

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

5 In the Matter of the Statement of Issues)
6 Against:) Enforcement Matter No.: 09-0091
7) OAH No. 2009070146
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ANTONIO NUNEZ

Respondent.

DECISION AND ORDER

I. INTRODUCTION

This matter was heard on September 15, 2009, by R. Steven Tharratt MD, MPVM, Director of the State of California Emergency Medical Services Authority ("Authority"), pursuant to the provisions of the Administrative Procedure Act ("Act")¹, subsequent to the hearing held on July 28, 2009, by Administrative Law Judge Roy W. Hewitt of the Office of Administrative Hearings.

II. PARTIES

1. R. Steven Tharratt MD, MPVM, is the Director of the Authority. The Director makes this decision in his official capacity as Director of the Authority.

2. Respondent applied for an unrestricted Paramedic License with the Authority on March 25, 2009. The Authority denied Respondent's application by letter on May 13, 2009, and Respondent appealed the denial.

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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 provide:
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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 license application denial tendered by Respondent, a hearing
24 was noticed and held in this matter on July 28, 2009, before an Administrative Law Judge with
25 the Office of Administrative Hearings in San Diego, California. Respondent appeared at this
hearing and represented himself. Senior Staff Counsel Cynthia Curry represented the Authority.

On or about August 25, 2009, the Authority received a copy of the Proposed Decision
and Order which was dated August 20, 2009. The Authority served a copy of the proposed
decision on Respondent via registered mail on August 27, 2009, and informed him at that time
that it had not adopted the Proposed Decision and Order. Respondent then signed a stipulation
for the Director of the Authority to decide the case without a hearing transcript on September 1,
2009. Respondent was informed that he could present written argument to the Director on or
before September 15, 2009. Respondent submitted no further argument or documents. The

1 original Statement of Issues, the evidence submitted at the hearing, and the Administrative Law
2 Judge's proposed decision were considered in this Decision and Order.

3 V. DISCUSSION

4 Respondent's application was subject to mandatory denial by the Authority due to a plea
5 of guilty to one count of a felony violation of California Penal Code section 459; Burglary, and
6 one count of a felony violation of California Penal Code section 475(c); Forgery. These
7 convictions were undisputed by the Respondent at the hearing.

8 The controlling authority in this matter is California Health and Safety Code,
9 Section 1798.200, and California Code of Regulations, Section 100173, Subdivisions (b)(3) of
10 Title 22, Division 9, Chapter 4, Article 9, which provides:

11 "§ 100173. Denial/Revocation Standards.

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

14 "...

15 "(3) Has been convicted of **two or more felonies.**" (emphasis added)

16 The regulations in this instance are exceedingly clear: the Authority shall deny a license
17 to an applicant if he or she has been convicted of two or more felonies. Respondent was
18 convicted of two felonies on March 1, 2001, by pleas of "guilty" to the felony violations. The
19 Administrative Law Judge determined that these regulations were applicable to Respondent on
20 page 5, paragraph 1 of the proposed decision, and also determined that the conviction was
21 substantially related to the duties and functions of a Paramedic in that same paragraph.

22 However, the Administrative Law Judge also determined that there was evidence
23 of mitigation and rehabilitation in the "Legal Conclusions" on Page 5, Paragraph 2 of the
24 proposed decision. The Director agrees with that particular finding, however, it is the Director's
25

1 opinion that while Respondent's mitigation and rehabilitation do not rise to the level of
2 extraordinary circumstances, they are sufficient enough to determine that granting Respondent a
3 provisional license is not contrary to the public's health and safety. The Director therefore
4 believes the conditions of license issuance as set forth in the Administrative Law Judge's
5 proposed decision should be modified.

6 VI. DECISION AND ORDER

7 The Director of the Authority therefore finds the following:

8 WHEREAS, the PROPOSED DECISION of the Administrative Law Judge and the NOTICE
9 CONCERNING PROPOSED DECISION in this matter were served upon Respondent in
10 accordance with Government Code section 11517; the Authority notified Respondent that the
11 Authority considered, but did not adopt, the PROPOSED DECISION; and
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13 WHEREAS, the Respondent was afforded the opportunity to present written argument,
14 but did not exercise the opportunity; and

15 WHEREAS, the Director of the Emergency Medical Services Authority has considered
16 the record, and now finds that;

17 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION of the
18 Administrative Law Judge is hereby adopted by the Director of the Emergency Medical Services
19 Authority as its Decision in this matter, EXCEPT FOR: The second sentence of the second
20 paragraph at Page 5, under "LEGAL CONCLUSIONS", is not adopted, and the first paragraph at
21 Page 5, under "ORDER", beginning with "Respondent's application...", is deleted in its entirety
22 and is replaced with the following:

23 "Respondent's application for licensure shall be accepted and if he meets all of the
24 qualifications for licensure he shall be issued a Paramedic license. That license shall be
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1 revoked; however, said revocation is stayed and Respondent is placed on probation for
2 three (3) years upon the following terms and conditions.”

3 The remaining portions of the Administrative Law Judge’s proposed decision are adopted by the
4 Authority in their entirety.

5 This DECISION shall become effective immediately upon the date of signature below.

6 Dated:

7 9/29/09

8 

9 R. STEVEN THARRATT, MD, MPVM
10 Director
11 Emergency Medical Services Authority
12 State of California