

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Application for  
Emergency Medical Technician Certification  
by:

JOSEPH WILEY POWERS,

Respondent.

Case No. 15-0011

OAH No. 2015061195

**PROPOSED DECISION**

Administrative Law Judge Adrienne J. Miller, State of California, Office of Administrative Hearings, heard this matter on August 17, 2015, in Oakland, California.

Aaron Doyle, Prehospital Care Coordinator Paramedic, represented complainant Patricia Frost, Director of the Contra Costa County Emergency Medical Services Agency.

Christopher Varnell, Attorney at Law, represented respondent Joseph Wiley Powers.

The matter was submitted on August 17, 2015.

**FACTUAL FINDINGS**

1. Patricia Frost issued the statement of issues in her official capacity as the Director of the Contra Costa County Emergency Medical Services Agency (agency).
2. Respondent was originally certified as an emergency medical technician (EMT), certification number E054839, by the agency on April 1, 2013. Respondent's EMT certification expired on March 31, 2015, and is subject to recertification unless denied or revoked. Respondent applied for recertification from the agency on March 30, 2015.
3. On March 13, 1997, respondent was convicted in the Superior Court of California, County of Contra Costa, on a plea of no contest, of violating Penal Code section 537, subdivision (a)(1) (defrauding an inn-keeper by non payment of \$400 or less), a misdemeanor. Imposition of sentence was suspended and respondent was placed on two years' court probation. Conditions of probation included paying a fine in the amount of \$250, and paying restitution in the amount of \$16.03 to Denny's restaurant.

4. The facts and circumstances underlying this conviction are that on January 16, 1997, respondent and a friend ate a meal at a Denny's restaurant and did not pay their bill in the amount of \$16.03.

Respondent paid his fine and paid restitution.

5. On March 24, 2015, when respondent applied for EMT recertification in Contra Costa County, he failed to disclose his March 13, 1997 conviction. Respondent declared, under penalty of perjury, that he had never been convicted of a felony or misdemeanor offense in California or in any other state or place, including entering a plea of nolo contendere or no contest, or been convicted of a crime that had been expunged or where the records had been sealed or set aside pursuant to Penal Code section 1203.4.

6. The agency uses the Live Scan system for criminal history background checks. Respondent's conviction, and his failure to disclose it on his March 24, 2015 application were discovered during the background check.

7. On April 6, 2015, the agency sent respondent a Notice of Administrative Investigation and Advisement letter advising him that it had received his application. It also contained the following:

It is alleged that you submitted an application for EMT certification to the Contra Costa County Emergency Medical Services Agency on March 30, 2015, declaring under penalty of perjury that you had never been convicted of a criminal offense. It is alleged that this statement was dishonest and made to fraudulently obtain EMT certification because you were convicted of a criminal offense in or about March, 1997, in Contra Costa County, California.

8. On April 15, 2015, respondent met with the agency's investigators. Respondent told them that he had never been convicted of a crime. Respondent admitted to receiving several fix-it tickets in 1996 and 1997, for an old Volkswagen car that he drove, and that he did not pay his tickets immediately. He admitted that in 1996 and 1997, he was "young and stupid" for not paying his fines, but did not recall any criminal conviction. Respondent did not recall being placed on probation. When respondent was asked if he had ever been convicted of a crime of "defrauding an inn-keeper," he admitted that it sounded familiar. However, respondent had no recollection of any circumstances or facts surrounding any conviction. Respondent denied ever being arrested and did not remember going to court and being charged with a crime. Respondent also told the agency investigators that he requested criminal records from the Walnut Creek Police Department, and his wife went to the Contra Costa County courthouse to find records of any conviction but did not locate any. At the time of the interview, respondent did not have records of any arrest or conviction.

9. On April 24, 2015, respondent emailed the agency and advised that he received a police report from Walnut Creek Police Department listing a vehicle violation from 1998. Respondent also advised the agency that he would hire a lawyer to look for more criminal records and wrote: "I would like to see exactly what is on my record so that I can clear this up, and also know for any future applications."

10. On April 28, 2015, respondent emailed the agency:

I have a letter from the District Attorney's office confirming that no criminal charges were filed against me, and there are also no charges currently pending.

This is why I was unable to come up with any information from the court, or from the police records.

Here is the information my lawyer was able to find.

PC 537 defrauding an innkeeper. Occurred on 1-16-97. Filed In March with docket number 3-176822-5. Denny's in Pleasant Hill. Pleasant Hill PD report number 97-312. DA was going to file charges, put it in their outgoing box, but then it appears officers never picked it up or took it to the clerk. That is where the trail ends. So good news is that it appears you are right, never convicted, wouldn't need to disclose a conviction. In your eyes never filed. DA wanted to file apparently which is evident by the existence of a docket number. But now statute of limitations would have run.

This was over 18 years ago, and as far as I can remember, I was questioned at the police car and that was it. I spoke with the officers and told them what happened and thought that they were letting me off for helping them get all the information. I do not recall hearing about it again and did not know it was even on my record at all.

I answered the questions on the California EMT application honestly and accurately and hope we can get this cleared up soon.

Thank you.

11. On July 6, 2015, the Contra Costa District Attorney's office sent respondent's attorney another letter regarding the search of records for the 1997 criminal complaint. It states:

In my previous letter dated April 23, 2015, I indicated that due to the expiration of the statute of limitations, there would be no further criminal prosecution in this incident. However, I have since received a copy of the criminal complaint filed against Mr. Powers and his accomplice in this case (apparently filed with the court on February 20, 1997), as well as a minute order dated March 13, 1997 (indicating that Mr. Powers was arraigned, and pled “no contest” to a misdemeanor offense of Penal Code section 537(a)(1)). Further, I have received a copy of the Probation Order, also dated March 13, 1997, with Mr. Powers’ signature, acknowledging the terms of probation. Hence, my previous letter dated April 23, 2015, based on a check of the computer files, was in error. Mr. Powers was, in fact, prosecuted and convicted based on the underlying conduct detailed in Pleasant Hill Police Department report no. 97-312, in Contra Costa County Superior Court docket no. 3-176822-5.

12. Respondent admitted that the DA’s letter, dated July 6, 2015, and the court documents (which he received two weeks prior to this hearing) demonstrate that he was convicted of defrauding an innkeeper. Respondent now understands that he was convicted of a crime. He did not, however, recall the conviction when he filled out his application.

13. Respondent described the incident as a “dine and ditch.” At the time, he had been hanging out with the wrong crowd. Respondent testified credibly that he had wiped the incident from his memory and thought he just had to pay a fine and it was over. He believes that if he had been reminded that the incident occurred at Denny’s he would have remembered more details.

14. Respondent has not disclosed his 1997 conviction on any previous employment applications. He does not recall if any previous application asked if he had been convicted of a criminal offense.

15. Respondent is a 37-year old married man. He is currently working for the San Francisco County Public Utilities Commission.

16. Respondent graduated from high school and took some courses at Diablo Valley College. He attended the Fast Response School in Berkeley to receive his EMT education. Respondent’s career goal is to become a firefighter.

## LEGAL CONCLUSIONS

### *Cause for Discipline*

1. Health and Safety Code section 1798.200, subdivision (a)(3), authorizes the local EMS Agency, through its medical director, to deny, suspend or revoke any EMT-I or EMT-II certification upon a determination of disciplinary cause.

2. Complainant alleges cause to deny certification exists, pursuant to Health and Safety Code section 1798.200, subdivision (c)(1), (fraud in the procurement of any certification or license) because respondent failed to disclose his 1997 conviction on his 2015 application as set forth in Factual Finding 5. To conclude that respondent perpetrated a fraud complainant must prove that respondent knew that his statement was not true and that he made the statement with the intent to deceive. As this was not proven, cause to deny certification does not exist under this section.

3. Complainant alleges cause to deny certification exists, pursuant to Health and Safety Code section 1798.200, subdivision (c)(5), (any fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel) because respondent denied he was convicted of any criminal offense during the administrative interview and he failed to disclose the conviction on his application as set forth in Factual Findings 5 and 8. To conclude that respondent committed a fraudulent, dishonest or corrupt act, complainant must prove that respondent knowingly denied he was convicted of any criminal offense. As this was not proven, cause to deny certification does not exist under this section.

4. Complainant alleges cause to deny exists, pursuant to Health and Safety Code section 1798.200, subdivision (c)(7), (violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel) because respondent declared under penalty of perjury that he had never been convicted of a misdemeanor on his 2015 application as set forth in Factual Finding 5. To conclude that respondent knowingly deceived complainant when he signed his application under penalty of perjury, complainant must prove that respondent knew of his prior conviction when he filled out his application. As this was not proven, cause to deny certification does not exist under this section.

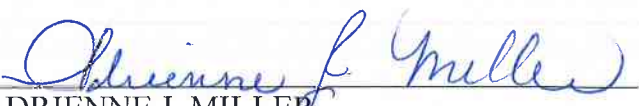
5. Respondent's criminal offense was over 18 years ago. Respondent testified credibly that he had no memory of the conviction at the time he filled out the application and was interviewed. Respondent was diligent in searching for court records, and hired a lawyer to find records from the DA's office. Respondent's search demonstrates his sincere efforts to recollect a forgotten memory and to be honest and forthcoming with the agency. There is no evidence of any other conviction in the last 18 years and no other evidence of dishonesty. Respondent paid his fine, paid restitution and his court probation ended in 1999. There is no evidence today that respondent lacks good character or would be a danger to the public. It

would not be contrary to the public health and safety to permit respondent to be recertified as an EMT.

ORDER

Respondent Joseph Wiley Powers's application for EMT certification is granted.

DATED: 9-11-15

  
ADRIENNE J. MILLER  
Administrative Law Judge  
Office of Administrative Hearings