

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

5 In the Matter of the Accusation Against:) Enforcement Matter No.: 12-0040
6) OAH No. 2013020500
7 **TY COOK**)
8 License No. P20637)
9 Respondent.)
10)
11)
12) **DECISION AND ORDER**
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9 I. INTRODUCTION

10 This matter was heard on March 3, 2015, 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 October 20 and 21, 2015, by Administrative Law Judge Coren D. Wong 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 P20637 which was first issued on May 30, 1991, and is valid through March 31, 2016,
21 unless revoked or suspended.

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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 October 20 and 21, 2015, before an Administrative Law
25 Judge with the Office of Administrative Hearings in Sacramento, California. Respondent
appeared at this hearing and was represented by counsel.

The Authority received a copy of the Proposed Decision and Order which was dated
November 14, 2014. The Authority served a copy of the proposed decision on Respondent via
registered mail on January 28, 2015, and informed him at that time that it had not adopted the
Proposed Decision and Order, and sent notice to the Respondent that Respondent could present
written argument to the Director on or before March 2, 2015. Respondent, through counsel,
submitted additional argument.

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1 V. EVIDENCE SUBMITTED AT WRITTEN HEARING

2 Pursuant to the notice of hearing, Respondent was allowed to submit any evidence in writing
3 to support his argument for adoption or modification of the Proposed Decision up to one
4 business day prior to the hearing, or March 2, 2015. The Authority considered all evidence,
5 which included Respondent's Written Argument After Hearing, the original Accusations, the
6 transcripts from the hearing, the evidence submitted at the hearing, and the Administrative Law
7 Judge's proposed decision, in this Decision and Order.
8

9 VI. DISCUSSION

10 Respondent's license was subject to discipline by the Authority due to his felony related
11 conviction. His license was subject to revocation by the Authority for his criminal conviction
12 that resulted from a finding of "guilty" subsequent to a jury trial on California Health and Safety
13 Code Section 11377, Possession of a controlled substance (Factual findings, proposed decision,
14 page 2 paragraph 3). This conviction was undisputed by the Respondent at the hearing.
15

16 The controlling authority in this matter is California Health and Safety Code,
17 Section 1798.200, and California Code of Regulations, Section 100174, Subdivisions (a)(4) and
18 (b)(2) of Title 22, Division 9, Chapter 4, Article 9, which provide:

19 "§ 100174. Denial/Revocation Standards.

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

22 "...

23 "(4) Is on parole or probation for any felony."

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

26 "...

27 "(2) Has been convicted and released from incarceration for said offense during
the preceding ten (10) years for any offense punishable as a felony." (emphasis added)

1 These regulations are applicable in the instant case due to the fact that the Respondent is
2 still on parole (Factual findings, proposed decision, page 2 paragraph 3), and Respondent's
3 original conviction was for a felony (Factual findings, proposed decision, page 2 paragraph 3,
4 and page 6, paragraph 23). The subsequent reduction of the felony conviction to a misdemeanor
5 is irrelevant, in that the offense was in fact punishable as a felony, putting it squarely within the
6 purview of (b)(2).

7 The regulations in this instance are exceedingly clear: the Authority is mandated to
8 revoke the license of a licensee if he or she has committed offenses which fall within "the shall
9 revoke" provisions of the regulations. The Administrative Law Judge determined that these
10 regulations were applicable to the Respondent on page 8, paragraph 5, of "Legal Conclusions" of
11 the proposed decision, and also determined that the conviction was substantially related to the
12 duties and functions of a Paramedic in paragraph 5, page 3.

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

19 California Code of Regulations, Title 22 Section 100174(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 letters of recommendation attesting to his good
14 character, these were afforded only slight probative value, as the majority of these letters
15 attested only to one particular facet - that of his AA meeting program. While these were
16 illustrative in showing that Respondent is serious about maintaining sobriety, these did not rise
17 to the level of exhibiting extraordinary circumstances. Respondent also submitted evidence
18 showing that his conviction was reduced to a misdemeanor, and this was considered as
19 favorable evidence. However, again this was not considered to be extraordinary or unusual, as
20 many persons in similar situations file the necessary petition and pay the necessary fees to have
21 a conviction reduced.

22
23 Subsequent to his arrest and conviction, Respondent has apparently obeyed all laws, and
24 performed what the court required of him as a result of that conviction. While it credibly
25 appears from the record that Respondent apparently possesses the skills necessary to perform

1 the functions of an EMT-P license holder at least competently, these factors individually or
2 taken in concert do not rise to the level of being “extraordinary circumstances”. The evidence
3 presented by Respondent reveals factors in the present case that are neither “exceptional” nor
4 “uncommon” - they are what are to be expected of any average law abiding person.

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

16 Respondent’s case is particularly egregious. As a former Local EMS agency (LEMSA)
17 coordinator, Respondent was responsible for, among other things, participating in EMT and
18 Paramedic disciplinary matters for licensees in his jurisdiction. As such, his own conduct should
19 have been above reproach. Instead, Respondent admitted to daily on-duty drug use, both before
20 going to work in the morning, and during his lunch time while at work (Official Transcript, page
21 125). This conduct shows a blatant disregard for the responsibilities of his former position, and
22 the laws and regulations that govern prehospital medicine.

24 While the Director is heartened by the positive steps that Respondent has made and that
25 appears he is continuing to make, they do not rise to the level of being extraordinary. While

1 “extraordinary circumstances” are not defined under the regulations and may not be the same
2 for each individual, in a case similar to the one before the Director in order for it to be
3 considered “remarkable” or “noteworthy”, there must be credible evidence presented of
4 significant mitigation over a sustained period of time. Such evidence would include such
5 factors as: length of time since conviction without additional incident; successful completion
6 and termination of probation; receiving a Governor’s Pardon or a Certificate of Rehabilitation
7 pursuant to California Penal Code 4852.13; continued significant volunteer work for the benefit
8 of the general public; and continued significant volunteer work in the EMS field. The
9 regulations mandating revocation subsequent to a conviction are clear, and insufficient evidence
10 was presented to warrant setting aside that mandate in this instance.
11

12 According to Government Code Section 11522, Respondent is entitled to reapply for an
13 EMT-P license again in one year from the effective date of this decision. If Respondent chooses
14 to reapply again at such time, favorable evidence sufficient to support a successful petition for
15 reinstatement would include sufficient continuing education course work to support license
16 reinstatement, significant volunteer work in the community, current and specific
17 recommendations from professionals in the EMS community, and other factors as outlined in
18 California Code of Regulations Title 22, Division 9, Chapter 4, Article 9, Section 100176.
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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 considered, but did not adopt, 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, EXCEPT FOR: Paragraph 25 page 7, of the FACTUAL
8 CONCLUSIONS, and the ORDER, the following being substituted therefore:

9 Respondent **TY COOK**'s Paramedic license is revoked.

10 This DECISION shall become effective fifteen (15) days from the date of signature below.

11 Dated:

12 4/13/15

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