

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

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

Enforcement Matter No.: 16-0139  
OAH No.: 2017091088

**NATHAN S. ROWELL**  
License No. P34267

**DECISION AND ORDER**

Respondent.

The attached Proposed Decision is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective 30 days after the date below. It is so ordered.

DATED:

May 31, 2018



Howard Backer MD, MPH  
Director  
Emergency Medical Services Authority

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

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

NATHAN S. ROWELL,  
EMT-P License No. P34267

Respondent.

Case No. 16-0139

OAH No. 2017091088

**PROPOSED DECISION**

This matter was heard before Dena Coggins, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on May 7, 2018, in Sacramento, California.

Complainant Sean Trask, Chief, EMS Personnel Division of the Emergency Medical Services Authority (EMSA), was represented by Cheryl Hsu, Staff Counsel.

Respondent Nathan Rowell (respondent) was present and represented by Nicole Valentine, Attorney at Law.

Evidence was received, the record was closed, and the matter was submitted for decision on May 7, 2018.

**FACTUAL FINDINGS**

1. On November 7, 2014, EMSA issued respondent Emergency Medical Technician-Paramedic (EMT-P) License No. P34267. The license will expire on December 31, 2018, unless renewed or revoked.

2. On September 29, 2017, complainant acting solely in his official capacity filed the Accusation and Petition to Terminate Probation in this matter based upon a conviction respondent received for driving under the influence of alcohol (DUI) while his EMT-P license was on probation.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law

Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

*Prior Discipline*

4. On April 9, 2014, respondent filed an application for licensure as an EMT-P with EMSA. Respondent's application was denied and respondent appealed. Complainant filed a Statement of Issues against respondent seeking a decision upholding the denial of respondent's license application alleging that respondent abused alcoholic beverages and violated the legal prohibition against driving while intoxicated. Specifically, complainant alleged on May 5, 2011, respondent's vehicle was stopped by an officer, after he was swerving into another lane and almost hit a parked car. Respondent failed a field sobriety test and admitted to drinking alcohol prior to driving. On June 30, 2011, in Miami County Superior Court, Case No. 2011TRC03297, respondent pled guilty to reckless operation, willful or wanton operation on street or highway.<sup>1</sup>

5. Effective November 5, 2014, pursuant to a Stipulated Settlement Agreement and Disciplinary Order entered into by respondent and EMSA, respondent was issued an EMT-P license. The license was immediately revoked. However, the revocation was stayed and respondent's license was placed on probation for three years with certain terms and conditions. The relevant terms and conditions are as follows, in pertinent part:

(1) **Probation Compliance:** Respondent will fully comply with all terms and conditions of this agreement. . . .

[¶] . . . [¶]

(6) **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. . . .

[¶] . . . [¶]

---

<sup>1</sup> Respondent referred to this conviction as a "wet reckless" throughout the hearing.

### 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 the actual license suspension or revocation. Upon initiation of such action, or the giving of notice to Respondent of the Authority's intent to initiate such an action, the probationary period shall remain in effect until the Authority has adopted a decision on the matter. . . .
- (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 actual 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.

(Emphasis in the original.)

#### *January 17, 2017 DUI Conviction*

6. On January 17, 2017, in the Shasta County Superior Court, Case No. 16TR6126, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving while under the influence of alcohol with a blood alcohol level of 0.08 percent or higher, a misdemeanor. Respondent admitted to having a blood alcohol content of .18 percent, pursuant to Vehicle Code section 23578, a special allegation. Respondent was sentenced to 48 hours in jail. He was placed on 36 months of probation, and he was ordered to pay about \$2,465 in fines and fees. Also, respondent was ordered to report to a First Offender DUI program, submit to chemical testing for the use of alcohol when requested by any peace officer, and attend the Victim Impact Panel program.

7. The circumstances underlying the conviction occurred in the afternoon on May 28, 2016. An officer responded to call to a curved roadway that travels through Shasta-Trinity National Forest in Shasta County. The roadway is bordered by dirt shoulders, and dirt and rock embankments. Respondent's vehicle crashed into a dirt and rock embankment, and was located in a dirt and gravel turnout along the eastern shoulder of the roadway, north of the collision location, when a California Highway Patrol officer arrived on scene. The vehicle had damage to the front license plate and the right rear wheel was flat. Respondent's wife was at the scene in her own vehicle when the officer arrived. Respondent told the officer he did not have a license in his possession, but the officer located the license inside respondent's wallet in his vehicle. Respondent told the officer he drank two bottles of beer within the last two hours and said he had not been drinking since the accident. Respondent said he was not the driver of the vehicle at the time of the collision, but claimed Don Johnson

was the driver and that Mr. Johnson had left to find help.<sup>2</sup> Respondent gave the officer a phone number for Don Johnson, which the officer determined was the phone number for a local hospital. Respondent claimed he was sitting on top of toolboxes in the passenger seat at the time of the collision.

At the scene, the officer noticed respondent's eyes were red and watery, and his speech was slurred. The officer detected the odor of an alcoholic beverage emitting from respondent. Respondent showed impairment on field sobriety test questions and during field sobriety tests that were administered by the officer. Respondent later admitted he was the driver of the vehicle. Respondent was arrested for operating a motor vehicle while under the influence of an alcoholic beverage. Respondent's blood alcohol level content was .18 and .19 percent. Respondent called the officer at work after his arrest, but the officer did not return his call.

### *Respondent's Evidence*

8. Respondent is 30 years old. He is employed as a senior paramedic at Mount Shasta Ambulance Service, and he has worked for the company for three years. He previously worked as a paramedic and emergency medical technician in Ohio. Respondent is a licensed paramedic in California and Ohio, and has obtained national certification as an emergency medical technician. Respondent testified that he loves his job and wants to continue helping people. Respondent is married and has four children.

9. Respondent has completed numerous educational courses relating to his profession. For example, he completed the cognitive skills evaluations in accordance with the curriculum of the American Heart Association Advanced Cardiovascular Life Support and Pediatric Advanced Life Support, in or about October 2017, and November 2017, respectively. He also completed the International Trauma Life Support Advanced Provider Course in January 2018, and 16 hours of continuing education in March 2018.

10. Respondent testified about the circumstances surrounding his 2017 DUI conviction. On March 28, 2016, respondent finished working a stressful 96-hour shift, with only four hours of sleep the prior night. At the end of his shift, he needed some time to himself, so he decided to go on a day-long fishing trip. He was upset because he and his wife argued about his plans for the day that did not include going to garage sales with her. He planned to drink alcohol while on his fishing trip. Respondent drank a beer before he left and purchased a pint of whiskey at a gas station along the way. When he arrived at the lake, he unpacked his fishing gear and drank another beer. He decided to drive to another area of the lake, and, on the way, he believes his tire hit a rock that caused him to lose control of the

---

<sup>2</sup> Respondent testified that Don Johnson was a fictitious name he gave the officer, based on an actor in the 1980s.

vehicle and collide into an embankment.<sup>3</sup> A passing motorist used his truck to pull respondent's vehicle out of the embankment. The motorist called respondent's wife to request her help. Respondent testified that he drank a large portion of whiskey on the side of the road while he waited for his wife to arrive; she was an hour away. Once she arrived, the responding officer arrived shortly thereafter.

Respondent admitted to being dishonest with the officer about not being the driver of the vehicle. He does not recall if he told the officer that he drank whiskey after the accident, but he acknowledged that no information about his consumption of whiskey appeared in the police report. According to respondent, he panicked because he was on probation when the officer arrived on scene. He acknowledged his lapse in judgment and recognizes he made bad choices. Respondent also admitted to subsequently calling the officer at work after his arrest, but the officer did not return his call. Respondent asserts he did not intend to get a professional courtesy when he reached out to the officer; rather, he was calling to apologize.

11. Respondent paid the court fees and fines associated with his 2017 DUI conviction. He completed the Victim Impact Panel program and enrolled in a six-month First Offender program, which he is expected to complete in May 2018. Respondent volunteered to submit to alcohol and drug testing offered by the First Offender program. Respondent submitted to three tests, and provided two test results at hearing, which were both negative for alcohol and drugs. Both tests were semi-random, as respondent was aware he would be tested at a program meeting, but was unaware of which date he would be tested. Respondent views the First Offender program as "eye-opening." No evidence was submitted regarding the results of the third test. Respondent remains on criminal probation until January 2020.

12. Respondent has abstained from alcohol use since March 28, 2016, the day he was arrested for the DUI. He testified that he used alcohol as a stress reliever, but now takes anti-anxiety medication to cope with stress. He has also become more involved in his congregation and has received counseling from the church elders relating to his misconduct.

13. Mark Towns, M.D., testified at hearing. He has been a hospitalist since 2007, working in internal medicine in several hospitals in Northern California. He received his bachelor's degree in chemistry and cell biology in 1999 and graduated from medical school at University of Michigan in 2003. He is board certified in internal medicine and addiction medicine/addiction psychiatry. He is the medical director of Towns Health Services, Inc. and Palm Tree Ranch, in-patient and outpatient addiction treatment programs. Dr. Towns holds a valid unrestricted medical license in California and has at least five years of experience in providing addiction evaluations of health professionals with substance abuse disorders and issues.

---

<sup>3</sup> The responding officer testified at hearing. Respondent did not tell the officer that a flat tire caused him to lose control of the vehicle before the collision.

Dr. Towns conducted an independent addiction consultation and assessment of respondent on November 9, 2017. Respondent informed Dr. Towns about the events that led to his conviction. Respondent told Dr. Towns that he drank two beers before driving and drank whiskey after the accident while he was waiting for his wife. Respondent also informed Dr. Towns that he voluntarily enrolled in a six-month DUI course. Dr. Towns diagnosed respondent with alcohol abuse (non-dependent) with intoxication not within the past 12 months. Dr. Towns further opined that respondent is a low risk for development of alcohol use disorder. Dr. Towns testified that his diagnosis would not change if he was aware respondent drank whiskey before driving, as opposed to while waiting for his wife.

14. Brian Witherell testified at hearing. Mr. Witherell has been the operations manager at Mount Shasta Ambulance Service for 12 years. He hired respondent and was aware respondent's license was on probation at the time he hired him. Mr. Witherell has never had concerns that respondent was under the influence of alcohol at work nor has he been approached with such concerns by respondent's coworkers or patients served by respondent. He described respondent's performance as good, and further described respondent as professional, conscientious, having integrity for his patients, and a hard worker. No disciplinary action was taken against respondent by Mount Shasta Ambulance Service when management learned of respondent's 2017 DUI conviction.

15. Rebecca Rowell testified at hearing. She has been married to respondent for four years. She has observed respondent drink on social occasions. He also occasionally has one or two beers while watching sports on the weekends prior to the incident resulting in his 2017 DUI conviction. She also testified that respondent has been under stress in connection with their two-month old baby who had serious medical issues at the time of delivery. However, respondent did not consume alcohol during that difficult time. Mrs. Rowell testified that the tire that blew out on March 28, 2016, had previously been patched because there was a problem with the tire.

16. Respondent submitted character reference letters from coworkers and colleagues. To the extent that the letter was admitted as administrative hearsay, the letter has been considered to the extent permitted under Government Code section 11513, subdivision (d). Respondent's coworkers and colleagues describe respondent as honest, kind, calm under pressure, thorough, and "an excellent paramedic who gives exemplary patient care."

### *Discussion*

17. The Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Disciplinary Guidelines) effective July 26, 2008, submitted by complainant and issued by EMSA, set forth the following rehabilitation criteria to consider when determining the appropriate level of discipline to be imposed on a licensee:

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.

18. Respondent is passionate about his work as a paramedic. He has obtained numerous certifications and attended many continuing education courses during his career. Respondent's employer is supportive of his continued work with the company and did not discipline him for his conduct that led to his 2017 conviction. Importantly, respondent has remained sober since May 28, 2016, even though his work and personal life have been stressful. He has sought medical care to address his anxiety, he has recommitted to his religion, and he does not have an alcohol use disorder. Respondent has taken positive steps in the right direction and his ability to remain sober for two years is commendable.

19. However, while his paramedic license was on probation in connection with a previous conviction resulting from drinking alcohol and driving, respondent, again, chose to drive while intoxicated. While no one was injured, the potential harm to the public was great. Respondent lacks insight into the seriousness of the incident and the potential harm that could have occurred. Even though respondent received prior warnings, by way of his 2011 conviction and the probation of his license by EMSA, he still made the decision to drive while intoxicated, showing extreme lack of judgment.

Only 16 months elapsed between the time respondent entered into the Stipulated Settlement Agreement in November 2014, and his choice to drive while intoxicated on March 28, 2016. He willfully violated the terms of his probation when he failed to obey state laws prohibiting driving while over the legal limit. EMSA and the public must have confidence that paramedics have sound judgment to immediately and appropriately react to emergency situations and recognize potential harm to the public in the execution of their job duties. Based upon respondent's violation of his EMSA probation and his conduct leading to the 2017 conviction, his lack of judgment is deeply concerning.

20. Although respondent is attending the First Offender DUI course, he was not able to provide insightful responses about what he has learned from the program. Based on respondent's testimony, he blamed his long work shift, lack of sleep, argument with his wife,



a rock in the roadway he may have hit before the collision, and the whiskey he claims he drank after he stopped driving as the reasons leading to his conviction. None of these excuses justify his decision to drive while intoxicated and shows respondent has not accepted responsibility for his conduct. Respondent's failure to accept responsibility for his actions demonstrates a lack of rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation"].)

21. More concerning is that respondent maintains his innocence despite his plea of no contest. Respondent's denial that he was driving while intoxicated is an attempt to impeach his conviction, which he may not do. Respondent's plea is conclusive evidence of guilt for the purpose of imposing administrative discipline or denial of licensure. (See *Arneson v. Fox* (1980) 28 Cal.3d 440, 449 [proof of a conviction "stands as conclusive evidence of [his] guilt of the offense charged."] Furthermore, the different versions of events respondent told to the responding officer compared to the version he told Dr. Towns and at hearing are most concerning. Respondent's inconsistent account of the events that took place leading to his 2017 DUI conviction show respondent is not credible, is not rehabilitated, and has not fully come to terms with the gravity of his misconduct.

22. In addition, although respondent is complying with the terms and conditions of his criminal probation, he will remain on probation until January 2020. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes . . . while on probation or parole."] A truer indication of rehabilitation is demonstrated by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

23. When all of the evidence is weighed and considered, respondent did not present sufficient evidence of rehabilitation to demonstrate it would be consistent with the public health, safety and welfare to impose any disciplinary action other than the immediate revocation of his paramedic license.

## LEGAL CONCLUSIONS

1. 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 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.

2. California Code of Regulations, title 22, section 100175 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 judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.

3. As set forth in Factual Findings 6, 7, and 19, complainant established 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). Therefore, cause exists to revoke respondent's probation and discipline his license based upon this violation.

4. As set forth in Factual Findings 6, 7, and 19, complainant established evidence that respondent violated Health and Safety Code section 1798.200, subdivision (c)(9) (excessive use or misuse of alcoholic beverage). Therefore, cause exists to revoke respondent' probation and discipline his license based upon this violation.

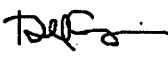
5. As set forth in Factual Findings 4 through 7, and 19, complainant established cause to impose discipline pursuant to the Petition to Terminate Probation in this matter.

6. Based upon Factual Findings 18 through 23, when all evidence is considered, including factors in aggravation, mitigation, and rehabilitation, respondent has not provided sufficient evidence of rehabilitation to ensure the that he does not pose a threat to public health, safety, or welfare at this time.

### ORDER

License Number P34267 issued to respondent Nathan Rowell is revoked.

DATED: May 24, 2018

DocuSigned by:  
  
10818D502AB344C...

---

DENA COGGINS  
Administrative Law Judge  
Office of Administrative Hearings