

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

JASON R. HOWZE
License No. P22842

Respondent.

EMS Authority No.: 14-0206

OAH No. 2015100459

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 29, 2016.

Senior Staff Counsel Stephan J. Egan represented complainant Sean Trask, Chief, EMS Personnel Division, Emergency Medical Services Authority, State of California.

Respondent Jason R. Howze appeared on his own behalf.

The record was left open until April 11, 2016, for respondent to submit additional evidence, and for complainant to comment thereon. Respondent did not submit any additional evidence. The record closed and the matter was submitted for decision on April 11, 2016.

FACTUAL FINDINGS

1. Respondent Jason R. Howze holds Emergency Medical Technician-Paramedic (EMT-P) license number P22842. The license was first issued on October 3, 2005, and expired on October 13, 2013. Respondent may renew his license unless it is revoked or suspended.

2. Complainant Sean Trask, acting in his official capacity as Chief, EMS Personnel Division, Emergency Medical Services Authority (EMSA), State of California, filed the accusation against respondent.

3. On February 4, 2015, respondent was convicted on his plea of guilty of a violation of Vehicle Code section 23103.5 ("wet reckless"/reckless driving involving the use of alcohol), a misdemeanor and a crime substantially related to the qualifications, functions

or duties of an EMT-P. Imposition of sentence was suspended, and respondent was placed on informal probation for two years on conditions that included payment of a fine, participation in driving under the influence (DUI) classes, and eight weeks of counseling. Respondent completed the DUI classes and counseling, and has otherwise complied with his probation conditions.

4. The facts and circumstances surrounding respondent's conviction are that on June 29, 2014, at about 4:00 a.m., he was pulled over for speeding, following reports that a suicidal man (identified as respondent) was driving around the Sonoma Valley. The police officer observed respondent crying hysterically; respondent stated that he wanted to die because his wife and children were going to leave him because he had been sexually abused as a child. He admitted to having consumed eight drinks of vodka over a period of five hours. Respondent exhibited objective signs of intoxication: his eyes were red and watery; his speech was slurred; and he was unable to perform field sobriety tests. Breath testing revealed a blood alcohol concentration of 0.12/0.13 percent.

Rehabilitation evidence

5. Respondent is extremely remorseful for driving after he had consumed alcohol. He testified credibly to the fact that his decision to drive after consuming alcohol was an isolated instance of misconduct that arose from a family crisis stemming from his disclosure to his wife that he had been sexually and physically abused as a child. Respondent became extremely upset and angry in the process of revealing his abuse to his wife. He destroyed a door in his home and felt like killing himself.

6. Respondent's offense was a wake-up call to respondent. He took prompt and thorough action to address his emotional problems that went well beyond what was ordered as conditions of probation. In July 2014 he began treatment in a three-month intensive Outpatient Behavioral Health Program at Santa Rosa Memorial Hospital. Psychiatrist Lesley N. Fishelman, M.D., treated respondent at Santa Rosa Memorial Hospital. In a letter dated October 14, 2014, she writes that respondent suffers from a mood disorder, and he is addressing his psychiatric issues by taking psychotropic medications, participating in therapy, and practicing behavioral techniques to prevent a recurrence of his behaviors. Dr. Fishelman also notes that respondent's toxicology reports have been negative other than for prescribed medication, and that he has been compliant with treatment.

7. Since July 2014 respondent has participated in weekly counseling sessions with Lisa Bermeo, LCSW.

8. Respondent has grown tremendously since his offense. He has created a support system that includes therapy and psychiatric medications. Additionally, through his participation in various types of therapy he has learned helpful and healthy tools to address his emotional problems. Respondent believes that with these tools, he is stable and safe to perform the duties of a paramedic.

9. After respondent received his EMT-P license in 2005 he worked at American Medical Response. Respondent stopped working as an EMT-P in December 2010, due to pain stemming from injuries to his neck. Respondent obtained his license as a registered nurse in July 2013 and worked as nurse until April 2014, when neck injuries and pain caused him to go on disability. He continues to be unable to work, and his disability has expired. His goal is to teach paramedics.

10. Respondent credibly testified that he consumes alcohol, but does not abuse it.

LEGAL CONCLUSIONS

Causes for discipline

1. Under Health and Safety Code section 1798.200, subdivisions (b) and (c)(6), the EMSA may suspend or revoke any EMT-P license if the licensee has been convicted of a crime substantially related to the qualifications, functions and duties of a licensee. Pursuant to California Code of Regulations, title 22, section 100175, a crime is "substantially related" if it evidences a present or potential unfitness of the paramedic to perform the functions authorized by his license in a manner consistent with public safety. In the instant case, respondent's "wet reckless" offense is substantially related to the duties and functions of a paramedic insofar as it evidences respondent's potential unfitness to perform his duties in a manner consistent with public safety. Accordingly, cause exists to suspend or revoke respondent's EMT-P license by reason of the matters set forth in Finding 3.

2. Under Health and Safety Code section 1798.200, subdivisions (b) and (c)(9), the EMSA may suspend or revoke any EMT-P license if the licensee has misused alcoholic beverages. Cause exists to suspend or revoke respondent's EMT-P license by reason of the matters set forth in Findings 3 and 4.

Disciplinary determination

3. The EMSA has adopted disciplinary guidelines which must be considered in fixing the level of discipline to be imposed. Under the guidelines, the maximum recommended discipline for conviction of a substantially related crime is license revocation, and the minimum recommended action is a stayed revocation with one year of probation. For the misuse of alcoholic beverages, the maximum recommended discipline is also revocation, but the minimum recommended discipline is a stayed revocation and three years' probation. In determining whether or not license revocation is appropriate in any case, the overriding concern is whether a paramedic can be trusted to perform his duties in a manner consistent with public safety.

Under the guidelines, the factors used to determine the appropriate discipline include: the nature and severity of the offense; the actual or potential harm to the public, including harm to any patient; the existence of a prior disciplinary record; the

nature of the offense and the time the offense, including mitigating or aggravating factors; rehabilitation evidence; performance on probation; and mitigating or aggravating evidence.

4. The instant case involves an isolated instance of reckless driving involving alcohol that is mitigated by the fact that it occurred following respondent's revelation that he had been sexually, physically and emotionally abused as a child. Respondent does not have a history of prior alcohol-related offenses. Respondent appreciates the seriousness of his offense. He has complied with his probation conditions and taken actions well beyond what was required to ensure his psychological stability. Towards this end, he has participated in extensive treatment and has made substantial and sincere efforts to learn and practice healthy coping skills. Respondent now has supports in place to maintain his mental health, including weekly counseling and psychiatric medications. In short, while respondent used extremely poor judgment when he drove after having consumed eight drinks of vodka in the course of five hours, the evidence established that respondent is highly committed to living a stable, law-abiding and productive life. In light of his substantial rehabilitation, it would not be contrary to the public interest to permit respondent to retain his EMT-P license on a probationary basis. The public will be adequately protected by the imposition of probation conditions that require respondent to abstain from alcohol and drugs (that are not prescribed to him), to submit to random biological fluid testing upon demand by the EMSA, and to undergo a psychiatric/medical evaluation.

ORDERS

Emergency Medical Technician-Paramedic license number P22842 issued to respondent Jason Howze is revoked pursuant to Legal Conclusions 1 and 2, jointly and separately. However, such revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Probation Compliance

Respondent shall fully comply with all terms and condition of the probationary order. Respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of respondent's compliance with the terms and conditions of his probationary order.

Respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of respondent.

2. Personal Appearances

As directed by the EMSA, respondent shall appear in person for interviews, meetings, and/or evaluations of respondent's compliance with the terms and

conditions of the probationary order. Respondent 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 compliance by respondent with all the terms and conditions of his probation. If respondent submits his quarterly reports by mail, it shall be sent as registered mail.

4. Employment Notification

During the probationary period, respondent shall notify the EMSA in writing of any EMS employment. Respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, respondent shall submit proof in writing to the EMSA of disclosure, by respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of respondent's 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 registered mail.

5. Notification of Termination

During the probationary period, respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. Respondent 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 registered mail.

6. Functioning as a Paramedic

The period of probation shall not run anytime 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, respondent must immediately notify the

EMSA, in writing, of the date of such departure and the date of return to California, if respondent returns.

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

7. Obey All Related Laws

Respondent shall obey all federal, state, and local laws, statutes, regulations, and local written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent 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, if respondent has not submitted fingerprints to the EMSA in the past as a condition of certification, then 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.

Within 72 hours of being arrested, cited or criminally charged for 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, and local written policies, protocols and rules governing the practice of medical care as a paramedic.

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

8. Completion of Probation

Respondent's certification shall be fully restored upon successful completion of probation.

9. 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 certificate suspension/revocation. Upon the initiation of such an action, or the giving of a notice to 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 certificate suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act. The issues to be resolved shall be limited to whether respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. 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. Abstinance 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 fourteen days of the commencement of probation.

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

11. Abstinance from the Use of Alcoholic Beverages

Respondent shall abstain from the use of alcoholic beverages.

12. 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. 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 drug/alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criterial 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.

The EMSA may allow the random drug/alcohol testing to be conducted by a laboratory under contract with respondent's employer to meet the requirement of random drug/alcohol testing as set forth in this section. The results of the

employer's random drug/alcohol testing shall be made available to the EMSA in the time frames described above.

13. Psychiatric/Medical Evaluation

Within 30 days from the effective date of this decision, and on a periodic basis as specified by a psychiatrist certified by the American Board of Psychiatry and Neurology, or other specialist as determined by the medical director of the EMSA, respondent shall submit to a psychiatric evaluation. The psychiatrist must be approved by the EMSA prior to the evaluation. The EMSA may allow the psychiatric evaluation to be conducted by respondent employer's employee assistance program that meets the qualifications as set forth above. Respondent shall be responsible for all costs associated with the evaluation.

Within 30 days from the effective date of this decision, and on a periodic basis as specified by a licensed physician, or other specialist as determined by the medical director of the EMSA respondent shall submit to a medical evaluation. The physician must be approved by the EMSA prior to the evaluation. The EMSA may allow the medical evaluation to be conducted by respondent employer's contracted physician that meets the qualifications as set forth above. Respondent shall be responsible for all costs associated with the evaluation.

The EMSA shall have the sole discretion to determine if respondent may continue to practice as a paramedic until such time that the psychiatrist or physician evaluates and determines that respondent is mentally and/or physically fit to practice safely as a paramedic.

DATED: April 18, 2016

DocuSigned by:
Cheryl R. Tompkin
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DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

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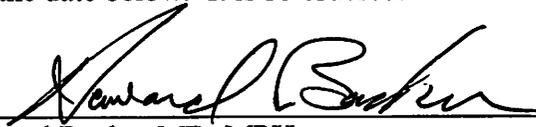
) Enforcement Matter No.: 14-0206
) OAH No.: 2015100459
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) **DECISION AND ORDER**
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The attached Proposed Decision is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.

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

DATED:

April 21, 2016


Howard Backer MD, MPH
Director
Emergency Medical Services Authority