

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical
Technical – Paramedical License of:

ROBERT ROSE
License No. P23131,

Respondent.

Enforcement Matter No.: 10-0070

OAH No.: 2010120991

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 8/28/2011.

IT IS SO ORDERED 7/28/2011.

EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

By

Harold Barker
Director, EMSA

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PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on June 27, 2011.

Cynthia L. Curry, Senior Staff Counsel represented Sean Trask (Complainant), the Chief of the EMS Personnel Division of the Emergency Medical Services Authority of the State of California (Authority).

Robert Rose (Respondent) represented himself.

Oral and documentary evidence was received, and the matter was argued.

The record was left open to permit Respondent to file letters of reference with time for any response from the Authority. On July 9, 2011, Respondent filed three letters of reference which are corporately marked as Respondent's Exhibit B and admitted in evidence as administrative hearsay.

The case was submitted for decision on July 22, 2011.

The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows.

JURISDICTION

1. This matter arises under the provisions of the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (Act)¹ and the California Code of Regulations, title 22.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in his official capacity as Chief of the EMS Personnel Division.

2. At all times pertinent to the allegations herein, Respondent has held an Emergency Medical Technician-Paramedic (EMT-P) license number P23131, which was first issued on January 4, 2006. The license expires on January 31, 2012, unless it is revoked or suspended as provided by law. With the exception of this proceeding, no other disciplinary actions have been filed against Respondent's license.

3. On August 6, 2010, in the California Superior Court, County of San Bernardino, Respondent, upon his nolo contendere plea, was convicted of violating Penal Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. Pursuant to a plea agreement, the court withheld the imposition of judgment and placed Respondent on summary probation for a period of 36 months on the certain terms and conditions including, serving 2 days in the county jail with credit for time served, attending a first offender alcohol program for 4 months, and paying fines and fees in the amount of \$1826.00, payable at the rate of \$60 or more per month. Respondent was also ordered not to drive a vehicle with any measurable amount of alcohol in his blood. Respondent has completed the first offender program. Respondent has paid \$800 of the fine and fees. He owes a balance of \$1,000. Respondent's driver's license has been renewed following a 3 month suspension. Respondent remains on probation.

4. The facts and circumstances surrounding Respondent's criminal conviction are as follows: Respondent and two friends were waiting for a third friend to arrive by plane from the east. They had dinner and drinks. When the friend arrived, they left for Las Vegas. Respondent was driving the vehicle in which they were traveling. The Highway Patrol observed Respondent driving at a very high rate of speed and stopped him. Upon interviewing Respondent, the officers determined that Respondent was under the influence of alcohol and placed him under arrest. Respondent was cooperative throughout the entire process.

5. Respondent has no other criminal convictions.

¹ The Act is codified at Health and Safety Code, Division 2.5, section 1797 et seq.

6. Respondent is greatly embarrassed for having been convicted of drunk driving. He feels that this is the greatest mistake he has ever made. He has apologized profusely. He reports that he has stopped drinking.

7. For two years prior to his criminal conviction Respondent served as a preceptor to other paramedics. He no longer is employed as a paramedic but hopes to be able to resume his paramedic position.

8. Respondent is currently employed as a production assistant at the American Broadcasting Company.

9. Respondent submitted three letters of reference. The first letter was from his brother who is a detective with the San Bernardino County Sheriff's Department. The brother stated that he was most surprised to learn of Respondent's conviction. He said that his brother will have to live with this the rest of his life. The brother stated:

"I truly believe, based upon our conversations and his actions when we get together that he has learned his lesson and has paid his debt to society for his actions. Robert has worked hard to get where he is in the paramedic field and I feel that he deserves a second chance."

The second letter was from Respondent's girlfriend who has lived with Respondent from more than four years. In her opinion:

"Robert is a very intelligent and compassionate person and I know that he feels awful about what has happened as well as thankful that nothing worse came of it. He has taken full responsibility for his actions, completing all that was required of him by the state as well as personally ensuring that he takes all precautions to guarantee that he never endangers himself or anyone else again. Since January 2010, I have not once seen Robert indulge in even one drink while we have been out unless he knows for a fact that he will have a designated driver or taxi to take him home. Robert often volunteers to be the designated driver when we go out to ensure that no one else makes a poor decision.

Robert has felt nothing but guilt and remorse since making this mistake. I can assure you that this will not be an issue in the future. He is an exceptional, true friend, who made a lapse in what I know to otherwise be exceptional judgment. He has paid his dues for the slip-up, both personally and professionally and I know that he has learned from this and that it will never happen again!"

The third letter of reference is from Respondent's college roommate. Recognizing that Respondent has thrown himself a curve which he was not prepared for, the former roommate stated that:

“However, since that time, I have seen Robert make drastic changes in his life to correct the path his {he} was on and make it right. Even in the turmoil of this Robert never wasted a second and right away went looking for work, not content to sit and wait to be handed anything. He worked through his situation and took the necessary steps to make the things right. I fully believe that Robert continues to be a man of integrity and even more so now having gone through this experience. I know something like this would never occur again in his life, and that because of this he has even influenced other to change their ways. I have no doubt Robert is a valued member of the paramedic community and having him back among them would be an asset to them all.”

LEGAL CONCLUSIONS

1. Respondent’s criminal conviction, set forth in Factual Findings 3 and 4, is substantially related to the qualifications, function, or duties of a paramedic in that it to a substantial degree evidences present or potential unfitness of a paramedic to perform functions authorized by his paramedic license in a manner consistent with the public health and safety. California Code of Regulations, title 22, section 100174

2. Pursuant to the provisions of Health and Safety Code section 1798.200, subsections (b) and (c) (6) and (9) Respondent’s criminal conviction is evidence of a threat to the public health and safety and subjects Respondent’s paramedic EMT-P license to suspension or revocation.

3. The Emergency Medical Services Authority (EMSA) has adopted Guidelines for Disciplinary Orders and Conditions of Probation. Those Guidelines are as follows:

- a. Nature and severity of the crime. Respondent’s criminal conviction is serious.
- b. Actual or potential harm to the public – Fortunately, there was no actual harm to the public in that Respondent was stopped for speeding before there was any accident or direct harm to the public. The threat was great however.
- c. Actual or potential harm to any patient - Not applicable.
- d. Prior Disciplinary record – No prior disciplinary record.
- e. Prior warnings on record or prior remediation – None.
- f. Prior warnings on record or prior remediation – None.
- g. Number and/or variety of current violations – A single violation was charged.
- h. Aggravating evidence - Other than the event, nothing.

- i. Mitigating Evidence - Respondent has aggressively sought to make amends for his drunk driving conviction. He has completed the First Offender Program and has accepted responsibility for the situation and rebuilding his life.
- j. Any discipline imposed by the paramedic's employer for the same occurrence of that conduct – Respondent is no longer employed by that employer.
- k. Rehabilitation evidence – Respondent has completed the First Offender Program and is in compliance with the court's order. He has the support of his friends in the rebuilding of his life. He is candid and positive in dealing with the situation. Respondent is supported by the letters of recommendation submitted by his close friends.
- l. Compliance with terms of court-ordered probation - Respondent is in compliance with the court ordered probation.

4. From the foregoing analysis and application of the Authority's Guidelines, the appropriate discipline to insure the protection of the public is to revoke Respondent's license but stay the revocation and issue a probationary license for a two year period.

ORDER

License Number P23131 issued to the Respondent, Robert Rose is revoked. However, such revocation is stayed and the Respondent is placed on probation for two (2) years upon the following terms and conditions:

1. Probation Compliance

The Respondent shall fully comply with all terms and conditions of the probationary order. The Respondent shall fully cooperate with the LEMSA in its monitoring, investigation, and evaluation of the Respondent's compliance with the terms and conditions of his probationary order.

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

2. Personal Appearances:

As directed by the LEMSA, 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 costs associated with this requirement.

3. Quarterly Report Requirements:

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 registered mail.

4. Employment Notification:

During the probationary period, the Respondent shall notify the LEMSA in writing of any EMS employment. The respondent shall inform the LEMSA 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 LEMSA 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 LEMSA may request that relate to the qualifications, functions, and duties of an EMT-I and/or AEMT. Any and all notifications to the LEMSA shall be by registered mail.

5. Notification of Termination:

During the probationary period, the Respondent shall notify the LEMSA within seventy-two (72) hours after termination, for any reason, with his 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 LEMSA shall be by registered mail.

6. Functioning as an EMT-I or AEMT:

The period of probation shall not run anytime that the Respondent is not practicing as an **EMT-I or AEMT** within the jurisdiction of California. If the Respondent, during his/her probationary period, leaves the jurisdiction of California to practice as an EMT-I or AEMT, the Respondent must immediately Notify the LEMSA, 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 LEMSA shall be by registered mail.

7. Obey All Related Laws:

The Respondent shall obey all federal, state and local laws, statutes, regulations, and local written policies, protocols and rules governing the practice of medical care as an EMT-I or AEMT. 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 LEMSA in the past as a condition of certification, then the Respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within forty-five (45) days of the effective date of this decision. Within seventy-two (72) hours of being arrested, cited or criminally charged for any offense, the Respondent shall submit to the LEMSA a full and detailed account of the circumstances thereof. The LEMSA shall determine the applicability of the offense(s) as to whether the respondent violated any federal, state and local laws, statutes, regulations, and local written policies, protocols and rules governing the practice of medical care as an EMT-I or AEMT. Any and all notifications to the LEMSA shall be by registered mail.

8. Abstinance from the Use of Alcoholic Beverages:

The Respondent shall abstain from the use of alcoholic beverages.

9. Completion of Probation:

The Respondent's certification shall be fully restored upon successful completion of probation.

10. Violation of Probation:

If during the period of probation the Respondent fails to comply with any term of probation, the LEMSA may initiate action to terminate probation and implement actual certificate 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 LEMSA. An action to terminate probation and implement actual certificate suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of either Chapter 6 of the California Code of Regulations, Title 22, Division 9, or the California Administrative Procedure Act, whichever process was used by the LEMSA.

The issues to be resolved 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. The Respondent and the LEMSA 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 22, 2011.



N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings