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10 BEFORE THE
11 EMERGENCY MEDICAL SERVICES AUTHORITY
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:)
14) Enforcement Matter No.: 10-0151
15) OAH No. 2011010811
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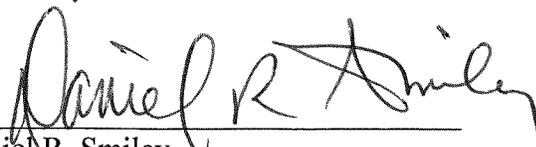
BRANDON BURRUSS
License #P25728
Respondent.

DECISION AND ORDER OF THE
EMERGENCY MEDICAL SERVICES
AUTHORITY

15 The attached Proposed Decision of the Administrative Law Judge is hereby adopted by
16 the Emergency Medical Services Authority, State of California, as its decision in the above-
17 entitled matter.

18 This Decision and Order shall become effective on the 10th day of August, 2011.

19 IT IS SO ORDERED this 11th day of July, 2011.

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22 Daniel R. Smiley,
23 Acting Director
24 EMERGENCY MEDICAL SERVICES
25 AUTHORITY, STATE OF CALIFORNIA

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical
Technician-Paramedic License Held by:

BRANDON BURRUSS,

License No. P25728

Respondent.

Enforcement Matter No. 10-0151

OAH No. 2011010811

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 1, 2011.

Senior Staff Counsel Cynthia L. Curry represented complainant Sean Trask, Chief, EMS Personnel Division, Emergency Medical Services Authority, State of California.

Respondent Brandon Burruss represented himself, assisted by his father, Richard Burruss.

The matter was submitted on June 1, 2011.

FACTUAL FINDINGS

1. Respondent Brandon Burruss holds Emergency Medical Technician-Paramedic (EMT-P) license number P25728. The license was first issued on January 30, 2008, and is valid through January 30, 2012.

2. Complainant Sean Trask, acting in his official capacity as Chief, EMS Personnel Division, Emergency Medical Services Authority (EMSA), State of California, filed the accusation against respondent. Respondent filed a notice of defense.

3. On April 29, 2010, respondent was convicted on his plea of no contest of a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or higher), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for three years on the conditions (among others) that he serve two days in the work alternative program; pay fines, fees and restitution in the

approximate amount of \$1,800; enroll in and complete a nine-month alcohol program; and not drive with any measurable alcohol in his system.

Respondent has completed his work alternative obligation, paid his fines, fees and restitution in full, and completed the nine-month alcohol program. The only condition that remains for him to satisfy the terms of his criminal probation is the passage of time. Respondent's probation is scheduled to terminate on April 29, 2013.

4. The facts and circumstances leading to this conviction are that respondent spent the night of July 10 and the early morning hours of July 11, 2009, socializing with a friend he had not seen in some time, and drinking alcohol. Respondent decided to drive home. He was pulled over at about 2:20 a.m. by a sheriff's deputy who observed him driving too fast and erratically. Respondent agreed to give a blood sample, which revealed a blood alcohol concentration of over 0.20 percent.

5. Respondent is 29 years old and single. He lives with his parents. Respondent served in the United State Coast Guard for six years, and was granted an honorable discharge in 2006. He completed paramedic school in 2007 and was first licensed in 2008. From December 2007 to April 2009, respondent worked as a paramedic for the City of Hayward Fire Department. In August 2009, after his DUI arrest, respondent decided to return to school and is studying to be a physician assistant or a nurse. Respondent was not working as a paramedic at the time of his arrest; he feels that the arrest left him "no choice" but to return to school. He believes the DUI conviction makes him unemployable as an EMT.

6. This is respondent's only criminal offense; he is embarrassed, ashamed and remorseful for his conduct. He acknowledges that he made a poor decision to drink and drive. Respondent states that it is unusual for him to drink as much as he did on the night he was arrested. He has been shocked to learn the financial and professional ramifications of a DUI conviction; respondent describes the past two years as torturous. Nevertheless, respondent emphasizes that although he made a "terrible mistake" on one occasion, his professional history otherwise demonstrates good judgment.

7. In the months before his criminal case came to trial in April 2010, respondent attended 10 Alcoholics Anonymous meetings upon the recommendation of his attorney. Respondent believes that AA is a wonderful program, but he feels that it is not appropriate for him. Respondent feels that he made a mistake when he abused alcohol on July 11, 2009, but that he does not have an addiction to alcohol. He emphasizes that he did not approach AA with that attitude, but came to that conclusion after attending the AA sessions.

8. Fred J. Von Stieff, M.D./A.A.F.P., saw respondent on October 19, 2010, at the request of the EMSA, for the purpose of performing a chemical dependency evaluation; he wrote a report that bears the same date. Dr. Von Stieff examined respondent and took a history from him. Respondent told Dr. Von Stieff that, since his arrest, he had chosen to stop drinking alcohol because he does not need "another DUI or problems with alcohol"; respondent testified to the same effect at hearing. Dr. Von Stieff concluded: "I believe that

he should have his paramedic license reestablished. He does not need any type of chemical dependency program at this time. I see no jeopardy for the public or patients he takes care of as a paramedic. His chance of relapse is nil or a very low chance of any future problems.”

9. Respondent’s mother and father testified at hearing. They are very proud and supportive of their son. Respondent has taken his DUI conviction very seriously; he has not drunk alcohol since his arrest.

LEGAL CONCLUSIONS

1. Under Health and Safety Code section 1798.200, subdivisions (b) and (c)(6), the EMSA may suspend or revoke any EMT-P license if the licensee has been convicted of a crime substantially related to the qualifications, functions and duties of a licensee. A crime is “substantially related” if “to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by his/her license in a manner consistent with the public health and safety.” (Cal. Code Regs., tit. 22, § 100174, subd. (a).) Even though respondent was not employed as a paramedic at the time of his offense, his crime evidences a potential unfitness to carry out the duties of a paramedic in a manner consistent with the public health and safety, and is therefore substantially related to the qualifications, functions and duties of a licensee. Cause exists to suspend or revoke respondent’s EMT-P license by reason of the matters set forth in Finding 3.

2. Under Health and Safety Code section 1798.200, subdivisions (b) and (c)(9), the EMSA may suspend or revoke any EMT-P license if the licensee has misused alcoholic beverages. Cause exists to suspend or revoke respondent’s EMT-P license by reason of the matters set forth in Findings 3 and 4.

3. The EMSA has adopted disciplinary guidelines which must be considered in fixing the level of discipline to be imposed. Under the guidelines, the maximum recommended discipline for conviction of a substantially-related crime is license revocation, and the minimum recommended action is a stayed revocation with one year of probation. For the misuse of alcoholic beverages, the maximum recommended discipline is again revocation, but the minimum recommended discipline is a stayed revocation and three years probation. The guidelines set forth recommended terms and conditions of probation.

4. Complainant recommends revocation of respondent’s license. If respondent is permitted to retain a probationary license, complainant argues that he should be required to abstain from the use of alcoholic beverages for one year and should be subject to random biological fluid testing. Complainant acknowledges that the evidence does not justify requiring respondent to attend an alcohol education program, as he has already completed such a program.

Respondent feels that no discipline should be imposed. If he is placed on probation, respondent argues that the probationary period should run from the date of his arrest. Respondent also objects to the agency’s standard condition that tolls probation when the

probationer is not employed as a paramedic; respondent feels that he will never be able to complete probation, because his conviction will make it impossible for him to find a job.

Respondent's decision to drive his motor vehicle after an evening of drinking alcohol was a serious lapse in judgment that endangered his own safety and the safety of the public. Respondent, however, has reacted responsibly to this incident of misconduct. He has chosen to abstain from drinking alcohol, he has attended AA meetings on a voluntary basis, and he has completed the court-ordered alcohol program. It is plain from respondent's testimony that he appreciates the seriousness of his misconduct and that he is determined not to repeat it.

Under these circumstances, it would not be contrary to the public interest to allow respondent to retain a probationary license. The evidence does not justify conditions that require respondent to abstain from the use of alcohol or to submit to random biological fluid testing; the EMSA's evaluator reports that respondent is not alcohol dependent. The probationary period, however, must run from the effective date of this decision, and the tolling provision to which respondent objects must remain in place; these conditions are necessary to assess respondent's ability to practice safely over the full term of probation.

ORDER

Emergency Medical Technician-Paramedic license number P25728 issued to respondent Brandon Burruss is revoked. However, such revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Probation Compliance: Respondent shall fully comply with all terms and conditions of the probationary order. Respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of respondent's compliance with the terms and conditions of his probationary order.

Respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of respondent.

2. Personal Appearances: As directed by the EMSA, respondent shall appear in person for interviews, meetings, and/or evaluations of respondent's compliance with the terms and conditions of the probationary order. Respondent shall be responsible for all of his costs associated with this requirement.
3. Quarterly Report Requirements: During the probationary period, respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by respondent with all the terms and

conditions of his probation. If respondent submits his quarterly reports by mail, they shall be sent as certified mail.

4. Pre-employment Notification: During the probationary period, respondent shall notify the EMSA in writing of any EMS employment. Respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, respondent shall submit proof in writing to the EMSA of disclosure, by respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of respondent's probation.

Respondent authorizes any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

Any and all notifications to the EMSA shall be by certified mail.

5. Notification of Termination: Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of his termination.

Any and all notifications to the EMSA shall be by certified mail.

6. Functioning as a Paramedic: The period of probation shall not run anytime that respondent is not practicing as a paramedic within the jurisdiction of California.

If respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, respondent must immediately notify the EMSA, in writing, of the date of such departure and the date of return to California, if the respondent returns.

Any and all notifications to the EMSA shall be by certified mail.

7. Obey All Related Laws: Respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for

disciplinary action pursuant to Health and Safety Code section 1798.200. To permit monitoring of compliance with this term, if respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Respondent shall comply with the terms of his probation in Contra Costa Superior Court Case No. 163641-4. Any violation of the terms of respondent's criminal probation may be deemed a violation of the terms of his probation to the EMSA.

Within 72 hours of being arrested, cited or criminally charged for any offense, respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the offense(s) as to whether respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

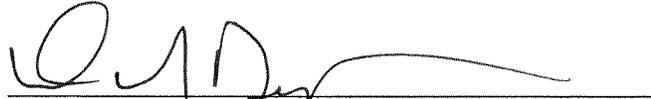
Any and all notifications to the EMSA shall be by certified mail.

8. Completion of Probation: Respondent's license shall be fully restored upon successful completion of probation.
9. Violation of Probation: If during the period of probation respondent fails to comply with any term of probation, the EMSA may initiate action to terminate probation and implement actual license revocation. Upon the initiation of such an action, or the giving of a notice to respondent of the intent to initiate such an action, the period of probation shall remain in effect until such time as a decision on the matter has been adopted by the EMSA. An action to terminate probation and implement actual license revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issues to be resolved at the hearing shall be limited to whether respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual revocation. At the hearing, respondent and the EMSA shall be bound by the admissions contained in

the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

DATED: June 28, 2011

A handwritten signature in black ink, appearing to read "D. Benjamin", written over a horizontal line.

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings