



State of New Jersey
DEPARTMENT OF HEALTH AND SENIOR SERVICES
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CHRISTINE TODD WHITMAN
Governor

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CHRISTINE GRANT, JD, MBA
Commissioner

ROBERT M. SKLAR,

PETITIONER

v.

**NEW JERSEY DEPARTMENT OF
HEALTH AND SENIOR SERVICES,**

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT NO. HLT 6455-98

Perry S. Warren, Esq., for petitioner (Maselli Warren)

Mylyn K. Alexander, Deputy Attorney General, for respondent (John J. Farmer, Jr., Attorney General of New Jersey).

INTRODUCTION

This is an appeal by Robert M. Sklar ("petitioner") from a determination by the Department of Health and Senior Services ("respondent" or "department") to revoke his temporary paramedic certification and deny his permanent certification. On January 12, 2000, the Honorable Steven C. Reback, Administrative Law Judge (ALJ) ordered respondent to award the petitioner a permanent certification as a paramedic along with a twelve month probationary period.



NEW JERSEY
Many Faces. One Family.

PROCEDURAL HISTORY

Petitioner submitted an Office of Emergency Medical Services Paramedic Reciprocity Application to respondent on May 2, 1997, for both temporary and permanent certification. In the application, petitioner denied that his EMT-Basic or EMT-Paramedic certification, license or registration had ever been suspended or revoked. Subsequently, respondent learned that petitioner's paramedic certification had been revoked on or about June 24, 1993, by the Kern County Emergency Medical Services (EMS) in California. Therefore, on May 8, 1998, the respondent served upon petitioner a notice of rejection of paramedic certification reciprocity application and notice of summary suspension and a proposed revocation of paramedic certification. Petitioner sought emergency relief from the notice, which was denied on May 29, 1998 by the Honorable Bernard Goldberg, ALJ. On or about the same day, petitioner submitted an amended paramedic reciprocity application in which he crossed out his previous response and instead answered "yes" to the question of whether his EMT-Basic or EMT-Paramedic certification, license or registration ever been suspended or revoked. Petitioner also noted in the comments section of the application that he did not "recognize" the decision made by the Kern County EMS since they failed to provide him with a resolution to the decertification issue.

By letter dated July 17, 1998, respondent notified petitioner that his amended application would not be accepted for processing based on the allegations that petitioner knowingly filed the original application with the deliberate misstatement that his paramedic certification was never revoked by another agency. On July 19, 1998, petitioner requested a hearing and the matter was sent to the Office of Administrative Law (OAL) on July 28, 1998. On October 8, 1998, petitioner moved to have the matter placed on the inactive list for a period of four months pending the resolution of his certification in California. The matter was removed from the

inactive list on November 5, 1998 and scheduled for hearing. On December 23, 1998, petitioner submitted a letter from Russ Blind, Senior Coordinator, Emergency Medical Services Department in California, which confirmed that petitioner was eligible to apply and enroll into the Kern County Paramedic Accreditation process. On March 1, 1999, respondent filed a motion for summary decision in which both parties submitted briefs. Respondent's motion was denied on June 7, 1999. After three hearing dates, Judge Reback requested both parties to submit briefs addressing whether the petitioner committed fraud or other violations and the appropriateness of the penalty. Both parties submitted briefs and replies to the other party's briefs. The record closed on November 30, 1999.

Judge Reback issued an Initial Decision on January 12, 2000, ordering petitioner's certification along with a twelve month probation period. By memorandum to the file dated January 26, 2000, Judge Reback corrected a designation in the Initial Decision to reflect that the decision involved petitioner's paramedic certification and not his emergency medical technician certification. Exceptions were received by this office from both parties on February 1, 2000. Respondent also filed a reply brief to petitioner's exceptions on February 7, 2000. On February 14, 2000, the Commissioner requested and thereafter received an extension of time in which to render a Final Agency Decision until April 17, 2000. By letter dated March 7, 2000, petitioner objected to the order of extension. On April 14, 2000, the Commissioner requested and thereafter received an extension of time in which to make a Final Agency Decision until April 25, 2000. On that same day, petitioner objected to the request for an extension.

FACTUAL BACKGROUND

Petitioner was employed between August 1992 and March 1993 as a certified paramedic with Golden Empire Ambulance in Kern County, California. On June 4, 1993, Dr. Robert Barnes, Medical Director of the Kern County Department of Emergency Medical Services sent by certified mail a notice of a formal investigation of petitioner's EMT-P activities to petitioner's last known address. This letter was returned to Dr. Barnes undelivered since petitioner had left California without providing a forwarding address. Thereafter on June 24, 1993, Dr. Barnes sent a second letter by certified mail to the same address indicating that petitioner's EMT-P certification had been revoked following an investigation. This letter was also returned undelivered. Petitioner admitted in a letter to Dr. Barnes that he learned of his California decertification on September 30, 1993, while he attempted to obtain reciprocal paramedic certification in Maryland. By certified letters dated October 1, 1993, and November 18, 1993, Dr. Barnes informed petitioner that the decertification process was now handled by the California State Emergency Medical Services Authority and that he should seek a remedy through that office.

On May 2, 1997, petitioner submitted to respondent a paramedic reciprocity application for both temporary and permanent certification. By letter dated August 15, 1997, respondent notified petitioner that his request for reciprocity was denied because his combined clinical and field experience was less than the 600 hours required in New Jersey. Thereafter, petitioner submitted additional documentation attesting to his qualifications. On September 12, 1997, respondent granted petitioner's request for temporary paramedic reciprocity certification. In the course of respondent's verification of petitioner's reciprocity application, respondent was informed by Dr. Barnes of the California revocation. By letter dated May 5, 1998, respondent

requested written confirmation regarding the revocation from Dr. Barnes. On May 6, 1998, Dr. Barnes confirmed that petitioner's paramedic certification had been revoked on or about June 24, 1993. In turn, on or about May 8, 1998, respondent sent petitioner a certified letter notifying him of the rejection of his paramedic certification reciprocity application and the revocation of his certification.

LEGAL CONTENTIONS

Petitioner contends that he did not engage in the deceptive or fraudulent procurement of a New Jersey paramedic certification. Specifically, he alleges that he was denied procedural due process in California and, as a result, it was in his discretion to recognize California's actions on the New Jersey reciprocity application. In particular, petitioner states that he was not given the required 15 days in which to appeal his decertification since the Kern County Department of Emergency Medical Services was divested of its authority to decertify paramedics six days into his appeal period. Petitioner argues that the California decertification was inconsistent with New Jersey's requirements for suspension and revocation. Petitioner also claims that the Kern County decertification was superseded by the December 1998 letter from Russ Blind confirming that he was eligible to apply and enroll in the Kern County Paramedic Accreditation process.

Respondent insists that petitioner deceptively and fraudulently procured his New Jersey paramedic certification by withholding and concealing material information. Specifically, respondent states that petitioner unequivocally denied any revocation or suspension on his May 2, 1997, application when he knew that his paramedic certification had been revoked in California on June 24, 1993.

Respondent asserts that petitioner had a duty to provide truthful and honest information and then offer an explanation as to those issues with which he was not in agreement. Respondent contends that petitioner's denial of the California action prevented respondent from deciding his certification eligibility issue on its merits.

Respondent states that petitioner intentionally omitted the Kern County action from his New Jersey reciprocity application with the hopes that respondent would not discover the decertification. Respondent maintains that it acted reasonably in denying petitioner's application since his misrepresentation demonstrated his lack of ethical standards required of paramedics.

ALJ FINDINGS AND EXCEPTIONS

Judge Reback found that the petitioner fraudulently procured a New Jersey paramedic certification by intentionally and willfully omitting a material fact from his application in violation of N.J.A.C. 8:41-4.18(a)(2). Specifically, Judge Reback notes in his decision that petitioner "appears to have had good reason to know his decertification would likely affect the Department's decision in granting him reciprocal paramedic certification, considering that he first learned of the Kern County EMS decertification in September 1993, when he sought reciprocal paramedic certification from the State of Maryland." (Initial Decision at 7). However, Judge Reback found that permanent revocation was a disproportionate penalty for an "ethical lapse." Judge Reback contends that permanent revocation is not warranted for an isolated incidence of fraud.

In petitioner's exceptions, petitioner states that the ALJ erred in concluding that the petitioner fraudulently procured the paramedic certification since no unfair advantage inured to petitioner's benefit. Petitioner suggests that the ALJ's finding on the issue of fraud is devoid of

any reason other than the alleged deception for the sanction imposed by California. Petitioner further contends that the Court erred in stating that Petitioner stated on his application that he had been or was at the time certified in Colorado, Maryland and Pennsylvania but he had not mentioned California. In fact, petitioner argues that the application does not require that an application indicate all states in which the applicant is certified. Therefore, he did not list Colorado, Pennsylvania or California. Petitioner claims that the court erred in not ordering the effective date of the certification retroactive to the date petitioner applied for a paramedic certification. Petitioner contends that he should not be subject to further penalty since he was not guilty of any wrongdoing and he has already been sanctioned for eighteen months.

In its exceptions, the respondent contends that Judge Reback erred in failing to address the potential applicability and significance of a disorderly persons offense despite finding that petitioner fraudulently procured the paramedic certification. Respondent also contends that Judge Reback failed to assess the appropriateness of the penalty based on a reasonableness standard despite finding that respondent met its burden. In fact, respondent claims that Judge Reback gave inappropriate weight to the circumstances surrounding the revocation of petitioner's California paramedic certification.

In response to petitioner's exceptions, respondent states that although the reciprocity application does not require an applicant to list all states in which the applicant is certified, the application does require an applicant to indicate whether the applicant's certification has ever been suspended or revoked in response petitioner answered untruthfully. Respondent also replied in its exceptions that petitioner incurred an unfair advantage by unjustly enjoying the benefits of paramedic certification during the time he would have been otherwise denied paramedic certification had he disclosed his previous revocation and the underlying reasons for

the revocation. Respondent contends that petitioner is ineligible for certification since he has been found in violation of N.J.A.C. 8:41-4.18(a)2.

CONCLUSION

Having conducted a careful review of the entire record in this matter, including the Initial Decision and all exceptions filed, for the reasons stated below I hereby modify, in part, the findings and conclusions of AJL Reback. In so doing, I note that ALJ Reback's findings and conclusions on the issue of fraud are well-grounded in the record before him, and my review of that record provides no reason to disturb the weight ascribed to the evidence on that issue.

Respondent has wide discretion in imposing disciplinary actions for violations of N.J.A.C. 8:41-4.18. For instance, N.J.A.C. 8:41-4.18(a)2 allows respondent to suspend, revoke or refuse to issue or reissue the certification or cancel an endorsement of any prehospital advanced life support provider upon receipt of a complaint and subsequent investigation for the deceptive or fraudulent procurement of certification. Likewise, N.J.A.C. 8:41-4.18(f) permits respondent to impose a probationary period, a fine or both in lieu of any suspension or revocation.

I find that respondent's decision to permanently revoke petitioner's paramedic certification based solely on his misrepresentation was unreasonable. I find that a suspension rather than a revocation is a more appropriate penalty based on petitioner's lack of candor and acknowledgement of wrongdoing. The definition of "revocation" and "revoked" under the regulatory framework means the permanent removal of a license, certificate or endorsement, and shall have the effect of permanent debarment. N.J.A.C. 8:41-1.3. Accordingly, I reject ALJ

Reback's use of the term "temporary revocation" to describe what he should have classified as a suspension. Since petitioner's paramedic certification has already been suspended for approximately twenty-four months, I find that the suspension should now be followed by an eighteen month probationary period as allowed by N.J.S.A. 8:41-4.18(b).

For the reasons stated herein, I hereby MODIFY ALJ Reback's Initial Decision to indicate that petitioner's certification has been suspended from May 8, 1998, to May 8, 2000. I further MODIFY ALJ Reback's Initial Decision to extend petitioner's probationary period from twelve months to eighteen months beginning May 8, 2000.

Parties have the right to appeal this Final Order within 45 days to the New Jersey Superior Court, Appellate Division, Richard J. Hughes Justice Complex, P.O. Box 006, Trenton, New Jersey 08625-0006.

THEREFORE, it is on this 25th day of April, 2000

ORDERED:

That the Initial Decision of ALJ Reback is hereby **MODIFIED** to reflect that Robert M. Sklar, paramedic, is placed on an eighteen month probationary period beginning May 8, 2000.

The terms and conditions of this probationary status are as follows:

1. In accordance with N.J.A.C. 8:41-4.16(a), petitioner's clinical performance shall be monitored by a sponsoring Mobile Intensive Care Unit (MICU) Medical Director for consistency with acceptable standards of paramedic practice. This monitoring shall include complete review of all medical records of calls in which petitioner provide advanced life support services (i.e., 100% chart and tape reviews);

2. In accordance with N.J.A.C. 8:41-4.16(b), petitioner shall operate only when under the supervision of an approved pre-hospital life support provider or physician. Under no circumstances may petitioner act independently or in conjunction with another probationary provider on the same MICU vehicle;
3. In accordance with N.J.A.C. 8:41-4.16(c), a sponsoring MICU EMS Educator or Director shall monitor your progress and shall forward to the Department a progress report at the end of the probationary period; and
4. In accordance with N.J.A.C. 8:41-4.16(d), the Department shall have the right to restrict or otherwise limit petitioner's scope of practice. Failure to meet such conditions or any terms of the probationary period shall be deemed cause for revocation of petitioner's paramedic certification and/or other such action the Department deems appropriate.

In addition, the petitioner is required to satisfy all the requirements set forth at N.J.A.C. 8:41-4 and all other applicable regulations. Should petitioner meet the above conditions and demonstrate clinical competence, the provisional status imposed herein shall be lifted at the end of the eighteen month probationary period, if otherwise qualified in every respect to be awarded permanent certification as a paramedic. Failure to comply with the above conditions shall be grounds for revocation of petitioner's paramedic certification, in accordance with N.J.A.C. 8:41-4.16(d).



Christine Grant
Commissioner