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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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In the Matter of the Emergency Medical Technician- Paramedic License Held by:))	Enforcement Matter No.: 06-0098
))	OAH No. L2008020164
VINCENT VALDIVIA))	
License No. P15655))	DECISION AND ORDER
Petitioner.))	

I. INTRODUCTION

This matter was heard on December 15, 2008, 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 1 and 2, 2008, by Administrative Law Judge Vallera Johnson 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. Petitioner holds Emergency Medical Technician-Paramedic ("EMT-P") license number P15655 that was first issued on April 16, 1999, and will expire by natural operation on April 30, 2009. The license may be renewed unless suspended or revoked.

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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 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 a Notice of Defense timely tendered by Petitioner, a hearing was noticed and
24 held in this matter on July 1 and 2, 2008, before an Administrative Law Judge with the Office of
25 Administrative Hearings in San Diego, California. Respondent appeared at this hearing and
represented himself. Deputy Attorney General David Chan represented the Authority. On or
about August 27, 2008, the Authority received a copy of the Proposed Decision and Order of the
Administrative Law Judge, dated August 8, 2008. The Authority served a copy of the proposed
decision on Respondent on September 3, 2008 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 28, 2008, the Authority received a copy of the transcript of
the hearing. The Authority sent notice to the Respondent on October 30, 2008, that it was not
adopting the proposed decision of the Administrative Law Judge, and that Respondent could

1 present written argument to the Director on or before December 15, 2008. On December 12,
2 2008, Respondent submitted written argument to the Authority, which consisted of a letter of
3 written argument from Respondent dated December 10, 2008, five separate letters of
4 recommendation from various employees of the California Department of Forestry and Fire
5 Protection (“CalFire”), and a probation progress report dated July 16, 2008, from Thomas J.
6 Hinkle, Deputy Probation Officer. Those documents, along with the transcripts from the hearing,
7 the evidence submitted at the hearing, and the Administrative Law Judge’s proposed decision,
8 were considered in this Decision and Order.
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10 V. DISCUSSION

11 Respondent’s license was subject to discipline by the Authority for his criminal
12 convictions that resulted from pleas of “guilty” to felony charges of California Penal Code
13 Section 245(a)(2)[assault with a firearm]; California Penal Code Section 245(a)(2)(F) [carrying a
14 loaded, unregistered firearm]; a misdemeanor conviction of California Penal Code 242 [battery];
15 and a misdemeanor conviction of California Vehicle Code Section 23152(a), [driving under the
16 influence] (proposed decision, page 1 paragraph 3). These convictions were undisputed by the
17 Respondent at the hearing (proposed decision page 3 paragraphs 6 and 10).

18 The controlling authority in this matter is California Health and Safety Code,
19 Section 1798.200, and California Code of Regulations, Section 100173, Subdivisions (a)(3)-(4)
20 and (b)(2) of Title 22, Division 9, Chapter 4, Article 9, which provide:

21 “§ 100173. Denial/Revocation Standards.

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

24 “.....

25 “(3) Has been convicted of two or more felonies.”

1 “(4) Is on parole or probation for any felony.” (emphasis added)

2 “(b) **The authority shall deny/revoke a paramedic license**, if any of the following apply
3 to the applicant:

4 “...
5 “(2) Has been convicted and released from incarceration for said offense during
6 the preceding ten years for any offense punishable as a felony.” (emphasis added)

7 The regulations in this instance are exceedingly clear: the Authority shall revoke the
8 license of a licensee if he or she has been convicted of two or more felonies, is on probation or
9 parole for any felony, or has been convicted and released from incarceration during the
10 preceding ten years. Respondent was convicted of two felonies in October of 2006, is currently
11 on probation for those felonies and was incarcerated for approximately 90 days. The
12 Administrative Law Judge determined that these regulations were applicable to Respondent on
13 page 8, paragraph 4 of the proposed decision.

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 acts, we must look to see if there is anything that
17 allows the Authority to take any action other than revocation of Respondent’s license. Contrary
18 to the Administrative Law Judge’s proposed decision at page 9, paragraph 6, there are no factors
19 that override the regulations to allow the Authority to forego revoking Respondent’s license at
20 this time.

21 California Code of Regulations, Title 22 Section 100173(g), cited by the Administrative
22 Law Judge as being allowable for Respondent to keep his license, is inapplicable to the instant
23 case. Section 100173(g) of Title 22, Division 9, Chapter 4, Article 9, California Code of
24 Regulations specifically provides:

1 “The director may grant a license to anyone otherwise precluded under subsections (a)
2 and (b) of this section if the director believes that extraordinary circumstances exist to
3 warrant such an exemption.”

4 This section is applicable to applicants for an initial paramedic license only (“may **grant**
5 a license...”), and is not applicable to currently licensed paramedics who are required to be
6 disciplined by other provisions of the Code of Regulations. The Director may not “grant” a
7 license to a licensee who already has one; the Authority’s sole discretion for an individual
8 already possessing a paramedic license is to simply take no formal action against the license at
9 all, which is not supported by the mandatory “shall revoke” language of the regulations. For
10 that reason, this section is not applicable to Respondent’s case and cannot be used to mitigate
11 the multiple provisions of 100173 that require license revocation.

12 Even assuming, ad arguendo, that 100173(g) is applicable in the present case, the
13 Director finds that there are no extraordinary circumstances present in this case that would
14 warrant allowing Respondent to retain his license. While there appeared to be some factors that
15 rehabilitation is occurring, and numerous letters of recommendation submitted attesting to
16 Respondent’s good character, there was no evidence of extraordinary circumstances presented.
17 Subsequent to his arrest and conviction, Respondent has apparently obeyed all laws and simply
18 performed what the law has required of him. While it appears from the record that Respondent
19 is well liked and respected by his peers and performs his job functions at least competently if
20 not above average, those factors do not rise to the level of being extraordinary circumstances
21 when balancing the Authority’s duty to protect the public’s health and welfare versus the
22 criminal acts that Respondent was convicted of and the mandatory language of the regulations.

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1 VI. DECISION AND ORDER

2 The Director of the Authority therefore finds the following:

3 WHEREAS, the PROPOSED DECISION of the Administrative Law Judge and the NOTICE
4 CONCERNING PROPOSED DECISION in this matter was served upon Respondent in
5 accordance with Government Code section 11517, notifying Respondent that the Authority
6 considered, but did not adopt, the Proposed Decision; and

7 WHEREAS, the Respondent was afforded the opportunity to present written argument,
8 and exercised the opportunity; and

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

11 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION of the
12 Administrative Law Judge is hereby adopted by the Director of the Emergency Medical Services
13 Authority as its Decision in this matter, EXCEPT FOR: Paragraph 4, pages 8 and 9 of the
14 LEGAL CONCLUSIONS to the extent that the last bullet in Paragraph 4, on page 9 is incorrect
15 and is replaced with the following:

- 16 • Has been convicted of one misdemeanor related to force, violence, threat or
17 intimidation and one misdemeanor related to the abuse of alcohol.

18 In addition the following are NOT ADOPTED by the Director: Paragraph 6, page 9 of the
19 LEGAL CONCLUSIONS, and the ORDER, the following being substituted therefore:
20 Emergency Medical Technician-Paramedic license number P15655 issued to Respondent
21 **VINCENT VALDIVIA** is hereby revoked.

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

2 Dated:

3 12/30/08



4 R. STEVEN THARRATT, MD, MPVM
5 Director
6 Emergency Medical Services Authority
7 State of California

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