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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:

DALE R. HILLER
License No. P25482

Respondent.

)
) Enforcement Matter No.: 11-0078
) OAH No.: 2012060988
)

DECISION AND ORDER

The attached Proposed Decision and order dated November 13, 2012, is hereby adopted by the
Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective 30 days after the date of signature.

It is so ordered.

DATED:

Nov 15, 2012



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 and First
Supplemental Accusation Against:

DALE R. HILLER,

License No. P25482,

Respondent.

Case No. 11-0078

OAH No. 2012060988

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 9, 2012, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Michael Jacobs, Senior Staff Counsel, represented Sean Trask (Complainant).

Dale R. Hiller (Respondent) was present and represented himself.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On November 16, 2007, the Emergency Medical Services Authority, State of California (EMSA), issued Emergency Medical Technician-Paramedic (EMT-P) License Number P25482 to Respondent. The license is scheduled to expire on November 30, 2013.

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

3. During the hearing, Complainant was granted leave, without objection by Respondent, to file the First Supplemental Accusation.

4. During the hearing, Complainant withdrew Health and Safety Code section 1798.200, subdivision (c)(6) (conviction of a substantially related crime), as a ground for discipline against Respondent's license.

Respondent's Use and Possession of a Controlled Substance

5. On April 11, 2011, officers of the Los Angeles Police Department conducted a vehicle stop and identified Respondent as the driver of the vehicle. Respondent had a passenger. After some questioning, Respondent and his passenger were asked to exit the vehicle. Respondent's passenger subsequently attempted to flee the scene but was apprehended by one of the officers. The passenger was searched and found to be in possession of two baggies of a substance appearing to be heroin. The officers decided to search Respondent, and found two foil wrapped packages in his pants pockets containing what appeared to be heroin. At the scene, and again during the booking process, Respondent readily admitted to police that the substance in his possession was heroin, that he and his passenger had smoked heroin earlier that day, and that he packed the remainder of the heroin in the foil packages.

6. Respondent was arrested and prosecuted for the felony crime of being in possession of a controlled substance (heroin). A criminal complaint was filed against him in the Superior Court of the State of California, Los Angeles County. On May 25, 2011, Respondent pled guilty to one felony count of violating Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance). The court deferred entry of judgment for a period of 18 months, and ordered Respondent to successfully complete the deferred entry program, including completing a drug treatment program, not using or possessing illegal drugs, staying away from known drug dealers and regular reporting requirements.¹ Respondent has remained in compliance with the deferred entry program, which is scheduled to expire on November 27, 2012.

7. During the hearing, Respondent admitted that at the time of his arrest he was addicted to heroin. His addiction had gradually on-set for approximately one year before his arrest, stemming from a serious injury to his hip and pelvis he suffered on duty on November 23, 2010. His treatment for those injuries included pain medications, which he began abusing. After befriending the man who was the passenger in his car when he was arrested, Respondent was introduced to heroin, which he too began to abuse. Due to his injuries, Respondent had been taken off active duty. He was still not on active duty when he was

¹ Pursuant to Penal Code section 1000.1, subdivision (d), a defendant's guilty plea resulting in a deferred entry of judgment shall not constitute a conviction, unless thereafter the defendant does not satisfactorily complete the deferred entry program or the court finds the defendant has subsequently engaged in criminal conduct. Complainant withdrew the allegations seeking discipline against Respondent's license based on Health and Safety Code section 1798.200, subdivision (c)(6), because technically he has not yet been convicted of a crime by operation of Penal Code section 1000.1.

arrested. No evidence was presented indicating that Respondent had any addictions or substance abuse problems before sustaining his industrial injuries in 2010.

Respondent's License Renewal Application

8. On October 20, 2011, Respondent submitted a license renewal application to the EMSA. In that renewal application, Respondent, under penalty of perjury, answered "NO" to the question, "Are there any criminal charges currently pending against you."

9. Respondent's answer was knowingly false, because at the time he submitted the license renewal application Respondent had been charged with a felony crime, pled guilty, and began completing terms of his deferred entry program, as described above.

10. Although Respondent had some slight uncertainty over his obligation to disclose his arrest and criminal case in light of the potential protections of Penal Code section 1000.4 (if and when he successfully completed the deferred entry program, he would no longer be required to disclose his arrest under most circumstances), he candidly admitted while testifying in this matter that he failed to disclose his criminal matter because at the time he had not fully accepted responsibility for his actions and was afraid of losing his license.

Rehabilitation and Other Relevant Information

11. Respondent has taken significant steps to address his addiction. Since Respondent is a combat veteran of the United States Armed Forces, he initially obtained treatment for his addiction at the Veterans Administration, including prescription of a medication that alleviates symptoms of heroin withdrawal. Respondent has been sober since April 7, 2012, when he stopped taking that medication. Respondent testified that he has successfully completed the drug treatment program ordered by the criminal court, although he did not submit any documentation. He has faithfully attended AA and NA programs, and adheres to the 12-step process. He continues to receive out-patient treatment, including group therapy sessions. Respondent also participates in an Employee Assistance Program offered through his employer, the Los Angeles Fire Department (LAFD). He has a sponsor through the AA program. Respondent has also disassociated himself from those with whom he was involved while abusing drugs.

12. Respondent is 30 years old. He is single but has an infant son whom he was awarded custody. He has been employed by LAFD since 2008. He immediately informed his employer of his arrest and the circumstances. He has remained off active duty while LAFD is pursuing discipline against his employment due to his arrest and addiction. Respondent was honorably discharged from the military in 2011.

13. During the hearing, Respondent appeared candid, contrite, and accepted full responsibility for his misconduct, including his addiction, arrest, guilty plea and false answer on his license renewal application.

14. The factors established by the EMSA to be considered in determining discipline of a licensee are applied to Respondent as follows:²

- A. Nature and severity of the act(s), offense(s), or crime(s) under consideration. Respondent's heroin addiction and his falsely answering his license renewal application are considered to be serious misconduct.
- B. Actual or potential harm to the public. Only potential harm to the public was established.
- C. Actual or potential harm to any patient. No harm to any patient was established; however, Respondent was not on active duty during the events in question due to an industrial injury.
- D. Prior disciplinary record. Respondent has no prior history of discipline with the EMSA, nor with his employer, though he has been licensed a relatively short period of time.
- E. Prior warnings on record or prior remediation. Respondent has received no prior warnings from the EMSA.
- F. Number and/or variety of current violations. The number and variety of violations in this matter are concerning, in that his violations involve substance abuse and dishonest conduct.
- G. Aggravating evidence. None was presented.
- H. Mitigating evidence. None was presented.
- I. Rehabilitation evidence. Respondent presented significant evidence of rehabilitation, as described in factual findings 11-13.
- J. Compliance with terms of the sentence and/or court-ordered probation. Respondent has remained in compliance with the terms of the deferred entry program.
- K. Overall criminal record. No evidence was presented establishing that Respondent has any other criminal record.

² These factors are part of the EMSA's "Recommended Guidelines for Disciplinary Orders and Conditions of Probation," dated July 26, 2008 (Guidelines), established pursuant to California Code of Regulations, title 22, section 100172, subdivision (d).

L. Time that has elapsed since the acts or offenses occurred. The proven misconduct is recent, having occurred in 2011.

M. If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4. Respondent is not currently eligible to expunge his criminal matter; however, by operation of Penal Code sections 1000.1-1000.4, if he successfully completes the deferred entry program, the criminal case will be dismissed and Respondent will not be required to disclose his arrest or criminal charge under most circumstances.

LEGAL CONCLUSIONS

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

2. *First Cause for Discipline (Violating the Law Regarding a Controlled Substance).* Respondent is subject to disciplinary action pursuant to Health and Safety Code section 1798.200, subdivision (c)(8), in that it was clearly and convincingly established that Respondent was in possession of a controlled substance, heroin, in violation of state and/or federal law. (Factual Findings 5 and 6.)

3. *Second Cause for Discipline (Addiction to and Misuse of a Controlled Substance).* Respondent is subject to disciplinary action under Health and Safety Code section 1798.200, subdivision (c)(9), in that it was clearly and convincingly established that he misused and was addicted to heroin in 2011. (Factual Findings 5-7.)

4. *Third Cause for Discipline (Fraudulent Procurement of a License).* Respondent is subject to disciplinary action under Health and Safety Code section 1798.200, subdivision (c)(1), in that it was clearly and convincingly established that he knowingly made a false statement in his 2011 renewal application, and thereby attempted to procure his renewed license by fraud. (Factual Findings 5-10.)

5A. *Disposition.* Serious discipline in this case is warranted. A licensed paramedic suffering from an addiction, for various reasons, poses a threat to the public health, safety and welfare. The greatest threat is of such a licensee providing care to a patient while under the influence, which could have catastrophic results. In addition, paramedics have access to controlled substances in their emergency vehicles and perhaps in the homes of those to whom they render services. As a trained professional with full knowledge of the dangers of using controlled substances, Respondent demonstrated extremely poor judgment by using and abusing drugs. Of equal concern is the dishonesty displayed by Respondent in knowingly providing a false answer in his license renewal application. Honesty and integrity are paramount for licensed paramedics for obvious reasons. The combination of these problems in Respondent's case is cause for substantial concern.

5B. The EMSA's Guidelines generally recommend serious discipline for the misconduct established in this case. The recommended discipline for fraud in procuring a license is revocation. The maximum discipline for Respondent's drug offenses is revocation, while the recommended discipline is a significant suspension and probationary period coupled with the full panoply of drug diversion conditions. For drug offenses, the Guidelines also recommend the presentation of documentation showing successful completion of a drug program, letters from counselors regarding participation in the program, proof of drug testing and results, and performance evaluations from employers, among other things.

5C. Respondent's case is perplexing. It is without dispute that he has engaged in serious, recent, misconduct involving drug addiction and dishonesty. While he presented documentation showing regular attendance of AA and NA meetings and appears to be adhering to the 12-step process, he submitted no documentation from any recovery program or counselor documenting his current status. While he apparently has complied with the criminal court's deferred entry program and is on schedule to have his arrest and guilty plea set aside, he presented no written documentation demonstrating that he has fully completed a recovery program. His sobriety date is fairly recent, though it must be remembered that his arrest is also recent. Respondent demonstrated laudable candor during the hearing, making a number of admissions against his interest without hesitation; yet he intentionally gave a false answer to an important question on his license renewal application. Analysis of the disciplinary criteria set forth in the Guidelines also presents a mixed picture. Thus, there remains doubt as to Respondent's state of rehabilitation. While Complainant bears the burden of proof in establishing misconduct, a licensee bears the burden in proving satisfactory rehabilitation. Given that Respondent's misconduct was recent and serious, and the interests of public protection are so high given the responsibilities exercised by licensed paramedics, the lingering doubt against Respondent's situation must be resolved in favor of protecting the public. However, given continuing progress toward rehabilitation, more sobriety and satisfactory documentation regarding his situation, Respondent may be a suitable candidate for reinstatement in the future. (Factual Findings 1-14.)

ORDER

Paramedic License No. P25482 issued to Respondent Dale R. Hiller is revoked pursuant to Legal Conclusions 2 through 4, jointly and separately.

DATED: November 13, 2012



ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings