

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition
to Terminate Probation Against:

JEFFREY M. WINGARD
EMT-P License No. P26640

Respondent.

Case No. 14-0348

OAH No. 2015110049

PROPOSED DECISION

This matter was heard by Robert S. Eisman, Administrative Law Judge with the Office of Administrative Hearings, on May 17, 2016, in Los Angeles, California.

Sean Trask (complainant), Chief, Emergency Medical Services (EMS) Personnel Division, California Emergency Medical Services Authority was represented by Craig L. Steverson, Senior Staff Counsel – Retired Annuitant.

Jeffrey M. Wingard (respondent) was present and represented by David Givot, Attorney at Law.

On May 16, 2016, complainant filed a motion to allow a witness, Officer Olivas from the Newport Beach Police Department to testify telephonically at the May 17, 2016 hearing in this matter. No grounds for the motion were stated and respondent opposed the motion under Government Code section 11440.30, subdivision (b). On May 16, 2016, respondent's motion was denied.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on May 17, 2016.

The Administrative Law Judge now finds, concludes and orders as follows:

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FACTUAL FINDINGS

Parties

1. On September 9, 2015, complainant signed the Accusation and Petition to Terminate Probation in his official capacity.
2. The Emergency Medical Services Authority (Authority or EMSA) is the agency of the State of California that operates the State Paramedic Licensure Program, which licenses and conducts disciplinary investigations of paramedics to ensure that the care they provide meets California's standards.
3. Under the Emergency Medical Services System and the Prehospital Emergency Medical Care Act (Health & Saf. Code, § 1797 et seq.), the Authority has the responsibility to develop and adopt standards for Emergency Medical Technician - Paramedic (EMT-P) training and scope of practice. (Health & Saf. Code, § 1797.172, subd. (a)). The Authority also has sole jurisdiction over EMT-P licensure and license renewal in California. (Health & Saf. Code, § 1797.172, subd. (c).)
4. Health and Safety Code section 1798.200 authorizes the Authority to take disciplinary action against an EMT-P license or to deny a license for enumerated acts deemed to constitute a threat to the public health and safety.
5. Respondent received an initial EMT-P license, number P26640, from the Authority on October 24, 2008. The license is due to expire on October 31, 2016.
6. On September 30, 2015, respondent submitted his Notice of Defense and request for a hearing to permit him to present his defense to the charges in the Accusation and Petition to Terminate Probation, and this hearing ensued.

Prior Discipline

7. On or about May 6, 2013, complainant filed an Accusation, Enforcement Matter No. 12-0190, which alleged, in relevant part:
 8. On June 14, 2012, at approximately 0052 hours, Officers Apodaca and Lewis, with the California Highway Patrol observed a vehicle at a complete stop, up against a concrete center divider wall and partially blocking the lane on State Highway 55. The vehicle was running with the transmission in "drive", and the driver was sitting in the driver's seat with his seatbelt on, asleep. The Officers identified Respondent as the driver of the vehicle. Officer Apodaca noted in his report that the Respondent displayed objective signs and symptoms of alcohol intoxication. Officer Apodaca did not administer field sobriety tests (FST), due to Respondent's inability to maintain his balance. Officer Apodaca then placed the Respondent under arrest for a violation of California Vehicle Code (CVC) section 23152 (a) and

(b) [driving under the influence of alcohol or drugs, and driving with a blood alcohol content (BAC) of 0.08% or higher]. A subsequent breathalyzer test revealed results of .21 percent BAC.

9. A criminal complaint was filed against Respondent in the County of Orange Superior Court, Case Number 12HM08787, alleging a misdemeanor violation of California Vehicle Code Section 23152(a); Driving While Under the Influence of Alcohol, and California Vehicle Code Section 23152(b); Driving with Blood Alcohol Level of 0.08% or Above, and an enhanced penalty for driving with a BAC greater than .15%. On or about September 13, 2012, in Orange County Superior Court, Case Number 12HM08787, Respondent pled "guilty" to a misdemeanor violation of California Vehicle Code Section 23152(b); Driving with a Blood Alcohol Level of 0.08% or Above. All other counts were dismissed. Respondent was sentenced to 3 years' summary probation with the following terms:

Violate no laws

Pay fines

Not drive with measurable amount of alcohol/drugs in his blood

Submit to blood, breath or urine test as requested

Not drive without a valid driver's license or registration or insurance

Enroll in and complete a 6 month first offender program

8. On July 2, 2013, the EMSA Director issued a Decision and Order in the foregoing matter, adopting a Stipulated Settlement Agreement and Disciplinary Order entered into between respondent and complainant on June 28, 2013. The Stipulated Settlement Agreement and Disciplinary Order provided that, respondent, solely for the purposes of the settlement proceeding and for no other reason, admitted that good cause existed for the Authority to revoke his license, and he did not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges contained in the Accusation and he has thereby subjected his license to discipline.

Pursuant to the Stipulated Settlement Agreement and Disciplinary Order, the Authority revoked respondent's EMT-P License No. P26640, however, the revocation was stayed and respondent's license was placed on probation under specific terms and conditions for a period of three years. The Decision and Order became effective on August 2, 2013, and respondent's term of probation is scheduled to end on August 1, 2016.

9. Pursuant to the Stipulated Settlement Agreement and Disciplinary Order, the terms and conditions of probation include the following, in relevant part:

A. License Revoked; Revocation Stayed; Probation: It is hereby ordered that EMT-P License #P26640 issued to Respondent be revoked. However, such revocation is stayed and Respondent's license is placed on probation for three (3) consecutive calendar years from the effective date of this Agreement, subject to the following probationary terms and conditions:

(1) Abstinence from the Consumption of Alcohol: Respondent shall abstain from [alcohol] . . . to comply with random alcohol testing by PAS device or by laboratory test at the discretion of the Authority. When the Authority requests a random test, the respondent shall provide the required urine or breath sample by the time specified, or within 12 hours of the request if no time is specified. When the Authority requests a random test, the respondent shall ensure that any positive test results are conveyed telephonically by the lab to the Authority within 48 hours, and all written positive or negative results are provided directly by the lab to the Authority within 10 days. The respondent shall be responsible for all costs associated with the alcohol screening.

(2) Probation Compliance: Respondent will fully comply with all terms and conditions of this Agreement. . . .

[¶] . . . [¶]

(7) Obey All Related Laws: Respondent shall obey all federal, state and local laws, statutes and regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that constitutes grounds for disciplinary action pursuant to EMS Act section 1798.200.

Within 72 hours of being arrested, cited or charged for any offense, Respondent shall submit to the Authority a full and detailed account of the circumstances thereof.

The Authority shall determine whether the offense constitutes a violation of any federal, state or local laws, written policies, protocols or rules governing the practice of medical care as a paramedic. To permit monitoring of compliance with this term, if Respondent has not submitted fingerprints to the Authority in the past as a condition of licensure, Respondent shall submit his fingerprints by Live Scan and pay the appropriate fees within forty-five days of the effective date of this Agreement.

(8) Notifications/Submissions: Any and all notifications and submissions to the Authority shall be sent by certified mail or e-mail. When emailing notifications and submissions, Respondent must receive a return e-mail from the Authority to assure the notification or submission was timely received.

B. Completion of Probation; Respondent's license shall have unrestricted status upon successful completion of probation. Successful completion entails complying with all terms and conditions listed in paragraph [A.], above.

C. Violation of Probation:

(1) Respondent understands and agrees that if during the period of probation, he fails to comply with any term or condition of probation, the Authority will initiate action to terminate probation and proceed with actual license denial, suspension or revocation. Upon initiation of such an action, or upon giving notice to Respondent of the EMSA's intent to initiate such an action, the probationary period shall remain in effect until the Authority has adopted a decision on the matter. An action to terminate probation and implement actual license denial, suspension or revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

(2) If such an action ensues, 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 the probation and implementation of license denial suspension or revocation. At the hearing, respondent and the Authority shall be bound to the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

First Cause for Discipline

10. The Accusation and Petition to Terminate Probation alleges that respondent violated Health and Safety Code section 1798.200, subdivision (c)(8), in that he violated or attempted to violate a federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.

11. On November 14, 2014, a law enforcement officer from the Newport Beach Police Department responded to a disturbance call of a male subject, later identified as respondent, who was refusing to leave a bar in Newport Beach. After arriving at the bar, the officer observed respondent walking out of the bar with an "unsteady gait" and "slurred speech" as he yelled at people walking by. When the officer contacted respondent, the officer noticed that respondent had a "strong odor of alcohol emanating his breath and person, along with bloodshot and watery eyes." When the officer asked respondent how much alcohol he drank, respondent replied "too much." The officer subsequently determined that respondent was unable to care for his safety or the safety of others and placed him under arrest for violating Penal Code section 647, subdivision (f); public intoxication.

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12. When the officer searched respondent, he found a yellow plastic baggy containing a white powdery substance. The officer identified the substance as cocaine based both on his experience and training, and subsequent testing. Respondent was then brought to the Newport Beach Police Department jail.

13. On January 20, 2015, in the Superior Court of the State of California, County of Orange, in case number 15HM00660, the Orange County District Attorney filed an original complaint, alleging that on November 14, 2014, respondent violated Health and Safety Code section 11350, subdivision (a), possession of a controlled substance, a misdemeanor (Count 1) and Penal Code section 647, subdivision (f), public intoxication, a misdemeanor (Count 2). The current court case was kept with the companion court case that that resulted in the Accusation against respondent that was filed in May 2013. Both court cases were presided over by the same superior court judge. (See Factual Finding 7, above.)

14. On June 16, 2015, on the People's motion to dismiss all counts based on respondent's completion of an unspecified 45-day program, the court dismissed all charges against respondent. There was no trial on the merits to determine whether, in fact, the testing of the substance found in respondent's wallet was properly completed, or that respondent used a narcotic, dangerous drug or controlled substance prior to or at the time of his arrest. As such, there is no clear and convincing evidence to a reasonable certainty that respondent violated Health and Safety Code Section 11350, subdivision (a).

Second Cause for Discipline

15. The Accusation and Petition to Terminate Probation alleges that respondent violated Health and Safety Code section 1798.200, subdivision (c)(9), in that he is addicted to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances. Complainant based this allegation on respondent's arrest on November 14, 2014, and the subsequent court action.

16. During the hearing, respondent admitted that he is addicted to alcohol.

17. In addition to respondent's admission, the 2013 disciplinary action and the circumstances surrounding respondent's arrest on November 14, 2014, further support a finding that respondent is addicted to alcohol. (Factual Findings 10 through 13, above.)

Third Cause for Discipline

18. The Accusation and Petition to Terminate Probation alleges, that respondent violated the terms and conditions of probation that were imposed on respondent pursuant to the Decision and Order issued by the EMS Director on July 2, 2013, which adopted the Stipulated Settlement Agreement and Disciplinary Order entered into between respondent and complainant on July 2, 2013. (Factual Findings 7 and 8, above.)

19. Respondent violated the terms and conditions of probation, in that he failed to abstain from the consumption of alcohol and failed to obey all federal, state and local laws, statutes and regulations, written policies, protocols and rules governing the practice of

medical care as a paramedic, when he was publicly intoxicated on November 14, 2014. In addition, respondent failed to notify the authority within 72 hours after his arrest and after being charged for violating Health and Safety Code section 11350, subdivision (a), and Penal Code section 647, subdivision (f). Respondent also failed to submit to the authority a full and detailed account of the circumstances thereof, within 72 hours of this arrest.

Substantial Relationship

20. Respondent's addiction to the consumption and apparent misuse or abuse of alcohol is substantially related to the qualifications, functions, or duties of an EMT-P in that to a substantial degree it evidences potential unfitness in his ability to perform the functions authorized by his license in a manner consistent with the public health and safety. This is especially important with respect to the potential adverse effects intoxication could have on respondent's ability to drive a motor vehicle and treat patients.

Witnesses

21. Dalayna Crawford is an EMSA Special Investigator. Complainant called Ms. Crawford as a witness to testify about the Case Summary report she prepared in this matter and submitted to EMSA on July 30, 2015. The Case Summary describes the results of Ms. Crawford's investigation pertaining to respondent's arrest on November 14, 2014, and subsequent court action. Respondent stipulated that Ms. Crawford would credibly testify to the sum of the content of her Case Summary report.

The Case Summary includes the following information: how the EMSA Enforcement Unit became aware of respondent's November 14, 2014 arrest; an investigative summary based on the Newport Beach Police Department's report regarding respondent's arrest; respondent's comments during a telephone interview he had with Ms. Crawford on July 28, 2015; the charges filed and results of the Orange County Superior Court case; the status of respondent's most recent paramedic license renewal application and his current mailing address; respondent's prior discipline; the evidence supporting and not supporting allegations regarding possession of narcotics/controlled substances, violating or attempting to violate laws or regulations that regulates narcotics, dangerous drugs or controlled substances, and addiction to the excessive use of, or misuse of alcoholic beverages, narcotics, dangerous drugs, or controlled substances. The Case Summary also includes Ms. Crawford's analysis of the case, wherein she concludes that respondent violated the the terms of his EMSA probation by not abstaining from alcohol, failing to obey all laws governing the practice of medical care as a paramedic, and failing to notify his EMSA probation monitor within 72 hours of his arrest . She also concluded that respondent violated Health and Safety Code section 1798.200, subdivision (c)(8), regarding respondent's possession of cocaine on November 14, 2014, and Health and Safety Code section 1798.200, subdivision (c)(9), regarding excessive use of or misuse of alcohol and drugs. Ms. Crawford concluded that, as a result, respondent demonstrates, "a lack of sound professional judgment that is relevant to a paramedic's fitness to perform his or her duties." (Complainant's Exhibit 6.)

22. Respondent testified on his own behalf.

Respondent admitted that prior to his arrest on November 14, 2014, he had been consuming alcohol, but does not recall the specific circumstances at the time of his arrest. Respondent became aware of his arrest only after being detained and jailed. Respondent also admitted that he knew the terms and conditions of probation that were imposed in the prior disciplinary action, and that consuming alcohol was a violation of probation.

With respect to the package containing a white powdery substance that was found in respondent's wallet, respondent testified that he was not aware of any substance in his wallet or that it was identified as cocaine and only became aware of it from the police report. Respondent testified that he had no idea how the package could have gotten in his wallet. When respondent's representative asked respondent if he had used cocaine on the night of his arrest, respondent testified, "not that I am aware of."

Respondent testified that he never consumed alcohol while at work or when he was subject to recall by the Los Angeles Fire Department.

23. Respondent did not have any witnesses testify on his behalf.

24. Respondent is 35 years old, single, resides with his fiancé and will soon be a father.

Aggravation Evidence

25. The current Accusation and Petition to Revoke Probation relates to the same type of conduct that resulted in respondent's prior discipline, i.e., the excessive consumption and abuse or misuse of alcohol. The most recent arrest, which was based in part on public intoxication (i.e., November 14, 2014), occurred little more than 15 months after the effective start date of respondent's probation (i.e., August 2, 2013).

Mitigation Evidence

26. Respondent submitted five letters of reference that pertain to his participation in recovery programs and his work ethic.

In a letter dated January 29, 2015, Steven Ely, M.D., noted that respondent was admitted to Hoag Memorial Hospital Presbyterian on November 24, 2014, and was scheduled to be discharged on January 30, 2015. Dr. Ely stated that respondent completed all assignments, attended 12-step program meetings, successfully completed the Primary Treatment Program, and completed 17 sessions in a Transitional Intensive Outpatient Program.

Jenny Hall, LMFT, is a clinical manager in the Chemical Dependency Center at Hoag Memorial Presbyterian. Ms. Hall provided a letter dated May 16, 2016, in which she echoed the comments made by Dr. Ely. She stated that respondent completed the Primary Treatment Program on December 22, 2014, and that after he was discharged from the Chemical

Dependency Recovery Center Program, he frequently visited the unit and reported that he was doing very well and continued to enjoy his sober lifestyle.

Jason Hurd is a Los Angeles County Fire Station captain who prepared an undated letter, on behalf of respondent. Captain Hurd had been respondent's immediate supervisor for three and one-half years when he prepared the letter. Captain Hurd acknowledged that although there were two incidents involving respondent's intoxication, respondent demonstrated his ability to be an excellent paramedic; that he provided patients with the utmost care, displaying compassion, curtesy and respect; and that he demonstrated leadership skills in and around the station. Captain Hurd stated that it would be a great loss to the Fire Department and the citizens of Los Angeles County if respondent would no longer be allowed to function as a paramedic.

Michael D. Kubler has been a firefighter for nearly 20 years and is one of respondent's co-workers. In an undated letter, Mr. Kubler stated that he has witnessed respondent's commitment to his position, advocacy for his patients, and that respondent was always willing to use his experience to assist and mentor other paramedics. Mr. Kubler believes that respondent should be allowed to "continue on his path so that he could be a benefit to his family, community, and the department."

Since November 2014, Trey Glennon has been respondent's "sponsor" in a 12-step recovery program. In a letter dated February 18, 2016, Mr. Glennon described respondent's dedication and progress in the recovery program and concludes that respondent is very dedicated to his career as a firefighter and even more so as a paramedic. Mr. Glennon has no doubt that respondent will continue to be active and strong in his recovery.

27. Respondent submitted a list of the approximately 75 recovery program meetings he attended between October 15, 2015, and May 16, 2016.

28. Respondent provided copies of his annual Performance Evaluation Narratives for his work as a Firefighter Paramedic. The evaluation narratives cover calendar years 2009, 2010, 2011, 2012, 2013, 2014, and 2015. Although the evaluations appear to be mostly proforma, in that there are duplicate narratives, they do not indicate that respondent's work is unsatisfactory or in need of improvement in any rated area. Respondent's annual ratings consistently show that respondent's performance is "competent" or "very good." In the summary statements included in the 2009 and 2010 performance evaluations, respondent's rater stated that respondent is "a very motivated Firefighter and Paramedic, a natural leader and well respected by the members of his station."

Rehabilitation

29. Respondent admits that he has made mistakes in the past and that in the future, he can only do his best to remain sober. Respondent stated he would willingly accept all results that may derive from this disciplinary matter.

30. Respondent admitted that he suffers from alcohol addiction, which he realized after waking up in jail, subsequent to his arrest on November 14, 2014. Prior to that time, respondent did not feel he had an addiction problem and felt that he could stop drinking on his own. Although respondent had to participate in a court-mandated diversion program after his first arrest in 2012, he stopped attending the program after the court's requirements were satisfied.

31. Respondent self-enrolled in an alcohol diversion program at Hoag Memorial Hospital in Newport Beach, which included a 72-hour detoxification period and ongoing monitoring for substance and alcohol use four days after his arrest in 2014. Respondent continues taking steps to abstain from alcohol, including participation in an Alcoholics Anonymous 12-step recovery program with a sponsor, which he attends at least twice a week. Respondent testified during the hearing that he has now been sober for 18 months and two days, and continues to routinely attend transitional and support group sessions at Hoag Memorial Hospital. He also participates in outreach programs to counsel and assist others with addiction problems.

32. Respondent testified that he was never intoxicated while performing duties as an EMT-P. In addition, respondent testified that since the start of the period of probation for his first offense and the date of his arrest in November 2014, he had abstained from consuming alcohol. Respondent stated that he consumed alcohol on November 14, 2014, because he was despondent after being notified that his father was diagnosed with cancer. Additionally, respondent testified that he has not consumed alcohol since the date of his most recent arrest.

33. More than one year has elapsed between the effective date of the prior disciplinary order (i.e., August 2, 2013) and the date of respondent's second offense (i.e., November 14, 2014).

34. Respondent has been and continues to be employed as a firefighter-paramedic with the Los Angeles Fire Department, which is a pre-hospital care provider. Respondent takes great joy in being a paramedic.

LEGAL CONCLUSIONS

Cause for Discipline and Termination of Probation

1. Cause does not exist for the Emergency Medical Services Authority to impose discipline on respondent's Emergency Medical Technician-Paramedic license pursuant to California Health and Safety Code section 1798.200, subdivision (c)(8), based on respondent's possession of a narcotic, dangerous drug or controlled substance, as set forth in Factual Findings 10 through 14, above.

2. Cause exists for the Emergency Medical Services Authority to impose discipline on respondent's Emergency Medical Technician-Paramedic license pursuant to California Health and Safety Code section 1798.200, subdivision (c)(9), based on respondent's addiction to the excessive use of or misuse of alcoholic beverages, as set forth in Factual Findings 7 and 10 through 14, above.

3. Cause exists for the Emergency Medical Services Authority to terminate respondent's period of probation and impose discipline on respondent's Emergency Medical Technician-Paramedic license based on respondent's violation of the terms and conditions of probation, as set forth in Factual Findings 7 through 20, above.

Applicable Statutes and Regulations

4. Health and Safety Code section 1798.200 states, in relevant 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 license holder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c). Proceedings against any EMT-P license or license holder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(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 holder or license holder under this division:

[¶] . . . [¶]

(8) Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.

(9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

5. California Code of Regulation, title 22, section 100173 states, in relevant part:

(a) Any proceedings by the Authority to deny, suspend or revoke the license of a paramedic or place any paramedic license holder on probation pursuant to Section 1798.200 of the Health and Safety Code, . . . shall be conducted in accordance with this article and pursuant to the provisions of the Administrative Procedure Act, Government Code, Section 11500 et seq.

[¶] . . . [¶]

(d) The administrative law judge shall use the “EMS Authority Recommended Guidelines for Disciplinary Orders and Conditions of Probation”, dated July 26, 2008, as a guide in making any recommendations to the Authority for discipline of a paramedic applicant or license holder found in violation of Section 1798.200 of Division 2.5 of the Health and Safety Code.

6. California Code of Regulation, title 22, section 100175, subdivision (a), states:

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.

7. California Code of Regulation, title 22, section 100176 states, in relevant part:

(a) At the discretion of the Authority, the Authority may issue a license subject to specific provisional terms, conditions, and review. When considering the denial, placement on probation, suspension, or revocation of a license pursuant to Section 1798.200 of the Health and Safety Code . . . , the Authority in evaluating the rehabilitation of the applicant and present eligibility for a license, shall consider the following criteria:

(1) The nature and severity of the act(s) or crime(s).

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (1) or (2) of this section.

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

- (6) Evidence, if any, of rehabilitation submitted by the person.

Disposition

8. In order to discipline respondent's license based on an Accusation, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853,855-856.)

“Clear and convincing evidence” must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing so long as there is a “high probability” that it is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

9. To discipline respondent's license based on a Petition to Terminate Probation, complainant bears the burden of proving the allegations by a preponderance of the evidence. (*Sandarg v. Dental Bd. of Calif.* (2010) 184 Cal.App.4th 1434,1440-1441.) The term preponderance of the evidence means “more likely than not” (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378,1388), or “evidence that has more convincing force than that opposed to it.” (*People ex rel Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567).

10. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) The provisions of the Health and Safety Code relevant to these proceedings were designed to insure the privileges granted under an EMT-P license are not exercised in derogation of the public interest. (*Ready v. Grady* (1966) 243 Cal.App.2d 113, 117; *Goldberg v. Barger* (1974) 37 Cal.App.3d 987, 996.)

In *Goldberg v. Barger*, supra, at p. 996, the Court of Appeal defined “public interest” as “(s)omething in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.” (Citation omitted).”

11. Addiction to and misuse of alcoholic beverages is relevant to an EMT-P's fitness and competence to practice prehospital emergency medical care.

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the

ability to judge speed, dimensions, and distance. (See *Burg v. Municipal Court* (1983) 35 Cal. 3d 257, 263, 267.)

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. . . . [¶]. . . [¶]

For a nexus to exist between the misconduct and the fitness or competence to practice medicine, it is not necessary for the misconduct forming the basis for discipline to have occurred in the actual practice of medicine. . . .

Substantial legal authority provides that conduct occurring outside the practice of medicine may form the basis for imposing discipline on a license because such conduct reflects on a licensee's fitness and qualifications to practice medicine.

(*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770-771.)

12. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

A respondent must present evidence both of a state of mind and a state of facts showing he has been rehabilitated. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811; *In re Adreani* (1939) 14 Cal.2d 736, 749.) The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Acceptance of responsibility is a necessary prerequisite to establishing rehabilitation.

13. A respondent bears the particular burden of establishing rehabilitation sufficient to compel his licensure. (*In the Matter of Brown*, supra, 2 Cal. State Bar Ct. Rptr. at p. 315.)

14. Complainant has met his burden by clear and convincing evidence to a reasonable certainty that respondent's EMT-P license is subject to discipline based on respondent's violation of Health and Safety Code section 1798.200, subdivision (c)(9). (Factual Findings 11, 15 through 17, 22 and 30.)

15. Complainant has met his burden by a preponderance of the evidence that respondent violated the terms and conditions of his three-year period of probation, which became effective on August 2, 2013. (Factual Findings 8, 9, 18, 19 and 25.)

16. Respondent is to be commended for realizing the gravity of his alcohol addiction and the impact it can have on his licensure as an EMT-P. In addition, he is to be

commended for the steps he is taking to understand and control his addiction, so that he can continue to serve the public as a firefighter-paramedic.

17. Based on the Factual Findings and Legal Conclusions as a whole, it is consistent with the public interest to allow respondent to maintain his EMT-P license by extending the term of probation with appropriate terms and conditions. In addition to the standard terms and conditions of probation, the public will be best protected by adding conditions that specifically pertain to respondent's use of and addiction to alcohol, including psychiatric evaluation to better insure continued public safety.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Emergency Medical Technician-Paramedic license number P26640 issued to respondent Jeffrey M. Wingard is revoked. However, such revocation is stayed and the respondent is placed on probation for 5 years, commencing on the effective date of this Decision, upon the following terms and conditions:

1. Actual Suspension:

EMT-P license number P26640, issued to respondent Jeffrey M. Wingard is suspended for a period of 15 days, commencing on the effective date of this Decision.

2. Probation Compliance:

Respondent shall fully 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.

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

3. Personal Appearances:

As directed by 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 EMSA in writing of any EMS employment. Respondent shall inform 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 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 of prehospital personnel.

6. Notification of Termination:

Respondent shall notify 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 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 EMSA, in writing, of the date of such departure and the date of return to California, if respondent returns.

Any and all notifications to 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 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 EMSA a full and detailed account of the circumstances thereof. 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 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, 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 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 EMSA shall be bound by any admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

11. Abstinence from Drug Possession and Use:

Respondent shall abstain from the possession, injection or consumption by any route of all controlled substances, dangerous drugs, or any drugs requiring a prescription unless prescribed under federal or state law as part of a documented medical treatment. Within fourteen days of obtaining such a prescription, respondent shall ensure that the prescribing professional provides EMSA a written report identifying the medication, dosage, the date the medication was prescribed, respondent's diagnosis, and the date the medication will no longer be required. This report must be provided to EMSA directly by the prescribing professional and respondent shall authorize the disclosure of such information to EMSA.

If respondent has a lawful prescription when initially placed on probation, this same report must be provided within fourteen days of the commencement of probation.

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

12. Abstinence from the Use of Alcoholic Beverages:

Respondent shall abstain from the use of alcoholic beverages.

13. Biological Fluid Testing:

Respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by EMSA or its designee. Respondent may use a lab pre-approved by EMSA or may provide to EMSA the name and location of an independent laboratory or licensed drug/alcohol testing facility for approval by EMSA. EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and drug/alcohol testing facilities. When EMSA requests a random test, 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 EMSA requests a random test, respondent shall ensure that any positive test results are conveyed telephonically by the lab to EMSA within 48 hours, and all written positive or negative results are provided directly by the lab to EMSA within 10 days. Respondent shall be responsible for all costs associated with the drug/alcohol screening.

At EMSA's sole discretion, EMSA may allow the random drug testing to be conducted by 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 EMSA in the time frames described above.

14. Drug/Alcohol Treatment Program:

Within 30 days of the effective date of this decision, respondent shall enroll and participate in a drug/alcohol treatment program approved by EMSA. Respondent shall participate in the program for a minimum of six (6) months and until appropriate medical supervision determines that further treatment and rehabilitation is no longer necessary. The treatment program may be a combined in-patient/out-patient and aftercare program. The program shall include at least the following elements: chemical-free treatment philosophy, individual and/or group counseling; random, documented biological fluid testing; participation in support groups; education about addictive disease; adherence to a 12-step recovery program philosophy or equivalent; and written documentation of participation in a 12-step recovery group or equivalent.

If respondent voluntarily withdraws from the drug/alcohol treatment program, is expelled from the program, or otherwise fails to successfully complete the program, such withdrawal, expulsion or failure to successfully complete the program shall constitute a violation of probation by respondent.

Respondent shall be responsible for all costs associated with such drug/alcohol treatment program.

15. Psychiatric Evaluation:

Within 60 days of the effective date of this decision, and on a periodic basis as specified by a psychiatrist certified by the American Board of Psychiatry and Neurology, or other specialist as determined by the director of EMSA, respondent shall submit to a psychiatric evaluation. The psychiatrist must be approved by EMSA prior to the evaluation.

Respondent shall be responsible for all costs associated with the evaluation. In addition, respondent shall be responsible for all costs associated with any treatment or therapy that respondent elects to receive.

EMSA shall have the sole discretion to determine if respondent may continue to practice as a paramedic until such time that the psychiatrist evaluates and determines that respondent is mentally fit to practice safely as a paramedic.

DATED: June 9, 2016

DocuSigned by:

robert s. eisman

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ROBERT S. EISMAN

Administrative Law Judge

Office of Administrative Hearings