

1
2 BEFORE THE
3 EMERGENCY MEDICAL SERVICES AUTHORITY
4 STATE OF CALIFORNIA

5 In the Matter of the Accusation Against:)
6 ADAM JOSEPH FREEMAN) Enforcement Matter No.: 10-0057
7 P27165) OAH No. 201000893
8 Respondent.) **DECISION AND ORDER**

9
10 I. INTRODUCTION

11 This matter was heard on September 28, 2011, by Howard Backer MD, MPH, FACEP,
12 Director of the State of California Emergency Medical Services Authority (“Authority”),
13 pursuant to the provisions of the Administrative Procedure Act (“Act”)¹, subsequent to the
14 hearing held on May 19, 2011, by Administrative Law Judge Rebecca M. Westmore of the
15 Office of Administrative Hearings.

16 II. PARTIES

17 1. Howard Backer MD, MPH, FACEP, is the Director of the Authority. The Director
18 makes this decision in his official capacity as Director of the Authority, and not otherwise.

19 2. Respondent holds Emergency Medical Technician-Paramedic (“EMT-P”) license
20 number P27165 which was first issued on April 8, 2009, and is valid through April 30, 2013,
21 unless revoked or suspended.

22 ///

23 ///

24 _____
25 ¹ The Act is codified at California Government Code Section 11370 et. seq.

1 III. JURISDICTION

2 The power to adopt, modify or reject a proposed decision is granted to the Authority
3 directly by the provisions of California Government Code, Section 11517, which provides:
4

5 "11517. (a) A contested case may be originally heard by the agency itself and subdivision
6 (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge
7 may originally hear the case alone and subdivision (c) shall apply.

8 (b) If a contested case is originally heard before an agency itself, all of the following
9 provisions apply:

10 (1) An administrative law judge shall be present during the consideration of the case and,
11 if requested, shall assist and advise the agency in the conduct of the hearing.

12 (2) No member of the agency who did not hear the evidence shall vote on the decision.

13 (3) The agency shall issue its decision within 100 days of submission of the case.

14 (c) (1) If a contested case is originally heard by an administrative law judge alone, he or
15 she shall prepare within 30 days after the case is submitted to him or her a proposed
16 decision in a form that may be adopted by the agency as the final decision in the case.

17 Failure of the administrative law judge to deliver a proposed decision within the time
18 required does not prejudice the rights of the agency in the case. Thirty days after the
19 receipt by the agency of the proposed decision, a copy of the proposed decision shall be
20 filed by the agency as a public record and a copy shall be served by the agency on each
21 party and his or her attorney. The filing and service is not an adoption of a proposed
22 decision by the agency.

23 (2) Within 100 days of receipt by the agency of the administrative law judge's proposed
24 decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the
25 agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days
of receipt of the proposed decision, the proposed decision shall be deemed adopted by the
agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the
proposed decision.

(C) Make technical or other minor changes in the proposed decision and adopt it as the
decision. Action by the agency under this paragraph is limited to a clarifying change or a
change of a similar nature that does not affect the factual or legal basis of the proposed
decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge
if reasonably available, otherwise to another administrative law judge, to take additional
evidence. If the case is referred to an administrative law judge pursuant to this
subparagraph, he or she shall prepare a revised proposed decision, as provided in
paragraph (1), based upon the additional evidence and the transcript and other papers that
are part of the record of the prior hearing. A copy of the revised proposed decision shall
be furnished to each party and his or her attorney as prescribed in this subdivision.

1 (E) Reject the proposed decision, and decide the case upon the record, including the
2 transcript, or upon an agreed statement of the parties, with or without taking additional
3 evidence. By stipulation of the parties, the agency may decide the case upon the record
4 without including the transcript. If the agency acts pursuant to this subparagraph, all of
5 the following provisions apply:

6 (i) A copy of the record shall be made available to the parties. The agency may require
7 payment of fees covering direct costs of making the copy.

8 (ii) The agency itself shall not decide any case provided for in this subdivision without
9 affording the parties the opportunity to present either oral or written argument before the
10 agency itself. If additional oral evidence is introduced before the agency itself, no agency
11 member may vote unless the member heard the additional oral evidence.

12 (iii) The authority of the agency itself to decide the case under this subdivision includes
13 authority to decide some but not all issues in the case.

14 (iv) If the agency elects to proceed under this subparagraph, the agency shall issue its
15 final decision not later than 100 days after rejection of the proposed decision. If the
16 agency elects to proceed under this subparagraph, and has ordered a transcript of the
17 proceedings before the administrative law judge, the agency shall issue its final decision
18 not later than 100 days after receipt of the transcript. If the agency finds that a further
19 delay is required by special circumstance, it shall issue an order delaying the decision for
20 no more than 30 days and specifying the reasons therefor. The order shall be subject to
21 judicial review pursuant to Section 11523.”

22 IV. HISTORY

23 Pursuant to an appeal of the Accusation issued against Respondent's license, a hearing
24 was noticed and held in this matter on May 19, 2011, before an Administrative Law Judge with
25 the Office of Administrative Hearings in Sacramento, California. Respondent appeared at this
hearing and was represented by counsel.

On or about June 23, 2011, the Authority received a copy of the Proposed Decision and
Order which was dated June 10, 2011. The Authority served a copy of the proposed decision on
Respondent via registered mail on June 24, 2011, and informed him at that time that it had not
adopted the Proposed Decision and Order. The Authority then ordered a copy of the transcript of
the hearing, and on or about August 12, 2011, the Authority received a copy of the transcript of
the hearing. The Authority sent notice to the Respondent on August 18, 2011, that Respondent

1 could present written argument to the Director on or before September 28, 2011. Respondent,
2 through counsel, submitted additional argument and documents.

3 V. EVIDENCE SUBMITTED AT WRITTEN HEARING

4 Pursuant to the notice of hearing, Respondent was allowed to submit any evidence in writing
5 to support his argument for adoption or modification of the Proposed Decision up to one
6 business day prior to the hearing, or September 27, 2011. The Authority considered all
7 evidence submitted by the Respondent, which included Respondent's Argument in Support of
8 Proposed Decision of Administrative Law Judge and the attached exhibits. The original
9 Accusation, the transcripts from the hearing, the evidence submitted at the hearing, the
10 Administrative Law Judge's proposed decision, and the additional argument and documents
11 submitted by Respondent were considered in this Decision and Order.
12

13 VI. DISCUSSION

14 Respondent's license was subject to discipline by the Authority due to a theft related
15 misdemeanor conviction. His license was subject to revocation by the Authority for his criminal
16 conviction that resulted from a plea of "nolo contendere" to a misdemeanor charge of California
17 Penal Code Section 488, Petty Theft (proposed decision, page 2 paragraph 3). This conviction
18 was undisputed by the Respondent at the hearing.
19

20 The controlling authority in this matter is California Health and Safety Code,
21 Section 1798.200, and California Code of Regulations, Section 100173, Subdivisions (b)(5) and
22 (c)(1) of Title 22, Division 9, Chapter 4, Article 9, which provides:

23 "§ 100173. Denial/Revocation Standards.

24 "(b) **The authority shall deny/revoke a paramedic license**, if any of the following
25 apply to the applicant:

"...

1 “(5) Has been **convicted** within the preceding five years for any theft related
2 misdemeanor.” (emphasis added)

3 “(c) The authority may deny/revoke a paramedic license if:
4 (1) Has committed any act involving fraud or intentional
5 dishonesty for personal gain within the preceding seven years.”

6 The regulations in this instance are exceedingly clear: the Authority shall revoke the
7 license of a licensee if he or she has been convicted of a theft related misdemeanor within the
8 preceding five years, or for committing an act of intentional dishonesty within seven years.

9 Respondent was convicted of a theft related misdemeanor on June 7, 2010, slightly more than a
10 year ago. The Administrative Law Judge determined that these regulations were applicable to
11 the Respondent on page 6, paragraph 4 of the proposed decision, and also determined that the
12 conviction was substantially related to the duties and functions of a Paramedic in that same
13 paragraph.

14 Since the Administrative Law Judge determined that the regulations cited here apply to
15 Respondent, and the regulations also make clear that the Authority is mandated to revoke
16 Respondent’s license based upon his criminal act, we must look to see if there is anything that
17 allows the Authority to take any action other than to adhere to the language of the regulations
18 that mandate revocation of Respondent’s Paramedic license.

19 California Code of Regulations, Title 22 Section 100173(g), specifically provides:

20 “The director may grant a license to anyone otherwise precluded under subsections (a)
21 and (b) of this section **if the director believes that extraordinary circumstances exist**
22 to warrant such an exemption.”(emphasis added)

23 In order to deviate from the regulations mandating revocation of Respondent’s license,
24 the Director must make a finding based upon the evidence submitted by Respondent that
25 “extraordinary circumstances” exist that warrant an excuse from the mandatory language.

1 “Extraordinary circumstances” are not defined by the regulations or by the statutory language of
2 the Health and Safety Code. Since the terms are not otherwise specifically defined, we must
3 therefore use a common definition for “extraordinary”.

4 “Extraordinary” is defined as: “beyond what is usual, ordinary, regular, or established”,
5 or “exceptional in character, amount, extent, degree, etc.; noteworthy” (Random House
6 Dictionary 2010). Black’s Law Dictionary defines “extraordinary” as “remarkable, uncommon,
7 rare” (Black’s Law Dictionary, 6th Edition, 1990). We must then analyze Respondent’s
8 submitted evidence to determine if it rises to the level of being “exceptional”, “beyond what is
9 usual”, or “rare”.

10
11 The Director finds that there was no evidence of extraordinary circumstances presented
12 in this case that would warrant exemption from the mandatory “shall revoke” language of the
13 regulations. While Respondent tendered numerous letters of recommendation attesting to his
14 good character, these were afforded only slight probative value, as all of these letters save one
15 did not address the present issue of Respondent’s conviction and were only general character
16 reference letters submitted to help Respondent in seeking employment subsequent to his layoff
17 due to economic factors. While these were illustrative in showing that Respondent performs his
18 job functions and paramedic practice at least at an acceptable level, these did not rise to the level
19 of being extraordinary circumstances. Respondent also submitted evidence showing that his
20 conviction was expunged pursuant to California Penal Code Section 1203.4, and this was
21 considered as favorable evidence. However, again this was not considered to be extraordinary
22 or unusual, as many persons in similar situations file the necessary petition and pay the
23 necessary fees to have a conviction expunged.
24
25

1 Subsequent to his arrest and conviction, Respondent has apparently obeyed all laws, and
2 performed what the law required of him as a result of that conviction. While it credibly appears
3 from the record that Respondent is recommended professionally by his peers and apparently
4 possesses the skills necessary to perform the functions of an EMT-P license holder at least
5 competently if not above average, these factors individually or taken in concert do not rise to the
6 level of being “extraordinary circumstances”. The evidence presented by Respondent reveals
7 factors in the present case that are neither “exceptional” nor “uncommon”. They are what are to
8 be expected of any average law abiding person.

9
10 The Authority takes any theft related conviction extremely seriously. EMT-P
11 practitioners, by virtue of their state licensure, have unsupervised, intimate, physical and
12 emotional contact with patients at a time of maximum physical and emotional vulnerability, as
13 well as unsupervised access to personal property. In this capacity, they are placed in a position
14 of the highest public trust, even above that granted to other public safety professionals and most
15 other health care providers. While police officers require warrants to enter private property, and
16 are subject to substantial oversight when engaging in “strip searches” or other intrusive
17 practices, EMT-P’s are afforded free access to the homes and intimate body parts of patients
18 who are extremely vulnerable, and who may be unable to defend or protect themselves, voice
19 objections to particular actions, or provide accurate accounts of events at a later time.

20
21 While the Director is heartened by the positive steps that Respondent has made and that
22 appears he is continuing to make, they do not rise to the level of being extraordinary. This is
23 especially true when looked at in the perspective of the relatively short amount of time that has
24 elapsed since Respondent’s conviction. While “extraordinary circumstances” are not defined
25 under the regulations and may not be the same for each individual, in a case similar to the one

1 before the Director in order for it to be considered “remarkable” or “noteworthy”, there must be
2 credible evidence presented of significant mitigation over a sustained period of time. Such
3 evidence would include such factors as length of time since conviction without additional
4 incident, receiving a Governor’s Pardon or a Certificate of Rehabilitation pursuant to California
5 Penal Code 4852.13; continued significant volunteer work for the benefit of the general public;
6 continued significant volunteer work in the EMS field. The regulations mandating revocation
7 subsequent to a theft related conviction are clear, and insufficient evidence was presented to
8 warrant setting aside that mandate in this instance.

9
10 According to Government Code Section 11522, Respondent is entitled to reapply for an
11 EMT-P license again in one year from the effective date of this decision. If Respondent chooses
12 to reapply again at such time, favorable evidence sufficient to support a successful petition for
13 reinstatement would include sufficient continuing education course work to support license
14 reinstatement, significant volunteer work in the community, current and specific
15 recommendations from professionals in the EMS community, and other factors as outlined in
16 California Code of Regulations Title 22, Division 9, Chapter 4, Article 9, Section 100175.

17 VII. DECISION AND ORDER

18 The Director of the Authority therefore finds the following:

19 WHEREAS, the PROPOSED DECISION of the Administrative Law Judge and the NOTICE
20 CONCERNING PROPOSED DECISION in this matter were served upon Respondent in
21 accordance with Government Code section 11517; the Authority notified Respondent that the
22 Authority considered, but did not adopt, the PROPOSED DECISION; and

23
24 WHEREAS, the Respondent was afforded the opportunity to present written argument,
25 and exercised the opportunity through counsel; and

1 WHEREAS, the Director of the Emergency Medical Services Authority has considered
2 the record, including the transcript, and now finds that;

3 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION of the
4 Administrative Law Judge is hereby adopted by the Director of the Emergency Medical Services
5 Authority as its Decision in this matter, EXCEPT FOR: Paragraphs 5 and 6, pages 6 and 7, of the
6 LEGAL CONCLUSIONS, and the ORDER, the following being substituted therefore:

7 Respondent **ADAM JOSEPH FREEMAN**'s Paramedic license is revoked.

8 This DECISION shall become effective thirty (30) days from the date of signature below.

9 Dated:

10 Oct 17, 2011

11 

12 HOWARD BACKER MD, MPH, FACEP
13 Director
14 Emergency Medical Services Authority
15 State of California
16
17
18
19
20
21
22
23
24
25