

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Statement of Issues)
Against:) Enforcement Matter No.: 08-0115
) OAH No. 2008090346.
)
JENNIFER A. MENELEY)
) **DECISION AND ORDER**
Respondent.)
)

I. INTRODUCTION

This matter was heard on March 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 November 5, 2008, by Administrative Law Judge Gary A. Geren 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 14, 2008. The Authority denied Respondent's application by letter on June 30, 2008, and Respondent appealed the denial.

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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 an appeal of the license application denial tendered by Respondent, a hearing
24 was noticed and held in this matter on November 5, 2008, before an Administrative Law Judge
25 with the Office of Administrative Hearings in Sacramento, California. Respondent appeared at
this hearing and represented herself, contrary to the statement in the proposed decision in the first
paragraph, page 1. Also, contrary to the statement in the proposed decision on page 1, Senior
Staff Counsel Cynthia Curry represented the Authority, not the Respondent.

On or about January 9, 2009, the Authority received a copy of the Proposed Decision and
Order which was dated December 6, 2008, which was mailed to the Authority on January 8,
2009. The Authority served a copy of the proposed decision on Respondent via registered mail
on January 14, 2009, and informed her 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

1 February 6, 2009, the Authority received a copy of the transcript of the hearing. The Authority
2 sent notice to the Respondent on February 10, 2009, that it was not adopting the proposed
3 decision of the Administrative Law Judge, and that Respondent could present written argument
4 to the Director on or before March 15, 2009. Respondent submitted no further argument or
5 documents. The original Statement of Issues, the transcripts from the hearing, the evidence
6 submitted at the hearing, and the Administrative Law Judge's proposed decision, was considered
7 in this Decision and Order.
8

9 V. DISCUSSION

10 Respondent's application was subject to mandatory denial by the Authority due to a theft
11 related misdemeanor conviction within five years of her application for licensure. Her
12 application was subject to denial by the Authority for her criminal conviction that resulted from a
13 plea of "no contest" to a misdemeanor charge of California Penal Code Section 503
14 [embezzlement] (proposed decision, page 1 paragraph 3). This conviction was undisputed by the
15 Respondent at the hearing.

16 The controlling authority in this matter is California Health and Safety Code,
17 Section 1798.200, and California Code of Regulations, Section 100173, Subdivisions (b)(5) of
18 Title 22, Division 9, Chapter 4, Article 9, which provides:

19 "§ 100173. Denial/Revocation Standards.

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

22 "...
23 "(5) Has been **convicted** within the preceding five years for any theft related
24 misdemeanor." (emphasis added)

25 The regulations in this instance are exceedingly clear: the Authority shall deny a license
to an applicant if he or she has been convicted of a theft related misdemeanor within the

1 preceding five years of the application. Respondent was convicted of a theft related
2 misdemeanor on May 9, 2005, less than four years ago. The Administrative Law Judge
3 determined that these regulations were applicable to Respondent on page 4, paragraph 3 of the
4 proposed decision, and also determined that the conviction was substantially related to the duties
5 and functions of a Paramedic in that same paragraph.

6 Since the Administrative Law Judge determined that the regulations cited here apply to
7 Respondent, and the regulations also make clear that the Authority is mandated to deny
8 Respondent's application for a license based upon her criminal act, we must look to see if there
9 is anything that allows the Authority to take any action other than to adhere to the language of
10 the regulations that mandate denial of Respondent's application for a Paramedic license.
11

12 California Code of Regulations, Section 100173(g) of Title 22, Division 9, Chapter 4,
13 Article 9, California Code of Regulations specifically provides:

14 "The director may grant a license to anyone otherwise precluded under subsections (a)
15 and (b) of this section if the director believes that **extraordinary circumstances** exist to
warrant such an exemption." (emphasis added)

16 This section is applicable to applicants for an initial paramedic license. Although there was
17 credible evidence and testimony presented that Respondent has fulfilled the terms of her
18 imposed sentence fully and has been a law abiding member of society since, the Director finds
19 that there are no extraordinary circumstances present in this case that would warrant granting
20 Respondent a license in contravention of the regulations.
21

22 There was no evidence presented of extraordinary circumstances, and the Administrative
23 Law Judge made no findings of extraordinary circumstances in the proposed decision that would
24 warrant the Director setting aside the mandatory language of the regulations and granting a
25 license.

1 Subsequent to her arrest and conviction, Respondent has apparently obeyed all laws and
2 simply performed what the law required of her. While it appears from the record that
3 Respondent has worked in the EMS field, is well liked by her employer and performs her job
4 functions at least competently, those factors do not rise to the level of being "extraordinary
5 circumstances". Respondent has simply performed what a person in a similar situation would
6 likely do: fulfill the terms of her sentence and get on her with her life.

7
8 Additionally, the Administrative Law Judge at paragraph 5, page 5 of the proposed
9 decision found that Respondent's arrest occurred nearly four and half years from the time of the
10 hearing, and that this time was close to the five years suggested in the Authority's Disciplinary
11 Guidelines. There is no time frame or limit specified in the "Recommended Guidelines for
12 Disciplinary Orders and Conditions of Probation" that have been adopted by regulation by the
13 Authority. California Code of Regulations, Section 100173, Subdivisions (b)(5) of Title 22,
14 Division 9, Chapter 4, Article 9, mandates license denial for a conviction within five years, not
15 for an arrest within five years. The measuring time for the denial is the conviction date, not the
16 arrest or occurrence date.

17 VI. DECISION AND ORDER

18 The Director of the Authority therefore finds the following:

19 WHEREAS, the PROPOSED DECISION of the Administrative Law Judge and the NOTICE
20 CONCERNING PROPOSED DECISION in this matter were served upon Respondent in
21 accordance with Government Code section 11517; the Authority notified Respondent that the
22 Authority considered, but did not adopt, the PROPOSED DECISION; and
23

24 WHEREAS, the Respondent was afforded the opportunity to present written argument,
25 but did not exercise the opportunity; and

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

3 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION of the
4 Administrative Law Judge is hereby adopted by the Director of the Emergency Medical Services
5 Authority as its Decision in this matter, EXCEPT FOR: Paragraph 1, page 1, sentences 2 and 3
6 of the PROPOSED DECISION are incorrect and are replaced with the following:

7 " Cynthia Curry, Senior Staff Counsel, represented the Emergency Medical Services
8 Authority (EMSA)."

9 "Jennifer A. Meneley (respondent) represented herself."

10 In addition, the following are NOT ADOPTED by the Director: Paragraphs 5 and 6, page
11 5, of the LEGAL CONCLUSIONS, and the ORDER, the following being substituted therefore:
12 Respondent **JENNIFER A. MENELEY**'s appeal of the denial of a Paramedic license is denied.

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

14 Dated:

15 3/26/09



16 R. STEVEN THARRATT, MD, MPVM
17 Director
18 Emergency Medical Services Authority
19 State of California
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