

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

DEREK K.N. OKI,
Emergency Medical Technician-Paramedic
License No. P33038,

Respondent.

Case No. 14-0228

OAH No. 2015100630

PROPOSED DECISION

This matter was heard on April 19, 2016, in Los Angeles, California, by Ji-Lan Zang, Administrative Law Judge (ALJ) of the Office of Administrative Hearings.

Craig Stevenson, Senior Staff Counsel, represented complainant Sean Trask, Chief, EMS Personnel Division of the Emergency Medical Services Authority of the State of California (Authority or EMSA). David Givot, Attorney at Law, represented respondent Derek K.N. Oki, who appeared.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on April 19, 2016.

FACTUAL FINDINGS

1. On January 3, 2014, the Authority issued Emergency Medical Technician-Paramedic (EMT-P) license number P33038 to respondent. The license was in full force and effect at all times relevant herein and is scheduled to expire on January 31, 2018, unless renewed.
2. On July 10, 2015, complainant made and filed the Accusation in his official capacity.
3. On January 8, 2015, respondent was convicted on his nolo contendere plea of violating Vehicle Code section 23152, subdivision (b), driving with a blood-alcohol content 0.08 percent or more, a misdemeanor. (Superior Court of California, County of Los Angeles, case number 4SR04477.)

4. The facts and circumstances underlying respondent's conviction are as follows: Late in the night on July 21, 2014, respondent went out for drinks with a co-worker at the Blue Moon Lounge in Glendale. He drank four 12 to 20-ounce glasses of beer over the course of two hours. After leaving the bar, respondent drove home to Canoga Park. While driving on the 210 Freeway, respondent at times traveled in excess of 80 miles per hour and drifted in and out of lanes. At one point, respondent almost collided with a pickup truck. A California Highway Patrol officer observed respondent driving erratically and pulled him over. As he questioned respondent, the officer smelled a strong odor of alcohol emanating from his car. The officer saw that respondent's eyes were red and glassy and noticed that his speech was slow and slurred. When the officer asked if respondent felt the effects of alcohol, respondent admitted, "Yah, I still feel buzzed." The officer conducted a field sobriety test, which respondent failed. The officer also administered a preliminary alcohol screening test. Respondent's two breath samples showed that he had a blood-alcohol content of 0.088 percent and 0.095 percent. Respondent was arrested for driving under the influence of alcohol and driving with a blood-alcohol content of 0.08 percent or more. After respondent was transported to and booked at the Los Angeles Police Department's Foothill Station, he elected to take a breath chemical test. The breath chemical test detected that he had a blood-alcohol content of 0.10 percent. Respondent's testimony at the hearing regarding the incident underlying his conviction was consistent with the arrest report from the California Highway Patrol.

5. For his conviction of driving with a blood-alcohol content of 0.08 percent or more, respondent was placed on three years of summary probation, under certain terms and conditions, including payment of \$1,992 in court fines, fees, and restitution, or, in lieu of fines, performance of 13 days of community labor; completion of a three-month first-offender alcohol education program; and the installation of an ignition interlock device in his car. Respondent has complied with all of the terms and conditions of his probation. His probation is scheduled to expire in January 2018. Respondent has not had his conviction expunged by the court. No evidence was presented that respondent has sustained any other arrests or convictions.

6. Respondent is a 26-year-old man. He testified at the hearing that he was not on duty as a paramedic at the time of the incident which led to his arrest and conviction. He does not believe that he has a drinking problem. Since his conviction, however, respondent drinks "rarely." As a part of his court-ordered alcohol education program, respondent was required to attend six Alcoholics Anonymous (AA) meetings. Respondent voluntarily participated in six additional AA meetings because he felt that he benefited from hearing about the experiences of other AA members. Respondent asserted that he has learned an important lesson from his conviction. Respondent understands that he should not drink and drive because "there are a lot of consequences."

7. Respondent is currently a full-time student at California State University, Northridge (CSUN), majoring in Public Health. Respondent is also actively involved with Peer Health Exchange (PHE), a non-profit organization partnered with CSUN that provides health education to disadvantaged youths. Respondent joined PHE in September 2015 as a

volunteer public health educator and speaks to high school students about teen pregnancy, drug and alcohol use, and mental health issues. He was recently promoted to an undergraduate public health intern at PHE. His job duties as an undergraduate intern include supporting volunteer efforts and training new public health educators.

8. In a letter dated February 22, 2016, Jeffery Lim, Los Angeles Program Manager for PHE, wrote that respondent has “demonstrated great judgment and exuded a positive countenance in not only the work he has done as an intern but also how [he] interacts with fellow staff and volunteers. He is charismatic and always speaks with eloquence and professionalism.” (Exhibit A.)

9. Nataly Mena, Leadership Councilmember at PHE, also wrote a letter in support of respondent, dated March 14, 2016. Ms. Mena has known respondent for two years, since she worked with respondent as an emergency medical technician at PRN Ambulance. Ms. Mena wrote that “[the] first few times I had worked with [respondent] at PRN Ambulance as an EMT, I immediately noticed that he has a drive for helping others improve what they do. Not only did he perform his paramedic duties, but he also became a teacher at work by helping me improve my knowledge and skills in the field.” Regarding respondent’s work at PHE, Ms. Mena wrote, “What I have observed through [respondent’s] work is that he genuinely enjoys giving back to the community while asking for nothing in return. . . [He] easily ranks in the top ten percent of volunteers that I have trained and worked with.” (Exhibit B.)

10. Respondent received his paramedic training at Mount San Antonio College. After receiving his EMT-P license in January 2014, he worked as a paramedic for six months at PRN Ambulance. In July 2014, respondent was dismissed from his job at PRN Ambulance. Respondent stated that he has not actively searched for a job as a paramedic since his dismissal. Respondent did not wish his EMT-P license to be disciplined because of the “negative connotation.”

LEGAL CONCLUSIONS

1. The standard of proof for the Authority to prevail on the Accusation is “clear and convincing” evidence. (*Ettinger v. Authority of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

2. The Authority is the state agency responsible for the coordination and integration of state activities concerning emergency medical services, including the licensure of paramedic technicians. (See Health & Saf. Code, § 1797.1.)

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3. Health and Safety Code section 1798.200 provides in relevant part:

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

(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. ...

[¶] ... [¶]

(9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

4. The record of conviction or a certified copy of the record shall be conclusive evidence of such conviction. (Health & Saf. Code, § 1798.200, subd. (c)(6); Cal. Code Regs., tit 22, § 100175, subd. (b).)

5. A crime or act is substantially related to the qualifications, functions, or duties of a person holding a paramedic license if to a substantial degree it evidences the present or potential unfitness of a paramedic to perform the functions authorized by his license in a manner consistent with the public health and safety. (Cal. Code Regs., tit 22, § 100175, subd. (a).)

6. A. Respondent contended during the hearing that a substantial relationship does not exist between his conviction and the qualifications, functions, or duties of a paramedic, because the incident underlying his conviction occurred when he was off-duty and he was not performing the functions of a paramedic. However, a substantial relationship does not mean that the crime or act must have occurred during the licensee's work or as part of the licensee's practice. It means that there must be a sufficient "nexus," or logical connection, between the conduct and the licensee's fitness to practice the profession. (*Griffith v. Superior Court* (2002) 96 Cal.App.4th 757, 769.)

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B. California courts have determined that a conviction involving the consumption of alcohol is substantially related to the licensed activity of a health care provider. The court in *Griffiths* stated,

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. . . . 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. (*Id.* at p. 770.)

C. Respondent's duties as a paramedic involve providing health care to persons in need of basic and emergency medical care on a daily basis, and require him to drive emergency vehicles as an integral part of these duties. The consumption of alcohol by a paramedic impairs his or her ability to operate a vehicle and provide medical care in a safe and effective manner. Although the facts in *Griffiths* involved three misdemeanor convictions relating to drinking and driving, a single misdemeanor conviction for driving with a blood alcohol content of 0.08 percent or more has been found to evidence a potential unfitness to practice as a health care provider. (See *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.) Thus, respondent's conviction for driving with a blood-alcohol content of 0.08 percent or more is substantially related to the qualifications, functions, or duties of a paramedic because the conviction and its circumstances demonstrate to a substantial degree that he is presently or potentially unfit to practice as a paramedic in a manner consistent with the public health and safety, within the meaning of California Code of Regulations, title 22, section 100175, subdivision (a).

7. Based on Factual Findings 3 and 4 and Legal Conclusions 2 through 6, cause exists to discipline respondent's EMT-P license pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(6), in conjunction with California Code of Regulations, title 22, section 100175, subdivision (a), in that respondent was convicted of a crime which is substantially related to the qualifications, functions, and duties of a paramedic.

8. Based on Factual Findings 3 and 4 and Legal Conclusions 2 and 3, cause exists to discipline respondent's EMT-P license pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(9), in that respondent misused alcoholic beverages. In disregard of public health and safety, respondent drank several glasses of beer over the course of two hours. While still feeling the effects of the alcohol, he drove with a blood-

alcohol content of greater than 0.08 percent. Respondent's conduct constituted a misuse of alcoholic beverages.

9. The Authority has adopted disciplinary guidelines to assist in the uniform application of penalties, disciplinary orders, and conditions of probation. 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 health and safety.

10. Pursuant to California Code of Regulations, title 22, section 100176, the Authority considers the following factors to evaluate whether an EMT-P license holder whose license is subject to discipline has been rehabilitated and is capable of safe paramedic practice:

- (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).
- (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.

11. Applying the Authority's discipline guideline and the rehabilitation criteria, respondent's license should be disciplined, but outright revocation is not warranted, notwithstanding the seriousness of respondent's crime. Respondent has suffered a single conviction for driving with a blood-alcohol content of greater than 0.08 percent. The conviction is for a crime substantially related to the qualifications, functions, or duties of a paramedic. Respondent's conviction and the underlying act occurred less than two years ago. Although respondent's probation will not expire until January 2018, he has complied

with all of the conditions of his criminal probation. He has paid all of the court fines, fees, and restitution. He has completed the court-ordered alcohol education program. Respondent does not have a history of alcohol abuse or prior alcohol-related offenses. Respondent appeared to be motivated not to commit a similar offense in the future, given that he voluntarily attended six additional AA meetings. Respondent also presented evidence of his involvement in the community. Both Mr. Lim's and Ms. Mena's letters substantiate respondent's contributions to PHE as a health educator to disadvantaged youths. In addition, Ms. Mena's letter attested to respondent's skills and abilities when he worked with her as an emergency medical technician at PNR Ambulance. Based on Factual Findings 5 through 10 and Legal Conclusions 9 through 11, it would not be contrary to the public interest to permit respondent to retain his EMT-P license on a probationary basis.

ORDER

Emergency Medical Technician-Paramedic (EMT-P) license number P33038 issued to respondent Derek K.N. Oki is revoked; provided, however, the revocation is stayed and respondent is placed on probation for a period of three (3) years on 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 EMSA all Release of Information forms that EMSA may require of respondent.

2. Personal Appearances: As directed by 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 by certified mail.

4. Employment Notification: During the probationary period, respondent shall notify EMSA in writing of any EMS employment. Respondent shall inform 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 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 shall authorize any EMS employer to submit performance evaluations and other reports which EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

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

5. Notification of Termination: Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, from his pre-hospital 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 EMSA shall be sent 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 EMSA, in writing, of the date of such departure and the date of return to California, if respondent returns.

Any and all notifications to EMSA shall be sent 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 Section 1798.200. To permit monitoring of compliance with this term, if respondent has not submitted fingerprints to EMSA in the past as a condition of licensure, 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 EMSA a full and detailed account of the circumstances thereof. 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 EMSA shall be sent 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, 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 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 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: May 16, 2016

DocuSigned by:

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Ji-Lan Zang
Administrative Law Judge
Office of Administrative Hearings

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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.: 14-0228
) OAH No.: 2015100630
)
6 **DEREK K.N. OKI**) **DECISION AND ORDER**
License No. P33038)
)
Respondent.)

The attached Proposed Decision and order dated May 16, 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:

May 17, 2016



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