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10 BEFORE THE
11 EMERGENCY MEDICAL SERVICES AUTHORITY
12 STATE OF CALIFORNIA

13 In the Matter of the Statement of Issues)
14 Against:) Enforcement Matter No.: 10-0342
15) OAH No. 2011020424
16)
17 **ANDREW WILLIAM McCABE**)
18 Respondent.) DECISION AND ORDER OF THE
19) EMERGENCY MEDICAL SERVICES
20) AUTHORITY

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22 The attached Proposed Decision of the Administrative Law Judge is hereby adopted by
23 the Emergency Medical Services Authority, State of California, as its decision in the above-
24 entitled matter.

25 This Decision and Order shall become effective on the 10th day of August, 2011.

IT IS SO ORDERED this 11th day of July, 2011.

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Daniel R. Smiley,
Acting Director
EMERGENCY MEDICAL SERVICES
AUTHORITY, STATE OF CALIFORNIA

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ANDREW WILLIAM MCCABE,

Respondent.

Case No. 10-0342

OAH No. 2011020424

PROPOSED DECISION

Administrative Law Judge Dianna L. Albin, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on May 26, 2011.

Senior Staff Counsel Cynthia L. Curry represented complainant Sean Trask.

Jeffrey Rosenblum, counsel, represented respondent Andrew William McCabe, who was also present.

The matter was submitted on May 26, 2011.

FACTUAL FINDINGS

1. The Statement of Issues against respondent was filed by complainant Sean Trask, while acting in his official capacity as Chief of the Emergency Medical Services Authority (EMSA) Personnel Division, State of California.

2. On October 21, 2010, respondent submitted an application to EMSA for licensure as an Emergency Medical Technician – Paramedic (EMT-P). On December 20, 2010, EMSA denied respondent’s application.

3. On February 27, 2007, respondent was convicted in Lake County Superior Court, on his plea of guilty, of a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or higher), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for three years on terms and conditions that included: payment of approximately \$2,300 in fines and fees; enrollment and completion of a three-month first offender course for drinking drivers; and that he not drive

with any measurable amount of alcohol in his system. Respondent successfully completed all terms and conditions of his probation.

4. The facts and circumstances underlying respondent's 2007 conviction were that on September 1, 2006, respondent, age 22, operated his vehicle with a blood alcohol level of 0.08 percent or higher.

5. On April 4, 2008, respondent was convicted in Sonoma County Superior Court, on his plea of nolo contendere, of a violation of Vehicle Code section 23103.5 (reckless driving, alcohol related), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for 24 months on terms and conditions that included: payment of approximately \$505 in fines and fees; serving 15 days in a work release program in lieu of jail; enrollment and completion of a Department of Motor Vehicle driving under the influence of alcohol course; and that he not drive with any measurable amount of alcohol in his system. Respondent successfully completed all terms and conditions of his probation. On December 9, 2010, the conviction was set aside pursuant to Penal Code section 1203.4.

6. The facts and circumstances underlying respondent's 2008 conviction were that on June 27, 2007, respondent, age 23, operated his vehicle on private property while under the influence of alcohol and collided with a fence. There were no injuries involved in this single vehicle collision that resulted in minor damage to the vehicle and fence. Respondent's blood alcohol level was 0.07 percent.

7. At hearing, respondent accepted full responsibility for his prior conduct. He stated at the time of the two incidents he was young and irresponsible, but acknowledged there was no excuse for his behavior. Respondent learned from his experiences and realized that if he wanted to pursue his dream of becoming a paramedic, he would have to change his behavior. During the time respondent was on probation for his June 27, 2007 offense, his work furlough program was delayed to allow respondent to fight fires with the California Department of Forestry (CDF) during the summer fire season. Except for a glass of champagne to toast at his wedding, he has not consumed alcohol during the past four years.

8. Currently, respondent is 27, recently married, and employed by the South Lake County Fire District as a paid on-call firefighter and emergency medical technician (EMT). Respondent also works for the CDF as a seasonal firefighter and EMT. One to two times per month respondent instructs basic life support classes for the American Heart Association.

Since 2007, respondent has furthered his academic education and completed the following certifications. He received a Fire Science degree from Santa Rosa Junior College, completed the 16th Paramedic Academy and the CDF 67-hour Wildland Academy. He is currently working to achieve an Associate Degree in Paramedicine at Santa Rosa Junior College and anticipates graduating in the winter of 2012. On December 16, 2007, respondent received his certification for Fire Apparatus Driver/Operator 1A Emergency Vehicle Operations. Respondent has received approximately 28 firefighter and emergency services related certifications beyond those required for his academic degree.

9. Respondent is certified by the National Registry of Emergency Medical Technicians, as a National Emergency Medical Technicians and classified as a paramedic. He is certified by the American Heart Association as a Basic Life Support instructor, and by the North Coast Emergency Medical Services as an EMT-1.

10. On April 29, 2011, the Department of Motor Vehicles issued respondent a California Ambulance Driver Certificate.

11. Daniel L. McCabe, respondent's father, was present and testified at hearing. Daniel McCabe is a retired Santa Rosa firefighter and EMT with 32 years of experience. During his career, Daniel McCabe supervised paramedics. He stated that respondent has been interested in emergency service work his entire life. As a young child, respondent would accompany his father to work and ride in the fire truck. Respondent joined the South Lake County Fire District prior to his graduation from high school. Daniel McCabe has noticed a tremendous change in his son's attitude over the past five years that demonstrate his growth into a mature and responsible person. Respondent is married and has set his life goals. Respondent has placed his focus and energy on his family and his career in the fire service. Except for the glass of champagne to toast at his wedding, Daniel McCabe has not observed his son consume any alcohol over the past four years.

Daniel McCabe is currently employed by the South Lake County Fire District as a paid on-call firefighter and EMT. During the past five years, Daniel McCabe has observed respondent during emergency service responses and highly emotional situations. Respondent has demonstrated excellent patient care in the field, emotional control in life and death situations, and has executed his job with confidence.

12. An April 11, 2011, letter from Jim Wright, Fire Chief of the South Lake County Fire Protection District, was submitted at hearing on respondent's behalf. Chief Wright has known and worked with respondent for the past eight years. Respondent informed Chief Wright of his prior conduct. During the past five years, Chief Wright has observed respondent mature and grow, both as an employee and as a person. Chief Wright has no reservations in allowing respondent to function as a paramedic for his department upon respondent's licensure.

13. An April 11, 2011, letter from James F. Comisky II, Battalion Chief of the City of Foster City Fire Department, was submitted at hearing on respondent's behalf. Battalion Chief Comisky is also the President of the Fire Board of the South Lake County Fire District. Battalion Chief Comisky has known respondent since respondent was in elementary school. He is aware of respondent's prior conduct and, while acknowledging respondent's errors and poor judgments in those situations, he commends respondent for accepting full responsibility for his actions. Battalion Chief Comisky has observed respondent display responsibility and professionalism in the performance of his work and the operation of emergency apparatus. Should the situation and opportunity arise, Battalion Chief Comisky has no reservations in hiring respondent.

14. Several additional character letters were presented at hearing by respondent. All letters contained the following common themes: acknowledgment of respondent's prior conduct; respondent's hard work and dedication to providing excellent emergency medical care; and, respondent has integrity. All of the letters recommend respondent for employment as a paramedic.

15. The evidence did not establish that respondent was, or is addicted to alcohol. Additionally, the evidence did not establish any recidivism by respondent with respect to his use of alcohol over the past four years or that such behavior would, or is likely to return in the future.

LEGAL CONCLUSIONS

1. Pursuant to Health and Safety Code section 1798.200, subdivision (c)(6), the EMSA has authority to deny an application for licensure as an EMT-P based on the conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel.

Pursuant to California Code of Regulations, title 22, section 100174, a crime is 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.

By reason of the matters set forth in Findings 3 and 5, convictions related to the operation of a vehicle while under the influence of alcohol evidences a potential unfitness to perform the qualifications, functions, or duties of a paramedic. As such, respondent's convictions are substantially related to the qualifications, functions, and duties of prehospital personnel. Therefore, cause exists for denial of respondent's application for licensure as an EMT-P pursuant to Health and Safety Code section 1798.200, subdivision (c)(6).

2. Pursuant to Health and Safety Code section 1798.200, subdivision (c)(9), the EMSA has authority to deny an application for licensure as an EMT-P based on an applicant's misuse of, alcoholic beverages. By reason of the matters set forth in Findings 3 and 5, operating a vehicle while under the influence of alcohol constitutes a misuse of alcoholic beverages. Therefore, cause exists for denial of respondent's application for licensure as an EMT-P pursuant to Health and Safety Code section 1798.200, subdivision (c)(9), based on a misuse or excessive use of alcoholic beverages.

3. Pursuant to Health and Safety Code section 1798.200, subdivision (c)(9), the EMSA has authority to deny an application for licensure as an EMT-P based on an applicant's addiction to, or excessive use of, alcoholic beverages. By reason of the matters set forth in Findings 6,7,11 and 15, the evidence did not establish respondent was, or is addicted to alcohol. Therefore, cause does not exist for the denial of respondent's application for licensure as an EMT-P pursuant to Health and Safety Code section 1798.200, subdivision (c)(9) based on an addiction to, or excessive use of, alcoholic beverages.

4. 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 denial, and the minimum recommended action is a stayed revocation with one year of probation. For the misuse of or excessive use 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.

5. Respondent accepts responsibility for his prior alcohol-related offenses and appreciates their seriousness. Respondent appears to be highly motivated not to commit a similar offense in the future. He has completed all of the terms and conditions of his criminal probations. It has been more than four years since respondent's most recent offense. Respondent has continued his education and achieved numerous certifications related to fire fighting and emergency service work.

In the past four years, respondent has demonstrated, he does not have an issue with alcohol and demonstrates better judgment. Notwithstanding the fact that cause exists to deny respondent's application, the evidence of rehabilitation, as set forth in Findings 7, 8, 9, 10, 11, 12, 13, 14 and 15, establish that respondent is rehabilitated and the likelihood of recidivism is minimal in view of the fact he has ceased drinking alcohol. It would not be contrary to the public health, safety and welfare to issue respondent a probationary license on appropriate terms and conditions. Abstinence from the use of alcoholic beverages and biological fluid testing are not warranted in this matter for the reasons set forth above.

ORDER

Respondent Andrew William McCabe's application for licensure shall be accepted and if he meets all of the qualifications for licensure he shall be issued an EMT-P license. That license shall be revoked; however, said revocation is stayed and respondent is placed on probation for three (3) 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 EMSA may require of respondent.

2. Personal Appearances: As directed by EMSA, respondent shall appear in person for interviews, meetings, and/or evaluations of the 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 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 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 pre-hospital personnel.

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

5. Notification of Termination: The respondent shall notify EMSA within seventy-two (72) hours after termination, for any reason, with his pre-hospital 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.

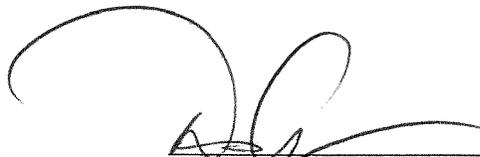
Any and all notifications to EMSA shall be by certified mail.

8. 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, 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 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: 6/30/11



DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings