

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SAGE PEART

License No. P16412

Respondent.

Case No. 05-0314

OAH No. N2007060487

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on January 11, 2008, in Sacramento, California.

G. Lynn Thorpe, Deputy Attorney General, represented complainant.

Kathleen N. Mastagni, Esq., represented Sage Peart, who was also present.

Evidence was received, the record was closed, and the matter was submitted on January 11, 2008.

FACTUAL FINDINGS

1. Daniel R. Smiley (complainant) is the Chief Deputy Director of the Emergency Medical Services Authority (EMSA). He brought the Accusation and First Amended Accusation solely in his official capacity.
2. On January 27, 2000, the EMSA issued Emergency Medical Technician – Paramedic (EMT-P) Number P16412 to Sage Peart (respondent). The license is current and will expire unless renewed on February 29, 2008.
3. Complainant contends that respondent’s paramedic license should be disciplined because he misused alcohol, and failed to disclose the fact that he had criminal charges pending at the time he submitted his EMT-Paramedic application for license renewal. The pertinent facts are set forth below.

4. On December 10, 2005, at 12:55 a.m., respondent was driving his motorcycle eastbound on Interstate 80, approximately 81 miles per hour (mph) in a posted 65 mph zone. He also made an unsafe lane change, splitting two vehicles that were approximately 12 feet apart. He was stopped by California Highway Patrol officer Frank Archuleta. Officer Archuleta detected the smell of alcohol on respondent, slow and slurred speech, and observed that his gait was unsteady and that his eyes were red and watery. Respondent admitted to drinking four to five beers over a two and a half hour period. Respondent engaged in and failed a field sobriety test. He also submitted to a preliminary alcohol screening test resulting in separate measurements of ethyl alcohol of .104 and .095 percent. Respondent was arrested and prosecuted for driving under the influence of alcohol.

On January 18, 2006, respondent entered a plea of no contest to driving under the influence of alcohol in violation of Vehicle Code section 23152, subdivision (a). Respondent was placed on informal probation for three years and ordered to enroll in a First Offender DUI program, to have his driver's license restricted, and to pay specified fines, fees and assessments. Respondent enrolled in the Breining Institute DUI Program, and received a certificate of completion in May 2006. He has complied with all other terms and conditions of his probation.

5. Respondent's DUI offense constituted excessive use of alcohol and/or misuse of alcohol within the meaning of Health and Safety Code section 1798.200, subdivision (c)(9).

6. On January 5, 2006, respondent submitted his State of California EMT-Paramedic Application License Renewal form under penalty of perjury. One of the questions asked of respondent was: "Are there any criminal charges currently pending against you?" Respondent checked "No" in response to this question. At the time respondent completed this license renewal form, he was aware that the criminal charges in the DUI matter referenced in Finding 4 were pending against him. It was established that respondent was aware of the true facts relating to the pending criminal action at the time that he completed the form to renew his paramedic license.

7. Respondent characterizes his failure to disclose the pending criminal charges on the renewal form as a clerical error and oversight on his part. He denies any intent to defraud, mislead or to otherwise engage in purposeful or bad faith conduct with regard to renewal of his EMT - Paramedic license. Respondent completed the same form every two years from 2000, and suggests that he considered the license renewal process as more of a routine exercise. He does acknowledge that his response was wrong.

8. Respondent has been employed as a firefighter/paramedic with the Sacramento Fire Department since 2001. He is certified in both Basic and Advanced Life Support. Although he has been assigned to engine and truck companies, the large majority of calls are medical and EMS - related. Following his DUI arrest, respondent notified both Fire Chief Forrest Adams and the human resources chief of his arrest and the pending criminal action. He was instructed by his superiors to be diligent, and to follow the appropriate course of

action. No disciplinary action was taken by his employer at that time, and no restrictions have been placed on his work as a firefighter/paramedic. He characterizes his employer's response to his DUI as understanding and supportive.

9. Respondent participated in a MADD seminar, in addition to completing the Breining Institute DUI first offender program. His vehicle driver's license remains on probationary status. He has taken full responsibility for his actions. Respondent notes that his DUI has made him aware of what he has to lose, and his need to be responsible for his actions when he is both on and off duty. He has learned that a momentary lapse of judgment can result in the loss of what he values most.

10. Respondent has had a longstanding interest in working as an EMT/paramedic. He worked approximately 15 years ago as an EMT with the Heavenly Valley Ski Patrol. He subsequently completed a training program at American River College, and worked for a private ambulance company in San Andreas, California. Between 1995 and 2000 he worked for the Lake Valley Fire Protection District in El Dorado County. In 2000, he obtained his paramedic license. He was employed in the emergency room at U.C. Davis Medical Center, and then interned with the Sacramento Fire Department before becoming employed as a fire fighter. His work performance has been above average and/or competent in areas evaluated through 2004. He has also received special recognition for outstanding service as a firefighter, and for participation in rescue operation in the aftermath of Hurricane Katrina. He currently serves as a paramedic preceptor through American River College, mentoring and helping paramedic students.

Respondent has no other history of arrests or convictions.

11. Respondent appreciates the serious nature of his criminal offense, and the consequences one faces when arrested and convicted for DUI. He also understands his obligation to complete the license renewal form accurately and to fully disclose all information requested of him. As a firefighter/paramedic, he has had firsthand experience responding to emergency situations when alcohol consumption was involved. He has learned from this experience and is unlikely to engage in similar behavior again.

12. EMSA has adopted disciplinary guidelines that have been considered in this case.¹ The recommended discipline for use of, or the misuse of, alcoholic beverages is revocation stayed, suspension until successful completion of drug/alcohol detoxification diversion program, and three years probation with terms and conditions. The recommended discipline for commission of a dishonest act is revocation stayed, 60 days suspension, and three years probation with terms and conditions. Complainant recommends that the period of suspension in this case should be increased from 60 to 90 days, noting that EMT-Paramedics should be held to a higher standard when convicted for DUI. Presumably, EMSA took this into account when it adopted its recommended disciplinary guidelines for licensees who use/misuse alcoholic beverages or controlled substances. Its guidelines recommend

¹ Recommended Guidelines for Disciplinary Orders and Conditions of Probation. (Effective July 10, 2002)

suspension only until a licensee successfully completes an alcohol detoxification/diversion program. There was no evidence that respondent needed to participate in such program. He has completed all programs connected to his criminal probation. The guidelines do call for a 60-day suspension in connection with the commission of a dishonest act. Respondent failed to disclose the fact of his pending criminal action at the time he applied for license renewal. A suspension of 60 days per EMSA disciplinary guidelines is therefore appropriate in this case.

LEGAL CONCLUSIONS

1. The EMSA may impose discipline on EMT-Paramedic licensees for any of the specific actions set forth in Health and Safety Code section 1798.200, and that are considered evidence of a threat to the public health and safety. These include the commission of any “fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of pre-hospital personnel.” (Health & Saf. Code, § 1798.200, subd. (c)(5).)

2. Respondent contends that a finding of dishonesty under this section requires either an intent to defraud, or bad faith on the part of the licensee. Section 1798.200, subdivision (c)(5) is not so specific. It only requires an act of dishonesty. Any additional requirement of “knowing” is satisfied once it is established that an individual is aware of the true facts. (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 555.) In *Brown*, the Court of Appeal considered whether a specific intent to deceive was required in order for a physician to be suspended as a provider of services under Medi-Cal. The statute stated that it was unprofessional conduct to “knowingly” make or sign a certificate which “falsely represents” a state of facts. (*Id.* at p. 554.) The appellate court held that “a person need only knowledge of the falsity of the facts certified when making or signing the certificate.” (*Id.* at p. 555.) In this case, it is enough that respondent had knowledge of the true and relevant facts, and that he failed to disclose this on his application for renewal. (See also *Fort v. Board of Medical Quality Assurance* (1982) 136 Cal.App.3d 12, 21-22; *People v. Gregory* (1990) 217 Cal.App.3d 665, 677.)

EMSA may still consider respondent’s characterization of his actions as an oversight or clerical error as factors in mitigation. However, his statement on the application that he had no pending criminal charges constituted the commission of a dishonest act under Health and Safety Code section 1798.200, subdivision (c)(5). EMSA depends upon its licensees to fully disclose all information requested when applying for renewal of licenses. The fact that the application requires licensees to provide information under penalty of perjury underscores this fact. Under these circumstances it was enough that respondent failed to disclose requested information for him to be subject to disciplinary action under this section.

3. Cause exists for disciplinary action under Health and Safety Code section 1798.200, subdivision (c)(5), by reason of the matters set forth in Finding 6.

4. Health and Safety Code section 1798.200, subdivision (c)(9) provides that license discipline may be imposed for: "Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances." Respondent's use of alcohol while operating a motorcycle constituted excessive use and/or the misuse of alcohol within the meaning of this section. Cause therefore exists for disciplinary action under Health and Safety Code section 1798.200, subdivision (c)(9), by reason of the matters set forth in Findings 4 and 5.

5. The matters set forth in Findings 7 through 12 were considered in making the following order. It would not be contrary to the public interest to issue respondent a probationary license at this time.

ORDER

Emergency Medical Technician-Paramedic License Number P16412 issued to respondent Sage A. Peart is revoked. However, such revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. License Number P16412 issued to respondent is suspended for sixty (60) days.
2. Probation Compliance. Respondent shall 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.
3. 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 his costs associated with this requirement.
4. 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.
5. 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 EMSA may request that relate to the qualifications, functions and duties and pre-hospital personnel.

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

6. Notification of Termination. Respondent shall notify the 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 the EMSA shall be by certified mail.
7. 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.

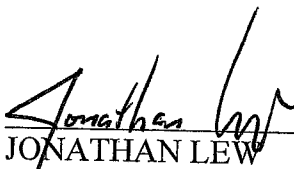
8. Obey All Related Laws. Respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Health 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, the 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 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.

9. Completion of Probation. Respondent's license shall be fully restored upon successful completion of probation.
10. 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 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 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.

DATED: January 29, 2008



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings