

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

DAVID ORTEGA-ENDAHL,

Respondent.

Case No. 07-0261

OAH No. 2008090803

(Statement of Issues)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by
the EMSA as ITS Decision in the above-entitled matter.

This Decision shall become effective 1/30/09.

IT IS SO ORDERED.

Date: 12/30/08



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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 December 5, 2008.

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

David Ortega-Endahl (respondent) represented himself.

Oral and documentary evidence was received and the matter was submitted on December 5, 2008.

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 June 5, 2007, respondent submitted an application to the EMSA for licensure as an Emergency Medical Technician – Paramedic (EMT-P).
3. On January 8, 2004, respondent was convicted, after entry of a guilty plea, in the San Diego County Superior Court, case number S179684, of one count of violating California Vehicle Code section 23103, subdivision (a) (reckless driving), a misdemeanor crime.

4. The facts and circumstances underlying respondent's 2004 conviction were established through respondent's June 5, 2007 letter to the EMSA. In that letter, respondent states:

"After meeting for pizza with my fellow EMTs (Emergency Medical Technicians) I was driving home on the 805 south and was pulled over by a California Highway Patrol officer. The officer asked if I was aware of why he pulled me over. I told the officer no. He then informed me that he saw my vehicle merging without a signal. I told the officer that I wasn't aware that I had merged without a signal, but I inadvertently could have, as I was reaching for some CDs that were on the floor of my van. The officer then inquired if I had been drinking. I told the officer I had just stopped for pizza, and had consumed two glasses of beer with the meal. The officer then asked me to perform a field sobriety test. I then successfully performed four physical field sobriety tests. The officer then requested that I take a breathalyzer test. I readily complied and blew a 0.074 and a 0.084. The officer then asked me to take a breathalyzer at the station. Knowing that I had drank only two beers, and I wasn't intoxicated, I told him no problem. At the station I blew another 0.074. The officer then informed me that I was going to be charged for violation of vehicle codes; vc23152a and vc23152b.

At the following court proceedings, the court offered to dismiss the vc23152a and vc23152b violations, if I would accept pleading guilty [to] a violation of vehicle code vc23103a (dry reckless driving). Not wanting to go through the hassle and financial burden of a trial, I accepted the agreement and pled guilty to dry reckless driving, (vc23103a). I was then convicted of one count of violating vc23103a. (Exhibit 5)"

5. As a result of the January 8, 2004 conviction respondent was placed on summary probation for three years on certain terms and conditions, including paying \$600 in fines and penalties.

6. Respondent successfully completed his three years of summary probation.

7. On July 23, 2007, the EMSA notified respondent that his application for an unrestricted paramedic license was denied based on respondent's 2004 conviction for reckless driving; however, the EMSA was willing to issue respondent a provisional license once respondent completed certain requirements, including providing a report from a physician certified in addiction medicine by the American Society of Addictions Medicine or the American Board of Psychiatry and Neurology that demonstrated that respondent was not "currently impaired or addicted by reasons of alcohol or substance abuse, and that you do not pose a threat to public health and safety when working in the pre-hospital environment."

(Exh. 1.) Respondent complied with the EMSA's assessment requirement. On August 1 and August 16, 2007, respondent was assessed by a qualified physician and, on September 11, 2007, the EMSA received the evaluation, which stated that respondent "did not have an impairment or addiction to alcoholic beverages." (Exh. 1.)

8. Respondent was awaiting his provisional license when, on March 14, 2008, respondent was convicted, after entry of a guilty plea, in the San Diego County Superior Court, case number S215174, of one count of violating California Vehicle Code section 23152, subdivision (b) (driving a vehicle with 0.08 percent and more by weight, of alcohol in his blood), a misdemeanor crime which, when considered in conjunction with respondent's 2004 alcohol-related arrest and subsequent conviction, is substantially related to the qualifications, functions and duties of a licentiate.

9. The facts and circumstances underlying respondent's 2008 conviction were as follows: On November 4, 2007, respondent was at his girlfriend's residence which was located about seven blocks from where respondent lived. While there, respondent consumed about six or seven beers and then, at about 2:00 a.m. on November 5, 2007, respondent made a "blunder of a choice," "a stupid mistake," and decided to drive home. While driving home respondent was pulled over by a San Diego Sheriff's Deputy because the license plate light on respondent's truck was out, respondent was driving in excess of the 45 mile per hour speed limit, and the tires of respondent's truck "crossed over the center line . . . three times." (Exh. 6.) Respondent was directed to perform some field sobriety tests (FST's). Respondent "performed poorly on the FST's and blew a .126 and .128 into the PAS device." (Exh. 6.) Consequently, respondent was arrested for driving under the influence of alcohol.

10. As a result of the March 14, 2008 conviction respondent was placed on summary probation for three years on certain terms and conditions, including completion of a three month long "first conviction" alcohol treatment program.

11. On July 8, 2008, 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 an EMT-P 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 the crimes exhibited "signs of 'Addiction to the excessive use of, or the misuse of, alcoholic beverages. . . .'" (Statement of Issues, pg. 1.)

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

Evidence of Rehabilitation and in Mitigation

13. Although respondent is still on summary probation as a result of his 2008 conviction, he is current on his payments of the fines and penalties imposed on him and he

has completed all of the other operative parts of the probation, including the 90-day first conviction alcohol treatment program.

14. Respondent has been involved with emergency service work since he began lifeguarding in 1996 when he was 16 years old. Respondent worked as a lifeguard until 1999. Respondent then began taking Emergency Medical Technician (EMT) classes at Southwestern College. Respondent completed his EMT classes in 2001, and became certified as an EMT in 2002. Respondent then started working as an EMT while attending Paramedic School at Southwestern College from 2005 through 2007. In 2007, respondent graduated from the paramedic program at Southwestern College, and submitted his application to the EMSA for licensure as an EMT-P.

15. Respondent testified that he quit drinking on November 6, 2007, the day after his arrest, and has completely abstained from consuming alcohol since that date.

16. One of respondent's friends and classmates, Trace Mendler, wrote a letter of support and appeared at the hearing and testified on respondent's behalf. Mr. Mendler's letter, which summarizes his testimony, states:

"I have known [respondent] as a friend, colleague, fellow student and co-worker for 7 years.

In the Paramedic Program [respondent] and I were classmates for two years and were simultaneously employed as Emergency Medical Technicians together. As a student, [respondent] was diligent, attentive, and excelled through hard work, and disciplined study habits. [Respondent] always found time to help and encourage fellow classmates.

Working with [respondent] as a[n] Emergency Medical Technician was a pleasure for myself and fellow employees. His work ethic, conscientious and caring attitude, coupled with his professionalism, set an example to follow for myself and co-workers.

I am aware of [respondent's] arrest for driving under the influence of alcohol. As a friend, [respondent] has confided in me his sincere acceptance of responsibility for his actions, his determination for self improvement and to do his utmost to never allow it to happen again.

I sincerely believe that if [respondent] is given the opportunity to pursue his career as a Paramedic, that through his honest, caring, and determined attitude, accompanied by his excellent professional skills, he will be a Paramedic we all will be proud of. (Exhibit A)"

Mr. Mendler surfs with respondent and socializes with him on a regular basis. When asked by the ALJ whether he has seen respondent consume any alcohol since respondent's arrest, Mr. Mendler answered "no," thereby corroborating respondent's testimony that he has completely abstained from consuming alcohol since November 6, 2007.

17. Rachelle Byler-Hudelson also wrote a letter of support. Ms. Hudelson, a "Senior Field Training Officer/Paramedic Preceptor AMR, San Diego" wrote:

"... [Respondent] was my Paramedic Intern for approximately two months full time. During that time I witnessed a professional responsible student put his years of schooling to the final test to become a licensed Paramedic. . . .

[Respondent] was a stellar student who showed compassion, professionalism and teamwork on a daily basis. He was always on time, in uniform and showed pride in his equipment and work ethic.

[Respondent] has worked hard to become a medical professional and it would be a shame to [respondent] as well as to the public to not let [respondent] obtain his Paramedic certification due to one irresponsible mistake.

... Don't let one misfortune ruin the rest of young [respondent's] career. (Exhibit B.)"

18. A third letter of support was written by the chaplain at Sharp Grossmont Hospital who observed respondent use his bilingual skills to calm and comfort an Hispanic patient who was "confused and belligerent." The chaplain stated, "I really appreciated how calm and capable [respondent] was. He will make an excellent paramedic – he is intuitively calming, [and] skillful in his handling of confused, elderly people (Exh. C.)

19. 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.

20. Respondent, whose date of birth is June 10, 1981, is currently 27 years old. He supports himself and, as previously noted, has been gainfully employed since he was 16 years old. Respondent worked his way through school, appreciates the value of his education, and is dedicated to being a health care practitioner.

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, 8 and 9, respondent was

convicted of crimes 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 exhibited signs of the misuse of alcoholic beverages.

2. Notwithstanding the fact that cause exists to deny respondent's application, the mitigating evidence and evidence of rehabilitation, as set forth in Findings 13, 14, 15, 16, 17, 18, 19, and 20, establish that respondent's misuse/abuse of alcohol was isolated in nature and, in view of the fact respondent has ceased drinking alcohol, there is no likelihood of recurrence. Consequently, it would not be contrary to the public health, safety and welfare to issue respondent a probationary/provisional license on appropriate terms and conditions.

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 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. The respondent shall abstain from the use of alcoholic beverages.

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 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 pre-hospital 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 pre-hospital 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: December 22 2008



ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings