

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ANTONIO NUNEZ,

Respondent.

Case No. 09-0091

OAH No. 2009070146

(Statement of Issues)

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, at San Diego, California on July 28, 2009.

Senior Staff Counsel for the Emergency Medical Services Authority, Cynthia L. Curry, represented complainant.

Antonio Nunez (respondent) represented himself.

Oral and documentary evidence was received and the matter was submitted on July 28, 2009.

FACTUAL FINDINGS

1. The Statement of Issues against respondent was filed by Nancy Steiner (complainant), while acting in her official capacity as Chief of the Emergency Medical Services Authority (the EMSA) Personnel Division, State of California.
2. On March 25, 2009, respondent submitted an application to the EMSA for licensure as a Paramedic.
3. On March 22, 2001, respondent was convicted, after entry of a guilty plea, in the San Diego County Superior Court, case number CN 123509, of one count of violating California Penal Code section 459 (commercial burglary), and one count of violating California Penal Code section 475, subdivision (c) (possession of a completed check with the intent to cash it in order to defraud someone), felony crimes. At the time respondent entered his plea the court and the Office of the District Attorney agreed that respondent would be

placed on probation, and that after 18 months of successful probation, the convictions would be reduced from felonies to misdemeanors. (Exh. 5.)

4. The facts and circumstances underlying respondent's March 22, 2001 convictions were established through respondent's testimony and the San Diego Sheriff's Department Crime/Incident report concerning the incident(s). Those facts are summarized as follows: Respondent was "not very good in school" and dropped out of high school in 1996 when he was 16 years old. Respondent characterized himself as an "odd kid" with "lazy habits." All he wanted to do was "hang out" and "skate board." In 1997, respondent began "experimenting with drugs." Respondent began getting "deeper and deeper into drugs." His drug use snowballed until he developed an opiate addiction. Respondent had been working, but he quit his job and did not work for a "number of years" thereafter. Respondent supported his drug habit by "beginning doing petty theft type things." Respondent's sister was in a similar situation and eventually came to respondent and asked him to cash some checks that she had "come across."¹ Respondent agreed and during the latter part of 2000, cashed several of the checks in a local check cashing business. Ultimately, during a police investigation, respondent was identified as the person who had cashed the forged checks. Respondent was arrested and ultimately convicted of both criminal counts as a result of entering a commercial establishment and negotiating the forged checks.

5. As a result of the March 22, 2001 convictions, respondent was placed on formal probation for three years on certain terms and conditions.

6. No court documents were presented concerning the allegation in the Statement of Issues that "on or about October 15, 2001, Respondent was convicted of violation of Health and Safety Code section 11550(a) Under the Influence of a Controlled Substance, and was sentenced to 180 days in jail." However, respondent candidly admitted during the instant hearing that he had a "drug problem" that lasted until November of 2001, and that while he was serving "90 days in county jail I stopped using opiates, cold turkey."

7. On May 13, 2009, the EMSA notified respondent that his application had been denied based on his criminal history. More specifically, the EMSA was concerned that respondent's licensure as a Paramedic would be contrary to the public health and safety within the meaning of Health and Safety Code section 1798.200 because he had been convicted of crimes substantially related to the qualifications, functions and duties of pre-hospital personnel and had a history of drug abuse.

8. Respondent timely appealed the denial of licensure and the instant proceedings ensued.

¹ The checks had been stolen from another woman's purse.

Evidence of Rehabilitation and in Mitigation

9. Respondent successfully completed his criminal probation(s) and, on May 15, 2009, respondent's convictions were expunged pursuant to California Penal Code section 1203.4.

10. Respondent has been clean and sober since his incarceration in November of 2001. While incarcerated, respondent saw the "in and out and in and out" cycle of the other inmates and he did not want to be a victim of that revolving-door. Respondent became committed to remaining clean and sober, and began the Alcoholics Anonymous (AA)/Narcotics Anonymous (NA) 12-Step program. Respondent consistently attends AA/NA meetings, he has a sponsor and he sponsors others.

11. In 2001, respondent completed his "GED" and obtained his high school degree.

12. After being released from custody in late 2001 or early 2002, respondent became gainfully employed. He worked in a local Jiffy Lube and did some "tree trimming" for several years. During this time frame respondent "met some people who turned my life around." One of the "people" respondent met was a Fire Captain in a local fire department. The two met in 2003, became friends, and the Fire Captain began mentoring respondent. Respondent "bought a suit" and attended an interview to become a reserve firefighter on the Pala Indian Reservation. Respondent was hired, and he worked as a reserve firefighter during the day, and attended Palomar College fire science classes at night. Respondent began "raising my sister's child while she was getting cleaned up." Respondent earned his Emergency Medical Technician (EMT) certification in 2005, and has worked for the Pala Fire Department on a full-time basis as a firefighter/EMT for the past four years.² Respondent has taken all the necessary classes and training to obtain his Paramedic license so that he can "move on to the next employment step of Firefighter/Paramedic." The Pala Fire Department has paid for respondent's fire science education in exchange for respondent's promise/commitment to spend at least three years with the department as a Firefighter/Paramedic after he obtains his Paramedic license.

13. With the exception of his sister, who is now clean and sober also, respondent no longer associates with the same people he associated with prior to his incarceration in 2001.

14. Pala Fire Department Battalion Chief Douglas A. Moriarty wrote a letter of support for respondent. In his July 22, 2009 letter, Chief Moriarty stated:

"I would like to take this opportunity to personally recommend [respondent's] licensure as a Paramedic in the State of California.

² Actually, it will be four years in November of this year (2009).

As a Battalion Chief with the Pala Fire Department, I have had the pleasure of working directly with [respondent] for more than three years. [Respondent] has used his desire to further his clinical standards in the completion and the rigors of Paramedic school. Now, at the doorstep of obtaining his Paramedic licensure, he must face his past. I can only testify as to the person that [respondent] is today; one who genuinely cares for those in need. As one of our EMT/firefighters, it was not a prerequisite to become a Paramedic in order to continue to work for the Pala Fire Department. The choice was solely [respondent's] to pursue the higher standard of care (Paramedic) for our constituents we serve.

As a Paramedic for nearly two decades myself, I am always impressed with those who choose the hard road to become a Paramedic; [respondent] is one of those who chose to do the same. Please, Your Honor, give my Firefighter, [respondent], the chance to prove himself to those in need. . . . (Exhibit A.)”

15. Pala Fire Department Captain Kyle Perez authored a letter of support for respondent in which he stated:

“ . . . I have worked for the Pala Fire Department for 22 years, 7 as a captain. In the last 4 years of working with [respondent] I have found him to be a hard working firefighter. In his position he has showed that he is an outstanding asset to the department and to the community. He has assisted with classes in fire and medical in house and to the community. With his recent accomplishment of Paramedic school he will help strengthen the foundation of our department. (Exhibit D.)”

16. Both Captain Perez and Battalion Chief Moriarty are fully aware of respondent's past. Respondent has been candid with them from the outset of his employment with the Pala Fire Department.

17. There have been no grievances or complaints lodged against respondent by the public, peers or supervisors. Respondent is highly regarded by those with whom he works and by members of the community he serves.

18. Respondent was very professional in his presentation of evidence during the hearing. Respondent's demeanor during his testimony indicated that his expressions of remorse were sincere, and that he is indeed a different person today than he was in 2001.

19. Respondent, whose date of birth is September 22, 1980, is currently 28 years old. He supports himself and, as previously noted, has been gainfully employed since his release from custody in late 2001 or early 2002. Respondent, with the help of the Pala Fire

Department, has worked his way through school, appreciates the value of his education, and is dedicated to being a Paramedic.

LEGAL CONCLUSIONS

1. Cause exists for denial of respondent's application pursuant to Health and Safety Code section 1798.200 because, as set forth in Findings 3, 4 and 5, respondent was convicted of crimes³ substantially related to the qualifications, functions, and duties of a licentiate, and the facts and circumstances underlying respondent's convictions reveal that in the past he abused drugs.

2. Notwithstanding the fact that cause exists to deny respondent's application, the mitigating evidence and evidence of rehabilitation, as set forth in Findings 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, establish that respondent is rehabilitated and there is no likelihood of recidivism. Extraordinary circumstances exist in this case and support the conclusion that it would not be contrary to the public health, safety and welfare to issue respondent a probationary/provisional license on appropriate terms and conditions.⁴

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for licensure shall be accepted and if he meets all of the qualifications for licensure he shall be issued a Paramedic license. That license shall be revoked; however, said revocation is stayed and respondent is placed on probation for one (1) year upon the following terms and conditions:

1. The respondent shall abstain from the use of any drugs that have not been prescribed for legitimate/documented medical needs.

2. The 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, the 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

³ Although there were two convictions, the "convictions" arose out of the same set of operative facts.

⁴ Respondent is being placed on probation not because there is a concern about his rehabilitation; rather, because for a short period of time the EMSA may wish to have him randomly drug tested so that it may assure itself that he is remaining clean and sober, and does not relapse.

a random test, the 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. The 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 the 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.

3. The respondent shall fully comply with all terms and conditions of the probationary order. The respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of the respondent's compliance with the terms and conditions of his/her probationary order.

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

4. As directed by the EMSA, the 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. The respondent shall be responsible for all of his/her costs associated with this requirement.

5. During the probationary period, the respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by the respondent with all the terms and conditions of his/her probation. If the respondent submits his/her quarterly reports by mail, it shall be sent as Certified Mail.

6. During the probationary period, the respondent shall notify the EMSA in writing of any EMS employment. The respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, the respondent shall submit proof in writing to the EMSA of disclosure, by the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of the respondent's probation.

The 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.

7. The respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his/her prehospital medical care employer. The respondent

must provide a full, detailed written explanation of the reasons for and circumstances of his/her termination.

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

8. The period of probation shall not run anytime that the respondent is not practicing as a paramedic within the jurisdiction of California.

If the respondent, during his/her probationary period, leaves the jurisdiction of California to practice as a paramedic, the 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.

9. The 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. The 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 the respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then the respondent shall submit his/her 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.

10. The respondent's license shall be fully restored upon successful completion of probation.

11. If during the period of probation the 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/her probation sufficient to warrant termination of

probation and implementation of actual suspension/revocation. At the hearing, the 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.

DATED: August 20, 2009

A handwritten signature in black ink, reading "Roy W. Hewitt". The signature is written in a cursive style with a horizontal line underneath the name.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings