

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

KIMBERLY K. HIROSHIMA
License No. P18969

Respondent.

Enforcement Matter No. 08-0183

OAH No. 2009090655

DECISION

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

This Decision shall become effective on 12/31/09.

IT IS SO ORDERED 12/10/09.



A handwritten signature in black ink, appearing to read 'M. J. Shaw', is written over a horizontal line.

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PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on October 28, 2009.

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

Respondent Kimberly K. Hiroshima appeared on her own behalf.

The matter was submitted on October 28, 2009.

FACTUAL FINDINGS

1. Respondent Kimberly K. Hiroshima holds Emergency Medical Technician-Paramedic (EMT-P) license number P18969. The license was first issued on July 27, 2002, and is valid through July 31, 2010.

2. Complainant Nancy Steiner, acting in her official capacity as Chief, EMS Personnel Division, Emergency Medical Services Authority (EMSA), State of California, filed the accusation against respondent. Respondent filed a notice of defense.

3. On March 16, 2009, respondent was convicted on her plea of guilty of a violation of Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor and a crime substantially related to the qualifications, functions or duties of an emergency medical technician-paramedic. Imposition of sentence was suspended and respondent was placed on probation for three years on the conditions (among others) that she serve one day in jail, with credit for time served; pay fines and fees; enroll in and complete a three-month first offender course for drinking drivers; and not drive with any measurable alcohol in her system.

Respondent has paid her fines and fees in full. She entered the first offender program on August 22, 2008, and completed it on November 22, 2008, before her conviction. Respondent's driver's license was suspended after her arrest, but her class C license has now been restored. She is studying for the examination to regain her class B license, which she needs to drive vehicles in connection with her duties as an emergency medical technician-paramedic for the San Francisco Fire Department.

4. This conviction followed respondent's arrest in the early morning hours of July 6, 2008, in Marin County. Respondent was pulled over after she was observed following too closely and driving over the speed limit, and she was found to be intoxicated. There was another adult in the vehicle. Respondent agreed to take a breathalyzer test, which revealed a blood alcohol concentration of 0.17 percent. The breathalyzer machine broke before a second test could be administered. Respondent then consented to a blood test, which revealed a blood alcohol concentration of 0.19 percent.

5. Respondent is 38 years old. She has two young children. She has been employed by the City and County of San Francisco since 1997. She has never been disciplined by her employer.

6. Respondent is embarrassed and profusely apologetic for her offense. She states that she knows better than to drink and drive, and acknowledges that she made a poor decision on July 6, 2008. Respondent has never been involved in a similar offense. She testified that she was "so stressed" by the events surrounding her offense that she sought therapy on a private basis. Since July 2008, respondent has not abstained from the use of alcohol, but she states that she drinks wine on a moderate basis only and is now careful not to drink and drive. She is engaged to be married and her fiancé supports her commitment not to drink to excess. Respondent has never drunk alcohol while on duty as a paramedic. Her employer conducts random alcohol and drug tests, but respondent has not been tested since July 2008. Respondent states that she will never again drive after she has been drinking. Her testimony appeared to be sincere.

LEGAL CONCLUSIONS

1. Under Health and Safety Code section 1798.200, subdivisions (b) and (c)(6), the EMSA may suspend or revoke any EMT-P license if the licensee has been convicted of a crime substantially related to the qualifications, functions and duties of a licensee. Cause exists to suspend or revoke respondent's EMT-P license by reason of the matters set forth in Finding 3.

2. Under Health and Safety Code section 1798.200, subdivisions (b) and (c)(9), the EMSA may suspend or revoke any EMT-P license if the licensee has misused alcoholic beverages. Cause exists to suspend or revoke respondent's EMT-P license by reason of the matters set forth in Findings 3 and 4.

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

4. In closing argument, complainant stated that she does not seek the outright revocation of respondent's license. The evidence supports complainant's position. Respondent does not have a history of alcohol abuse or prior alcohol-related offenses. Respondent appreciates the seriousness of her offense, which has been a source of embarrassment to her, she is apologetic for her misconduct, and she appears to be highly motivated not to commit a similar offense in the future. Respondent has complied with all of the conditions of her criminal probation, except for the passage of time. It would not be contrary to the public interest to permit respondent to retain her EMT-P license on a probationary basis. Among other conditions of her probationary license, respondent will be required to comply with the conditions of her criminal probation and to submit to random biological fluid testing upon demand by the EMSA.

ORDER

Emergency Medical Technician-Paramedic license number P18969 issued to respondent Kimberly K. Hiroshima is revoked. However, such revocation is stayed and respondent is placed on probation for three 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 the EMSA in its monitoring, investigation, and evaluation of respondent's compliance with the terms and conditions of her probationary order.

Respondent shall immediately execute and submit to the EMSA all Release 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 her 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 her probation. If respondent submits her quarterly reports by mail, they shall be sent as certified mail.

4. Pre-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 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 her prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of her 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 her 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 the 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 Health and Safety Code 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 her fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Respondent shall comply with the terms of her probation in Marin County Municipal Court Case No. CR160112A. Any violation of the terms of respondent's criminal probation may be deemed a violation of the terms of her probation to the EMSA.

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 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 respondent has violated any term of her 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. 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 the EMSA or may provide to the 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.

DATED: 11-25-09

Melissa Crowell
for DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings