

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

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

SCOT GRAHAM

License No. P04138

Respondent.

No. 07-0213

OAH No. 2009030843

**PROPOSED DECISION**

On June 15, 2009, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Cynthia Curry, Senior Staff Counsel, represented Complainant Nancy Steiner.

Carmela J. Woll, Attorney at Law, of Wylie, McBride, Platten and Renner, 2125 Canoas Garden Avenue, Suite 120, San Jose, California 95125, represented Respondent Scot Graham, who was present for the hearing in this matter.

The record remained open to afford an opportunity to Complainant to file copies of the agency's decisions that purportedly offer persuasive support of Complainant's argument for revocation of the license issued to Respondent Scot Graham. And further the record was held open to enable Respondent Scot Graham to file a reply argument to the position advanced by Complainant. On June 16, 2009, Complainant filed a copy of a single proposed decision, which was marked as Exhibits "8." And on June 19, 2009, Respondent filed a written brief titled "Respondent's Post-Hearing Reply Brief," which was marked as exhibit "G," and received as argument.

On June 19, 2009, the parties were deemed to have submitted the matter and the record closed.

**FACTUAL FINDINGS**

1. On January 27, 2009, Complainant Nancy Steiner (Complainant), in her official capacity as a Chief of the EMS Personnel Division of the Emergency Medical Services Authority (the Authority) of the State of California, made the Accusation against Respondent Scot Graham (Respondent).

Respondent filed a Notice of Defense by which he requested a hearing in this matter.

2. On September 17, 1990, the Authority issued Respondent EMT-Paramedic License No. P04381. The license was last renewed on September 22, 2008. And for all times pertinent to the matter, the license held by Respondent was in full force and effect.

### *Criminal Convictions*

#### *a. Violation of Protective Order Conviction*

3. On April 21, 2008, in Case Number CC759044, the California Superior Court in and for Santa Clara County convicted Respondent of violating Penal Code section 273.6, subdivision (a) (Violation of a Protective Order), a misdemeanor.

4. The facts and circumstances of the events that led to the conviction for violation of a protective order pertaining to Respondent's conduct that culminated on March 6, 2007.

On August 1, 2005, Respondent and his wife separated. Upon leaving the family home, the estranged wife took Respondent's three children into her exclusive custody. Then his wife initiated divorce proceedings and secured a domestic violence restraining order (DVRO) in December 2006. On March 3, 2007, Respondent was arrested for having violated the DVRO. He posted bail on March 6, 2007 and was released from custody at about 2:00 a.m. Despite the existing restraining order and his arrest for violation of a DVRO, Respondent dispatched an Email message<sup>1</sup> to his wife at 3:57 a.m. on March 6, 2007. A few hours later on March 6, 2007, Respondent's estranged wife forwarded the Email message to the San Jose Police Department. The police arrested Respondent for violation of the restraining order in violation of Penal Code section 273.6, subdivision (a). That arrest on March 6, 2007 led to his conviction under Case Number CC759044.

5. Under the circumstances, Respondent's conviction for violation of a protective order cannot be found to be a crime or act that is substantially related to the qualifications, functions, or duties of a paramedic because the offense is not to a substantial degree of criminality as to evidence a present or potential unfitness of a paramedic to perform the functions authorized by his license in a manner consistent with the public health and safety.

#### *b. Possession of a Firearm While Subject to a Protective Order Conviction*

6. Also, on April 21, 2008, in case number CC759266, the Superior Court in and for the County of Santa Clara, on a plea of nolo contendere, convicted Respondent of

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<sup>1</sup> The Email message on March 6, 2007, set out: "Subject: Hi Tricia. [¶] I am home and OK. Please support me as best you can the next couple of weeks. Have a happy birthday and say hi to the kids for me. [¶] I'll be thinking of you this week; your b-day and our anniversary. [¶] Love Scot."

violating Penal Code section 12021, subdivision (g)(2) (Owning or Possessing a Firearm While Subject to a Protective Order), a misdemeanor.

7. Respondent's conviction under Case Number CC759266 arose out of a police investigation on February 27, 2007.

On that date in February 2007, which was one month before he sent an Email message that led to his conviction under Penal Code section 273.6, subdivision (a), for violation of a protective order, a detective assigned to the Family Violence Unit of the San Jose Police Department met with Respondent's estranged wife, Patricia, at the police station. The woman complained that since her separation from Respondent in July 2005, she had received several annoying forms of communication from Respondent that had prompted her to secure a restraining order in December 2006. Patricia conveyed her fear that Respondent, who owned rifles and handguns, might be a threat especially to himself because his father and brother had committed suicide by using firearms. And the woman was personally fearful of Respondent due to his repeated communications with her in violation of the restraining order. In addressing the woman's complaint, the police drove to Respondent's residence to conduct an investigation. After conducting an interview with Respondent about the import of the restraining order, which compelled him to have no contact with his estranged wife and that imposed upon him an obligation to surrender firearms, Respondent acknowledged that he had a handgun in his bedroom and five weapons in a gun safe that was located in the garage to the house. (Respondent had not withdrawn the firearms from the gun safe at any time following the issuance of the protective order.) Upon his peaceful surrender of the weapons, the police confiscated the firearms and gave him a receipt for two handguns, a single shotgun and two rifles.

On March 1, 2007, the District Attorney's Office for Santa Clara County issued a misdemeanor complaint in Case Number CC759266 that set out seven counts. The first five counts alleged Respondent's possession of February 27, 2007, of particular firearms in violation of Penal Code section 12021, subdivision (g)(2), that prohibits the ownership or possession of a firearm while subject to a restraining order. (The weapons were described as: a Benelli 12-gauge shotgun, a Marlin 22-caliber rifle, a H&R Arms 30mm rifle, a Ruger 9mm handgun, and a Taurus 39 caliber handgun.) Count Six alleged that between December 31, 2006, and February 28, 2007, Respondent violated a protective order by "intentionally and knowingly" violating Penal Code section 273.6, subdivision (a). And Count Seven alleged Respondent's violation of Penal Code section 653m, subdivision (a), between October 1, 2006, and October 31, 2006, by using obscene language or threats to injure by use of a telephone or other electronic communication device.

8. Under the circumstances, Respondent's conviction for violation of a protective order cannot be found to be a crime or act that is substantially related to the qualifications, functions, or duties of a paramedic because the offense is not to a substantial degree of criminality as to evidence a present or potential unfitness of a paramedic to perform the functions authorized by his license in a manner consistent with the public health and safety.

c. *Threats to Commit a Crime Resulting in Death of Great Bodily Injury Conviction*

9. And, on April 21, 2008, in Case Number CC766285, the California Superior Court in and for Santa Clara County, in accordance with a plea of nolo contendere, convicted Respondent, under two counts, of violating Penal Code section 422 (Threats to Commit a Crime Resulting in Death or Great Bodily Injury), a misdemeanor.

10. The facts and circumstances leading to the conviction in Case Number CC766285 occurred on May 7, 2007.

At about the time of the separation from his wife, Respondent suspected that a man named Marty Sharpe, who had not only been his friend but also had participated in Respondent's wedding ceremony as his "Best Man," had become Respondent's estranged wife's boyfriend. Before the incident in question, Respondent began to abuse alcoholic beverages to self-medicate aspects of his emotional distress and sense of anger and loss. On the subject date, while in his own residence, Respondent's anger, which was fueled by a state of intoxication, led to him making several telephone calls to confront Sharpe about Respondent's suspicion that the other man was in an amorous relationship with Respondent's estranged wife. Respondent made accusatory utterances and threatened to burn down Sharpe's house. That he made a second telephone call to the house of Sharpe's mother and reached the man's sister who ridiculed Respondent regarding his previous jail term. Respondent angrily retorted that wished to perform a violent sexual act upon the woman.

On May 10, 2007, the District Attorney's Office for Santa Clara County filed a Felony Complaint that alleged four counts of Respondent's violations of law. Count One and Count Two alleged Respondent making the two distinct telephone calls to separate places to threaten death or great bodily injury to Sharpe in violation of Penal Code section 422, felonies. Count Three and Count Four alleged Respondent use of repeated telephone calls to make threats in violation of Penal Code section 653m, subdivision (b), misdemeanors.

11. The crime of making threats to commit crimes resulting in death or great bodily injury is a crime or act that is substantially related to the qualifications, functions, or duties of a paramedic. Such crime or act is of a substantial degree to evidence present or potential unfitness of a paramedic to perform the functions authorized by his license in a manner consistent with the public health and safety.

12. Among other consequences resulting from the May 2007 crimes, Respondent was arrested, taken to jail on May 6, 2007, and he remained confined for about 41 days .

13. Even though Respondent has two convictions for his criminal conduct that occurred on May 7, 2007, his behavior must be viewed as a single continuum of misbehavior. Respondent sought to vent his threats to a single individual through the use of his single telephone by making telephone calls to two numbers at location he believed his

single-targeted person might be located. And the telephone calls were made within minutes of each other.

*Consequence of the Convictions on April 21, 2008*

14. On April 21, 2008, the California Superior Court for Santa Clara County, in a single proceeding, issued orders of nearly identical import under the three case numbers of CC 759044, CC759266 and CC766285.

Under Case Number CC759044, the superior court suspended imposition of sentencing for the conviction under a single count of violation of Penal Code section 273.6, subdivision (a). The court dismissed count two of the complaint. The terms and conditions of formal probation included a term of jail for 75 days; but, the court granted Respondent credit for time served. The court noted that the term of confinement was to be concurrent with "any" other pending sentence. Also, the court directed Respondent to complete 20 hours of volunteer work time. Further the court ordered Respondent to pay fines and fees in an amount of about \$620. Also, the court directed Respondent to complete a substance abuse and a domestic violence counseling program. And the court noted that the "DVPO" (domestic violence protective order) would expire April 21, 2011.

In Case Number CC759266, the superior court suspended imposition of sentencing for the conviction under a single count of violation of Penal Code section 12021, subdivision (g)(2). The court dismissed the criminal complaint's counts 2 through 7, inclusive. As part of formal probation, the court imposed the same jail term and other terms as specified in the court record for Case Number CC759044. But the court added a term that Respondent was not to own or possess deadly weapons.

In Case Number CC766285, the superior court suspended imposition of sentencing for the conviction under two counts of violation of Penal Code section 422. The court accepted a motion to amend the complaint to reduce the offenses from felonies to misdemeanors. And the court dismissed the criminal complaint's counts three and four. Under formal probation that was extended under Case Number CC766285, the superior court imposed the same jail term and other terms that were specified in the court records for Case Number CC759044 and Case Number CC759266. But in addition to the terms and conditions of probation, the court added that the "non-DV<sup>c</sup>PO" (non-domestic violence protective order), which was issued with regard to Marty Sharpe, would expire on April 21, 2011.

*Matters that Negatively Impact Upon Respondent's Rehabilitation*

15. Respondent remains on probation due to the four criminal convictions that were entered on April 21, 2008

16. Respondent criminal convictions occurred only about nine months before the date of the Accusation in this matter. And the convictions were recorded on a date that was about 14 months before the date of the hearing of this matter.

*Matters in Mitigation and Respondent's Background*

17. For nearly 20 years Respondent has been a firefighter/engineer/paramedic with the Santa Clara County Fire Department.

In August 1988, Respondent first received a paramedic certificate, which was two years before the creation of the authority's licensing scheme. (He was first employed as a paramedic in September 1988.) In April 1990 Respondent began his work as a firefighter/paramedic.

Also Respondent is a fire department engineer, which entails duties and responsibilities for the care and control of fire trucks and the ladder apparatus on fire trucks.

18. In 2000 in his capacity as a firefighter, Respondent received an Award of Valor when he single-handedly rescued another firefighter who had collapsed in a burning building.

19. Respondent and his wife were married in March 1995. The couple has three children who have ages of 10 years, eight years and five years. (Although his wife commenced divorce proceedings following the separation in August 2005, the superior court has not issued a final decree of divorce.)

20. On November 2, 2005, Respondent sought psychiatric therapy at the Kaiser Permanente facility in Campbell, California. He continued with treatments related to depression until his attained maximum benefits from therapy as determined a treating doctor in March 2006.

21. Respondent never neglected the performance of his duties, functions and responsibilities as a paramedic with the Santa Clara County Fire Department during his period of loss, frustration and misbehavior in the course of private life. (But he sustained Santa Clara County Fire Department disciplinary proceedings that resulted in a 30-day suspension due to the April 2008 convictions.)

22. Before April 21, 2008, Respondent had never been convicted of a misdemeanor or felony criminal offense.

*Matters in Extenuation*

23. When his wife abandoned the marriage in August 2005, Respondent suspected that his estranged wife had been engaged in an extra-martial affair with Respondent's former best friend, who had been the "Best Man" at the couple's wedding.

24. His estranged wife then forbade Respondent from visiting his children and she secured a court order that directed Respondent to stay away from his estranged wife during divorce proceedings. (In 2008, Respondent secured a court order that allowed him to have supervised visitation with his children.)

25. Respondent observed his father, who had been close to his grandchildren, grow despondent after Respondent's wife abandoned the marriage. Less than one year after Respondent's wife had initiated a marital separation, Respondent's father committed suicide in July 2006. Respondent was gravely impacted by his father's suicide.

26. Respondent's losses prompted him to abuse alcoholic beverages, which worsened his attitudes and contributed to poor decision-making in his personal, private life. Respondent persuasively represented that all of the contacts with various individuals, who were involved with the facts and circumstances of the events that resulted in his convictions, entailed his intoxication due to consumption of alcoholic beverages.

#### *Matters in Rehabilitation*

27. In addition to maintaining civil service classification of firefighter/ engineer/ paramedic with the Santa Clara County Fire Department, Respondent is part of the Special Operations Task Force, which is called "Rescue 3." The Rescue 3 team specializes in technical rescue maneuvers. Respondent offered the memorandum by Mark Norman, Fire Captain, Santa Clara County Fire Department, who had been Respondent's supervisor for, at least, two years. The letter asserts that Respondent worked as a paramedic and firefighter at a "high level of skill and true concern for his patients and the public."

On June 13, 2009, which was two days before the hearing in this matter, Respondent participated in three emergency calls while on duty. During one call Respondent provided paramedic assistance to an elderly man who had fallen out of a wheelchair. The man was not breathing and he had no pulse. By way of Respondent's use of paramedic techniques the elderly man was successfully resuscitated.

28. Respondent has paid all fines and fees associated with the convictions that were recorded against him on April 21, 2008.

29. Respondent attended and completed a six-month alcohol abuse out-patient counseling program. Respondent continues to attend meetings of Alcoholic Anonymous (AA).

30. Sometime in early 2009, Respondent completed a 52-week batterers' counseling program that is offered by New Beginnings Counseling and Consulting of San Jose. Respondent offered a letter, dated May 21, 2009, by Sallie Danenberg, LMFT, Program Administrator of New Beginnings Counseling and Consulting.

31. On June 26, 2007, Respondent returned to the Psychiatric Department of Kaiser Permanente in Campbell. Respondent proclaimed that since June 2007 he has not been burdened with symptoms consistent with depression. On October 9, 2007, Respondent completed all treatment with Kaiser Permanente's Psychiatric Department. Respondent offered the letter, dated March 12, 2008, by Kenneth Rogers, Psy.D., that notes Respondent has fully recovered from all emotional problems and that further treatment is not necessary.

32. On May 29, 2009, the superior court conducted a hearing on the court's "Domestic Violence Calendar." At the proceeding<sup>2</sup> that pertained to Respondent, the court terminated Respondent's formal probation status and converted the probation to court (informal) probation for all three case numbers associated with the convictions entered in April 2008. (There is no evidence that Respondent's wife has ever charged Respondent of actual physical violence.)

33. In March 2009, Respondent secured a court order that granted him visitation rights one day each week with his children. Since then Respondent has not missed a week in seeing his children. Respondent dutifully pays both child support and spousal support money. He has never been in arrears in making those payments.

#### *Ultimate Finding*

34. It would not be against the public interest for Respondent to possess a paramedic license on conditions of probation.

### LEGAL CONCLUSIONS

#### *The Standard of Proof*

1. The standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a paramedic license is "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.)

"Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. "Clear and convincing evidence" is a higher standard of proof than proof by a "preponderance of the evidence." (*BAJI*<sup>3</sup> (8<sup>TH</sup> ED.), No. 2.62.) "Clear and

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<sup>2</sup> A transcript by a court reporter for the late May 2009 proceeding, includes the superior court judge's praise of Respondent by noting that over the judge's tenure in the domestic violence unit of the Santa Clara Superior Court, he had seen "very few people finish off the 52-week [certified batterer's counsel program] without missing a session, and you have successfully done that, which in itself . . . speaks volumes about the dedication that you had to this program . . ."

<sup>3</sup> *Book of Approved Jury Instructions, Standard Jury Instructions, Civil.*



convincing evidence” requires a finding of high probability for the propositions advanced in an Accusation against a targeted licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th700.)

### *Cause for Discipline*

2. Health and Safety Code section 1798.200, subdivision (b), provides, in pertinent part, that the authority may suspend or revoke any EMT-P (emergency medical technician-paramedic) certificate upon a finding of any action by the certificate holder as prescribed under subdivision (c) of the statute. Subdivision (c)(6) of Code section 1798.200 provides for license disciplinary action for a conviction of any crime that is substantially related to the qualifications, functions, and duties of pre-hospital personnel, that is a paramedic.

California Code of Regulations, title 22, section 100174, subdivision (a), sets out

(a) For the purposes of . . . placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 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 . . . his license in a manner consistent with the public health and safety.

3. Cause exists for disciplinary action against the license held by Respondent under Health and Safety Code section 1798.200, subdivision (c) (6), as that section interacts with California Code of Regulations, title 22, section 100174, subdivision (a), by reason of Factual Findings 9, 10 and 11.

### *Insufficient Basis for Determination of Causes for Discipline*

4. No cause exists for disciplinary action against the license held by Respondent under Health and Safety Code section 1798.200, subdivision (c) (6), as that section interacts with California Code of Regulations, title 22, section 100174, subdivision (a), by reason of Factual Findings 3, 4, with 5, as well as 6, 7, with 8.

5. California Code of Regulations, title 22, 100173, subdivision (b)(4), establishes that the authority shall revoke a paramedic license if the licensee “has been convicted of two misdemeanors within the preceding five years for any offense relating to force, violence, threat, or intimidation.”

No cause exists for disciplinary action against the license held by Respondent under California of Regulations, title 22, section 100173, subdivision (b)(4), by reason of Factual Findings 13.

*Basis for Granting Probation*

6. Health and Safety Code section 1798.200, subdivision (b), establishes that the authority 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).

7. The factors established by the EMSA to be considered in determining the discipline of a licensee are applied to Respondent as follows:<sup>4</sup>

A. *Nature and severity of the act(s), offense(s), or crime(s) under consideration.* Respondent's acts were related to emotional turmoil that afflicted him by reason of the loss of his wife and the belief that a former best friend had betrayed Respondent by engaging in an extramarital affair with Respondent's estranged wife. Respondent experienced extreme and extraordinary events that led to the misconduct described above.

B. *Actual or potential harm to the public.* Other than the potential to disrupt the quiet of the community and the expectation of good conduct by public servants, Respondent's conduct entailed little harm to the public.

C. *Actual or potential harm to any patient.* No harm to any patient was established by Complainant.

D. *Prior disciplinary record.* Respondent has no prior history of discipline with the Authority.

E. *Prior warnings on record or prior remediation.* Respondent has received no prior warnings from the Authority.

F. *Number and/or variety of current violations.* There are four convictions at issue in this matter. But only two

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<sup>4</sup> These factors are part of the EMSA's "Recommended Guidelines for Disciplinary Orders and Conditions of Probation," dated July 10, 2002 (Guidelines), established pursuant to California Code of Regulations, title 22, section 100172, subdivision (d).

convictions, which pertain to a single occurrence of Respondent making two telephone calls for a single person, entailed the threat of violence. Complainant offered no evidence that Respondent violated any standard of care on Respondent's part in performing any duty, function or responsibility of a paramedic.

G. *Aggravating evidence.* Respondent abused alcoholic beverages to a degree that his sober, good judgment was impaired when he committed criminal acts. Such conduct exists as aggravating evidence in this matter.

H. *Mitigating and Extenuating evidence.* There is considerable evidence in mitigation and extenuation. Such evidence is set out under Factual Findings 17 through 26.

I. *Rehabilitation evidence.* Respondent presented compelling evidence of rehabilitation, which is described in Factual Finding 27 through 33.

J. *Compliance with terms of the sentence and/or court-ordered probation.* Respondent has faithfully complied with the court-ordered terms of probation.

K. *Overall criminal record.* Other than the four convictions described above, Complainant offered no other criminal record for Respondent.

L. *Time that has elapsed since the act(s) or offense(s) occurred.* About one year has elapsed since Respondent's convictions were entered.

M. *If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4.* Respondent has not received a superior court order that expunges any of the four convictions. But the formal probation status was modified to informal (court) probation due to Respondent's great efforts towards rehabilitation.

8. California Code of Regulations, title 22, section 100173, subdivision (g), prescribes that the director may grant a license to anyone otherwise precluded under subsections (a) and (b) of the section if the director believes that extraordinary circumstances exist to warrant such an exemption.

Complainant advances a very restrictive reading of California Code of Regulations, title 22, section 100173, subdivision (g). Under the interpretation suggested, no discretion can be exercised by the director to place on probation any individual who has had two misdemeanor convictions within the preceding five years for any offense relating to force, violence, threat, or intimidation. Notwithstanding either extenuating circumstances that may have prompted the unlawful conduct of a respondent or the efforts of the individual respondent in attaining rehabilitation, according to Complainant's argument license revocation must be imposed on a finding of two or more misdemeanor convictions of the nature so proscribed. Such an interpretation cannot be viewed as reasonable policy that is intended to protect the public interests, rather such a strained reading of the regulation must be deemed as a form of punishment of a paramedic.

First, with regard to Respondent's history of having four misdemeanor convictions, he has only two convictions (violations of Penal Code section 422 as to making threats to commit a crime resulting in death or serious bodily injury) that can be viewed to fall with the ambit of California Code of Regulations, title 22, section 100173, subdivision (b)(4). And as set out in the factual findings, the convictions for violation of Penal Code section 422 arose on a single date in a uninterrupted span of time during which Respondent placed two telephone calls from a single telephone for the purpose of verbally abusing a single individual, that is the man who he believed had had an extramarital affair with Respondent's estranged wife. The other convictions involved Respondent's possession and ownership of firearms at a time that he was subject to a protective order, and for violation of a protective order by sending an Email message to his estranged wife.

Second, as noted above, Respondent has pursued many paths towards rehabilitation. He has paid all court fines and fees. He has attended AA meetings. He completed a 52-week batterer's counseling program. He devoted effort in psychotherapy. He has applied for termination of probation and expungment of the convictions that led to a court order to modify the formal probation to court (informal) probation. And he has abstained from the consumption of alcoholic beverages for more than one and one-half years.

Third, Respondent is a veteran of the paramedic profession for a period that nearly spans 20 years. He is an active firefighter and is a member of a specified rescue detachment of the Santa Clara County Fire Department.

California Code of Regulations, title 22, section 100173, subdivision (g), should be read more broadly than argued by Complainant. The regulation exists to allow for the Director's use of discretion in considering particular or extraordinary circumstances in matters such as are involved in the instance of Respondent.

The Authority's Guidelines for Disciplinary Orders and Conditions of Probation specify that "[s]hould the Respondent invoke his . . . privilege to contest the allegations through the Administrative Procedure Act, the administrative law judge *shall* use this document as a guide in making his . . . recommendations for discipline (if needed) to the [Authority]." The Guidelines state that "[t]he administrative law judge may propose any

discipline between the minimum and the maximum for a particular violation.” Accordingly, the Guideline prescribe a possible outcome contrary to Complainant’s argument that only revocation may result in this matter.

Matters in mitigation, matters in extenuation and matters in rehabilitation, as described in Factual Findings 17 through 33 outweigh Respondent’s acts and omissions upon which revocation of a license may be rationalized.

9. The purpose of administrative adjudication relative to licensing disciplinary proceedings is not to punish licensees but rather “to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent.” (*Borrow v. Department of Investment* (1971) 15 Cal.App.3d 531, 540; *Fahmy v. Medical Bd. of California* (1995) 38 Cal. App.4th 810, 817.) Absolute revocation of the paramedic license held by Respondent, in light of the nature and circumstances of the criminal conduct and as measured against the sincere expressions of remorse for his past crimes along with his long professional career as a fire fighter and paramedic, would amount to punishment. The efforts made by Respondent to rehabilitate himself and to remain a contributing citizen and a skilled emergency medical professional establish that it would not be against the public interest for Respondent to hold a license as an emergency medical technician serving as a paramedic, so long as he fulfills a reasonable period of probation.

#### ORDER

Emergency Medical Technician-Paramedic (EMT-P) License No. P04381 of Respondent Scot Graham is revoked, by reason of Legal Conclusion 3; however, the revocation is stayed during a three-year period of probation under the following terms and conditions:

##### 1. *DISCLOSURE OF DISCIPLINE*

Within 15 calendar days after the effective date of this decision, Respondent shall provide the Authority’s Director, or his designee, proof of service that Respondent has served a true copy of this decision on the Fire Chief of the Santa Clara County Fire Department, or the designee of the Fire Chief, or any place where Respondent is employed to practice as a paramedic. Within 15 calendar days securing new employment, Respondent will provide the Authority’s Director, or her designee, proof of service that the chief executive officer of her new employer has received and read a copy of this decision.

2. *EDUCATION COURSE*

Within 90 days of the effective date of this decision, and on an annual basis thereafter, Respondent shall submit to the Division or its designee for its prior approval an educational program or course to be designated by the Division, which shall not be less than eight hours per year, for each year of probation. This program shall be in addition to the continuing education requirements for re-licensure. Following the completion of each course, the Authority or its designee may administer an examination to test Respondent's knowledge of the course.

3. *ETHICS COURSE*

Within one year of the effective date of this decision, Respondent shall enroll in a course in Ethics approved in advance by the Authority or its designee, and shall successfully complete the course during the 18 months of probation.

4. *CLINICAL TRAINING PROGRAM*

Within 90 days of the effective date of this decision, Respondent shall submit to the Authority or its designee for prior approval, a clinical training or educational program. The exact number of hours and specific content of the program shall be determined by the Authority or its designee. Respondent shall successfully complete the training program and may be required to pass an examination administered by the Authority or its designee related to the program's contents.

5. *OBEY ALL LAWS*

Respondent shall obey all federal, state and local laws.

6. *QUARTERLY REPORTS*

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

7. *PROBATION SURVEILLANCE PROGRAM COMPLIANCE*

Respondent shall comply with the Authority's probation surveillance program. Respondent shall, at all times, keep the Authority informed of his addresses of business and residence

which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record.

8. *INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS DESIGNATED PHYSICIAN(S)*

Respondent shall appear in person for interviews with the Authority, its designee or its designated investigator(s) upon request at various intervals and with reasonable notice.

9. *TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-STATE NON-PRACTICE*

In the event Respondent should leave California to reside or to act as a paramedic outside the State or for any reason should Respondent stop practicing as a paramedic in California, Respondent shall notify the Authority or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.

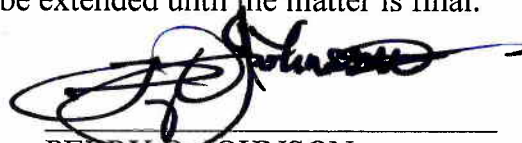
10. *COMPLETION OF PROBATION*

Upon successful completion of probation, Respondent's certificate shall be fully granted.

11. *VIOLATION OF PROBATION*

If Respondent violates probation in any respect, the Authority, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Authority shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

DATED: July 16, 2009



PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings