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

5 In the Matter of the Accusation Against:) Enforcement Matter No.: 07-0213
6) OAH No. 2009030843

7 **SCOT GRAHAM**
8 License No.: P04381

9 Respondent.)

10 **DECISION AND ORDER**

11 I. INTRODUCTION

12 This matter was heard on December 2, 2009, by R. Steven Tharratt MD, MPVM,
13 Director of the State of California Emergency Medical Services Authority ("Authority"),
14 pursuant to the provisions of the Administrative Procedure Act ("Act")¹, subsequent to the
15 hearing held on June 15, 2009, by Administrative Law Judge Perry Johnson of the Office of
16 Administrative Hearings.

17 II. PARTIES

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

20 2. On or about September 17, 1990, the Emergency Medical Services Authority, State
21 of California, issued Emergency Medical Technician-Paramedic (EMT-P) License No. P04381
22 to **SCOT GRAHAM** (Respondent). The license was in full force and effect at all times
23 relevant to the proceedings herein and will expire by natural operation on August 31, 2010,
24 unless suspended or renewed.

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

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III. JURISDICTION

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

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

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

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

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

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

(c) (1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the 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

1 are part of the record of the prior hearing. A copy of the revised proposed decision shall
2 be furnished to each party and his or her attorney as prescribed in this subdivision.

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

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

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

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

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

24 IV. HISTORY

25 Pursuant to a notice of defense timely tendered by Respondent, a hearing was noticed and
held in this matter on June 15, 2009, before Perry Johnson, an Administrative Law Judge with
the Office of Administrative Hearings in Oakland, California. Respondent appeared at this
hearing and was represented by counsel Carmela Woll. Senior Staff Counsel Cynthia Curry
represented the Authority.

On or about July 20, 2009, the Authority received a copy of the Proposed Decision and
Order which was dated July 16, 2009. The Authority served a copy of the proposed decision on
Respondent via registered mail on August 13, 2009, 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 October 8, 2009, the Authority received a copy of the transcript.

1 The Authority sent notice to the Respondent on October 12, 2009, that it was not adopting the
2 proposed decision of the Administrative Law Judge, and that Respondent could present written
3 argument to the Director on or before November 17, 2009. Respondent's counsel requested an
4 extension to respond to December 1, 2009, which request was granted. On December 1, 2009,
5 Respondent's counsel submitted written argument for consideration by the Director. The
6 original Accusation, the transcripts from the hearing, the evidence submitted at the hearing, the
7 Administrative Law Judge's proposed decision, and the written argument from Respondent's
8 counsel submitted on December 1, 2009, were considered in this Decision and Order.
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10 V. DISCUSSION

11 Respondent's license was subject to discipline for criminal acts that Respondent had been
12 convicted of. The Administrative Law Judge determined that Respondent's convictions for
13 violating California Penal Code Section 422 (Threats to commit a crime resulting in great bodily
14 injury or death) were substantially related to the duties and functions of a licensee (Proposed
15 Decision, Page 4, Paragraph 11). These convictions were undisputed by the Respondent at the
16 hearing.

17 The Administrative Law Judge found that the Authority posited a restrictive view of
18 California Code of Regulations Section 100173(g), relating to the granting of a license to a
19 person otherwise precluded from having one.

20 The Administrative Law Judge determined that Respondent was convicted of
21 misdemeanors related to force, violence, threat or intimidation within the preceding five years,
22 and also found that such convictions were substantially related to the duties and functions of a
23 licensee (Proposed Decision Page 4, Paragraph 11), and a cause for discipline (Proposed
24 Decision, Page 9, Paragraphs 2 and 3.
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1 The Administrative Law Judge made a finding that Respondent had two convictions
2 (Proposed Decision, Page 4, Paragraph 13). However, he determined that the two convictions
3 should be treated as one conviction.

4 **APPLICABILITY OF CCR 100173(g)**

5 California Code of Regulations, Title 22 Section 100173(g), cited by the Administrative
6 Law Judge and by Respondent's written argument, is inapplicable to the instant case. Section
7 100173(g) of Title 22, Division 9, Chapter 4, Article 9, California Code of Regulations
8 specifically provides:
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10 "The director **may grant** a license to anyone **otherwise precluded** under subsections (a)
11 and (b) of this section if the director believes that extraordinary circumstances exist to
warrant such an exemption." (emphasis added)

12 This section is applicable only to applicants for an initial paramedic license. To proffer
13 otherwise is to ignore the plain language of the regulation itself. The section is applicable to
14 applicants for an initial paramedic license by the specific inclusion of the language "may grant a
15 license...", and is not applicable to currently licensed paramedics. The Director cannot "grant"
16 a license to an individual who already has one. An individual who already has obtained a license
17 may have it disciplined, suspended or revoked; the Director cannot grant or give something that
18 an individual already has a right to possess. A licensed Paramedic, such as Respondent, is not
19 "otherwise precluded" from having a license; he has already met the requirements for licensure
20 and has been issued a license which is considered a property right. The language here clearly
21 relates to the potential issuance of a license to a person who does not already have one, and not
22 to the mitigation of, or excuse from, imposition of license discipline for a person who already
23 has a vested right in continued possession of one. For that reason, this section is neither
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1 applicable to Respondent's case nor open to such a broad reading as espoused by the
2 Administrative Law Judge and Respondent.

3 VI. DECISION AND ORDER

4 The Director of the Authority therefore finds the following:

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

9 WHEREAS, the Respondent was afforded the opportunity to present written argument,
10 and exercised the opportunity through counsel; and

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

13 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION of the
14 Administrative Law Judge is hereby adopted by the Director of the Emergency Medical Services
15 Authority as its Decision in this matter, EXCEPT FOR: Paragraph 5, Page 9; and Paragraph 8,
16 Pages 11, 12 and 13. In addition, the following portions of the ORDER are NOT ADOPTED by
17 the Director, the following being substituted therefore:

18 ORDER

19 "Emergency Medical Technician-Paramedic (EMT-P) license No. P04381 of Respondent **SCOT**
20 **GRAHAM** is hereby revoked by reason of Legal Conclusion 3; however, the revocation is
21 stayed during a four-year period of probation under the following terms and conditions:"

22 The following paragraphs are added to the ORDER immediately after Paragraph 11 on
23 Page 15:
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1 "12. **Abstinence from the Use of Illegal Drugs or Alcoholic Beverages:** The Respondent
2 shall abstain from the use or possession of all illegal drugs; and shall abstain from the use of
3 alcoholic beverages during the probationary period.

4 13. **Biological Fluid Testing:** The Respondent shall submit to routine and random biological
5 fluid testing or drug/alcohol screening as directed by the EMSA or its designee. Respondent may
6 use a lab pre-approved by the EMSA or may provide to the EMSA the name and location of an
7 independent laboratory or licensed drug/alcohol testing facility for approval by the EMSA. The
8 EMSA shall have sole discretion for lab approval based on criteria regulating professional
9 laboratories and drug/alcohol testing facilities. When the EMSA requests a random test, the
10 respondent shall provide the required blood/urine sample by the time specified, or within 12
11 hours of the request if no time is specified. When the EMSA requests a random test, the
12 respondent shall ensure that any positive test results are conveyed telephonically by the lab to the
13 EMSA within 48 hours, and all written positive or negative results are provided directly by the
14 lab to the EMSA within 10 days. The Respondent shall be responsible for all costs associated
15 with the drug/alcohol screening.

16 At the EMSA's sole discretion, the EMSA may allow the random drug testing to be
17 conducted by the respondent's employer to meet the requirement of random drug testing as set
18 forth above. The results of the employer's random drug testing shall be made available to the
19 EMSA in the time frames described above."

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

21 Dated:

22 11/25/10
23 _____

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25 R. STEVEN THARRATT, MD, MPVM
Director
Emergency Medical Services Authority
State of California