

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHELE K. CASWELL
Emergency Medical Technician-Paramedic
License No. P28077,

Respondent.

Case No. 13-0073

OAH No. 2015090923

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 April 10, 2016.

IT IS SO ORDERED March 10, 2016.

EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

By Jennifer Lim for Howard Becker MD

ref

**BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MICHELE K. CASWELL
Emergency Medical Technician-
Paramedic License No. P28077,

Respondent.

Case No.: 13-0073

OAH No. 2015090923

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, presided at the hearing in this matter, which occurred and was completed in Los Angeles, California on February 9, 2016.

Craig Stevenson, Senior Staff Counsel, represented complainant Sean Trask, Chief, EMS Personnel Division of the Emergency Medical Services Authority of the State of California (Authority or EMSA). David Givot, Attorney at Law, represented respondent Michele K. Caswell, who appeared.

Complainant seeks to discipline respondent's emergency medical technician-paramedic license on allegations that respondent's misuse of alcoholic beverages resulted in her criminal conviction for driving with a blood alcohol content of .08 percent or higher and that her criminal conviction is substantially related to the qualifications, functions, or duties of an emergency medical technician-paramedic. Respondent admits to her alcohol consumption, but argues that complaint has failed to establish grounds for discipline of her emergency medical technician-paramedic license. For the reasons set forth below, respondent's arguments are without merit.

FACTUAL FINDINGS

1. Complainant made, executed, and filed the Accusation in his official capacity.
2. On January 27, 2010, the Authority issued to respondent Emergency Medical Technician-Paramedic (EMT-P) License Number P28077, which was in full force and effect at all times. The license, which has no history of prior discipline, expired on January 31,

2014. Pursuant to California Code of Regulations, title 22, section 100167, the license is subject to renewal upon meeting certain specified requirements.

Alleged Cause for Discipline

3. On February 22, 2013, respondent met a former co-worker for dinner in Woodland Hills. She consumed indeterminate amounts of alcoholic beverages including a shochu cocktail and a martini consisting of vodka and lemon. After her dinner meeting concluded, respondent drove her vehicle 15 miles on the freeway from Woodland Hills to her residence in Simi Valley.

4. California Highway Patrol officers observed respondent making a right-hand turn without stopping for the red light as she exited the freeway. The officers conducted a traffic stop, and they observed that respondent's "eyes were red and watery" and that respondent's "speech seemed thick." (Complainant's Ex. 5 at p. 27.) At the scene, the officers administered field sobriety and preliminary alcohol screening (PAS) tests to respondent. Respondent's performance on the field sobriety test was unsatisfactory and her PAS test results showed blood alcohol levels of 0.124 percent and 0.126 percent. Based on their observations of respondent and her driving, and based on respondent's performance on the field sobriety and PAS tests, the officers determined that respondent "was under the influence of an alcoholic beverage." (*Ibid.*) The officers arrested respondent and charged her with misdemeanor violations of Vehicle Code 23152, subdivisions (a) (driving under the influence of an alcoholic beverage) and (b) (driving with a blood alcohol level of 0.08% or higher). During the subsequent booking process, an administration of a breathalyzer test to respondent yielded a blood alcohol level of 0.11 percent.

5. On April 21, 2014, in the Superior Court of California, Ventura County, in case number 2013005892MA, respondent was convicted, on her plea of guilty, for one count of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08% or higher), a misdemeanor. After finding that respondent understood the nature of the charges against her and the consequences of conviction, the court suspended imposition of sentence and released respondent on formal probation for 36 months with terms and conditions including serving two days with credit for one day actual time served in the Ventura County Jail, paying fines totaling \$2,377, and participating in a First Conviction Driving Under the Influence Program for 90 days.

Factors in Aggravation, Mitigation, and Rehabilitation

6. Respondent has completed the court-ordered First Conviction Driving Under the Influence Program. She has paid her court-imposed fines in full. On November 25, 2015, the court modified the terms of respondent's probation and converted her formal probation status to conditional revocable release.

///

7. Commencing in 2006, respondent worked as an emergency medical technician providing basic life support. In 2011, respondent became a paramedic with responsibility for administering drugs, reading EKGs, and managing airways. At the time of her arrest and conviction set forth in Factual Findings 4 and 5, AMR Ventura employed respondent. In an undated letter, a supervisor writes, "At no time during Michele's employ with us did she exhibit any sign of substance abuse or use. Michele was always on time, prepared for her shift and competent. Hearing of Michele's DUI was such a shock as this was not something Michele would do given her character." (Respondent's Ex. 1.) Respondent resigned from AMR Ventura in April 2014 because, according to her testimony, she "would have been terminated based on [the company's] driving policy."

8. Several paramedics acquainted with respondent, because they worked or trained with her, wrote letters extolling respondent's skills, compassionate delivery of care, and commitment to the paramedic profession. (See Respondent's Ex. 1.) One paramedic wrote, for example, that respondent "is not a routine drinker or a risk-taker. It is completely out of character for this woman to ingest alcohol and operate a motor vehicle. Nobody knows how reckless that behavior can be more than Michele. Both as a paramedic and as a loving mother and grandmother." Another paramedic wrote, "I have never known Michele to have a problem with overuse of alcohol and have never witnessed anything to create suspicion of such a problem."

9. Respondent's history of volunteerism for the City of Simi Valley Disaster Service Worker program and for the American Red Cross resulted in her receipt of several commendations. (See Respondent's Exs. 3 and 4.)

10. Respondent claimed that at the time of her February 22, 2013 arrest she did not feel the effects of the alcohol she consumed during dinner. She testified that she has learned that she cannot have any alcohol and then drive, and that doing so "was one of the biggest mistakes of my life." According to respondent, "it has been three years since this happened and I won't even smell a glass of alcohol. It has been devastating to me. I regret that it happened. In hindsight, it was a mistake to have any alcohol."

11. Respondent is married; her spouse is disabled and unemployed. Since her conviction, respondent has sought employment as a paramedic without success. According to respondent, she gets "no thank yous or no responses." Respondent testified that assuming she is permitted to retain her EMT-P license, she would like to work in emergency rooms. She wishes to "continue in the medical field."

LEGAL CONCLUSIONS

1. Complainant has the burden of proving by clear and convincing evidence that suspension or revocation of respondent's EMT-P license is warranted. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) A "clear and convincing" evidentiary standard means that complainant must establish the charging allegations by proof

that is clear, explicit and unequivocal—so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. The Authority is the state agency responsible for the coordination and integration of state activities concerning emergency medical services, including the licensure of paramedic technicians. (See Health and Safety Code section 1797.1.)

3. Health and Safety Code section 1798.200 empowers the Authority to take disciplinary action against a licensee “upon the finding by the director of the occurrence of any of the actions listed in subdivision (c) [¶] (c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension or revocation of a certificate or a license issued under this division, or in the placement on probation of a certificate or licenseholder under this division: [¶] (6) Conviction of any crime which is substantially related to the qualification, functions, and duties of prehospital personnel. . . . The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction. [¶] (9) Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.”

4. A crime or act is substantially related to the qualifications, functions or duties of a person holding a paramedic license if to a substantial degree it evidences the present or potential unfitness of a paramedic to perform the functions authorized by her license in a manner consistent with the public health and safety. (Cal. Code Regs., tit 22, § 100174, subd. (a).)

5. The record of conviction or a certified copy of the record shall be conclusive evidence of such conviction. (Health & Saf. Code, §1798.200, subd. (c)(6); Cal. Code Regs., tit 22, § 100174, subd. (b).)

6a. With respect to the First Cause of Action alleged in the Accusation, cause exists pursuant to Health and Safety Code section 1798.200, subdivision (c)(6) and California Code of Regulations, title 22, section 100174, subdivisions (a) and (b), to discipline Emergency Medical Technician-Paramedic License number P28077 issued to respondent in that, by reason of Factual Finding 5, complainant has established by clear and convincing evidence that respondent has been convicted of a crime, which is substantially related to the qualifications, functions, and duties of a person holding a paramedic license.

6b. Respondent argues that the facts underlying her alcohol-related conviction occurred when she was off-duty and performing no paramedic functions. Respondent therefore maintains that her alcohol-related conviction is unconnected to her role as a paramedic. Those contentions are rejected. It is not necessary for conduct forming the basis for discipline to occur while performing licensed activity. (See *Sula v. Board of Registered Nursing* (2012) 205 Cal.App. 4th 195, 1203.) An alcohol-related conviction may reflect a personal problem involving alcohol consumption, and it is not necessary to postpone discipline until that personal problem affects the professional discharge of respondent’s

functions and duties of a paramedic. (See *id.* at p. 1207.) As acknowledged in *Griffiths v. Superior Court of Los Angeles County* (2002) 96 Cal.App. 4th 757, a conviction involving alcohol consumption reflects a lack of sound professional and personal judgment that is relevant to the fitness and competence of health care practitioners, including paramedics. “Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. . . . Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.” (*Id.* at p. 770.) For these reasons, respondent’s conviction for driving with a blood alcohol level of 0.08 or higher is substantially related to her qualifications, functions, and duties as a licensed paramedic. Importantly, respondent’s own hearing testimony establishes that AMR Ventura’s driving policy acknowledges a relationship between alcohol consumption and the function and duties of a paramedic. (See Factual Finding 7.)

7a. With respect to the Second Cause of Action alleged in the Accusation, cause exists pursuant to Health and Safety Code section 1798.200, subdivision (c)(9), to discipline Emergency Medical Technician-Paramedic License number P28077 issued to respondent in that, by reason of Factual Findings 3 and 4, complainant has established by clear and convincing evidence that respondent misused alcoholic beverages.

7b. Respondent consumed at least two alcoholic beverages then drove a motor vehicle. Respondent’s operation of a motor vehicle with a blood alcohol level greater than 0.08 percent created a risk of danger to herself and to members of the public. She failed to stop for a red light before making a right turn as she exited the freeway. It is irrelevant, as respondent maintained at the administrative hearing, that respondent felt none of the intoxicating effects of the alcohol beverages she consumed. It is never safe to drive with a blood alcohol level above zero. Doing so amounts to a misuse of alcoholic beverages.

8. A determination that legal cause exists to discipline respondent’s EMT-P license does not end the inquiry. Such cause may be met with substantial, persuasive evidence of her rehabilitation and capability to discharge the functions and duties of a paramedic safely. To evaluate whether a EMT-P license holder whose license is subject to discipline has been rehabilitated and capable of safe paramedic practice, pursuant to California Code of Regulations, title 22, section 100176, the Authority considers the following factors: the nature and severity of acts or crimes under consideration; evidence of any acts committed subsequent to the acts or crimes under consideration; the time that has elapsed since the acts or crimes occurred; compliance with any terms of probation; evidence of expungement pursuant to Penal Code section 1203.4; and evidence of rehabilitation.

9a. All evidence presented at the administrative hearing has been considered. Respondent has no prior disciplinary record. The misdemeanor conviction set forth in Factual Finding 5 comprises respondent’s overall criminal record. The acts underlying

respondent's conviction occurred three years ago. Respondent has complied with all the terms of her probation including the payment of fines and the completion of a first-time drug offender alcohol program. Nonetheless, a misdemeanor conviction for driving a motor vehicle on public roadways with a blood alcohol level of 0.08 or higher is a serious matter. The court, however, has imposed appropriate and significant criminal punishment on respondent. The purpose of this administrative proceeding is not to impose additional punishment on respondent. The purpose of this administrative proceeding is to determine respondent's capability for safe paramedic practice to ensure public safety and protection. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

9b. Respondent resigned from AMR Ventura after her alcohol-related conviction. There is no evidence indicating that respondent's employer ever assessed the consequences of the conviction and the circumstances giving rise to the conviction on respondent's capacity for safe paramedic practice. Nonetheless, unrebutted character evidence establishes respondent's prior, demonstrated capacity for safe paramedic practice. A supervisor knowledgeable about respondent's conviction wrote a letter stating that during the course of respondent's employment respondent manifested no evidence of alcohol-related impairment. Other paramedics with whom respondent worked or trained praised respondent's compassionate care when delivering paramedic services. Respondent's history of volunteerism earned her numerous commendations. The totality of the facts and circumstances of this case indicates that the Order below staying revocation of respondent's license and imposing standard probationary terms and conditions as set forth in the *Emergency Medical Services Authority Recommended Guidelines for Disciplinary Orders and Conditions for Probation* (July 26, 2008) (Complainant's Ex. 8.)¹ protects the public.

ORDER

Emergency Medical Technician-Paramedic (EMT-P) License Number P28077 issued to Michele K. Caswell is revoked; provided, however, the revocation is stayed and respondent is placed on probation for a period of one (1) year on 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/her 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.

¹ Given the facts and circumstances of this case, respondent's single, alcohol-related conviction is insufficient to justify the imposition of additional probationary terms and conditions.

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 her 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 her probation. If the respondent submits his/her 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 her pre-hospital medical care employer. The respondent must provide a full, detailed written explanation of the reasons for and circumstances of his/her 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/her 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 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 her 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 her 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.

DATED: March 7, 2016

DocuSigned by:



C2CF22333C46434...

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings