BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: JENNIFER A. MENELY, Respondent.	Case No. 08-0115 OAH No. 2008090346

PROPOSED DECISION

Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 5, 2008, in Sacramento, California.

Steven A. McGee, Senior Staff Counsel, represented the Emergency Medical Services Authority (EMSA).

Cynthia Curry, Attorney at Law, represented Jennifer A. Meneley (respondent).

The matter was submitted on November 5, 2008.

FACTUAL FINDINGS

1. Complainant, Nancy Steiner, filed the Statement of Issues in her official capacity as Chief of the Emergency Medical Services Personnel Division of EMSA.

2. On March 14, 2008, respondent filed with EMSA an application for licensure as an Emergency Medical Technician--Paramedic (paramedic). On June 30, 2008, EMSA denied respondent's application. Respondent appealed the denial, and this hearing followed.

3. EMSA denied respondent's application because of her criminal record, which is as follows:

On May 9, 2005, in the Superior Court of California, County of Merced, respondent was convicted of violating Penal Code section 503 (embezzlement), a misdemeanor.

Respondent was sentenced to serve 30 consecutive days in jail, fined $450, ordered to complete 300 hours of community service, and placed on informal probation for a term of 36 months.

4. The facts and circumstances giving rise to respondent's conviction are as follows:

In July 2004, respondent was employed as a clerk by Lowe's home improvement store. On July 29, 2004, and twice on July 30, 2004, respondent arranged for an acquaintance posing as a customer to pass through her "check out" line while only charging him for certain, but not all, items contained in his shopping cart. Respondent then allowed her acquaintance to leave the store without paying for the items for which she did not charge him.

July 29, 2004, respondent's acquaintance left the store with $534.84 worth of merchandise. Respondent only charged him $135. On July 30, 2004, the acquaintance left the store with fourteen items. Respondent only charged him for five items, at a loss to the store of $834. Later that day, respondent charged him for three of eight items, at a loss of approximately $710.99.

The thefts were observed by Lowe's loss prevention personnel who reported the incidents to the Merced Police Department. Prior to the police officer's arrival, security personnel questioned respondent about the thefts. Respondent immediately admitted her involvement.

Respondent cooperated with the police department's investigation, confessing and identifying her accomplice. Respondent told police officers that she committing the crime because she was in financial distress and had "bills that she could not pay."

There was conflicting evidence as to whether respondent solicited her acquaintance to engage in the scheme, or whether the acquaintance recruited her.

5. Respondent completed her probation without violation. She completed her community service hours and her jail sentence. She has not re-offended. She has not yet petitioned the court to have her conviction expunged, but is willing to do so if EMSA deems it necessary to obtain her paramedic's license.

6. In July 2004, respondent was 20 years old. Her crime stands in contrast to the living of a law-abiding life before and after the July 2004. Prior to the crime, respondent was an "A Student" and participated in athletics while growing up. She persuasively testified that she was viewed by others as "one who could be trusted."

After committing her crime, respondent realized that the trust others had placed in her had been lost and she has worked to restore her reputation. She has worked in a nursing home where she compassionately and honestly tended to patients' needs. Respondent is now married, and at the time of the hearing was expecting the birth of her first child.

Respondent has enjoyed steady employment. Since March 2006, respondent has been employed by Riggs Ambulance Service (Riggs) as an Emergency Medical Technician. Respondent was hired by Riggs after completing her training in emergency services at Merced Junior College. Her EMT license has never been subjected to discipline by EMSA, nor has she engaged any conduct that has harmed to a patient.

While working for Riggs, respondent enrolled in a paramedic program at the encouragement of her employer, who provided her with a $12,500 scholarship. Respondent completed the paramedic training, graduating second in her class of 19 students (twelve other students who started the program dropped out prior to graduation). In order to become a paramedic, respondent was required to successfully complete a test administered by the Nurses' National Registry. Respondent passed the examination on her first attempt, and was among three of 30 examinees who passed the exam at the location where it was administered. Respondent received a score of 89%.

7. Donald Vonary testified on respondent's behalf. He has been a general manager at Riggs since July 2007, and he has been in the ambulance business for more than 25 years. He is aware of respondent's conviction and the circumstances surrounding it. Mr. Vonary persuasively testified that respondent is a "great employee," always willing to "go above and beyond" that which is asked of her. She has often worked 60 hours per week. Mr. Vonary testified that she has done so while maintaining a positive attitude.

Mr. Vonary recognizes the position of trust with which individuals providing emergency medical services hold, and he is mindful of the liabilities to which Riggs is exposed by any misdeeds committed by one of their employees, including theft.

He testified that it is unusual for him to testify on behalf of a licensee or applicant before EMSA, even though he has been asked to do so in the past. Despite respondent's conviction, Mr. Vonary unhesitatingly endorses respondent's bid to obtain her paramedic license, believing that respondent is a trustworthy applicant, and that he "could not imagine" her reoffending. His support of respondent followed meaningful deliberation on his part as was indicted by his concise and insightful answers.

Mr. Vonary further testified that Riggs' employees undergo rigorous evaluations of their job performance. Through these evaluations, respondent has shown exceptional skills in providing emergency services. Mr. Vonary expressed his opinion that established that respondent has never violated Riggs's trust while working as an EMT, despite have a great deal of unsupervised access to patients' and Riggs' property. In sum, Riggs has trusted respondent, despite her conviction, and she has rewarded his trust and acted forthrightly. Riggs' reputation would be adversely effected by an employee who committed a theft while

employed by them, and according to Mr.Vonary, Riggs does not tolerate employees who behave less than honestly.

Mr. Vonary is respectful of EMSA's concern over public protection. His trust of respondent to not reoffend was based on his personal knowledge of her performing her duties while under his supervision. His observations regarding respondent's trustworthiness and veracity provides persuasive evidence that respondent has matured since committing her crime and that she has learned from her mistake.

8. Respondent persuasively testified that she is dedicated to seeing that her patients receive superior emergency medical services. Her testimony, as well as Mr. Vonary's, established that respondent is a highly competent EMT and, if given the opportunity, would be a similarly competent paramedic. Respondent recognizes the harm her crime caused others and herself. Respondent recognizes that committing any other crimes would place the continuation of her a career she "loves" in extreme jeopardy, and is therefore all the more dedicated to not reoffending.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200, subdivisions (b) and (c), provides that EMSA may deny issuing a paramedic license to any applicant who has, among other things, committed any "fraudulent, dishonest, or corrupt act" or been convicted of "any crime which is substantially related to the qualifications, functions, and duties of pre-hospital personnel."

2. Title 22, California Code of Regulations, section 100173, subdivision (b), provides that EMSA shall deny issuing a paramedic license to any applicant who has, among other things, "been convicted within the preceding five years of any theft related misdemeanor."

3. As set forth in Factual Findings 3 and 4, and Legal Conclusions 1 and 2, legal cause exists for EMSA to deny respondent's application. Respondent suffered a theft related conviction within the preceding five years of her making application for a paramedic's license.

Also, her conviction is substantially related to the qualifications, functions, and duties of a paramedic. By the very nature of their employment, paramedics are provided unsupervised and unique access to the personal property and dwellings of others at a time when those members of the public are most vulnerable. Accordingly, the public needs reasonable assurance of a paramedic's honesty before granting them a licensure it affords this access. [well said]

4. This is a difficult case. Rote application of the disciplinary guidelines warrants the denial of respondent's application. However, respondent made a meaningful showing of her rehabilitation, insight, and otherwise law-abiding conduct through out her life, and she has the unwavering support of her employer.

Significantly, respondent has worked as an EMT for over two-and-one-half years. As an EMT, she has held a nearly identical position of trust to that which she would hold as a paramedic. As an EMT, her honesty and integrity in carrying out her obligations have not been brought into question. Additionally, the testimony of Mr. Vonary carried great weight. As her supervisor, he has a good perspective from which to gauge respondent's honesty, and he believes her to be imminently trustworthy.

5. While respondent's conviction occurred less that five years ago, it must be noted the crime occurred nearly four and one-half-years ago, therefore, the period of time that has passed is very near the five year period suggested in EMSA's Disciplinary Guidelines.

6. Ultimately, EMSA's granting respondent a probationary paramedic's license strikes a balance that permits respondent to provide paramedic services while at the same time monitors her professional conduct to reasonably ensure public protection.

ORDER

Respondent Jennifer Meneley's application for a paramedic's license is denied; however, the denial is stayed for a period of three years, commencing with the effective date of this Decision, during which time respondent shall be on probation to the EMSA, subject to the following terms and conditions:

1. Probation Compliance:

The respondent shall fully comply with all terms and conditions of the probationary order. The respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of the respondent's compliance with the terms and conditions of her probationary order.

The respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of the respondent.

2. Personal Appearances:

As directed by the EMSA, the respondent shall appear in person for interviews, meetings, and/or evaluations of the respondent's compliance with the terms and conditions of the probationary order. The respondent shall be responsible for all of her costs associated with this requirement.

3. Quarterly Report Requirements:

During the probationary period, the respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by the respondent with all the terms and conditions of her probation. If the respondent submits her quarterly reports by mail, it shall be sent as Certified Mail.

4. Employment Notification:

During the probationary period, the respondent shall notify the EMSA in writing of any EMS employment. The respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, the respondent shall submit proof in writing to the EMSA of disclosure, by the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of the respondent's probation.

The respondent authorizes any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

Any and all notifications to the EMSA shall be by certified mail.

5. Notification of Termination:

The respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with her prehospital medical care employer. The respondent must provide a full, detailed written explanation of the reasons for and circumstances of her termination.

Any and all notifications to the EMSA shall be by certified mail.

6. Functioning as a Paramedic:

The period of probation shall not run anytime that the respondent is not practicing as a paramedic within the jurisdiction of California.

If the respondent, during her probationary period, leaves the jurisdiction of California to practice as a paramedic, the respondent must immediately notify the EMSA, in writing, of the date of such departure and the date of return to California, if the respondent returns.

Any and all notifications to the EMSA shall be by certified mail.

7. Obey All Related Laws:

The respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. The respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if the respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then the respondent shall submit her fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Within 72 hours of being arrested, cited or criminally charged for any offense, the respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the offense(s) as to whether the respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

Any and all notifications to the EMSA shall be by certified mail.

8. Completion of Probation:

[Upon the successful completion of probation, the stay shall become permanent, and the paramedic's license shall be issued free of restrictions and conditions. Respondent shall be issued a non-probationary paramedic's license upon the successful completion of probation.

9. Violation of Probation:

If during the period of probation the respondent fails to comply with any term of probation, the EMSA may initiate action to lift the stay, terminate probation and impose the stayed denial, may extend probation, add or modify conditions, or impose any other sanction warranted by the circumstances proved. Upon the initiation of such an action, or the giving of a notice to the respondent of the intent to initiate such an action, the expiration of the period of probation shall be stayed, and probation shall remain in effect until such time as a decision on the matter has been adopted by the EMSA. An action to terminate probation and implement the stayed denial shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issues to be resolved at the hearing shall be limited to whether the respondent has violated any term of her probation sufficient to warrant termination of probation and implementation of the denial. At the hearing, the respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

10. Length of Probation [you can eliminate this if you opt for the above changes]

Respondent shall hold her probationary paramedic license subject to the above terms and conditions for a period of three (3) years, commencing from the effective date of this decision.

DATED: December 6, 2008

GARY A. GEREN
Administrative Law Judge
Office of Administrative Hearings