



BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

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

RICHARD NOLAN

License No. P13986,

Respondent.

EMS Authority Case No. 17-0243

OAH No. 2018031087

**PROPOSED DECISION**

Administrative Law Judge Perry O. Johnson, State of California, Office of Administrative Hearings, heard this matter on July 18, 2018, in Oakland, California.

Senior Staff Counsel Gail P. Heuer, Emergency Medical Services Authority, State of California, represented complainant Sean Trask.

Attorney at Law Helen Fong of the law offices of Goyette and Associates, Inc., represented respondent Richard Nolan, who was present throughout the administrative adjudication proceeding (hearing).

On July 18, 2018, the parties submitted the matter for decision, and the record closed.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On January 25, 2018, complainant Sean Trask (complainant) in his capacity as Chief, Emergency Personnel Division, Emergency Medical Services Authority, State of California (the Authority or the EMSA), signed the Accusation against respondent Richard Nolan (respondent).

Respondent timely filed a notice of defense and requested a hearing.

On July 18, 2018, the administrative adjudication proceeding ensued.

### *License History*

2. On November 27, 1997, the Authority issued respondent license number P13986 that permitted him to act as an Emergency Medical Technician-Paramedic (EMT-P) in the State of California. On approximately November 30, 2017, the Authority issued a recertification of the license held by respondent. The license is valid through November 30, 2019, unless revoked, suspended, or surrendered before that date.

### *Causes for Discipline*

#### RECORD OF CRIMINAL CONVICTIONS

3. On July 14, 2017, in the Superior Court in and for the County of Sonoma, under case number SCR-699561-1, by his plea of no contest, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with .08 percent or more blood alcohol content, DUI, or drunk driving), a misdemeanor. At the time of the entry of the conviction, the superior court accepted respondent's admission to having a prior DUI conviction, that is a violation of Vehicle Code section 23540 (a second DUI conviction within a seven-year span).

The certified copy of the record of conviction is conclusive evidence of the conviction.

4. The offense for which the superior court convicted respondent in July 2017 is substantially related to the qualifications, functions, or duties of an Authority licensee.

5. The offense of drunk driving evidences a present or potential unfitness of a licensed EMT-P to perform the functions authorized by his license.

6. The facts and circumstances of respondent's acts that resulted in the July 2017 DUI conviction are best gleaned from a police officer's Incident/Investigation Report, dated January 28, 2017.

Within the Incident/Investigation Report of the Windsor City Police Department, the law enforcement officer chronicled that at 9:50 p.m. on the night of Saturday, January 28, 2017, respondent was arrested for misdemeanor drunk driving in violation of subdivisions (a) and (b) of Vehicle Code section 23152. The narrative in the report sets out that the police officer was operating his patrol vehicle southbound on US Hwy 101 near the central portion of the City of Windsor, when he observed an SUV automobile erratically move across lanes of the highway. After the police officer activated his emergency lights the SUV exited the highway via an offramp, but rather than stopping, the vehicle proceeded to make a righthand turn onto a city street so that the police officer sounded the patrol car's air horn as the emergency lights continued to flash. Thereupon, the SUV, which was operated by respondent, came to a stop.

When the city law enforcement officer walked to the passenger side of the SUV, the police officer detected a strong odor of an alcoholic beverage coming from respondent's breath. The police officer observed respondent's bloodshot and watery eyes. When respondent exited the vehicle at the officer's request, respondent was unsteady on his feet. Upon police officer's questioning respondent regarding what alcohol related beverage he had consumed that day, respondent initially replied disingenuously that he did not know but he voiced, "I'm in trouble."

At the scene of the traffic investigation, the police officer administered a series of field sobriety tests (FSTs). His failure of various FSTs led to respondent undergoing Preliminary Alcohol Screening (PAS) tests, which identified respondent to exhibit a blood alcohol content level (BAC) of 0.177 percent at 10:06 p.m. When respondent failed the FSTs and the PAS tests, he was arrested and transported to the local centralized law enforcement site for processing drunk drivers. At the Sonoma County Sheriff's Office Main Adult Detention Facility, respondent gave additional chemical breath test results that showed him to exhibit a 0.16 percent BAC at 10:31 p.m. and a 0.17 percent BAC at 10:34 p.m., on the subject Saturday night. (All of the breath samples indicated respondent to have BAC levels at approximately two times the "legal limit" of 0.08 percent so that he was determined by law enforcement personnel to evidence alcohol intoxication; and, therefore he was not safe to operate a motor vehicle at the time of his arrest.)

7. As a consequence of respondent's conviction in July 2017, the superior court suspended imposition of sentence and granted respondent a conditional sentence for a term of 36 months (three years).

The terms and conditions of the conditional sentence included an order that respondent obey all laws and to be of good conduct. The superior court further ordered respondent to pay fines and fees in the total amount of more than \$2,390. The superior court ordered respondent not only to stay out of places where alcoholic beverages were the primary item of sale (that is, bar and liquor store), but also to not drive with any alcohol in his system. In addition, respondent was ordered to enroll within 21 days of the court proceeding, and to successfully complete an 18-month Multiple Offender Drunk Driver counseling program, with the court referring him to the Neighborhood House of North Richmond. In lieu of an additional period of jail incarceration, the superior court directed respondent to complete 28 days of inpatient treatment at an alcohol abuse rehabilitation facility. And, for an 18-month period from the commencement of the conditional sentence, respondent was directed not to operate a motor vehicle unless the vehicle was equipped with a "functioning, certified ignition interlock device."

#### *Matters in Aggravation*

8. Notwithstanding the recent July 2017 DUI conviction, respondent has a record for an earlier DUI conviction as well as one other alcohol abuse related conviction.

a. On March 18, 2011, in the California Superior Court in and for the County of El Dorado, under case number 11CRM0121, respondent was convicted of violating Vehicle

Code section 23152, subdivision (a), (driving under the influence of an alcoholic beverage), a misdemeanor. As a result of the March 2011 conviction, the superior court placed respondent on a summary probation for a period of four years. The terms and conditions of the summary probation included an order that respondent spend two days in county jail. Also, the superior court ordered respondent to enroll and complete a First Offender Drunk Driver counseling program, which was to span three months.

The March 2011 DUI conviction related to respondent's arrest on January 15, 2011, when he was arrested by a California Highway Patrol Officer in El Dorado County. During a skiing weekend, respondent consumed an excessive amount of alcohol with friends. Upon being separated from his friends, respondent attempted to drive to a lodging site, but he was apprehended by a CHP officer. After being unable to perform the FSTs, respondent consented to PAS tests that showed him to have blood alcohol levels of 0.20 percent and 0.21 percent. A more definite breath test was performed after he was deposited at a jail facility. It revealed his blood alcohol levels at 0.20 percent and 0.19 percent.

In its Case Number 12-0277, the Authority issued an accusation, which was not dated. The accusation pertained to respondent's DUI conviction on March 18, 2011, in the El Dorado County Superior Court for driving under the influence of an alcoholic beverage. The accusation was grounded on two causes for discipline that were identical to the first two causes of discipline that underpin the accusation in this matter. In resolving the controversy relating to the 2012 accusation, respondent agreed with the Authority to terms and conditions of a Stipulated Settlement Agreement, dated May 30, 2012. The Stipulated Settlement Agreement resulted in a Decision and Order effective June 29, 2012. The Decision and Order placed respondent's license on probation for a period of three years, which was prescribed to end in late June 2015.

b. In 2008, respondent was arrested, and later convicted, of being drunk in public to a degree that he posed a danger to himself or others. The conviction entailed a one-year period of probation. The 2008 conviction resulted in the Authority imposing an administrative fine against respondent.

#### *Adverse Impact Upon Licensure by Reason of Alcohol-Related Convictions*

9. Since acquiring licensure, respondent has a record of experiencing two convictions pertaining to excessive consumption by him of intoxicating alcoholic beverages. Respondent's acts of drunk driving indicate unlawful conduct that has been dangerous or injurious to him, other persons, or the general public.

10. The Accusation in this matter was issued only two years, seven months after the end of the Authority's past prescribed probationary period imposed on respondent because of his 2011 drunk driving act and DUI conviction.

*Matters that Indicate Respondent Has Not Attained an Adequate Degree of Rehabilitation*

11. Respondent's last drunk driving conviction in late July 2017 occurred less than six months before the date of the Accusation in this matter.

12. Respondent's 36-month period of probation, which relates to the last conviction in July 2017 in the Superior Court for Sonoma County, will not end until approximately July 14, 2020.

13. Respondent has not acquired an order of expungement under Penal Code section 1203.4 for either his past drunk driving conviction that occurred in March 2011 or his 2008 conviction for public intoxication.

14. The record for this matter lacks a written report, from an addictionology medical treatment expert or other competent medical evaluator, which sets out an objective assessment regarding respondent's disposition for sobriety and good judgment as well as an absence of current signs of an addiction for the consumption of alcoholic beverages.

15. Since his conviction in July 2017 for drunk driving, respondent has not engaged in significant and conscientious involvement in community, religious, or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

16. At the hearing of this matter, respondent gave vague and imprecise accounts of his participation in the behavior modification objectives and precepts of Alcoholics Anonymous (AA). Among other things in describing a sponsor with whom he was first associated at an AA facility in the Santa Rosa area, respondent expressed that that person had "judged" him. (Respondent either ignorantly misconstrued, disdainfully rejected, or pridefully misconceived the role of the sponsor<sup>1</sup> in the AA mission. Respondent's testimony shows his poor appreciation of the critical role of an AA "sponsor." And, if respondent had been unsatisfied with the aura of the first assigned sponsor, he offered no rational reason for his inability to have sought out and then identified another individual to act as a sponsor. Moreover, respondent's description of his attendance at AA meetings suggests that he has taken a backseat observer role and that he has not been wholly committed to the AA 12-Step program.)

Currently, respondent does not associate with an AA sponsor; and, he has not collected "chips" upon reaching milestones in the AA behavior modification program. Moreover, respondent unpersuasively testified that he has attained Step-Four of the AA "12-Step" program's objectives, and that he has been "working" on Step Five through Step Nine.

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<sup>1</sup> In the AA scheme, a sponsor acts as a "sobriety mentor" and an "accountability partner" to the AA participant. (Aaron C., *All Twelve Steps of the Twelve Steps of Alcoholics Anonymous: Guide, History and Worksheets*, Chapter 22.). "An AA sponsor is a person who has been abstinent for a long period and who is prepared to support a newly abstinent member. The sponsorship idea is an integral part of the Alcoholics Anonymous set up, and part of its social support network." (*The Alcoholism Guide*, [www.thealcoholism-guide.org](http://www.thealcoholism-guide.org).)

And, at the hearing of this matter, respondent failed to present documentary proof (attendance record, letter from program coordinator, or sworn statements by other attendees of meetings that respondent attended) that he has faithfully attended, and sought “membership” in the AA program offered at El Sobrante Fellowship.

#### *Matters in Mitigation and Respondent's Background*

17. Respondent demonstrates himself to be an intelligent and calculating individual.

18. Since approximately 2002, the Fire Department for the City and County of San Francisco has employed respondent as a Firefighter/Paramedic.

19. Respondent has never experienced any adverse personnel action as an employee of San Francisco Fire Department.

20. In late January 2017, when he was arrested for drunk driving, respondent was emotionally upset and grieving due to the then recent sudden death of his mother. In addition, he was impacted by a series of “bad loans,” which led to him being forced to sell his house in the Santa Rosa area. Moreover, he was essentially homeless due to the sale of his former primary residence that he had occupied for a period of years. His state of homelessness had spanned the period of August 2016 to January 2017.

21. On the day of his arrest, respondent has a period of being off duty and found himself in a state of loneliness. Hence, he turned to consuming alcohol as relief from his emotional upheaval and then he entered his vehicle to drive on Saturday night in late January 2017.

#### *Matters in Rehabilitation*

22. Respondent expresses grave distress and remorse for his most recent drunk driving offense. He believably proclaims that following the January 2017 arrest for drunk driving, he experienced a “profound spiritual awakening,” which impacted him with thoughts that “something had to become different” in his life. Respondent acknowledges that his past drinking-related criminal offenses cast a poor impression upon his good character and sound decision-making skills. He observes that following his first DUI he did not “get it,” but with the severity of the consequences stemming from the July 2017 DUI conviction he does “get it” so that now he is absolutely committed to perpetual sobriety and non-use of alcoholic beverages. Respondent is now committed to demonstrating that he possesses qualities of maturity, integrity, and good judgment.

23. Within hours of gaining release from jail following the January 28, 2017, arrest, one of the first telephone calls placed by respondent was to a fellow employee who advised him to call the “Stress Unit” for his employing agency. An “action plan” was created whereby respondent would take a period of leave from his employment in order to enroll in a residential alcohol abuse treatment facility.

24. On January 31, 2017, within a few days of the date for his last arrest for drunk driving, respondent enrolled in a 28-day residential treatment program presented by Mountain Vista Farms, an alcoholism and chemical dependency treatment program. The treatment program's facility is located in Glen Ellen, California. On March 2, 2017, he completed the therapy as designed to treat addictions. Because of his successful completion of the program, respondent became eligible for weekly aftercare group counseling sessions.

At the Mountain Vista Farms residential facility program, respondent discovered that he is a classic binge drinking alcoholic. The program taught respondent stress management skills, coping mechanisms, and relapse prevention techniques. He acquired insights into being alert to seeking "help" when he is tempted to turn to consumption of alcoholic beverages.

25. At the hearing of this matter, respondent compellingly asserts that he now totally abstains from the use of alcoholic beverages. His last drink of an alcoholic beverage occurred on January 28, 2017, that is the date of his last DUI arrest. He poignantly claims that he realizes that he has a "problem" with abuse of alcoholic beverages. Respondent acknowledges that he has been impaired by binge drinking whereby many weeks may pass before he engages in excessive drinking to his detriment.

26. From March 3, 2017, until approximately August 2, 2017, respondent participated in the Santa Rosa "Newcomers Group's" Aftercare Alcoholic Anonymous (AA) meetings and classes on an average of two times each week.

Because in early August 2017, respondent purchased a house in Pinole, California, he transferred his attendance of AA meetings, during the week of August 4, 2017, El Sobrante Fellowship of El Sobrante, California.

27. With regard to his last conviction for drunk driving, respondent enrolled in the 18-month Multiple-Offender Alcohol Counseling Program on July 31, 2017, for the program's "education" component. Under the Multiple Offender program, respondent attended an "education" orientation and a "face-to-face" meeting with a counselor on August 7, 2017. Respondent has attended the education program and face-to-face meetings between two and three dates each month. As part of the educational component, respondent participated on August 26, 2017, "Victim Impact Panel" class in Richmond, California, as sponsored by Mothers Against Drunk Driving (MADD). (For the four months before the date for the hearing in this matter, respondent attended "face-to-face" interview on April 5 and 19, May 3, 17, and 31, June 14 and 28, and July 12, 2018.) (He has attended "education" session on July 31, August 7, 14, 21 and 28, and September 4, 2017. No "education" sessions have been attended for the 10 months immediately before the date of the hearing in this matter.)

On August 17, 2017, respondent began attending counseling groups on Thursday nights, two dates each month. (For the four months before the date for the hearing in this



matter, respondent attended “counseling group” session on April 12 and 26, May 10 and 24, and June 7 and 21, 2018.)

Respondent theorizes that the superior court-ordered Multiple Offender Drunk Driver counseling program will terminate in approximately July 2019.

28. On the date of the July 2017 conviction, respondent paid in full the fines and fees of more than \$2,390 to satisfy a court-imposed probation term.

29. On October 27, 2017, the installation of an Ignition Interlock System was installed on respondent’s personal vehicle. The device is monitored every four months. On November 29, 2017, during a monitor check, the oversight company, LifeSafer, noted a “power disconnect violation” for the Ignition Interlock System installed on respondent’s vehicle.

30. As of the date of the hearing, respondent participates in AA meetings at a rate of “a minimum of one” session each week, with a maximum of four to five meetings per week at the site in El Sobrante.

When he lived in the Santa Rosa area before August 2017, respondent attended two meetings each week. He proclaims that he contemplates attending AA meetings “forever” into the future.

31. In his employment with San Francisco Fire Department, respondent currently holds a job classification of H3 Firefighter/Paramedic. At the time of the hearing, he is currently assigned to a 24-hour shift that results in a 48.7-hour workweek. He works approximately nine days each month. (For the month of the hearing in this matter, respondent worked on July 5, 8, 11 and 16, 2018. For the immediate past month, he had worked on June 4, 7, 10, 15, 18, 19, 21, 28, and 29, 2018.)

Respondent considers himself to be an “exceptional” paramedic employee.

Respondent credibly testified that he has never used alcoholic beverages as a firefighter/paramedic.

32. Since March 2017, respondent has completed no less than nine separate EMS training courses through the San Francisco Fire Department’s managed continuing education program (CE). For that period of time, respondent completed 22 CE course hours for courses titled, “Alternate Destination Training: Sobering Center,” “EMS Amputation Injuries-Advanced,” “EMS Workplace Stress,” “EMS Altitude Emergencies,” “EMS Thoracic Emergencies Advanced,” “EMS Asthma-Advanced,” “Active Shooter 2016-2017,” “Gurney Training,” “EMS Special Challenges in Patient Assessment.”

Also, respondent has completed several CE courses to remain proficient as a San Francisco Firefighter.

33. Respondent has the admiration, respect, and support of many individuals with whom has maintained long-term familial and friendship relations. In addition to letters offered by persons giving testimony at the hearing of this matter, respondent offered five<sup>2</sup> letters from individuals with whom has had long-term interpersonal relationships. The authors of the letters consistently describe respondent as being devoted and thoroughly accomplished in performing various tasks, responsibilities, and functions required of an EMT-paramedic who is dedicated to his profession. And, those persons present poignant recollections of dealings with respondent.

*Witnesses in Mitigation and Rehabilitation*

34. Respondent has the respect, admiration, and support of close family members and fellow firefighters and a paramedic. The following five individuals offered compelling and persuasive testimony at the hearing as follows:

- a. Ms. Christine M. Harris is respondent's oldest sister.

Ms. Harris corroborates that at the time of respondent's last DUI arrest, he had faced a set of stressors, including the then recent death of their mother and that because of financial burdens respondent had sold his house. Respondent was alone and living from his personal vehicle.

Ms. Harris is aware of respondent having grown up in a family where the father and other male relatives suffered with alcohol dependence problems. Over the years, Ms. Harris has been aware of respondent's infrequent, yet distressing difficulties with excessive consumption of alcoholic beverages.

Immediately after his last DUI arrest, respondent fled to the home of Ms. Harris. At their initial meeting, Ms. Harris heard respondent make statements and admissions that he had never uttered in the past prior to that date in late January 2017. Respondent proclaimed that with his alcohol abuse, his life was in disarray. Ms. Harris heard respondent voice that he wished to end his troubles with alcohol abuse that his misconduct could cause him to lose his employment as an EMT-paramedic with the San Francisco Fire Department. Respondent declared to his sister that he "needed help" and that he was "ready" for rehabilitation therapy.

Since the beginning of respondent's recent course of rehabilitation, which followed the conclusion of the 28-day residential treatment program with Mountain Vista Farms,

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<sup>2</sup> A letter, dated March 2, 2017, by Lisa Kidd, Operations Director, Mountain Vista Farm; a letter, dated March 7, 2018, by Eric Leal, Captain with the San Francisco Fire Department; a letter, undated, by Erik Bernecker, Ph.D.; a letter, dated March 8, 2018, by Myra Gueco Bernecker, Ph.D.; a letter, undated, Stephen J. Nolan, who is respondent's brother; and, a letter, undated, Matthew J. Ellis, Director, Business Development, Sonoma Raceway

Ms. Harris is aware that respondent exudes a new positive aura. He projects a disposition of having had a weight lifted from him with moving away from alcoholic beverages. Respondent has been more interactive with family members, including the children of Ms. Harris.

Of importance in the perspective of Ms. Harris is respondent's dedication to attending AA meetings and the counseling related to the court-imposed 18-month multiple offender program.

Ms. Harris notes that with respondent's current involvement with his recovery program and he has shown a willingness to give positive accounts to his family of his work as a paramedic.

Ms. Harris is aware that respondent is devoted to the residents of the San Francisco Tenderloin area to which he provides services as an EMT-paramedic.

Ms. Harris provided a letter that was received into evidence. The letter vividly reports the important impressions formed by Ms. Harris regarding respondent's progress in overcoming his past troubles with abuse of alcoholic beverages. Among other things, Ms. Harris knows that respondent's January 2017 arrest was respondent's second DUI, however, in her view his recent arrest has resulted in a different outlook for respondent, who now proclaims a need for help in avoiding relapse. The letter by Ms. Harris underscores her understanding of respondent's awareness that he has the "disease" of alcoholism to which he has been powerless. Respondent knows that he must have the outside power of others to attain full rehabilitation.

b. Mr. Damon Harris is married to respondent's sister, Christine. Mr. Harris has known respondent for approximately 17 years.

Mr. Harris spent 28 years as a sergeant with the Alameda County Sheriff's Department. He has been retired as a deputy sheriff approximately four years.

Mr. Harris has utmost respect for respondent's commitment as a "first responder." Respondent has always given the image of being a very serious professional who is devoted to the mission of a prehospital medical worker as an EMT-paramedic.

Mr. Harris is aware of respondent's efforts in overcoming his history of abuse of alcoholic beverages. There have been occasions that Mr. Harris has transported respondent to counseling programs or AA meetings. Mr. Harris has noticed respondent's change attitude of exhibiting remorse for his past bad conduct as a DUI offender. Respondent, however, has shown a very positive outlook regarding his rehabilitation from his past unlawful conduct in abusing alcoholic beverages.

Mr. Harris wrote a detailed letter that was received into evidence. The letter supports the strong support of respondent as Mr. Harris articulated at the hearing of this matter.

As a sergeant deputy sheriff, Mr. Harris described his experience with law enforcement officers who experienced drunk driving convictions; yet those officers recovered from the misconduct of excessive, unlawful consumption of alcoholic beverages so as to resume very productive careers.

Mr. Harris provided very important insight into respondent's past use of alcoholic beverages. He noted that over more than a decade, he attended various family and social functions with respondent. And on those festive occasions, Mr. Harris has no recollection of respondent having overindulged in the use of intoxicating substances. In fact, Mr. Harris has never saw respondent consume any alcoholic beverages. Hence, Mr. Harris has inferred that respondent seemingly resorted to binge drinking.

c. Ms. Diane Nolan Miller is another sister of respondent. She is 11 months older than respondent.

Shortly after respondent was released from jail confinement following his January 28, 2017, drunk driving arrest, Ms. Miller received respondent's telephone call expressing his regret for having "let down" his sister. He planned to travel to the home of their older sister, Ms. Harris, to create a plan. Later, Ms. Miller learned that after respondent had taken advice from family members and gained counseling from management personnel with his employer, respondent embarked on an enrollment in a 28-day residential facility confinement to treat his history for abuse of alcoholic beverages. Because she lived in close proximity to the premises of Mountain Vista Farms, Ms. Miller resolved to visit respondent during his treatment and counseling confinement.

Like respondent, Ms. Miller has personal insight into the impairment brought by alcohol abuse. For a period of 23 years, she has been clean and sober from excessive consumption of alcoholic beverages. Ms. Miller is a proponent of being transparent as well as instructive with regard to methods of acquiring recovery from addiction behaviors by persons who abused alcoholic beverages.

Ms. Miller notes that respondent holds himself as being a "private" individual who has not always been receptive to receiving advice from Ms. Miller on topics pertaining to coping with excessive use of alcoholic beverages. But, Ms. Miller has inserted herself into respondent's recovery steps. Ms. Miller knows that in the past respondent went up to seven years on a path to recovery; but, he failed in fully embracing the sobriety and he relapsed into bad habits of turning to alcoholic beverages.

Currently, Ms. Miller appreciates that respondent has finally accepted that he is an alcoholic. And, Ms. Miller has heard respondent proclaim that he has been powerless in overcoming his alcoholism alone. Now, she believes that respondent has been rendered humble by his realization that he is in fact an alcoholic.

Ms. Miller offered a letter into the record of this proceeding. Her written comments and observations of respondent were credible and poignant.

d. Mr. Chadwick Clark Ertola works as a Lieutenant with the San Francisco Fire Department with a duty station at Station Three, which serves the Tenderloin area of the city. He has known respondent since approximately April 2009, when the witness came to the station, where respondent had already been assigned for some time.

When Mr. Ertola was the supervisor of Engine Three, Mr. Ertola served in a direct line management position regarding respondent, who acted as the engine's assigned EMT-paramedic.

Soon after respondent's arrest in January 2017 for his DUI offense, Mr. Ertola heard directly from respondent about his criminal conduct. In addition, Mr. Ertola has long known about respondent's 2011 DUI offense. But, Mr. Ertola has seen respondent to be much more serious regarding his recent DUI in the current level of intensity in addressing his abuse of alcoholic beverages. Respondent's heightened commitment to overcoming his problems with alcoholic beverages follows respondent's past admissions to Mr. Ertola in 2011 that he knew that he was an alcoholic.

Mr. Ertola proclaims that even though Engine Three has several top-flight EMT-paramedic members, respondent has shown himself to be among the very best prehospital, onsite medical professionals encountered by the witness. Respondent is calm, collected under great pressures in effectively serving as an EMT-paramedic in the San Francisco's Tenderloin District that receives the highest number of calls for medical assistance, which may number as many as 40 incidents during a single shift.

Mr. Ertola knows of no occasion when respondent ever appeared to be under the influence of any alcoholic beverages. Respondent's level of high quality provision of services did not "fall off" after either his 2011 DUI arrest or the recent 2017 DUI misconduct. Respondent has "always" been professional, and he has been always ready for work for the San Francisco Fire Department. Respondent has given superb care and treatment to all patients encountered by him as the assigned EMT-paramedic.

Mr. Ertola pointed out that the loss of respondent's services due to license revocation would greatly harm the ability of the San Francisco Fire Department to meet the demands placed on its EMT-paramedic mission. Mr. Ertola notes the chronic shortage of skilled, committed personnel acting as EMT-paramedics for the city renders respondent a valuable asset to the Fire Department.

Mr. Ertola perceives that respondent shows that he cherishes his position as an EMT-paramedic. And, respondent continuously shows his commitment of meeting the demands of counseling and rehabilitation towards full sobriety.

In addition to being an outstanding EMT-paramedic, Mr. Ertola has found respondent to be a very skilled firefighter.

Mr. Ertola proclaims that he knows of no other EMT-paramedic professional that he would seek to have present at a serious injury/illness incident than respondent.

e. Mr. Jovan Nicholas Blake is employed as an EMT-paramedic by the San Francisco Fire Department. He is assigned to Station Three in the Tenderloin district of the city.

Mr. Blake works alongside respondent as an EMT-paramedic. Over approximately seven months before the date of the hearing, their respective work schedules were arranged so that they worked the identical work periods every day of the month. The arrangement is designated as “watch for watch” schedules. Their work activities occur in one of the most difficult area for medical calls due to the high number of very low-income, and destitute, residents.

Mr. Blake greatly admires respondent’s skills and work ethic as an EMT-paramedic. Respondent has instructed Mr. Blake that each and every patient encountered by Station Three EMT-paramedic personnel must receive the same “prime treatment” through the initial assistance and care to the resolution of the emergency call. Mr. Blake has heard respondent convey that every injured victim or ill patient must receive a blood pressure check, a vital sign assessment, and detailed questioning as to the nature of a medical emergency necessitating EMT-paramedic attention. Respondent lives by the precept that the persons encountered are not “to be judged” due to their circumstances or condition. Respondent frequently articulates that all persons encountered by the prehospital personnel should be shown the respect and treatment that each person deserves. Mr. Blake credibly opines that as a fellow EMT-paramedic, respondent is “nothing but the best.”

Mr. Blake has knowledge of respondent’s recent DUI offense and eventual conviction. Mr. Blake was impressed with respondent’s attitude of not making any excuses but rather voicing personal responsibility for the act of abusing alcoholic beverages and then driving a motor vehicle. Mr. Blake has been impressed with respondent’s faithful participation in AA classes.

Mr. Blake has never known of respondent being under the influence of any intoxicating substance. Over their time of working together, respondent has uniformly demonstrated his ability to work at the highest level of professionalism and efficiency. Respondent is a uniquely skilled EMT-paramedic, whose loss to Fire Department Engine Three by way of license revocation would result in a tremendous blow to the Fire Department and the patients served in the district.

Mr. Blake wrote a detailed and compelling letter, which was received into the record of this proceeding. The letter reflects the tremendous regard held by Mr. Blake for respondent’s ability as an EMT-paramedic.

### *Ultimate Factual Findings*

35. Respondent has engaged in unlawful conduct that operates as cause for revocation of licensure. The evidence in rehabilitation as offered by him, however, warrants a stay of revocation. But, because of his second DUI conviction for a total of three arrests

and convictions for alcohol related misconduct, the public interest must be protected with imposing on respondent a significant set of terms and conditions of probation that spans a lengthy period of years.

## LEGAL CONCLUSIONS

### *Statutory Authority*

1. California Health and Safety Code section 1797 states:

This division shall be known and may be cited as the Emergency Medical Services System and the Pre-hospital Emergency Medical Care Personnel Act.

2. California Health and Safety Code section 1797.1 states:

The Legislature finds and declares that it is the intent of this act to provide the state with a statewide system for emergency medical services by establishing within the Health and Welfare Agency the Emergency Medical Services Authority, which is responsible for the coordination and integration of all state activities concerning emergency medical services.

3. California Health and Safety Code section 1797.52 states:  
“Advanced life support” means special services designed to provide definitive pre-hospital emergency medical care, including, but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of specified drugs and other medicinal preparations, and other specified techniques and procedures administered by authorized personnel under the direct supervision of a base hospital as part of a local EMS system at the scene of an emergency, during transport to an acute care hospital, during interfacility transfer, and while in the emergency department of an acute care hospital until responsibility is assumed by the emergency or other medical staff of that hospital.

4. California Health and Safety Code section 1797.172 states in part:

(a) The authority shall develop and, after approval by the commission pursuant to Section 1799.50, adopt minimum standards for the training and scope of practice for EMT-P.

(b) The approval of the director, in consultation with a committee of local EMS medical directors named by the EMS Medical Directors Association of California, is required prior to implementation of any

addition to a local optional scope of practice for EMT-Ps proposed by the medical director of a local EMS agency.

(c) Notwithstanding any other provision of law, the authority shall be the agency solely responsible for licensure and licensure renewal of EMT-Ps who meet the standards and are not precluded from licensure because of any of the reasons listed in subdivision (d) of Section 1798.200. Each application for licensure or licensure renewal shall require the applicant's social security number in order to establish the identity of the applicant. The information obtained as a result of a state and federal level criminal offender record information search shall be used in accordance with Section 11105 of the Penal Code, and to determine whether the applicant is subject to denial of licensure or licensure renewal pursuant to this division. Submission of fingerprint images to the Department of Justice may not be required for licensure renewal upon determination by the authority that fingerprint images have previously been submitted to the Department of Justice during initial licensure, or a previous licensure renewal, provided that the license has not lapsed and the applicant has resided continuously in the state since the initial licensure . . . .

5. California Health and Safety Code section 1798.200, states in 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:

[¶] . . . [¶]. . .

(6) Conviction of any crime [that] 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.

*Regulatory Authority*

6. California Code of Regulations, title 22, section 100145, states in part:

(a) A paramedic may perform any activity identified in the scope of practice of an EMT-I in Chapter 2 of this Division, or any activity identified in the scope of practice of an EMT-II in Chapter 3 of this Division.

(b) A paramedic shall be affiliated with an approved paramedic service provider in order to perform the scope of practice specified in this Chapter.

(c) A paramedic student or a licensed paramedic, as part of an organized EMS system, while caring for patients in a hospital as part of his/her training or continuing education under the direct supervision of a physician, registered nurse, or physician assistant, or while at the scene of a medical emergency or during transport, or during interfacility transfer, or while working in a small and rural hospital pursuant to Section 1797.195 of the Health and Safety Code, may perform the following procedures or administer the following medications when such are approved by the medical director of the local EMS agency and are included in the written policies and procedures of the local EMS agency. . . .

7. California Code of Regulations, title 22, section 100175, provides in part:

(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 . . . , 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. . . .

*Disciplinary Guidelines EMS Authority*

8. The Authority's *Recommended Guidelines*<sup>3</sup> prescribe factors that should be considered when determining the appropriate discipline. The factors include, among other factors:

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

All of the above factors have been considered in making the Order, below.

*Applicable Appellate Authority*

9. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable, or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

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<sup>3</sup> *Recommended Guidelines for Disciplinary Orders and Conditions of Probation*, July 26, 2008, page 1.

## *Causes for Discipline*

### FIRST CAUSE FOR DISCIPLINE: CRIME CONVICTION

10. Cause exists for discipline against respondent's EMT-paramedic license pursuant to Health and Safety Code sections 1798.200, subdivision (c)(6), by reason of the matters set forth in Factual Findings 3 and 5, along with Legal Conclusions 1 through 7. Respondent has a conviction of a crime that is substantially related to the qualifications, functions, and duties of a prehospital professional.

### SECOND CAUSE FOR DISCIPLINE: ADDICTION TO, EXCESSIVE USE OF, OR MISUSE OF ALCOHOLIC BEVERAGES

11. Cause exists for discipline against respondent's EMT-paramedic license pursuant to Health and Safety Code sections 1798.200, subdivision (c)(9), by reason of the matters set forth in Factual Findings 6 and 7, along with Legal Conclusions 1 through 7. Respondent's record of a drunk driving conviction evidence his addiction to, excessive use of, or misuse of alcoholic beverages.

### THIRD CAUSE FOR DISCIPLINE: PRIOR LICENSE DISCIPLINARY ACTION AGAINST RESPONDENT

12. Cause exists for discipline against respondent's EMT-paramedic license pursuant to the fact of the aggravating factors pertaining to respondent's past of being subject to disciplinary action by the Authority, as grounded on a past drunk driving conviction in March 2011, that determined respondent's past violation of Health and Safety Code sections 1798.200, subdivisions (c)(6) and (9). This third cause for revocation of respondent's license is established by reason of the matters set forth in Factual Findings 3, 8, and 9, along with Legal Conclusions 1 through 7.

## *Discussion*

13. Respondent has a recent drunk driving conviction, which resulted in probation that will not end before July 2020. He is subject to a superior court requirement that he complete an 18-month Multiple Offender Program, which will not end before mid-2019. The most recent DUI conviction, which occurred less than six months before the date of the Accusation, follows a prior drunk driving conviction and a conviction for public drunkenness. Hence, respondent's July 2017 drunk driving conviction must be viewed as having a serious nature.

Respondent's act of drunk driving operates as an actual risk to the public. The California Supreme Court in *Taylor v. Superior Court* (1979) 24 Cal.3d 890, at pages 897 to 899, expressed: "[o]ne who willfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle, thereby combining sharply impaired physical and mental faculties with a vehicle capable of great force and

speed, reasonably may be held to exhibit a conscious disregard for the safety of others. The effect may be lethal whether or not the driver had a prior history of drunk driving incidents . . . . Drunken drivers are extremely dangerous people.”

As set out above, the Authority imposed discipline against respondent’s license for a past conviction for drunk driving. And, the Authority issued a fine for respondent’s 2008 conviction for being drunk in public. Respondent past violations of the law regarding consuming excessive amounts of alcoholic beverages must be viewed as grave aggravating evidence.

Notwithstanding the foregoing, at the time of his last DUI arrest, extenuating factors existed. He had taken poorly the death of his mother, and he had been forced to sell a house because of bad finances.

In addition, he offered important evidence in mitigation. Respondent appears to be committed to meeting his obligation to remain free of the impact of alcoholism. Very important to the resolution of this matter is the strong support, respect, and admiration extended to respondent by fellow firefighters, an EMT-paramedic, and his close family members.

Respondent presented adequate rehabilitation evidence so as to justify a stay of outright license revocation.

Moreover, outright revocation of licensure would operate as being unduly harsh and contrary to the precept that a licensing agency’s action should not impose punishment on a licensee, who has functioned in his professional for more than 15 years.

Even though matters in mitigation, extenuation, and rehabilitation were established through the hearing, because of respondent’s dubious testimony regarding his minimalist or lackadaisical involvement in Alcoholic Anonymous objectives for behavior modification of a person addicted to alcoholic beverages along with the history of three convictions due to abuse of alcoholic beverage consumption, a significant period of probation is necessary to protect the public interest and to assure respondent’s continued progress towards rehabilitation and adherence to sobriety.

#### *Ultimate Determination*

14. Although cause exists to impose ultimate discipline in the form of licensure revocation, it would not be contrary to the public interest to place respondent on probation for a period of five years on standard terms and conditions of probation together with special terms of probation that require respondent to remain abstinent, to maintain a recovery program, and to submit to random alcohol testing. Imposing an outright revocation would, under the circumstances, involve impermissible punishment and would not serve to protect the public.

## ORDER

Emergency Medical Technician-Paramedic License No. P13987 issued to respondent Richard M. Nolan, is revoked; however, the order of revocation is stayed and respondent's license is placed on five (5) years probation and is subject to the following terms and conditions of probation:

1. Probation Compliance:

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

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

2. Personal Appearances:

As directed by the EMSA, respondent shall appear in person for interviews, meetings, and/or evaluations of respondent's compliance with the terms and conditions of the probationary order. Respondent shall be responsible for all of his cost associated with this requirement.

3. Quarterly Report Requirements:

During the probationary period, respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by respondent with all the terms and conditions of his probation. If respondent submits his quarterly reports by mail, they shall be sent by Certified Mail.

4. Employment Notification:

During the probationary period, respondent shall notify the EMSA in writing of any EMS employment. Respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, respondent shall submit proof in writing to the EMSA of disclosure, by respondent, to his current employer, that is the Fire Department for the City and County of San Francisco, and any prospective EMS employer, of the reasons for and terms and conditions of respondent's probation. And, within 45 days of the effective date of the decision, respondent shall cause the Chief of the Fire Department for the City and County of San Francisco to

dispatch a letter to the EMSA's executive officer that the Fire Department has received and filed a copy of the decision with respondent's personnel records.

Respondent shall authorize any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of an Emergency Medical Technician-Paramedic.

Any and all notifications to the EMSA shall be sent by certified mail to the official address of the EMSA.

5. Notification of Termination of Employment:

Respondent shall notify the EMSA within seventy-two (72) hours after his termination of employment, for any reason, from his pre-hospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of his termination.

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

6. Functioning as a Paramedic:

The period of probation shall not run anytime that respondent is not practicing as a paramedic within the jurisdiction of California.

If respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, respondent must immediately notify the EMSA, in writing, of the date of such departure and the date of return to California, if Respondent returns.

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

7. Obey all Related Laws:

Respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then the respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Within 72 hours of being arrested, cited or criminally charged for any offense, respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the

offense(s) as to whether respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

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

8. Completion of Probation:

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

9. Violation of Probation:

If, during the period of probation, respondent fails to comply with any term of probation, the EMSA may initiate an action to terminate probation and implement actual license revocation. Upon the initiation of such an action, or upon 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 of the matter has been adopted by the EMSA. An action to terminate probation and implement actual license revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issue to be resolved at the hearing shall be limited to whether respondent violated any term of his probation sufficient to warrant termination of probation and the implementation of an outright revocation. At the hearing, respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

10. Abstinence from Use of Alcoholic Beverages:

Respondent shall abstain from the use of alcoholic beverages for the duration of the period of probation.

11. Psychiatric/Medical Evaluation:

Within 35 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 in Addictionology as determined by the director of the EMSA, the respondent shall submit to a psychiatric evaluation. The psychiatrist or specialist in Addictionology must be approved by the EMSA prior to the evaluation. Respondent shall be responsible for all costs associated with the evaluation.

Within 60 days of the effective date of this decision, and on a periodic basis as specified by a licensed physician, or other specialist as determined by the director of the EMSA, respondent shall submit to a medical evaluation. The physician must be approved by the EMSA prior to the evaluation. Respondent shall be responsible for all costs associated with the evaluation.

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

12. Biological Fluid Testing:

Respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by the EMSA or its designee. Respondent may use a lab pre-approved by the EMSA or may provide to the EMSA the name and location of an independent laboratory or drug/alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and drug/alcohol testing facilities. When the EMSA requests a random test, Respondent shall provide the required blood/urine sample by the time specified, or within twelve (12) hours of the request if no time is specified. When the EMSA requests a random test, Respondent shall ensure that any positive test results are conveyed telephonically by the lab to the LEMSA within forty-eight (48) hours, and all written positive or negative results are provided directly by the lab to the EMSA within ten (10) days. Respondent shall be responsible for all costs associated with the drug/alcohol screening.

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

13. Stress Management:

Within 45 days of the effective date of this decision, the respondent shall enroll and participate in a local, court approved, stress management program, which the respondent shall complete during his probation. Upon completion of the approved program, the respondent shall submit proof to the EMSA that he/she has fulfilled all course requirements.

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



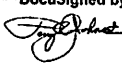
14. Attendance of Alcoholic Anonymous and Proof of Attendance:

Respondent shall participate with Alcoholic Anonymous behavior modification programs by attending at least four meetings a month until advised by the Authority that attendance is no longer required. Respondent shall provide proof of attendance when requested by personnel of the EMSA or its executive officer.

15. Continued Attendance of Counseling and Submit Proof of Attendance:

Respondent shall continue to participate in counseling to address his alcohol-related issues including those as they pertain to his family dynamics as directed by a licensed professional. Respondent shall submit proof of attendance when requested. Respondent shall comply with this condition of probation until he is released from care by the licensed professional providing services and the Authority has notified respondent in writing that this condition of probation has been satisfied. Respondent shall pay for the cost of therapy.

DATED: August 15, 2018

DocuSigned by:  
  
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PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings