

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
against:

JAMES BURNS, EMT-P,

Respondent.

Case No. 06-0095

OAH No. L2007080288

PROPOSED DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in Laguna Hill, California, on February 19, 2008.

David Chan, Deputy Attorney General, represented complainant Daniel R. Smiley, Chief Deputy Director, Emergency Medical Services Authority, State of California.

Fredrick M. Ray, attorney at law, represented respondent James Burns who was also present at the hearing.

The matter was submitted on February 19, 2008.

FACTUAL FINDINGS

1. Statement of issues number 06-0095, dated July 10, 2007 was filed by complainant, Daniel R. Smiley (complainant), in his official capacity as Chief Deputy Director of the Emergency Medical Services Authority for the State of California (the Authority) against respondent James Burns (respondent). The statement of issues alleges respondent applied for an Emergency Medical Technician-Paramedic (EMT-P) license, was given a provisional EMT-P license, the provisional license was revoked, and the Authority reinstated the denial of respondent's application.

2. On July 8, 2004, respondent submitted an application to the Authority for an EMT-P license. On March 18, 2005, the Authority denied respondent's application due to prior criminal convictions that were substantially related to the qualifications, functions, and duties of a licensee and for failure to disclose those criminal convictions on his application. Respondent requested a hearing on the denial of his application in 2005. On May 24, 2005,

the Authority offered to grant respondent a provisional EMT-P license and respondent agreed to several terms and conditions of a provisional license. On June 3, 2005, the Authority issued respondent a provisional EMT-P which remained in full force and effect until April 2, 2007. On April 2, 2007, the Authority revoked respondent's provisional license and reinstated its original denial of his application for an EMT-P license. The Authority took this action due to respondent's violation of terms and conditions of the provisional license. Subsequently, respondent requested a hearing to challenge the denial of his application for a license. The proceeding herein followed.

3. Respondent has the following criminal history:

A. In April 1990, respondent pleaded guilty to and was convicted in Orange County, California, of driving under the influence of alcohol.

B. In May 1995, respondent was arrested for driving under the influence of alcohol and he pleaded guilty to and was convicted in the County of Riverside, California, of reckless driving.

C. In November 2003, in the County of Riverside, California, respondent pleaded guilty to and was convicted to driving under the influence of alcohol.

These convictions were all related to respondent's abuse of alcohol and were substantially related to the qualifications, functions, and duties of an EMT-P licensee.

4. On May 27, 2005, respondent entered into an agreement for his provisional license to be issued by the Authority. Under the terms of the provisional license, respondent agreed not to engage in any conduct that would be grounds for discipline. Respondent also agreed to abstain from the consumption of all alcohol. The provisional license further provided that the Authority would consider certain acts, if committed by respondent, to be a threat to the public health and safety and could result in the revocation of his license. Those acts included the conviction of any crime substantially related to the qualifications, functions, and duties of a licensee and the addiction to the excessive use of alcohol. The Authority issued the provisional license on June 3, 2005.

5. Subsequently, less than one year after respondent received his provisional license, respondent was arrested for public intoxication in April 2006. Respondent was arrested on April 28, 2006 in Carlsbad, California when he was away for the weekend with his wife. He began drinking when he and his wife arrived at the hotel and he then became involved in a heated argument with his wife. Police were called to the hotel due to the argument. When the police arrived they found respondent in his room clearly intoxicated and agitated with numerous items broken and thrown around the room. The police advised respondent to stay in his room and sleep it off while his wife left to get something to eat and cool off. The police warned respondent that if he caused any further disturbance at the hotel, he would be removed from the premises. The police officers left and went to the parking lot to prepare to leave when respondent came outside in an aggressive manner looking for his

wife. Respondent was agitated and belligerent when the police officers approached him. The officers determined that respondent appeared to be a danger to himself and others so at that point they arrested him for a violation of Penal Code 647, subdivision (f) for public intoxication. Respondent spent the night in jail and was released the next day without charges being pursued. He paid for the damages he caused in the hotel room and wrote a letter of apology to the police officers.

6. Thereafter, in March 2007, respondent was arrested again in an alcohol-related incident. On March 5, 2007, he was arrested after he attended a concert with a friend and was intoxicated in public. Police found respondent lying on the ground passed out in a very intoxicated state and took him into custody. On May 17, 2007, in Ventura County, California, respondent was convicted of disturbing the peace.

7. The April 2006 arrest and the May 2007 conviction for alcohol-related incidents clearly violated the terms of respondent's provisional license. Respondent failed to abstain from the consumption of alcohol and continued to violate the law.

8. All of respondent's criminal activities have been related to his ongoing struggle with alcoholism. Respondent is now sober and seems to have completely turned his life around. In April 2007, respondent sought out help from the Substance Abuse Assistance Program (SAAP) offered by his employer, Cal Fire, and he signed a "last chance agreement" wherein he agreed to complete numerous requirements for rehabilitation during a two year period of time. As part of the SAAP program, respondent completed a 28 day residential rehabilitation program and is now working the 12-step program of Alcoholics Anonymous (AA). He has a sponsor who actively works with respondent on his sobriety and he attends AA meetings regularly, if not daily. He also obtained regular therapy to assist in his rehabilitation and has reached out to help others struggling with recovery. Respondent has now clearly dedicated himself to the goal of not returning to his old way of life. His devotion to the ongoing process of staying sober should serve him well in this difficult journey. Respondent has made tremendous strides towards rehabilitation and he should be commended for his continuous efforts and dedication to sobriety.

9. However, respondent has gone through rehabilitation before and he nevertheless relapsed while he held a provisional license and was employed as a paramedic. Respondent had been sober for one year and four months when he began drinking again and was arrested in April 2006. Then he was sober again and assured his employer such an incident would not happen again, and yet, he was found drunk and passed out in public in March 2007. This last alcohol-related arrest and conviction was just one year ago. Respondent's sobriety is still too new. Due to his ongoing struggle with recovery, there is simply too much risk that respondent could resort to his old ways of alcohol abuse and crime in difficult times. The Authority must be able to rely on its licensees who work in life and death situations. Respondent has only been sober this time for one year. Clearly, he intends to stay sober and is doing everything he can to accomplish that goal. However, he has relapsed before and therefore, he needs more time to establish a track record as a clean and sober, law abiding citizen. He should not yet be entrusted with a license as an EMT-P. It is

not in the public interest to grant respondent's application for a license as an EMT-P at this time.

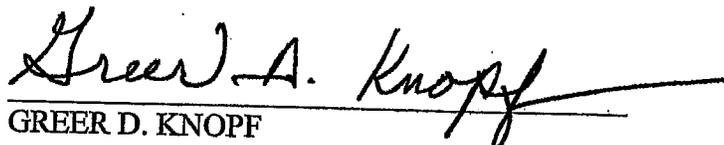
LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application for a license as an EMT-P pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(6) and Title 22, California Code of Regulations, section 100175, subdivision (a) in that respondent was convicted of crimes that were substantially related to the qualifications, functions and duties of an EMT-P licensee, as set forth in Findings 2-9.
2. Cause exists to deny respondent's application for a license as an EMT-P pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(9) and Title 22, California Code of Regulations, section 100175, subdivision (a) in that respondent suffers from addiction to the excessive use of or misuse of alcohol, as set forth in Findings 2-9.
3. Cause exists to deny respondent's application for a license as an EMT-P pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(9) and Title 22, California Code of Regulations, section 100175, subdivision (a) in that respondent failed to obey all laws and failed to abstain from the consumption of alcohol, in violation of his provisional license, as set forth in Findings 2-9.

ORDER

The application of James Burns submitted to the Emergency Medical Services Authority for licensure as an Emergency Medical Technician-Paramedic is hereby denied.

DATED: 3/18/08


GREER D. KNOFF
Administrative Law Judge
Office of Administrative Hearings