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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. 18-0039
) OAH No. 2019010696
)
ZACHARY FLISIK,) **DECISION AND ORDER**
License No. P34520)
)
Respondent.)
)

The attached Proposed Decision dated July 30, 2019, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective on September 1, 2019. It is so ordered.

DATED:

8/9/2019



Julie Souliere, Acting Director
Emergency Medical Services Authority

**BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ZACHARY FLISIK, License No. P34520, Respondent.

Case No. 18-0039

OAH No. 2019010696

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 1, 2019, in Los Angeles, California.

Cynthia Curry, Attorney, represented complainant.

David J. Givot, Attorney at Law, represented Zachary Flisik, who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 1, 2019.

During her review of the documentary evidence, the ALJ redacted respondent's social security number, driver's license number, month and day of birth, and vehicle license number when noted in the exhibits.

FACTUAL FINDINGS

1. Complainant Sean Trask filed the Accusation in his official capacity as the Chief, EMS Personnel Division of the Emergency Medical Services Authority of the State of California (EMSA).

2. On January 22, 2015, the EMSA issued Emergency Medical Technician-Paramedic (EMT-P) license number P34520 to Zachary Flisik (respondent). The license is valid through January 31, 2021.

Respondent's Conviction

3. On October 22, 2018, in the Superior Court, County of Orange, case number 18NM04577, respondent was convicted on his pleas of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (count 1); section 23152, subdivision (b), driving with 0.08 percent or more of alcohol in blood (count 2); and section 20002, subdivision (a), hit-and-run with property damage (counts 3 and 4). All of respondent's offenses were misdemeanors.

4. Imposition of sentence was suspended for counts 1, 3, and 4, and respondent was placed on three years' informal probation under terms and conditions including, but not limited to, serving 180 days in Orange County Jail (credit given for one day served) and respondent could apply for home electronic confinement; completing an 18-month multiple offender alcohol program; completing Victim

Impact Counseling; and paying various fines, fees, assessments and restitution. The court stayed the sentence for count 2 pursuant to Penal Code section 654.¹

5. (A) The facts and circumstances underlying the October 22, 2018 conviction are: On February 19, 2018, at or about 12:54 a.m., respondent drove his silver Ford F-250 truck (vehicle) while under the influence of alcohol and was involved in two hit-and-run traffic collisions with other vehicles. The first incident occurred in the parking lot of an In-N-Out hamburger restaurant, where respondent was driving his vehicle and collided with an unoccupied Nissan Versa that was parked in the lot. Respondent fled the scene, traveling northbound on Placentia Avenue. The second incident occurred a few minutes later at the intersection of Placentia Avenue and Rolling Hills Drive, where respondent's vehicle collided with the rear end of a vehicle that was traveling northbound on Placentia Avenue. Respondent fled the scene after the collision.

(B) Two officers from the Placentia Police Department (Placentia PD), who were initially dispatched to the scene of the In-N-Out incident, found respondent and his vehicle parked in the north section of Tri-City Park. A witness to the In-N-Out incident had provided the officers with a photo of the vehicle, which he saw collide

¹ Penal Code section 654, subdivision (a), provides: "An act or omission that is punishable in different ways by different provisions of law shall be punishable under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other."

with the Nissan Versa and then flee the scene. At Tri-City Park, the officers recognized the vehicle from the witness's photo. The officers observed that the vehicle had front end collision damage and two of the tires appeared to be flat. Tri-City Park was closed at the time, and the only way for the vehicle to have entered the north section of the park was to drive through the exit and over traffic spikes.

(C) The officers contacted respondent, who was sitting on the ground outside the driver's side door of the vehicle. The officers identified respondent by his driver's license. One of the officers spoke with respondent. The officer noticed that respondent's speech was slow and slurred, his eyes were red and watery, he struggled to keep his balance when getting up from the ground, and his gait was unsteady when he walked to the officer's patrol vehicle. The officer asked respondent if he had been drinking alcohol, and respondent said yes. The officer could smell the odor of an alcoholic beverage coming from respondent's breath and person.

(D) Respondent told the officer his friend, Eric Singleton, had been driving the vehicle but ran away once they drove into Tri-City Park. When the officer asked respondent for Singleton's address and telephone number, respondent said he did not have or know that information. Respondent admitted to the officer that his vehicle was involved in traffic collisions at an In-N-Out and near the intersection of Placentia Avenue and Rolling Hills Drive. Respondent told the officer that he had been riding in the passenger seat as his friend drove the vehicle. The officer saw respondent's firefighter gear and helmet placed on the front passenger seat of the vehicle. Based on where the gear was placed, it did not appear to the officer that anyone could sit in the front passenger seat of the vehicle.

(E) The officer administered field sobriety tests (FSTs) to respondent, which he failed to complete as demonstrated by the officer. Based on respondent's

objective symptoms of intoxication, his unsatisfactory performance on the FSTs, and the traffic collisions that occurred in the surrounding area, respondent was arrested for driving under the influence (DUI) and hit-and-run driving. Respondent was transported to the Placentia PD station, where he was given a breath test, which measured his blood-alcohol level at 0.22 percent at 2:55 a.m. and 0.23 percent at 2:58 a.m.

6. Respondent, in his testimony at the hearing, admitted he drove his vehicle while intoxicated on February 19, 2018, and entered guilty pleas in his criminal case because he was, in fact, "guilty." Respondent was not on duty at the time of his arrest, was not coming from or going to work, and was not subject to recall to report to work. Respondent testified he was a "black out drunk" on February 19, 2018, which makes him unable to recall incidents that occur while drinking alcohol. Respondent testified he had prior incidents of "blacking out" when he first started drinking alcoholic beverages and also years later.

Aggravating Factor

7. Complainant alleges, as a factor in aggravation, respondent's prior DUI conviction in July 2014 and three-year license probation under a stipulated settlement (discussed below) related to the misuse of alcoholic beverages:

8. On July 28, 2014, respondent was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood-alcohol level of 0.08 percent or more. He was placed on three years' summary probation, which he completed. The incident underlying the conviction occurred on March 21, 2014. (Exhs. 6-8.)

9. Respondent initially applied for an EMT-P license on August 21, 2014. The EMSA denied the application based on respondent's DUI conviction on July 28, 2014, and a Statement of Issues was filed. Pursuant to a Stipulated Settlement

Agreement and Disciplinary Order effective January 22, 2015 (Stipulated Settlement), the EMSA issued an EMT-P license to respondent, the license was immediately revoked, the revocation was stayed, and the EMT-P license was placed on three years' probation. The terms of probation included abstinence from alcohol and drugs. Respondent successfully completed the three-year probation, which ended on January 22, 2018. Complainant contends that respondent's second DUI arrest shortly thereafter, on February 19, 2018, shows that respondent was "clearly not rehabilitated." (Accusation, ¶ 16.)

Rehabilitation

10. Respondent is 34 years old. Respondent is currently employed at an upholstery shop owned by his father. He also works as a waiter and a first-aid instructor.

11. Respondent was previously employed by the Fullerton Fire Department. During his career with the Fullerton Fire Department, respondent was employed in the following positions: a utility driver from October 2007 to April 2009; a firefighter from April 2009 to January 2015; a firefighter/paramedic from January 2015 to June 2016, and an engineer/paramedic from June 2016 to October 2018. Respondent resigned from his employment with the Fullerton Fire Department in October 2018, because he could not continue working in his job as an engineer/paramedic since he did not have a driver's license and was subject to home confinement as a condition of his criminal probation. Respondent testified that the Fullerton Fire Department has indicated it would re-hire him as a firefighter, but only if he has his EMT-P license.

12. (A) Respondent is complying with the terms of probation for his October 22, 2018 conviction. He is scheduled to remain on the three-year probation until

October 2021. Respondent paid \$2,234 for fines and fees. He completed the Mothers Against Drunk Driving (MADD) Victim Impact Panel. With court approval, respondent served his jail sentence through supervised electronic confinement/home detention.

(B) Additionally, as required by his probation terms, respondent is currently attending an 18-month Drinking Driver Program through School Ten, Inc. (School Ten). He enrolled in the program on November 1, 2018, and his expected completion date is May 1, 2020. A progress report dated June 19, 2019, from the School Ten program indicates that respondent is currently in compliance with the program. Although he completed all the required sessions for Alcohol Education, respondent has only partially completed the required number of sessions for Group Sessions, Individual Counseling, Transition Sessions, and Self-Help Meetings. (See Exh. B; p. 35.) According to respondent, he is half-way through the School Ten program.

13. Respondent, in his testimony, acknowledged and admitted that he is an alcoholic. After his second DUI arrest in February 2018, respondent realized he had an issue with alcohol. On March 5, 2018, respondent checked himself into a 30-day in-patient alcohol treatment program at Windward Way Recovery (Windward Way), which is a 120-bed substance abuse treatment facility. Respondent completed the program on April 4, 2018.

14. According to respondent, not long into his treatment at the Windward Way facility, he realized he was an alcoholic and understood that he needed to completely eliminate alcohol from his life. In the Windward Way program, respondent received therapy from a psychologist and psychiatrist, who helped him identify that anxiety and depression caused him to drink alcohol. In a letter dated October 10, 2018, Tyler Michaelis, Program Director at Windward Way, wrote, in part, that respondent "participated in group therapy several times a week and has made significant strides in

identifying his defects, enabling him to overcome his addictive behaviors as an ongoing process. ... Throughout his stay in treatment at Windward Way Recovery, he has passed all random urinalysis tests for drugs and alcohol." (Exh. B, p. 14.)

15. Respondent testified he has been working every single day to make himself a better and happier person. Respondent testified that, by quitting drinking, he is happier and wakes up every morning feeling good and healthy. Respondent completed the 12-step program with Alcoholics Anonymous (AA), he has a sponsor, and he continues to attend and participate in AA meetings once a week. Respondent testified that, as of July 4, 2019, he will have been sober for 484 days. Respondent understands that he will always be an alcoholic and must constantly work on maintaining his sobriety. Respondent continues to receive therapy from a psychiatrist and psychologist and is taking medications for anxiety and depression. Respondent currently sees his psychologist (therapist) once a month; he is trying to get insurance so he can resume weekly appointments. Respondent currently sees his psychiatrist every six months; he used to see the psychiatrist bi-weekly. Respondent has a supportive group of family, friends, and his AA sponsor, to help him maintain his sobriety.

16. Respondent believes he will not have a third incident of driving under the influence of alcohol. At the time of his first drunk driving conviction in 2014, respondent did not realize he was alcoholic; he just thought he was "unlucky." He now understands and accepts that he is an alcoholic. Respondent believes that eliminating alcohol from his life will prevent similar DUI incidents in the future. Respondent testified he is "okay" with not having alcohol anymore. He feels he is a much better person now.

17. (A) Respondent presented letters from his psychologist, Kenneth Kaisch, Ph.D., and psychiatrist, Steven Mee, M.D., which attest to respondent's progress and commitment to maintaining his sobriety.

(B) Kenneth Kaisch, Ph.D., is a clinical psychologist who has been treating respondent since June 14, 2018. In a letter dated October 18, 2018, Dr. Kaisch wrote, in part: "Since he has been in treatment with me, [respondent] has maintained sobriety. We have focused on treating his anxiety, which is the underlying cause for his alcoholism. He has made significant progress in resolving his anxiety. ... [¶] [Respondent] is a highly motivated individual who is working extremely hard to resolve his mental health issues and his addiction to alcohol. He loves his job as a firefighter and a paramedic. ... He is aware that any further use of alcohol will result in the termination of his employment. It is my belief that this highly motivated individual will be able to overcome his problems with continued treatment." (Exh. A, p. 1.)

(C) Steven Mee, M.D., is a psychiatrist who has been treating respondent since May 2018 for anxiety and mood disorder symptoms relating to his alcohol use disorder. In his letter dated October 17, 2018, Dr. Mee wrote, in part: "I have been treating [respondent] since May, 2018. I can attest to my observing him as very committed to his recovery, fully adherent to medication and appointment follow-up attendance as well as participating in 12-Step group therapy and regular individual therapy. [Respondent] has taken ownership of his issues and does not appear to be hindered by denial or excessive need to control his treatment program which often afflicts those in substance treatment. I will continue to treat him regularly for these issues and can attest to his character." (Exh. A, p. 2.)

18. (A) Respondent presented character reference letters from three Fullerton Fire Department officials which attest to respondent's dedication to his career as a firefighter and paramedic for the department.

(B) In a letter dated October 26, 2018, retired Fire Chief Knabe wrote, in part: "You have voluntarily resigned from the fire department to handle personal issues in your life. I want you to know that you have my full support as you try and manage the situation. [¶] You have shown tremendous fortitude and personal accountability in the way you have handled the events these past months. As Fire Chief, I feel this is commendable and a testament to your character. [¶] In terms of your duties and performance as an Engineer/Paramedic, you left the Department in good standing. At such time as you are able to meet the job requirements of a Fire Fighter on the Fullerton Fire Department, I would personally recommend you for rehire. [¶] As you know, I am retiring December 29, 2018." (Exh. E, p. 52.)

(C) Mark Huckabey is a retired Fire Captain/Paramedic with the City of Fullerton and currently the chief executive officer of Heartsavers LLC, an advanced medical education and consulting firm. Mr. Huckabey has known respondent for approximately 11 years. He was respondent's supervisor and also worked alongside respondent as a paramedic team. In an undated letter, Mr. Huckabey commended respondent for continuously demonstrating exemplary skills and compassion in his role as an Engineer/Paramedic, as well as professionalism, teamwork, dedication, and a positive attitude. Due to respondent's skill level, Mr. Huckabey has employed respondent at Heartsavers LLC as a course instructor in Basic and Advanced Life Support and Pediatric Advanced Life Support.

(D) As stated in his letter, Mr. Huckabey is "intimately aware of [respondent's] past issues with alcohol and subsequent DUI's," and he "can attest that

in no time [has he] seen any issues on duty at either the fire department or Instructing for [his] company." (Exh. E, p. 53.) Mr. Huckabey further attests that respondent "understands that he must refrain from any drinking whatsoever and know that he is attending meetings and taking this situation very seriously. [¶...] My professional and personal opinion is that [respondent] is an excellent Engineer/Paramedic and has been successful at dealing with his issue with alcohol working daily by going to meetings and doing what he is supposed to do to be successful." (*Id.*)

(E) Rebecca Duran-Brown is currently a Fire Captain/Paramedic with the Fullerton Fire Department. She has been employed by the Department for 22 years. She has been a paramedic for 19 years. Ms. Duran-Brown first met respondent in 2007 when he was hired as a utility driver. She and respondent were assigned to the same crew in 2015 as paramedic partners. In a letter dated May 8, 2019, Ms. Duran-Brown commended respondent for his skills and ability as a firefighter and paramedic, writing, "As his captain it was reassuring to know that if [respondent] was given a task he would do it and do it well." (Exh. E, p. 54.) Ms. Duran-Brown's letter notes that respondent "has made mistakes off duty that he regrets immensely," but she has "never seen any indications that these mistakes have spilled over to his on duty conduct." (*Id.*) She further commented that respondent "has never tried to hide anything and has always taken responsibility. He has never tried to cast blame to anyone but himself. With that said, he has done everything he can to try to better himself and, if possible, get back to the job he loves." (Exh. E, p. 55.)

19. Respondent was credible in his testimony, both in terms of his demeanor, which was open and straightforward, and in terms of the consistency of his statements. He appeared sincere in expressing remorse for his crimes, acknowledging his addiction

to alcohol, and expressing his commitment to maintaining sobriety and his strong desire to return to his career as a firefighter and paramedic.

LEGAL CONCLUSIONS

1. The EMSA is the state agency "responsible for the coordination and integration of all state activities concerning emergency medical services." (Health & Safe. Code, § 1797.1). Emergency medical services (EMS) are "the services utilized in responding to a medical emergency. (Health & Safe. Code, § 1797.72.)

2. A paramedic is a health care professional. (Health & Safe. Code, § 1798.6, subd. (a) [describing paramedics and other prehospital emergency personnel as "health care professional[s]".) To impose discipline on a professional license, complainant must prove cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

3. Pursuant to Health and Safety Code section 1798.200, subdivision (b), the EMSA may deny, suspend, revoke, or place on probation any EMT-P license upon the finding of the occurrence of any of the actions listed in subdivision (c). Subdivision (c) reads in pertinent part as follows:

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 which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

[¶] . . . [¶]

(9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages

4. California Code of Regulations, title 22, section 100175 provides in pertinent part: "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 his/her license in a manner consistent with the public health and safety."

First Cause for Discipline

5. Cause exists to discipline respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(6), and California Code of Regulations, title 22, section 100175, in that, on October 22, 2018, respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed paramedic, based on Factual Findings 3-6.

6. Respondent was convicted of driving under the influence of alcohol and alcohol-related hit-and-run driving (property damage), which are "substantially related" crimes because, to a substantial degree, these crimes evidence respondent's present or potential unfitness to perform the function authorized by his paramedic license in a manner consistent with the public health and safety. (Cal. Code Regs.,

tit.22, § 100175.) "One who willfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle . . . reasonably may be held to exhibit conscious disregard of the safety of others." (*People v. Watson* (1981) 30 Cal.3d 290, 300-301.)

7. California courts have determined that a conviction involving the consumption of alcohol is substantially related to the licensed activity of a health care provider. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757 (*Griffiths*), the court found that a physician's convictions involving alcohol consumption had a logical connection to his fitness to practice medicine and could be the basis for license discipline. The court explained:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed.

(*Griffiths, supra*, 96 Cal.App.4th at p. 770, citation omitted.)

8. The above-quoted language from *Griffiths* applies with equal force to respondent's circumstances as a licensed paramedic. There is no language in the

Griffiths decision that its holding was limited only to the facts of that case (i.e., a physician with multiple drunk driving convictions).

9. Furthermore, the safe transportation of patients is an important part of a paramedic's duties, and an alcohol-related driving conviction evidences potential unfitness to provide safe transportation. The scope of paramedic practice includes services performed "while at the scene of a medical emergency or during transport, or during interfacility transfer." (Cal. Code Regs., tit. 22, § 100146, subd. (c).)

10. Respondent contends there is no connection between his 2018 conviction and his fitness for duty as a paramedic. At the time of his arrest, respondent was not driving to or from work as a paramedic, and was not subject to being recalled to work. But the court in *Griffiths* rejected the same argument for a physician, noting that "[s]ubstantial legal authority provides that conduct occurring outside the practice of medicine may form the basis for imposing discipline on a license because such conduct reflects on a licensee's fitness and qualifications to practice medicine. [Citations.]" (*Griffiths, supra*, 96 Cal.App.4th at p. 771.) Similarly, respondent's off-duty behavior reflects on his fitness and qualifications to perform duties authorized by his paramedic license. Respondent was not working as a paramedic at the time of his arrest, and is not currently employed as a paramedic. Nonetheless, as the holder of a valid paramedic license, he remains empowered to perform paramedic functions authorized by his license and is subject to all obligations imposed on him by the license.

Second Cause for Discipline

11. Cause exists to discipline respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(9), in that, on February 19, 2018,

respondent misused alcoholic beverages by drinking alcohol and then driving his vehicle and causing two hit-and-run traffic collisions, based on Factual Findings 3-6.

Disposition

12. Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee but, rather, to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

13. "The administrative law judge shall use the 'EMS Authority Recommended Guidelines for Disciplinary Orders and Conditions of Probation', dated July 26, 2008 [Guidelines], as a guide in making any recommendations to the EMSA for discipline of a paramedic applicant or license holder found in violation of Section 1798.200 of Division 2.5 of the Health and Safety Code." (Cal. Code Regs., tit. 22, § 100173, subd. (d).) (See Exh. 12.)

14. The Guidelines set forth categories of violations and the recommended level of discipline for each category. For a substantially related criminal conviction, the maximum discipline is revocation and the minimum discipline is revocation stayed, with a one-year probation. For the excessive use or misuse of alcohol, the maximum discipline is revocation and the minimum is revocation stayed, with three years' probation. (Guidelines, pp. 6-7.)

15. The Guidelines list 14 factors that shall be considered when determining the appropriate discipline. (Guidelines, pp. 1-2.) The factors apply in respondent's case as follows:

(1) *Nature and severity of the act(s), offense(s), or crime(s) under consideration:* Respondent drove his vehicle while under the influence of alcohol and caused two separate traffic collisions, each resulting in property damage to the other vehicles. Respondent fled the scene after each collision.

(2) *Actual or potential harm to the public:* Respondent's conduct posed a serious risk of harm to himself and other motorists. His conduct caused two traffic collisions, resulting in actual damage to other vehicles and his vehicle. No persons were injured in the collisions.

(3) *Actual or potential harm to any patient:* There was no actual or potential harm to any patient.

(4) *Prior disciplinary record:* Respondent's EMT-P license was initially issued pursuant to the Stipulated Settlement, under a stayed revocation and three-year probation. Respondent successfully completed the probation. The Stipulated Settlement was based on respondent's first DUI conviction in 2014.

(5) *Prior warnings on record or prior remediation:* No evidence was presented of any prior warnings on record or prior remediation.

(6) *Number and/or variety of current violations:* Respondent committed two violations arising from the February 19, 2018 incidents.

(7) *Aggravating evidence:* Respondent's prior DUI conviction in July 2014 and three-year license probation under the Stipulated Settlement related to the misuse of alcoholic beverages. Also, respondent's DUI arrest on February 19, 2018, occurred shortly after he completed the three-year probation under the Stipulated Settlement.

(8) *Mitigating evidence:* No mitigating evidence was presented.

(9) *Any discipline imposed by the paramedic's employer for the same occurrence of that conduct:* Not applicable.

(10) *Rehabilitation evidence:* Shortly after his DUI arrest on February 19, 2018, respondent checked himself into a 30-day alcohol treatment program at Windward Way. During that program, respondent came to the realization that he is an alcoholic and needed to completely eliminate alcohol from his life. He testified credibly regarding his commitment to maintaining his sobriety. He has been receiving psychological and psychiatric treatment, and taking medication, to address the anxiety and depression which are the underlying causes of his alcoholism. Respondent's reference letters, from his physicians and Fullerton Fire Department officials, lent credibility and substance to his own testimony regarding his rehabilitation. "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317 – 318.)

(11) *In case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation:* Respondent is complying with the terms of probation for his October 22, 2018 conviction. He is in the process of completing the 18-month Drinking Driver Program through School Ten, as required by his probation.

(12) *Overall criminal record:* Respondent has a conviction in 2014 for DUI, and convictions in 2018 for DUI and hit-and-run (property damage).

(13) *Time that has elapsed since the act(s) or offense(s) occurred:* One year and five months have elapsed since the February 19, 2018 incidents that resulted in respondent's arrest and conviction.

(14) *If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4:* Not applicable. Respondent is scheduled to remain on criminal probation until October 2021 and, thus, is not eligible to petition for expungement of his conviction at this time.

16. Rehabilitation is a state of mind and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Mere remorse does not demonstrate rehabilitation, but can be considered as a mitigating factor. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Also important is evidence of an internal, attitudinal scale. In other words, respondent must present evidence both of a state of mind and a state of facts showing he has been rehabilitated. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811; *In re Adreani* (1939) 14 Cal.2d 736, 749.) Respondent bears the particular burden of establishing rehabilitation sufficient to compel continued licensure. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.)

17. In this case, based on respondent's convincing evidence of rehabilitation, the appropriate level of discipline is a revocation stayed with three years' probation.

The public protection concern with respondent is the misuse of alcohol and driving under the influence. Respondent has taken steps to alleviate and address that concern. Respondent has demonstrated a serious commitment to maintaining sobriety. He now understands and accepts that he is an alcoholic. He is addressing the underlying causes of his alcoholism (i.e., anxiety and depression) through therapy and medication. Since becoming sober, respondent has a happier and healthier outlook about his life. He has a strong desire to return to work as a firefighter and paramedic, which also motivates him to maintain sobriety. He has family, friends, and an AA sponsor to support his efforts. The probation conditions set forth in the Order below will protect the public health and safety. The optional probation conditions that respondent abstain from the use of alcohol beverages and submit to random alcohol testing are appropriate and included in the Order. (Factual Findings 1-19; Legal Conclusions 1-16.)

ORDER

License Number P34520 issued to the respondent, Zachary Flisik, is revoked. However, such revocation is stayed and the respondent is placed on probation for three years upon the following conditions:

1. Probation Compliance

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

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

2. Personal Appearances

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

3. Quarterly Report Requirements

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

4. Employment Notification

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

Additionally, the respondent shall submit proof in writing to the EMSA of disclosure, by the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of the respondent's probation.

The 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

The respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. The 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 the respondent is not practicing as a paramedic within the jurisdiction of California.

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

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

7. Obey All Related Laws

The 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. The 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 the 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, the 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 the 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

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

9. Violation of Probation

If, during the period of probation, the 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 the 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.

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

The respondent shall abstain from the use of alcoholic beverages.

11. Biological Fluid Testing

The respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by the EMSA or its designee. The 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 licensed 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, the respondent shall provide the required blood/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, the respondent shall ensure that any positive test results are conveyed telephonically by the lab to the EMSA within 48 hours, and all written positive or negative results are provided directly by the lab to the EMSA within 10 days. The 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.

DATE: July 30, 2019

DocuSigned by:
Erlinda G. Shrenger
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ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings