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BEFORE THE  
CONTRA COSTA COUNTY  
EMERGENCY MEDICAL SERVICES AGENCY

In the Matter of the Application for  
Emergency Medical Technician Certification  
by:

OAH Case No.: 2015061195  
Enforcement Case No.: 15-0011

**JOSEPH WILEY POWERS**

**FINAL DECISION AND ORDER**  
[Govt. Code § 11509]

Respondent.

I. INTRODUCTION

This matter was heard on November 17, 2015, by David Goldstein, M.D., the Medical Director for the Contra Costa County Emergency Medical Services Agency ("Agency") pursuant to the provisions of the Administrative Procedure Act ("Act")<sup>1</sup>, subsequent to the hearing held on August 17, 2015, by Administrative Law Judge Adrienne J. Miller, of the Office of Administrative Hearings. Respondent was present at the hearing on August 17, 2015, and represented by his attorney, Christopher Varnell. Complainant was represented by Prehospital Care Coordinator Aaron Doyle.

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<sup>1</sup> The Act is codified at California Government Code Section 11370 et. seq.

1 II. PARTIES

2 1. David Goldstein, M.D., is the Medical Director of the Agency. The Medical Director  
3 makes this Decision in his official capacity as Medical Director of the Agency, and not  
4 otherwise.

5 2. Respondent applied for a certificate as an Emergency Medical Technician ("EMT")  
6 on March 30, 2015.

7 III. JURISDICTION

8 3. The power to adopt, modify or reject a proposed decision is granted to the Agency  
9 directly by the provisions of California Government Code, Section 11517, which provides:

10 (a) A contested case may be originally heard by the agency itself and subdivision

11 (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.

12 (b) If a contested case is originally heard before an agency itself, all of the  
following provisions apply:

13 (1) An administrative law judge shall be present during the consideration of the  
14 case and, if requested, shall assist and advise the agency in the conduct of the  
hearing.

15 (2) No member of the agency who did not hear the evidence shall vote on the  
decision.

16 (3) The agency shall issue its decision within 100 days of submission of the case.

17 (c)(I) If a contested case is originally heard by an administrative law judge alone,  
18 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  
19 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  
20 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  
21 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.

22 (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),  
23 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  
24 decision shall be deemed adopted by the agency. The agency may do any of the  
following:

25 (A) Adopt the proposed decision in its entirety.

1 (B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of  
2 the proposed decision.

3 (C) Make technical or other minor changes in the proposed decision and adopt it  
4 as the decision. Action by the agency under this paragraph is limited to a  
5 clarifying change or a change of a similar nature that does not affect the factual or  
6 legal basis of the proposed decision.

7 (D) Reject the proposed decision and refer the case to the same administrative law  
8 judge if reasonably available, otherwise to another administrative law judge, to  
9 take additional evidence. If the case is referred to an administrative law judge  
10 pursuant to this subparagraph, he or she shall prepare a revised proposed decision,  
11 as provided in paragraph (1), based upon the additional evidence and the  
12 transcript and other papers that are part of the record of the prior hearing. A copy  
13 of the revised proposed decision shall be furnished to each party and his or her  
14 attorney as prescribed in this subdivision.

15 (E) Reject the proposed decision, and decide the case upon the record, including  
16 the transcript, or upon an agreed statement of the parties, with or without taking  
17 additional evidence. By stipulation of the parties, the agency may decide the case  
18 upon the record without including the transcript. If the agency acts pursuant to  
19 this subparagraph, all of the following provisions apply:

20 (i) A copy of the record shall be made available to the parties. The agency may  
21 require payment of fees covering direct costs of making the copy.

22 (ii) The agency itself shall not decide any case provided for in this subdivision  
23 without affording the parties the opportunity to present either oral or written  
24 argument before the agency itself. If additional oral evidence is introduced before  
25 the agency itself, no agency member may vote unless the member heard the  
additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision  
includes authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue  
its final decision not later than 100 days after rejection of the proposed decision.  
If the agency elects to proceed under this subparagraph, and has ordered a  
transcript of the proceedings before the administrative law judge, the agency shall  
issue its final decision not later than 100 days after receipt of the transcript. If the  
agency finds that a further delay is required by special circumstance, it shall issue  
an order delaying the decision for no more than 30 days and specifying the  
reasons therefor. The order shall be subject to judicial review pursuant to Section  
11523.”

#### 24 IV. HISTORY

25 4. Pursuant to an appeal of the Statement of Issues regarding the denial of Respondent's

1 application for an EMT certificate, a hearing was noticed and held in this matter on August 17,  
2 2015, before an Administrative Law Judge with the Office of Administrative Hearings in  
3 Oakland, California. Respondent appeared at this hearing and was represented by counsel.

4 5. On or about September 12, 2015, the Agency received a copy of the Proposed  
5 Decision and Order which was dated September 9, 2015. The Agency served a copy of the  
6 Proposed Decision on Respondent and his attorney via U.S. mail on October 15, 2015, together  
7 with a Notice of Written Hearing, and informed him at that time that it had not adopted the  
8 Proposed Decision and Order. The Agency notified Respondent that he could present written  
9 argument to the Medical Director on or before November 16, 2015. Respondent presented  
10 written argument to the Agency on November 9, 2015, but did not provide any additional  
11 evidence; Respondent recapitulated testimony from the hearing.

12 6. The Agency ordered a copy of the transcript from the hearing. The Agency received  
13 a copy of the transcript of the hearing on or about October 30, 2015

#### 14 V. EVIDENCE SUBMITTED AT WRITTEN HEARING

15 7. Pursuant to the Notice of Written Hearing, Respondent was allowed to support his  
16 case with his written argument for adoption or modification of the Proposed Decision up to one  
17 business day prior to the hearing, or November 16, 2015 .

18 8. The Agency considered all evidence submitted by the Respondent, which included  
19 Respondent's written argument. The original Statement of Issues, the transcripts from the  
20 hearing, the evidence submitted at the hearing, the Administrative Law Judge's Proposed  
21 Decision, and the additional argument submitted by Respondent were considered in this Decision  
22 and Order.

#### 23 VI. DISCUSSION

24 9. Respondent's application for an EMT certificate was subject to denial by the Agency  
25

1 due to his failure to disclose a 1997 theft related misdemeanor conviction for “defrauding an inn-  
2 keeper” on his initial application for an EMT certificate. (Penal Code Section 537, Defrauding  
3 an Inn-Keeper.; Proposed Decision, p. 1 ¶ 3). The conviction involved a “dine and ditch” at  
4 Denny’s restaurant in Pleasant Hill, California. (RT p.32,l.18-24). The conviction was  
5 undisputed by the Respondent at the hearing; Respondent’s defense to the Agency’s decision to  
6 deny his application for not disclosing the criminal conviction is that he did not recall having  
7 ever been convicted of a crime when he applied for an EMT certificate on March 24, 2015.

8 10. The controlling authority in this matter is California Health and Safety Code  
9 section 1798.200, and California Code of Regulations, section 100173, subdivisions (b)(5) and  
10 (c)(l) of Title 22, Division 9, Chapter 4, Article 9. The relevant provision of the Act that  
11 provides for the denial of an EMT certificate is Health and Safety Code section 1798.200(a),  
12 which provides in pertinent part as follows:

13 ...

14  
15 (3) The medical director of the local EMS agency may, upon a  
16 determination of disciplinary cause and in accordance with  
17 regulations for disciplinary processes adopted pursuant to Section  
18 1797.184, deny, suspend, or revoke any EMT-I or EMT-II  
19 certificate issued under this division, or may place any EMT-I or  
20 EMT-II certificate holder on probation, upon the finding by that  
21 medical director of the occurrence of any of the actions listed in  
22 subdivision (c) and the occurrence of one of the following:

23 ...

24 (B) Either the employer of an EMT-I or EMT-II further  
25 determines, after an investigation conducted under paragraph (1),  
or the medical director determines after an investigation conducted  
under paragraph (2), that the conduct requires disciplinary action  
against the certificate.

(4) The medical director of the local EMS agency, after  
consultation with the employer of an EMT-I or EMT-II, may  
temporarily suspend, prior to a hearing, any EMT-I or EMT-II  
certificate or both EMT-I and EMT-II certificates upon a  
determination that both of the following conditions have been met:

(A) The certificate holder has engaged in acts or omissions that

1 constitute grounds for revocation of the EMT-I or EMT-II  
2 certificate.

3 (B) Permitting the certificate holder to continue to engage in the  
4 certified activity without restriction would pose an imminent threat  
5 to the public health or safety.

6 ...

7 (c) Any of the following actions shall be considered evidence of a  
8 threat to the public health and safety and may result in the denial,  
9 suspension, or revocation of a certificate or license issued under  
10 this division, or in the placement on probation of a certificate  
11 holder or licenseholder under this division:

12 ...

13 (1) Fraud in the procurement of any certificate or license under this  
14 division.

15 ...

16 (5) The commission of any fraudulent, dishonest, or corrupt act  
17 that is substantially related to the qualifications, functions, and  
18 duties of prehospital personnel.

19 ...

20 (7) Violating or attempting to violate directly or indirectly, or  
21 assisting in or abetting the violation of, or conspiring to violate,  
22 any provision of this division or the regulations adopted by the  
23 authority pertaining to prehospital personnel.

24 ...

25 11. Respondent's explanations for not disclosing his conviction on his application for an  
EMT certificate were not persuasive. Moreover, Respondent's conduct after the initiation of the  
Agency's administrative investigation and during the course of the administrative hearing is  
cause for great concern and is an additional basis for the decision to deny Respondent's  
application for an EMT certificate.

12. Respondent, when confronted with the omission of his criminal conviction from his  
application for an EMT certificate, chose to continue to engage in less than forthcoming conduct  
with the Agency. Among the choices available to Respondent, Respondent could have (1)

1 admitted that he subsequently recalled having been convicted of defrauding an inn-keeper on  
2 March 13, 1997, and elected to correct his application; (2) admitted that he omitted the  
3 conviction from his application; (3) testified in a truthful and forthcoming manner. Instead,  
4 Respondent chose to continue to “not recall” the conviction and engage in further effort to prove  
5 he had never been convicted despite the fact he admitted to signing the Order of Probation and  
6 conviction paperwork. (RT p.37, l.22; p.38, l. 1-5). These efforts included Respondent sending  
7 his wife to the courthouse to search court records for a conviction Respondent repeatedly  
8 claimed did not exist. Respondent testified that his wife was unable to locate any records of  
9 conviction. However, Respondents testified his lawyer was able to locate records and provided  
10 him with docket information that included the date and type of charges. (RT p.35, l.3-10; p.50,  
11 l.4-20). There is no logical explanation for why one would search for conviction records that one  
12 did not believe to exist. Through all of these efforts the Respondent’s memory that he appeared  
13 in court, entered a plea of guilty to a misdemeanor, signed the Order of Probation, and was  
14 sentenced to probation and ordered to pay a fine never improved.

15  
16 13. Even though Respondent could not recall being convicted of a crime, Respondent was  
17 able to recall being stopped by the police a day or two after he “dine and ditched” from Denny’s.  
18 In fact, Respondent even recalls that the traffic stop was for an issue involving a license plate.  
19 (RT p.36, l.18-23; p.36, l. l.). Respondent’s memory also has not failed him in regard to being  
20 stopped by the police and receiving a series of “fix it ticket’s” in 1996 and 1997. Respondent  
21 even recalls that one of the fix it tickets was for a broken windshield on a Volkswagon bug he  
22 had been working on at the time. (RT p.39, l.12-24).

23 14. The fact that Respondent could vividly recall the details of these events occurring  
24 around the same time, recalled the “defrauding an inn-keeper” parlance during the administrative  
25 interview with Agency investigators, but had no recollection of appearing in court and having  
been convicted of defrauding an inn-keeper, is substantial evidence that the Respondent was

1 dishonest when he did not disclose his criminal conviction on his application for an EMT  
2 certificate.

3 15. Respondent's lack of candor during the administrative investigation and the  
4 administrative hearing is a separate and distinct basis for denying Respondent's application for  
5 an EMT certificate. Respondent testified that he did not recall that he had been convicted of  
6 defrauding an inn-keeper until after he last met with Agency investigators on April 15, 2015.  
7 (RT p.31, l.2-19). Respondent testified he remembered that he had been convicted when driving  
8 home from this meeting. (RT p.33, l.3-19). Respondent's statement is inconsistent with his later  
9 testimony where Respondent submitted an e-mail to Agency investigators on April 28, 2015,  
10 claiming he had a letter from the District Attorney (which was not offered or admitted into  
11 evidence) that he had never been convicted of a criminal offense. (RT p.45, l.2-22).

12 Notwithstanding Respondent's recollection of his conviction on the drive home on April 15,  
13 2015, he nonetheless chose to acquire and attempt to use a letter from the District Attorney  
14 purporting that he had never been convicted of a crime in an e-mailed dated April 28, 2015.

15 16. Respondent's testimony was inconsistent. During the hearing Respondent was  
16 steadfast that he had no recollection of being convicted of a criminal offense; however, the next  
17 moment he recalls going to court but has no memory of what happened when he appeared in  
18 court. (RT p.42, l. 14-25; p.43, l.1-11).

19 17. The application completed by Respondent states clearly, in boldface type, with  
20 portion in red font color, that the applicant must disclose any felony or misdemeanor offense in  
21 California or any other state or place. The application does not limit the number of years that  
22 passed since the conviction. Respondent never made any attempt to correct his application –  
23 even after he allegedly learned he had been convicted of a crime. (RT p.53, l.2-6).

24 18. Respondent was inconsistent when he answered the Agency investigators questions  
25



1 and evasive to questions asked by the Agency during the hearing. The Agency determined that  
2 Respondent was not credible when he testified he had no recollection of being convicted of the  
3 crime defrauding an inn-keeper in 1997.

4 19. The Agency takes any dishonesty extremely seriously. Truthfulness and the Agency's  
5 ability to trust the integrity of its EMTs is critical in light of the EMTs responsibilities and the  
6 vulnerable population they serve. EMT practitioners, by virtue of their state certification, have  
7 unsupervised, intimate, physical and emotional contact with patients at a time of maximum  
8 physical and emotional vulnerability, as well as unsupervised access to personal property. In this  
9 capacity, they are placed in a position of the highest public trust, even above that granted to other  
10 public safety professionals and most other health care providers. While police officers require  
11 warrants to enter private property, and are subject to substantial oversight when engaging in  
12 "strip searches" or other intrusive practices, EMT's are afforded free access to the homes and  
13 intimate body parts of patients who are extremely vulnerable, and who may be unable to defend  
14 or protect themselves, voice objections to particular actions, or provide accurate accounts of  
15 events at a later time.

## 16 VII. DECISION AND ORDER

17 The Medical Director of the Agency therefore finds the following:

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

23 **WHEREAS**, the Respondent was afforded the opportunity to present written argument,  
24 and exercised the opportunity without counsel; and

25 **WHEREAS**, the Medical Director of the Emergency Medical Services Agency has  
considered the record, including the transcript, and now finds that **GOOD CAUSE**

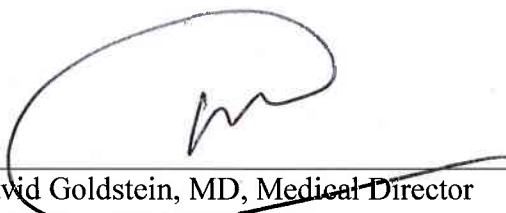
1 **APPEARING THEREFORE**, the **PROPOSED DECISION** of the Administrative Law Judge  
2 is not adopted by the Medical Director of the Emergency Medical Services Agency as its  
3 Decision in this matter, **EXCEPT FOR**:

- 4 1. Paragraphs 2 of page 5, of the **LEGAL CONCLUSIONS**, the following being  
5 submitted therefore: The Agency adopts the **PROPOSED DECISION** that fraud  
6 in the procurement of a certificate was not proven at the hearing.
- 7 2. The **ORDER** on Page 6 of the **PROPOSED DECISION**, the following being  
8 submitted therefore: Respondent **JOSEPH WILEY POWERS's** application for  
9 EMT certification is **DENIED**.

10 Pursuant to Government Code section 11522, Respondent is entitled to reapply for an  
11 EMT certificate again in one year from the date of this decision. If Respondent chooses to  
12 reapply again at such time, Respondent should submit evidence sufficient to support the issuance  
13 of an EMT certificate, including the disclosure of any criminal convictions and other factors as  
14 outlined in California Code of Regulations Title 22, Division 9, Chapter 4, Article 9, section  
15 100175.

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

18 Dated: February 8, 2016

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22 \_\_\_\_\_  
23 David Goldstein, MD, Medical Director  
24 Emergency Medical Services  
25 Contra Costa County Emergency Medical Services Agency

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**DECLARATION OF SERVICE BY U.S. MAIL**

In the Matter of the Emergency Medical Technician certification Held by:

**JOSEPH WILEY POWERS**  
**LEMSA Case No.: 15-0011**  
**OAH Case No.: 2015061195**

I, LETICIA ANDREAS, declare:

I am employed by the County of Contra Costa - Emergency Medical Services Agency. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Agency for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Agency has the postage affixed by the County's mailroom and is thereafter deposited with the United States Postal Service that same day in the ordinary course of business.

On February 8, 2016, I caused the following attached documents to be served:

- FINAL DECISION AND ORDER**

By placing a true copy thereof enclosed in a sealed envelope for the affixation of fully prepaid postage by the County of Contra Costa's Central Services Department (Mail Department), and a true copy thereof enclosed in a sealed envelope postage to be affixed by the Contra Costa County Central Services (Mailroom), and to be thereon fully prepaid in the internal mail collection system at the Contra Costa County Emergency Medical Services Agency, 1340 Arnold Drive, Suite 126, Martinez, California 94553, addressed as follows:

**Mr. Joseph Wiley Powers**  
1000 Canyon Hills Road  
San Ramon, CA 94582  
*(Via U.S. Registered Mail)*

**Mr. Christopher Varnell, Esq.**  
1255 Treat Boulevard, Suite 300  
Pleasant Hill, CA 94597  
*(Via U.S. First-Class Mail)*

Dated: February 8, 2016



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LETICIA ANDREAS