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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.: 14-0091
) OAH No.: 2015010825
)
6 **MARK M. MOALEM**) **DECISION AND ORDER**
License No. P17859)
)
Respondent.)

The attached Proposed Decision and order dated March 3, 2015, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The temporary suspension order issued January 12, 2015, is hereby vacated immediately. This decision shall become effective 15 days after the date of signature.

It is so ordered.

DATED:

March 5, 2015


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:

MARK M. MOALEM,

License No. P17859

Respondent.

Agency Case No. 14-0091

OAH No. 2015010825

PROPOSED DECISION

Administrative Law Judge Regina J. Brown, Office of Administrative Hearings, State of California, heard this matter on February 10, 2015, in Oakland, California.

Stephen Egan, Staff Counsel III, represented complainant Sean Trask.

David J. Givot, Attorney at Law, represented respondent Mark M. Moalem, who was present.

The matter was submitted on February 10, 2015.

FACTUAL FINDINGS

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

2. On August 4, 2001, the EMSA issued Emergency Medical Technician-Paramedic (EMT-PM) license number P17859 to respondent Mark M. Moalem. On January 12, 2015, that license was suspended pursuant to a temporary suspension order.

3. On November 22, 2013, while on duty as a firefighter/paramedic with the San Jose Fire Department (SJFD), respondent was found unconscious on the floor of the men's bathroom and rushed to the hospital. He was in possession of a tourniquet, an empty syringe, and a vial, of what was later determined to be morphine sulfate. Morphine sulfate is a schedule II narcotic which is regulated under state and federal laws. Respondent did not have a prescription for morphine sulfate. He admitted to the arresting police officer that he was addicted to opiates and that the drugs and paraphernalia belonged to him. Respondent was arrested and released. He was charged with the following violations of the Health and

Safety Code: section 11350, subdivision (a) (possession of a controlled substance), a felony; section 11550, subdivision (a) (being under the influence of a controlled substance), a misdemeanor; and section 11364 (possession of a hypodermic needle), a misdemeanor. On July 29, 2014, before the Superior Court of California, County of Santa Clara, respondent pled guilty to the charges and was allowed to participate in a deferred entry of judgment (DEJ) program where he was ordered to complete a drug education program, pay program fees, have no new criminal convictions, and pay all court fines and fees. His convictions are held in abeyance for 18 months and all charges will be dismissed, if he meets the requirements of the DEJ program.

4. SJFD initiated an internal investigation and found that respondent was in possession of a controlled substance without a prescription while on duty in violation of the policy manual and San Jose Municipal Code. This constituted cause for discipline for misconduct and failure to observe applicable rules and regulations, and the recommended penalty was dismissal. Respondent appealed. On November 17, 2014, respondent and SJFD entered into a settlement agreement where respondent's dismissal would be held in abeyance for four years under certain terms. These terms included: (1) a five percent salary step reduction for 26 pay periods; (2) that he not engage in similar conduct; (3) that he attend an Employee Assistance Program assessment and follow any recommended counseling or treatment; (4) submit to random alcohol and drug testing; (5) complete the DEJ program, and (6) that he incur no felony conviction or conviction for drugs, violence, or driving under the influence. If respondent fails to comply with the terms of the settlement agreement, SJFD can automatically impose the dismissal.

5. The EMSA also initiated an investigation into respondent's conduct. Respondent admitted to the EMSA investigator that he was addicted to opiates as a result of a work-related injury. An Accusation was issued. Respondent filed an appeal. This hearing ensued.

Respondent's evidence

6. Respondent states that his drug problem arose after he suffered a work-related lower back injury and sustained two herniated discs. He began to take the pain medication, Norco, in 2005. By 2009, he began to use prescription drugs more frequently for pain. In June 2012, he was treated by a pain management doctor who prescribed OxyContin, a morphine sulfate. By the end of the summer of 2012, he was in "full blown addiction."

In August 2012, at the request of his fiancée, his friends conducted an intervention to have respondent deal with his addiction. Respondent checked into a detox center for 28 days. SJFD was aware of his drug problem. He returned to full duty on September 28, 2012, responding to emergencies and administering drugs to consumers. However, he relapsed because he did not believe that he was addicted, and he blamed the doctors for prescribing the pain medications. He began to use prescription Percocet and OxyContin for recreational use. His fiancée left him. In late 2012, he went out on disability leave for seven months. During his disability leave, his drug use escalated. In early 2013, he began to buy

prescription morphine from drug dealers because he could not obtain any prescription medications from his doctor. In June 2013, he returned to full duty. He made attempts to stop using drugs, but when he did, he would experience withdrawal symptoms.

7. In October 2013, respondent went to work after taking Percocet the night before. His supervisor believed that his behavior was odd and told him to take a drug test. To respondent's surprise, the drug test results were negative. In late October 2013, he went to work experiencing withdrawal symptoms and his immediate supervisor noticed that respondent was "not acting right." Effective November 21, 2013, respondent was placed on modified duty with SJFD's Office of Emergency Services where he would assist the staff. Prior to leaving home, on November 22, 2013, respondent injected himself with morphine. While at work, he began to experience withdrawal symptoms. He went into the bathroom to inject morphine, passed out, and was transported to the hospital.

8. After being released from the hospital on November 22, 2013, respondent immediately completed a two month drug treatment rehabilitation program at Amicus House. He was discharged from the inpatient program on January 22, 2014. He also spent 10 months in Amicus House's residential sober living program, and completed a three month aftercare program. The Amicus House program met the requirements of the DEJ.

9. During SJFD's internal investigation, respondent was assigned to administrative duty in the SJFD company store warehouse where he provided supplies for the fire stations, and did not respond to emergency calls. After he entered into the settlement agreement with SJFD, respondent returned to full duty on November 25, 2014. On January 12, 2015, EMSA issued an Order for Temporary Suspension Pending Hearing suspending respondent's EMT-PM license. SJFD placed him back on administrative duty.

10. Respondent used poor judgment and takes responsibility for his actions and acknowledges that he made an egregious mistake. He is ashamed and wants to do whatever it takes to get better. Currently, he is being treated by a therapist. He has also seen an addiction specialist. He joined a peer support group for firefighters on long term disability. He attends six Narcotics Anonymous (NA)/Alcoholics Anonymous (AA) meetings a week and is working through the 12-step program. He has a service commitment to NA to help run the meetings and obtain speakers. He still experiences occasional back pain, but now he exercises to deal with the pain instead of taking medication. He has a better understanding that the pain is tolerable and not as bad as he had made it out to be. He has a plan in place if he is required to take prescription pain medications, and will seek assistance from his sponsor, friends and family. Respondent makes no guarantees that he will not relapse, but he does not foresee it happening because of the steps that he has taken and his commitment to working his recovery program. He is not a threat to the public, and he was never under the influence while on a response to an emergency.

11. Lori Johnson, Executive Director of Amicus House, testified on respondent's behalf. Johnson confirmed that all of respondent's random urinalysis tests were negative while he was at Amicus House. She observed respondent during his stay at Amicus House, and watched his physical and emotional improvement, and believes that he is no longer in denial about his addiction and committed to his recovery.

12. Curtis Jacobson, SJFD's Interim Fire Chief, testified on respondent's behalf. Chief Jacobson was formerly respondent's immediate supervisor. He describes respondent as an excellent paramedic with above standard skills, competent, calm, "cool under pressure," and committed to the job. Chief Jacobson is aware that respondent is a recovering drug addict. Respondent has never stolen any drugs while on the job, even though he has had access to drugs, including morphine, during emergency calls. Respondent has had no positive drug tests. Chief Jacobson has no reservations with returning respondent to full duty.

13. Ron D'Acchioli, Deputy Director of SJFD's Bureau of Administrative Services, testified on respondent's behalf. D'Acchioli supported the settlement agreement between respondent and SJFD because he believes that respondent has "reached his bottom in addiction," and he is in the process of turning it around.

14. Stephen M. Stein, M.D., specializes in addiction medicine. He writes in a letter, dated February 7, 2015, that he performed a complete medical history, including respondent's drug and alcohol usage, and a physical examination. Dr. Stein described respondent's physical examination as unremarkable. He suggested that if respondent returns to work, then he should be subject to four years of random drug and alcohol testing performed twice monthly. Dr. Stein also states that "a total opiate blocker such as injectable naltrexone (Vivitrol) should be required for some period of time, at least 6-12 months, if he is to be in a position that allows access to morphine, his drug of choice."

15. Jane A. Dawson, M.A., M.F.T., substance abuse specialist, writes in a letter, that respondent started counseling with her on February 2, 2015, as part of the EAP requirement in the settlement agreement. Dawson describes respondent as motivated to abstain from all drugs, and that he knows he has a lot to lose. Respondent has a very positive attitude and is deeply grateful for the support he has received from his employer.

16. Mark L., respondent's NA sponsor, writes in a letter that he believes that respondent "has a grip on his recovery." According to Mark L., respondent is working his steps diligently, and he has seen "improvements in his attitude and self-worth towards life."

17. Ruben Torres, the former SJFD Fire Chief, writes in a letter, dated January 29, 2015, that respondent's performance as a firefighter/paramedic contributed to the safety and well-being of the residents of San Jose. Torres is aware that respondent faced a serious addiction problem, but he completed a rehabilitation program and is willing to do whatever it takes to get his life back on track. Torres is confident in respondent's dedication to his recovery and in his skills and trustworthiness as a paramedic.

18. Captain Peter Caponio, respondent's SJFD union representative, writes that respondent is humble, forthright and sincere in his effort to rehabilitate his image and move forward in a positive direction.

19. Charles Schulz, SJFD fire equipment technician, writes in a letter, dated February 5, 2015, that respondent has been working under his direction since January 2014. Schulz describes respondent as an exemplary employee, reliable, efficient in carrying out instructions, with the highest level of integrity and trustworthiness. Schulz believes that respondent will continue to apply himself to maintain his ability to perform his responsibilities as a firefighter/paramedic.

20. Michelle Kahihikolo, a support staff with SJFD, writes that she has known respondent since he started working for SJFD. She has been working with him directly since January 2014. Kahihikolo finds that respondent is open about his recovery. She observes all the work he is doing to continue to maintain his clean and sober lifestyle, and he works diligently on his 12-steps. She describes respondent as trustworthy, responsible, dependable, willing to lend a helping hand, and an exceptional firefighter/paramedic.

21. Respondent is 34 years old and has been a firefighter paramedic with SJFD since October 13, 2002. Respondent describes his current situation as "the happiest and healthiest that he has ever been in his life." He knows that working as a firefighter is a privilege that he took for granted. He embraces this as a second chance at life and looks forward to taking what he has experienced and applying it to his work. He has been clean and sober since November 22, 2013.

LEGAL CONCLUSIONS

1. The Emergency Medical Services System and the Prehospital Emergency Medical Personnel Act is codified at Health and Safety Code¹ section 1797 et seq. Section 1798.200, subdivision (c), authorizes the EMSA to discipline the license of an EMT-P who has engaged in actions constituting a "threat to the public health and safety" including: violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances (§ 1798.200, subd. (c)(8)); and, addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances (§ 1798.200, subd. (c)(9).) Title 22, California Code of Regulations, section 100175, provides that: "A crime or act shall be considered 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 his or her license in a manner consistent with the public health safety." Respondent's conduct, of overdosing on morphine and being addicted to controlled substances, is substantially related to the qualifications, functions, and duties of an EMT-P, who is required to respond to emergencies to treat injured consumers.

¹ All citations are to the Health and Safety Code, unless otherwise noted.

2. Cause exists to take disciplinary action against respondent's EMT-P license pursuant to section 1798.200, subdivision (c)(8), by reason of the matters set forth in Findings 3 through 5.

3. Cause exists to take disciplinary action against respondent's EMT-P license pursuant to section 1798.200, subdivision (c)(9), by reason of the matters set forth in Findings 3 through 5.

4. The EMSA has issued Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines). The recommended discipline for addiction to controlled substances is probation for five years, a suspension until an assessment and successful completion of a drug detoxification diversion program, plus standard and optional terms and conditions relating to abstinence from the use of drugs and alcohol, biological fluid testing, participation in a diversion program, and a psychiatric/medical evaluation.

5. Respondent's evidence of mitigation and rehabilitation have been considered. The evidence supports imposition of the recommended discipline set forth in the Guidelines for addiction to controlled substances. Given the significant responsibilities of EMT-P's, the EMSA must have adequate assurances that respondent will not be under the influence of drugs when he is on duty. All things considered, it is concluded that the public interest and safety will be sufficiently protected by a five-year term of probation with appropriate terms and conditions. Respondent has established that he has been clean and sober for over a year, therefore, there is no need to impose a suspension. However, all of the other recommended terms and conditions are appropriate.

ORDER

Emergency Medical Technician-Paramedic license number P17859 issued to respondent Mark M. Moalem is revoked pursuant to Legal Conclusions 2 and 3, jointly and separately; however, the revocation is stayed and respondent is placed on probation for five years pursuant to the following terms and conditions:

1. Probation Compliance

Respondent shall fully comply with all terms and conditions 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, they shall be sent by certified 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 certified mail.

5. Notification of Termination

Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his 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 certified 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 certified mail.

7. Obey All Related Laws

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. 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 licensure, 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, 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

Respondent's license 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 license 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 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 respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, 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 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, the 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 the respondent has a lawful prescription when initially placed on probation, this same report must be provided within 14 days of the commencement of probation.

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

11. **Abstinence 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 criteria 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 twelve (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 forty-eight (48) hours, and all written positive or negative results are provided directly by the lab to the EMSA within ten (10) days. 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 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.

13. Drug/Detoxification/Diversion Program

Within 30 days after being ordered by the EMSA based upon the recommendation of the psychiatrist or physician who conducts the evaluation pursuant to paragraph 13 below, respondent shall enroll and participate in a drug/detoxification/diversion program approved by the EMSA. Respondent shall participate in the program until appropriate medical supervision determines that further treatment and rehabilitation is no longer necessary.

If respondent voluntarily withdraws from the drug/detoxification/diversion program or respondent is expelled from the program, such withdrawal or expulsion shall constitute a violation of probation by respondent. Respondent shall be responsible for all costs associated with such drug/detoxification/diversion program.

14. Psychiatric/Medical Evaluation

Within 60 days after the effective date of this decision, and on a periodic basis as specified by a licensed physician, psychiatrist, or other specialist as determined by the director of the EMSA, respondent shall submit to a medical/psychiatric evaluation. The physician/psychiatrist must be approved by the EMSA prior to the evaluation. Respondent shall be responsible for all costs associated with the evaluation.

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

DATED: March 3, 2015


REGINA J. BROWN
Administrative Law Judge
Office of Administrative Hearings