

1 CYNTHIA L. CURRY (SBN 109286)
2 Senior Staff Counsel
3 Emergency Medical Services Authority
4 10901 Gold Center Drive Suite 400
5 Rancho Cordova, CA 95670
(916) 322- 4336
Fax: (916) 322-1441
cynthia.curry@emsa.ca.gov

6
7 BEFORE THE
8 EMERGENCY MEDICAL SERVICES AUTHORITY
9 STATE OF CALIFORNIA

9 In the Matter of the Emergency Medical)
10 Technician- Paramedic License Held by:)
11 JUSTIN B. BECKMAN)
License No. P24555)

EMSA Case No.: 12-0001
OAH No. 2012010689

12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

DECISION AND ORDER

Respondent.

14 The Emergency Medical Services Authority hereby adopts as its decision in this matter
15 the Proposed Decision of the Administrative Law Judge dated March 5, 2012.

16 The Temporary Suspension Order issued January 9, 2012, is hereby lifted immediately.
17 The remaining portions of this Decision and Order shall become effective on the 6th day of
18 April, 2012.

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

20 *Mar 6, 2012*

Howard Backer

Howard Backer, MD, MPH, FACEP
Director
EMERGENCY MEDICAL SERVICES
AUTHORITY, STATE OF CALIFORNIA

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

JUSTIN B. BECKMAN
License No. P24555

Respondent.

Case No. 12-0001

OAH No. 2012010689

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 6, 2012, in San Diego, California.

Cynthia L. Curry, Senior Staff Counsel, Emergency Medical Service Authority, State of California, represented Complainant, Sean Trask, Chief, Emergency Medical Service Personnel Division, Emergency Medical Services Authority, State of California (Authority).

Fern M. Steiner, Attorney at Law, represented Justin B. Beckman (Beckman or Respondent), who was present throughout the administrative hearing.

On February 6, 2012, the matter was submitted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 9, 2012, the Accusation was signed on behalf of Complainant, Sean Trask, Chief, Emergency Medical Service Personnel Division, Emergency Medical Services Authority, State of California. The Accusation was served on Respondent after the Authority determined that Respondent appeared on duty as a firefighter/paramedic while he was intoxicated. Blood testing obtained revealed that Respondent had a blood alcohol level of .076 percent at the time he was tested. Respondent timely filed a notice of defense and requested a hearing.

On January 9, 2012, an order for a temporary suspension pending hearing was signed by the Director of Emergency Medical Services Authority, Howard Backer, MD, MPH, FACEP. The order was to remain in effect until a final determination was made on the

merits of the Accusation in accordance with applicable Government Code and the Health and Safety Code provisions.

On February 6, 2012, the record was opened; jurisdictional documents were provided; documentary evidence was produced; sworn testimony was taken; closing arguments were given; and the matter was submitted.

Respondent Justin B. Beckman's Testimony

2. Beckman readily admitted that he drank alcoholic beverages the night before he reported to work as a firefighter/paramedic with the San Diego Fire Department. He testified that on December 9, 2011, he consumed alcoholic beverages at a holiday party: "I don't recall what shots I had, but I drank beers, had some shots and cocktails. I don't remember what type of cocktails." He stopped drinking at 11:30 pm when his girlfriend picked him up from the party and drove him home.

On the morning of December 10, 2011, Beckman said he drove himself to work and did not "feel" as though he was impaired. He arrived at work at 7 a.m. at fire station number 36. He was advised that he had been transferred to fire station number 43 for that workday. At 9 a.m., Beckman consented to a breathalyzer test. The results of the breathalyzer were positive and he a full drug screening test was conducted. Beckman was then placed on administrative assignment. Three weeks later, his blood alcohol level was determined to be .076 percent. Beckman was suspended without pay. He now knows and testified that he "was impaired . . . I do have a problem." Beckman took full responsibility for his actions.

Beckman immediately began attending Alcoholics Anonymous (A.A.) meetings; he participated in a Kaiser Permanente eight-hour alcohol educational program; he attended a twenty-day group program regarding the effects of alcohol and the process of addiction; and he attended a group meeting provided by his employment assistance program (EAP). From December 23, 2011 to January 20, 2012, Beckman saw a marriage family therapist at Kaiser. Beckman testified: "I am so embarrassed. My career is on the line." Beckman's father sells alcohol and both his parent drink on a regular basis. He testified, "I never wanted to drink like my dad."

Beckman testified that on January 20, 2012, he drank two beers while he was on a date. This event occurred following his sessions with the family therapist and after he was placed on suspension. Since the January 20, 2012, incident, he made a commitment to remain abstinent of alcohol.

Beckman testified that he now maintains his sobriety by keeping active, surfing, staying healthy, and surrounding himself with positive people. "I don't want to be like my parents." He testified that he would be willing to participate in additional counseling.

Beckman lives with his brother and a roommate, each of whom supports his decision to abstain from alcohol. He provided verification of his A.A. attendance for 17 meetings taking place from December 23, 2011, through February 4, 2012. He also submitted an

employee performance review that verified that his overall job performance had been “above standard.”

Beckman expressed sincere remorse and he was visibly distraught throughout the proceedings. Although it was troubling that Beckman drank beer one evening after his suspension and after his visits with the family therapist, his promise to meet and comply with any condition of probation, including abstinence, was sincere. Beckman promised to meet required standards as might be required and to continue with counseling. His testimony was sincere and credible.

Chief Mike Finnerty's Testimony

3. Mike Finnerty, a Battalion Chief, has been employed by the San Diego Fire Department for 29 years. He testified that on December 10, 2011 at 9:30 a.m., a “for cause” test was administered to Beckman for suspicion of Beckman being under the influence of alcohol, and that the result of that testing was positive for the presence of alcohol. Chief Finnerty testified that Beckman was eligible for the “Last Chance Agreement,” an 18-month agreement with the San Diego Fire Department’s employee assistance program and the human resources department. This agreement would require Beckman to participate in substance abuse counseling and to undergo frequent alcohol testing in lieu of immediate termination. While alcohol testing would last for one year, the agreement would last forever. Beckman does not currently have an active EMT license, was on suspension, and did not conduct pre-hospital care at the time of the hearing as a result of the incident referred to herein. Chief Finnerty’s testimony was straightforward and direct.

Dalayna Crawford's Testimony

4. Dalayna Crawford has been employed a special investigator with the authority for the past three years. He prepared a report summarizing telephone interviews with Battalion Chief Colin Stowell and Captain Craig Newell. Captain Stowell told Crawford that Beckman came to work on December 10, 2011, and was “shaky and smelled of alcohol.” Beckman was pulled off his shift and was sent to a medical facility for drug and alcohol testing. Captain Newell told Crawford that Beckman smelled of alcohol, drank a lot of water, and was chewing gum, which Captain Newell believed was intended to cover up the alcohol smell. The blood alcohol level results returned at .076 percent. Crawford was sincere and insightful concerning his duties and the interviews.

Alcohol Anonymous Attendance Verification and Documentation of Counseling

5. Beckman submitted written evidence confirming his attendance at 17 AA meetings from December 23, 2011, through February 4, 2012. Beckman also submitted a January 20, 2012, letter from marriage family therapist Rene Mendoza, of Kaiser Permanente Department of Psychiatry and Addiction Medicine. Beckman’s treatment plan included four educational classes focused on addiction and recovery development. Beckman also attended three individual counseling sessions. Therapist Mendoza believed Beckman showed a positive attitude towards treatment and was open to self-exploration. Beckman tested

negative in all drug and alcohol testing that was conducted from December 23, 2011, through January 20, 2012.

Beckman submitted a January 4, 2012, memorandum signed by Cheryl L. Avina, the Employee Assistance Program (EAP) Manager for the Last Chance Agreement. Avina indicated that Beckman had participated in and had followed EAP recommendation under the Last Chance Agreement. The Last Chance Agreement recommendation for Beckman included an 18-month agreement and a minimum of eight hours of Alcohol Awareness Education and attending two A.A. or Smart Recovery meetings per month.

LEGAL CONCLUSIONS

Statutory Authority

1. California Health and Safety Code section 1797 states:

This division shall be known and may be cited as the Emergency Medical Services System and the Pre-hospital Emergency Medical Care Personnel Act.

2. California Health and Safety Code section 1797.1 states:

The Legislature finds and declares that it is the intent of this act to provide the state with a statewide system for emergency medical services by establishing within the Health and Welfare Agency the Emergency Medical Services Authority, which is responsible for the coordination and integration of all state activities concerning emergency medical services.

3. California Health and Safety Code section 1797.52 states:

“Advanced life support” means special services designed to provide definitive pre-hospital emergency medical care, including, but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of specified drugs and other medicinal preparations, and other specified techniques and procedures administered by authorized personnel under the direct supervision of a base hospital as part of a local EMS system at the scene of an emergency, during transport to an acute care hospital,

during interfacility transfer, and while in the emergency department of an acute care hospital until responsibility is assumed by the emergency or other medical staff of that hospital.

4. California Health and Safety Code section 1797.172 states in part:

(a) The authority shall develop and, after approval by the commission pursuant to Section 1799.50, adopt minimum standards for the training and scope of practice for EMT-P.

(b) The approval of the director, in consultation with a committee of local EMS medical directors named by the EMS Medical Directors Association of California, is required prior to implementation of any addition to a local optional scope of practice for EMT-Ps proposed by the medical director of a local EMS agency.

(c) Notwithstanding any other provision of law, the authority shall be the agency solely responsible for licensure and licensure renewal of EMT-Ps who meet the standards and are not precluded from licensure because of any of the reasons listed in subdivision (d) of Section 1798.200. Each application for licensure or licensure renewal shall require the applicant's social security number in order to establish the identity of the applicant. The information obtained as a result of a state and federal level criminal offender record information search shall be used in accordance with Section 11105 of the Penal Code, and to determine whether the applicant is subject to denial of licensure or licensure renewal pursuant to this division. Submission of fingerprint images to the Department of Justice may not be required for licensure renewal upon determination by the authority that fingerprint images have previously been submitted to the Department of Justice during initial licensure, or a previous licensure renewal, provided that the license has not lapsed and the applicant has resided continuously in the state since the initial licensure. . . .

5. California Health and Safety Code section 1798.200, states in 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 license holder 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 license holder 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:

. . .

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

Regulatory Authority

6. California Code of Regulations, title 22, section 100145, states in part:

(a) A paramedic may perform any activity identified in the scope of practice of an EMT-I in Chapter 2 of this Division, or any activity identified in the scope of practice of an EMT-II in Chapter 3 of this Division.

(b) A paramedic shall be affiliated with an approved paramedic service provider in order to perform the scope of practice specified in this Chapter.

(c) A paramedic student or a licensed paramedic, as part of an organized EMS system, while caring for patients in a hospital as part of his/her training or continuing education under the direct supervision of a physician, registered nurse, or physician assistant, or while at the scene of a medical emergency or during transport, or during interfacility transfer, or while working in a small and rural hospital pursuant to Section 1797.195 of the Health and Safety Code, may perform the following procedures or administer the following

medications when such are approved by the medical director of the local EMS agency and are included in the written policies and procedures of the local EMS agency. . . .

7. California Code of Regulations, title 22, section 100174, provides in part:

(a) 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...

Disciplinary Guidelines EMS Authority

8. The disciplinary guidelines contain factors that should be considered when determining the appropriate discipline. The factors include:

1. Nature and severity of the act;
2. Actual or potential harm to the public;
3. Prior disciplinary record;
4. Prior warning on record or prior remediation;
5. Number and or/variety of current violations;
6. Mitigating evidence;
7. Any discipline imposed by the paramedic's employer for the same occurrence of that conduct;
8. Aggravating evidence.

Applicable Appellate Authority

9. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Evaluation

10. Beckman admitted that he consumed alcohol to excess the night before going to work as a Paramedic. The next morning, while on duty, he smelled of alcohol and he was reported to his superiors. Drinking excessively the night before a shift, smelling of alcohol while on duty, and having a blood alcohol level of .076 percent when tested at work involve conduct that is substantially related to the qualifications, functions and duties of a person holding a paramedic license. This misconduct threatens public health and safety. Beckman was granted a "Last Chance Agreement" and was placed on suspension. Beckman was offered this agreement because his employer believed Beckman was a good candidate for the program, which consisted of attending educational classes, counseling, and random drug testing. Beckman complied with all the rules and requirements of the program. However, on January 20, 2012, Beckman drank two beers. This event occurred after his initial A.A. meetings and after counseling sessions with the Kaiser therapist. Although his limited consumption of alcoholic beverages on January 12, 2012, is troubling, Beckman testified that he became committed to complete abstinence after January 20, 2012. He only recently accepted his alcohol problem. The Last Chance Agreement does not require complete Beckman's abstinence from alcohol, but he is prepared to remain abstinent if he is placed on probation. Beckman became emotional during his testimony when he described his parents' alcohol use, and he testified that he would be willing to attend more counseling concerning his use of alcohol and the family dynamic surrounding alcohol abuse. Although there was no actual harm to the public, the potential for harm was present and Beckman recognized the danger. He has been cooperative with his employer. He will accept any probationary terms, including complete abstinence, to retain his license. Under the circumstances, the public will be protected by placing Beckman on five years probation that is subject to certain terms and conditions that will assure his abstinence and provide for adequate monitoring.

Cause Exists to Impose a Probationary License upon Craig

11. Cause exists to impose discipline. It would not be contrary to the public interest to place Beckman on probation for a period of five years on standard terms and conditions of probation together with special terms of probation that require Beckman to remain abstinent, to maintain a recovery program, and to submit to random alcohol testing. Imposing an outright revocation would, under the circumstances, involve impermissible punishment and would not serve to protect the public.

ORDER

Emergency Medical Technician-Paramedic License No. P24555 issued to Respondent, Justin B. Beckman, is revoked; however, the order of revocation is stayed and

Respondent's license is placed on five (5) years probation and is subject to the following terms and conditions of probation:

1. Probation Compliance:

Respondent shall fully comply with all terms and conditions of this probationary order. Respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of the Respondent's compliance with the terms and conditions of his probationary order.

Respondent shall immediately execute and submit to the EMSA all Releases 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 cost associated with this requirement.

3. Quarterly Report Requirements:

During the probationary period, Respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by Respondent with all the terms and conditions of his probation. If Respondent submits his quarterly reports by mail, they shall be sent by Certified Mail.

4. Employment Notification:

During the probationary period, Respondent shall notify the EMSA in writing of any EMS employment. Respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, Respondent shall submit proof in writing to the EMSA of disclosure, by Respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of Respondent's probation.

Respondent shall authorize any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of pre-hospital personnel.

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

5. Notification of Termination of Employment:

Respondent shall notify the EMSA within seventy-two (72) hours after his termination of employment, 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 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 the respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Within 72 hours of being arrested, cited or criminally charged for any offense, Respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the offense(s) as to whether Respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

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

8. Completion of Probation:

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

9. Violation of Probation:

If, during the period of probation, Respondent fails to comply with any term of probation, the EMSA may initiate an action to terminate probation and implement actual

license revocation. Upon the initiation of such an action, or upon 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 of the matter has been adopted by the EMSA. An action to terminate probation and implement actual license revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issue to be resolved at the hearing shall be limited to whether Respondent violated any term of his probation sufficient to warrant termination of probation and the implementation of an outright revocation. At the hearing, Respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

10. Abstinence from Use of Alcoholic Beverages

Respondent shall abstain from the use of alcoholic beverages.

11. Biological Fluid Testing

Respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by the EMSA or its designee. Respondent may use a lab pre-approved by the EMSA or may provide to the EMSA the name and location of an independent laboratory or drug/alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and drug/alcohol testing facilities. When the EMSA requests a random test, Respondent shall provide the required blood/urine sample by the time specified, or within twelve (12) hours of the request if no time is specified. When the EMSA requests a random test, Respondent shall ensure that any positive test results are conveyed telephonically by the lab to the EMSA within forty-eight (48) hours, and all written positive or negative results are provided directly by the lab to the EMSA within ten (10) days. Respondent shall be responsible for all costs associated with the drug/alcohol screening.

At the EMSA's sole discretion, the EMSA may allow the random drug testing to be conducted by the respondent's employer to meet the requirement of random drug testing as set forth above. The results of the employer's random drug testing shall be made available to the EMSA in the time frames described above.

12. Participation in the "Last Chance Agreement" with his Employer

Respondent shall continue to participate and comply with all terms and conditions of the program/contract entitled "Last Chance Agreement" with his employer. Respondent is to participate in the two A.A. meetings per month under the Last Chance Agreement as opposed to the Smart Recovery meetings. If Respondent withdraws or is expelled from the program, Respondent shall immediately notify the EMSA and such withdrawal or expulsion shall constitute a violation of probation by the respondent. Respondent shall be responsible for all costs associated with such program, if any, as directed by his employer.

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


13. **Attendance of Alcoholic Anonymous and Proof of Attendance**

Respondent shall participate with A.A. by attending at least two meetings a month until advised by the authority that attendance is no longer required. Respondent shall provide proof of attendance when requested.

14. **Continued Attendance of Counseling and submit proof of attendance.**

Respondent shall continue to participate in counseling to address his alcohol-related issues including those as they pertain to his family dynamics as directed by a licensed professional. Respondent shall submit proof of attendance when requested. Respondent shall comply with this condition of probation until he is released from care by the licensed professional providing services and the authority has notified Respondent that has notified Respondent in writing that this condition of probation has been satisfied. Respondent shall pay for the cost of therapy.

DATED: March 5, 2012


CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings