

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ADAM JOSEPH FREEMAN
License No. P27165

Respondent.

Case No. 10-0057

OAH No. 2010100893

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 19, 2011, in Sacramento, California.

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

Debra Oldziewski, Attorney at Law, represented respondent, Adam Joseph Freeman, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on May 19, 2011.

FACTUAL FINDINGS

1. Respondent holds Emergency Medical Technician-Paramedic (EMT-P) license number P27165, which was first issued on April 8, 2009, and is valid through April 30, 2013, unless renewed or revoked.

2. Complainant filed the Accusation in his official capacity on October 12, 2010. Complainant seeks to revoke respondent's license on the basis of his June 7, 2010 conviction for petty theft.

Respondent's Conviction

3. On June 7, 2010, in Placer County Superior Court, Case No. 62-97364, respondent was convicted, upon his plea of nolo contendere, of violating Penal Code section 488, petty theft, a misdemeanor. Imposition of sentence was suspended, and respondent was placed on three years conditional probation. The court ordered respondent to pay a \$100 fine and to stay away from Costco.

4. The circumstances relating to the offense occurred on February 21, 2010, when respondent took a 750 GB computer hard drive, and a five-pack of Copenhagen chewing tobacco from Costco without paying for them. The value of items taken totaled \$146.71. Upon his arrest, respondent told the Roseville police officer that he did not know why he stole the items, and that he was not thinking.

5. According to respondent, he was in Chile assisting a family to restore their water supply when he learned that his mother had passed away after being struck by a drunk driver. Respondent took an 18-hour bus ride from Santiago, flew into San Francisco, and was on his way to his home in Colfax when he stopped at the Roseville Costco. He had not slept on his journey, and was stressed out and distraught about his mother's passing. Respondent described himself as being "in a bit of a daydream," and does not know what he was thinking that day while shopping at Costco.

6. Respondent's conviction for petty theft constitutes a threat to the public health and safety, due to the fact that respondent is present as a first responder in patients' homes and in ambulances where the patients' personal belongings must be secured by respondent. In addition, respondent's conviction demonstrates an inability or unwillingness to obey the law, and is a breach of his duty owed to society. Honesty is essential to the duties of a paramedic, and respondent's actions undermine public confidence and respect for the profession.

Factors in Aggravation, Mitigation and Rehabilitation

7. In or about 2005, respondent was convicted of fraud. At hearing, respondent asserted that while he was out of the country, the person he was living with pulled the registration sticker off his own truck and placed it on respondent's truck. Respondent decided not to fight the charge in court, and paid the fines and painted the local library as community service.

8. Respondent is on probation for his petty theft conviction until June 7, 2013. However, according to the certified court records, the Placer County District Attorney "would not object to a PC 1203 after one year." Respondent has paid his court-ordered fine, and has stayed away from Costco in Roseville, California.

9. Two weeks following the incident giving rise to respondent's June 2010 conviction, respondent sought weekly counseling with Stephen E. Barr, L.Ac., for approximately four months. Beginning in July 2010, he saw Mr. Barr every other week. According to respondent, Mr. Barr related respondent's criminal conduct to post-traumatic stress disorder (PTSD), and indicated that respondent was rebelling and lashing out at the time. According to respondent, he is no longer experiencing PTSD, but continues to see Mr. Barr for help dealing with issues surrounding his father and his mother.

10. Respondent has been employed full-time since November 2009 as a paramedic and firefighter with the Truckee Fire Protection District (TFPD). He also serves as the EMS Coordinator for his shift, which requires him to conduct the medical ordering and organize local trainings. He told his Battalion Chief, Gary Botto, of his conviction, and was advised "to finish this process to avoid further public issues."

11. Respondent is 31 years old. He has been licensed as an Emergency Medical Technician (EMT) since he was 18 years old. He was drawn to the field because his father was a flight medic, and his mentors were fire medics. Respondent participated in flight expedition services during the summer months, and worked in ski patrol during the winter months. He also taught a wilderness first responder program for six years, and assisted candidates for the wilderness program. Respondent volunteered his time following the Katrina hurricane, and continues to help local injured athletes by providing food and physical therapy. He loves being a paramedic, and believes that it is in his blood. He takes pride in his bedside manner, and genuinely gives each patient 100 percent. Respondent contends that the "last thing that crosses [his] mind is taking [the] property [of his patients]."

12. Respondent submitted four letters of recommendation which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).¹ Grant Korgan has known respondent for 10 years, and is a fellow snowmobiler. In an unsigned letter dated May 1, 2011, Mr. Korgan described respondent as a gentle giant, loving friend and gifted caregiver. According to Mr. Korgan, respondent helped him for 10 months following a snowmobile accident resulting in a burst fracture of his L1 vertebrae. Respondent attended his therapy appointments, worked out with him, brought food, moved and rearranged his housing situation, and walked with him on the beach.

Clayton Thomas is the Fire Captain at Penn Valley Fire Protection District, and was respondent's instructor during respondent's didactic training and field internship. In an unsigned letter dated May 15, 2011, Mr. Thomas described respondent as an excellent care

¹ Government Code section 11513, subdivision (d), states in pertinent part, "Hearsay 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"

provider, conscientious, dependable and educated. He believes respondent has a "high level of integrity" in his professional and personal life.

Larry Ochoa is the Fire Captain at TFPD. In a letter dated and signed May 16, 2011, he described respondent "as a very competent and conscientious Firefighter/Paramedic." According to Captain Ochoa, respondent is "organized, efficient, and willing to do whatever is needed to get a particular task finished. He is highly self-motivated and well capable of achieving any goal he sets his mind to."

Gary Mohun is also a Fire Captain at TFPD. Captain Mohun has worked with respondent since June 2010, and describes him as mature and caring, and one who takes "the extra steps to maintain good working relationships with the rest of the crew...." He also hailed respondent's work ethic, and expressed his loss if respondent loses his job at the TFPD due to budgetary needs.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200 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 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 or licenseholder under this division:

[¶] . . . [¶]

(5) The commission of any fraudulent, dishonest, or corrupt act which 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.

[¶] . . . [¶]

2. California Code of Regulations, title 22, section 100173, subdivisions (b) and (c), provide, in pertinent part:

(b) The authority shall deny/revoke a paramedic license, if any of the following apply to the applicant:

[¶] . . . [¶]

(5) Has been convicted within the preceding five years of any theft related misdemeanor.

(c) The authority may deny/revoke a paramedic license if:

(1) Has committed any act involving fraud or intentional dishonesty for personal gain within the preceding seven years.

[¶] . . . [¶]

3. California Code of Regulations, title 22, section 100174, provides:

(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.

Cause for Discipline

4. As set forth in Factual Findings 3 through 6, respondent's 2007 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), (c)(5) and (c)(6), in conjunction with California Code of Regulations, title 22, sections 10173, subdivisions (b)(5) and (c)(1), and 10174, subdivisions (a) and (b).

Fitness for Continued Licensure

5. 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 100175.² The act giving rise to respondent's conviction was serious, in that

² California Code of Regulations, title 22, section 100175, provides, in pertinent part:

(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.
- (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.

it involved dishonesty and the taking of property belonging to another. He has not committed subsequent acts that would constitute grounds for disciplinary action. His conviction is relatively recent, he is fully complying with the terms and conditions of his criminal probation, and he remains on criminal probation as of the date of hearing. He is gainfully employed, and enjoys an excellent reputation amongst his friends and colleagues for having a strong work ethic, and for being considerate toward others less fortunate than himself. When all the facts and circumstances are considered, it would not be contrary to the public health, safety and welfare to permit respondent to remain licensed, with appropriate probationary terms and conditions designed to protect the public and monitor his practice.

6. The disciplinary guidelines adopted by 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, an additional condition of probation requires respondent to comply with the terms of his criminal probation (condition 8).

ORDER

License number P27165 issued to the respondent Adam Joseph Freeman is revoked. However, such revocation is stayed and respondent is placed on probation for five (5) years upon 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 EMSA in its monitoring, investigation, and evaluation of respondent's compliance with the terms and conditions of his probationary order.

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 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.

(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.

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 EMSA in writing of any EMS employment. Respondent shall inform 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 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 EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

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

5. Notification of Termination:

Respondent shall notify 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 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 EMSA, in writing, of the date of such departure and the date of return to California, if respondent returns.

Any and all notifications to 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 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 EMSA a full and detailed account of the circumstances thereof. 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 EMSA shall be by certified mail.

8. Compliance with Criminal Probation:

Respondent shall fully comply with all of the conditions of probation in Placer County Superior Court Case No. 62-97364, *In the Matter of the People of the State of California v. Adam Joseph Freeman*. Any violation of respondent's criminal probation shall be deemed a violation of probation in this licensing matter.

9. Completion of Probation:


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

10. Violation of Probation:

If during the period of probation respondent fails to comply with any term of probation, 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 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 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: June 10, 2011


REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings