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10 BEFORE THE
11 EMERGENCY MEDICAL SERVICES AUTHORITY
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:) Enforcement Matter No.: 09-0287
14) OAH No. 2010110124
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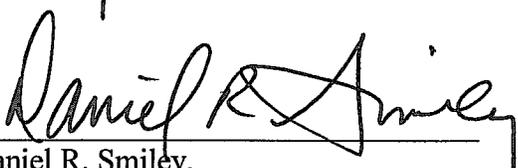
VINCENT WELLS
P00699
Respondent.

DECISION AND ORDER OF THE
EMERGENCY MEDICAL SERVICES
AUTHORITY

15 The attached Proposed Decision of the Administrative Law Judge is hereby adopted by
16 the Emergency Medical Services Authority, State of California, as its decision in the above-
17 entitled matter.

18 This Decision and Order shall become effective on the 21ST day of August, 2011.

19 IT IS SO ORDERED this 22ND day of July, 2011.

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22 Daniel R. Smiley,
23 Acting Director
24 EMERGENCY MEDICAL SERVICES
25 AUTHORITY, STATE OF CALIFORNIA

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical
Technician-Paramedic License Held by:

VINCENT WELLS
License No. P00699

Respondent.

Enforcement Matter No. 09- 0287

OAH No. 2010110124

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 17, 2011, in Sacramento, California.

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

Respondent, Vincent Wells appeared and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 17, 2011.

FACTUAL FINDINGS

1. On September 28, 2010, Sean Trask made and filed the Accusation in his official capacity as Chief, EMS Personnel Division, Emergency Medical Services Authority, State of California (Authority). The Accusation was duly served on Vincent Wells (respondent). Respondent timely requested a hearing by filing a Notice of Defense. A hearing was held pursuant to Government Code section 11505.

2. On August 19, 1993 the Authority issued respondent Emergency Medical Technician-Paramedic (EMT- P) license number P00699. The license is valid through October 31, 2011.

3. Respondent's license allows him to perform various medical procedures, including advanced life support procedures while at the scene of a medical emergency, during transport of an injured or ill person to a medical facility, or during transfer of a patient between medical facilities. Respondent held his paramedic license at the time he committed the criminal offense set forth below.

4. On August 9, 2008, an officer with the Stockton Police Department responded to a report of a non-injury accident. Respondent identified himself as one of the drivers. The officer noted an odor of alcohol coming from respondent and that respondent's eyes were bloodshot and watery. He asked respondent if he had been drinking and respondent replied that he had had two beers. The officer asked respondent to perform field sobriety tests, which respondent was unable to perform properly. Preliminary alcohol screening showed respondent had a blood alcohol content of .19 percent. He was arrested for driving under the influence of alcohol. A subsequent blood alcohol test showed a blood-alcohol content of .18 percent.

Relationship of Criminal Offense to Duties of Paramedic

5. Respondent was charged with driving under the influence of alcohol and driving with a blood-alcohol level over .08 percent. On October 10, 2008, in the Superior Court of San Joaquin County, respondent pled no contest to a misdemeanor violation of California Vehicle Code section 23152, subdivision (b). He was sentenced to serve three years conditional probation with the following terms: serve 32 days in jail; pay restitution; violate no laws; pay fine; not drive with measurable amount of alcohol/drugs in blood; submit to blood, breath or urine tests as requested; not drive without a valid driver's license, registration or insurance; and enroll in and complete a three-month First Offender Alcohol program.

6. The consumption of alcohol quickly affects normal driving ability and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. In addition, driving under the influence of alcohol is substantially related to the duties of a paramedic (Finding 3). A paramedic must be able to safely drive first responder vehicles and competently provide medical care to the public.

7. Respondent's conviction also reflect a lack of sound professional and personal judgment that is substantially related to a paramedic's fitness to perform his duties. Such a conviction undermines public confidence in and respect for the profession.

8. Respondent's conviction also shows an inability or unwillingness to obey the law prohibiting drinking and driving.

Evidence of Rehabilitation

9. In determining the discipline, if any, to impose on a licensee, it is necessary to examine the factors which may justify, mitigate or aggravate the offenses. It is also necessary to determine whether the licensee is presently of good character and has rehabilitated himself. There were no factors justifying or mitigating respondent's criminal conduct. In aggravation, respondent was licensed as a paramedic when he committed his offense and was a Captain in the Contra Costa Fire Protection District. In aggravation, respondent was 43 years old at the time of his offense.

10. Respondent submitted evidence of rehabilitation. He fully disclosed his criminal conviction on his license renewal application on October 9, 2008. The Authority would not have known of his criminal conviction had he not reported it. Respondent agreed to submit to a fitness for duty evaluation, to ensure the Authority that he did not have a substance abuse problem. Respondent complied with all of the terms and conditions of his criminal probation and his criminal probation is due to expire in October 2011.

11. Respondent exhibited extreme embarrassment and contrition at hearing. Respondent has been a Fire Captain and Paramedic at Contra Costa Fire Protection District since 1997 and has worked as a paramedic for 19 years. His driver's license was suspended for four months and he has to pay higher insurance rates. He advised his Fire Chief immediately of his arrest and conviction and received a letter of reprimand. He received this low-level of discipline because he had an excellent reputation with his employer.

12. Respondent suffered the embarrassment of having to explain to his adult children what he had done. Respondent maintained that he does not have an alcohol problem and therefore, other than the court ordered alcohol programs and the fitness for duty examination, he has not attended any Alcoholics Anonymous meetings, therapy or counseling regarding alcohol. He maintains that driving under the influence of alcohol was a one-time incident that occurred after eating at a popular sushi spot around the corner from his home. Respondent is a large gentleman and has now imposed a two drink rule on himself if he is going to drive.

13. Respondent expressed concern that a probationary term imposed on his license now, three years after his conviction, would have little benefit, because this was a one-time occurrence, he has completed the court ordered alcohol program and the fitness for duty examination and he will never re-offend. Moreover, he does not feel it is appropriate to impose a probationary term on his license, when that term will begin running after his criminal probation expires. In essence, if the Authority places him on probation, he feels he would be on probation for an extended period of time, now that he has nearly completed three years of criminal probation.

14. While a probationary term may not benefit respondent, it will benefit the Authority and the public by providing that respondent's conduct is monitored for a period of time long enough to assure the Authority that respondent does not pose a risk to the public. The fact that respondent is poised to successfully complete a three year court ordered probation has little bearing on respondent's future conduct. It is axiomatic that individuals on criminal probation must comply with the law, under threat of imposition of a jail sentence. Moreover, although respondent was not required to report his criminal conviction to the Authority prior to his completing a license renewal application, if he had reported the conviction when it occurred the Authority would have had an opportunity to monitor him concurrently with his court probation.

LEGAL CONCLUSIONS

1. The statutes and regulations which govern the licensing of Emergency Medical Technicians-Paramedics are contained in division 2.5 of the Health and Safety Code commencing with section 1797 and Chapter 4 of Division 9 of the California Code of Regulations (CCR), title 22.

2. Health and Safety Code section 1798.200 provides in pertinent part:

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c)...

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate or licenseholder under this division:

¶...¶

(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.

3. CCR, title 22, section 100174 provides:

(a) For the purposes of denial, placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 of the Health and Safety Code, or imposing an administrative fine pursuant to Section 1798.210 of the Health and Safety Code, a crime or act shall be substantially related to the qualifications, functions and/or duties of a person holding a paramedic license under Division 2.5 of the Health and Safety Code. A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a paramedic if to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety.

(b) For the purposes of a crime, the record of conviction or a certified copy of the record shall be conclusive evidence of such conviction. "Conviction" means the final judgement on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.

4. It has been established by clear and convincing evidence that respondent violated Health and Safety Code section 1798.200, subdivision (c)(6) (conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel) as set forth in the Factual Findings.

5. It has been established by clear and convincing evidence that respondent violated Health and Safety Code section 1798.200, subdivision (c)(9) (misuse of alcoholic beverage) as set forth in the Factual Findings. Cause exists for discipline of respondent's license because of this violation.

6. The purpose of a disciplinary action is not to punish the licensee for the crime or conduct he has engaged in. The purpose of disciplinary proceedings is to ensure that the licensee does not currently pose a threat to the public he serves.

7. Respondent bears the burden of proving that he is currently of such good character that he does not pose a threat to the public that he serves. In order to determine whether respondent has met this burden, the evidence in mitigation and rehabilitation was weighed and balanced against the circumstances of respondent's crimes and the factors in aggravation. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; ["The licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation."] citing *Brandt v. Fox* 90 Cal.App.3d 737 at p. 747.) As set forth in the

Factual Findings 13 and 14, respondent has demonstrated a remorseful and positive attitude and compliance with criminal probation. However, a period of monitoring is necessary to assure the Authority that respondent no longer poses a risk to the public.

8. The public interest would not be adversely affected by issuance of a probationary license at this time.

ORDER

Certification Number P00699 issued to Vincent Wells is REVOKED. However, the revocation is STAYED and respondent's license is placed on probation for a period of two years upon the following terms and conditions:

Conditions of Probation

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/her 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/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 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/her 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. Completion of Probation:

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

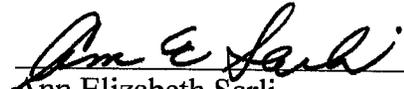
9. Violation of Probation:

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 14, 2011


Ann Elizabeth Sarli
Administrative Law Judge
Office of Administrative Hearings