

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of:

JOSHUA PINO,

Respondent.

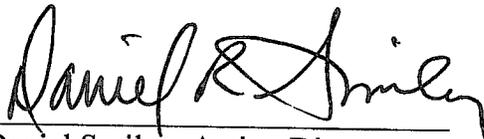
OAH number 2011030194

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Emergency Medical Services Authority as its Decision in the above-entitled matter.

This Decision shall become effective on 23rd Aug 2011.

IT IS SO ORDERED this 25th day of July, 2011.


Daniel Smiley, Acting Director

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOSHUA PINO,

License No. P23221,

Respondent.

Enforcement Matter No. 10-0043

OAH No. 2011030194

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 14, 2011, in Sacramento, California.

Cynthia L. Curry, Senior Staff Counsel, represented Sean Trask (complainant), Chief of the Emergency Medical Services Authority (Authority or EMSA), Emergency Medical Services (EMS) Personnel Division.

Joshua Pino (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted on July 14, 2011.

AMENDMENTS TO THE ACCUSATION

At the hearing, complainant amended the Accusation to delete paragraph V.B, which alleged that respondent violated the terms of a probationary order. Because complainant conceded at the hearing that respondent was not subject to a probationary order, the administrative law judge has also redacted from the Accusation the words "and for violations of his probation" on page 5, line 9, and the words "and for a violation of his probationary order and terms of probation" on page 5, lines 16 and 17.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in his official capacity.

2. Since January 2, 2006, respondent has been licensed as an Emergency Medical Technician-Paramedic (EMT-P), under License No. P23221 (license). Respondent's license was in full force and effect at all time relevant to this matter, and is valid through January 31, 2012, unless revoked or suspended. Complainant seeks to discipline respondent's license based upon the wet reckless conviction described below.

3. On April 23, 2010, in the El Dorado County Superior Court, in Case No. P10CRM0199, respondent, upon his plea of no contest, was convicted of violating Vehicle Code section 23103, subdivision (a), wet reckless, a misdemeanor.¹ Respondent was placed on summary probation for three years. He was ordered to: (1) pay fines and fees; (2) obey all laws; (3) not to operate a motor vehicle with any measureable amount of alcohol; (4) submit to a chemical test of blood, breath, or urine upon request of any peace officer; and (5) submit to alcohol and field sobriety tests.

4. The circumstances surrounding respondent's wet reckless conviction occurred on February 7, 2010. Respondent attended a friend's birthday party with his girlfriend. Over the course of the evening, respondent had three drinks. Respondent and his girlfriend drove home in separate cars. While driving home, respondent's girlfriend was stopped by a California Highway Patrol (CHP) officer. Because respondent had his girlfriend's driver's license in his vehicle, the CHP officer called respondent to bring her license. When respondent brought his girlfriend's driver's license to where the CHP officer has stopped his girlfriend, the officer smelled alcohol on respondent's breath, and decided to administer field sobriety tests. Respondent performed poorly on those field sobriety tests. Respondent agreed to a breath test. The results of that breath test showed that respondent's blood alcohol content was .09/.09 percent. At the time of this incident, respondent was 24 years old.

5. Respondent has paid all his court-ordered fines and fees. He has complied with all the terms and conditions of his criminal probation. He is scheduled to be on criminal probation until April 2013.

6. Since January 2007, respondent has been employed as a paramedic firefighter with the Sacramento City Fire Department. In this position, he works two days on, four days off. As a paramedic, he has seen many individuals injured in vehicle accidents involving alcohol. Respondent denied that he has a drinking problem. He testified that he has never worked while under the influence of alcohol. Occasionally, on a day off, he may consume small amounts of alcohol with friends. Since his conviction, he has not driven his vehicle after he has consumed any alcohol. According to respondent, he only works on the days he is assigned to work, and cannot be called into work on days that he is scheduled to be off. At the

¹ Vehicle Code section 23103, subdivision (a), provides:

A person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

hearing, respondent admitted that he made a mistake the night he was arrested. He recognized the serious consequences that may result from drinking and driving.

7. Steven McGee is the Authority's General Counsel. He testified that it is the Authority's policy to take action every time a paramedic is involved in an alcohol-related driving incident. According to Mr. McGee, a paramedic's duties generally involve driving an ambulance. A paramedic who is called to an emergency must treat injured consumers. Consumers have no choice as to who their assigned paramedic may be. The Authority takes action on all alcohol-related driving incidents involving paramedics to ensure that the public will be adequately protected.

8. The Authority has issued Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines). These Guidelines state that the following factors shall be considered when determining the appropriate discipline:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Prior warnings on record or prior remediation;
6. Number and/or variety of current violations;
7. Aggravating evidence;
8. Mitigating evidence;
9. Any discipline imposed by the paramedic's employer for the same occurrence of that conduct;
10. Rehabilitation evidence;
11. In case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation;
12. Overall criminal record;
13. Time that has elapsed since the act(s) or offense(s) occurred;
14. If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4.

The Guidelines also include maximum, minimum and recommended discipline for each of the grounds for disciplinary action set forth in Health and Safety Code section 1798.200, subdivision (c). (See Legal Conclusion 1 below.) In the Accusation, complainant alleged cause for discipline under Health and Safety Code section 1798.200, subdivisions (c)(6), conviction for a substantially-related crime, and (c)(9), misuse of alcoholic beverages. The minimum penalty set forth in the Guidelines for a conviction for a substantially-related crime is a stayed revocation, and a one-year probation with standard probationary terms and conditions. The minimum penalty for misuse of alcoholic beverages is a stayed revocation, and a three-year probation with standard probationary terms and conditions, plus optional terms and conditions relating to abstinence from the use of alcohol, biological fluid testing, participation in a diversion program, and a psychiatric/medical evaluation.

9. At the hearing, Mr. McGee recommended that, given the circumstances of this case, the minimum discipline for a conviction for a substantially-related crime was the appropriate discipline to be imposed on respondent's license.

10. Mr. McGee's testimony was persuasive. Given the significant responsibilities of EMT-P's, the Authority must have adequate assurances that they are not under the influence of alcohol when they are on duty. They drive ambulances. They treat consumers in emergency medical situations. Consequently, it is appropriate for the Authority to impose discipline after an EMT-P is involved in a single alcohol-related driving incident.

11. When the factors set forth in the Guidelines (Finding 8) are applied to the facts of this case, they support that the minimum discipline for a conviction for a substantially-related crime should be imposed. Respondent was involved in a single wet reckless incident. His blood alcohol level of .09 percent was slightly above the legal limit of .08. There was no evidence that respondent has a drinking problem. Although he does not fully abstain from drinking, he drinks minimally and does not drink on the days he could be called into work. He no longer drives after he has any alcohol to drink. At the hearing, he recognized the tragic consequences that may result when an individual drives under the influence of alcohol. When all the evidence is considered, placing respondent on probation for one year under the Authority's standard probationary terms and conditions is appropriate to ensure that the public health, safety and welfare are adequately protected.

LEGAL CONCLUSIONS

1. Pursuant to Health and Safety Code section 1798.200, subdivision (c), the Authority may discipline the license of an EMT-P who has engaged in actions constituting a "threat to the public health and safety" including:

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The 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. Respondent's April 23, 2010 wet reckless conviction (Finding 3) was a crime substantially related to the qualifications, functions, and duties of prehospital personnel such as EMT-P's. As Mr. McGee testified, an EMT-P is generally required to drive an ambulance. An EMT-P who is called to an emergency must treat injured consumers. Given the significant responsibilities of EMT-P's, the Authority must have adequate assurances that they are not under the influence of alcohol when they are on duty. Respondent's April 23, 2010 wet

reckless conviction therefore constitutes cause to discipline his license pursuant to Health and Safety Code section 1798.200, subdivision (c)(6).

3. The fact that respondent was determined to have a blood alcohol content of .09 percent when he drove on February 7, 2010 (Finding 4) shows that he misused alcohol on that day. Complainant therefore established cause to discipline respondent's license under Health and Safety Code section 1798.200, subdivision (c)(9).

4. As set forth in Finding 11, when all the evidence is considered, placing respondent on probation for one year under the Authority's standard probationary terms and conditions is appropriate to ensure that the public health, safety and welfare are adequately protected.

ORDER

License Number P23221 issued to respondent, Joshua Pino, is revoked. However, such revocation is stayed and respondent is placed on probation for one (1) year 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 probationary order.

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

2. 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.

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, they shall be sent by 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 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, 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 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.

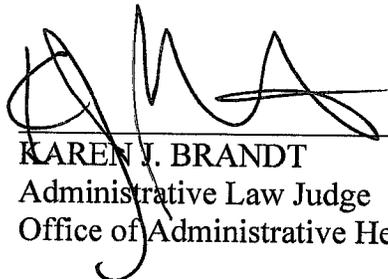
8. Completion of Probation:

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 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: July 20, 2011


KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings