHSS to advise of respondent's criminal background that it pursued the investigation resulting in the Notice of Revocation. Had the respondent admitted to a criminal background, the DHSS would have conducted an investigation as it relies upon on the honesty of the applicant.

In seeking revocation, the DHSS considered certain factors. During the time that respondent was on probation in Essex, he was convicted of the crimes in Morris County. (P-4). Thus, he violated the terms of the probation imposed upon him during his sentencing by the Essex County judge. When respondent submitted his letter requesting a hearing on the proposed revocation (P-9), he did not indicate that the false responses on his application were due to any confusion on his part relating to

comprehension of the application.<sup>1</sup> Ryan testified that as a result of considering the rehabilitation factors pursuant to the statutory requirement, the DHSS forwarded the amended revocation letter. (P-8). In seeking revocation rather than suspension or no penalty, the DHSS considered: the responsibilities of an EMT; the seriousness of the offenses; the date of the offenses; the age when they occurred; any social conditions; and any evidence of rehabilitation. The rationale in the decision reached is reflected in the amended revocation letter and is noted in the preliminary findings of fact indicated above. (P-8). Ryan testified that the DHSS still seeks revocation rather than any other penalty or no penalty in consideration of the fact that even after the Department interviewed respondent and met with him, he still submitted an application to ASHI on May 25, 2010, in which he denied a felony conviction. (P-10b).

Robert Van Doren, president of the Bloomsbury Rescue Squad for the past five years, testified on behalf of both petitioner and respondent. He has been associated with the squad since 1980. He was on a four year leave of absence when respondent started working there as a volunteer EMT. He could not locate the application respondent completed in order to be considered for the position. Background checks are conducted for new applicants. Van Doren testified that respondent did not apprise him of his criminal background. He further testified that he is still not aware of that criminal history. However, had he been apprised of it, he would have considered the nature of the conviction and discussed it with the officers and trustees prior to making any decision with regard to accepting the respondent as a volunteer EMT. Van Doren testified he has never received any complaints regarding respondent's competency. Additionally, no questions have ever been raised with regard to any impropriety relating to treatment of patients. Respondent quickly rose to the rank of lieutenant and was voted Assistant Chief of the squad in 2010.

James Anderson, Chief of the Bloomsbury Rescue Squad for approximately 14 years, testified on behalf of both petitioner and respondent. He has known the respondent for seven years. He was the Chief at the time respondent submitted an application. As part of his responsibilities as a chief, he would have reviewed the

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<sup>1</sup> See summary of respondent's testimony in the factual discussion portion of this Initial Decision wherein he attributes the false responses on his part to not reading the application thoroughly.

application and if a criminal conviction was noted, he would have discussed it with the respondent, as with any applicant. He testified that he was not aware of respondent's prior criminal convictions at the time of application and is still not aware of that history as he testified before me. Anderson testified respondent never mentioned it to him. However, he recalled respondent "was a little vague" about being sued by a company but never mentioned a criminal conviction relating to his employment. Respondent did appear before the trustees and explained that he had been the captain at the Hampton Squad and that they were "cutting heads" relating to "a policy issue."

Anderson testified that the Bloomsbury volunteer squad is an independent squad and not does answer to the mayor. The squad relies upon the honesty of the applicant during the application process. The squad does not have the financial resources to conduct background checks on the applicants. After being apprised of the criminal convictions at this hearing, Anderson testified that it "bothers him" that he is just being apprised of that background, but that nothing in that background, in consideration of the time frame, would cause him to think that respondent would jeopardize patient care if he continued as a volunteer EMT.

Respondent testified on his own behalf. He was the Hampton EMS Chief and attending paramedic school when Mayor Walton filed a complaint with the Department. He testified that he was guilty of passing bad checks in 1996 as he was "going through hard times" and had no money in his account to clear the checks. (P-2). He testified that with regard to the 2002 Essex County Judgment, he was "going through a hard time financially and (he) had to do what (he) had to do" to support his family. He testified that he was working full-time 12 to 16 hours per day, but his partner was not paying him. He could not get a second job. It was "not (his) first choice" to have committed the theft. He testified that it was a bad decision on his part and that he paid restitution and completed probation. (P-3). With regard to the 2002 conviction, respondent testified that he was the director of a relative's business. He left to start a new company and took some clients and employees. The relative pursued criminal charges. (P-4). He accepted a plea bargain to end the case but, he testified, he is not admitting to the crime.

Respondent testified that he will frequently sign paperwork without reading “the fine print.” He cannot attest to whether he read the National Registry Application fully as he “sometimes read(s) questions quickly just to get it done.” He testified that he “did not come clean” when he first joined the (Hampton) squad but that when Mayor Walton said that he would tell the squad, he “did come clean but (he) was pushed in that direction.” Except for Mayor Walton, there have not been any complaints regarding his trustworthiness. Patient care has not been an issue. Respondent testified squad members do not enter a house alone when responding to an emergency. The responding squad members would direct a family member or the police to obtain any medications from the house or to hold onto the patient’s valuables if the patient was not in a position to be responsible for them.

Respondent testified that the application he completed in 2009, wherein he admitted to his background, is a reflection of his honesty. (R-1). He testified that he has demonstrated that he has been rehabilitated as he has not committed any crimes in ten years.

He is currently not working.

### **LEGAL ANALYSIS**

To ensure that all hospital and related health care services rendered in the state of New Jersey are of the highest quality, the DHSS is vested with the responsibility of carrying out the provisions of the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1, et seq. Health care services are statutorily defined to include any pre-hospital care rendered by basic life support personnel. N.J.S.A. 26:2H-2b. In furtherance of that objective, the DHSS has adopted regulations governing the training, certifications and professional conduct of EMT-Basics. N.J.A.C. 8:40A-1.1 et seq. In seeking revocation of respondent’s certification as an EMT-Basic, the DHSS has relied upon N.J.A.C. 8:40A-10.2(b)2, 12, 15, 21, 23 and 24 in consideration of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1, set seq., which prohibits disqualification from licensure or certification because of a conviction unless it relates adversely to the

occupation, trade, vocation, profession or business for which the license or certificate is sought. N.J.A.C. 8:40A-10.2, provides in pertinent part,

The Commissioner, or his or her designee, may issue a formal written warning, impose a monetary penalty, place on probation, suspend, revoke and/or refuse to issue or renew the certification of any EMT-Basic or EMT-Instructor for violation of any of the rules set forth in this chapter. This includes, but is not limited to:

2. Deceptive or fraudulent procurement of certification or recertification credentials and/or documentation;
12. Conviction of any crime;
15. Entry into a pre-trial intervention, conditional discharge, or other diversionary program;
21. Making material misrepresentations or providing false information on the NREMT-Basic Certification Examination and/or an application for EMT-Basic, EMT-Instructor or EMT-Paramedic certification or recertification;
23. Failure to comply with any part of this chapter, any applicable part of N.J.A.C. 8:40 or N.J.A.C. 8:41, or any applicable law, rule and/or regulation; and or 24. Any other action deemed by the Department to pose a threat to the public health, safety or welfare.

Respondent asserts that he has been rehabilitated because he has not committed a crime since 2002 and has paid restitution. Chief of the Bloomsbury Rescue Squad, James Anderson, testified that while it “bothers him” that respondent has never been forthright about his criminal background, nothing in that background, in consideration of the time frame, would cause him to think that respondent would jeopardize patient care if he continued as a volunteer EMT.

In contrast, the DHSS asserts that respondent has a history of lying and stealing when he feels it suits his needs. His history of “doing what he needs to do” to get what he wants, the DHSS asserts, is incompatible with the duties of an EMT. As testified to by OEMS Investigator Chris Ryan, EMTs are entrusted with the responsibility of patient care which includes safeguarding patient medications and valuables. The crimes which

respondent committed are serious in nature and are contrary to the high moral character expected from EMTs.

Having considered the evidence and the credibility and demeanor of the witnesses, I make the following further findings of fact, analysis and credibility determinations. OEMS investigator Chris Ryan presented as a credible witness who not only detailed thoroughly the investigation that was conducted, but also provided a reasoned analysis of why the DHSS is seeking revocation in this matter. Both Van Doren and Anderson were credible witnesses. They were surprised to hear of the respondent's criminal background that was not revealed to them by the respondent at any time. And they both confirmed that they never received any complaints with regard to respondent's trustworthiness in dealing with patients. Both would have considered the nature of the convictions prior to making any determination with regard to whether to offer respondent a position on the volunteer squad. In contrast, respondent did not present as a credible witness. While he professes honesty in that he completed his 2009 application admitting to a criminal background (R-1), he neglects to indicate that he responded in such fashion because he was directed by the Department as to how he should respond as a result of a meeting with him. As late as March 25, 2010, respondent yet again denied a felony conviction on the New Instructor Application for ASHI. (P-10b). Respondent has consistently denied his past; indeed, as to his 2002 conviction, he testified before me that he is not admitting to a crime. It is troubling that he admits to telling the Hampton Rescue Squad the truth, but only because the mayor "pushed him in that direction." He still fails to accept responsibility for his conduct in that he rationalizes the thefts leading to his felony convictions because of financial troubles and "(doing) what (he) had to do" to support his family. He still fails to accept responsibility for lying about his convictions on the various applications (P-5, P-6, P-10b) by attributing it to a recent rationalization of his conduct that he does not always "read the fine print." I **FIND** that after being directed by the DHSS to admit to his past criminal background on a 2009 application, the respondent still proceeded to lie about it in 2010 when he sought New Instructor status by ASHI. I **FIND** that respondent still fails to admit to a felony that he pleaded guilty to in 2002. I **FIND** that but for the Mayor of Hampton "push(ing) him in that direction" he would not have admitted to his past criminal background to the Hampton Squad. I **FIND** that he failed to apprise the

Bloomsbury Rescue Squad of his past criminal background and lied about the reason he was no longer with the Hampton Squad. I further **FIND** that he failed to apprise his witnesses, President of the Bloomsbury squad, Robert Van Doren, and Chief of the Bloomsbury Squad, James Anderson, respectively, of his criminal background and that they only learned of it during the course of this hearing. I **FIND** that the respondent's actions demonstrate a pattern of deceit on his part.

Based on the foregoing, and in consideration of the Rehabilitated Convicted Offenders Act and the nature and duties of an EMT-Basic, I **CONCLUDE** that respondent has violated N.J.A.C. 8:40-10.2(b)2, 12, 15, 21, 23 and 24. His criminal background, coupled with his continual deceit to cover-up that background are contrary to the trust placed upon EMTs and the high moral conduct expected of them in treating patients. His continued certification as an EMT poses a high risk that the respondent will do "what he ha(s) to do" for financial gain regardless of whether it constitutes a crime or a further deceit about his criminal background or a rationalization for failing to accept responsibility for his past.

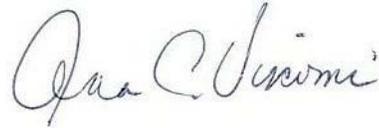
### **DECISION AND ORDER**

Based on the foregoing, the DHSS' revocation of respondent's EMT-Basic certification is hereby **AFFIRMED** and respondent's appeal 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, PO 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.



\_\_\_\_\_  
July 12, 2011

DATE

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**ANA C. VISCOMI, ALJ**

Date Received at Agency:

\_\_\_\_\_  
July 12, 2011

Date Mailed to Parties:

\_\_\_\_\_  
July 12, 2011

/lam/bdt

**WITNESSES**

**For Petitioner:**

Chris Ryan  
Robert Van Doren  
James Anderson

**For Respondent:**

Robert Van Doren  
James Anderson  
Scott Donnenberg

**EXHIBITS**

**For Petitioner:**

- P-1 September 7, 2007 memo from Sweeney to Pidcock re criminal history background
- P-2 Fairfield Municipal Court certified transcript of docket
- P-3 Judgment of Conviction (Essex County)
- P-4 Judgment of Conviction (Morris County)
- P-5 National Registry EMT application
- P-6 Hampton Emergency Squad application
- P-7 August 17, 2009 Notice of Proposed Revocation
- P-8 July 13, 2010 Amended Notice of Proposed Revocation
- P-9 September 12, 2009 request for hearing
- P-10a ASHI Formal Complaint
- P-10b New Instructor Application
- P-10c New Instructor Certification card
- P-10d Instructor classification
- P-10e NJ DHSS EMT-Basic ID card for respondent
- P-10f ASHI suspension letter
- P-10g ASHI revocation letter
- P-11 Respondent's web page

**For Respondent:**

R-1 EMT Recertification Application