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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:

)
) Enforcement Matter No.: 18-0042
) OAH No.: 2018060962
)

OSCAR CABRERA,
License No. P04383

Respondent.


) **DECISION AND ORDER**
)
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)

The attached Proposed Decision and Order dated January 16, 2019, is hereby adopted by the
Emergency Medical Services Authority as its Decision in this matter. The decision shall
become effective 30 days after the date of signature. The Temporary Suspension Order issued
on April 11, 2018, is hereby vacated immediately.

It is so ordered.

DATED:

Jan 29, 2019



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

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OSCAR CABRERA,
License No. P04383

Respondent.

Case No. 18-0042

OAH No. 2018060962

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 18 and 19, 2018, in Oakland, California.

Attorney Cheryl W. Hsu represented complainant Sean Trask, Chief, EMS Personnel Division, Emergency Medical Services Authority (EMSA).

Attorney David J. Garcia represented respondent Oscar Cabrera, who was present throughout the hearing.

The matter was submitted on December 19, 2018.

FACTUAL FINDINGS

1. Respondent Oscar Cabrera has been licensed as a paramedic (License No. P04383) since August 1992. The EMSA renewed this license effective September 1, 2016, to expire August 31, 2018. The evidence did not establish whether at the time of the hearing the EMSA had renewed this license again.

2. Effective April 11, 2018, the EMSA suspended respondent's license. The same day, acting in his official capacity as Chief of the EMSA's EMS Personnel Division, complainant Sean Trask filed an accusation against respondent, seeking revocation of respondent's paramedic license. Respondent requested a hearing on the accusation.

3. The accusation alleges that on September 11, 2017, respondent consumed alcohol, cocaine, and benzodiazepine drugs while on duty as a paramedic, and that he rendered emergency medical treatment while under the intoxicating influence of one or more of these substances. The accusation also alleges that respondent regularly misuses alcohol and controlled substances, and that his substance use disorder threatens harm to the public.

4. Respondent has been a paramedic for the City and County of San Francisco since 1994. He completed the San Francisco Fire Department (SFFD) Fire Academy in 2000 and since then has been a paramedic and firefighter. He was an emergency responder until the EMSA suspended his paramedic license in April 2018. Since then, respondent has continued to work for SFFD at its ambulance fleet station.

On-Duty Alcohol Use on September 11, 2017

5. On Monday, September 11, 2017, SFFD had scheduled respondent to work a 24-hour shift beginning at 8:00 a.m. Respondent reported to work that morning feeling tired from a short vacation he had taken the previous weekend (described in Finding 12, below). He also was under significant emotional stress.

6. Respondent spent time at the fire station during his shift, and also went on several emergency calls. By late afternoon, respondent had decided that he wanted to leave his shift early.

7. Around 7:00 p.m., respondent asked Jonathan Okamura, the firefighter supervising respondent's crew that day, for permission to leave his shift. Okamura told respondent that respondent could leave work only if respondent arranged for another paramedic to come in to the fire station to cover the rest of respondent's scheduled shift. Respondent tried without success to find a replacement.

8. Around 8:00 p.m., respondent went on a short emergency call, during which he did not render any emergency medical care. When respondent and the crew returned to the fire station, respondent decided that he did not intend to work any more that evening regardless of whether another paramedic arrived to take over his shift. He went to his car and drank vodka¹ that he had concealed there in a thermos bottle.

9. After drinking the vodka, respondent went back inside the fire station. A farewell dinner for a colleague who was leaving the station was in progress, but respondent did not join the dinner. Instead, he sat in a reclining chair in another room, where a colleague found him and realized while conversing with him that he was heavily intoxicated by alcohol.

¹ Respondent estimated that he drank between 300 and 400 milliliters of vodka.

10. Firefighter Anthony Petruzzella guided respondent up two or three flights of stairs to respondent's bed.² Between one and two hours later, firefighter and paramedic John Christy came to the fire station and drove respondent to a hospital. At the hospital, blood testing confirmed that respondent was intoxicated by alcohol. He stayed in the emergency room until morning and then went home.

