

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

In the Matter of the Third Amended
Accusation Against:

TY A. COOK,

Respondent.

Case No. 12-0040

OAH No. 2013020500

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on October 20 and 21, 2014, in Sacramento, California.

Michael Jacobs, Senior Staff Counsel, represented complainant Sean Trask, Chief of the EMS Personnel Division, Emergency Medical Services Authority (EMSA), State of California.

Attorney Frederick H. Brennan represented respondent Ty A. Cook, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on October 21, 2014.

SUMMARY

Complainant seeks to discipline respondent's paramedic license based on his criminal convictions for unlawful possession of a controlled substance and prostitution, as well as the underlying criminal conduct. Cause exists for discipline. Respondent presented sufficient evidence of rehabilitation and "extraordinary circumstances" to justify allowing him to keep his license on a probationary basis, subject to the terms and conditions specified in the Order below.

FACTUAL FINDINGS

1. EMSA issued respondent Paramedic License No. P20637 on May 30, 1991. The license expires July 31, 2016, unless renewed or revoked. There is no history of prior discipline of the license.

2. On September 3, 2014, complainant signed a Third Amended Accusation solely in his official capacity. The Third Amended Accusation seeks to discipline respondent's license on the grounds that he: 1) committed a fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a paramedic; 2) was convicted of a substantially related crime; 3) violated or attempted to violate a federal or state statute or regulation regarding narcotics, dangerous drugs, or controlled substances; 4) was addicted to, or engaged in the excessive use of, or misuse of, alcohol, narcotics, dangerous drugs, or controlled substances; and 5) was convicted and released from incarceration during the preceding 10 years for an offense punishable as a felony.

Criminal Convictions

3. On September 17, 2012, in the Superior Court of the State of California, in and for the County of Napa, Case No. CR160702, respondent was found guilty by a jury of a felony violation of Health and Safety Code section 11377, subdivision (a), unlawful possession of a controlled substance, and a misdemeanor violation of Penal Code section 647, subdivision (b), disorderly conduct – prostitution. On November 16, 2012, the court entered judgment of conviction based on the jury verdicts. Imposition of sentence was suspended, and respondent was placed on formal probation for three years. He was ordered to serve one day in the Napa County Jail, with credit given for the one day he served after he was arrested. He was also ordered to complete 120 hours of community service; pay fines, penalties, and fees; and submit to drug and/or alcohol testing at any time when requested by his probation officer.

On June 4, 2013, the court entered an order confirming that respondent had complied with all terms and conditions of probation and reducing his conviction for violating Health and Safety Code section 11377, subdivision (a), to a misdemeanor for all purposes pursuant to Penal Code section 17, subdivision (b). The court also converted the remainder of his probation to informal probation.

4. The factual basis for respondent's convictions arose out of a January 28, 2012 traffic stop by the Napa County Sheriff's Department. During that traffic stop, the sheriff's deputy uncovered evidence that respondent was paying a prostitute for sex. The matter was referred to the Napa Police Department for further investigation.

On January 31, 2012, the Napa Police Department executed a search warrant at the Napa County Health and Human Services Department, respondent's place of employment. When one of the police officers executing the warrant informed respondent why the police were there, respondent spontaneously stated, "Fuck, fuck, fuck." He then placed his head in

his hands and continually repeated that word, after which he said, "I fucked up my life because I was horny."

As officers were searching respondent's office and car, he voluntarily admitted that he had an "8-ball of meth" at his residence. He also warned officers about his dogs and the fact that he may have mouse traps hidden throughout the residence. A subsequent search of his residence uncovered methamphetamine and several plastic bags and a plastic cylinder containing a white crystalized substance consistent with methamphetamine. Respondent was arrested and transported to the Napa County Jail.

Detective Darlene Elia, the lead detective investigating respondent, testified at hearing that respondent was "cooperative in all respects" during the execution of both search warrants.

Substantial Relationship

5. EMSA has adopted a regulation for determining whether a crime or act is substantially related to the qualifications, functions, or duties of a paramedic. California Code of Regulations, title 22, section 100175, subdivision (a), provides, in relevant part: "A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a paramedic if to a substantial degree it evidences present or potential unfitness of the paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety."

Respondent's convictions for unlawful possession of a controlled substance and prostitution are substantially related to the qualifications, functions, or duties of a paramedic. Paramedics are responsible for administering medical aid to people in distress, which sometimes involves the administration of controlled substances. It is inconsistent with public health and safety to give a person with a demonstrated propensity towards the unlawful possession of controlled substances unfettered access to controlled substances. Additionally, as a provider of medical aid, paramedics should be aware of the health risks of prostitution. Therefore, it is inconsistent with the duties and expectations of a paramedic to allow one who engages in prostitution to still hold a paramedic license.

Additional Grounds for Discipline

6. Respondent was interviewed by the Napa County Probation Department on October 19, 2012, about the crimes. During that interview, he admitted his misconduct and said, "I take full responsibility for my behavior." Additionally, he denied drinking alcohol but admitted to using methamphetamine "for approximately twelve (12) years on a daily basis." Methamphetamine is a controlled substance as defined by Health and Safety Code section 11055, subdivision (d)(2). Health and Safety Code section 11377, subdivision (a), makes it a crime to unlawfully possess a controlled substance. Therefore, respondent's admissions established that he committed a corrupt act, violated a state statute regulating controlled substances, and misused a controlled substance.

Factors in Aggravation, Mitigation, and Rehabilitation

7. Respondent was the Emergency Medical Services Administrator for the Napa County Health and Human Services Agency when he engaged in the criminal conduct underlying the convictions discussed above. He was responsible for overseeing the day-to-day administration and operations of the Napa Emergency Medical Services system.

8. On January 31, 2012, Napa police officers executed a search warrant for his office during business hours. After officers finished searching his office, they executed a search warrant for his residence. He was arrested after methamphetamine was found in his residence. Both respondent's arrest and subsequent convictions were covered extensively by the local media and brought discredit to his reputation, as well as that of Napa County, in general, and the Napa County Health and Human Services Agency, in particular.

9. Respondent was placed on paid administrative leave from his job after police officers finished searching his office on January 31, 2012. His employment was subsequently terminated, and the termination was affirmed on appeal. Respondent ultimately entered into an agreement with Napa County whereby his termination was rescinded and he was allowed to voluntarily resign, effective 5:00 p.m. February 22, 2012.

10. Respondent has not worked in a job requiring a paramedic license since he left Napa County.

11. At hearing, respondent testified openly and candidly about his two criminal convictions and the underlying criminal conduct. He readily took responsibility for such conduct, recognized that he had "made a big mistake," and agreed that his license should be subject to "some discipline." Respondent explained that he began recognizing that he had a problem with methamphetamine sometime before his arrest. While he was looking for help with his addiction, he did not know how to ask for it. He did not take advantage of the Employee Assistance Program that was available through work because, in his experience, the Program was not confidential. He credited his arrest with saving his life because it forced him to confront his addiction and get help. Respondent further explained that he wants to keep his license because he believes it gives him "credibility" with others in the field because it indicates to them that he "keep[s] up with what's going on."

12. Respondent explained that his substance abuse began with alcohol. He said he spent a lot of time drinking when he was not at work. He also occasionally smoked marijuana to help him sleep because he suffers from severe sleep apnea and the facemask he wears to bed to help him breathe is uncomfortable. However, respondent admitted that his "real problem" was with methamphetamine, which he used for about 12 years.

13. On February 2, 2012, respondent voluntarily admitted himself into an inpatient alcohol and chemical dependency treatment program at Mountain Vista Farm. The program consisted of daily small group meetings, individual counseling sessions, and classes about alcoholism, addiction, and recovery. It also included regular Narcotics Anonymous (NA)

and Alcoholics Anonymous (AA) meetings. Respondent successfully completed the program on March 1, 2012.

14. After completing the treatment program at Mountain Vista Farm, respondent continued attending NA and AA meetings at the Alano Center, which is part of the Napa Recovery Resource Center. He was attending five to six meetings a day for a period of time. While respondent no longer attends multiple meetings each day, he attends meetings “a couple of times each week,” including when he travels out of town.

15. Respondent has “worked” the 12 steps of recovery, and has a sponsor for both NA and AA. He has begun giving back to others at NA and AA meetings by serving as the secretary for the meetings. His duties include making sure the meeting goes forward, opening and setting up the room, and starting and facilitating the meeting. Respondent has been sober from alcohol and all controlled substances since February 1, 2012.

16. Lieutenant Colonel William Isaac Chadwick, U.S. Army Retired, is respondent’s AA sponsor, and testified on his behalf. He explained that one’s recovery from drugs and alcohol does not simply involve abstinence, but requires the recovering addict to accept on a daily basis the fact that he is an addict. It also requires “vigilance and inattentiveness” by the recovering addict, who constantly needs to be able to find alternatives to drugs and alcohol.

17. Lieutenant Colonel Chadwick testified to seeing respondent make a “mental, physical, and spiritual recovery” and move forward with his life over the past three years. During that time, he has made several “unannounced visits” to respondent’s home to verify that he continues to live a sober lifestyle when he is alone. Respondent has welcomed each of those visits, and has never disappointed Lieutenant Colonel Chadwick.

18. Lieutenant Colonel Chadwick explained that the ninth step of recovery requires the recovering addict to make amends with those he has harmed. He believes this step is an important step towards recovery because it cleanses the recovering addict’s psyche in the sense of what he did wrong. He explained that the point is not to ask for acceptance of the bad behavior or an apology for any wrongdoing by the person to whom amends is being made, but for the recovering addict to recognize and accept responsibility for his wrongdoing. Therefore, Lieutenant Colonel Chadwick required respondent to rehearse what he was going to say five or six times before allowing respondent to contact those with whom he wanted to make amends.

19. Based on what he has observed, Lieutenant Colonel Chadwick believes respondent is “100% into [his] recovery” and is “committed” to maintaining a sober lifestyle. Respondent confirmed his commitment to sobriety, and explained that “you don’t graduate” from recovery, but need to constantly live and work the 12 steps of recovery.

20. Respondent submitted several character reference letters on his behalf. Many of the authors met him at NA or AA meetings. All of the authors expressed confidence in respondent's commitment to his sobriety.

21. Respondent described his decision to have sexual relations with a prostitute as "not [his] proudest moment by any stretch." He explained that he did so on three or four occasions. His reasoning for doing so was that he had gotten older, fat, and bald, and had no self-confidence. He was trying to "fill a hole in his life." Respondent was adamant that he always thought the prostitute was at least 18 years old, based on the postings on her website advertising her services.¹

22. Respondent explained that he was "booked" into the Napa County Jail after he was arrested on January 31, 2012. He spent about three hours in jail before being released on bail. He never served any additional time.

23. Respondent remains on an informal criminal probation, although he has served his jail time, completed his community service requirement, and paid all monetary obligations imposed by the criminal court. His probation officer required him to undergo random drug and alcohol testing on five different occasions, all prior to his formal probation being converted to informal probation. Each test was negative for drugs and alcohol. Respondent is still under the impression that his probation officer can order drug and alcohol testing at any time, although he no longer has a probation officer.

24. EMSA has adopted criteria for consideration in determining whether a licensee has been rehabilitated since engaging in the criminal conduct for which discipline is sought. That criteria requires consideration of the following: 1) the nature and severity of the underlying criminal conduct; 2) evidence of subsequent criminal conduct; 3) the amount of time that has elapsed since engaging in the underlying criminal conduct; 4) whether the licensee has complied with the terms of criminal probation; 5) evidence that the crimes for which the licensee was convicted have been dismissed pursuant to Penal Code section 1203.4; and 6) any rehabilitation evidence submitted by the licensee. (Cal. Code Regs., tit. 22, § 100176, subd. (a)(1)-(6).)

Respondent was convicted of two crimes that are wholly inconsistent with a paramedic's duties to maintain the health and welfare of the public. While one of those crimes was originally a felony, it was subsequently reduced to a misdemeanor for all purposes. Additionally, his formal probation was converted to informal probation, and he has completed all the terms and conditions of his probation. It has been almost three years since respondent engaged in his underlying criminal conduct. He voluntarily admitted himself into a residential treatment facility for alcohol and drugs immediately after being released from custody after he was arrested. He has maintained a sober lifestyle ever since,

¹ The prostitute testified at hearing and confirmed that she always told respondent she was 18 years old when he asked. She explained that she chose to prostitute herself because she wanted the money so she could have a better life.

and demonstrated significant insight into his addiction when he explained that “you don’t graduate” from recovery, but need to constantly live and work the 12 steps of recovery. Respondent’s commitment to maintaining his sobriety was corroborated by several character witnesses, including his AA sponsor who provided compelling and convincing testimony on respondent’s behalf.

25. Cause exists to discipline respondent’s license for the reasons discussed in the Legal Conclusions below. When all the evidence discussed above is considered, respondent presented sufficient evidence of rehabilitation and extraordinary circumstances such that an outright revocation of his paramedic license is not necessary in order to protect public health, safety, and welfare. While he has almost one year remaining on informal probation (see, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [the conclusion that one has been rehabilitated must be supported by evidence of good conduct that occurs while he is no longer on criminal probation]), the analysis of his state of rehabilitation is one of degree rather than an all-or-nothing proposition. And respondent presented compelling and convincing evidence of his commitment to his sobriety from alcohol and drugs such that he sufficiently demonstrated his ability to continue performing the duties of a licensed paramedic in a manner consistent with public health, safety, and welfare, subject to the terms and conditions specified in the order below.

LEGAL CONCLUSIONS

1. A paramedic license may be disciplined if the licensee has committed “any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.” (Health & Saf. Code, § 1798.200, subd. (c)(5).) Respondent committed a corrupt act when he engaged in sexual relations with the prostitute and illegally possessed methamphetamine as discussed in Factual Finding 6. Such conduct is substantially related as explained in Factual Finding 5. Therefore, cause exists to discipline respondent’s paramedic license pursuant to Health and Safety Code section 1798.200, subdivision (c)(5).

2. A paramedic license may be disciplined if the licensee has been convicted “of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel.” (Health & Saf. Code, § 1798.200, subd. (c)(6).) Respondent was convicted of two crimes, both of which are substantially related as discussed in Factual Findings 3 and 5. Therefore, cause exists to discipline his paramedic license pursuant to Health and Safety Code section 1798.200, subdivision (c)(6).

3. A paramedic license may be disciplined if the licensee has violated or attempted to violate “any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.” (Health & Saf. Code, § 1798.200, subd. (c)(8).) Respondent violated a California statute that makes it illegal to unlawfully possess methamphetamine as discussed in Factual Finding 6. Therefore, cause exists to discipline his paramedic license pursuant to Health and Safety Code section 1798.200, subdivision (c)(8).

4. A paramedic license may be disciplined if the licensee is addicted to, has excessively used, or has misused, “alcoholic beverages, narcotics, dangerous drugs, or controlled substances.” (Health & Saf. Code, § 1798.200, subd. (c)(9).) Respondent misused methamphetamine, a controlled substance, as discussed in Factual Finding 6. Therefore, cause exists to discipline his paramedic license pursuant to Health and Safety Code section 1798.200, subdivision (c)(9).

5. A paramedic license must be revoked if the licensee “has been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a felony.” (Cal. Code Regs., tit. 22, § 100174, subd. (b)(2).) “The Director of the Authority may grant a license to anyone otherwise precluded under subsections (a) and (b) of this section if the Director of the Authority believes that extraordinary circumstances exist to warrant such an exemption.” (Cal. Code Regs., tit. 22, § 100174, subd. (g).) As discussed in Factual Finding 3, respondent was convicted of illegal possession of methamphetamine, a crime punishable as a felony. That he served his jail time prior to his conviction is irrelevant. (See, *People v. Valenzuela* (1981) 116 Cal.App.3d 798, 803.) Therefore, cause exists to discipline respondent's paramedic license pursuant to California Code of Regulations, title 22, section 100174, subdivision (b)(2).

6. Cause exists to discipline respondent's paramedic license for the reasons discussed in Legal Conclusions 1 through 5, individually and collectively. When all the evidence discussed above is considered, respondent presented sufficient evidence of rehabilitation and “extraordinary circumstances” to justify allowing him to keep his license, subject to the terms and conditions specified in the Order below, for the reasons discussed in Factual Findings 24 and 25.

ORDER

License Number P20637 issued to respondent Ty A. Cook is REVOKED pursuant to Legal Conclusions 1 through 5, individually and collectively. However, such revocation is immediately STAYED, and respondent is placed on PROBATION for four 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 his compliance with the terms and conditions of his probationary order.

2. **Personal Appearances:** Respondent shall appear in person, as directed by the EMSA, for interviews, meetings, and/or evaluations of his compliance with the terms and conditions of the probationary order. He 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 his compliance with all terms and conditions of his probation. If he submits his quarterly reports by mail, it shall be sent as certified mail.

4. **Employment Notification:** During the probationary period, respondent shall notify the EMSA in writing of any EMS employment. He shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment. Additionally, respondent shall submit to the EMSA proof in writing of his disclosure to the current and any prospective EMS employer of the reasons for in terms and conditions of his 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. He 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 any time 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, he must immediately notify the EMSA, in writing, of the date of such departure and the date returned to California, if he returns.

7. **Abstinence from Drug Possession and Use:** Respondent shall abstain from the possession, injection, or consumption by any route of all controlled substances, dangerous drugs, or any drugs requiring a prescription, unless prescribed under federal or state law as part of a documented medical treatment. Within 14 days of obtaining such a prescription, respondent shall ensure that the prescribing professional provides the EMSA a written report identifying the medication, dosage, the date the medication was prescribed, respondent's diagnosis, and the date the medication will no longer be required. This report must be provided to the EMSA directly by the prescribing professional.

If respondent has a lawful prescription when initially placed on probation, this same report must be provided within 14 days of the commencement of probation.

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

8. **Abstinence from the Use of Alcohol and Products Containing Alcohol:** Respondent shall abstain from the use of alcoholic beverages and products containing alcohol.

9. **Biological Fluid Testing:** Respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by the EMSA or its designee. He 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 drug/alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and drug/alcohol testing facilities. When the EMSA requests a random test, 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, 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. Respondent shall be responsible for all costs associated with the drug/alcohol screening.

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

10. **Addictive Behavior Support Groups:** Within five (5) days of the effective date of the Decision, respondent shall begin attendance at an addictive behavior support group (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.). Respondent shall submit verified documentation of attendance with each written report as required by the EMSA. Respondent shall continue attendance in such a group for the duration of probation.

11. **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. He 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, 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 if he has not submitted fingerprints to the EMSA in the past as a condition of licensure.

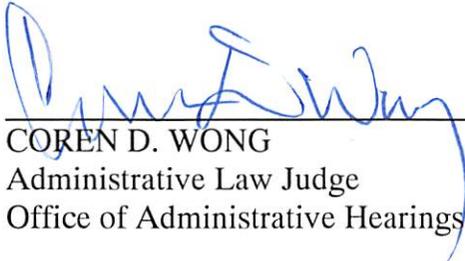
Within 72 hours of being arrested, cited or criminally charged with any offense, respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the offense(s) as to whether respondent violated any federal, state and local laws,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

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

12. **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 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 omissions.

13. **Completion of Probation:** Respondent's license shall be fully restored upon successful completion of probation.

DATED: November 14, 2014


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings