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7 BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
8 STATE OF CALIFORNIA

9 In the Matter of the Emergency Medical)
10 Technician- Paramedic License Held by:) EMSA Case No.: 10-0262
) OAH No. 2011120209
11 **JOHNNY H. MATAMOROS**)
License No. P14734) **DECISION AND ORDER**
12)
13 Respondent.)

14 The Emergency Medical Services Authority hereby adopts as its decision in this matter
15 the Proposed Decision of the Administrative Law Judge dated March 18, 2012.

16 This Decision and Order shall become effective on the 18th day of April, 2012.

17 IT IS SO ORDERED this 22nd day of March, 2012.

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19 Howard Backer, MD, MPH, FACEP
20 Director
EMERGENCY MEDICAL SERVICES
21 AUTHORITY, STATE OF CALIFORNIA
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**BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA**

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

JOHNNY H. MATAMOROS,
License No. P14734

Respondent.

Case No. 10-0262

OAH No. 2011120209

PROPOSED DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on February 16, 2012, in Los Angeles, California.

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

Johnny H. Matamoros (Respondent) represented himself.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on February 16, 2012.

FACTUAL FINDINGS

1. Complainant filed the Accusation in his official capacity.
2. On May 6, 1998, EMSA issued Emergency Medical Technician-Paramedic (EMT-P) license number P14734 to Respondent. Respondent's license was in full force and effect at all times relevant to the charges brought in the Accusation, and is due to expire on June 30, 2012.

Respondent's Conviction

- 3a. On September 2, 2010, in the Superior Court of California, County of Los Angeles, case number 9AV10102, Respondent was convicted, on his plea of nolo contendere, of violating California Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of .08 percent or more), a misdemeanor.

3b. Imposition of sentence was suspended and Respondent was placed on summary probation for a period of 36 months under terms and conditions that required him to complete a three-month alcohol program¹ and pay fines and fees totaling \$1,483.

3c. The facts and circumstances of the crime are as follows. On October 31, 2009, Respondent was driving home with his fiancée after leaving his parents' home where he had consumed alcohol. A police officer observed Respondent weaving through lanes. After pulling Respondent over, officers then spoke to Respondent, conducted field sobriety tests, and formed the opinion that Respondent was driving under the influence of alcohol. Respondent's blood alcohol content was subsequently measured at .11 percent.

3d. Respondent remains on probation. He is complying with the terms of his probation. He has paid his fines and fees. He will finish the 18-month alcohol program on April 28, 2012.

4. Respondent accepted responsibility for his actions. He explained that he was struggling with personal and family issues at the time of his arrest. He was going through a separation and divorce from his wife. He was also facing the possibility of losing his home. Several circumstances in Respondent's life have changed since his conviction. Although still not divorced, he and his wife finally parted ways in March 2009. He is now able to see his four children on a regular basis. He is living with his fiancée, who he has been with for three years. She also has four children of her own and Respondent helps care for her children.

5. Respondent, who is 43 years old, has been a firefighter for 17 years and a firefighter-paramedic for 12 years. He has never had any complaints regarding his work performance. Respondent explained that he was employed by the Los Angeles County Fire Department (LACFD), but was terminated in February 2011 following his conviction. According to Respondent, in October 2011, he entered into an agreement with LACFD to reinstate him as a firefighter, under terms and conditions including participating in a drug/alcohol program and submitting to random drug/alcohol testing. Respondent also explained that the agreement provides that he cannot serve as a paramedic for at least five years from the date of reinstatement as a firefighter. Despite being reinstated, Respondent has not resumed working as a firefighter since he has not had his driver's license reinstated. At hearing, Respondent

¹ The certified court docket reveals that Respondent was to complete the three-month alcohol program concurrent with an 18-month alcohol program from another criminal case. However, no evidence was presented at hearing regarding any additional criminal convictions suffered by Respondent.

explained that he has not been able to get his driver's license reinstated due to insurance costs that he cannot afford.

6. Respondent started drinking alcohol at the age of 16. He testified that he was drinking socially once a week when he was arrested. Respondent voluntarily completed an outpatient alcohol program at the Tarzana Treatment Center from April 2010 to June 2010. He also voluntarily attends Alcoholics Anonymous (AA) meetings twice a month. From April 2010 to October 2010, Respondent also sought help for depression and anxiety. Since April 3, 2010, Respondent has been sober from alcohol.

7. No evidence was presented that Respondent has suffered any prior discipline of his EMT-P license.

LEGAL CONCLUSIONS

1. Health and Safety Code section² 1798.200 states in part:

[¶] . . . [¶]

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P 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 holder or licenseholder under this division:

[¶] . . . [¶]

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The

² All further statutory references are to the Health and Safety Code.

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 in part:

(a) For the purposes of denial, placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 of the Health and Safety Code, 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.

3. A paramedic must be able to safely drive first responder vehicles and competently provide medical care to the public. Therefore, the crime of driving with a blood alcohol of .08 percent or more is substantially related to the qualifications, functions, and duties of a paramedic because it reflects the lack of sound judgment and the disregard for the safety of others.

4. Cause exists to suspend or revoke Respondent's EMT-P's license pursuant to section 1798.200, subdivision (c)(6) and California Code of Regulations, title 22, section 100174, in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed EMT-P, by reason of Factual Finding 3, and Legal Conclusions 1 through 3.

5. Cause exists to suspend or revoke Respondent's EMT-P's license pursuant to section 1798.200, subdivision (c)(9), in that Respondent misused alcohol, by reason of Factual Finding 3, and Legal Conclusion 1.

6. The EMSA has developed "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" dated July 26, 2008 (Guidelines), which are incorporated by referenced in the EMSA's regulations at California Code of Regulations, title 22, section 100172.

7. Section III of the Guidelines set forth categories of violations and the recommended level of discipline for each category. For a "substantially related"

criminal conviction, the maximum discipline is revocation and the minimum discipline is revocation stayed, with one year probation. For a misuse or excessive use of alcohol, the maximum discipline is revocation and the minimum discipline is revocation stayed, with three years probation.

8. Section II of the Guidelines set forth factors to be considered when determining the appropriate discipline to be imposed in a given case. The factors include: the nature and severity of the act, offense, or crime under consideration; the actual or potential harm to the public or any patient; prior disciplinary record; prior warnings on record or prior remediation; the number and/or variety of current violations; aggravating evidence; mitigating evidence; any discipline imposed by the paramedic's employer for the same occurrence of that conduct; rehabilitation evidence; in cases with a criminal conviction, compliance with the terms of the sentence and/or court-ordered probation; overall criminal record; time that has elapsed since the act or offense occurred; and if applicable, evidence of expungement proceedings under Penal Code section 1203.4.

9. Applying the EMSA's discipline factors, Respondent offense of driving with a blood alcohol level of .08 percent or more threatened public health and safety. Given the significant responsibilities of EMT-P's, EMSA must have adequate assurances that they are not under the influence of alcohol when they are on duty. Paramedics drive ambulances and treat consumers in emergency medical situations. Consequently, it is appropriate for EMSA to impose discipline upon an EMT-P licensee who has suffered an alcohol-related driving incident. However, the maximum level of discipline is not warranted in this case. The actual incident surrounding Respondent's conviction was more than two years ago. Respondent has been complying with the terms of his criminal probation and will complete his 18-month alcohol program in the near future. He has remained sober from alcohol for approximately the past two years. He voluntarily completed an additional outpatient program, sought counseling, and continues attending AA meetings. Respondent accepted responsibility for his actions. His family life appears more balanced. Respondent has been a firefighter-paramedic for 12 years with no prior history of discipline against his EMT-P license. The appropriate level of discipline in this case is a stayed revocation with a three-year period of probation under terms and conditions that will provide for adequate monitoring.

ORDER

Emergency Medical Technician-Paramedic license number P14734 issued to Respondent Johnny H. Matamoros is hereby 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 his probation.

Respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of Respondent.

2. Personal Appearance

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 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, the 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 the 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 suspension/revocation. Upon the initiation of such an action, or the giving of a notice to the 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 suspension/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 suspension/revocation. At the hearing, Respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

10. Abstinence from the Use of Alcoholic Beverages

Respondent shall abstain from the use of alcoholic beverages.

11. Biological Fluid Testing

Respondent shall submit to routine and random biological fluid testing or 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 alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and 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 alcohol screening.

At the EMSA's sole discretion, the EMSA may allow the random testing to be conducted by Respondent's employer to meet the requirement of random testing as set forth above. The results of the employer's random testing shall be made available to the EMSA in the time frames described above.

12. Alcohol Dependence Support Group Attendance

Respondent shall attend an alcohol dependency support group meeting (e.g., Alcoholics Anonymous) at least once per week. In his quarterly reports to the EMSA, Respondent shall provide verified documentation of such attendance, in a form specified by the EMSA. Respondent shall fulfill this term for the duration of his probation, unless the EMSA orders otherwise.

DATED: March 18, 2012



JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings