

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KURT W. STEEVER,

Emergency Medical Technician-Paramedic  
License No. P36495

Respondent.

Case No. 17-0158

OAH No. 2018110303

**PROPOSED DECISION**

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 21, 2019, in Sacramento, California.

Cheryl W. Hsu, Staff Counsel, represented Sean Trask (complainant), Chief of the Emergency Medical Services Personnel Division of the Emergency Medical Services Authority (EMSA).

Sean D. Currin, Attorney at Law, represented Kurt W. Steever (respondent) who was present.

Evidence was received, the record was closed, and the matter was submitted for decision on February 21, 2019.

**FACTUAL FINDINGS**

1. On July 21, 2016, the EMSA issued Emergency Medical Technician-Paramedic (EMT-P) License No. P36495 (license) to respondent. Respondent's license is in full force and effect and will expire on July 31, 2020, unless renewed or revoked. Complainant seeks to revoke respondent's license based on respondent's conviction of misdemeanor vehicular manslaughter, and the underlying misuse of alcoholic beverages.

### *Complainant's Evidence*

2. Misdemeanor Conviction: On July 13, 2018 in El Dorado County Superior Court, Case No. P18CRM0518-1, respondent was convicted on his plea of no contest of a misdemeanor violation of Penal Code section 191.5, subdivision (b), vehicular manslaughter without gross negligence while driving under the influence of alcohol. The court sentenced respondent to serve 270 days in custody, and placed respondent on formal probation for a period of 5 years, with terms and conditions including that he complete the three-month first offender Driving Under the Influence (DUI) program, complete 200 hours of counseling through an alcohol or drug program, attend and complete the Mothers Against Drunk Driving (MADD) program, not use or possess alcohol or knowingly frequent places where alcohol is the chief item of sale, pay fines and fees in the amount of \$220, that his driver's license be suspended pursuant to an order by the Department of Motor Vehicles, and that he not drive any off-road motor vehicle.

3. Testimony and Report<sup>1</sup> of Jesse Miller: Officer Miller is employed by the California Highway Patrol (CHP). He has been employed as a patrol officer for approximately 12 years, during which time he has conducted more than 200 DUI arrests. On June 25, 2017, at approximately 2:35 a.m., he was dispatched from Placerville to investigate a Jeep rollover on the Rubicon Trail. He was informed by radio that a person in the Jeep had been seriously injured, and civilians were driving the victim (JC) out to the trailhead at Loon Lake Dam. Officer Miller arrived at Loon Lake Dam at approximately 3:50 a.m. A paramedic helicopter had already landed, and the paramedics at the scene had declared JC to be dead. Officer Miller went to a group of people who were standing near a Jeep, and asked who had been driving during the rollover accident. Respondent immediately told Officer Miller he had been driving. Officer Miller took respondent to his patrol car, where respondent said he had been driving his Jeep on the Rubicon Trail back to camp, with JC in the front passenger seat. The Jeep unexpectedly rolled over as respondent drove down a slope on the Rubicon Trail. JC was ejected and suffered a major head injury when the Jeep rolled over him. Respondent's companions were following directly behind in another Jeep. They put JC in the back of respondent's Jeep, and respondent performed cardiopulmonary resuscitation (CPR) while one of their friends drove them out to the trailhead.

4. Officer Miller noticed that respondent was covered in blood from rendering assistance to JC, and that he was visibly shaken by the ordeal. Officer Miller also noticed that respondent smelled of alcohol, and that his speech was slow and slightly slurred. Respondent said he had two light beers at approximately 5:00 p.m., the preceding evening, and that he had not consumed any alcoholic beverage since the accident. Respondent appeared to be more intoxicated than would result from consuming two beers the prior

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<sup>1</sup> The CHP report was admitted into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448. Accordingly, the percipient observations of the reporting officer and the admissions of respondent were admitted as direct evidence; the statements of third parties were admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d).

evening. Officer Miller administered a series of field sobriety tests which respondent performed displaying signs of impairment. Officer Miller placed respondent under arrest, and advised him that he was required, by implied consent, to submit to a blood, breath, or urine test of his blood alcohol concentration (BAC). Respondent initially requested a blood test, but in response to Officer Miller stated he would not refuse to take a breath test due to the remote location and time delay involved. Respondent submitted two breath samples at 4:32 and 4:35 a.m., both of which registered a BAC of .11 percent, which would be reached with approximately five 12-ounce beers in his system at that time. The legal limit for driving a motor vehicle on or off road is a BAC of .08 percent.

### *Respondent's Evidence*

5. Testimony of respondent: The accident occurred during a weekend maintenance and cleanup trip on the Rubicon Trail with his four-wheel-drive club. The club members had a large dinner at their campsite and played an after-dinner horseshoe game, during which respondent consumed some beer. He was not clear in his testimony how much beer he had consumed. He told Officer Miller he had consumed two beers because that was his best recollection at the time, though he was then thinking much more about the accident and the death of his friend than the number of beers he had consumed.

6. Following the horseshoe game, respondent and some other club members went out for a drive on the Rubicon Trail. Respondent was driving a Jeep with a full roll cage, and no side doors. JC was his passenger. JC and respondent were close friends, like brothers. JC was not wearing a seatbelt. Respondent told him to put it on at least a half-dozen times. JC replied that he did not like to wear seatbelts, in case he needed to jump out. JC was older than respondent, so he felt he needed to show some respect. Respondent deeply regrets that he did not push hard enough to get JC to wear his seatbelt, even though he told him multiple times to do so.

7. Respondent has driven through the area of the accident many times. He has not previously rolled his Jeep. He was following the same line of travel he normally takes when his Jeep rolled over and landed on its wheels. The first thing he did was look to the passenger side to check on JC, and saw the empty passenger seat. Respondent jumped out and found JC lying face down between two rocks. He rolled JC over, maintaining C-spine stability. Respondent examined JC and found a depressed skull fracture on the right side, and no pulse. Respondent instructed his friends who had been following in their own vehicle to clean out the back of his Jeep. They then carried JC to the back of respondent's Jeep, where respondent performed CPR consistent with his training as a paramedic, while another friend drove them toward the trailhead and to a place where they could get cell phone coverage to call for help. Respondent performed CPR continuously for approximately 90 minutes until they reached the trailhead. Respondent transferred care and gave a full briefing to the paramedics who were waiting.

8. Respondent cannot begin to express the remorse, regret, and sorrow that he feels. The impact on himself and others has been huge, and he owns it. He is in full

compliance with the terms of probation ordered by the El Dorado County Superior Court, including completion of the MADD program in January 2019. Respondent also participated in counseling with a therapist on his own initiative, to help manage his grief regarding JC's death. Respondent also stopped drinking alcoholic beverages on his own initiative, immediately after the accident. It was not difficult for respondent to stop drinking alcohol, because he previously drank only occasionally. As a personal matter, respondent believes that his only option now is to take ownership of his responsibility for the accident, to not be personally defeated, and to move forward from this accident that so terribly "affected us all."

9. Respondent feels embarrassment toward those who trained him at the Sacramento Metropolitan Fire District (Metro Fire), and in the United States Marine Corps (USMC), where he served honorably. Respondent's training and experience as a paramedic and in the USMC are discussed below.

10. Training and Experience with Metro Fire: Respondent entered the Metro Fire Single Role Academy (Single Role Academy) in July 2015. Graduates from the Single Role Academy are eligible to serve at Metro Fire in a single role as an EMT or paramedic, but not as a firefighter. Respondent graduated from the Single Role Academy as an EMT, and began working for Metro Fire as an EMT in October 2015. Respondent completed his education and paramedic internship while employed with Metro Fire. This facilitated his advance from an EMT to a paramedic.

11. During January through May, 2017, respondent completed the Metro Fire Regional Academy (Metro Fire Academy), which made him eligible to advance beyond single role paramedic service, and apply for a position on a fire engine, where he would serve as a firefighter/paramedic. Respondent earned the Top Recruit Award in his graduating class from the Metro Fire Academy.

12. Respondent began working as a firefighter/paramedic for Metro Fire in June, 2017. Respondent submitted into evidence his employment evaluations for June, 2017. The evaluating officers uniformly gave respondent high marks (3 of 3) for his performance in different categories including communication, scene activities, treatment, and assessment. The written summaries included comments such as "good attitude," "great work ethic" and "creates a good rapport with patients quickly." After the accident on June 25, 2017, respondent was put on unpaid administrative leave by Metro Fire, then resigned in August 2017, to avoid likely involuntary termination of his employment.

13. Training and Experience in the USMC: Respondent served in the USMC from July 2007 to July 2011, during which time he completed tours of duty in Iraq and Afghanistan, and was meritoriously (based on merit as distinct from time in service) promoted to the rank of Sergeant. A review of the documentation regarding respondent's service demonstrates that his superiors found him to perform exceptionally well. Respondent completed basic training in October 2007, then went to advanced infantry training school where he was meritoriously promoted to the rank of Lance Corporal, effective January 2008.

14. Respondent was deployed to Iraq, Al Anbar Province, during the fall of 2008 through spring 2009, where he commanded a team of four Marines, and was responsible to ensure their mission readiness and capability. He drove Humvees and armored trucks during armored patrols. He also led his team on dismounted (on foot) patrols. Respondent was promoted during this tour from the rank of Lance Corporal to the rank of Corporal, which is the first level of a noncommissioned officer.

15. Respondent was deployed to Afghanistan during the fall of 2009 through spring 2010, where he was given command of a squad of eight Marines, and the responsibility to maintain and operate the radios for the platoon, comprised of 25 to 50 Marines. Respondent's Fitness Report evaluating his conduct in Afghanistan, completed by his platoon commander, stated the following:

[Respondent] performed his duties in an exceptional manner throughout a grueling combat deployment. He is a team player that is always willing to put in the extra work and do what is necessary to ensure the mission is accomplished.

[Respondent's] strong work ethic, motivated attitude, and knowledge of all things mechanical proved invaluable throughout the deployment . . . . [Respondent] will certainly be a great asset to any unit of which he is a member.

Respondent received a Certificate of Commendation from his commanding officer for his service in Afghanistan noting his "exceptional performance of his duties while serving as a squad leader . . . ." The Certificate of Commendation also stated:

[Respondent] was a vehicle commander and radio operator for more than 80 mounted patrols covering 1,400 kilometers and transporting key personnel across [the] area of operations. . . . Additionally, he led his team on more than 200 dismounted patrols and two direct fire engagements in which he displayed an unmatched ability to control and maneuver his team in an effective manner. . . .

16. Respondent was meritoriously promoted to the rank of Sergeant, effective May 2, 2010. When he returned from Afghanistan, respondent went to the Mountain Warfare Training Center for high-altitude training near Bridgeport, California. He was given command of two squads, a minimum of 16 Marines. He also completed a martial arts instructor training course, qualifying him to serve as an instructor up to the green belt level. Respondent's Fitness Report evaluating his performance in high-altitude training states that respondent is a "mature and professional Noncommissioned Officer who holds his Marines to sound and consistent procedures . . . . Good potential for future service. Highly recommended for promotion."

17. On July 23, 2010, respondent's commanding officer awarded him with the Good Conduct Medal, which included the following statement:

Throughout the period 10 July 2007 to 9 July 2010, you distinguished yourself through your exemplary personal and professional conduct. This award is testament to your selfless service and faithful adherence to the Corps' high standards. . . .

18. In October 2010, respondent was nearing the end of his enlistment. He was deployed to the USMC base in Hawaii where he completed training in marksmanship instruction, after which he served as the primary marksmanship instructor at the Pu'uloa Training Facility. Here, too, respondent provided outstanding service and was awarded a Meritorious Mast issued by his commanding officer. Respondent was honorably discharged from the USMC in July 2011, at the conclusion of his enlistment.

19. Testimony of Gina Bateman: Ms. Bateman was engaged to be married to JC at the time he was killed in the Jeep rollover accident with respondent. Respondent was like a "brother" to JC. Ms. Bateman met respondent in 2014, at one of the four-wheel-drive club events, and would see him approximately once per month after that. She reached out to respondent's attorney when she heard of the hearing. She wanted to testify to serve as JC's "voice" at the hearing. JC and respondent were very close. JC would not want to see respondent lose his career as a paramedic. She is grateful to respondent for his efforts to revive JC after the accident.

20. Testimony of Jacob Peek: Mr. Peek has known respondent for approximately five years. They know each other very well. Respondent is a "stand-up guy" and will "do anything for anybody." At the time of the Jeep rollover accident, Mr. Peek was following approximately 15 feet behind respondent in his own four-wheel-drive vehicle. Both respondent and Mr. Peek had driven this exact area many times. They were both driving very slowly, similar to a walking pace. Respondent and Mr. Peek were taking an appropriate line of travel, similar to what they had done many times before. He did not see respondent driving in an unsafe manner, though rollovers are always possible on steep terrain, even when driving safely. Mr. Peek is a four-wheel-drive enthusiast. In his experience, a lot of his peers swear by wearing seatbelts, and a lot prefer to ride seatbelt free so they can jump out if needed.

21. Mr. Peek saw respondent's Jeep rollover. Mr. Peek does not know how it happened. It looked like "a complete fluke of an incident." After the rollover, respondent immediately jumped into action and coordinated their response to the accident. He had the training and experience to make sure everyone had a task. Mr. Peek helped respondent lift JC into the back of respondent's Jeep, where respondent administered CPR. To Mr. Peek's observation, JC was already dead at the time they put him in respondent's Jeep. Another person drove respondent's Jeep, while Mr. Peek drove his own vehicle. They had to drive approximately one mile down the Rubicon Trail before they could get cell phone coverage to call 911.

22. Testimony of Jonathan Davis: Captain Davis is employed by Metro Fire. He is licensed as a paramedic. His responsibilities include supervision of an engine crew, and making sure that emergency medical treatment is provided correctly. He has worked with hundreds of firefighters and paramedics.

23. Captain Davis has known respondent since 2015, when respondent joined Metro Fire. Captain Davis did not supervise respondent. He has, however, seen respondent's performance on the job and, earlier, at the Academy. Respondent was a "standout recruit" when he came into the Academy, and it was clear that he was "an obvious leader." Captain Davis leaned on respondent a little bit to help the other recruits in the Academy. Based on Captain Davis's observations of respondent in the Academy and on the job, it is his opinion that respondent has qualities that cannot be taught, specifically a desire to serve and care for others, and to give more than he gets. It is Captain Davis's opinion that respondent poses no threat to the public as a paramedic. Captain Davis would trust respondent to be a paramedic for his own family members. Captain Davis would have no reservations about working with respondent, and would like to work with him again. Captain Davis is aware that respondent had been drinking alcohol when he was involved in a motor vehicle accident that caused the death of his passenger, and resulted in a criminal conviction.

24. Testimony and Letter of Support by Kim Fong: Captain Fong has been employed by Metro Fire for approximately 20 years. Captain Fong oversees the operations of the fire house where he is stationed during his shift. He also served as the drill master at the Metro Fire Academy during 2017, when respondent was in attendance. Captain Fong's responsibilities at the Metro Fire Academy included evaluating new recruits' proficiency in firefighting and para-medicine. To Captain Fong's observation, respondent was not only technically proficient, but also a natural leader at the Metro Fire Academy. Through his leadership, respondent helped the 20 individuals in his class form a cohesive unit. Respondent was awarded Top Recruit of his academy class. In his letter of support, Captain Fong commented on respondent's leadership qualities and work ethic at the Metro Fire Academy, as follows:

The thing that struck me most about [respondent] during the 20-week long academy was the manner in which he demonstrated his selflessness, or Service before Self. [Respondent] was always ensuring the rest of his classmates were ready to go before worrying about himself. This is an attribute that we look for in Recruit Firefighters; however, even those who possess this trait have a difficult time demonstrating it during the academy due to the intensity and stress. Many of our recruits are simply treading water and completing the tasks at hand [that] are simply overwhelming. [Respondent] was able to lead his fellow classmates and ensure the success of his entire class. This, in my opinion, is why he was so successful and was ultimately awarded the Metro Fire Regional Academy 17-1 Top Recruit Award.

25. Captain Fong has seen respondent at emergency calls as a paramedic following his graduation from the Metro Fire Academy, and was very impressed with how respondent managed the situations. Captain Fong would take respondent at his firehouse “in a heartbeat.” Respondent is the type of candidate that Metro Fire looks for as a potential 30-year employee. In sum, respondent is one of the most qualified individuals Captain Fong has ever seen.

26. Captain Fong is aware that respondent had a rollover accident that was fatal to his passenger, and resulted respondent’s criminal conviction. Captain Fong regards this as a tragic accident and a misstep by respondent. He is fully aware that paramedics are held to a higher standard, and that para-medicine is a lifestyle – 24 hours per day, seven days per week. He does not believe, however, that respondent’s misstep should define him for the rest of his life. Captain Fong followed up with respondent during the weeks and months following his rollover accident, and observed that respondent was deeply remorseful and suffering greatly because of his responsibility for the accident.

27. Given the opportunity, Captain Fong believes that respondent would contribute greatly to Sacramento County and Metro Fire. Based on his experience and observations, Captain Fong believes that respondent “poses no danger to the public, whatsoever.” Captain Fong would, without a doubt, have respondent care for his family as a paramedic. Captain Fong would stake his reputation on respondent.

28. Testimony of Patrick Ellis: Assistant Chief Ellis retired from Metro Fire in 2016, after 32 years of service. Prior to retirement, Assistant Chief Ellis normally supervised 168 firefighters, paramedics, and EMTs. Assistant Chief Ellis supervised respondent when he was a single role EMT and paramedic. He saw respondent numerous times at the firehouse and during a couple of emergencies where respondent was performing services. Respondent performed well during the emergencies, and was respectful at the firehouse. Respondent exhibited the type of skills and leadership qualities that Metro Fire looks for as it seeks to develop leaders from within its ranks.

29. Assistant Chief Ellis is aware that respondent was the driver in a fatal rollover accident, and that he was under the influence of alcohol at the time of the incident. Assistant Chief Ellis reached out to respondent after the accident, and took him to the gym to get some exercise as a way to help respondent through a very difficult time. Assistant Chief Ellis had many conversations with respondent about “what was going on in his head.” Respondent always accepted full responsibility for the accident and the death of his good friend. Respondent was extremely remorseful, and felt horrible, such that it was painful to see.

30. Based on what he knows of respondent as a person and a firefighter/paramedic, Assistant Chief Ellis believes respondent should be put back to work. Respondent exercised poor judgment by drinking and driving. He accepts full responsibility for his conduct, and has learned from this very difficult experience. Assistant Chief Ellis would trust respondent to provide paramedic services to members of his own family.



31. Letters of Support: Respondent submitted 28 letters of support, all of which speak very highly of him as a friend, Marine, and firefighter/paramedic.<sup>2</sup> Representative quotations from three letters are provided below.

Letter from Drew Barnes, former platoon commander, USMC:

My name is Drew Barnes and I was [respondent's] platoon commander from April, 2009 to July, 2010. . . .

. . . As a fire team leader, he stood out as someone who truly cared for the members of his team. He was the type of leader that would work alongside his men as opposed to bossing them around. During combat situations [respondent] demonstrated courage under fire and a determination to fight for his fellow Marines to his left and right. He is the type of guy that you would want by your side in tough situations and who can be trusted to do what is right for those around him. I enjoyed being his platoon commander because he was eager to step up and take on challenges that I would give him. He was truly an exemplary Marine that any commander would want on his team.

Although [respondent] has been involved in a terrible accident, this does not change the fact that he is a good and decent person who cares deeply for the safety and well-being of others. While in Afghanistan there were times when I trusted [respondent] with my life, and I would do so again in a heartbeat. . . . I believe whole-heartedly that he will learn from this recent tragedy and do everything he can not only to continually better himself but also to make the world around him a better place. . . .

Letter from Michael Launier, Captain, Metro Fire:

I have had the pleasure of working with [respondent] on multiple occasions over the last two years and would like to provide some insight to his character. . . .

[Respondent] has an outstanding work ethic. He is the type of person that always shows up early and stays late if necessary. He constantly offers to lend a hand or shows initiative to get something done. He strived to do his best and is always looking for ways to improve. He is the last person to quit.

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<sup>2</sup> The letters of support were admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d), to supplement or explain other evidence.

[Respondent] is always respectful to his supervisors, crew members and the public. . . . He looks out for fellow employees and often serves as a role model to them. [Respondent] is also respectful to the public which he serves. He treats the public with kindness and is willing to go above and beyond the call of duty. I would feel very comfortable with him helping my family in an emergency.

. . . [Respondent] is honest and trustworthy. He owns his mistakes and learns from them. These are traits that are lacking in today's world and I am grateful to still see them in people like [respondent].

Letter from Erik Roman Rubalcava, Captain (Ret.), Metro Fire:

[Respondent] was a recruit in Metro Fire's Single Role Paramedic Program Academy 15-2 in 2015. I was the Drill Master for that Academy, and as such, I had ample opportunity to observe and evaluate [respondent's] performance.

[Respondent] distinguished himself by working hard and maintaining his focus throughout our Academy. He interacted well with his formal recruits and my staff. He has an active and curious mind, and he was very coachable. [Respondent] received criticism well, and made adjustments where appropriate.

I was impressed by [respondent's] work ethic. He was frequently the first recruit to arrive in the morning and the last to leave in the afternoon. . . .

. . . [Respondent] is exactly the kind of person that I would like to have in the backseat of my fire engine. I will gladly stake my name and good reputation on [respondent]. . . .

32. Evaluation Report by Angella Barr, M.D.: Dr. Barr prepared an evaluation report dated September 7, 2017, at the request of the Sacramento County Emergency Medical Service Agency.<sup>3</sup> Dr. Barr categorized the evaluation type as: "Professional Evaluation for 'Threat to public, care provider.'" Dr. Barr's evaluation included a three-hour face-to-face interview with respondent on September 7, 2017, and an 11-minute follow-up

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<sup>3</sup> Statements by respondent included in the Evaluation Report were admitted as direct evidence; other portions not qualifying for a hearsay exception were admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d), to supplement or explain other evidence.

telephone interview on September 28, 2017. Dr. Barr also reviewed the following: (1) CHP reports regarding respondent's DUI arrest and the rollover accident; (2) Controlled Substance Utilization Review and Evaluation System (CURES), which showed no prescriptions for controlled substances in the previous 12 months; (3) urine drug screening test, which was negative for 12 drugs included in the test; (4) alcohol screening questionnaire, which showed a low risk; (5) drug abuse screening test, which showed no problem reported; (6) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, indicating that respondent does not fit the diagnostic criteria for alcohol use disorder; and (7) National Institute on Alcohol Abuse and Alcoholism Six Question Set, which showed infrequent, light alcohol consumption, and no pattern of binge drinking.

33. Dr. Barr's evaluation also included corroborating information obtained in interviews with six people, including two four-wheel-drive club members, a co-worker at Metro Fire, a cousin, respondent's girlfriend, and a therapist whom respondent saw on his own volition to get help with emotional trauma from the death of his friend in the rollover accident. The interviews, as a whole, corroborate other direct evidence that respondent has a high level of integrity, that he helps others before thinking of himself, that he has an excellent work ethic, and that he is full of remorse for causing his friend's death.

34. Dr. Barr's impression, based on all of the evidence available to her, is that the rollover accident was an isolated and tragic incident with multiple contributing factors, including location, terrain, time of day, lack of safety precautions and alcohol use. Dr. Barr went on to state that in her opinion respondent "does not pose a risk to public safety and that he will continue to conduct his work and personal life as a responsible citizen."

### *Discussion*

35. Respondent credibly testified that he cannot begin to express the amount of remorse, regret, and sorrow he feels about JC's death and how it has impacted others. Those who know respondent can see that his remorse and sorrow are profound. This was expressed most clearly by Assistant Chief Ellis (Ret.) who had many conversations with respondent following the accident, and testified that respondent is extremely remorseful, such that it was painful to see. (Factual Finding 29.)

36. Respondent's remorse and regret are best understood in conjunction with his demonstrated commitment to protecting the safety of others. This was well articulated by Metro Fire Captain Jonathan Davis, who testified that respondent has qualities that cannot be taught, especially a desire to serve and care for others. (Factual Finding 23.) Respondent's USMC platoon commander, Drew Barnes, made a similar point in his letter stating that respondent "is a good and decent person who cares deeply for the safety and well-being of others." (Factual Finding 31.) Because of his commitment to serve others, and through his training and proficiency, respondent has protected others in times of danger, both as a Marine and as a paramedic. What he failed to do, was to protect his friend from an entirely preventable fatal accident during a time of recreation and companionship. This causes respondent great remorse and regret. Respondent accepts full responsibility for JC's death.

He feels his only option now is to not be defeated and to move forward from this terrible accident.

37. A central concern is whether respondent, if permitted to retain his license, would present a risk of harm to the public. Captain Davis, Captain Fong, and Angella Barr, M.D., all stated explicitly that respondent would not pose a risk to the public safety if he is allowed to retain his license as a paramedic. (Factual Findings 23, 27, and 34.) Captain Launier and Assistant Chief Ellis (Ret.) stated that they would trust respondent to provide paramedic services to their own family members. (Factual Findings 30 and 31.) Captain Rubalcava stated that respondent is exactly the type of person he would want in the backseat of his fire engine, and that he would stake his professional reputation on respondent. (Factual Finding 31.) Captain Fong also stated that he would stake his reputation on respondent, and that he would accept respondent in his firehouse in a heartbeat. Captain Fong characterized respondent as one of the most qualified individuals he has ever seen. (Factual Finding 25.) Based on respondent's acceptance of full responsibility for the accident, his willingness to learn from his mistakes, and the skills that he brings as a paramedic, it is most reasonable to expect that if respondent is allowed to retain his license, he would continue to provide the quality of service and leadership for which he is known. The overwhelming evidence is that respondent would not present a risk of harm to the public if he is allowed to retain his license as a paramedic.

38. Complainant argued that the sequence of events leading to JC's death was set in motion when respondent started drinking beer at the four-wheel-drive camp, and that it got worse when respondent started driving on the Rubicon Trail after consuming beer. In doing so, respondent did not meet the high standards to which the EMSA holds paramedics. Complainant argued further that revocation is mandatory because respondent was convicted of vehicular manslaughter. (Cal Code Regs., tit. 22, § 100174, subdivision (b)(1) [requiring revocation if a licensee has been convicted of manslaughter or involuntary manslaughter].) As discussed below, based on the EMSA's Disciplinary Guidelines as applied to the facts of this case, and the purpose of discipline to protect the public safety, circumstances exist such that the EMSA may revoke respondent's license, and stay the revocation.<sup>4</sup>

39. The EMSA's Disciplinary Guidelines provide factors to be considered when determining the appropriate level of discipline.<sup>5</sup> Applying these guidelines here, respondent

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<sup>4</sup> The EMSA exercised its authority to revoke a license and stay the revocation in a case with similar considerations. (See *In the Matter of the Paramedic License Held by: Thomas C. Stillman*, Enforcement Matter No. 15-0092, OAH No. 2016020393, October 26, 2016.)

<sup>5</sup> The factors to be considered when determining appropriate discipline include: (1) the nature and severity of the act(s), offense(s), or crime(s) under consideration; (2) actual or potential harm to the public; (3) actual or potential harm to any patient; (4) prior disciplinary record; (5) prior warnings on record or prior remediation; (6) number and/or variety of current violations; (7) aggravating evidence; (8) mitigating evidence; (9) any discipline

committed a severe offense by driving under the influence of alcohol on a dangerous portion of the Rubicon Trail, thereby causing the death of his passenger. Respondent's offense resulted in harm to a member of the public, namely his passenger. There was no harm to any patient. Respondent has no prior disciplinary record, no prior warnings, and no other violations. There are no aggravating factors. Respondent resigned from his employment. He remains on court ordered probation, and is in compliance with all terms of probation. Respondent has no other criminal convictions. Respondent has led a law-abiding life. He has provided exemplary service as a Marine and as a paramedic with Metro Fire. The testimony and letters of support on respondent's behalf well describe respondent's excellent work ethic, team leadership, and attitude of service before self. The evidence regarding respondent's service with the USMC and Metro Fire shows a steady upward trajectory, as he was promoted based on merit as a Marine, and as he graduated as the top recruit from the Metro Fire Academy based on his technical proficiency and willingness to help others. Based on the evidence as a whole and considering the criteria set forth in the Disciplinary Guidelines, outright revocation of respondent's license is not necessary to protect the public safety.

40. The evidence taken as a whole, including respondent's law-abiding life, his substantial and consistent service to others, his genuine remorse, and his ability to learn from his mistakes, presents extraordinary circumstances such that alternatives to outright revocation should be considered. This is consistent with the purpose of discipline, which 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.) The evidence is that respondent is honest, ethical, highly competent, and has a solid reputation based on these characteristics. Outright revocation of respondent's license under these circumstances would constitute punishment more than protection of the public. Given the facts presented here, the public safety can be ensured with a stayed revocation, and terms and conditions of probation including abstinence from alcohol and biological fluid testing.

## LEGAL CONCLUSIONS

1. The standard of proof in an administrative action seeking to suspend or revoke a certificate that requires substantial education, training, and testing is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Substantial education, training, and experience is required to apply for a paramedic license in

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imposed by paramedics employer for the same occurrence of that conduct; (10) rehabilitation evidence; (11) compliance with terms of criminal sentence and/or court-ordered probation; (12) overall criminal record; (13) time that has elapsed since the act(s) or offense(s) occurred; and (14) evidence of expungement pursuant to Penal Code section 1203.4.

California. On this basis, the clear and convincing standard of proof applies in this disciplinary proceeding.

2. Pursuant to Health and Safety Code section 1798.200, subdivision (c)(6), the EMSA may discipline an EMT-P license if the licensee has been convicted of “any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel.” In such case, the “record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.” (*Ibid.*) California Code of Regulations, title 22, section 100175 provides that 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.” The crime of vehicular manslaughter with alcohol involved is substantially related to the qualifications, functions, or duties of a paramedic because “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.” For these reasons, and based on the evidence as a whole, cause exists to discipline respondent’s license pursuant to section 1798.200, subdivision (c)(6).

3. Pursuant to Health and Safety Code section 1798.200, subdivision (c)(9), the EMSA may discipline an EMT-P license if the licensee has engaged in “the excessive use of, or the misuse of, alcoholic beverages . . . .” Respondent engaged in the excessive use and misuse of alcoholic beverages by driving a motor vehicle with a BAC of .11 percent. For this reason, and based on the evidence as a whole, cause exists to discipline respondent’s license pursuant to section 1798.200, subdivision (c)(9).

4. California Code of Regulations, title 22, section 100174, subdivision (b)(1), provides that the EMSA “shall deny/revoke a paramedic license” if the licensee has been convicted and released from incarceration during the preceding fifteen (15) years for the crime of manslaughter or involuntary manslaughter. Respondent was convicted of vehicular manslaughter in 2018. For this reason, cause exists to discipline respondent’s license pursuant to section 100174, subdivision (b)(1). However, based on the evidence as a whole, particularly Factual Findings 35 through 40, extraordinary circumstances exist such that it is appropriate to order a revocation, and stay the revocation.

5. The matters set forth in the Factual Findings and Legal Conclusions have been considered. Based on the evidence and applicable law, the appropriate discipline in this matter, best calibrated to protect the public safety, is to revoke respondent’s license, and to stay the revocation on the condition that respondent complies with the terms of probation set forth below.

#### ORDER

EMT-Paramedic License Number P36495 issued to respondent, Kurt W. Steever, is revoked. However, that revocation is stayed and respondent is placed on probation for five

(5) years upon the following terms and conditions. Each condition of probation set forth hereafter is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other conditions and applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Probation Compliance:**

Respondent shall fully comply with all terms and conditions of the 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 this probationary order.

Respondent shall immediately execute and submit to the EMSA all Release 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 the costs associated with this requirement.

3. **Quarterly Report Requirements:**

During the probationary period, respondent shall submit quarterly reports covering each calendar quarter which he shall certify, under penalty of perjury, and document his compliance with all the terms and conditions of his probation. If respondent submits his quarterly reports by mail, the reports 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 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 and any prospective EMS employer of the reasons for and terms and conditions of respondent's probation.

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

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

**5. Notification of Termination:**

Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of any such 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 during 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, and local 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 respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within forty-five (45) days of the effective date of this decision.

Within seventy-two (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, and local 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. Abstinence from the Use of Alcoholic Beverages:**

Respondent shall abstain from the use of alcoholic beverages.

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9. **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 respondent's employer to meet the requirement of random drug testing as set forth above. The results of employer's random drug testing shall be made available to the EMSA in the time frames described above.

10. **Completion of Probation:**

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

11. **Violation of Probation:**

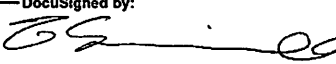
If during the period of probation respondent fails to comply with any term of probation, the EMSA may initiate action to terminate probation and implement actual license suspension/revocation. Upon the initiation of such an action, or the giving of a notice to respondent of the intent to initiate such an action, the period of probation shall remain in effect until such time as a decision on the matter has been adopted by the EMSA. An action to terminate probation and implement actual license suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

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The issues to be resolved shall be limited to whether respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, respondent and 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.

DATED: March 22, 2019

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TIMOTHY J. ASPINWALL  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KURT W. STEEVER,

Respondent.

Case No. 17-0158

OAH No. 2018110303

**ORDER OF DECISION**

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Emergency Medical Services Authority as its Decision in the above-entitled matter.

This Decision shall become effective on March 27, 2019.

IT IS SO ORDERED this 27 day of March, 2019

By: Howard Becker