

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

GERAD RODRIGUEZ,

EMT-P License No. P00655,

Respondent.

Case No. 08-0014

OAH No. 2008100376

(Accusation)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by
the _____ as _____ Decision in the above-entitled matter.

This Decision shall become effective 3/27/09.

IT IS SO ORDERED.

Date: 2/27/09



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PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, at San Diego, California on January 30, 2009.

Senior Counsel for the Emergency Medical Services Authority, Cynthia L. Curry, represented complainant.

Gerad Rodriguez (respondent) personally appeared and was represented by Fern M. Steiner, Esq.

Oral and documentary evidence was received and the matter was submitted on January 30, 2009.

FACTUAL FINDINGS

1. The Accusation against respondent was filed by Nancy Steiner (complainant), while acting in her official capacity as Chief of the Emergency Medical Services Authority (the EMSA) Personnel Division, State of California.
2. On October 1, 1991, the EMSA issued respondent an Emergency Medical Technician-Paramedic (EMT-P) license, License number P00655. At all relevant times, respondent's EMT-P license was, and currently is, in full force and effect.
3. Currently, respondent works for the City of San Diego Fire-Rescue Department (SDFD) as a firefighter and paramedic. Respondent has been employed by the

City of San Diego since 1986. As a condition of his employment with SDFD, respondent is required to submit to random drug testing. On May 1, 2007, respondent submitted to a random drug test. The test came back positive for marijuana. When questioned about the positive test result, respondent admitted, in writing, to using illegal drugs or "inadequately explained" legal drugs, "Twice" prior to May 17, 2007. (Exh. 8.)

On May 22, 2007, respondent entered into a one-year "conditional," "Last Chance Agreement" with SDFD. Pursuant to the agreement, respondent was allowed to continue working as a firefighter/paramedic with SDFD. The Last Chance Agreement was the equivalent of a grant of probation under certain terms and conditions, including condition C, which states, in pertinent part: "Additionally, if you test positive, as defined hereinafter, for the presence of non-prescribed controlled substances or narcotic drugs (not including over-the-counter medicines) and/or .04[%] or above for alcohol during the term of this last chance agreement which includes unscheduled samplings, you will be terminated." (Exh. 8, emphasis added.)

4. On February 19, 2008, respondent was convicted, after entry of a guilty plea, in the San Diego County Superior Court, case number CN240648, of one count of violating California Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol with a blood alcohol content of 0.08% or greater), a misdemeanor crime substantially related to the qualifications, functions and duties of pre-hospital personnel. Additionally, respondent admitted the "Minor Passenger: Enhanced Penalty" allegation/enhancement pursuant to California Vehicle Code section 23572, subdivision (a).

5. The facts and circumstances underlying respondent's 2007 conviction are as follows: On December 17, 2007, California Highway Patrol officers responded to a call regarding a traffic collision resulting in property damage. The officers arrived at the scene and determined that respondent, who was dressed in a Rincon Fire Department uniform, had been driving an official Rincon Fire Department Vehicle, and that he had made an unsafe turn resulting in a "rollover" accident. At the time of the accident respondent's four minor children, ranging in age from five years old to 13 years old, were passengers in the vehicle. As respondent was explaining what had happened, the officers smelled the odor of alcohol on his breath. Consequently, the officers had respondent attempt some field sobriety tests (FST's). Respondent was unable to complete the FST's. The officers asked respondent if he had consumed any alcohol. Initially, respondent denied having consumed any alcohol and then he stated that he had consumed six beers. Respondent then submitted to a Preliminary Alcohol Screening test which indicated that his blood alcohol level was 0.13%. Respondent was arrested for driving under the influence of alcohol and a subsequent blood test revealed that respondent's blood alcohol level was 0.09%.

6. As a result of the conviction and the enhancement, respondent was placed on summary probation for three years on certain terms and conditions, including: Paying \$1,900 in fines and penalties; serving 48 hours in jail; completing a first offender program; completing a three-day work program; and attending a Mother's Against Drunk Driving (MADD) seminar.

7. During the instant hearing, respondent addressed the issue of his past marijuana use. Respondent claimed that on April 29, 2007, he was at a family gathering and "somebody" there had some marijuana. Respondent wanted to be "part of the fellows" so he smoked the marijuana. Respondent testified that he has not used marijuana "prior or since" the "family gathering" incident. However, respondent's testimony that he only used marijuana one time is belied by respondent's written statement signed by him on May 17, 2007, in which he indicated using illegal drugs (i.e. marijuana) "twice." (Exh. 8.) During cross-examination, respondent was unable to explain the disparity between his written statement and his testimony.

8. Respondent also addressed the driving under the influence conviction. Respondent testified as follows: From May 2007 through December 2007, respondent was under severe pressures. He was working for SDFD and working as the Fire Chief for the Rincon Reservation Fire Department. The 2007 fire season was one of the worst ever and respondent was basically working around the clock responding to and managing extremely stressful, life-threatening situations. Respondent testified that the night before his December 17, 2007 driving under the influence arrest, he could not sleep due to stress so he began drinking "probably anything I could find" so he could get to sleep. Respondent finally either went to sleep or passed out. When he awoke the morning of December 17, 2007, he got dressed in his Rincon Fire Department uniform, gathered four of his five children together and had them get into his official Rincon Fire vehicle so he could drive them to school. According to respondent he did not think he was still under the influence of alcohol when he drove off to deliver his children to school. Respondent further testified that he did not know why he had put his uniform on that morning as he did not intend going in to work that day.

Once again, respondent's testimony is belied by other, past statements he made. More specifically, during the instant hearing, respondent testified that he drank "probably anything I could find;" however, a review of the police report reveals that he told the officers that he had consumed "six beers." (Exh. 6.) Similarly, respondent's testimony that he had not been planning to go to work on December 17, 2007 lacks credibility. According to respondent, he was working virtually around the clock at the time and was rarely home. Consequently, the only reasonable interpretation of all of the evidence is that respondent was, in fact, planning to report to work in an intoxicated state.

9. On May 14, 2008, the Employee Assistance Program Manager for the City of San Diego informed Captain Duron of the Health and Human Resources section of the SDFD of respondent's "Successful completion of Last Chance Agreement." The May 14, 2008 memorandum stated:

"The Employee Assistance Program is pleased to inform you that [respondent] will be completing his requirements as stipulated in the Last Chance Agreement dated May 22, 2007.

You may congratulate [respondent] for successfully fulfilling the provisions of the Last Chance contract which will officially end on May 22, 2008. (Exh. A.)”

It seems incredible that respondent could have successfully completed his Last Chance Agreement when the facts of the instant case establish that respondent violated provision D of the agreement on December 17, 2007 by having over 0.04% alcohol in his system while wearing an official Rincon Fire uniform and driving an official Rincon Fire vehicle. Why respondent was not immediately terminated from his employment with SDFD based on this egregious violation of his Last Chance Agreement is unclear; however, for purposes of the present proceedings, respondent’s violation of his Last Chance Agreement serves as an aggravating factor.

10. An Occupational Health Services “Courtesy Release of Information” form dated October 8, 2008, states that respondent has completed 12 hours of substance abuse education classes, 18 hours of group counseling sessions, 45 minutes of face-to-face counseling, and three self-help meetings. (Exh. B.)

11. Indian Health Council “Substance Abuse Panel” reports from October 1, 2008 through December 23, 2008, indicate that respondent tested negative for drugs and alcohol on six separate testing dates. (Exh. C.)

12. A December 30, 2008 letter from the Indian Health Council, Inc. states:

“Please be advised that [respondent] has completed a 3 month, Substance Abuse Outpatient Treatment Program at the Indian Health Council. This program consists of one 1:1 session, one group per week, and random drug testing for three months. In addition [respondent] has attended out side self help AA meetings.

[Respondent] has participated appropriately with no absences through out his program and it’s been a pleasure to have had this opportunity to work with this client. [Respondent] plans to continue participating with AA meetings to help maintain his sobriety. (Exh. D.)”

13. A January 12, 2009 report from the Occupational Health Services Substance Abuse Division concluded that respondent “does not meet the DSM-IV-TR criteria for Alcohol Abuse.” (Exh. F.) The report, however, is “based solely on [respondent’s] self-reports” during the January 10, 2009 interview.

14. Respondent presented SDFD evaluation reports for 2005, 2006, 2007, and 2008. Respondent’s performance for each of these years was rated as “above standard.” (Exhs. G, H, I, & J.)

15. Respondent presented four character reference letters (Exhs. K, L, M, & N) and the testimony of several character witnesses. The contents of the character letters and the witnesses' testimony were considered.

LEGAL CONCLUSIONS

1. Cause exists for discipline pursuant to Health and Safety Code section 1798.200 because, as set forth in Findings 4, 5, 6, and 8, respondent was convicted of a crime substantially related to the qualifications, functions and duties of a licentiate.

2. Cause exists for discipline pursuant to Health and Safety Code section 1798.200 because, respondent's marijuana use, as set forth in Findings 3 and 7, constitutes a violation of Laws and Regulations prohibiting the use of controlled substances.

3. Cause exists for discipline pursuant to Health and Safety Code section 1798.200 because, the circumstances underlying respondent's conviction, as set forth in Finding 5, reveal that respondent misused/abused alcoholic beverages.

4. The mitigating evidence and evidence of rehabilitation, as set forth in Findings 10, 11, 12, 13, 14, and 15, is insufficient to establish that it would not be contrary to the public health, safety and welfare to allow respondent to remain licensed, especially in light of the fact that respondent is still on criminal probation (Findings 4 & 6), the fact that respondent was not completely candid and truthful while testifying in the instant proceedings (Findings 7 & 8), and the fact that respondent violated his "Last Chance" agreement with the City of San Diego¹ (Findings 3, 4, 5, 6, 8, & 9).

¹ Respondent's driving under the influence conviction constituted a blatant violation of the terms and conditions of his "Last Chance" agreement and equates to a violation of probation. This violation reveals that respondent is not an appropriate candidate for probation.

ORDER .

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's EMT-P license, License number P00655 is revoked.

DATED: February 25, 2009

A handwritten signature in cursive script, reading "Roy W. Hewitt". The signature is written in black ink and is positioned above a horizontal line.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings