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7 BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
8 STATE OF CALIFORNIA

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

EMSA Case No.: 09-0157
OAH No. 2011080999

11 **OLIVER Q. ARELLANO**
License No. P24368

)
)
) **DECISION AND ORDER**
)

12 Respondent.
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14 The Emergency Medical Services Authority hereby adopts as its decision in this matter
15 the Proposed Decision of the Administrative Law Judge dated February 29, 2012.

16 This Decision and Order shall become effective on the 6th day of April, 2012.

17 IT IS SO ORDERED this 6th day of March, 2012.

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19 Howard Backer, MD, MPH, FACEP
20 Director
21 EMERGENCY MEDICAL SERVICES
22 AUTHORITY, STATE OF CALIFORNIA
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24
25

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OLIVER Q. ARRELLANO,

Respondent.

Case No. 09-0157

OAH Nos. 2011080999

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter in Los Angeles, California on January 31, 2012.

Cynthia L. Curry, Deputy Attorney General, represented Complainant.

Ira M. Salzman, Attorney at Law, represented Oliver Q. Arrellano (Respondent).

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

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

2. The Authority issued Emergency Medical Technician-Paramedic (EMT-P) license number P24368 to Respondent on December 14, 2006. The license is currently in full force and effect and is due to expire December 31, 2012.

3. On February 15, 2011, in the Superior Court of the State of California, County of Los Angeles, case number GA076965, Respondent was convicted on his plea of *nolo contendere* to one count of violating Penal Code section 245, subdivision (a)(1), assault by means likely to produce great bodily injury. This crime was originally charged as a felony but, pursuant to a plea bargain, was reduced to a misdemeanor.

The court suspended imposition of sentence and placed Respondent on summary probation for three years on condition that he serve 178 days in Los Angeles County Jail, with credit for 178 days served (89 days actual incarceration and 89 days good time-work time). The court also ordered Respondent to perform 200 hours of community service, to enroll in and complete an alcohol rehabilitation program, to pay \$200 in fines and fees, and to pay the victim \$10,000 restitution and write a letter of apology to him.

4. The facts and circumstances of the crime were not established with any precision. Respondent and friends had been watching a basketball game, and drinking beer, until the early morning hours of May 28, 2009, at two restaurants in Pasadena, California. After leaving the second restaurant, in a parking lot across the street, Respondent got into a fist fight with another patron. One or more of Respondent's friends joined in and, according to Respondent, one or more of the victim's associates also were part of the fray. Respondent admitted to the police, who interviewed him in the emergency department of Huntington Memorial Hospital shortly after the incident, that he started the fight. At hearing, Respondent denied he made any specific admissions to the investigating officer. Respondent claimed the victim started the fight. Respondent's admission to the police officer, which occurred shortly after the incident, is given greater weight than his testimony, particularly because at hearing, Respondent gave no rational explanation for how the fight actually started. Respondent expressed no remorse for his participation in the fight.

5. Both the victim and Respondent sustained severe facial injuries: The victim suffered a sinus fracture, along with very significant bruising over several parts of his body from kicks allegedly delivered by the Respondent and his friends. Respondent was similarly bruised and sustained a fracture to one eye socket. Respondent wrote a letter to the Authority (Exhibits L-1 and L-2) explaining how the fight began (the victim's fault) and about the injuries he sustained, including the claim that the victim had broken Respondent's eye socket. It appears from the record, however, that Respondent's eye likely was fractured by a restaurant security guard who helped stop the fight (Exhibit 5, page 18), and not by the victim.

6. Respondent has complied with every part of his probation order, save and except for the passage of time until the probationary period expires. He pledged he would never again engage in the conduct for which he was convicted. He no longer drinks, except on celebratory occasions. Since his conviction, Respondent has married, has had a child, and appears to be leading a stable and law-abiding life. Respondent attends church on a regular basis and actively participates in the rearing of his child.

7. Respondent offered seven reference letters from friends and relatives (two of which were unsigned and thus not considered), all remarking on his courtesy, compassion and integrity. However, none of them referenced Respondent's remorse for his conduct or his acceptance of responsibility for his part in the fight. Respondent called two character witnesses, one his wife and the other his co-defendant in the criminal proceedings. While they attested to Respondent's calm disposition, his honesty, and his integrity, neither one remarked on Respondent's remorse for his criminal conduct. Their testimony clearly showed bias towards Respondent and was given little weight.

8. During his own testimony, Respondent expressed no remorse for his participation in the fight. In fact, he insisted he did not provoke the confrontation. He pointed out that he was "off-duty" when the fight occurred and the fight "had nothing to do"

with” his job. Respondent did note, however, that if he “had it to do all over again” he “would have just gone home.”

LEGAL CONCLUSIONS

1. This proceeding is brought under the provisions of the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (Act), Health and Safety Code section 1797, *et seq.*

2. Section 1798.200 of the Act provides, 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 licenseholder 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.

[¶] . . . [¶]

3. A crime or act is considered substantially related to a licensed profession if, to a substantial degree, it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety, or welfare. (*Brewer v. Department of Motor Vehicles* (1979) 93 Cal.App.3d 358 (motor vehicle sales person); *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (teacher); *Griffiths v. Superior Court* (2002) 96

Cal.App.4th 757 (medical doctor). In accordance with the above case law, the Authority has enacted regulations which apply to the issue of whether a crime is substantially related to the functions, duties and qualifications of one of its licensees. California Code of Regulations, title 22 (Regulations), section 100174, subdivision (a) provides:

For the purposes of denial, placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 of the Health and Safety Code, or imposing an administrative fine pursuant to Section 1798.210 of the Health and Safety Code, a crime or act shall be substantially related to the qualifications, functions and/or duties of a person holding a paramedic license under Division 2.5 of the Health and Safety Code. A crime or act shall be considered to be 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 her/his license in a manner consistent with the public health and safety.

4. The crime at issue here, assault with the intent to commit great bodily injury, is not only substantially, but is directly, related to the functions, duties and qualifications of any healthcare-related personnel. Involvement in the healthcare profession, whether it be as a nurse, doctor, or emergency medical technician, is or should be dedicated to the preservation and protection of life and limb. A crime involving assaultive behavior is clearly antithetical to that purpose.

5. Having concluded that Respondent's crime is substantially related to the functions, duties and qualifications of an Authority licensee, it must next be determined what penalty, if any, should be imposed. In this regard, the Authority has enacted a Regulation, 100173, subdivision (b)(2), directly on point. That regulation provides: "The authority shall deny/revoke a paramedic license, if any of the following apply to the applicant: [¶] . . . [¶] (2) Has been convicted and released from incarceration for said [criminal] offense during the preceding ten years for any offense punishable as a felony." (Emphasis added.) As set forth in Findings 3 and 4, Respondent's crime was punishable as a felony, and he has been released from incarceration approximately one year ago. Accordingly, under this Regulation, revocation of Respondent's license must be imposed.

6. Noting, *sub silentio*, that even though revocation must be imposed, the Authority recognizes that a licensee may nevertheless retain his license, albeit on a probationary basis, if he or she has been rehabilitated from his or her criminal conduct to the extent the public health, safety and welfare would not be jeopardized by staying the revocation.

7. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v.*

Committee of Bar Examiners (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.) Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an applicant for a professional license did not commit additional crimes while in prison or while on parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

8. Applying the law set forth in the preceding Conclusion to the facts set forth in Findings 6 through 8, it is clear Respondent has not been rehabilitated from his criminal conduct. Respondent has not expressed remorse for, or even complicity in, the commission of the crime for which he was convicted. He continues to insist he did not start the fight. He never expressed regret that he was in a confrontation in which another human being sustained significant injuries at his hands, whether or not he started the fight. Respondent cannot show a sustained track record of exemplary behavior as his conviction is only one year old. Respondent is still on criminal probation and is required by law to behave. The law permits Respondent to re-apply for his license at some point in the future, perhaps when his rehabilitation from his criminal conduct has more fully matured.

9. The Accusation alleges, as an additional ground for license discipline, that Respondent's conduct was "corrupt" within the meaning of Health and Safety Code section 1798.200, subdivision (c)(5) (revocation for fraudulent, dishonest, or corrupt acts). The word "corrupt" is not defined in the Act. It is defined in Black's Law Dictionary 7th Edition (West Group, 1999) as, "having an unlawful or depraved motive; esp., influenced by bribery."

10. The Supreme Court in *Meijia v. Reed* (2003) 31 Cal.4th 657 at 663, stated:

Under well-established rules of statutory construction, we must ascertain the intent of the drafters so as to effectuate the purpose of the law. [Citation.] Because the statutory language is generally the most reliable indicator of legislative intent, we first examine the words themselves, giving them their usual and ordinary meaning and construing them in context.

11. The word "corrupt" has a usual and ordinary meaning. The Merriam-Webster online dictionary (<http://www.merriam-webster.com/dictionary/corrupt>) defines corrupt as, among other definitions, "tainted," "rotten," and "morally corrupt." Predecessors to this online source, such as Webster's Third New International Dictionary (G & C Merriam

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Company, 1967), define "corrupt" as "depraved, evil" and "adulterated, debased." None of these everyday definitions is applicable to the crime of which Respondent has been convicted. Thus, cause for discipline has not been established under the provisions of Health and Safety Code section 1798.200, subdivision (c)(5).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Emergency Medical Technician-Paramedic (EMT-P) license number P24368 issued to Oliver Q. Arrellano, together with all licensing rights appurtenant thereto, are revoked.

Date: 2-29-12



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings