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10 BEFORE THE  
11 EMERGENCY MEDICAL SERVICES AUTHORITY  
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against: )  
14 ) Enforcement Matter No.: 10-0166  
15 ) OAH No. 2010110776  
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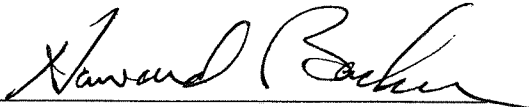
**ROBERT BENITEZ**  
License #P23236  
Respondent.

DECISION AND ORDER OF THE  
EMERGENCY MEDICAL SERVICES  
AUTHORITY

16 The attached Proposed Decision of the Administrative Law Judge is hereby adopted by  
17 the Emergency Medical Services Authority, State of California, as its decision in the above-  
18 entitled matter.

19 This Decision and Order shall become effective on the 28<sup>th</sup> day of August, 2011.

20 IT IS SO ORDERED this 28<sup>th</sup> day of July, 2011.

21   
22 Howard Backer, MD, MPH  
23 Director  
24 EMERGENCY MEDICAL SERVICES  
25 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:

ROBERT BENITEZ,

License No. P23236

Respondent.

Enforcement Matter No. 10-0166

OAH No. 2010110776

**PROPOSED DECISION**

Administrative Law Judge Perry O. Johnson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 21, 2011.

Senior Staff Counsel Cynthia L. Curry represented complainant Sean Trask, Chief, EMS Personnel Division, Emergency Medical Services Authority, State of California.

Respondent Robert Benitez appeared for the proceeding, but he was not otherwise represented.

On June 21, 2011, the parties submitted the matter.

**FACTUAL FINDINGS**

1. Respondent Robert Benitez (respondent) holds Emergency Medical Technician-Paramedic (EMT-P) license number P23236. The license was first issued on January 23, 2006, and is valid through January 30, 2012, unless it is revoked, suspended or surrendered before that date.

2. Complainant Sean Trask, in his official capacity as Chief, EMS Personnel Division, Emergency Medical Services Authority (EMSA), State of California, filed the accusation against respondent. Respondent filed a notice of defense, and the matter proceeded to the hearing in this matter.

*Record of Conviction*

3. On August 25, 2010, in Case Number TCM238447 titled "The People of the State of California vs. Robert Zachariah Benitez," on a plea of no contest, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (b) (Driving with a Blood Alcohol Level of 0.08 Percent or Higher), a misdemeanor. The conviction included enhancement by special allegations, namely that respondent had a history of a prior conviction for drunk driving and that under Vehicle Code section 23578 respondent's blood alcohol level was excessive at the time of his drunk driving arrest.

4. The crime of driving with a blood alcohol level of 0.08 percent or higher (drunk driving) is substantially related to qualifications, functions and duties of an EMT-P.

5. As a consequence of the August 2010 conviction, the court suspended imposition of sentence and respondent was placed on summary (informal) probation for 60 months (five years). The terms and conditions of probation included that respondent spend 30 days in the confinement, but the court allowed him to complete the confinement by way of a home-monitoring arrangement whereby he wore an ankle bracelet. Also the court ordered that respondent pay fines, fees and restitution in the approximate amount of \$2,140; that he enroll in and complete a second-offender drunk driver counseling program; and that he not drive with any measurable alcohol in his system.

Respondent's drunk driving offense markedly affected his ability to drive a motor vehicle. Approximately 30 days after the date of his arrest, the Department of Motor Vehicles, through its administrative per se procedures, suspended respondent's driver's license. At the August 2010 superior court proceeding, respondent's license was revoked for a term of two years. (The court ordered that one year of the license revocation could not be rescinded; however, after the passage of one year respondent could petition to receive a restricted driver's license so that he might drive a vehicle where an Interlock device is affixed to a vehicle. The one year anniversary of the conviction will occur on August 15, 2011, so that respondent may apply for reinstatement of his driving privileges.)

6. The facts and circumstances leading to respondent's August 2010 conviction pertain to his acts on the night of June 8, 2010. During that night, respondent consumed a copious amount of alcoholic beverages, namely six to seven cans of beer, at bar in the City of Visalia, Tulare County. Even though he was intoxicated, respondent decided to drive his truck to his residence. Respondent was pulled over at approximately 1:40 a.m. by a California Highway Patrol officer who observed him driving erratically over a one-half mile route. Respondent failed a field sobriety test and he was arrested and transported to the Tulare County Main Jail, where his blood was drawn. A toxicology report revealed respondent's blood alcohol concentration to be 0.20 percent.

### *Matter in Aggravation*

7. In December 2004, respondent sustained an initial drunk driving conviction, which included a five-year term of probation. (That term of probation had ended by the date of his recent DUI arrest.

### *Respondent's Background and Matters in Mitigation*

8. Respondent is 30 years old as he has a date of birth of January 25, 1981.

9. At the time of his drunk driving arrest, respondent and his wife were experiencing difficulties in their marriage. Among other things, the couple was confronting the prospect of foreclosure of their residence.

10. Due to the December 2004 drunk driving conviction, when respondent first applied to become an EMT-P, the EMSA issued him a provisional EMT-P license for his first two years of licensure.

### *Matters in Rehabilitation*

11. As of the date of the hearing, respondent claimed that he had stopped all consumption of alcoholic beverages. He compellingly asserted at the hearing that he plans to abstain from drinking intoxicating beverages.

12. Respondent successfully completed the 30-day period of confinement and he paid all fees associated with the home monitoring program as administered by Behavioral Interventions of Tulare County. The confinement was completed on approximately November 6, 2010.

13. Respondent has commenced classes in the 18-month second-offender drunk driver course. He has not been delinquent in tendering payment to date for the course fee. Respondent had a face-to-face interview with a program representative on October 26, 2010. Respondent began the group counseling sessions of the course on December 14, 2010.

14. Respondent and his wife have reconciled. He views his marriage to be an aspect of his personal stability. Respondent's wife works as a medical assistant.

16. In the college semester ending in June 2011, respondent was enrolled in College of the Sequoias at the Hanford, California, campus. He completed the anatomy course, and during the ensuing semester he plans to enroll in the microbiology and physiology classes. Respondent's objective is to complete courses that will enable him to enroll by January 2012 in a training program to become a registered nurse.

17. For September and October 2010, his father employed respondent in the agriculture industry in Tulare County. Respondent participated in harvesting work for a six-week period.

18. Respondent has the respect and admiration of productive citizens in his community. He offered four letters from persons<sup>1</sup> who support efforts towards rehabilitation.

*Matters that Suggest Respondent is Not Rehabilitated.*

19. Respondent's conviction for drunk driving occurred less than one year before the date of the hearing in this matter.

20. Respondent will remain on probation due to the drunk driving conviction until approximately August 25, 2015, which is four years into the future relative to the date of the hearing in this matter.

21. Respondent has not paid all the fines and fees associated with the 2010 conviction for drunk driving.

22. Respondent has not completed the 18-month second-offender drunk driver-counseling course, which costs \$1,425. He attends the program once per week on Tuesday nights, and he is approximately at the half-way point into the course.

23. Upon the loss of his driver's license, respondent was terminated from his position as a paramedic and ambulance driver with Exeter District Ambulance.

Respondent has not been employed as a paramedic since July 15, 2010. And other than for a six-week period in late 2010 when he worked during a harvest for his father, he was not been employed in any manner.

24. Respondent called no witness to the hearing of this matter. No person appeared on respondent's behalf to offer evidence pertaining to respondent's reputation in his community for honesty and integrity. No person came to the hearing of this matter to describe respondent's attitude towards his past criminal action that led to the conviction mentioned above.

25. Respondent provided no competent, corroborating evidence that he has been involved in significant and conscientious community, religious or privately sponsored programs designed to provide social benefits or to ameliorate social problems

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<sup>1</sup> An undated letter by Marco A. Vaca, EMT-1, Firefighter-II; a letter, dated June 17, 2011, by Elisa Garcia, Clerical Assistant, Public Safety Training Department, College of the Sequoias; an undated letter by Ryan Paul McNulty; and an undated letter by David Diaz, police officer, City of Exeter.

26. Despite having experienced two drunk driving convictions, respondent is not now participating in Alcoholics Anonymous or other behavior modification program.

### LEGAL CONCLUSIONS

1. Pursuant to the authority of Health and Safety Code section 1798.200, subdivisions (b), (c)(6)<sup>2</sup> and (c)(9), the Emergency Medical Services Authority may suspend or revoke any Emergency Medical Technician-Paramedic license if the licensee has been convicted of a crime substantially related to the qualifications, functions and duties of a licensee. A crime is “substantially related” if “to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by his/her license in a manner consistent with the public health and safety.” (Cal. Code Regs., tit. 22, § 100174, subd. (a).)

It has long been known that “[o]ne who willfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle . . . reasonably may be held to exhibit conscious disregard of the safety of others.” (*People v. Watson* (1981) 30 Cal.3d 290, 300-301.)

Respondent was employed as a paramedic at the time of his offense, his crime evidences a potential unfitness to carry out the duties of a paramedic in a manner consistent with the public health and safety, and is therefore substantially related to the qualifications, functions and duties of a licensee. Respondent’s drunk driving history not only shows a

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<sup>2</sup> Health and Safety Code section 1798.200 provides, in pertinent part:

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the . . . suspension, or revocation of a certificate or license issued . . . , or in the placement on probation of a certificate holder or license holder . . . :

[¶] . . . [¶]

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of pre-hospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

[¶] . . . [¶]

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

(Emphasis added.)

disregard for the law, but also undermines the public confidence and respect for the EMT-P profession.

Cause exists to suspend or revoke respondent's EMT-P license by reason of the matters set forth in Factual Findings 3 and 4.

2. The EMSA has adopted disciplinary guidelines, which must be considered in fixing the level of discipline to be imposed. Under the guidelines, the maximum recommended discipline for conviction of a substantially-related crime is license revocation, and the minimum recommended action is a stayed revocation with one year of probation. For the misuse of alcoholic beverages, the maximum recommended discipline is again revocation, but the minimum recommended discipline is a stayed revocation and three years probation. The guidelines set forth recommended terms and conditions of probation.

3. Respondent's decision to drive his motor vehicle after an evening of drinking alcohol reflected a serious lapse in judgment that endangered his personal safety as well as the safety and welfare of others. At this time, respondent has not regained his driving privileges; and even if the court restores to him restricted driving privileges at the one-year anniversary (August 25, 2011) of the conviction date, respondent must place an Interlock device on vehicles that he operates until approximately August 2012. Respondent claimed that he now abstains from drinking alcohol; but, he offered no corroborating proof of such abstinence on his part. He acknowledges that he does not voluntarily attend AA meetings or other forms of behavior modification therapy. Furthermore, respondent has not completed an 18-month second drunk driver offender-counseling course, which appears to have an expiration date for him in approximately April 2011. And he has not paid all fines and fees associated with his recent conviction.

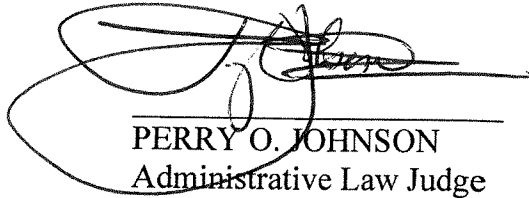
*In re Gossage* (2000) 23 Cal.4th 1080, 1104-1105, establishes, among other things, that from the standpoint of a licensing agency's regulatory oversight of licensees, rehabilitation of a licensee cannot begin to be accurately assessed until the person, who has been convicted of a crime, is beyond the restrictions of criminal probation and the prospect of incarceration no longer looms over the head of the licensee. Respondent sustained a conviction for drunk driving that entails a five-year probation term that will not end until approximately August 2015. Hence, EMSA will not be able to correctly determine respondent's rehabilitation until several years into the future.

Under these circumstances, it would be contrary to the public interest to allow respondent to retain an EMT-P license, even on a probationary basis.

ORDER

Emergency Medical Technician-Paramedic license number P23236 issued to respondent Robert Benitez is revoked.

DATED: July 20, 2011

A handwritten signature in black ink, appearing to read 'Perry O. Johnson', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings