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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

CHRISTOPHER DAVIS

Respondent.

)
) Enforcement Matter No.: 10-0066
) OAH No.: 2011021041
)
)

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the
Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective thirty (30) days after the date below. It is so ordered.

DATED:

10/11/11



Howard Backer, MD, MPH, FACEP

Director

Emergency Medical Services Authority

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

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

CHRISTOPHER DAVIS
License No. P08488

Respondent.

Case No. 10-0066

OAH No. 2011021041

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on September 6, 2011, in Los Angeles.

Cynthia L. Curry, Senior Staff Counsel, represented Complainant.

Christopher Davis (Respondent) represented himself.

Oral and documentary evidence was received, and argument was heard. The record was held open to allow Respondent to submit documentation regarding his alcohol program by 5 P.M. on September 16, 2011, and to allow Complainant to submit a written response and/or objections by 5 P.M. on September 20, 2011. OAH received timely submissions from the parties. Respondent's 10-page facsimile transmission was received on September 14, 2011, and marked for identification as Exhibit A. Complainant's four-page facsimile transmission was received on September 16, 2011, and marked for identification as Exhibit 9. After consideration of Complainant's Exhibit 9, Respondent's Exhibit A was admitted pursuant to Government Code section 11513, subdivision (d). The matter was submitted and the record was closed on September 16, 2011.

FACTUAL FINDINGS

1. Complainant Sean Trask filed the Accusation in his official capacity as Chief of the EMS Personnel Division of the Emergency Medical Services Authority of the State of California.

2. On February 1, 1996, the Emergency Medical Services Authority of the State of California (EMSA) issued Emergency Medical Technician-Paramedic (EMT-P) license

number P08488 to Respondent. The license is valid through March 31, 2012, unless it is revoked or suspended as provided by law.

Respondent's Conviction

3. On May 4, 2010, in the Superior Court, County of San Bernardino, case number TWV900085, Respondent was convicted on his plea of nolo contendere to one count of violating Vehicle Code section 23103, subdivision (a) (reckless driving), a misdemeanor.

4. Respondent was placed on conditional and revocable release for a period of three years under terms and conditions including, but not limited to, that he pay fines and fees totaling \$2,026, he not drive a motor vehicle unless properly licensed, he not drive a motor vehicle with a measureable amount of alcohol in his system, and he attend a first-offender alcohol counseling program for three months.

5. The criminal case originally filed against Respondent charged him with violating Vehicle Code sections 23152 (driving under the influence of alcohol, with a blood-alcohol level of 0.08 percent or higher), 23103 (reckless driving), and 14601.1 (driving with a suspended license). Pursuant to a plea agreement, all charges were dismissed except the charge for reckless driving, which was the basis for Respondent's conviction.

6. (A) The facts and circumstances underlying the conviction are: On November 12, 2008, at approximately 5:35 p.m., a uniformed motorcycle officer of the Pasadena Police Department's Traffic Section was traveling in the carpool lane eastbound on the 210 freeway. The officer was moving with the flow of traffic, which was between 40 to 45 miles per hour. The officer saw a black Mercedes Benz CL500, driven by Respondent, approximately 200 yards ahead that was driving at a high rate of speed in the emergency lane adjacent to the center divider and passing vehicles in the carpool lane. The officer saw Respondent's vehicle pass 10 vehicles and re-enter the carpool lane. A few seconds later, he saw Respondent's vehicle enter the emergency lane, quickly pass several more vehicles, and then re-enter the carpool lane.

(B) At one point, the officer lost sight of Respondent's vehicle but then saw it again driving in the carpool lane. The officer saw Respondent's vehicle pull up behind a blue Toyota Prius. Respondent's vehicle began to weave back and forth behind the Prius, as if Respondent was looking for a way to get around the Prius. The officer saw the Prius move to the left side of the carpool lane and it appeared to the officer that Respondent's vehicle was attempting to pass it on the right, between the carpool lane and the number one lane. Respondent's vehicle was almost alongside the Prius before it moved behind the Prius and continued to weave back and forth. The officer then saw Respondent's vehicle quickly move into the emergency lane between the center divider and the carpool lane. The officer activated his emergency lights to initiate a traffic stop of Respondent's vehicle. Respondent's vehicle accelerated at a very high rate of speed, passing the slower traveling vehicles in the carpool lane. The motorcycle officer pursued Respondent's vehicle but at 90 miles per hour

could not keep up with Respondent's vehicle, which pulled away from the officer. Respondent's vehicle was driving in the emergency lane, passing slower vehicles, and kicking up dust and debris. The officer estimated Respondent's vehicle to be traveling at over 110 miles per hour. The officer determined it was unsafe to continue pursuing Respondent's vehicle at these speeds, and let it go.

(C) A short time later, the officer caught up with Respondent's vehicle, which had slowed down from the freeway traffic traveling at 35 miles per hour. The officer activated his siren and Respondent's vehicle moved to the right shoulder of the freeway. The officer detained Respondent and contacted the California Highway Patrol (CHP) for assistance. While waiting for the CHP to arrive, the officer spoke to Respondent and smelled a faint odor of alcohol on Respondent's breath. The officer also heard that Respondent's speech was slurred and saw his eyes were red and watery. When the officer told Respondent he could have killed someone or himself with the way he was driving, Respondent said he was very sorry. Respondent called his driving "reckless" and told the officer he was trying to get to his ex-girlfriend's house.

(D) The CHP officer who arrived at the scene spoke with Respondent and smelled the odor of an alcoholic beverage on his breath, and saw that Respondent's eyes were red and watery and his speech was slurred. The CHP officer administered field sobriety tests, taking into account Respondent's report that he had recent knee surgery. Based on his observations of Respondent, and the results of the field sobriety tests, the CHP officer formed the opinion Respondent was under the influence of alcohol. The Arrest-Incident Report by the CHP officer indicates that a blood sample was taken to measure Respondent's blood-alcohol level. The results of the blood test are not described in the documents presented at this hearing.

Rehabilitation

7. Respondent is 39 years old. He has been a firefighter-paramedic for 16 years.
8. Respondent currently works for the Los Angeles County Fire Department, and previously worked for the Inglewood Fire Department before it merged with the Los Angeles County Fire Department. He has no history of prior discipline by the EMSA against his EMT-P license. He has no history of discipline with the Inglewood Fire Department. However, he has appealed a pending disciplinary action by Los Angeles County related to his 2010 conviction.
9. Respondent is currently on probation for his 2010 conviction, and is scheduled to remain on probation until May 4, 2013. He is complying with the terms of his probation. He has paid the court-ordered fines and fees and completed a first-offender alcohol program.

10. Prior to his sentencing on May 4, 2010, Respondent had enrolled in an alcohol program with Southern California Alcohol and Drug Programs, Inc. He completed the three-month alcohol program on September 11, 2009. Respondent complied with the program requirements by attending 10 group sessions, three individual counseling sessions, 15 alcohol education hours, and six Alcoholics Anonymous (AA) meetings. A client progress report from the program rated Respondent's attitude as "fair."

11. Respondent testified he currently attends AA meetings once per month. He testified that he was never a heavy drinker, and would have a drink with a meal at a restaurant. Today, Respondent may have a glass of wine on occasion, but only when he is at home.

12. Respondent expressed remorse for his 2010 conviction. He feels his conviction was an isolated incident that will not happen again. He attended counseling to address the issues that led to his misuse of alcohol. Respondent has two sons, ages 16 and 18. He wants to be a good role model for his sons. His conviction is not the type of role model he wants his sons to follow. In addition, Respondent is a volunteer mentor with the District Attorney's office, and recruits other firefighter-paramedics to also volunteer for the program. As a mentor, Respondent counsels young people against joining gangs and abusing drugs and alcohol. Respondent is embarrassed about his conviction because it makes him feel hypocritical when he talks to young people about avoiding the abuse of alcohol and drugs. Respondent appeared sincere when testifying that his conviction was an isolated incident that will not happen again.

LEGAL CONCLUSIONS

1. The EMSA is the state agency "responsible for the coordination and integration of all state activities concerning emergency medical services." (Health and Safety Code, section 1797.1.) Emergency medical services (EMS) are "the services utilized in responding to a medical emergency." (Health & Saf. Code, § 1797.72.)

2. Pursuant to Health and Safety Code section 1798.200, subdivision (b), the EMSA may deny, suspend, revoke, or place on probation any EMT-P license upon the finding of the occurrence of any of the actions listed in subdivision (c). Subdivision (c) reads in pertinent part as follows:

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 license issued under this division, or in the placement on probation of a certificate holder or licenseholder under this division:

[¶] . . . [¶]

(6) Conviction of any crime which is substantially related to the qualifications, 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

3. An 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 a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety." (Cal. Code Regs., tit. 22, § 100174.)

4. Cause exists to discipline Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(6), and California Code of Regulations, title 22, section 100174, in that Respondent was convicted of a crime which is substantially related to the qualifications, functions, and duties of a licensed EMT-P, based on Factual Findings 3-6.

5. Cause exists to discipline Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(9), and California Code of Regulations, title 22, section 100174, in that Respondent misused alcoholic beverages in a manner that threatened the public health and safety, based on Factual Findings 3-6.

6. Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

7. The EMSA has developed "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" dated July 26, 2008 (Guidelines), which are incorporated by referenced in the EMSA's regulations at California Code of Regulations, title 22, section 100172.

8. Section III of the Guidelines set forth categories of violations and the recommended level of discipline for each category. For a "substantially related" criminal conviction, the maximum discipline is revocation and the minimum discipline is revocation stayed, with one year probation. For a misuse or excessive use of alcohol, the maximum discipline is revocation and the minimum discipline is revocation stayed, with three years probation. (Guidelines, pp. 6-7.)

9. Section II of the Guidelines set forth factors to be considered when determining the appropriate discipline to be imposed in a given case. The factors include: the nature and severity of the act, offense, or crime under consideration; the actual or potential harm to the public or any patient; prior disciplinary record; prior warnings on record or prior remediation; the number and/or variety of current violations; aggravating evidence; mitigating evidence; any discipline imposed by the paramedic's employer for the same occurrence of that conduct; rehabilitation evidence; in cases with a criminal conviction, compliance with the terms of the sentence and/or court-ordered probation; overall criminal record; time that has elapsed since the act or offense occurred; and if applicable, evidence of expungement proceedings under Penal Code section 1203.4. (Guidelines, pp. 1-2.)

10. Applying the EMSA's discipline factors, Respondent committed a serious offense by driving in a reckless manner and under the influence of alcohol on a busy freeway. His conduct posed a risk of harm to himself and members of the public traveling on the freeway. However, his crime was classified as a misdemeanor and he was placed on probation for three years. He has complied with the terms of his criminal probation. He is scheduled to remain on probation until 2013. He has no history of other criminal convictions. The 2010 conviction appears to be an isolated incident. Respondent was sincere in expressing remorse and embarrassment for the conviction. Being a good role model for his two sons, and his volunteer work as a youth mentor, appear to be strong motivation for Respondent to avoid repeating the conduct that led to his conviction. Respondent has been a firefighter-paramedic for 16 years with no prior history of discipline against his EMT-P license. The appropriate level of discipline in this case is a stayed revocation with a three-year period of probation under the terms and conditions set forth in the Order below. The optional conditions for abstaining from alcohol use and biological fluid testing are appropriate conditions of probation in Respondent's case.

ORDER

License Number P08488 issued to Respondent, Christopher Davis, 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:

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.

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/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 his/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 his/her prehospital 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 his/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 his/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.

10. Abstinence 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 drug/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 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, 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 drug/alcohol screening.

At the EMSA's sole discretion, the EMSA may allow the random drug testing to be conducted by the 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.

DATED: October 7, 2011


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings