

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Amended Accusation
Against:

JAMES A. BRASIEL,

License No. P03188

Respondent.

Case No. 15-0080

OAH No. 2015100195

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on March 7, 2016, in Oakland, California.

Stephen J. Egan, Senior Staff Counsel, represented complainant Sean Trask, Chief, Emergency Medical Services Authority, EMS Personnel Division.

Joe Rose, Attorney at Law, represented respondent James A Brasiel, who was present at the hearing.

The matter was submitted for decision on March 7, 2016.

FACTUAL FINDINGS

1. On May 14, 1994, the Emergency Medical Services Authority (EMSA) issued Emergency Medical Technician-Paramedic License Number P03188 to respondent James A. Brasiel. This license will expire on May 31, 2016, and has been temporarily suspended concurrently with the filing of the accusation in this matter.

2. In February, 2015, the FBI detected that illegal videos had been downloaded to an IP address registered to respondent's residence in Concord. On March 12, 2015, Concord Police and FBI Special Agent Robert Basanez served a search warrant on respondent at his residence. Computers and hard drives were seized from the residence. Respondent was interviewed by Basanez and Concord Police Detective Tamara Roberts. During this interview, respondent confessed to downloading and watching child pornography. Numerous videos depicting underage children engaged in sex acts were discovered following a forensic examination of the seized computer equipment. Respondent was arrested and

charged with one felony count of violating Penal Code section 311.11, subdivision (c)(1) (possession of child pornography containing more than 600 unlawful images, including more than ten images involving a prepubescent minor or minor under age 12).

3. On January 12, 2016, respondent was convicted in the Superior Court of California, County of Contra Costa, pursuant to his plea of no contest, of a misdemeanor violation of Penal Code section 288.2, subdivision (a)(2) (distribution of harmful matter to a minor). Respondent was placed on court probation for three years, on terms and conditions which included serving nine months in jail (through electronic home detention), submitting to searches, having no contact with minors other than his son (unless authorized by the probation officer), and attending a sex offender treatment program. Respondent was not ordered to register as a sex offender pursuant to Penal Code section 290.

4. During his interview with the police officers, respondent initially denied having child pornography and stated that he only downloaded some "glam model" videos featuring teens wearing lingerie.

Eventually, respondent acknowledged downloading child pornography. Respondent admitted downloading videos for about a year and a half. He had seen a story on the news about someone getting arrested for child pornography and was curious about how easy it would be to obtain.

Respondent insisted that he was only interested in videos of older teen girls and searched for videos of 13 or 14 year old girls. He admitted that he viewed them for sexual gratification. He denied seeking out or having an interest in videos of younger children. When asked why it appeared that he had searched for and downloaded videos of younger children, respondent stated that these videos would come up when he was searching for other material. When a video of younger girls did come up, he would stop watching it and delete it because it did not interest him. Sometimes he might stumble on something and watch it out of curiosity and be disgusted by it and wonder why the people making it were not in jail.

He acknowledged having seen a well-known video called "Tara" which features a young girl and stated that he watched it in "shock and awe" because the video depicts a girl being sexually assaulted by her father.

Throughout the interview, respondent expressed concern about going to jail and about not being able to participate in Boy Scouts. He stated that he would never touch a child. He saved the videos on his hard drive because he thought sharing them through peer to peer software programs was illegal.

Respondent's Evidence

5. Respondent became an emergency medical technician in 1989 and a paramedic in 1994. He later attended medical school and holds an M.D. degree and a Masters in Health Administration degree. He has never been licensed as a medical doctor.

Since obtaining his M.D., respondent has primarily worked as an educator and consultant. He is currently the medical director of the East Bay Regional Park District Police Department's air support unit flight paramedic program. He owns a consulting firm providing educational programs and quality improvement. He has taught numerous Emergency Medical Technician and Paramedic courses. Respondent has also written journal articles and co-authored textbooks and given lectures. Besides a brief period in 2012, respondent has not treated patients since going to medical school.

6. Respondent expressed remorse for making a "mistake." Respondent explained that his friend and former partner, Millard Starling, committed suicide on April 8, 2014, after having had his paramedic license revoked. Respondent and others were helping look for Starling when he was discovered with two gunshot wounds to his head. Respondent came upon the scene and was not allowed to get close and help. Respondent felt "numb." He sought peer counseling and help from a therapist he had used in the past. He blamed himself for his friend's suicide and lost weight and was unable to sleep. Respondent spent time at night searching on the internet. He saw a news story about child pornography on the internet and was curious about how easy it was to obtain it. When the police came to his house to serve the search warrant, respondent initially thought it was a prank.

When asked at the hearing about what kind of material he watched, respondent said that it was "grainy stuff, Russian stuff, kids dancing around and playing games." He would not elaborate further, saying that he did not remember the content of the videos because it was "more than a year ago," and that "I buried that."

He stated that he would never touch a child in a sexual manner and denied victimizing the children in the videos. Respondent's eight-year-old son was interviewed after respondent's arrest and was allowed to stay in the home.

Respondent stated that he is paying for his "wrong deed" and that he has been "hurt deeply." He has lost friends and one of his siblings over this. He has been bullied on-line and subjected to public shaming. Respondent was active in the Boy Scouts from second grade through college. He became active again when his son became a scout. Respondent was a scout leader and was slated to become a cub master. Respondent stated that in light of his conviction, his relationship with the Boy Scouts "is all gone, it kills me."

Respondent stated that he has "come to learn through counseling" that he made a "grievous mistake." He now understands that by downloading and watching child pornography, he helped create a demand for it.

Respondent believes he should retain his license because he has never harmed a patient and has been a champion for the sick and injured.

7. Respondent's testimony was not forthcoming. He minimized his conduct and testified implausibly that he does not remember the content of the videos he downloaded.

8. Respondent's therapist, Cynthia Rinker, L.M.F.T., was qualified as an expert and testified on respondent's behalf. Rinker is certified as a sex offender therapist and has almost completed the certification process for certification as a sex addiction therapist. She has been treating respondent in weekly therapy sessions since November 17, 2015. Rinker has diagnosed respondent with Post-Traumatic Stress Disorder, caused by exposure to his friend's suicide and by repeated exposure to aversive and threatening events during his years working in the emergency medical profession. She believes that respondent was watching pornography in an attempt to "escape negative emotions." Post-Traumatic Stress Disorder is common in first responders. Some develop sex addiction, others engage in other addictive behavior such as gambling or substance abuse. She stated that trauma can effect one's judgment.

Rinker stated that attraction to post-pubescent adolescents is normative, although acting on such attraction is illegal. She stated that not all individuals who download child pornography are sexual deviants. She further testified that viewing child pornography does not necessarily mean that the individual is pre-disposed towards sexual attraction to children. However, viewing such material can create a sexual interest towards children.

Based on an assessment of risk factors that correlate with re-offending, Rinker believes that respondent is at low risk for re-offending. Rinker also believes that respondent is at low risk to engage in sexual contact with children, based on research suggesting that only a small number of offenders whose only offense is possession of child pornography go on to engage in sexual contact with children. Rinker believes that respondent presents a low risk of harming a patient.

Rinker has not discussed the details of the content of the pornography during counseling. She stated that she anticipates doing so during a later phase of treatment. She anticipates respondent's treatment will last one to two years.

9. Paul H. Abley testified at the hearing as a character witness. Abley is an emergency medical technician and has known respondent since 1993. At the time, respondent was operations manager for Antioch Ambulance and hired Abley. Abley considers respondent to be a close friend and mentor. They have worked side by side with patients of all ages during thousands of calls from 1993 through 1996, and again from 2003 through 2004. Abley believes that respondent is honest and professional and possesses stellar skills. He never observed respondent behave in an unethical or sexually inappropriate manner. Abley has attended a re-certification course taught by respondent in 2008. Abley is aware that respondent downloaded child pornography.

10. Stephen Martin testified at the hearing as a character witness. Martin has been an emergency medical technician for 15 years. He has known respondent since 2010. They have worked together as instructors at Los Medanos College and at United Heart Training Center. Martin testified that respondent has a reputation as a knowledgeable, honest, and dedicated professional. Martin was working with respondent at Los Medanos in the Spring of 2015. He observed a change in respondent's demeanor and mood. He spoke with

respondent a couple of times and learned that respondent was recovering from his friend's suicide. Martin learned that respondent had been arrested and saw negative comments about the arrest on Facebook forums.

11. Raymond Leonard testified at the hearing as a character witness. Leonard is a registered nurse and has known respondent for about 22 years. Leonard worked as an emergency medical technician and attended paramedic school. Leonard worked with respondent on an ambulance. Leonard has never observed respondent engaging in inappropriate touching of children or expressing sexual interest in children. Leonard recalled respondent calling him in 2014 to tell him about his friend's suicide. Respondent told Leonard that he found his friend shot in the head and voiced concerns that he could have prevented it.

Leonard has spoken to respondent about his conviction. Leonard has three teen-aged daughters and trusts respondent around them.

12. Respondent submitted many letters that were written on his behalf by friends, family, colleagues, his priest, and two therapists. Respondent is described as a dedicated and knowledgeable paramedic and medical educator, and as a loving and supportive husband, father, and friend. Respondent is also described as having actively volunteered in the emergency medical community and with the Boy Scouts. Most letter writers mentioned respondent's friend's suicide as triggering depression and leading to his conviction.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

First Cause for Discipline

2. Health and Safety Code section 1798.200, subdivision (c)(5), provides that disciplinary action may be taken against a licensee who commits any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel. Respondent's downloading of child pornography constituted a corrupt act.

Therefore, by reason of Factual Findings 2, 4, and 6, cause is established to discipline respondent's license under Health and Safety Code section 1798.200, subdivision (c)(5).

Second Cause for Discipline

3. Health and Safety Code section 1798.200, subdivision (c)(12)(C), provides that disciplinary action may be taken against a licensee for unprofessional conduct consisting of the commission of any sexually related offense specified under Penal Code section 290.

Penal Code section 290 establishes which crimes require sex offender registration. Respondent was convicted of a misdemeanor violation of Penal Code section 288.2, subdivision (a)(2). Penal Code section 290 establishes that individuals convicted of a felony violation of Penal Code section 288.2 must register as sex offenders. Respondent therefore was not required to register as a sex offender pursuant to Penal Code section 290. The evidence, including respondent's testimony, established that respondent possessed child pornography. The underlying conduct meets the elements of Penal Code section 311.11, which criminalizes the knowing possession of any matter, the production of which involved the use of a person under 18 years age depicted personally engaging in or simulating sexual conduct. Penal Code section 311.11 is specified under Penal Code section 290. Therefore, it was established that respondent committed a sexually related offense specified under Penal Code section 290, notwithstanding the fact that he was not convicted of an offense under Penal Code section 290.

Accordingly, by reason of Factual Findings 2, 4, and 6, cause is established to discipline respondent's license under Health and Safety Code section 1798.200, subdivision (c)(12)(C).

Third Cause for Discipline

4. Health and Safety Code section 1798.200, subdivision (c)(6), provides that disciplinary action may be taken against a licensee who is convicted of a crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. Penal Code section 288.2, subdivision (a)(2), is a crime that is substantially related to the qualifications, functions, and duties of prehospital personnel who may be called upon to treat vulnerable young children during the performance of their duties.

By reason of Factual Finding 3, cause is established to discipline respondent's license under Health and Safety Code section 1798.200, subdivision (c)(6).

Fourth Cause for Discipline

5. Pursuant to California Code of Regulations, title 22, section 100174, a paramedic license shall be revoked if the licensee has committed any sexually related offense specified under section 290 of the Penal Code. As discussed above in Legal Conclusion 3, respondent was not convicted of an offense specified under Penal Code section 290, but did in fact commit an offense that is specified under Penal Code section 290. Accordingly, by reason of Factual Findings 2, 4, and 6, cause exists to revoke respondent's license.

Disciplinary Considerations

6. California Code of Regulations, title 22, section 100176, provides that when considering the denial, placement on probation, suspension, or revocation of a license

pursuant to Health and Safety Code section 1798.200, the following criteria shall be considered:

1. Nature and severity of the act(s) or crimes under consideration.
2. Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, placement on probation, suspension, or revocation.
3. The time that has elapsed since commission of the act(s) or crimes(s) referred to above.
4. The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.
5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the penal Code.
6. Evidence, if any, of rehabilitation submitted by the person.

7. EMSA's Recommended Guidelines for Disciplinary Orders require that the administrative law judge use the following disciplinary consideration factors as a guide in making a recommendation for discipline:

1. Nature and severity of the act(s) or crimes under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Prior warnings on record or prior remediation;
6. Number and/or variety of current violations;
7. Aggravating evidence;

8. Mitigating evidence;
9. Any discipline imposed by the paramedic's employer for the same occurrence of that conduct;
10. Rehabilitation evidence;
11. In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation;
12. Overall criminal record;
13. Time that has elapsed since the act(s) or offense(s) occurred;
14. If applicable, evidence of expungement proceedings pursuant to Penal Code section 1203.4.

Analysis

8. Engaging in acts that are exploitative of children is incompatible with the duties of a licensee. Therefore, substantial evidence of rehabilitation is required to justify retaining respondent's license.

Respondent has been licensed for more than 20 years and has a reputation as a highly educated and highly skilled paramedic and educator. There has been no other discipline against his license and he has no previous criminal record. Respondent is being treated by an expert in sex offenders and has been diagnosed with Post-Traumatic Stress Disorder.

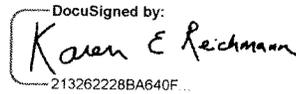
Respondent's conduct of downloading numerous videos depicting children engaged in sex acts was egregious and took place over a period of several months. Respondent was convicted only two months ago and remains on probation until January 2019, under terms which prevent any contact with minors other than his own son.

Respondent expressed little empathy for the victims of his offense and little insight into why his conduct is wrong. Instead, he expressed self-pity at the personal repercussions of his arrest and conviction. Respondent demonstrated a lack of candor by providing testimony at the hearing that was not forthright. Although respondent's expert opined that respondent is at a low risk of re-offending, respondent has only undergone treatment for a few months. Respondent is clearly in the very early stage of rehabilitation. His evidence of rehabilitation is far outweighed by the severity of the underlying conduct. Revocation of respondent's license is necessary for the protection of the public.

ORDER

Emergency Medical Technician-Paramedic License Number P03188, issued to respondent James A. Brasiel, is revoked.

DATED: March 10, 2016

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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

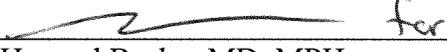
In the Matter of the Emergency Medical Technician- Paramedic License of:) Enforcement Matter No.: 15-0080
) OAH No.: 2015100195
)
JAMES A. BRASIEL) **DECISION AND ORDER**
License No. P03188)
Respondent.)
_____)

The attached Proposed Decision is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective 15 days after the date below. It is so ordered.

DATED:

3-14-16



Howard Backer MD, MPH
Director
Emergency Medical Services Authority