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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.: 14-0180
) OAH No.: 2015120526
)
6 **JACK C. ROBERTS**) **DECISION AND ORDER**
License No. P04109)
)
Respondent.)

The attached Proposed Decision and order dated August 5, 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:
August 11, 2016


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 Against:

JACK C. ROBERTS,

Emergency Medical Technician-Paramedic
License No. P04109

Respondent.

Enforcement Matter No. 14-0180

OAH No. 2015120526

PROPOSED DECISION

This matter was heard before Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 11, 2016, in Sacramento, California.

Stephen J. Egan, Senior Staff Counsel, Emergency Medical Services Authority (EMSA), represented complainant.

David J. Givot, Attorney at Law, represented respondent Jack C. Roberts.

Evidence was received and the matter was submitted on July 11, 2016.

FACTUAL FINDINGS

1. Sean Trask (complainant) brought the accusation solely in his official capacity as the Chief, EMS Personnel Division, EMSA, State of California.

2. At all times relevant to the allegations in the accusation, respondent held a valid Emergency Medical Technician-Paramedic (EMT-P) license, number P04109, issued by the EMSA. Respondent was initially licensed on September 30, 1990, and his license lapsed on December 31, 2014.

Findings on First Cause For Discipline: Commission of Fraudulent, Dishonest or Corrupt Acts

3. On or about May 10, 2010, respondent sent a series of text messages by cell phone to his former girlfriend. Respondent was attempting to revive their relationship and

the former girlfriend had rebuffed his efforts to do so. The text messages included one that read: "There is one way to resolve this. I want you to honor YOUR commitment to me. I will give you two weeks to work things out and clean up your plate." When the former girlfriend communicated her disinterest in getting back together and asked respondent to let her go, respondent texted: "Tried and tried and tried. Have you ever tasted the smoke on the barrel of a gun because you couldn't stop what u feel inside? I did. But I won't ever hurt you."

4. Respondent's former girlfriend feared for her safety and contacted the San Jose Police Department. She told officers that she had broken up with respondent on December 24, 2008, after being together for one and one-half years. She told the officers that respondent was addicted to methamphetamines and had placed a gun to his head on Christmas day of 2008 after their breakup. She felt that he had begun stalking her around the time of the text messages based on information that he related about her activities. After speaking to the former girlfriend and reviewing the text messages sent to her by respondent, the police arrested respondent for violating Penal Code section 422, making criminal threats. He was also placed on a Welfare and Institutions Code section 5150 hold (danger to self, danger to others or grave disability caused by mental illness) by police officers based on his conduct.¹

5. Following the incident related above, respondent's former girlfriend obtained a judicial restraining order that included a prohibition against respondent contacting her, including through third persons. On November 15, 2010, respondent's former girlfriend called the San Jose Police Department to report that respondent had violated the restraining order by asking her neighbor to pass a message on to her. When officers interviewed the neighbor, he confirmed that respondent had gone to his home and said that he was making contact with the FBI in San Francisco in the next week and respondent wanted his ex-girlfriend to know about it. The neighbor, a criminal defense attorney, told respondent that he should realize that the restraining order prevented a third party making contact with the subject of the order on behalf of respondent. He refused respondent's request and told the ex-girlfriend about his conversation with respondent. On or about November 24, 2010, a misdemeanor complaint was filed against respondent in the Santa Clara County Superior Court, alleging the violation of the restraining order. On June 27, 2011, respondent was convicted, upon his plea of nolo contendere, of the lesser included offense of Penal Code section 415, subdivision (1), disturbing the peace, a misdemeanor. Respondent was ordered to pay a fine of \$309.75. After respondent paid the fine, the offense was reduced to an infraction.

¹ On April 10, 2010, the San Jose Police Department had gone to respondent's residence after he threatened suicide following his disqualification from a Post Traumatic Stress Disorder retreat because he was using methamphetamine. He was relatively calm when officers arrived and told them where his registered handgun was located. On this occasion, respondent was also placed on a Welfare and Institutions Code hold.

6. On January 23, 2011, respondent was stopped by the Los Gatos/Monte Sereno Police Department for erratic driving. The officer noticed that respondent appeared to be under the influence of controlled substances and a search of the vehicle revealed a glass pipe for ingesting methamphetamine and methamphetamine. Respondent was arrested for possession of methamphetamine and related paraphernalia and for being under the influence of a controlled substance. A criminal complaint was filed in the Santa Clara County Superior Court on or about February 11, 2011, alleging all three violations of law. On May 12, 2011, respondent was convicted upon his plea of guilty of violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance: methamphetamine; Health and Safety Code section 11550, subdivision (a), using and being under the influence of a controlled substance: methamphetamine; and Health and Safety Code section 11364, possession of controlled substance paraphernalia; all misdemeanor crimes.

7. The Santa Clara County Superior Court deferred entry of judgment pursuant to Penal Code section 1000.3. On November 19, 2012, respondent's guilty pleas were set aside and his conviction was dismissed pursuant to Penal Code section 1000.3 because respondent had successfully completed the court-ordered drug rehabilitation program.

8. On February 7, 2011, respondent was cited by the San Jose Police Department for violating Penal Code section 148, subdivision (a)(1), obstructing a law enforcement officer. Respondent agreed to perform 10 hours of community service and, after respondent completed his obligation, the complaint was dismissed by the Santa Clara County District Attorney's office. The incident that led to respondent's arrest involved his sleeping on the lawn in front a hotel and an altercation with private security guards who asked him to leave. When a San Jose Police Department officer was summoned by the private security guards, he asked respondent to remain and provide identification. Respondent did not obey the officer's command and continued to ride his bicycle in the area until the officer grabbed the bicycle and arrested respondent.

Findings on Second Cause for Discipline: Conviction of a Crime Which is Substantially Related to the Qualifications, Functions, and Duties of Prehospital Personnel; Violation of Any State Statute Regulating Narcotics, Dangerous Drugs or Controlled Substances; and Addiction to, Excessive Use of, or Misuse of, Narcotics, Dangerous Drugs or Controlled Substances.

9. The same allegations on which findings were made above were realleged in support of this allegation.

10. Respondent challenged the use of the May 12, 2011 convictions based on respondent's successful completion of the court-ordered drug rehabilitation program. The challenge is discussed in the Legal Conclusions below.

Findings on Third Cause for Discipline: Addiction to, excessive use of, or misuse of controlled substances

11. The same allegations on which findings were made above were realleged in support of this allegation.

12. Respondent challenged any consideration of the conduct that led to the May 12, 2011 conviction because of respondent's successful completion of probation. This challenge is also dealt with in the Legal Conclusions below.

Other Findings and Mitigation/Rehabilitation Findings

13. Respondent testified at the administrative hearing. Regarding the incidents described above, he was depressed when he texted his former girlfriend. He was addicted to methamphetamine and his long-time use of the drug is chronicled below. After his arrest and referral to a mental health facility, his Welfare and Institutions Code hold lasted between one and three days. No criminal charges were filed as a result of the May of 2010 incident and respondent was not convicted of any crimes. Respondent admitted that he knew that his attempt to communicate with his former girlfriend through her neighbor was a violation of the judicial restraining order. In 2009, respondent was diagnosed with Post Traumatic Stress Disorder which apparently was caused by the trauma experienced by respondent as a paramedic. Respondent was not on duty as either a paramedic or firefighter or in uniform on any of the occasions listed under the First Cause for Discipline above.

14. Respondent has been addicted to methamphetamine since at least 2005. In that year, he completed a 30-day inpatient program followed by a six-month outpatient rehabilitation program. He relapsed and repeated the programs in 2007. He was intermittently clean and sober thereafter. After another relapse in 2011 which led to the arrest described above, respondent completed the court ordered drug rehabilitation program. He also began attending Alcoholics Anonymous, initially going to 90 meetings in 90 days. He now attends meetings once a week and has the same sponsor that he had when he began in 2011. Respondent has been continuously clean and sober for five years. He has worked the 12 steps multiple times, each time focusing on the steps in more detail.

15. In 2012, respondent was diagnosed with Attention Deficit Hyperactivity Disorder which he feels contributed to his poor performance in school in past years. In 2014, he participated in a retreat hosted by the West Coast Post Traumatic Stress Disorder Center which respondent felt was very helpful.

16. Respondent worked part time as an ambulance EMT-P (paramedic) in 1995 and became a full time firefighter/paramedic for the San Jose Fire Department in the same year. He continued to perform paramedic duties for the fire department until 2009 when he was assigned administrative duties. He resigned from the San Jose Fire Department in late 2010 because of his methamphetamine use. He did not use the drug while in uniform or

otherwise on duty, but took sick time to cope with his addiction. According to commendations and other awards submitted by respondent and discussed below, respondent reached the rank of Captain with the San Jose Fire Department.

17. Respondent completed high school and attended community college before he was licensed. His first marriage ended in a divorce in 2005 and his ex-wife obtained custody of their child. For reasons not full explained by respondent, he was required to attend 16 weeks of anger management classes and voluntarily attended such classes for 70 weeks. Respondent remarried in 2012. He and his current wife live in Missouri, but they would like to move back to California to help their elderly parents and be closer to family. Respondent and his wife left California in 2013 and moved to Oklahoma where respondent worked as a paramedic for approximately one year. After moving to Missouri, respondent worked as a critical care flight paramedic, but was fired in January of 2016 when the agency learned about his controlled substance conviction. Since his termination from employment, respondent has been taking classes at a Missouri community college where he carries a 3.7 grade point average. He also spends time rebuilding an automobile.

18. Respondent submitted numerous letters of commendation dated from August of 1991 until 2007. The letters attest to respondent's excellent performance as a paramedic and dedication to his patients. There are similar letters commending respondent for his performance as a firefighter/paramedic for the San Jose Fire Department. These include commendation letters relating to his work as a paramedic preceptor and Academy instructor. The last three letters in the group exhibit were apparently written to assist respondent's search for employment as a flight paramedic in Missouri. One was written on March 27, 2014, by Captain Nelson, EMT-P, who worked with respondent at both an ambulance service and the San Jose Fire Department for a total of approximately 20 years. Captain Nelson described respondent as intelligent, able to multi-task, focused, competent, and aggressive in treating critical patients. The second letter is dated March 26, 2014, and written by Dr. Howard Michaels. He has known respondent for "several" years and related respondent's excellent paramedic judgment in the field and skill as a helper and advisor to other paramedics. The third letter was dated March 25, 2014, and written by John Rohrabough, Assistant Fire Chief, Altaville Melones Fire Department. He was respondent's supervisor in the San Jose Fire Department for many years. He stated that respondent was regarded by his peers and hospital staff as one of the elite paramedics in Santa Clara County. He confirmed that respondent was a preceptor and trained many other paramedics. He wrote that respondent brought calm to critical situations and has excellent patient communication skills, assessment skills and treatment skills.

19. Respondent submitted a second group of documents reflecting the many courses that he has taken relating to his profession from 1991 until 2009. The courses include training and evaluating paramedic students, hazardous materials, firefighting techniques and advanced paramedic training.

20. Respondent also submitted three more recent character reference letters. The first, dated July 8, 2016, was written by Marcie Morrow, a California licensed paramedic.

She has known respondent for more than 25 years including the time that respondent was her intern and later a co-worker at the San Jose Fire Department. Ms. Morrow is also a recovering addict and has been sober for 25 years. She described respondent as having hit his personal “bottom” at the time of his arrest and subsequent voluntary resignation from the fire department. She described him as feeling hopeless and broken at the time. She related respondent’s efforts to recover from his addiction and his commitment to sobriety. The second letter, dated July 2, 2016, was written by respondent’s long-time Alcoholics Anonymous sponsor James Donaldson. They met in 2005. Mr. Donaldson described respondent as highly intelligent, empathetic, loyal, honest, and caring. Respondent’s current priorities are his sobriety, family, career, professional development, and character development. Mr. Donaldson confirmed respondent’s five years of sobriety. The last letter is the most revealing concerning respondent’s long battle with addiction. It is dated July 11, 2016, and was written by Jeffrey J. Wasel, PhD. Respondent and Dr. Wasel have been close friends for more than 18 years with shared interests in flying and shooting sports. Respondent sought Dr. Wasel’s help with his addiction issues. Dr. Wasel has been in recovery for 25 years and steered respondent to appropriate resources. Dr. Wasel confirmed that it took several attempts for respondent to finally achieve a sober life. Dr. Wasel attributed respondent’s substance abuse to his attempt to self-medicate for what was eventually diagnosed as Post Traumatic Stress Disorder brought on by grisly scenes respondent witnessed as a Fire Captain. He also believes that respondent’s misconduct stemmed from his not being in a “right mind” as a result of substance abuse. Dr. Wasel has done “ride along” trips with respondent and witnessed respondent’s calm demeanor and management of crisis situations as a paramedic. Dr. Wasel related that respondent is remorseful for those harmed by his past actions. He urged that respondent’s license not be revoked.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200, subdivisions (b) and (c), read, in pertinent part:

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place 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 subdivision (c). Proceedings against any EMT-P license or licenseholder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(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 license holder under this division:

[¶] ... [¶]

(5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.

(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.

[¶] ... [¶]

(8) Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.

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

First Cause for Discipline

2. Respondent did not commit fraudulent, dishonest, or corrupt² acts substantially related to the qualifications, functions or duties of a licensed paramedic by reason of the conduct described in Factual Findings 3 through 8. His persistent attempts to resurrect his relationship with his former girlfriend were inappropriate and his threatening texts scared her to the extent that she sought and obtained a judicial restraining order against respondent. However, the misconduct did not involve fraud, dishonesty or corruption. Respondent's clumsy attempt to contact the woman through a neighbor may have included a dishonest representation about going to see the FBI the next week, but his admitted willful violation of the restraining order was not a dishonest act substantially related to the qualifications, functions and duties of a licensed paramedic. The same can be said for respondent's illicit use of the controlled substance methamphetamine to the extent that he was addicted to it and respondent's failure to comply with a police officer's commands. None of respondent's

² Penal Code section 7 defines the word "corruptly" as importing a wrongful design to acquire or cause some pecuniary or other advantage the party guilty of the act. (See also 1 Witkin, Cal. Crim. Law 4th Elements §10 (2012).)

actions were acts involving fraud, dishonesty or corruption in a manner substantially related to the qualifications, functions and duties of a licensed paramedic.³

Second Cause for Discipline

3. The Second Cause for Discipline incorporates three separate causes: conviction of a crime substantially related to a licensed paramedic's qualifications, functions and duties; violating federal or state law regulating controlled substances; and addiction to, excessive use of, or misuse of controlled substances. As noted above, respondent contends that his successful completion of a court approved diversion program prevents complainant from using the conviction, or the underlying events, to discipline respondent.

Conviction of a Crime

4. Respondent has not been convicted of any crimes. His misdemeanor conviction for violating Penal Code section 415, subdivision (1), was reduced to an infraction after he paid a nominal fine. The court deferred entry of judgment for the three drug related offenses and they were later dismissed after respondent completed a drug rehabilitation program pursuant to Penal Code section 1000.4. The misdemeanor complaint for obstructing a peace officer was dismissed after respondent performed community service.

Violating State Law Regulating Controlled Substances

5. Penal Code section 1000.4, subdivision (a), reads:

- (a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in

³ California Code of Regulations, title 22, section 100175 defines the phrase as conduct evidencing "present or potential unfitness of a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety."

the denial of any employment, benefit, license, or certificate.⁴

6. There is one published appellate decision which explains the effect of a Penal Code section 1000.4 dismissal in license disciplinary proceedings. *B.W. v. Board of Medical Quality Assurance* (1985) 69 Cal. App.3d 219 involved a physician who had successfully completed a pretrial diversion program pursuant to Penal Code section 1000.5. Penal Code section 1000.5 includes the same language as Penal Code section 1000.4 prohibiting the use of the arrest record in the denial of any license or certificate. In the *B.W.* case, the Board of Medical Quality Assurance (now the Medical Board of California) admitted that it had used the record of respondent's arrest for possession of cocaine as the sole source of information to initiate disciplinary proceedings. The court first determined that the statute applied to disciplinary proceedings against existing licensees, despite the use of the word "denial" in reference to any employment, benefit, license or certificate. On the principal issue, the court decided that the Board, having learned of the arrest prior to the completion of a diversion program, could have used the arrest to initiate disciplinary proceedings. It could also have used the arrest to investigate further and develop additional information. However, once the physician successfully completed the diversion program and the trial court dismissed the charges, the Board was precluded from using the arrest record as the sole source of information to initiate disciplinary proceedings unless the physician consented to such use.

7. In this case, no evidence was presented by either side to establish to what extent, if at all, complainant used the record of respondent's arrest for the controlled substance offenses on January 23, 2011, to initiate disciplinary action against respondent. Respondent successfully completed the drug rehabilitation program and the charges were dismissed by the criminal court on November 19, 2012. The Accusation was filed on November 2, 2015, some three years after the dismissal. Complainant offered the record of respondent's arrest in evidence at the administrative hearing and respondent's counsel objected on the basis of Penal Code section 1000.4. There was no other evidence presented by complainant relating to the arrest. While the records from the Los Gatos/Monte Sereno Police Department do not include a request for such records from complainant, other law enforcement records received in evidence from other agencies include what appears to be a form signed by complainant's special investigator requesting any and all "police/arrest/incident/warrant reports" relating to respondent. Under these circumstances, it may be reasonably inferred that the sole basis for the allegation regarding respondent's arrest for using and possessing methamphetamine and related paraphernalia was the arrest report. Penal Code section 1000.4 precludes the use of such a report to support discipline. Thus, respondent is not subject to discipline by reason of his arrest for drug related charges on January 23, 2011. As this was the only evidence presented by complainant that respondent violating state law regulating controlled substances, complainant did not establish such use in violation of Health and Safety Code section 1798.200, subdivision (c)(8).

⁴ Subdivision (b), which has been omitted, makes the protections of the section inapplicable to employment in law enforcement.

Addiction to, Excessive Use of, or Misuse of Controlled Substances

8. This allegation was supported by more than the arrest record presumably obtained by complainant from the Los Gatos/Monte Sereno Police Department pertaining to respondent's arrest on January 23, 2011. Complainant also obtained records from the San Jose Police Department regarding respondent's criminal threats contained in the texts to his ex-girlfriend on or about May 10, 2010, and the April 10, 2010 report regarding respondent's threatened suicide. There was no evidence presented to suggest that complainant's request for such documents was the result of complainant's review of the documents obtained from the Los Gatos/Monte Sereno Police Department. In fact, the August 11, 2014 letter to the San Jose Police Department authored by complainant's special investigator only references the "2010 Criminal Threat" with a case number that coincides with the report for the May 10, 2010 incident.

9. In the report regarding the April 10, 2010 incident, a person affiliated with a Post Traumatic Stress Disorder retreat told officers that respondent was upset because he could not attend the retreat because he had been using methamphetamine. In the May 10, 2010 report, respondent's former girlfriend told police that she had broken up with respondent because he was a methamphetamine addict. While these hearsay statements, standing alone, could not support a finding of respondent's methamphetamine abuse and addiction, respondent readily admitted at the administrative hearing that he had abused methamphetamine and described his long period of addiction. Thus, respondent's testimony, corroborating the statements in the police reports, established that respondent is subject to discipline for addiction to, excessive use of, and misuse of a controlled substance: methamphetamine.

10. It is somewhat troubling that the Accusation's Second Cause for Discipline merely incorporates the factual allegations in the First Cause for Discipline and the only reference to methamphetamine use is contained in the factual allegations relating to respondent's arrest on January 23, 2011. However, administrative pleading is not subject to the strict rules applicable in court proceedings and fair notice to the respondent is more important than compliance with technical pleading rules (*Stearns v. Fair Employment Practice Commission* (1971) 6 Cal.3d 205, 213; *Cooper v. Board of Medical Examiners* (1975) 49 Cal. App.3d 931, 942.) Any variance between pleadings and proof is immaterial unless it actually misled the respondent to his or her prejudice in maintaining a defense on the merits (*Stearns v. Fair Employment Practice Commission, supra*, at p. 212.) As noted above, respondent testified about his addiction to methamphetamine and offered character reference letters that also described his addiction.

Third Cause For Discipline: Addiction To, The Excessive Use Of Or The Misuse Of, Alcoholic Beverages, Dangerous Drugs, Or Controlled Substances

11. Complainant again realleged the prior allegations, this time including those in the Second Cause for Discipline. However, complainant added that this cause for discipline specifically related to respondent's addiction to, excessive use of, or misuse of "alcoholic

beverages.” The next sentence charged that respondent’s conduct reflected a lack of personal and professional judgement, disregard for personal and public safety, and willingness to violate the “prohibition against drinking and driving.” Complainant presented no evidence supporting the allegation that respondent abused alcohol and if this cause for discipline was worded in error, there was no request to amend it at the hearing in accordance with Government Code section 11507. In summary, it was not established that respondent abused alcohol as alleged in the Third Cause for Discipline.

Applicability of Firefighters’ Bill of Rights (FPBOR)

12. Government Code section 3254, subdivision (d), requires that punitive action against a firefighter be undertaken within one year of discovery of the act or omission which is the basis for the action. The statute, effective January 1, 2008, includes a number of exceptions, none of which applies in this matter.

13. Effective January 1, 2009, the Legislature added section 1797.219. This provision makes the FPBOR applicable to all investigatory and disciplinary processes for EMT-I and EMT-II certificate holders who are firefighters.

14. Respondent moved to dismiss the Accusation at the outset of the administrative hearing on the grounds that complainant was aware of the acts and omissions alleged in the Accusation for more than one year before the filing of the Accusation on November 2, 2015. The certification dates on the arrest reports sent to complainant by the San Jose Police Department fell within August of 2014, more than one year before the Accusation was filed.

15. Complainant countered that effective January 1, 2008, the Legislature enacted Government Code section 3262 which reads: “The rights and protections described in this chapter shall only apply to a firefighter during events and circumstances involving the performance of his or her official duties.” Complainant notes that respondent testified that he did not use methamphetamines while on duty or otherwise in uniform. Thus, the protections otherwise afforded him by the FPBOR do not apply in this matter.

16. In the case of *Seibert v. City of San Jose* (2016) 247 Cal. App.4th 1027, the court was faced with the question whether a firefighter/paramedic’s alleged harassment of a female colleague during training and the allegation that he sent salacious emails to a minor whom he met during tours of the fire station fell within the protections of the FPBOR. The court noted that in two legislative reports regarding the language of Assembly Bill 220 enacting Government Code section 3262, the analysts stated that the bill specified that the rights and protections afforded firefighters only apply when they are performing job related activities (*Seibert*, at p. 1068.)

17. In summary, respondent’s use of methamphetamine and his addiction to it occurred during the time that he was a San Jose firefighter. However, as he asserted in this testimony, he did not use methamphetamine while on duty or otherwise in uniform. Since

respondent's use of the controlled substance did not occur while respondent was performing his official duties as a firefighter/paramedic, he is not entitled to the protections of the FPBOR, including the provision requiring that discipline be undertaken by the EMSA within one-year of discovery of the acts which formed the basis of the Accusation.

18. California Code of Regulations, title 22, section 100176, lists the criteria for assessing rehabilitation when considering, among other EMSA actions, discipline imposed pursuant to Health and Safety Code section 1798.200. They are:

- (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) of this section.
- (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.

19. Respondent's addiction to methamphetamine extended from 2005 to early 2011. It was severe to the extent that it destroyed his otherwise stellar career with the San Jose Fire Department where he had attained the rank of Captain. He experienced multiple relapses before he finally achieved what one hopes is sobriety for the remainder of his life. He has had approximately five years of continuous sobriety and actively participates in Alcoholics Anonymous. After he regained his sobriety following his resignation from the San Jose Fire Department, he worked successfully as a paramedic in Oklahoma and Missouri for approximately three years. Respondent submitted many documents including course certifications, letters of commendation and character reference letters, attesting to his considerable skills as a paramedic. He was selected to train, mentor and supervise other paramedics. He had a reputation as someone who remained calm during medical crises. Respondent has been diagnosed with PTSD and ADHD and he feels that these diagnoses have help provide him with explanations for his addictive behavior and psychiatric symptoms including depression and suicidal ideation.

20. All things considered, the appropriate disposition of this matter is the revocation of respondent's license, staying the revocation, and placing the license on probationary terms that include an evaluation of his current psychiatric condition and conditions that ensure his continued abstinence from controlled substances.

ORDER

Emergency Medical Technician-Paramedic license number P04109 issued to respondent Jack C. Roberts is revoked pursuant to Legal Conclusion 9. However, such revocation is stayed and respondent is placed on probation for three (3) years upon the following conditions:

Standard Conditions of Probation

It is the responsibility of the EMSA to monitor paramedics placed on probation consistent with the terms and conditions of the probationary order.

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, it shall be sent as 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 the 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 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 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 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.

Additional Conditions Imposed in Accordance with EMSA Penalty Guidelines⁵

8. Abstinence from Drug Possession and Usage:

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 laws as part of a documented medical treatment. Within fourteen days of obtaining 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 physician.

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.

9. Abstinence 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 any independent laboratory or licensed drug/alcohol testing facility for approval by the EMSA. The EMSA shall have the sole discretion for lab approval based on criterial regulation 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, the 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

⁵ The EMSA's recommended condition that respondent pass a clinical examination prior to practicing as a paramedic was not included because respondent has had no quality of care issues since the incident, and this requirement might well result in the loss of respondent's current job, and unintended consequence.

by the lab to the EMSA within 10 days. Respondent shall be responsible for all costs associated with the drug/alcohol screening.

11. Psychiatric/Medical Evaluation:

Within 60 days of 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 Director of the EMSA, respondent shall submit to a psychiatric evaluation. The 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 continue to practice as a paramedic until such time as the psychiatrist or physician evaluates and determines that respondent is mentally fit to practice safely as a paramedic.

Completion of Probation

12. Completion of Probation:

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

13. 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.

DATED: August 5, 2016

DocuSigned by:
Karl Engeman
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KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings



OFFICE OF ADMINISTRATIVE HEARINGS

State of California

GENERAL JURISDICTION DIVISION

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Department of General Services

Governor Edmund G. Brown Jr.

August 05, 2016

Emergency Medical Services Authority
10901 Gold Center Drive
Suite 400
Rancho Cordova, CA 95670-6073

Subject: Roberts, Jack C.
OAH No. 2015120526
Agency No. 14-0180

Enclosed are the following:

- The original Proposed Decision
- An agency order of adoption. If the Proposed Decision is adopted, please return a copy of the signed adoption order to the Office of Administrative Hearings.
- The original Decision
- Exhibits will be forthcoming under separate cover
- Email copy of the Proposed Decision to:
- The above referenced case was resolved prior to conclusion of the hearing. We are returning the enclosed original exhibits 1 – x to you.

KE:nb

Encl.

Transmittal Form
OAH 60 (Rev. 04/09)

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