

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

ARTURO JIMENEZ JR.,

License No. P28675,

Respondent.

Case No. 14-0318

OAH No. 2015080751

DECISION

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

This Decision shall become effective March 30, 2014.

IT IS SO ORDERED February 29, 2016.

EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

By

Howard Becker

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PROPOSED DECISION

This matter was heard by Humberto Flores Administrative Law Judge with the Office of Administrative Hearings in Los Angeles, California on February 1, 2016.

Stephen Egan, Staff Counsel III, represented complainant.

Arturo Jimenez (respondent) appeared at the hearing and was represented by David J. Givot, Attorney at Law.

Evidence was received and the matter was submitted for decision.

FACTUAL FINDINGS

1. Sean Trask (complainant) made and filed the Accusation in his official capacity as Chief, EMS Personnel Division of the Emergency Medical Services Authority of the State of California (Authority).

2. Respondent is currently licensed as an Emergency Medical Technician-Paramedic (EMT-P) (License No. P28675).

3. An EMT-P may perform various medical procedures, including advanced life support procedures, while at the scene of a medical emergency or during transport, or during inter-facility transfer, when authorized to practice as an EMT-P by the local emergency medical services agency.

4. Pursuant to Health and Safety Code section 1798.200, et seq., and California Code of Regulations, title 22, Division 9, Chapter 6, et seq., the Authority is authorized to deny, suspend, or revoke an EMT-P certificate or place the certificate holder on probation if the certificate holder has been convicted of a crime substantially related to the duties, functions and qualifications of pre-hospital personnel.

5. On January 23, 2015, in the Superior Court of California, County of Ventura, (Case No. 2014031815MA), respondent entered a plea of guilty and was convicted of violating Vehicle Code sections 23152, subdivision (b), driving with a blood alcohol level of .08 percent or more and 22348, subdivision (b), driving in excess of the speed limit (over 100 miles per hour). These offenses are substantially related to the duties, functions and qualifications of an EMT-P. Imposition of sentence was suspended and respondent was placed on formal probation for a period of 36 months on certain terms and conditions, including, inter alia, that he serve 15 days in the county jail, complete a nine-month first-offender alcohol program, and pay fines and fees totaling \$2,377.

6. The facts and circumstances underlying the conviction were that on October 16, 2014, respondent drove his vehicle on the 101 freeway at a speed in excess of 100 miles per hour while under the influence of alcohol. Highway Patrol Officers observed respondent driving erratically and clocked respondent's vehicle at 106 miles per hour. The officers activated their emergency warning lights and ordered respondent to pull over and stop his vehicle. The officers approached respondent's vehicle and observed that respondent exhibited objective signs of intoxication. Respondent was unable to satisfactorily perform the field sobriety tests and the officers determined that respondent was under the influence of alcohol and arrested him. The facts set forth above were based on the personal observations of the arresting CHP officers as set forth in the police report. Pursuant to *Lake v Reed* (1997) 16 Cal.4th 448, the personal observations of a police officer as set forth in a police report are admissible as direct evidence. Further, in his testimony, respondent admitted driving at least 100 miles per hour during the incident.

7. Complainant introduced evidence of a prior driving under the influence conviction in 2003, but did not allege this prior conviction as a cause for discipline. This prior conviction occurred 13 years ago and was expunged pursuant to Penal Code section 1203.4 in 2009.

8. Respondent presented evidence of rehabilitation. He is in compliance with the terms and conditions of his probation. Since his conviction, respondent has been participating in Alcoholics Anonymous (AA). He attends at least four AA sessions per month and has a mentor as well as a sponsor. He is now in the ninth step of the 12-Step Program. He has been clean and sober for one year. Respondent expressed remorse in that he let down his family and lost his job as a paramedic. Respondent has no prior disciplinary record.

RELEVANT STATUTES AND REGULATIONS

9. Health and Safety Code section 1798.200, subdivision (b), provides in pertinent part:

The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license holder on probation, upon the finding by the director of the occurrence of any of the actions listed in subdivision (c).

10. Health and Safety Code section 1798.200, subdivision (c), provides in pertinent part:

(c) 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, narcotics, dangerous drugs, or controlled substances.

11. California Code of Regulations title 22, section 100175, states:

(a) For the purposes of denial, placement on probation, suspension, or revocation of a certificate, pursuant to Section 1798.200 of the Health and Safety Code . . . a crime or act shall be considered to be substantially related to the qualifications, functions, and/or duties of a person holding a paramedic license under Division 2.5 of the Health and Safety Code. A crime shall be considered to be substantially related to the qualifications, functions or duties of a paramedic if to substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by his/her license in a manner consistent with the public health and safety.

(b) For the purposes of a crime, the record of conviction or a certified copy of the record shall be conclusive evidence of such conviction. "Conviction" means the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.

12. California Code of Regulations title 22, section 100173, states:

(a) Any proceedings by the Authority to deny, suspend or revoke the license of a paramedic or place any paramedic license holder on probation pursuant to Section 1798.200 of the Health and Safety Code, or impose an administrative fine pursuant to Section 1798.210 of the Health and Safety Code, shall be conducted in accordance with this article and pursuant to the provisions of the Administrative Procedure Act, Government Code, Section 11500 et seq. [¶] . . . [¶]

(d) The administrative law judge shall use the “EMS Authority Recommended Guidelines for Disciplinary Orders and Conditions of Probation”, dated July 26, 2008, as a guide in making any recommendations to the Authority for discipline of a paramedic applicant or license holder found in violation of Section 1798.200 of Division 2.5 of the Health and Safety Code.

13. The EMS Authority Recommended Guidelines for Disciplinary Orders and Conditions of Probation sets forth following factors to be considered when determining the appropriate discipline:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Prior warnings on record or prior remediation;
6. Number and/or variety of current violations;
7. Aggravating evidence;
8. Mitigating evidence;
9. Any discipline imposed by the paramedic’s employer for the same occurrence of that conduct;
10. Rehabilitation evidence;
11. In the case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation;
12. Overall criminal record;
13. Time that has elapsed since the act(s) or offense(s) occurred;
14. If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4.

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LEGAL CONCLUSIONS

1. Jurisdiction to conduct the hearing is established under Health and Safety Code section 1797 et seq.
2. Cause exists to suspend or revoke the licenses and licensing rights of respondent pursuant Health and Safety Code sections 1798.200, subdivisions (b) and (c)(6), 1797.184, and California Code of Regulations, title 22, section 100174, based on respondent's substantially related conviction and the conduct underlying the conviction as set forth in Factual Findings 5 and 6.
3. Cause exists to suspend or revoke the licenses and licensing rights of respondent pursuant Health and Safety Code sections 1798.200, subdivisions (b) and (c)(9), 1797.184, and California Code of Regulations, title 22, section 100174, based on respondent's misuse of alcoholic beverages as set forth in Factual Findings 5 and 6, which posed a risk to public safety.
4. Respondent's conduct of drinking and driving created a potential risk to the public safety. In aggravation, respondent drove his vehicle in excess of 100 miles per hour after consuming alcoholic beverages. Respondent has one previous conviction for violating Vehicle Code section 23152, subdivision (b). His previous conviction is 13 years old and has since been expunged. Respondent presented evidence of rehabilitation. He is in compliance with the terms and conditions of his probation. Since his conviction, respondent has been participating in Alcoholics Anonymous (AA). He attends at least four AA sessions per month and has a mentor as well as a sponsor. He is now in the ninth step of the 12-Step Program. He has been clean and sober for one year. Respondent has no prior disciplinary record.
5. The fact that respondent drove his vehicle at such a dangerously high rate of speed after consuming alcoholic beverages shows a serious lack of judgment. His rehabilitation effort must be balanced with this aggravated conduct. Based on the entire record of this case, the public would be adequately protected by imposing a stayed revocation with a term of probation under strict conditions, including a period of suspension, abstention from the use of alcohol, and biological fluid testing. Other optional conditions relating to the use and abuse of drugs are not relevant here since there was no evidence that respondent uses or abuses drugs.

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ORDER

The Emergency Medical Technician - Paramedic License (No. P28675) issued to respondent Arturo Jimenez Jr. is revoked pursuant to legal conclusions 1, 2 and 3. However, such revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Suspension

Respondent's Emergency Medical Technician – Paramedic License (No. P28675) is suspended for a period of 45 days beginning on the effective date of this Decision.

2. Probation Compliance

Respondent shall fully comply with all terms and condition of the probationary order. Respondent shall fully cooperate with the Emergency Medical Services Authority (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 and Release all Information forms that the EMSA may require of the respondent.

3. Personal Appearances:

As directed by the EMSA, the respondent shall appear in person for interviews, meetings, and/or evaluations of 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.

4. 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.

5. 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 the 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.

6. 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.

7. 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, 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 registered mail.

8. 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 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 certification, then the respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within forty-five (45) days of the effective date of this decision.

Within seventy-two (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 the 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.

9. Abstinance from the Use of Alcoholic Beverages:

Respondent shall abstain from the use of alcoholic beverages.

10. 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. Lab approval shall be based on criteria regulating professional laboratories and drug/alcohol testing facilities as set forth in Chapter 3, Division 2, of the Business and Professions Code and Division 1 of Title 17 of the California Code of Regulations.

When the EMSA requests a random test, the respondent shall provide the required blood/urine sample by the time specified, or within twelve (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 forty-eight (48) hours, and all written positive or negative results are provided directly by the lab to the EMSA within ten (10) days. The respondent shall be responsible for all costs associated with the drug/alcohol screening.

The EMSA may allow the random drug testing to be conducted by a laboratory under contract with respondent's employer to meet the requirement of random drug testing as set forth in this section. The results of the employer's random drug testing shall be made available to the EMSA in the time frames described above.

11. Completion of Probation:

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

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 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 either Chapter 6 of the California Code of Regulations, Title 22, Division 9, or the California Administrative Procedure Act, whichever process was used by the EMSA.

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.

DATED: February 23, 2015



HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings