

**BEFORE THE
EMERGENCY MEDICAL SERVICES AGENCY
CONTRA COSTA COUNTY**

**In the Matter of the Application for an Emergency Medical
Technician Certificate by:**

RAFAEL RICO BARRIENTOS, Respondent.

Agency Case No. 21-0041

OAH No. 2022080689

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on September 19, 2022, by videoconference.

Prehospital Care Coordinator Benjamin Keizer represented complainant Marshall Bennett, Director, Contra Costa County Emergency Medical Services Agency.

Respondent Rafael Rico Barrientos represented himself.

The matter was submitted for decision on September 19, 2022.

FACTUAL FINDINGS

1. In August 2021, respondent Rafael Rico Barrientos applied to the Contra Costa County Emergency Medical Services Agency (Agency) for a certificate authorizing him to work as an Emergency Medical Technician (EMT).

2. After investigation, the Agency notified respondent that it would deny his application. Respondent appealed and requested a hearing.

3. Acting in his official capacity as Director of the Agency, Marshall Bennett prepared and served a statement of issues to respondent in July 2022.

4. The statement of issues alleges that respondent should not receive an EMT certificate because his application intentionally misrepresented his arrest history, and because he has used alcohol excessively and unlawfully.

Arrest on November 21, 2020

5. On November 20, 2020, respondent spent the evening with friends at a bar and restaurant.

6. Respondent had driven to the bar, and drove home in the early morning on November 21, 2020. Although respondent had been drinking alcohol during the evening, he did not feel as if he still was under the influence of alcohol when he left for home.

7. Respondent took a freeway to get home. Near his exit, a California Highway Patrol (CHP) officer activated the CHP patrol car's lights and siren and directed respondent over the car's loudspeaker to exit the freeway and stop. Respondent complied.

8. Respondent told the CHP officer falsely that he had not consumed any alcohol that evening before driving. The officer did not believe respondent, and asked respondent to perform field sobriety tests. The officer reported that respondent performed poorly on tests of balance and coordination. Respondent does not dispute this report, but believes that his poor performance was because he was nervous, not because alcohol was affecting him.

9. After the field sobriety tests, the CHP officer took respondent into custody and transported him to a CHP office. Respondent gave a breath sample, from which the measuring device estimated respondent's blood alcohol concentration at 0.06 percent. Respondent spent the rest of the night in jail before being released later in the day on November 21.

10. The People did not charge respondent with any crime before or after his release from jail. All together, the evidence is inconclusive as to whether respondent was under the influence of alcohol during this CHP traffic stop.

EMT Certificate Application

11. Question 6 on the EMT certificate application respondent completed in August 2021 asks if the applicant has "ever been arrested or cited for a criminal offense." Respondent answered "yes" to this question.

12. Question 6a asks an applicant who admits an arrest to describe "the circumstances surrounding your arrest, including the date(s), location(s), arresting agency(s) and outcome." Respondent's application did not identify the date, location or arresting agency for the arrest described above in Findings 7 through 9. It also did not describe accurately the event that led to respondent's arrest. Instead, it said:

I was arrested for suspected DUI for having the car parked in a lot and when the arresting officer breathalyzed me I blew a 0.5¹ however I was still taken to be held for the night and fingerprinted. I have not had to go to court for this however and I am attempting to get this off my record since I blew under the limit and was still processed.

Investigatory Interview

13. Despite respondent's failure to identify the date, location, or arresting agency for his arrest, Agency staff members reviewing his EMT certificate application learned that a CHP officer had arrested respondent on November 21, 2020, on suspicion of driving while under the influence of alcohol. They notified respondent by letter on September 22, 2021, that they intended to investigate the matter, and asked him to participate in an investigatory interview.

14. The interview occurred on January 20, 2022. Although the Agency staff members who interviewed respondent accused him on several occasions during the interview of answering evasively, most of these accusations were unfair. Except as described below in Finding 19, respondent was generally candid and credible in his responses to interview questions.

15. Before the interview, at Agency staff members' request, respondent had obtained and provided to the Agency a copy of the CHP officer's report about his November 2020 arrest. At the interview, respondent described the circumstances of his

¹ In context, this number is a typographical error; it should have been "0.05."

arrest in a manner conforming substantially to the description in Findings 5 through 9, not to the description in Finding 12.

16. When the interviewing Agency staff members asked respondent why his answer to application Question 6a described the arrest as having occurred in a parking lot, respondent professed surprise about this answer. Upon further questioning, respondent explained that he had asked his mother (a legal assistant in a bankruptcy practice) for help formulating his response to this application question. He said that rather than simply conferring with his mother, however, he had given her his electronic application password and asked her to fill in an answer to Question 6a and submit the application on his behalf. Respondent denied having reviewed his mother's work before she submitted the application, or at any time before the interview.

17. Respondent also stated that he had described his arrest truthfully to his mother. He denied having asked or expected her to lie on his EMT certificate application about the circumstances of his arrest. Instead, he said that he had asked her to "help me with how to phrase it," and had assumed that her help included describing his arrest concisely but accurately to the Agency.

18. Respondent's mother did not testify.

19. The interview statements summarized in Findings 16 and 17 imply an implausible lack of prudence and caution by both respondent and his mother. These statements are not credible. Whether by himself or in consultation with his mother, respondent submitted an EMT certificate application to the Agency that he knew included a false description of the circumstances surrounding his November 2020 arrest. Respondent also knew that his application omitted details about the arrest that Question 6a specifically had requested, and that would have enabled the Agency to

investigate the circumstances independently. Respondent described the November 2020 arrest accurately at the January 2022 investigatory interview only because he had been unable to prevent Agency staff members from obtaining and reading the CHP officer's report.

20. Respondent is a young adult, and was older than 21 in November 2020. He mentioned during the interview, however, that he had consumed alcohol when he was younger than 21 years old.

Additional Evidence

21. At the hearing, respondent confirmed the information he gave during the January 2022 interview about his arrest and application. He described himself as "not legally savvy." Respondent acknowledges that he bears responsibility for having allowed his mother to submit an application for him that included a false statement, but denies having intended to mislead the Agency about his arrest history. He urges the Agency to give him another opportunity to prove his honesty, and to prove that he has learned from this experience.

22. Respondent presently works as a firefighter for the California Department of Forestry and Fire Protection. He is a student instructor at the Chabot College Fire Academy, and a volunteer intern with a Federal Emergency Management Agency Urban Search and Rescue Task Force. He has completed basic EMT training and holds a certificate from the National Registry of EMTs that expires in March 2024.

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LEGAL CONCLUSIONS

1. The Agency must issue an EMT certificate to any applicant who meets the Agency's training and examination criteria, and who is "not precluded from certification for any of the reasons listed in [Health and Safety Code section] 1798.200." (Health & Saf. Code, § 1797.210, subd. (a).) As the applicant for an EMT certificate, respondent ultimately bears the burden of demonstrating that he meets all qualifications for that certificate. In the context of this proceeding, however, complainant bears the burden of demonstrating the existence of the specific issues complainant alleges as grounds to deny respondent's application.

2. After an investigation, the Agency may deny an EMT certificate to an applicant who has committed any statutorily disqualifying act. (Health & Saf. Code, § 1798.200, subd. (a)(3)(B).) The Agency has discretion, however, to issue an EMT certificate to such a person, or to issue a probationary certificate. (*Id.*)

First Cause for Denial: Fraud

3. Intentional misrepresentation on an EMT certificate application may justify denying the application. (Health & Saf. Code, § 1798.200, subd. (c)(1).) The matters stated in Findings 5 through 9, 12, and 16 through 19 constitute cause under this subdivision to deny respondent's application.

Second Cause for Denial: Substantially Related Dishonesty

4. Dishonesty relating to the applicant's qualifications may justify denying EMT certification to an applicant. (Health & Saf. Code, § 1798.200, subd. (c)(5).) The matters stated in Findings 5 through 9, 12, and 16 through 19 constitute cause under this subdivision to deny respondent's application.

Third Cause for Denial: Statutory or Regulatory Violations

5. The Agency may deny an EMT certificate to an applicant who has committed any violation of the statutes or regulations governing pre-hospital personnel. (Health & Saf. Code, § 1798.200, subd. (c)(7).) The matters stated in Legal Conclusions 3 and 4 also constitute cause under this subdivision to deny respondent's application.

Fourth Cause for Denial: Substance Abuse

6. Substance abuse also may justify denying EMT certification to an applicant. (Health & Saf. Code, § 1798.200, subd. (c)(9).) Complainant argues that the matters stated in Findings 5 through 10 and 20 constitute cause under Health and Safety Code section 1798.200, subdivision (c)(9), to deny respondent's application for an EMT certificate. Because these matters do not demonstrate that respondent ever has engaged in excessive, abusive, or irresponsible substance use, they do not constitute cause to deny his application.

Disciplinary Considerations

7. The Agency may deny an application for EMT licensure from an applicant who has committed "any act involving fraud or intentional dishonesty for personal gain within the preceding seven (7) years." (Cal. Code Regs., tit. 22, § 100214.3, subd. (d).) Because respondent's dishonesty occurred on an application for EMT licensure, it qualifies as such an act.

8. Respondent demonstrated no mitigation for his application's falsehoods, and no rehabilitation. Instead, his unsuccessful effort to deflect partial responsibility for his application's falsehoods onto his mother further demonstrates his present

unsuitability for certification as an EMT. Public safety requires the Agency to deny his application.

ORDER

The application by Rafael Rico Barrientos to the Contra Costa County Emergency Medical Services Agency for an EMT certificate is denied.

DATE: **09/29/2022**

Juliet E. Cox

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings