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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

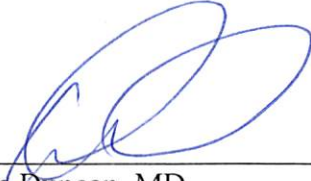
In the Matter of the Emergency Medical Technician- Paramedic License Held by:) Enforcement Matter No. 19-0101
) OAH No. 2019040819
)
JEREMY CARR,) **DECISION AND ORDER**
License No. P33521)
Respondent.)
)
)
)
)

The attached Proposed Decision and Order dated October 29, 2019, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The Decision shall become effective on December 1, 2019.

It is so ordered.

DATED:

11/13/19



Dave Duncan, MD,
Director
Emergency Medical Services Authority

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

**In the Matter of the Accusation and Petition to Terminate
Probation against:**

JEREMY CARR, Respondent

License No. P33521

Enforcement Matter No. 19-0101

OAH No. 2019040819

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 15, 2019, in Los Angeles, California.

Complainant and Petitioner (hereafter, complainant) Sean Trask was represented by Cynthia L. Curry, Attorney, Legal Division, Emergency Medical Services Authority, State of California (EMSA). Respondent Jeremy Carr was present and was represented by Seth Weinstein, Attorney.

Oral and documentary evidence was received. A protective order was issued to permit redaction of personal or confidential information in exhibits. The record was closed and the matter was submitted for decision on October 15, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed and pursued the Accusation and Petition to Terminate Probation (Accusation and Petition) in his official capacity as Chief, Emergency Medical Services Personnel Division, EMSA.

2. On May 5, 2014, EMSA issued Emergency Medical Technician-Paramedic (EMT-P) license number P33521 to respondent. The license was in full force and effect at the relevant times, and is valid through May 31, 2020, unless renewed.

3. Respondent filed a Notice of Defense and this hearing was scheduled.

Disciplinary History of the License

4. As discussed in more detail below, a prior Accusation was filed against respondent based on his criminal conviction for driving under the influence of alcohol. That prior Accusation was resolved when respondent and EMSA signed a stipulation that revoked his license, stayed the revocation, and placed the license on probation under various terms and conditions.

5. In the current Accusation and Petition (paragraphs 12 and 13), it is alleged that officers of the California Highway Patrol were dispatched to a location and found certain circumstances, that respondent made certain statements at the scene, and other information. It is also alleged that respondent was later convicted of driving under the influence of alcohol. No documentary evidence was submitted, such as police reports or court documents, to establish the details of these allegations. However, in his testimony, respondent acknowledged that the incident occurred on

June 18, 2016, and on December 8, 2016, he was convicted in Santa Barbara Superior Court of driving under the influence of alcohol, with an enhancement that his blood alcohol level was in excess of .15 percent. Respondent testified that he began drinking alcohol that day at the beach, then attended a Dodgers baseball game where he consumed some beers. He was driving to a friend's birthday party in Santa Barbara when his car drifted, and he overcorrected. This caused his car to crash. There were no passengers and no one was injured. Respondent testified that he was sentenced to serve three years of probation, to pay fines and fees, and to attend a first offender program that included attendance at weekly meetings of Alcoholics Anonymous (AA). He was ordered not to drive for one year with any detectable alcohol in his system.

6. The prior Accusation (Accusation No. 16-0153) was based on respondent's criminal conviction. It was resolved by a Stipulated Settlement Agreement and Order (Stipulation), signed by respondent and complainant, effective September 16, 2017. (Exhibit 3A.) In paragraph 5 of the Stipulation, respondent admitted that there was good cause for EMSA to impose discipline against his license based on the allegations and charges in Accusation No. 16-0153. Respondent agreed, in paragraphs 6 and 7 of the Stipulation, to waive his rights, including the right to a hearing, and stipulated that EMSA could impose stated conditions of license discipline, as if the allegations of the Accusation had been proven. In paragraph 11 (C)(2) of the Stipulation, it is stated that, if an action is brought to terminate probation, the allegations of Accusation No. 16-0153 shall be deemed true and admitted. Although it states in paragraph 3 of the Stipulation that a copy of Accusation No. 16-0153 is attached to the Stipulation, there was no copy in exhibit 3, or in any other exhibit submitted at the administrative hearing. The exact allegations of Accusation No. 16-0153 are, therefore, not established by the evidence.

7. Under the agreements in the Stipulation, respondent's license was revoked, however the revocation was stayed and the license was placed on three years of probation under terms and conditions. Under Condition 1, respondent was to abstain from the consumption of any and all alcoholic beverages during the entire probationary period. EMSA could direct respondent to undergo random alcohol testing and, if EMSA directed him to do so, respondent would take a breath or urine test at a specific time, or if no time was given, within 12 hours of the request. It is this condition that was violated by respondent and is the subject of the current Accusation and Petition. Other conditions are also relevant, including Condition 2, which required respondent to attend AA meetings at least once per week during the first year of probation. Condition 4 required respondent to meet with EMSA personnel if necessary. If respondent complied with all terms of the probation, his license would be returned without restrictions.

8. On September 14, 2017, respondent and EMSA Special Investigator Karen Kolman had an initial probation intake meeting. Kolman explained each probation term. Respondent signed an Acknowledgement of Decision indicating that Kolman explained each condition of probation and that respondent understood each term of probation. (Exhibit 4B.)

Alleged Violations and Other Relevant Evidence

9. On Monday, February 11, 2019, respondent was randomly selected for alcohol and controlled substance screening. Respondent timely submitted a urine sample. The drug/alcohol sample submitted by respondent was positive for BTG/ETS (alcohol).

10. Before the random test, on Saturday February 9, 2011, respondent's girlfriend was visiting from San Francisco. They had rented an Airbnb lodging, and took Uber to a nightclub in Hollywood. Respondent consumed six cocktails over the course of five hours. He agreed that he was tipsy, but not that he was drunk. He did agree that he was intoxicated. Respondent and his girlfriend took Uber to return to their lodging.

11. On March 1, 2019, respondent received an email from EMSA employee Jaime Cichy, informing him of the positive test result and that he was in violation of probation Condition 1. Cichy informed respondent that he could submit a reply.

12. Respondent replied by email the same day. He noted he was in his second year of probation "and was under the impression that the no tolerance for alcohol and attendance at AA meetings were only for my first year of probation and the zero tolerance for alcohol while driving was the 3 year requirement for my probation." (Exhibit 3C.) He noted he had no prior violations and that his paramedic license was required for his job.

13. Respondent testified credibly that he believed that the condition to abstain from alcohol was for only the first year of license probation. His belief was based on the court probation following his criminal conviction, in which he stated that he was prohibited for one year from driving with any alcohol in his system and was to attend AA meetings for one year. His license probation included a condition that he attend AA meetings for one year. Respondent believed there was a similar time limit of the license condition to abstain from consuming alcohol; that is, to abstain for one year after September 16, 2017.

14. At first, the manner in which respondent was selected for random testing was receipt of a telephone call from an EMSA employee. Later it changed; respondent would check online to see if testing was required. If chosen, he was required to be tested within 12 hours. Respondent had not been selected for random testing between September 2018 and February 2019. This contributed to his belief that he was not required to abstain from alcohol after the first year of license probation was over on September 16, 2018.

15. Respondent was born in Los Angeles and raised in Bellflower in a stable family. During high school he did a ride along with the Downey Fire Department, and after graduation in 2008, he attended Rio Hondo College and received an Associate of Arts degree in fire technology. He also completed a semester of specific coursework to become qualified as an Emergency Medical Technician (EMT). Respondent completed the Fire Academy at Rio Hondo College, a 17-week program to acclimate him to the discipline, professionalism and team work necessary to become a firefighter. Respondent then completed training at the Paramedic Training Institute in Santa Fe Springs. He passed the licensing examination and became a paramedic in 2014.

16. Respondent worked for two years as an EMT at a private ambulance company that was contracted to respond to 911 calls. He assisted paramedics. He volunteered for one year as a firefighter for the Downey Fire Department, assisting on an ambulance or an engine in response to calls. In 2015, respondent worked for AMR, which contracted to respond to 911 calls in Riverside, as a paramedic and rescue technician, which he described as specialized rescues from confined spaces, such as oil rig workers. He then worked for one year as a rescue technician for Total Safety in Signal Hill. Respondent then worked for the West Covina Fire Department as a probationary firefighter/paramedic. Four months into that job he was arrested for

driving under the influence. He was terminated under his probationary employment based on the arrest and conviction. He then worked at Ancon for one and a half years as a confined space reserve technician.

17. Respondent testified that, when he was served with the prior Accusation, it made him nervous. Although he did not see a correlation between the conviction and his job, he knew that his license was at risk. He did not know to consult with an attorney. He agreed to sign the Stipulation. He would receive calls for random testing and would provide the required samples. Respondent testified that, if he was on a duty shift, he could inform EMSA and the testing could be cancelled.

18. Respondent began his present job as a primary paramedic in June 2018 for CalFire in Riverside, which contracts with cities that do not have fire departments. He disclosed his conviction during the hiring process. He works on an engine with two other firefighters assigned, most of whom are not paramedics. A standard shift week is three days on, four days off. But CalFire is understaffed. Respondent is assigned to a relief shift at a station in Beaumont but is routinely assigned to fill vacancies at other stations. He works six to seven days per week.

19. Respondent submitted his third report of performance as a probationary employee from September 2019. He received standard ratings for the nine listed qualification factors. Respondent's probation ended on September 24, 2019.¹ Respondent's goal is to become a captain with CalFire.

¹ The report, exhibit A, was received in evidence under the limitations for hearsay evidence in Government Code section 11513, subdivision (d) [it can be used to supplement or explain other evidence but cannot, by itself, be a basis for a factual

20. During his first year of probationary employment, respondent was hesitant to inquire about taking time off for random testing. However, now that his employment is permanent he will ask if he can take time for testing when selected to do so.

21. Respondent learned from the car accident and described it as humbling, because he had seen such things in his job but did not apply it to himself. He described himself at the time as not having a drinking problem, but definitely as having too much to drink that day. As a condition of probation after his criminal conviction, respondent attended an alcohol education class for three months that included attendance at AA meetings. After the required three-month period, he continued to attend AA meetings voluntarily for about five months. As part of the Stipulation and the conditions on his EMT-P license, respondent again attended weekly AA meetings for one year, as required, from September 2017 to September 2018. Recently, on the advice of an attorney, respondent attended AA meetings in April, July, August and September 2019.

22. Respondent has had no alcoholic drinks since February 2019. He returned to AA meetings voluntarily to "get back on track" and do the right thing. He does not have a sponsor. In response to the question whether he had "accomplished any AA steps," respondent answered no. However, he was not asked whether he was working on any steps; rather, whether he had accomplished any. Respondent noted that some of the experiences of others at the meetings served as a red light, because he did not want to be in their position, such as losing their jobs or families, because

finding]. In this instance, the report supplemented and explained respondent's testimony.

alcohol had altered their priorities. Before, respondent had viewed drinking as just a social activity, but through the AA meetings he became more aware of alcoholism as a disease, and he gained a new perspective.

23. When asked about the random test result in February 2019, respondent stated that it was a hardship because of the time he has had to spend in response. He also testified to his realization that having the license is a privilege. He is proud of the benefits to society that are provided by licensees and he would like to continue to help the public as a license holder. He noted that, since age 19, he has had a goal of serving the public in this way and would like to continue as a paramedic as his career.

LEGAL CONCLUSIONS

1. A licensed EMT-P practices a profession requiring education, training and a licensing examination. In this case involving an accusation requesting discipline of a professional license, complainant bears the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.) With respect to that portion of the case concerning the Petition to Revoke Probation, “[a]lthough the standard of proof to revoke a professional license is clear and convincing evidence, the standard of proof to revoke the *probation* of a professional license is preponderance of the evidence.” (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1435, 1441; italics in original.)

2. The Accusation and Petition contains two causes for discipline. The First Cause for Discipline (paragraphs 7, 8, and 9), relates to Health and Safety Code section 1798.200, subdivision (c)(9), which authorizes license discipline for “[a]ddiction to, the

excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.” Complainant alleges that respondent violated this statute by his misuse of alcoholic beverages when he tested positive for ingestion of alcohol while his probation required abstinence from alcohol. The standard of clear and convincing evidence applies. In the Second Cause for Discipline, complainant alleges that respondent violated the terms of his license probation for the same reasons, so the standard of preponderance of the evidence applies.

3. Complainant’s contention (in the Accusation portion of the Accusation and Petition) that respondent has misused alcohol because he ingested alcohol in violation of a condition of his license probation is not supported by the law or the facts. Although respondent’s February 2019 test revealed the presence of alcohol, there was no evidence that respondent was drunk in public, drunk and disorderly, or drove with a prohibited amount of alcohol in his system, in violation of any Penal Code or Vehicle Code laws. There was no evidence of the amount of alcohol found in the blood test. Rather, the evidence proved that respondent and his girlfriend did not drive to the nightclub, he had six drinks over the course of five hours, and they did not drive away from the nightclub.

4. The basis of the allegation relies upon a condition on his license imposed by EMSA in settlement of an earlier disciplinary matter. The allegation that respondent misused alcohol, in violation of a statute, relies on his failure to uphold an agreement rather than a violation of any law. That agreement includes the mechanism for enforcement of any violation; that is, a petition to revoke probation, as is also included in these proceedings. However, the violation of the agreement is insufficient to establish that respondent misused alcoholic beverages in a manner to establish a separate basis for license discipline.

5. For the reasons stated in Factual Findings 2 – 14 and Legal Conclusions 1 - 4, there is no cause to impose license discipline against respondent under the First Cause for Discipline for violation of Health and Safety Code section 1798.200, subdivision (c)(9).

6. Respondent violated the terms of the Stipulation, Condition 1, that he abstain from the consumption of alcoholic beverages while on probation. Cause to find a violation of probation was proven, as set forth in Factual Findings 2 – 12.

7. Complainant contends that respondent's license should be revoked, as the Stipulation imposed the revocation of the license, which was stayed under the terms and conditions stated, and respondent violated a condition. Respondent contends that the violation was in the nature of negligence and that, although a significant violation, in context respondent should have his license again placed on probation.

8. Under the authority of California Code of Regulations, title 22, section 100214.1, the medical director of EMSA may order probation when an infraction occurs which indicates a need to monitor the certificate holder's conduct in the EMS system in order to protect the public health and safety. The term of the probation and any conditions shall be in accordance with model disciplinary orders, discussed in more detail below. If the probationary licensee fails to successfully complete the terms of probation, the license may be revoked.

9. At the administrative hearing, official notice was taken of exhibit 7, the EMSA Recommended Guidelines for Disciplinary Order and Conditions of Probation, July 26, 2008, referred to as Model Disciplinary Orders, or MDO. The recommended range of license discipline for respondent's initial violation (misuse of alcohol

beverages in violation of Health and Safety Code section 1798.200, subdivision (c)(9)) is from a maximum of revocation to a minimum of three years of license probation with conditions, including the recommendation of optional conditions, some of which were not included in respondent's license probation. It is therefore inferred that the EMSA medical director considered respondent's criminal conviction as appropriate for imposition of less than the full minimum recommended discipline.

10. This is used as the starting point for consideration of the appropriate level of discipline for respondent's violation of his probation. He testified, without any contradictory evidence, that he abstained from alcoholic beverages for the first year of his license probation. Despite the plain language of the probation terms and a meeting during which that language was explained, respondent incorrectly believed the condition was to last for just the first year of his probation. Five months into his second year of license probation, he had drinks with his girlfriend at a nightclub, but did not drive afterwards and was not proven to be in violation of any law.

11. In MDO, section II, titled DISCIPLINARY CONSIDERATION FACTORS, it is stated that the following factors "shall be considered when determining the appropriate discipline:"

1. 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 imposed by the paramedic's employer for the same occurrence of that conduct.
10. Rehabilitation evidence;
11. In the case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation;
12. Overall criminal record;
13. Time that has elapsed since the act(s) or offense(s) occurred;
14. If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4.

These factors are almost identical to the factors to be considered to evaluate rehabilitation on review of a petition for reinstatement of license, under California Code of Regulations, title 22, section 100208, subdivision (c).

12. Applying these factors, there are two acts under consideration: a criminal conviction, for which respondent's license was placed on probation with less than the recommended probation conditions, and a one-time violation of the condition to abstain from alcohol, in February 2019, which is in the nature of a moderate act, and also evidence of aggravation. There was no harm to the public or any patient.

Respondent has complied with the terms of probation related to his criminal conviction and, if there are no intervening violations, that criminal probation will end in December 2019. In mitigation and as rehabilitation, respondent has attended AA meetings voluntarily, after his obligation to do so under criminal probation ended, and again after his obligation ended under his license probation.

13. Under all of the circumstances herein, although there are grounds to revoke respondent's license probation, it would be overly punitive to do so. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 183-184; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

14. Although respondent complied with the license probation terms for 17 months, his violation at that time established that he did not fully understand how to fully comply. The appropriate discipline of respondent's license is to place it under the same terms as were included in the Stipulation, as modified by reference to language in the MDO or as otherwise necessary. In this manner, the public will be protected.

ORDER

Emergency Medical Technician-Paramedic license P33521 issued to respondent Jeremy Carr is revoked. However, the revocation is stayed and respondent's license is

placed on probation for three consecutive calendar years from the effective date of this decision, subject to the following probationary terms and conditions:

1. Abstinance from the Use of Alcoholic Beverages:

Respondent shall abstain from the use of alcoholic beverages.

2. 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 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, 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, 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. 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 the employer's random drug testing shall be made available to the EMSA in the time frames described above.

3. Alcoholics Anonymous Meeting Attendance:

During the first year of probation, respondent shall provide documented proof of attendance at Alcoholics Anonymous meetings at least once per week. Proof of attendance may be provided with quarterly reports described below.

4. 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 his probationary order.

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

5. Personal Appearances:

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

6. Quarterly Report Requirements:

During the probationary period, respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by respondent with all the terms and conditions of his probation. Reports are due on or before the 15th day of January, April, July and October. Respondent will provide whatever documentation is necessary to document

compliance with the terms and conditions of probation. If respondent has not met any of the terms or conditions, respondent will provide a written explanation for failing to do so.

7. Employment Notification:

During the probationary period, respondent shall notify the EMSA in writing of any EMS employment. Written notification of respondent's present employment shall be made within 10 days of the effective date of this decision. Respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Within ten days of the effective date of this decision, 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 by providing a copy of this decision.

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.

8. Notification 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 written explanation of the reasons for and circumstances of his termination.

9. Functioning as a Paramedic:

Respondent shall maintain an active license with the EMSA for the probationary period to run. Should respondent's license lapse or expire by operation of law or otherwise during the probationary period, upon renewal or reinstatement of the license, the license will be subject to all terms and conditions of this probation that remain unsatisfied.

The period of probation shall not run anytime that respondent is not practicing as a paramedic within the jurisdiction of California. If respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, respondent must immediately notify the EMSA, in writing, of the date of such departure and the date of return to California, if respondent returns.

10. Obey All Related Laws:

Respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Health and Safety Code 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 45 days of the effective date of this decision.

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

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

11. Completion of Probation:

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

12. 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 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 revocation.

DATE: October 29, 2019

DocuSigned by:

David Rosenman

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DAVID B. ROSENMAN

Administrative Law Judge

Office of Administrative Hearings