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

10 In the Matter of the Accusation Against:)
11) Enforcement Matter No.: 10-0267
12) OAH No. 201010482
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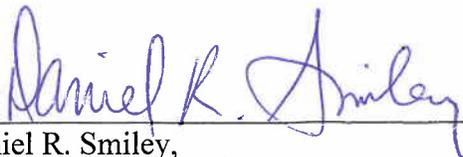
ROBERT CRAIG
License #P18200
Respondent.

DECISION AND ORDER OF THE
EMERGENCY MEDICAL SERVICES
AUTHORITY

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

18 This Decision and Order shall become effective on the 11th day of August, 2011.

19 IT IS SO ORDERED this 12th day of July, 2011.

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22 Daniel R. Smiley,
23 Acting 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 CRAIG,
License No. P18200

Respondent.

Case No. 10-0267

OAH No. 2010110482

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 6, 2011, 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 Robert Craig (Craig or respondent), who was present throughout the administrative hearing.

On June 6, 2011, the matter was submitted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 12, 2010, 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 paramedic while intoxicated. Blood testing obtained revealed that respondent had a blood alcohol level of .061 percent. Respondent admitted to both his employer and the Authority investigator that he had been drinking heavily the night before his shift, but did not believe at the time that he was impaired when he reported to work. Respondent timely filed a notice of defense and requested a hearing.

On June 6, 2011, 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 Robert Craig's testimony

2. Craig readily admitted that he drank heavily the night before he was to report for work as a paramedic at the San Diego Fire Department. He testified that on August 5, 2010, he drank several beers, a bottle and a half of wine and two glasses of scotch. He stopped drinking at midnight on August 5, 2010, nine hours before his paramedic shift was to begin. On the morning of August 6, 2010, he drove himself to work and did not "feel" as though he was impaired. He now knows and testified that he "was most definitely impaired." Craig took full responsibility for his actions.

Except for this incident, Craig testified he had never been reprimanded, disciplined, or given any type of warning related to his functioning as an EMT-Paramedic. He expressed how honored and privileged he has been to be able to serve in the fire and EMS field for the past nine years. In addition, Craig testified his employer allowed him to participate in a "Last Chance Agreement" which supported his assertion that his employer believed that he was able to be rehabilitated.

Craig expressed sincere remorse and was visibly distraught throughout the proceedings. He is willing to meet and comply with any condition of probation and he promised to meet required standards at the highest level. His testimony was sincere and credible.

Chief John Strock's testimony

3. John Strock, the Battalion San Diego Fire Chief and licensed paramedic for 29 years, testified Craig had no prior disciplinary record, no prior warnings, and no prior remediation. Craig was a valued and loyal employee. On August 6, 2010, it was reported to him Craig smelled of alcohol and a blood test was immediately taken. Craig was sent home and placed on "special assignment." His blood alcohol level returned a value .061 percent. The employee assistance program was offered to Craig as the human resources department believed Craig would be a good candidate for the "Last Chance Agreement." This signed agreement between Craig and his employer outlined that Craig would undergo substance abuse counseling, and frequent alcohol testing in lieu of immediate termination. The alcohol testing would last for one year, but the agreement would last forever. Chief Strock testified Craig was a good candidate for this program as this was his first offense. Strock's testimony was straightforward and direct.

Captain Daniel Scott Green's testimony

4. Daniel Green, a veteran of the San Diego Fire force for 25 years and Captain at the Pacific Beach Station, testified on Craig's behalf. Green has been a personal friend of Craig and has recently witnessed Craig refuse alcoholic beverages in places where alcohol

was served. Green has seen great changes in Craig over the last year. He witnessed Craig handle his personal issue responsibly by no longer drinking any alcohol at all. Green testified Craig remains very professional in his work duties. Captain Green was sincere and insightful as to the changes that have transpired in Craig's life since the incident.

Captain Dave Conde's testimony

5. Dave Conde, a veteran of the San Diego Fire force for 23 years, and Captain in the University City San Diego area, testified on Craig's behalf. He has known Craig personally and professionally. He attended a recent dinner with Craig and his wife wherein Craig abstained from any alcoholic beverages even though others around him were drinking alcohol. Captain Conde was sincere and provided additional corroborating testimony of Craig's continued sobriety.

Alcohol Anonymous Attendance Verification and Program Attendance Documentation

6. Craig submitted written evidence of his attendance at Alcohol Anonymous meeting since August 25, 2010, to the present. Craig attended approximately ten AA meetings a month. Craig also submitted an August 31, 2010, letter from counselor Robert Young, of Sharp Vista Pacifica Hospital Outpatient Program that stated that based on Craig's history, he did not meet the qualifications for the program. In essence, Craig did not have any alcohol dependency issues because this incident was a one-time occurrence.

A May 11, 2011, memorandum and June 2, 2011, letter from Cheryl L. Avina, the Employee Assistance Program Manager for the Last Change Agreement, indicated Craig has fully participating in his recovery plan. Craig attended monthly substance abuse support group meetings in addition to AA meetings. Craig was noted to be a leader in the groups and served as a mentor to other group members. Craig furthered his education on the effects of substance abuse on the body as well as the psychological effects. Ms. Avina wrote Craig "has no further problems with alcohol and has had no relapse issues. Since he has been in recovery, he has focused on his family and on keeping his job. [Craig] is respected as a fire fighter and City of San Diego employee."

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. Craig has had no prior disciplinary record, no prior warnings, and no prior remediation. Craig is a valued and loyal employee. Craig admitted that he misused alcohol to excess the night before working as a Paramedic. The next morning, while on duty, he smelled of alcohol and was reported to his superiors. Drinking excessively the night before his work shift, smelling of alcohol while on duty and having a blood alcohol level of .061 percent, are acts that are substantially related to the qualifications, functions and duties of a person holding a paramedic license. This conduct threatens public health and safety. Craig was granted a 'Last Chance Agreement' in lieu of termination. His employer invested in him because they believed he would be a good candidate for the program which consisted of attending educational classes, counseling, and random drug testing. Craig continues to comply with all the rules and requirements of the program. He has never tested positive for drugs or alcohol since this incident. He has turned his life around and readily knows his number of sober days. He has a family to support that motivates him even further to continue a life of sobriety. He takes his job seriously and has never had any question regarding his patient care. Under the circumstances, the public will be protected by placing Craig on three years probation.

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 Craig on probation for a period of three years on standard terms and conditions of probation and special terms of probation that require Craig 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.

This conclusion is based on all factual findings and on all legal conclusions.

ORDER

Emergency Medical Technician-Paramedic License No. P18200 issued to Respondent, Robert Craig, is revoked; however, the order of revocation is stayed and Respondent's license is placed on three 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 the probationary order. The 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:

Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with 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 action to terminate probation and implement actual license 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 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 implementation of actual 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

The Respondent shall abstain from the use of alcoholic beverages.

11. Biological Fluid Testing

The respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by the LEMSA or its designee. Respondent may use a lab pre-approved by the LEMSA or may provide to the LEMSA the name and location of an independent laboratory or drug/alcohol testing facility for approval by the LEMSA. Lab approval shall be based on criteria regulating professional laboratories and drug/alcohol testing facilities as set forth in Chapter 3, Division 2, of the Business and Professions Code and Division 1 of Title 17 of the California Code of Regulations. When the LEMSA requests a random test, the 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 LEMSA requests a random test, the respondent shall ensure that any positive test results are conveyed telephonically by the lab to the LEMSA within forty-eight (48) hours, and all written positive or negative results are provided directly by the lab to the LEMSA within ten (10) days. The respondent shall be responsible for all costs associated with the drug/alcohol screening.

The LEMSA may allow the random drug testing to be conducted by a laboratory under contract with the respondent's employer to meet the requirement of random drug testing as

set forth in this section. The results of the employer's random drug testing shall be made available to the LEMSA in the time frames described above.

12. Participation in the 'Last Chance Agreement' contract with his employer

Respondent is to continue to participate and comply with all terms and conditions of the 'Last Chance Agreement' contract with his employer. 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. The respondent shall be responsible for all costs associated with such program, if any, as directed by his employer.

13. Attendance of Alcoholic Anonymous and submit proof of attendance

Respondent is to continue to participate with AA by attending at least one meeting a month and provide proof of attendance when requested.

DATED: July 6, 2011


CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings