

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

5 In the Matter of the Accusation Against:)
6) Enforcement Matter No.: 08-0233
7) OAH No. 201004973
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JOSEPH SILVERSTEIN
P00913

Respondent.

DECISION AND ORDER

9 I. INTRODUCTION

10 This matter was heard on September 23, 2011, by Howard Backer MD, MPH, FACEP,
11 Director of the State of California Emergency Medical Services Authority (“Authority”),
12 pursuant to the provisions of the Administrative Procedure Act (“Act”)¹, subsequent to the
13 hearing held on March 17, 2011, by Administrative Law Judge Erlinda G. Shrenger of the
14 Office of Administrative Hearings.
15

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 P00913 which was first issued on January 15, 1992, and is valid through December
21 31, 2011, unless revoked or suspended.

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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 provides:

“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 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 March 17, 2011, before an Administrative Law Judge with
25 the Office of Administrative Hearings in Los Angeles, California. Respondent appeared at this
hearing and was represented by counsel.

On or about June 7, 2011, the Authority received a copy of the Proposed Decision and
Order which was dated May 16, 2011. The Authority served a copy of the proposed decision on
Respondent via registered mail on June 20, 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 July 12, 2011, the Authority received a copy of the transcript of the
hearing. The Authority sent notice to the Respondent on July 15, 2011, that Respondent could
present written argument to the Director on or before August 20, 2011. Respondent requested a

1 continuance, which was granted, and the hearing was continued to September 23, 2011.
2 Respondent, through counsel, submitted additional argument.

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 22, 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; additionally the Director considered the
9 original Accusation, the transcripts from the hearing, the evidence submitted at the hearing, and
10 the Administrative Law Judge's proposed decision.
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12 VI. DISCUSSION

13 Respondent's license was subject to discipline by the Authority due to irregularities in
14 courses that were being taught by the Respondent that had a bearing on the duties and functions
15 of a licensee. A review of the entire record in this matter finds no mistake of law or fact by the
16 Administrative Law Judge in her proposed decision. Additional argument submitted by
17 Respondent's counsel was afforded only marginal probative value, as it consisted almost
18 entirely of citations to cases that were not relevant to the present case.
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20 VII. DECISION AND ORDER

21 The Director of the Authority therefore finds the following:

22 WHEREAS, the PROPOSED DECISION of the Administrative Law Judge and the NOTICE
23 CONCERNING PROPOSED DECISION in this matter were served upon Respondent in
24 accordance with Government Code section 11517; the Authority notified Respondent that the
25 Authority had not yet adopted the PROPOSED DECISION; and

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

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

5 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION of the
6 Administrative Law Judge is hereby adopted by the Director of the Emergency Medical Services
7 Authority as its Decision in this matter.

8 The action against Respondent **JOSEPH SILVERSTEIN**'s Paramedic license is dismissed.

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

10 Dated:

11 Oct 17, 2011

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13 HOWARD BACKER MD, MPH, FACEP
14 Director
15 Emergency Medical Services Authority
16 State of California
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