11. The evidence did not establish that respondent consumed alcohol on September 11, 2017, before returning from the call described above in Finding 8. The evidence did not establish that respondent went on any calls on September 11, 2017, after having consumed alcohol. The evidence did not establish that on September 11, 2017, respondent went on any calls, or otherwise rendered emergency medical care, while intoxicated by alcohol. The evidence did not establish that respondent ever was unconscious or unresponsive (as distinct from ordinary sleep) at the fire station on September 11, 2017.

Cocaine Use on or Before September 11, 2017

12. Over the weekend of September 8 through 10, 2017, respondent traveled with friends to Cabo San Lucas, Baja California Sur, Mexico, to celebrate respondent's upcoming wedding. Over that weekend, respondent drank alcohol and used cocaine.

13. The evidence did not establish whether or under what circumstances Mexican law either permits or prohibits cocaine possession and use.

14. The evidence did not establish any other occasions when, or locations where, respondent has used cocaine. In particular, the evidence did not establish that respondent used cocaine in California before going to Mexico in September 2017; took cocaine to Mexico in September 2017; brought cocaine home from Mexico in September 2017; or used cocaine at any time on September 11, 2017.

15. Urine screening at the hospital on the night of September 11-12, 2017, confirmed that respondent had used cocaine during the several days before the hospital visit. The evidence did not establish that on September 11, 2017, respondent rendered emergency medical care while intoxicated by cocaine.

² Petruzzella testified that he believed respondent to be ill, rather than drunk. He denied that any colleague had suggested that respondent was drunk, and denied having observed any signs of alcohol intoxication such as slurred speech, poor balance, or the smell of alcohol on respondent's breath. This testimony conflicts with other considerably more credible evidence, including with respondent's own testimony. Petruzzella's testimony is not credible.

Benzodiazepine Use on or Before September 11, 2017

16. In early September 2017, before his vacation to Mexico, respondent experienced a panic attack. He went to an emergency room, where a physician prescribed Librium (a benzodiazepine drug) to ease anxiety.

17. The evidence did not establish precisely when, or how frequently, respondent took this drug between the time he received the prescription and September 11, 2017. The evidence did not establish that in early September 2017 respondent took any benzodiazepine drug other than the Librium he had obtained by prescription.

18. Urine screening at the hospital on the night of September 11-12, 2017, confirmed that respondent had used one or more benzodiazepine drugs during the several days before the hospital visit. The evidence did not establish that on September 11, 2017, respondent rendered emergency medical care while intoxicated by any benzodiazepine drug.

Substance Abuse and Mental Health Treatment

19. Respondent was convicted in 2006 of two misdemeanors, both relating to driving a car while intoxicated.³ A mental health professional who evaluated respondent then concluded that he did not have a substance use disorder. In hindsight, respondent believes that this conclusion was error; but at the time, he relied on it to avoid addressing what he now recognizes as unhealthy alcohol use.

20. In 2012, respondent completed Phase I (described more fully below in Finding 22) of the Kaiser Permanente Chemical Dependency Recovery Program (CDRP). He found Phase II (also described more fully below in Finding 23) difficult because it did not fit neatly into his firefighter/paramedic work schedule, and dropped out of the program. He abstained from alcohol and drugs for a few years, but gradually drifted away from recovery activities and began using alcohol and drugs⁴ again.

21. Respondent did not return to work for a few months after September 11, 2017. Instead, toward the end of that week, he began the Kaiser CDRP again. The program began with a 2.5-week stabilization and detoxification period, during which respondent attended group therapy and community meetings between 9:00 a.m. and 3:00 p.m. six days each week. To move forward in the program, respondent had to attend every class and meeting on time, and had to participate meaningfully in the sessions.

22. After the initial stabilization period, respondent began CDRP Phase I. Phase I lasts 90 days, and involves group psychotherapy and community meetings five days per

³ The evidence did not clarify whether the two convictions arose from the same incident, or from different incidents.

⁴ In addition to cocaine, respondent testified that he had used cannabis.

week for two hours. In addition, Phase I participants must attend at least seven 12-step group meetings each week. Random biological fluid testing confirms abstinence from drugs and alcohol. Respondent's wedding and honeymoon occurred during Phase I, but he completed it without incident in late December 2017.

23. Respondent is now in CDRP Phase II. Phase II continues for two years, and requires one or two group psychotherapy sessions per week along with at least three 12-step group meetings and one or two individual psychotherapy sessions per month.

24. Respondent testified credibly and without contradiction that he has not used alcohol or unprescribed psychotropic drugs since September 11, 2017.

25. Unlike his earlier experience in CDRP Phase II, respondent now believes that consistent adherence to his 12-step meeting and psychotherapy routine is critically important to maintain sobriety. He attends 12-step meetings most days of the week, including when he is traveling in other cities. When he is at home, he attends the same men's group every week, along with other 12-step meetings. He has a 12-step sponsor who also works as an emergency responder.

26. Mark F. Towns, M.D., examined respondent; prepared a short report about him; and testified on his behalf. Dr. Towns is an internist whose professional practice emphasizes addiction medicine. Dr. Towns believes that respondent's recovery program is appropriate to respondent's needs. He recommends that respondent continue his program, and that he consider obtaining a psychiatric evaluation to assess whether treatment for anxiety, depression, or post-traumatic stress disorder might further improve his ability to withstand stress and remain sober. This testimony is persuasive.

Professional References

27. SFFD Battalion Chief Charles Crane has known respondent for more than 20 years. Crane supervises firefighters and paramedics from several stations, and has worked regularly with respondent. Crane describes respondent as a reliable, adaptable paramedic and firefighter with valuable skills and experience working with hazardous materials.

28. SFFD Rescue Captain Niels Tangherlini began working for the City and County of San Francisco as a paramedic the same year that respondent began. He presently supervises paramedics from several fire stations. Tangherlini believes that respondent's emergency medical skills are "above average," and that respondent is especially good at remaining calm and helping patients remain calm under pressure.

29. SFFD Captain Glenn Kircher is an acting battalion chief at SFFD, and has known respondent for almost 20 years. They have worked together regularly over the years on emergency calls. In Kircher's experience, respondent always is professional, and is a leader among SFFD's paramedics. Kircher believes that respondent will need to continue his

recovery program to maintain sobriety, but has no qualms about continuing to work alongside respondent.

30. Like Tangherlini and Kircher, Christy has known respondent throughout respondent's career in San Francisco. Christy concurs with Tangherlini's opinion that respondent's emergency medical skills are "excellent," and views respondent as a leader who sets a strong example of professionalism and community service for newer paramedics.

31. Christy retired in 2018. For the last several years of his career, he worked with SFFD's "stress unit," providing psychological support for SFFD personnel experiencing unusual stresses including substance abuse. In 2012 and again in 2017, Christy recommended that respondent seek medical treatment for his substance use disorder. He counseled respondent daily or near-daily between September and December 2017, and continues to meet with him regularly to discuss respondent's progress in recovery.

32. Respondent also offered written character references from San Francisco Police Department (SFPD) Sergeant Arthur Howard; SFPD Sergeant Philip Pera, respondent's 12-step sponsor; SFFD Captain Keng Yan Chan; SFFD Paramedic and Firefighter Gabriel Lopez; SFFD Captain Theresa Kwan; SFFD Acting EMS Lieutenant Jared F. Cooper; SFFD Paramedic Eric Glickman; SFFD Paramedic Simon Pang; SFFD Paramedic Martin Lee; SFFD Paramedic James H. Green; SFFD EMS Operations Section Chief Antenor S. Molloy; SFFD Lieutenant John C. Grant; SFFD Paramedic Nicholas E. Izquierdo. These writers praised respondent's emergency medical skills, his compassion and respect for patients, and his commitment to sobriety.

LEGAL CONCLUSIONS

1. The EMSA may discipline respondent's paramedic license upon proof that respondent has violated Health and Safety Code section 1798.200, subdivision (c). (Health & Saf. Code, § 1798.200, subd. (b).) Complainant bears the burden of proving respondent's statutory or regulatory violations, using clear and convincing evidence.

2. "Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances" is a ground to discipline a paramedic's license. (Health & Saf. Code, § 1798.200, subd. (c)(8).) The matters stated in Findings 12 through 18 do not establish cause for discipline against respondent under this statute.

3. "Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances" also is a ground to discipline a paramedic's license. (Health & Saf. Code, § 1798.200, subd. (c)(9).) The matters stated in Findings 8, 9, 10, 12, 19, and 20 establish cause for discipline against respondent under this statute.

4. The matters stated in Findings 5 through 10 and 12 demonstrate respondent's poor judgment while actively abusing alcohol. Nevertheless, the matters stated in Findings 21 through 26 establish that respondent has taken positive, effective steps to address his substance use disorder. Moreover, the matters stated in Findings 27 through 32 demonstrate that respondent's colleagues uniformly respect his skills and experience; value his work when he is sober; and believe he has committed himself meaningfully to sobriety. These matters demonstrate that the EMSA may protect public safety by placing respondent's paramedic license on probation rather than revoking it outright.

5. According to the EMSA's Recommended Guidelines for Disciplinary Orders and Conditions of Probation (July 26, 2008), license suspension often is appropriate for substance-abusing paramedics, until such time as the paramedic completes an assessment and a treatment program. A treatment program should include abstinence, confirmed by biological fluid testing; individual and group counseling; support groups, including 12-step groups; and education about substance use disorders. The matters stated in Findings 21 through 25 show that respondent has undertaken such a treatment program, and that he currently is in the outpatient maintenance phase. According to Finding 2, respondent's license has been suspended for many months; but according to Findings 4 and 27 through 32, he has continued to work successfully during this period, and during his substance use disorder treatment, in a role that does not require licensure. An additional period of suspension would not serve public welfare in this case.

ORDER

Paramedic License No. P04383, issued to respondent Oscar Cabrera, is revoked. The revocation is stayed, however, and respondent is placed on probation for five years upon the following terms and conditions.

1. Probation Compliance

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

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

2. Personal Appearances

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

3. Quarterly Reports

During the probation period, respondent shall submit quarterly reports covering each calendar quarter. These reports shall certify, under penalty of perjury, and document compliance by the respondent with all terms and conditions of probation. Respondent shall transmit these reports using a transmission method that permits verification of the transmission date and method.

4. Employment Notification

During the probation period, respondent shall notify the EMSA in writing of any change in EMS employment. Respondent shall inform the EMSA in writing of the name and address of any prospective new EMS employer before accepting employment.

Respondent shall submit proof in writing to the EMSA that respondent has disclosed to his current employer, and to any prospective or new EMS employer, the reasons for and terms and conditions of his probation.

Respondent authorizes any EMS employer to submit performance evaluations and other reports the EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

Respondent shall transmit these notices using a transmission method that permits verification of the transmission date and method.

5. Notice of Termination

Respondent shall notify the EMSA within 72 hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed explanation in writing of reasons for and circumstances of employment termination. Respondent shall transmit such notice using a transmission method that permits verification of the transmission date and method.

6. Function as a Paramedic

The probation period shall toll, and shall not run, any time that respondent does not practice as a paramedic within California. If respondent leaves California during the probation period to practice elsewhere as a paramedic, he must notify the EMSA immediately in writing of the date of such departure and of the date of return to California if he returns. Respondent shall transmit such notice using a transmission method that permits verification of the transmission date and method.

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 under Health and Safety Code section 1798.200. To permit monitoring of compliance with this requirement, if respondent has not submitted fingerprints to the EMSA in the past as a condition of license renewal, he shall submit fingerprints by Live Scan or by fingerprint cards, and shall pay the appropriate fees, within 45 days after the effective date of this decision.

8. Completion of Probation

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

9. Violation of Probation

If during the probation period respondent fails to comply with any probation term, the EMSA may initiate action to terminate probation and to implement actual license revocation. Upon initiation of such an action, or upon notice to respondent of intent to initiate such an action, the probation period shall remain in effect until such time as a decision on the matter has been adopted by the EMSA. An action to terminate probation and to implement actual license revocation shall be initiated and conducted in accordance with the Administrative Procedure Act (Gov. Code, § 11500 et seq.)

The issues to be resolved at any such hearing shall be limited to whether respondent has violated any probation term to a degree sufficient to warrant termination of probation and implementation of actual license revocation. At the hearing, both respondent and the EMSA shall be bound by the probation terms, and neither party shall have a right to litigate the validity or invalidity of the terms.

10. Abstinence from Drug Use

Respondent shall abstain from possession, injection, or consumption by any route of all controlled substances, dangerous drugs, or drugs requiring prescription except as prescribed under federal or state law as part of a documented medical treatment. Within 14 days after obtaining any such prescription, respondent shall ensure that the prescribing professional reports the prescription directly to the EMSA, in a written report identifying the medication, dosage, prescription date, diagnosis, and date the medication no longer will be required. If respondent has any lawful prescription at the beginning of the probation period, the same report must be provided within 14 days after the effective date of this order.

11. Abstinence from Alcohol

Respondent shall abstain from any use of alcoholic beverages.

12. Biological Fluid Testing

Respondent shall submit to routine and random biological fluid testing or drug and alcohol screening as directed by the EMSA or its designee. Respondent may use a laboratory pre-approved by the EMSA or may provide to the EMSA the name and location of an independent laboratory or licensed drug and alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for laboratory approval based on criteria regulating professional laboratories and drug and alcohol testing facilities.

When the EMSA requests a random test, respondent shall provide the required blood or urine sample by the time specified, or within 12 hours of the request if no time is specified. When the EMSA requests a random test, respondent shall ensure that any positive test result is conveyed telephonically by the laboratory to EMSA with 48 hours, and that all written positive or negative test results are provided directly by the laboratory to the EMSA within 10 days. Respondent is responsible for all costs associated with drug and alcohol screening.

At the EMSA's sole discretion, the EMSA may allow random biological fluid testing to be conducted by respondent's employer. The results from any employer testing must be made available to the EMSA within the time frames described above.

13. Treatment Program

Respondent shall continue active participation the Kaiser CDRP Phase II until appropriate medical supervision determines that further professionally supervised treatment and rehabilitation is no longer necessary. If either the evaluator(s) described in Condition 14, below, or the CDRP recommend continuing attendance at 12-step or other support group meetings after completion of other professionally supervised treatment and rehabilitation, respondent shall continue to attend such meetings as recommended for the remaining duration of probation.

If respondent voluntarily withdraws from the CDRP, or if he is expelled from the program, such withdrawal or expulsion shall constitute a probation violation, unless respondent withdraws to enroll in a different substance use disorder treatment program approved by EMSA.

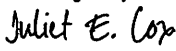
Respondent is responsible for all costs associated with continuing participation in substance use disorder treatment.

14. Psychiatric or Medical Evaluation

Within 30 days after the effective date of this decision, and on a periodic basis thereafter as specified by a psychiatrist certified by the American Board of Psychiatry and Neurology (or other specialist as determined by the EMSA Director), respondent shall submit to a psychiatric evaluation. The psychiatrist must be approved by the EMSA before the evaluation. Respondent shall be responsible for all costs associated with the psychiatric evaluation. The psychiatric evaluator shall report to the EMSA whether respondent remains fit to practice safely as a paramedic.

Within 30 days after the effective date of this decision, and on a periodic basis thereafter as specified by a licensed physician (or other specialist as determined by the EMSA Director), respondent shall submit to a medical evaluation. Respondent shall be responsible for all costs associated with the medical evaluation. The medical evaluator shall report to the EMSA whether respondent remains fit to practice safely as a paramedic.

DATED: January 16, 2019

DocuSigned by:

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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings