

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

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|----------------------------|---|--------------------|
| IN THE MATTER OF: |) | DIA NO. 10DPHES015 |
| |) | CASE NO. 10-05-28 |
| Dina Hefel |) | |
| 201 Michigan Avenue |) | |
| Farley, Iowa 52046-9307 |) | PROPOSED DECISION |
| |) | |
| Certification: B-01-371-05 |) | |

On June 3, 2010, the Department of Public Health-Emergency Medical Services Bureau (Department) served a Notice of Proposed Action-Denial on Dina Hefel (Appellant). Appellant filed a timely Notice of Appeal on June 23, 2010. A telephone hearing was held before Administrative Law Judge Margaret LaMarche on July 28, 2010 at 11:00 a.m. Assistant Attorney General Heather Adams represented the Department. Appellant was self-represented.

THE RECORD

The record includes the Notice of Telephone Hearing, Department Exhibits 1-7 (See Exhibit Index for description), Appellant Exhibit A (6/22/2010 email from Danielle White), and the testimony of EMS Regulation Manager Joe Ferrell, Dr. Kyle Schipper, Dale Hefel, and Appellant.

FINDINGS OF FACT

From October 2009 through March 2010, Appellant Dina Hefel attended classes at Northern Iowa Community College (NICC) to become an Emergency Medical Technician at the basic level (EMT-B). On or about November 3, 2009, Appellant completed an on-line application for EMT-B certification as part of the student registration process. Appellant answered "yes" to the question that asked if she had "been convicted of, found guilty of, or entered a plea of no contest to any felony or misdemeanor crime, other than minor traffic violations with fines under \$100." If applicants answered "yes" to the conviction question, they were then required to send the Department a letter containing the date, location, charge, court disposition, and

current status for each charge. The training program also gives each student a registration memo which explains the information they must submit to the Department. (Appellant, Ferrell testimony)

Appellant answered "yes" to the question asking if she had any convictions. Because of the affirmative response, the Department placed Appellant's certification application on hold pending its investigation. Appellant knew that her certification application was placed on hold in November but she did not provide the Department any further information about her convictions at that time. (Ferrell, Appellant testimony)

On March 29, 2010, Appellant sent an email to Joe Ferrell, the Department's EMS Manager, and asked him why her certification was still on hold. Appellant wanted to clear up the hold because she wanted to be able to complete her clinical ride time. Joe Ferrell replied that he had not yet received any information from Appellant concerning her hold. (Ferrell testimony; Department Exhibit 4)

In an April 7, 2010 email, Appellant reported the following information that pertained to her driving record and driving privileges:

- She was in an accident on December 11, 2007 and had to pay a fine over \$120 for failure to maintain control;
- She was in an accident on June 26, 2006 and paid a fine of over \$200 for failure to maintain control and for leaving the scene of an accident;
- Her driver's license was suspended from October 31, 2008 until December 31, 2008. She was required to drive with an instructor and pay a \$200 reinstatement fee to get her license back.
- She has not had any further driving violations and her driver's license had not been revoked.

(Ferrell, Appellant testimony; Department Exhibit 4)

When Joe Ferrell went to Iowa Courts Online to verify the information provided by Appellant, he discovered that she also had the following three misdemeanor theft convictions that she had not reported:

- Theft, Fifth Degree, Offense Date: 8/31/2007; Sentence Date: 11/14/2007
- Theft, Fifth Degree, Offense Date: 9/13/2007; Sentence Date: 11/14/2007

- o Theft, Fifth Degree, Offense Date: 12/31/2008; Sentence Date 4/30/2009

Appellant had been placed on probation for 24 months on the most recent theft conviction. (Ferrell testimony; Department Exhibit 5)

On April 13, 2010, Joe Ferrell wrote to Appellant and asked her to explain the circumstances that led to the three theft convictions and why she did not report them in her previous email. (Ferrell testimony, Department Exhibit 3) Appellant replied by email on May 11, 2010. Appellant wrote that the first two counts of fifth degree theft occurred on September 13, 2007 while she was working as a cashier at Theisen's Home Farm and Auto in Dubuque, Iowa. However at hearing Appellant admitted that there were in fact two separate incidents of theft from her employer, one on August 31, 2007 and one on September 13, 2007. Appellant admitted that she withdrew money from the cash register without permission on two occasions, that she was charged with both crimes on November 14, 2007, and that she paid \$868.40 in fines. (Department Exhibit 4; Ferrell, Appellant testimony)

Appellant explained that the third theft occurred on December 31, 2008 at a Kohl's Department Store. Appellant reports that she was with a friend who put two bottles of perfume in her purse. Appellant was charged on April 30, 2009. Appellant paid \$175.00 in fines, was given a 30 day jail sentence which was stayed, and was placed on probation for 24 months. Appellant will remain on probation for the most recent theft conviction until April 2011. (Department Exhibits 4, 5; Appellant testimony)

In both her email and in her testimony at hearing, Appellant denied that she intentionally withheld information about her convictions from the Department. Although Appellant claimed that she was confused about what information she needed to provide, she never asked Joe Ferrell for clarification. (Appellant testimony; Department Exhibit 4)

NICC conducted its own child abuse, adult abuse, and a (non law enforcement) criminal background check on Appellant in October 2009. All of these background checks came back clear, with no hits. (Appellant Exhibit A; Ferrell testimony) Joe Ferrell explained that some conviction information may not be reported through a non law enforcement background check, even though it is available through Iowa Courts Online. Therefore, the Department must be able to rely on applicants to fully disclose

all convictions, regardless of whether the conviction information would be available through a particular background check. (Ferrell testimony)

Dale Hefel is the Appellant's father and is also the EMS Director of the Farley Ambulance Service. Since December 2009, Appellant has accompanied the Farley Ambulance on emergency calls but has not provided any patient care. Mr. Hefel does not feel that his daughter would pose any risk to the public if she is certified as an EMT-B. Farley Ambulance has a policy requiring all new EMTs to be on probation for a period of one year during which they must be accompanied by other EMTs if responding to a call. (Testimony of Dale Hefel; Appellant)

Dr. Kyle Schipper is a chiropractor who was in Appellant's EMT class. Dr. Schipper believes that Appellant has good EMT skills and good people skills. He is aware of Appellant's criminal history but feels that she is trustworthy and would not pose any threat to members of the public or their possessions. (Dr. Schipper testimony)

CONCLUSIONS OF LAW

The legislature has directed the Department to adopt rules pertaining to the examination and certification of emergency medical care providers.¹ The Department has adopted rules at 641 IAC chapter 131.

641 IAC 131.7(2) provides, in relevant part:

131.7(2) The department may deny an application for issuance or renewal of an emergency medical care provider certificate, including specialty certifications, or place on probation, or issue a citation and warning, or suspend or revoke the certificate when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

...

d. Fraud in procuring certification or renewal including, but not limited to:

...

(2) False representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that

¹ Iowa Code section 147A.4(2)(2009).

which should have been disclosed when making application for a certification in this state.

...

f. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. ...

...

t. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or a misdemeanor, which relates to the provision of emergency medical care, including but not limited to a crime involving dishonesty, fraud, theft, embezzlement,.... A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

The preponderance of the evidence established that Appellant committed fraud in procuring certification as an EMT-B, in violation of 641 IAC 131.7(2)"d"(2), and knowingly made misleading or deceptive representations, in violation of 641 IAC 131.7(2)"f", when she failed to disclose three misdemeanor theft convictions on her certification application. The certification application clearly requires disclosure of all misdemeanor convictions except for minor traffic tickets. Although Appellant had three misdemeanor theft convictions within two years of submitting her certification application, she failed to disclose any of them. Appellant's explanations for her failure to disclose this information lacked credibility. The convictions were all relatively recent, they resulted in the imposition of sizeable criminal fines, and Appellant was still on probation for one of the convictions at the time that she submitted her application. The greater weight of the evidence in this record supports the conclusion that Appellant intentionally failed to disclose her three theft convictions.

In addition, the three theft convictions are related to the provision of emergency medical care. The public has the reasonable expectation that persons who are certified by the Department to provide emergency medical services are honest and trustworthy. The public would not expect a certified EMT to have three recent theft convictions and to be on criminal probation for theft. Emergency medical services are provided to people when they are at their most vulnerable, and EMTs responding to emergencies may have unsupervised access to patients' homes and their possessions. Moreover,

Appellant's failure to disclose the three convictions raises additional legitimate concerns about her honesty and trustworthiness.

As pointed out by the Department, Appellant could obtain certification in the future after she satisfactorily completes her current probationary period and demonstrates a reasonable length of time without further criminal convictions.

ORDER

IT IS THEREFORE ORDERED that the Notice of Proposed Action-Denial issued by the Department to Appellant Dina Hefel on June 3, 2010 is hereby AFFIRMED.

Dated this 11th day of August, 2010



Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
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This proposed decision and order becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director of the Department of Public Health is taken as provided in subrule 131.12(11). Any appeal to the director for review of this proposed decision and order

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shall be filed in writing and mailed to the director of the Department of Public Health by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be sent to the administrative law judge. Any request for appeal shall state the reason for the appeal. 641 IAC 131.12(11).

