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BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician- Paramedic License Held by: ) Enforcement Matter No.: 14-0168  
) OAH No.: 2016030446  
)  
6 **ERMILO GONZALEZ** ) **DECISION AND ORDER**  
License No. P24878 )  
)  
Respondent. )

The attached Proposed Decision and order dated August 9, 2016, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The decision shall become effective 30 days after the date of signature.

It is so ordered.

DATED:  
*August 11, 2016*

  
Howard Backer, MD, MPH, FACEP  
Director  
Emergency Medical Services Authority

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ERMILO GONZALEZ,

Emergency Medical Technician-Paramedic  
License No. P24878,

Respondent.

Case No. 14-0168

OAH No. 2016030446

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 13, 2016, in Fresno, California.

Craig L. Stevenson, Senior Staff Counsel, represented Sean Trask (complainant), Chief of the Emergency Medical Services Personnel Division of the Emergency Medical Services Authority (Authority or EMSA).

Ermilo Gonzalez (respondent) represented himself.

Evidence was received on July 13, 2016. The record remained open to allow the parties to submit briefs. On July 21, 2016, complainant submitted a brief, which was marked for identification as Exhibit 12. On July 25, 2016, respondent submitted a brief, which was marked for identification as Exhibit B. The record was closed, and this matter was submitted for decision on July 25, 2016.

**FACTUAL FINDINGS**

1. On May 7, 2007, Emergency Medical Technician-Paramedic (EMT-P) License No. P24878 (license) was issued to respondent. Respondent's license is in full force and effect and will expire on May 31, 2017, unless renewed or revoked. Complainant seeks to revoke respondent's license based upon the convictions described below and respondent's use of alcohol.

### *Respondent's Convictions*

2. On October 8, 2014, in the Fresno County Superior Court, Case No F14909021, respondent, on a plea of nolo contendere, was convicted of violating Penal Code section 273.5, subdivision (a), inflicting corporal injury on a spouse, cohabitant or fiancé, a felony. On November 19, 2014, imposition of judgment and sentence was suspended, and respondent was placed on formal probation for three years. He was ordered to serve one day in jail and was given credit for one day served. He was ordered to enroll in a 52-week batterer's treatment program and an "outpatient substance abuse program (evaluation)." He was also ordered to complete 40 hours of community service through Hands On Central California, and to pay fines and fees. On February 22, 2016, respondent's felony conviction was reduced to a misdemeanor under Penal Code section 17, subdivision (b), after respondent submitted proof to the court that he had completed the batterer's treatment program. Respondent's criminal probation is currently scheduled to end in November 2017.

3. The incident underlying respondent's inflicting corporal injury conviction occurred on September 12, 2014. As set forth in the Clovis Police Department case report,<sup>1</sup> respondent lived with his girlfriend. Respondent's girlfriend called the police to their home. When the police arrived, respondent's girlfriend stated that respondent told her to "Get the fuck out of my house," racked his handgun to frighten her, pulled her off the bed causing her to hit her head on the wall and fall to the floor, wrapped his arms around her neck, placed her in a choke hold, and began to squeeze to the point where she could no longer breathe. Respondent admitted to the police that he pulled his girlfriend off the bed and into the living room. He also admitted that he activated and manipulated the slide on his handgun "for protection" because his girlfriend liked to "scratch." He further admitted that he put his arms around her neck from behind to drag her into the other room, but he denied that he squeezed her neck. The police obtained and served an emergency protective order on respondent.

4. On November 20, 2014, in the Fresno County Superior Court, Case No. M14923301, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more (DUI), a misdemeanor. Imposition of judgment and sentence were suspended and respondent was placed on informal probation for three years. Respondent was ordered to serve three days in jail, and was given three days credit for time served. He was ordered to attend and complete a three-month Level 1 First Offender Alcohol Program, and to pay fines and fees. Respondent's criminal probation is currently scheduled to end in November 2017.

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<sup>1</sup> The Clovis Police Department case report was admitted pursuant to the *Lake v. Reed* (1997) 16 Cal.4th 448: The percipient observations of the reporting police officers and the admissions of respondent were admitted as direct evidence; the statements of third parties, including respondent's girlfriend, were admitted as administrative hearsay under Government Code section 11513, subdivision (d).

5. The incident underlying respondent's DUI conviction occurred shortly after midnight on May 24, 2014. A deputy sheriff observed respondent driving at a high rate of speed and repeatedly drifting out of his lane. When the deputy sheriff stopped respondent's vehicle, he smelled the "distinct odor of an alcoholic beverage emitting from" respondent and observed that respondent's eyes were red and watery. Respondent told the deputy sheriff that he had consumed two shots of vodka. The deputy sheriff requested the assistance of a California Highway Patrol (CHP) officer. A CHP officer arrived, observed signs that respondent was intoxicated, and conducted a DUI evaluation, including field sobriety tests. Breath samples taken at the scene measured respondent's BAC at .17/.16 percent. The court's minute order stated that respondent's BAC was .14 percent.

#### *Respondent's Testimony and Evidence*

6. At the hearing, with regard to his DUI conviction, respondent testified that he stopped drinking alcohol on May 25, 2014, the day after his arrest. He has learned that, given who he is, he cannot drink anymore, and so has not had any alcohol since then. He completed the three-month DUI program ordered by the court. He also participated in Alcoholics Anonymous (AA) for three months as mandated by the court. He has continued to attend AA meetings on Sundays although it is no longer required by the terms of his criminal probation.

7. With regard to his inflicting corporal injury conviction, respondent testified that he completed the court-ordered batterer's treatment program. He has learned how easy it is to get into trouble and how important it is to "walk away" from such situations. He asserted that he has made every effort to get his conviction behind him. He is still living with his girlfriend. They have been together for 12 years. He testified that she wanted to hurt him by talking to the police, but he had forgiven her for it.

8. At the hearing, respondent submitted certificates showing that he had successfully completed both the batterer's treatment program and the three-month DUI program. He also submitted copies of progress reports prepared by the facilitators who led his batterer's treatment program. These reports show that respondent was rated as either "satisfactory" or "excellent" on all the items that were evaluated, and that his facilitators believed that his participation and progress in the class were positive.

9. In the past, respondent worked as a firefighter, an EMT, and a paramedic. His most recent work as a paramedic was for Imperial Ambulance where he worked for three years as a Training Director. He testified that he "had to leave" that position about one year ago after he "wrote up" the vice president's daughter for misconduct. He has not worked as a paramedic since that time because he did not want to disclose his felony conviction to prospective employers. For the past year he has had his own business working as a Training Director for the American Heart Association. He also works as a lead instructor for Pace Symposia. As part of his work, he teaches the Advanced Cardiac Life Support and Basic Life Support classes for professional healthcare providers.

10. At the hearing, respondent took responsibility for his actions. He testified that it would be hard for him to continue performing his current work if he loses his EMT-P license. He asserted that there was no “spill over” from his convictions to his job, and that he never let his personal issues interfere with his professional work as a paramedic.

### *Discussion*

11. The Accusation alleged three causes for discipline against respondent’s license: (1) under Health and Safety Code section 1798.200, subdivision (c)(6), for having been convicted of substantially related crimes; (2) under Health and Safety Code section 1798.200, subdivision (c)(9), for excessive use of alcohol as evidenced by his DUI conviction; and (3) under California Code of Regulations, title 22, section 100174, subdivisions (a)(4) and (b)(2), for having been convicted of a felony. Complainant argued that the cited subdivisions of section 100174 mandate that respondent’s license must be revoked. As set forth in the Legal Conclusions, complainant established that California Code of Regulations, title 22, section 100174, subdivision (b)(2), mandates the revocation of respondent’s license. As set forth below, even if that subdivision did not mandate revocation, respondent did not submit sufficient evidence of rehabilitation to demonstrate that it would be consistent with public health, safety, and welfare to allow him to retain his license, even on a probationary basis.

12. California Code of Regulations, title 22, section 100176 provides that the following criteria shall be considered when evaluating a licensee’s rehabilitation:

- (1) The nature and severity of the act(s) or crime(s).
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (1) or (2) of this section.
- (4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the person.

13. Respondent has engaged in some rehabilitation. He has complied with the terms of his criminal probation, including completing the 52-week batterer's treatment program and the three-month DUI program. After completing the batterer's treatment program, his inflicting corporal injury conviction was reduced from a felony to a misdemeanor. At the hearing, he took responsibility for his criminal conduct.

14. But when all the relevant rehabilitation criteria set forth in California Code of Regulations, title 22, section 100176 are considered, respondent failed to offer sufficient evidence of rehabilitation to allow him to retain his license. The acts underlying respondent's conviction for inflicting corporal injury were serious. He admitted to the police that he dragged his girlfriend from her bed, put his arms around her neck, and activated and manipulated the slide on his handgun. With regard to his DUI conviction, his BAC was measured at about twice the legal limit. It has been less than two years since respondent sustained his two convictions. He is still on criminal probation, which is not scheduled to end until November 2017. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation because such conduct is expected].)

15. Although respondent testified that he took responsibility for his criminal actions, at the hearing he demonstrated little insight into the nature and scope of his illegal conduct. He pointed out his girlfriend's fault in calling the police in an effort to hurt him, but minimized his fault in violently confronting her. Respondent has not worked as a paramedic for approximately one year. His stated reason for not doing so was that he did not want to admit his felony conviction to prospective employers. As the California Supreme Court stated in *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940, "Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation."

16. Respondent did not submit any testimony or letters from employers, colleagues, family, friends or sponsors to substantiate that he has had a change in attitude and behavior since his convictions to ensure that he would not pose a threat to the public if he were allowed to retain his license. He did not present any evidence of drug or alcohol testing or attendance at AA meetings to support his sobriety. The anger and violence he displayed during the incident underlying his inflicting corporal injury conviction are antithetical to the demeanor and behavior that are expected of a paramedic. In sum, when all the evidence offered at hearing is considered, respondent failed to offer sufficient evidence of rehabilitation to establish that he would not pose a threat to the public health, safety and welfare if he were allowed to retain his paramedic license. Consequently, his license must be revoked.

## LEGAL CONCLUSIONS

1. Pursuant to Health and Safety Code section 1798.200, subdivision (c)(6), the Authority may discipline an EMT-P license if the licensee has been convicted of "any crime which is substantially related to the qualifications, functions, and duties of prehospital

personnel.” In such case, the “record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.” (*Ibid.*)

2. California Code of Regulations, title 22, section 100175 provides that 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 a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety.”

3. Respondent’s DUI and inflicting corporal injury convictions, to a substantial degree, evidence respondent’s present or potential unfitness to perform the functions of a paramedic in a manner consistent with the public health and safety. They are therefore substantially related to the qualifications, functions, and duties of a paramedic under California Code of Regulations, title 22, section 100175, and establish cause to discipline respondent’s license under Health and Safety Code section 1798.200, subdivision (c)(6).

4. Pursuant to Health and Safety Code section 1798.200, subdivision (c)(9), the Authority may discipline an EMT-P license for a licensee’s “[a]ddiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.” On May 24, 2014, respondent’s excessive use of alcoholic beverages resulted in his arrest and subsequent DUI conviction. His BAC was measured at about twice the legal limit. As the court in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770, explained:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician’s fitness and competence to practice medicine. 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. [Citation.]

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.

5. The court’s reasoning in *Griffiths* applies in this case. (See also *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.) Consequently, complainant established cause to discipline respondent’s license under Health and Safety Code section 1798.200, subdivision (c)(9), based upon his excessive use of alcohol on May 24, 2014, as evidenced by his DUI conviction.

6. California Code of Regulations, title 22, section 100174, subdivision (a)(4), provides that the Authority “shall” revoke a paramedic license if the licensee “[i]s on parole or probation for any felony.” Subdivision (b)(2) provides that the Authority “shall” revoke a paramedic license 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.” Subdivision (d) provides that:

Subsections (a) and (b) shall not apply to convictions that have been pardoned by the governor, and shall only apply to convictions where the applicant/licensee was prosecuted as an adult. Equivalent convictions from other states shall apply to the type of offenses listed in (a) and (b). As used in this section, “felony” or “offense punishable as a felony” refers to an offense for which the law prescribes imprisonment in the state prison as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

7. In complainant’s post-hearing brief, complainant argued that California Code of Regulations, title 22, section 100174, subdivisions (a)(4) and (b)(2), apply in this matter with regard to respondent’s inflicting corporal injury conviction because respondent was convicted of a felony and was placed on felony probation from October 2014 to February 2016. According to complainant, “The fact that the felony was later reduced to a misdemeanor is irrelevant.” Complainant argued that under subdivisions (a)(4) and (b)(2), the Authority is “required” to revoke respondent’s license.

8. Respondent, in his post-hearing brief, argued that the court-ordered programs he participated in were intended to “reduce [his] conviction and make [him] a better person.” They were provided for a reason: “to give someone a second chance to live a semi-normal life and do what they love.” He believes he “did everything” he “emotionally, physically and financially” could do. He does not believe that the reduction of his felony to a misdemeanor was irrelevant “in any possible way.” Respondent argued that his license should not be revoked.

9. On October 8, 2014, respondent, upon his plea of nolo contendere, was convicted of violating Penal Code section 273.5, subdivision (a), inflicting corporal injury on a spouse, cohabitant or fiancé, a felony. On February 22, 2016, pursuant to Penal Code section 17, subdivision (b), respondent’s felony conviction was reduced to a misdemeanor. Penal Code section 17, subdivision (b), in relevant part, provides:

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following Circumstances:

[¶] ... [¶]

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

10. Given this language in Penal Code section 17, subdivision (b), once respondent's conviction for inflicting corporal injury was reduced to a misdemeanor, that conviction must thereafter be treated as a misdemeanor "for all purposes." (*Gebremicael v. California Com'n on Teacher Credentialing* (2004) 118 Cal.App.4th 1477, 1487.) Consequently, it cannot be found that respondent "[i]s on parole or probation for any felony." Thus, respondent's license is not subject to required revocation under California Code of Regulations, title 22, section 100174, subdivision (a)(4).

11. But the same analysis does not apply when considering whether respondent's license is subject to required revocation under California Code of Regulations, title 22, section 100174, subdivision (b)(2), which provides that the Authority "shall" revoke a paramedic license 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." In the past 10 years, respondent was convicted and released from incarceration for violating Penal Code section 273.5, subdivision (a), an offense which is "punishable as a felony." Consequently, notwithstanding the February 2016 reduction of respondent's conviction from a felony to a misdemeanor under Penal Code section 17, subdivision (b), given the language of California Code of Regulations, title 22, section 100174, subdivision (b)(2), respondent's license must be revoked. (*Rusheen v. Drews* (2002) 99 Cal.App.4th 279, 285-287.)

12. Complainant established that respondent's license is subject to discipline for the three causes discussed above in Legal Conclusions 3, 5 and 11. As set forth in Findings 13 through 16, respondent did not submit sufficient evidence of rehabilitation to demonstrate that it would be consistent with public health, safety and welfare to allow him to retain his EMT-P license. Respondent's license must therefore be revoked.

## ORDER

Emergency Medical Technician-Paramedic License No. P24878 issued to respondent Ermilo Gonzalez is REVOKED pursuant to Legal Conclusions 3, 5, and 11, separately and for all of them.

DATED: August 9, 2016

DocuSigned by:

*Karen Brandt*

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KAREN J. BRANDT

Administrative Law Judge

Office of Administrative Hearings