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BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

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

**DAVID JOSEPH FARRELL**

License No. P06648

Respondent.

)  
) Enforcement Matter No.: 10-0299  
) OAH No.: 2011070052  
)  
)  
)

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the  
Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective 30 days after the date below. It is so ordered.

DATED:

10/24/2011



Howard Backer MD, MPH, FACEP  
Director

Emergency Medical Services Authority

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID JOSEPH FARRELL,  
License No. P06648

Respondent.

Case No. 10-0299

OAH No. 2011070052

**PROPOSED DECISION**

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 30, 2011, in Sacramento, California.

Cynthia L. Curry, Senior Staff Counsel, represented complainant, Sean Trask, Chief of the EMS Personnel Division of the Emergency Medical Services Authority (EMSA).

David Joseph Farrell (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on September 30, 2011.

**FACTUAL FINDINGS**

1. Respondent holds Emergency Medical Technician-Paramedic (EMT-P) license number P06648 which was first issued on March 28, 1995, and was valid through March 31, 2011.

2. On June 15, 2011, complainant filed the Accusation in his official capacity. Complainant seeks to discipline respondent's license on the grounds of his criminal conviction for driving under the influence of alcohol.

### *Respondent's Conviction*

3. On November 9, 2010, in El Dorado County Superior Court, Case No. P10CRM1203, respondent, upon a plea of no contest, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of .08 percent or above, a misdemeanor. As part of his plea, respondent admitted that his blood alcohol content (BAC) was higher than .20%. Respondent was placed on 48 months summary probation. The terms and conditions included four days in county jail; attendance at a nine-month First Offender Program; and payment of fines, fees and penalties totaling \$2,665.

4. Respondent's conviction arose from his conduct on September 24, 2010, when he was observed by a Placerville police officer drifting over the double yellow lines on Cold Springs Road in Placerville, California, in a vehicle with expired registration tags. The officer pulled respondent's vehicle over and upon contact with respondent, detected red and watery eyes, slow and slurred speech, and a moderate odor of alcohol coming from inside the vehicle and from respondent's person. Respondent denied to the officers that he had consumed alcoholic beverages that evening. Respondent failed to satisfactorily complete the demonstrated field sobriety tests, and asked the officer to give him the "breath test." The first test revealed a BAC of .25%, and the second test revealed a BAC of .23%.

5. Respondent's conviction, and the circumstances which led to the conviction, establish that on September 24, 2010, respondent misused alcoholic beverages.

6. Respondent's conviction for driving with a blood alcohol level greater than .08 percent, and his misuse of alcohol as set forth in Factual Findings 3 through 5, constitute a threat to the public health and safety, due to the fact that respondent must drive a vehicle (ambulance) and provide medical care to the public as part of his licensed activities. Driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. In addition, it demonstrates an inability or unwillingness to obey the law prohibiting drinking and driving, and is a breach of respondent's duty owed to society. Compliance with these requirements is essential to the duties of a paramedic, and respondent's actions undermined public confidence in, and respect for, the profession.

7. Respondent remains on probation until November 9, 2014. He is in full compliance with the terms and conditions of his probation. He successfully completed the nine-month DUI program on or about August 9, 2011. He is current on his payments for his court-ordered fines, fees and penalties, and he has not consumed alcohol.

### *Factors in Aggravation, Mitigation and Rehabilitation*

8. Respondent testified at hearing that he started drinking at the age of 15 years old, and has had a drinking problem "for years." He admitted that "I have no defense to the DUI." Respondent asserted that "I deal with it by not making excuses." He has been sober since September 25, 2010. According to respondent, his integrity, family and career were jeopardized by his conduct, so he "doesn't intend to ever drink again." Respondent asserted

that "I am not asking for leniency. I did that." He believes that his conviction "was a symptom of a much bigger problem," which he is now dealing with. He is also attempting to "make it up to his family." Respondent periodically treats with G. Bruce Quinn, Ph.D. regarding his alcohol abuse issue. The visits help respondent to remember "where I was then, and where I am now." He no longer has the desire to drink, and "does not intend to go back there." He no longer attends Alcoholics Anonymous meetings, but has a "big support group" made up of immediate family, friends and colleagues.

9. Respondent has been employed as a firefighter for the Sacramento Metropolitan Fire Department for 21 years. He has not served as a medic since 2006. Respondent allowed his EMT-P license to lapse because maintaining it became "a huge financial strain" on his family, and he "had already financially impacted [his] family enough." However, respondent would like to retain his EMT-P license so that he can continue to teach EMT "on the side," and for "personal pride."

10. Respondent submitted three letters of support, which were received in evidence and considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>1</sup> G. Bruce Quinn, Ph.D. has been treating respondent for his alcohol abuse issue since October 1, 2010. As of November 1, 2010, they had completed eight sessions, during which time respondent was "cooperative and a full participant." According to Dr. Quinn, respondent "openly addressed his alcohol issue from the beginning ... [has] made very positive progress ...," and is "genuine" in his efforts and his progress.

Michael J. Slone is the Captain of Engine 21 for the Sacramento Metropolitan Fire District. Respondent contacted him "shortly after" September 24, 2010, and "took full responsibility for his actions." According to Mr. Slone, respondent "did not try to hide it or to blame it on a one time occurrence ..., [and] was committed to making sure that this situation would never occur again."

Joelle Farrell is respondent's wife. In an undated letter, she asserted that "I am very proud of David for his success in not drinking ... and I have confidence that he will succeed." Respondent and his wife have three children together. They have "discussed with them the dangers of alcoholism ...." According to Mrs. Farrell their 17-year-old daughter "has learned a lot from the process that [respondent] has had to undergo." Mrs. Farrell believes that "[n]ow that [respondent] functions with a clear head every day, it has made everything so much better for us."

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<sup>1</sup> Government Code section 11513, subdivision (d), provides that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions ...."

## LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200 states, 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 licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c) ....

(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 or licenseholder under this division:

[¶] ... [¶]

(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.

[¶] ... [¶]

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

[¶] ... [¶]

2. California Code of Regulations, title 22, section 100174, states:

(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.

(b) For the purposes of a crime, the record of conviction or a certified copy of the record shall be conclusive evidence of such conviction. "Conviction" means the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.

3. As set forth in Factual Findings 3 through 6, respondent's 2010 criminal conviction was substantially related to the qualifications, functions, or duties of a paramedic in that it evidences potential unfitness to perform the functions authorized by the license in a manner consistent with the public health and safety. Therefore, cause exists to discipline respondent's EMT-P license pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(6).

4. As set forth in Factual Findings 3 through 5, respondent misused alcoholic beverages on September 24, 2010, which constituted a threat to the public health and safety because of respondent's duty to drive a vehicle and provide medical care to the public. Therefore, cause exists to discipline respondent's EMT-P license pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(9).

5. The EMSA has adopted criteria to evaluate the rehabilitation of a licensee who is subject to license disciplinary action, which are set forth in California Code of Regulations, title 22, section 100175.<sup>2</sup> The conduct giving rise to respondent's criminal

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<sup>2</sup> California Code of Regulations, title 22, section 100175 states:

(a) At the discretion of the EMS Authority, the EMS Authority may issue a license subject to specific provisional terms, conditions, and review. When considering the denial, placement on probation, suspension, or revocation of a license pursuant to Section 1798.200 of the Health and Safety Code, or a petition for reinstatement or reduction of penalty under Section 11522 of the Government Code, the EMS Authority in evaluating the rehabilitation of the applicant and present eligibility for a license, shall consider the following criteria:

(1) The nature and severity of the act(s) or crime(s).

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.

conviction was serious, in that it involved drinking and driving. He has not committed subsequent acts that would constitute grounds for disciplinary action. His conviction is relatively recent, and he remains on criminal probation as of the date of hearing. Respondent is fully complying with the terms of his criminal probation, and he has demonstrated a commitment to sobriety. Under all of the facts and circumstances, it would not be contrary to the public health and safety to permit respondent to remain licensed, with appropriate terms and conditions designed to protect the public and monitor his practice.

6. The disciplinary guidelines adopted by the EMSA pursuant to California Code of Regulations, title 22, section 100172, have been considered in fashioning the appropriate terms and conditions of probation set forth below. In addition to the standard terms and conditions recited below as terms and conditions 1 through 7, optional conditions recommended for misuse of alcohol were included in terms and conditions 1, 2, 3, 4 and 10. However, as it has not been established that respondent possesses or uses drugs, it is not necessary to require him to abstain from drug possession and use (optional condition 1). In addition, as respondent has completed a nine-month DUI program, it is not necessary to require him to enroll in a detoxification program (optional condition 4). Finally, as respondent is currently receiving treatment through Dr. Quinn, it is not necessary that he submit to a psychiatric evaluation (optional condition 10). As an additional condition of probation, respondent shall be required to comply with the terms of his criminal probation (condition 10).

#### ORDER

License number P06648 issued to respondent David Joseph Farrell is revoked. However, the revocation is stayed and respondent is placed on three (3) years probation with the following terms and conditions:

1. **Probation Compliance:** Respondent shall fully comply with all terms and conditions of the probationary order. Respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of respondent's compliance with the terms and conditions of his probationary order.

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(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (1) or (2) of this section.

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the person.

Respondent shall immediately execute and submit to EMSA all Release of Information forms that the EMSA may require of the 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 costs 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, it shall be sent as 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 the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of respondent's probation.

Respondent authorizes any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

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

5. **Notification of Termination:** Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital 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 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. **Abstinence from the Use of Alcoholic Beverages:** Respondent shall abstain from the use of alcoholic beverages.

9. **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 EMSA or may provide to EMSA the name and location of an independent laboratory or licensed 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 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 48 hours, and all written positive or negative results are provided directly by the lab to the EMSA within 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 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.

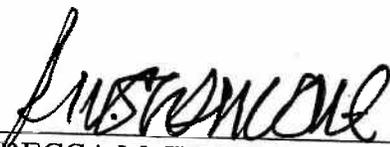
10. **Compliance with Criminal Probation:** Respondent shall fully comply with all of the conditions of criminal probation in El Dorado County Superior Court, Case No. P10CRM1203, *In the Matter of the People of the State of California v. David Joseph Farrell*. Any violation of respondent's criminal probation shall be deemed a violation of probation in this licensing matter.

11. **Completion of Probation:** Respondent's license shall be fully restored upon successful completion of probation.

12. **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 on 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 issues to be resolved at the hearing shall be limited to whether the respondent has 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.

Dated: October 18, 2011

  
REBECCA M. WESTMORE  
Administrative Law Judge  
Office of Administrative Hearings