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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

WESLEY L. BARONE,
License No. P34954

Respondent.

)
) Enforcement Matter No.: 18-0102
) OAH No.: 2018090304
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DECISION AND ORDER

The attached Proposed Decision dated January 3, 2019, is hereby adopted by the Emergency
Medical Services Authority as its Decision in this matter.

This decision shall become effective on February 1, 2019.

It is so ordered.

DATED:

January 7, 2019



Howard Backer, MD, MPH, FACEP
Director
Emergency Medical Services Authority

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EMS Authority Case No. 18-0102

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PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, State of California, Office of Administrative Hearings, heard this matter on December 5, 2018, in Oakland, California.

Staff Counsel Cheryl Hsu, Emergency Medical Services Authority, State of California, represented complainant Sean Trask.

Attorney at Law David J. Givot represented respondent Wesley L. Barone, who was present throughout the administrative adjudication proceeding (hearing).

On December 5, 2018, the parties submitted the matter for decision, and the record closed.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 18, 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 and Petition to Terminate Probation against respondent Wesley L. Barone (respondent).

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

On December 5, 2018, the administrative adjudication proceeding ensued.

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License History

2. On May 8, 2015, the Authority issued respondent license number P34954 that permitted him to act as an Emergency Medical Technician-Paramedic (EMT-P) in the State of California. The license is valid through May 31, 2019, unless revoked, suspended, or surrendered before that date.

Respondent's Criminal Conduct Before Respondent's License was Placed on Probation

3. On approximately May 1, 2016, a City of Campbell Police Department patrol officer observed a sedan, as operated by respondent, turn right at an intersection marked by a "No Turn on Red Signal" sign. At the time, the signal light was red. The police officer effected pursuit of the sedan, which accelerated to approximately 50 miles per hour (MPH) in the 30 MPH zone. The police officer directed the sedan driver to stop. Upon approaching the driver, namely respondent, the police officer detected respondent to be impaired by consumption of alcoholic beverages. Respondent failed a set of field sobriety tests. Then the police administered to respondent a preliminary alcohol screening test that showed respondent to have a blood alcohol content level of 0.16 percent. Respondent was arrested for a set of offenses relating to unlawful driving while intoxicated crimes. Later, in the booking process, respondent gave a chemical breath sample that resulted in a 0.14 percent blood alcohol content level.

On June 28, 2017, before the Superior Court for Santa Clara County, under case number C1640281, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (b) (driving with blood alcohol level of 0.08 percent or above, or "drunk driving"), a misdemeanor. As a consequence of the conviction, the superior court placed respondent on probation for a three-year period with terms and conditions of probation including: 12 days of jail confinement, an order that he pay fines and fees, and that he complete a court-ordered alcohol treatment program.

Decision and Order by the Authority's Director Affecting Respondent

4. On November 28, 2017, based upon respondent's June 2017 drunk driving conviction, the Authority's Director executed a Decision and Order that placed respondent's EMT-P license on probation for a three-year period. The Decision and Order followed respondent's voluntarily entering into a Stipulated Settlement Agreement with the Authority.

The Director's Decision and Order, which became effective December 28, 2017, included the following pertinent parts:

- A. Licensed Revoked; Revocation Stayed; Probation:** It is hereby ordered that EMT-P License P34954 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 and Drugs:

Respondent shall abstain from the consumption of any and all alcoholic beverages and non-prescription drugs during the entire term of the probationary period

[¶] . . . [¶]

(2) 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.

[¶] . . . [¶]

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 suspension/revocation. Upon initiation of such an 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 a decision on the matter has been adopted by the Authority

(2) If, for good cause, the Authority brings an action to terminate Respondent's probation, 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/revocation. Respondent agrees that in any action by the Authority to terminate probation, the charges and allegations in Accusation No. 16-0108 shall be deemed true and fully admitted. At the hearing on the petition to terminate probation, 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

5. Before the Authority granted respondent the privilege to enter into a Stipulated Settlement Agreement, respondent was required to undergo a detailed evaluation by a medical doctor specializing in substance abuse illnesses and impairments. Respondent met

with Jerry Calloway, M.D. on two separate dates. During the interview, respondent stated that his past history involved his consumption of alcoholic beverages as a high school student that resulted in “blackouts.” Based on his review of respondent’s medical history, Dr. Calloway concluded that respondent was a binge drinker, who could be classified as an alcoholic.

In January 2018, the Authority’s employee, who was a probation monitor, met with respondent to inform him that Dr. Calloway rendered a diagnosis that required him to abstain from consumption of alcoholic beverages during his period of probation as a licensed paramedic.

Causes for Discipline

FIRST CAUSE FOR DISCIPLINARY ACTION: ADDICTION TO, THE EXCESSIVE USE OF, OR THE MISUSE OF ALCOHOLIC BEVERAGES

6. Deputy Sheriff Elizabeth Engelhardt offered competent, compelling, and reliable testimony at the hearing of this matter. The law enforcement officer’s credible testimony established the following:

On June 2, 2018, at approximately 3:15 A.M., Deputy Sheriff Engelhardt, along with another deputy sheriff, responded to a 911 dispatch call regarding a male suspect maliciously striking parked vehicles and mailboxes. The law enforcement officer heard an Uber driver report that a passenger, who was the crime suspect, had been commanded to exit the Uber car because of his erratic, loud, and upsetting behavior while in the vehicle.

The erratic and loud passenger was respondent. Before exiting the Uber car, respondent had punched the vehicle’s interior, exited the vehicle to then proceed with walking along the street as he punched parked vehicles and mailboxes.

When the deputy sheriffs reached respondent, who stood alone in a city street, respondent gave obvious signs of being very intoxicated by consumption of alcoholic beverages. In addition to a strong odor of alcoholic beverage coming from his breath, respondent exhibited slurred speech as well as an unsteady gait when he attempted to walk.

Respondent proclaimed that he had a record of an earlier “DUI” arrest and conviction and that he could not afford “any more trouble.”

Due to his erratic behavior and very intoxicated physical condition, the deputies took respondent into custody under the authority of Penal Code section 657, subdivision (f). Respondent reacted very poorly to the detention for misconduct for his crime of acting out in an exceedingly aggressive manner. He kicked the interior of the patrol vehicle and used profane and angry words against Deputy Sheriff Engelhardt. While being driven to the local sobering center, respondent shouted threatening and verbally abusive language against Deputy Sheriff Engelhardt, which included:

I hope you don't live on the Eastside, because when I work there, and your fucking grandma's got a heart attack going on, she ain't gonna fucking have fun. You hear me? Yeah. I'm talking shit the only person that knows how to fucking bring someone back to life at your fucking age is me. So in the entire fucking City of San Jose, guess what? You can be a fucking asshole, you want to be the fucking person who tells me I can't bring someone back to life, you're going to be the person who tells your grandma, hey, guess what you get to die today. You understand? . . . I hope I see you on the street . . . [And, on several occasions, respondent shouted] Fuck you.

When Deputy Sheriff Engelhardt reached the local sobering center, from the caged area in the patrol car where he sat handcuffed, respondent yelled, "What's your name? . . . I hope I fucking see you on the streets in San Jose." His behavior prompted the sobering center to refuse to admit respondent. Accordingly, Deputy Sheriff Engelhardt was required to take respondent to the Santa Cruz County Jail for his confinement until he reached an appropriate degree of sobriety. Before leaving the law enforcement officer's custody, respondent again yelled "Fuck you" to the deputy sheriff.

Although he was booked and detained in jail confinement by Santa Cruz County for violation of Penal Code section 647, subdivision (f), (disorderly conduct by reason of being unable to exercise care for his own safety due to being under the influence of intoxicating liquor or drugs), when he acquired sobriety the morning after his detention, the county law enforcement officers released respondent. The local district attorney did not file criminal charges against respondent and he did not suffer a criminal conviction due to his unlawful acts on the night of June 2, 2018.

7. Before the date that the Authority's Director executed a Decision and Order that placed respondent's EMT-P license on probation for a three-year period, in late 2017 an expert medical specialist rendered an opinion expressing that respondent was an alcoholic of the sort who should be classified as a "binge drinker," that is a person who might infrequently consume a sufficient amount of alcoholic beverages to become markedly drunk, but when such drinking occurred the person's consumption of alcoholic beverages would be very excessive and uncontrollable.

8. As measured against respondent's past act of unlawful drunk driving along with the opinion of a medical expert that he was an alcoholic having tendencies as a binge drinker, respondent's conduct on early June 2018, showed him to have as an addiction to, or have excessively used or misused alcoholic beverages. Respondent's conduct violated Business and Professions Code section 1798.200, subdivision (c)(9).

SECOND CAUSE FOR DISCIPLINARY ACTION: VIOLATION OF THE TERMS OF PROBATION IMPOSED ON RESPONDENT'S EMT-P LICENSE BY THE DIRECTOR'S DECISION AND ORDER IN EMS AUTHORITY CASE No. 16-0108

9. In approximately early June 2018, the Authority acquired possession of a report pertaining to respondent's detention for public intoxication and jail confinement on June 2, 2018, for the offense of public intoxication. Within 72 hours of his unlawful conduct and detention in a county jail, respondent failed to "self-report" to the Authority the fact of his detention by law enforcement officers due to his unlawful act of public intoxication.

10. Respondent's detention of June 2, 2018, due to public intoxication, occurred during the term of his EMT-P licensure probation. And, in particular, the actual detention and jail confinement in Santa Cruz County occurred approximately four months following the date respondent had been placed on probation with the Authority.

11. On approximately June 19, 2018, during a telephonic interview with an employee of the Authority, respondent made an admission that he was impaired by an alcohol beverage consumption problem. He proclaimed knowing that he was a binge drinker and that he was unable to "have just one drink." Later, respondent sent the Authority's employee documents establishing his enrollment in an outpatient treatment program for alcoholics and others who misuse alcoholic beverages.

12. The evidence established that respondent violated the express terms of the Director's Decision and Order, and the underlying Stipulated Settlement Agreement with the Authority, in three material respects as follows:

1. Consumption of alcoholic beverages in breach of a pledge of abstinence;
2. Failure to obey all laws by his unlawful act of public intoxication requiring law enforcement officers to place him in jail so as to regain a state of sobriety; and,
3. Failure to report to the Authority his detention in a county jail for disorderly conduct due to significant intoxication caused by the consumption of an excessive amount of alcohol beverages that occurred on June 2, 2018,

Adverse Impact Upon Licensure by Reason of Alcohol-Related Public Offenses

13. Respondent has a police record of a detention for public intoxication as well as a drunk driving criminal conviction on June 28, 2017. The underlying offenses pertain to excessive consumption by him of intoxicating alcoholic beverages. Respondent's acts of either addiction to, or excessive use, of alcoholic beverages, indicate unlawful conduct that has been dangerous or injurious to him, other persons, or the general public.

14. The Accusation in this matter was issued on July 18, 2018, which was only seven months after the Authority's past prescribed probationary period imposed on respondent by the Director's Decision and Order that became effective on December 28, 2017.

Matter in Extenuation

15. During the weekend consisting of June 2, 2018, respondent participated in a celebratory party in the Santa Cruz County area for his best friend, Tyler Jacobson. Mr. Jacobson had then recently graduated from a fire academy. On the night of the graduation, a continuation of the party involved a function at a bar in Capitola Village. Before participating in the festivities, respondent paused at the "Six Sisters" house to remember his deceased mother and aunt. At the site, respondent sat on a bench, which held a plaque with the name of his deceased mother. Respondent became emotionally upset with the thought of the anniversary of his mother's death was within a few days. Thereafter respondent and his friend Tyler returned to the bar where "rounds of shots" of Tequila were consumed. Respondent's emotional state blurred his judgment regarding the amount of alcoholic beverages he consumed.

As he was markedly intoxicated, at approximately 3:00 a.m., respondent and Tyler's brother, Blake, hailed an Uber vehicle to travel to his hotel. During the trip, respondent became angry with Blake, who could not remember the address of the AirBNB house where they were being housed. An argument ensued between respondent and Blake that included respondent kicking the seat of the Uber vehicle. The driver demanded respondent to exit the Uber vehicle, which was done. Once on the county road, respondent became angry so as to punch the window to the vehicle. Then respondent laid on the front lawn of a house near the site of the Uber vehicle, which parked while the driver waited for arrival of law enforcement officers. Respondent was awakened from his intoxicated slumber on the ground when Deputy Sheriff Engelhardt and her fellow officer shone a flash light into respondent's face.

Matters in Mitigation and Respondent's Background

16. Respondent is 27 years of age.

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

18. Respondent attended college courses at Butte College in Orville, California, from 2010 to 2014.

19. From 2014 to 2016, he resided and worked in San Diego. Through a base headquarters in San Diego, respondent worked for CalFire in Riverside County through 2016.

20. As set out above, respondent has held a paramedic license since 2015.

21. From approximately 2016 until approximately October 2018, respondent resided in Morgan Hill, California. When he ended his relationship with a girlfriend, he moved in with his father and stepmother.

22. In February 2016, respondent entered the firefighting academy for San Jose. Since his graduation in June 2016, the Fire Department for the City of San Jose has employed respondent as a Firefighter/Paramedic.

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

24. On the day of his detention for public intoxication, respondent was on personal leave and off duty as a Firefighter/Paramedic with his city employer's fire department.

Matters in Rehabilitation

25. Respondent ended a long-term romantic relationship because of his awareness of a toxicity of emotions that underpinned the relationship. In either October or November 2018, respondent relinquished possession of an apartment in Morgan Hill (Santa Clara County) in order to definitively end the romantic relationship, and he moved into the residence of his father and stepmother in San Jose. (Respondent, however, will continue to pay rent on the apartment until February 2019 because the former girlfriend alone cannot afford the entire rental fee.)

26. Respondent expresses grave distress and remorse for his most recent public intoxication offense. He believably proclaims that following the June 2018 arrest for unlawful conduct in public, reflective of an impairment due to excessive consumption of alcoholic beverages, he experienced an awareness following the event whereby he felt terribly with a sense that he had betrayed his aspiration to help others as a health care provider. Respondent proclaimed that he owed Deputy Sheriff Engelhardt the most profound apology for his conduct and the awful language used against the law enforcement officer. Respondent acknowledges that his past drinking-related criminal offenses cast a poor impression upon his good character and sound decision-making skills. Respondent is now committed to demonstrating that he possesses qualities of maturity, integrity, and good judgment.

27. After the June 2018 detention for public intoxication, respondent came to terms with the realization that he could not control the consumption of alcoholic beverages.

28. Within days of his detention, respondent contacted the Employee Assistance Program (EAP) for San Jose to learn about resources to aid him in overcoming his difficulty with alcoholic beverages. The EAP officer directed respondent to enroll in the Kaiser Permanente Medical Group's addiction treatment services.

On June 26, 2018, respondent was received into the Permanente Medical Group's Alcohol and Drug Program. From July 10, 2018, to August 28, 2018, he participated in and completed a chemical dependency evaluation's Healthy Steps six-week first phase.

As of the date of the hearing (December 5, 2018), respondent was dutifully enrolled in the second phase of the Permanente Medical Group's Alcohol and Drug Program. He entered the started Phase Two of the Healthy Steps Group program on September 25, 2018; however, as of November 13, 2018, respondent had attended one session in Phase Two of the program. At the hearing of this matter, however, respondent claims that he has attended "three or four" sessions in the Phase Two of the Kaiser Permanente program. (The Healthy Steps Group meets on Tuesday evenings.) At the hearing of this matter, respondent claimed that his next meeting at Phase Two of the Kaiser Permanente program was scheduled for December 11, 2018.

29. At the end of July 2018, respondent began participation in meetings and classes of Alcoholic Anonymous (AA), a behavior modification program. His very first session with AA meetings was at the Calvary Church in Los Gatos, California. Respondent attended one meeting of AA in July 2018. In August 2018, respondent attended four meetings of AA. In September 2018, he attended three meetings of AA. In October 2018, respondent attended two meetings of AA. In November 2018, he "believes" he attended five meetings of AA. (In October or November 2018, respondent ended a relationship with a girlfriend, and he moved out of a shared apartment in Morgan Hill. Hence, it took him time to locate a convenient site to attend AA meetings.) In November 2018, respondent joined the AA meetings of Sufficient Substitute. During December 2018, that is immediately before the hearing date (December 5, 2018), respondent has attended one meeting of AA at the Sufficient Substitute facility. At the hearing of this matter, respondent claimed that his next AA meeting was set for the evening of December 5, 2018.

Respondent has never secured a sponsor since beginning AA meetings in late July 2018. He unpersuasively claims that without a sponsor, but in league with a friend, he has completed Step Four of the 12-Step Program of AA.

30. Respondent proclaims that his sobriety date is June 2, 2018, the date of his release from Santa Cruz County Jail following his detention for disorderly conduct arising from an inability to exercise care for himself due to significant intoxication by ingestion of an excessive amount of intoxicating liquor.

31. 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 June 2, 2018, that is the date of his detention for disorderly conduct due intoxication through consumption of alcoholic beverages. Respondent 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 considerable time may pass before he engages in excessive drinking to his detriment.

32. In his employment with San Jose Fire Department, respondent currently holds a job classification of Firefighter/Paramedic. Respondent offered Employee Performance Review reports for the respective periods of October 4, 2017, through October 4, 2018, and April 25, 2017, through April 25, 2018. The reports show respondent to have, for the most part, exceeded expectations in his performance of duties, responsibilities, and functions of his civil service classification.

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

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

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 five¹ 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.

34. Respondent’s employer requires that he submit to random alcohol/drug testing. He persuasively conveyed that his last test occurred on Monday, December 3, 2018, that is two days before the hearing date.

Witness in Mitigation and Rehabilitation

35. Respondent has the respect, admiration, and support of a fellow firefighter and a paramedic, who acts as respondent’s supervisor. The following individual offered compelling and persuasive testimony at the hearing as follows:

Captain Nick Bello (Mr. Bello) is respondent’s supervisor within the San Jose Fire Department.

Mr. Bello works as a Captain with the San Jose Fire Department with a duty station at Station Ten, which serves on the “C” shift. He has been employed with the fire department

¹ A letter, dated November 27, 2018, by Nick Bello, Fire Captain, City of San Jose; a letter, dated November 29, 2018, by Jamie G. Kerin, Captain with the San Jose Fire Department; a letter, undated, by Jack Shaw, Fire Engineer, with the San Jose Fire Department; a letter, dated November 29, 2018, by Mike Afshar, Arson Investigator; a letter, dated November 27, 2018, by Joe Noon; a letter, undated, by Michael S. Hughes; a letter, undated, by Brian Barner; a letter, dated November 29, 2018, by Benjamin Broida; a letter, dated November 20, 2018, by Makayna Hughes, a letter, dated November 28, 2018, by Timothy Goulet; and, a letter, undated, by Tyler D. Jacobsen.

over approximately 15 years. Mr. Bello acted as a paramedic himself, which began more than 20 years ago.

Mr. Bello has known respondent for three years, which spans the period of respondent's term of probation with the fire department. Mr. Bello served in a direct line management position regarding respondent, who acted as the fire engine's EMT-paramedic.

Mr. Bello has insight into respondent's history of unresolved trauma from his childhood. He believes that respondent has a history of turning to alcoholic beverages in coping with his past problems.

Soon after respondent's detention for disorderly conduct due to public intoxication, Mr. Bello heard directly from respondent about his criminal conduct. In addition, Mr. Bello has long known about respondent's past DUI offense. But, Mr. Bello has seen respondent to be much more serious regarding his recent June 2018 conduct in a heightened level of intensity in addressing his abuse of alcoholic beverages. Respondent's enhanced commitment to overcoming his problems with alcoholic beverages follows respondent's past admissions to Mr. Bello that he knows that he is an alcoholic.

Mr. Bello proclaims that even though the San Jose Fire Department 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 his unit of the San Jose Fire Department.

Mr. Bello 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 the June 2018 incident. Respondent has "always" been professional, and he has been always ready for work for the San Jose Fire Department. Respondent has given superb care and treatment to all patients encountered by him as the assigned EMT-paramedic.

Mr. Bello pointed out that the loss of respondent's services due to license revocation would greatly harm the ability of the San Jose Fire Department to meet the demands placed on its EMT-paramedic mission. He opines that should the Authority revoke respondent's licensure as an EMT-paramedic, the fire department will more likely than not terminate the employment of respondent.

Mr. Bello 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.

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

36. Respondent was not believable at the hearing of this matter when he proclaimed that immediately after he sustained his drunk driving conviction he did not take

that matter “seriously” in that he considered the unlawful conduct as a mere “mistake.” His testimony must be deemed to be disingenuous and deceitful in that the record shows as a result of the drunk driving crime: (i) the superior court imposed on respondent of marked criminal penalties (three-year term of probation, a significant monetary fine, and court-required participation in drunk driving counseling), (ii) the Authority required respondent to be evaluated by a medical doctor having a specialty in diagnosing drug and alcoholic impairments; and (iii) the Authority granted him a probationary license having significant terms of licensure probation that, among other things demanded that he abstain from consumption of all forms of alcoholic beverages.

37. Respondent’s last arrest or detention for a crime relating to excessive consumption of alcoholic beverages happened on approximately June 2, 2018, which was less than six months after the Authority’s director imposed a probationary license on respondent due to an earlier drunk driving conviction.

38. Respondent’s three-year period of criminal court-imposed probation, which relates to the drunk driving conviction in June 2017 in the Superior Court for Santa Clara County, will not end until approximately June 28, 2020. Accordingly, respondent has not acquired an order of expungement under Penal Code section 1203.4 for his past drunk driving conviction that occurred in June 2017.

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

40. Since the date of his act of public intoxication in June 2018 that led to his arrest and detention for disorderly conduct, 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.

41. 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 he has not secured an AA sponsor. (Respondent either ignorantly misconstrued, disdainfully rejected, or pride fully misconceived the role of the sponsor² in the AA mission. Respondent’s testimony shows his poor appreciation of the critical role of an AA “sponsor.” Moreover, respondent’s description of his attendance at

² 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.)

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, at the hearing of this matter, respondent failed to present competent and reliable documentary proof (precise, certified attendance records, letters from behavior modification program coordinators, 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 Sufficient Substitute program in San Jose, California

42. When respondent was first contacted via telephone by an employee of the Authority after his June 2018 detention for disorderly conduct due to intoxication by alcoholic beverages, respondent made false statements to the Authority’s agent regarding his public intoxication detention. Respondent made a claim that he had been drugged at a party and that any smell of alcoholic beverages on him was due to his girlfriend’s intoxicated condition. Within hours of ending the call with the Authority’s agent, respondent telephoned the Authority to recant his initial false statements. (Notwithstanding his effort to recant his initial false statement to an agent of the State of California government, respondent’s initial lies to the Authority’s agent show he has a propensity to make a false statement.)

Ultimate Factual Findings

43. Respondent has engaged in unlawful conduct that constitutes cause for revocation of licensure. The matters in extenuation, mitigation, and rehabilitation as offered by him, however, warrant a stay of revocation. But, because of his second criminal offense involving excessive consumption of alcoholic beverages, 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 of the EMS Authority

8. The Authority's *Recommended Guidelines*³ 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;

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

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, as set out in Factual Findings 16 through 42, 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.)

Causes for Discipline

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

10. 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 5 through 13, along with Legal Conclusions 1 through 9. Respondent's record of a detention under Penal Code section 647, subdivision (f), which follows an earlier drunk driving conviction, evidences respondent's addiction to, excessive use of, or misuse of alcoholic beverages.

SECOND CAUSE FOR DISCIPLINE: VIOLATION OF THE TERMS OR PROBATION IMPOSED ON RESPONDENT'S EMT-P LICENSE

11. Cause exists for discipline against respondent's EMT-paramedic license pursuant respondent being subject to disciplinary action by the Authority, which had been grounded on a past drunk driving conviction on June 28, 2017. Due to his 2017 drunk driving conviction, the Authority granted him probationary licensure status under terms and conditions. Respondent violated the terms and conditions of probation by becoming so intoxicated that law enforcement officers placed him under detention and filed a criminal

incident report pertaining to respondent's unlawful conduct. This second cause for revocation of respondent's license and cause for termination of probation are established by reason of the matters set forth in Factual Findings 9 through 12, and 14, along with Legal Conclusions 1 through 9.

Discussion

12. Respondent has a recent detention and record of involuntary confinement in a county jail due to his excessive consumption of intoxicating alcoholic beverages. An earlier conviction for drunk driving (DUI) was the basis of respondent having been subject to probationary license under a Stipulated Settlement Agreement with the Authority. Respondent's most recent law enforcement detention for the offense of disorderly conduct due to intoxication by alcoholic beverages, which occurred less than six months after the date of the Stipulated Settlement Agreement with the Authority, followed a prior drunk driving conviction. Hence, respondent's June 2018 public intoxication detention by law enforcement officers must be viewed as having a very serious nature.

Respondent's past 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."

Notwithstanding the foregoing, at the time of his last act of public intoxication, extenuating factors existed. He had been overcome emotionally by the memory of the 20-year anniversary of the death of his mother, and he was involved in a toxic relationship with a girlfriend who also abused alcoholic beverages. In addition, respondent 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, and other fire department professionals who admire respondent's skills and devotion to his work as an EMT-paramedic.

Respondent presented adequate rehabilitation evidence so as to justify a stay of outright license revocation. Moreover, outright revocation of licensure would operate as 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 profession for approximately three 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 a drunk driving conviction

and an arrest with detention 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

13. 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 not less than six 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. P34954 issued to respondent Wesley L. Barone, is revoked; however, the order of revocation is stayed and respondent's license is placed on six (6)-year 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 of San Jose, 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 of San Jose 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 EMSA 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 has fulfilled all course requirements.

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

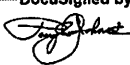
14. **Attendance of Alcoholic Anonymous and Proof of Attendance:**

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: January 3, 2019

DocuSigned by:

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PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings