

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation  
Against:

JEREMY DEANTHONY CARTER  
Los Angeles, California 90062

License No. P19435,

Respondent.

Case No.: 05-0226

OAH No.: L2008090714

DECISION

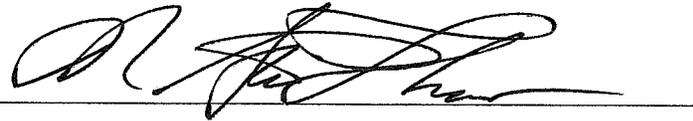
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Emergency Medical Services Authority as its Decision in the above-entitled matter:

This Decision shall become effective 3/26/09.

IT IS SO ORDERED 2/26/09.

EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

By



rfm

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**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 14, 2009, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Klint James McKay, Deputy Attorney General, represented Nancy Steiner (Complainant).

Jeremy Deanthony Carter (Respondent) was present and represented himself.

FACTUAL FINDINGS

1. On a date not established, the Emergency Medical Services Authority, State of California (EMSA), issued Emergency Medical Technician-Paramedic (EMT-P) License Number P19435 to Respondent. The license was in full force and effect at all times relevant and will expire on December 31, 2009, unless renewed.

2. Complainant brought the First Amended Accusation solely in her official capacity as Chief, EMS Personnel Division, EMSA. Respondent timely requested a hearing.

3A. On February 16, 2006, Respondent entered a plea of no contest and was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of .08% or more, a misdemeanor. Imposition of sentence was suspended and Respondent was placed on summary probation for three years, under terms including that he serve 13 days in jail or pay a \$390 fine, or in lieu of paying the fine perform 12 days of community service, complete a first-offender alcohol program, pay fines and fees totaling \$1,552, enroll in an alcohol treatment program, and not operate a motor vehicle with any measurable amount of alcohol in his blood system.

3B. On February 22, 2007, Respondent was found to be in violation of probation for not complying with the first-offender alcohol program, his probation was revoked, and a bench warrant was issued. On March 19, 2007, probation was reinstated under modified terms, including that he wear an ankle device that would monitor the presence of alcohol in his body. Respondent did not comply with that requirement, so he was subsequently ordered to serve 30 days in jail and to install an ignition interlock device on his car. Respondent is now in compliance with the terms of this probation.

3C. The circumstances underlying this conviction occurred on September 18, 2005, when Respondent was observed by two California Highway Patrol officers to be driving his vehicle in such a way as to straddle two lanes on SR-47, and then swerve into one of the lanes and almost collide with the center divider. The officers initiated a traffic stop. Respondent exhibited signs of being under the influence. Respondent was asked to perform field sobriety tests, which he failed. After his arrest, Respondent's blood alcohol content was determined to be .14 percent.

3D. Respondent's crime is substantially related to the qualifications, functions, and/or duties of a person holding a paramedic license, in that to a substantial degree it evidences a present or potential unfitness of a paramedic to perform the functions authorized by his license in a manner consistent with the public health and safety.<sup>1</sup> Specifically, driving under the influence of alcohol evidences a disregard for the safety of persons and property and evidences extremely poor judgment in the operation of a motor vehicle.

4A. On May 18, 2007, Respondent pled nolo contendere and was convicted of violating Vehicle Code section 14601.2, subdivision (a), driving with a suspended driver license, a misdemeanor. Respondent had also been charged in that matter with two counts alleging that he had driven under the influence of alcohol. Respondent was acquitted by a jury of those two drunken driving charges. After the verdict, Respondent entered into a plea bargain that included his nolo contendere plea described above.

4B. Imposition of sentence was suspended and Respondent was placed on summary probation for three years, under terms including that he serve 10 days in jail, pay a \$300 fine or serve 10 days in jail, pay fines and fees totaling \$1,161, and install an ignition interlock device on his car. Respondent is in compliance with the terms of this probation.

4C. The circumstances underlying this conviction occurred at approximately 3:40 a.m. on the morning of December 17, 2006, when a California Highway Patrol officer responded to the report of a traffic accident on the Santa Monica Freeway (I-10) in Los Angeles at the on-ramp to the north San Diego Freeway (I-405). Upon arriving at the scene, the officer contacted Respondent, who admitted that he had been driving his car and was involved in a roll-over accident on the freeway. Respondent told the officer that the accident happened when he swerved away from a truck that had come too close to him. Respondent also admitted to the officer that he had consumed alcohol a few hours prior to driving.

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<sup>1</sup> See California Code of Regulations, title 22, section 100174, subdivision (a).

4D. It was not established that this crime is substantially related to the qualifications, functions, and/or duties of a person holding a paramedic license. Complainant cited no authority demonstrating, and made no argument, that a conviction for driving with a suspended license on its face has a substantial relationship to being a licensed paramedic. Complainant's argument instead rests on the premise that this crime is significantly associated with Respondent's consumption of alcohol. It was established that Respondent had consumed alcohol before the accident. However, in light of the fact that Respondent has consistently denied being under the influence of alcohol at the time of the accident, and his acquittal of the drunken driving charges, it was not clearly and convincingly established that alcohol caused or was associated with the accident.

5. The EMSA began an investigation after it received notification of Respondent's arrest in September 2005. As part of that investigation, EMSA Investigator Katherine Arnautovic conducted telephonic interviews with Respondent on February 7 and 12, 2007. During both of those telephonic interviews, Respondent admitted to Investigator Arnautovic that he was "addicted to alcohol."

6. During the hearing, Respondent confirmed that he has a problem with alcohol. In his words, the problem was binge drinking, i.e., he drank too much during social outings and thereafter drove his car home. He demonstrated candor by testifying that he had driven under the influence of alcohol after binge drinking on several other occasions.

7. Respondent has taken steps to address his drinking problem. He has attended drunken driver programs and Alcoholics Anonymous classes as a result of his probation. Respondent participated in an alcohol rehabilitation program offered through his employer, the Los Angeles Fire Department (LAFD). He has also disassociated himself from the friends who were involved in his binge drinking. In addition, Respondent regularly attends church services and bible study meetings, which he believes provides him with spiritual guidance conducive to avoiding binge drinking. Respondent testified that he occasionally drinks alcohol, but that when he does, it is only in moderation and that he has not driven a vehicle after consuming any alcohol in over two years.

8. Respondent is 29 years old. He is divorced and has a four-year-old son. He has been employed as a paramedic for the LAFD for five years. He was suspended from work without pay for six days as a result of his first conviction, and he received a written reprimand at work for his second conviction.

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9. The factors established by the EMSA to be considered in determining discipline of a licensee are applied to Respondent as follows:<sup>2</sup>

- A. Nature and severity of the act(s), offense(s), or crime(s) under consideration. Respondent's drunken driving conviction and binge drinking are of moderate severity.
- B. Actual or potential harm to the public. Only potential harm to the public was established.
- C. Actual or potential harm to any patient. No harm to any patient was established.
- D. Prior disciplinary record. Respondent has no prior history of discipline with the EMSA, although he does with his employer.
- E. Prior warnings on record or prior remediation. Respondent has received no prior warnings from the EMSA.
- F. Number and/or variety of current violations. The number and variety of violations in this matter are minimal.
- G. Aggravating evidence. Some aggravating evidence was established, in that Respondent violated terms of probation from his first conviction. Moreover, although his second conviction for driving with a suspended license does not support cause for discipline, it is viewed as aggravating evidence, in that it is misconduct subsequent to his first conviction which does support cause for discipline.
- H. Mitigating evidence. No evidence of mitigation was established.
- I. Rehabilitation evidence. Respondent presented some evidence of rehabilitation, as described in factual finding 7.
- J. Compliance with terms of the sentence and/or court-ordered probation. Respondent initially violated the terms of his first probation. He is now in compliance with both probations.

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<sup>2</sup> These factors are part of the EMSA's "Recommended Guidelines for Disciplinary Orders and Conditions of Probation," dated July 10, 2002 (Guidelines), established pursuant to California Code of Regulations, title 22, section 100172, subdivision (d).

K. Overall criminal record. No evidence was presented establishing that Respondent has any other criminal record.

L. Time that has elapsed since the act(s) or offense(s) occurred. It has been three years since Respondent's drunken driving conviction. According to Respondent, he has not driven under the influence of alcohol in over two years.

M. If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4. Respondent has not expunged either conviction.

### LEGAL CONCLUSIONS

1. *Burden and Standard of Proof.* Complainant bears the burden of proof in this case. The standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. *First Cause for Discipline (Misuse of Alcohol).* Respondent is subject to disciplinary action under Health and Safety Code section 1798.200, subdivision (c) (9), in that it was clearly and convincingly established by his 2006 conviction for drunken driving and his admissions to EMSA Investigator Arnautovic that he has been addicted to alcohol, that he has excessively used alcohol, and that he has misused alcohol. (Factual Findings 3, 5 and 6.)

3. *Second Cause for Discipline (Conviction of a Crime).* Respondent is subject to disciplinary action under Health and Safety Code section 1798.200, subdivision (c) (6), in that it was clearly and convincingly established that Respondent's conviction in 2006 for violating Vehicle Code section 23152, subdivision (b), was for a crime substantially related to the qualifications, functions, and/or duties of a licensed paramedic within the meaning of California Code of Regulations, title 22, section 100174, subdivision (a). (Factual Findings 3, 5 and 6.)

4A. *Disposition.* Moderate discipline in this case is warranted. The cause for discipline established in this case demonstrates that Respondent has, at least, a binge drinking problem. A licensed paramedic suffering from an alcohol abuse problem, for various reasons, poses a threat to the public health, safety and welfare. The greatest threat is of such a licensee providing care to a patient while under the influence of alcohol or impaired by the after-effects of having consumed alcohol, which could have catastrophic results. In this case, Respondent also demonstrated a lack of regard for public safety and poor judgment by driving under the influence on several occasions. The EMSA's Guidelines recommend a moderate level of discipline for such misconduct, including optional conditions aimed at addressing alcohol abuse. This case warrants such treatment.

4B. However, minimum discipline is not appropriate for this case, both in terms of a lesser probationary period or not imposing optional conditions aimed at alcohol abuse. Respondent testified that his drinking problem is limited to binge drinking, and that he is not otherwise an alcoholic. Taking his testimony at face value, the optional conditions in the order below requiring complete sobriety and random fluid testing will confirm that such is the case and that the public will not be jeopardized by Respondent retaining his license while on probation. In addition, the optional condition requiring Respondent to regularly attend alcohol dependency support group meetings is meant to provide Respondent with a continuing reminder of the seriousness of his misconduct in order to prevent him from doing it in the future. In light of the fact that it was not clearly and convincingly established that Respondent is in fact an alcoholic, and that he has already participated in alcohol rehabilitation programs through criminal probation and his employer, requiring him to participate in an alcohol diversion program (optional condition 4 of the Guidelines) is not warranted at this time. (Factual Findings 1-9.)

### ORDER

Paramedic License No. P19435 issued to Respondent Jeremy Deanthony Carter (hereinafter "the Respondent") is revoked pursuant to Legal Conclusions 2 and 3, jointly and separately. However, such revocation is stayed, and the Respondent is placed on probation for three years, upon the following terms and conditions:

#### **1. Probation Compliance**

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

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

#### **2. Personal Appearances**

As directed by the EMSA, the Respondent shall appear in person for interviews, meetings, and/or evaluations of the Respondent's compliance with the terms and conditions of the probationary order. The Respondent shall be responsible for all of his costs associated with this requirement.

#### **3. Quarterly Report Requirements**

During the probationary period, the Respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by the Respondent with all the terms and conditions of his probation. If the Respondent submits his quarterly reports by mail, it shall be sent as certified mail.

#### **4. Employment Notification**

During the probationary period, the Respondent shall notify the EMSA in writing of any EMS employment. The Respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

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

The 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**

The Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his pre-hospital medical care employer. The 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 the Respondent is not practicing as a paramedic within the jurisdiction of California.

If the Respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, the 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**

The 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. The 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 the Respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then the 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.

Within 72 hours of being arrested, cited or criminally charged for any offense, the 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 the 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**

The Respondent's license shall be fully restored upon successful completion of probation.

**9. Violation of Probation**

If during the period of probation the Respondent fails to comply with any term of probation, the EMSA may initiate action to terminate probation and implement actual license suspension/revocation. Upon the initiation of such an action, or the giving of a notice to the 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 suspension/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 the Respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, the 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.

**10. Abstinance from the Use of Alcoholic Beverages**

The Respondent shall abstain from the use of alcoholic beverages.

**11. Biological Fluid Testing**

The Respondent shall submit to routine and random biological fluid testing or alcohol screening as directed by the EMSA or its designee. Respondent may use a lab pre-approved by the EMSA or may provide to the EMSA the name and location of an independent laboratory or licensed alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and alcohol testing facilities. When the EMSA requests a random test, the Respondent shall provide the required blood/urine sample by the time specified, or within 12 hours of the request if no time is specified. When the EMSA requests a random test, the

Respondent shall ensure that any positive test results are conveyed telephonically by the lab to the EMSA within 48 hours, and all written positive or negative results are provided directly by the lab to the EMSA within 10 days. The Respondent shall be responsible for all costs associated with the alcohol screening.

At the EMSA's sole discretion, the EMSA may allow the random testing to be conducted by the Respondent's employer to meet the requirement of random testing as set forth above. The results of the employer's random testing shall be made available to the EMSA in the time frames described above.

**12. Alcohol Dependency Support Group Attendance**

The Respondent shall attend an alcohol dependency support group meeting (e.g., Alcoholics Anonymous) at least once per week. In his quarterly reports to the EMSA, the Respondent shall provide verified documentation of such attendance, in a form specified by the EMSA. Respondent shall fulfill this term for the duration of his probation, unless the EMSA orders otherwise.

DATED: February 19, 2009



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ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings