

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

RACHEL FOGLE,
License No. P33621

Respondent.

)
) Enforcement Matter No.: 18-0201
) OAH No.: 2019030930
)


DECISION AND ORDER

The attached Proposed Decision and Order dated October 23, 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:

10/28/19



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 Revoke

Probation of:

RACHEL FOGLE, Respondent

EMT-P License No. P33621

Case No. 18-0201

OAH No. 2019030930

PROPOSED DECISION

Marion Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 24, 2019, in San Diego, California.

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

Rachel Fogle, respondent, represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 24, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 11, 2019, complainant signed the accusation and petition to terminate probation in his official capacity. The accusation and petition to terminate probation alleged that Ms. Fogle's license should be revoked and her probation terminated because she suffered a substantially related felony conviction, unlawfully consumed controlled substances, excessively used or misused alcohol, and violated terms and conditions of her Emergency Medical Technician-Paramedic (EMT-P) license probation.

2. Ms. Fogle timely filed a notice of defense after being served with the required jurisdictional documents and this hearing followed.

License and Probation History

3. On June 2, 2014, EMSA issued EMT-P License No. P33621 (license) to Ms. Fogle. That license is current and will expire on June 30, 2020, unless renewed.

4. On May 16, 2018, complainant filed an accusation against Ms. Fogle, entitled *In the Matter of the Emergency Medical Technician-Paramedic License Held by Rachel Warren*,¹ Enforcement Matter No. 16-0210, asserting causes for discipline against Ms. Fogle's license based on allegations she violated or attempted to violate a statute or regulation that regulates narcotics, dangerous drugs, or controlled

¹ Respondent is also known as Rachel Warren, as well as Rachel Fogle Warren, and Rachel Ballesteros.

substances; and addiction to and excessive use or misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances. As required by her employer's controlled substance test policy, Ms. Fogle provided a urinalysis, which tested positive for cocaine. On August 13, 2018, Ms. Fogle signed a Stipulated Settlement Agreement and Disciplinary Order (stipulation), in which she admitted to the truth of each allegation in that accusation. EMSA adopted the stipulated settlement as its Decision and Order (decision), effective September 13, 2018. The adopted decision revoked Ms. Fogle's license, stayed the revocation, and placed her on three years' probation with terms and conditions.

Pertinent Terms and Conditions of Probation

5. The board's decision contained the following pertinent probationary terms and conditions:

(1) **Abstinence from the Consumption of Drugs:** Respondent shall abstain from the consumption of any non-prescription drugs during the entire term of the probationary period. At any time during the probationary period, the Authority may direct Respondent, at Respondent's expense, to comply with random drug testing by a laboratory test at the discretion of the Authority. When the Authority request a random test, the Respondent shall provide the required urine or blood sample by the time specified, or within twelve (12) hours of the request if no time is specified. When the Authority requests a random test, the Respondent shall ensure that any positive test results are conveyed telephonically by the lab to the Authority within forty-eight (48) hours, and all written positive or negative results are provided directly by the lab to the Authority within ten (10) days. The Respondent shall be responsible for all costs associated with the drug screening.

(2) **Probation Compliance:** Respondent will fully comply with all terms and conditions of this Agreement. Respondent will fully cooperate with the Authority in its monitoring, investigation, and evaluation of Respondent's compliance with the terms and conditions of this Agreement. Respondent will immediately execute and submit to the Authority all Release of Information forms that the Authority may require of Respondent.

(7) **Obey All Related Laws:** Respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to EMS Act Section 1798.200. Within 72 hours of being arrested, cited or criminally charged for any offense, Respondent shall submit to the Authority a full and detailed account of the circumstances thereof. The Authority shall determine whether the offense constitutes a violation of any federal, state or local laws, written policies, protocols or rules governing the practice of medical care as a paramedic. To permit monitoring of compliance with this term, the Respondent shall submit California Department of Justice and/or Federal Bureau of Investigation fingerprints by Live Scan to the Authority, if he/she has not submitted either in the past as a condition of licensure, and pay the appropriate fees within forty-five (45) days of the effective date of this Agreement.

Ms. Fogle's 2018 Conviction

6. On November 13, 2018, Ms. Fogle was convicted in San Diego County Superior Court, based on her plea of guilty, of violating Vehicle Code section 23153, subdivision (b), driving with a measurable blood alcohol causing injury, a felony, with enhanced special allegations pursuant to Penal Code section 12022.7, subdivision (a); Vehicle Code sections 23558, 23582, subdivision (a), and 23578; and Penal Code

section 1192.7, subdivision (c)(8). These enhancements involved an increased term of imprisonment due to infliction of great bodily injury on another person during the commission of a felony. At the time of her conviction, EMSA's decision was in effect.

The court suspended imposition of sentence, placed Ms. Fogle on five years' formal probation which will expire on January 27, 2024, ordered her to serve 180-days in county jail, and ordered her to pay fines and restitution to the three victims.

In her November 13, 2018, plea agreement, Ms. Fogle stated:

Drove with .15 BAC and violated a traffic law that resulted in great bodily injury to more than 1 victim. I admit I suffered a prior DUI conviction as alleged. I exceeded the posted speed limit by 25+ mph.

7. The San Diego Police Department reports² documented that on September 9, 2018, at 1:57 p.m., while driving her vehicle, Ms. Fogle made an unsafe

² The reports were received under *Lake v. Reed* (1997) 16 Cal.4th 448, wherein the California Supreme Court concluded that direct observations memorialized in a peace officer's report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and were sufficient to support a factual finding. The court further concluded that admissions by a party memorialized in such a report were admissible under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the court held that other hearsay statements set forth in the police officer's report could be used to supplement or explain other evidence, but they were not sufficient, by themselves, to

movement to the left, her vehicle crossed over the double yellow lines, and collided head on into another vehicle. Ms. Fogle's passenger and husband, Joshua Fogle, and the driver and passenger of the second vehicle sustained injuries. This accident happened approximately one month after Ms. Fogle signed the stipulation, but five days before the effective date of EMSA's decision.

The officer who responded to the scene observed a black sedan and a white sedan, both with heavy front end damage. Witnesses on scene informed the officer that the black sedan swerved into the lane of the white sedan, and that the driver of the black sedan was standing on the sidewalk across the street. The officer contacted the female who was pointed out as the driver of the black sedan and she identified herself as "Rachel." The officer was able to smell a strong odor of alcohol coming from "Rachel." He later found her California driver's license in the black sedan she had been driving and identified her as "Rachel Warren." The officer performed a horizontal gaze nystagmus evaluation on Ms. Fogle. He observed that her eyes did not have smooth motion when moving from left to right and "before they reached the extreme of 45 degrees they rebounded." Paramedics arrived and transported Ms. Fogle, Joshua Fogle, and the driver and passenger of the second vehicle, to the hospital.

At the hospital, an officer asked Ms. Fogle what happened, and she stated she did not remember. Based on the officer's training and experience, he formed the opinion that Ms. Fogle was driving while under the influence of alcohol, and he placed her under arrest. As Ms. Fogle refused to submit to a blood test, the officer obtained an electronic search warrant, and her blood was drawn. Testing revealed a blood

support a factual finding, unless the hearsay evidence would be admissible over objection in civil actions.

alcohol content (BAC) of 0.19 percent (over twice the legal limit), and her blood tested positive for benzodiazepines and amphetamines.

Testimony of Ms. Fogle

8. Ms. Fogle has always been interested in the medical field. She attended EMT training at Southwestern College and obtained her EMT certificate in 2010. She then attended paramedic training at EMSTA College³ but failed the national registry examination. In 2014, she completed the training program again, successfully passed the exam, and obtained her EMT-P license. Ms. Fogle has taken the prerequisite classes for a registered nursing program and was scheduled to start the program in December 2018.

Ms. Fogle worked as a paramedic for San Diego Rural Metro Ambulance (Rural Metro) until August 14, 2016, when she lost her job after testing positive for cocaine. The circumstances that resulted in the loss of her job and EMSA's imposition of probation on her license are as follows: In June 2016, after Ms. Fogle had gone off duty, the following shift discovered that the controlled substance inventory was missing narcotics. Ms. Fogle was required to submit to a urinalysis. She tested positive for cocaine, but not for any of the missing narcotics. As a result, Ms. Fogle was terminated from Rural Metro. She testified that she had not used cocaine but had attended a party and that someone had slipped cocaine into her drink. Ms. Fogle explained that it had been "a long path," she was a single mother at the time, and she had given up a lot to become a paramedic. She loved working in the ambulance, and she had a good relationship with the fire fighters and others with whom she worked. Ms.

³ EMSTA College is an Emergency Medical Services Training facility.

Fogle said she had lost her mother and her sister had been murdered, but losing her job as a paramedic "was worse."

In December 2016 Ms. Fogle began working as an emergency department technician (ER tech) at Paradise Valley Hospital, where she still works today. Her current position requires that she be either an EMT or a paramedic.

Ms. Fogle did not "deny what happened" and the resulting accident in September 2018. As she had previous DUIs, she did not drink and drive, and "was so adamant for so long." She does not know why she drove on that occasion. Her husband had already ordered a Lyft. She said, "I don't know how" this happened.

Regarding her blood testing positive for amphetamines and benzodiazepines, Ms. Fogle testified that this is because she currently takes three medications that have been prescribed by a physician: Adderall 60 mg per day for attention-deficit/hyperactivity disorder (ADHD); Restoril 30 mg as needed for insomnia; and Xanax 1mg as needed for anxiety. Ms. Fogle stated that Adderall is an amphetamine. She has taken these medications since 2013. She believes she has a problem with alcohol but she was "never a drug user." Although Ms. Fogle did not offer any medical records to corroborate her testimony, complainant did not offer any evidence that refuted it, nor did complainant offer any evidence that Adderall and Restoril would not have caused the positive results obtained on September 9, 2018 when Ms. Fogle's blood was drawn.

After her 2018 conviction, Ms. Fogle understood she would be spending only three months in custody, and Paradise Valley Hospital (PVH) agreed that she could take a three-month furlough from her job. However, at her January 29, 2019,

sentencing, the judge ruled that she should spend the entire six months in custody, and PVH terminated her.

Ms. Fogle claimed a sobriety date of September 10, 2018. In October 2018, she voluntarily attended a four-session class entitled "Addiction Medicine Recovery Program Education," which provided information about chemical abuse and dependency. She began attending Alcoholics Anonymous (AA) on September 25, 2018. She has attended three AA meetings per week for about one year, although the terms of her probation only require that she attend one meeting per week. Ms. Fogle has an AA sponsor and is working the 12-steps. She was at Step 6 at the time she went to jail, but picked up where she left off when she was released in July 2019. She is now at Step 11, which is meditation and prayer for an understanding of God's will.

Ms. Fogle speaks on a Hospitals and Institutions panel, where she shares her experiences "to help others not do this." On Tuesday evenings she attends the four-hour MAAC Project DUI Program Beginning in October 2018 through the end of January 2019, Ms. Fogle saw a licensed clinical social worker (LCSW) every two weeks. She tried to continue their visits while she was incarcerated, but it did not work out. She plans to begin working with her therapist again on October 11, 2019. Ms. Fogle has a contract with American Safety, a training facility, where she teaches cardiopulmonary resuscitation (CPR), Pediatric Advanced Life Support (PALS), and Adult Cardiac Life Support (ACLS), to family and friends of medical personnel. She takes an Algebra class on Monday and Wednesday evenings, which is her last class required before getting her Associates Degree.

Through attending AA meetings and "looking at my life," Ms. Fogle recently realized that she has had an alcohol problem for some time. Her first DUI was in 2001, for which she completed her probation. Her second DUI was in September 2009. She

completed five years of probation but acknowledged six incidents of non-compliance during that probation. She noted that not paying her fine was a probation violation. She served no time in custody but performed community service. She explained that she had retained an attorney, who advised her that she did not have to go back to court, and she stated, "he didn't show up."

The November 2018 conviction was her third DUI and was a felony. She was given five years' formal probation. She was remanded to custody on January 28, 2019, and was released on July 11, 2019. Ms. Fogle said her profession is to help people and it is so out of character for her to hurt people. "All I can do is fix what I can and get help to prevent ever making this mistake" again.

Testimony of Joshua Fogle

9. Joshua Fogle is married to Ms. Fogle. He is an emergency room trauma and mobile intensive care nurse. He met Ms. Fogle four or five years ago "in a hospital setting." The first thing he noticed about Ms. Fogle was that her patients were her top priority. She is a hard worker and her work ethic is above that of most people. Ms. Fogle would work 72 hours straight if needed. After she lost her job as a paramedic, she began working in a hospital.

Mr. Fogle stated that he "still has no idea what happened at the accident." The two of them had not had anything to drink in the few weeks prior to the accident, and each drank about the same amount that day. Ms. Fogle "went from normal to [*sic*] I could not recognize her. I didn't know why she was acting that way." Mr. Fogle conceded, however, this does not excuse her behavior. After the accident, Ms. Fogle made a complete life change. She attends AA and keeps track of her attendance. She goes to church and has been seeing a counselor at Kaiser "since this all started." She is

"more communicative, doesn't hold in as much." She is a better person, "we are both sober."

Mr. Fogle is proud of the steps his wife has taken. Her paramedic license means everything to her. She is "a phenomenal paramedic" and it would be a shame and a loss for her not to continue working as a paramedic. She works with Hospitals and Institutions and Volunteers of America/Detox, and shares her story and "how her actions have affected her life and our lives."

Ms. Fogle's Documents

10. Ms. Fogle provided the following documents, which were received in evidence:

- MADD Victim Impact Panel Registration Confirmation dated July 30, 2019;
- MAAC Project DUI Program (proof of enrollment) dated July 30, 2019;
- Verification of Ms. Fogle's attendance at Kaiser Permanente's "Addiction Medicine Recovery Program Education" on October 18, 2018, October 25, 2018, November 1, 2018, and December 13, 2018.
- Signatures reflecting Ms. Fogle's attendance at AA meetings from September 25, 2018 through January 27, 2019;
- Confirmation of installation of continuous alcohol monitoring device (SCRAM) dated September 20, 2018;
- Letter from L. J. Witte, Sr. dated March 29, 2012, thanking the first responders for their expertise and efforts that saved his life. Ms. Fogle testified that she was one of the first responders when Mr. Witte had an emergency health situation and she performed CPR and saved his life.

Ms. Fogle's Letters of Reference

11. Ms. Fogle submitted the following nine letters of reference. The first seven letters were written by her co-workers in the Emergency Department at Paradise Valley Hospital (PVH) and the final two letters were written by fellow members of AA.

12. Dr. Andrew Stanitsas is the medical director at PVH's Emergency Department. He has known Ms. Fogle for approximately two years and stated he is aware of her "recent encounter with the law." Ms. Fogle has a reputation for being a hard-working, responsible and dedicated individual. She shares her knowledge with fellow colleagues, has a strong work ethic, and a caring personality.

13. Jorge Martinez, D.O., wrote that the "recent news" regarding Ms. Fogle "does not reflect the Rachel I have come to know and respect." He has worked with Ms. Fogle for two years and sees her as a very responsible and professional person with a great attitude. As a preceptor training new EMTs, Ms. Fogle demands a lot of the new trainees, while being extremely caring and compassionate. Ms. Fogle "has expressed significant remorse for her actions."

14. Jeremy Howard is a technician and analyst at PVH, and has worked with Ms. Fogle for two years. He wrote that her knowledge and work ethic is of considerable value to the department, she has the integrity to get tasks completed correctly without taking shortcuts, and she is mature and disciplined. "Rachel is an example of what all ED techs should strive to be."

15. Luis M. Torres has worked with Ms. Fogle for two years and he "has enduring respect for both her work ethic and problem-solving abilities." He knows Ms. Fogle both personally and professionally, and stated, "she has my highest respect and trust."

16. Elizabeth F. Castro has known Ms. Fogle since Ms. Fogle was a teaching assistant at EMSTA College. Ms. Fogle was tough and had high expectations for the students, and Ms. Castro's "experience at EMSTA was excellent because of her (Ms. Fogle)" As a preceptor to many of PVH's new hires, Ms. Fogle has "put out some of the strongest EMTs on our team."

17. Steven Slaff is a registered nurse who has known Ms. Fogle since they team-taught CPR classes together several years ago. He was impressed with her knowledge of emergency medicine and her love for sharing that knowledge with others. Mr. Slaff "was surprised to hear about the recent events" regarding Ms. Fogle. She is always courteous and professional with patients, and she is calm and composed even in the most trying situations in the emergency department.

18. Jonah James M. Jenkins is an LVN who has known Ms. Fogle as a good friend and hard-working co-worker for the past two years. He described her as a strong, caring, upright individual who puts others before herself in health care and in the community. He understands the seriousness of "this recent event" and writes that "people make mistakes and learn from" them.

19. Samantha Goren is an EMT, and coworker and friend of Ms. Fogle. Ms. Fogle is known for her hard work, positive demeanor, and knowledge. Ms. Fogle "has dedicated most of her life to helping her community and those in need." Ms. Goren wrote, "[t]o look at Rachel as only the circumstances that brought her before you," would not be doing her justice.

20. Anthony W. Rasco holds panel discussions at Volunteers of America/Detox and leads a Hospitals & Institutions panel. He met Ms. Fogle through AA, and wrote that she is working the 12 steps and working very hard to maintain her

sobriety. Ms. Fogle has led AA meetings and her "personal shares" help other recovering alcoholics, as well as herself. "I feel that Rachel has been open and honest in her trek to sobriety."

22. Teri Davis is a Volunteers of America/Detox panel coordinator, she serves as a group secretary for three AA meetings, and she is an AA sponsor of many women. Ms. Fogle "has been attending daily meetings since her accident" and she is an active participant at these meetings. "We have begun the Twelve Steps together" and Ms. Fogle exhibits a "sincere desire to change" and "a profound sense of remorse for her lack of sound judgment and is clearly in pursuit of solution." She accepts responsibility for her choices."

Several of the above letters were undated, and those that contained dates were dated between September 21, 2018 and November 8, 2018. Ms. Fogle testified that all letters were written in the months following the September 2018 accident. These letters were written in anticipation of Ms. Fogle's criminal court hearing and there is no evidence that these individuals were aware of all the facts involved in the current hearing, making the letters of little worth.

Legal Conclusions

Standards of Proof

1. The allegations in this matter require analysis under two different standards of proof.
2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license 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 high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.) The burden of proof is on complainant in this regard.

3. The burden of proof in a proceeding to revoke probation is on complainant to prove the allegations by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441-1442; Evid. Code, § 115.)

A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) Complainant must prove grounds exist to revoke probation

Relevant Statutory Authority

4. Health and Safety Code section 1797.172 provides that EMSA is solely responsible for licensure and licensure renewal of EMT-Paramedics.

5. Health and Safety Code section 1798.200, subdivision (b), authorizes EMSA to discipline its licensees. Subdivision (c) identifies those actions “considered evidence of a threat to the public health and safety” that may result in discipline including: conviction of any crime that is substantially related to the qualifications, functions, and duties of prehospital personnel [Subdivision (c)(6)]; violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances [Subdivision (c)(8)]; and the addiction to,

the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances. [Subdivision (c)(9)].

Applicable Regulations

6. California Code of Regulations, title 22, section 100173, provides that the administrative law judge "shall use" the EMSA guidelines when making recommendations for discipline.

7. California Code of Regulations, title 22, section 100174, subdivision (b)(2), provides that EMSA "shall . . . revoke a paramedic license" if the licensee "has been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a felony."

8. California Code of Regulations, title 22, section 100175, provides that a crime or act is "substantially related" if it evidences present or potential unfitness of a paramedic to perform the functions authorized by the license in a manner consistent with the public health and safety. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

Rehabilitation

9. California Code of Regulations, title 22, section 100176, outlines the rehabilitation criteria to be considered when considering discipline. Those criteria were considered and include the following:

- (1) The nature and severity of the act(s) or crime(s).
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial,

placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (1) or (2) of this section.

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

10. Rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) "While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice. . . ." (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.)

11. When considering an individual's rehabilitation from substance abuse, consideration must be given to the nature and extent of that abuse and its impact upon the individual. Through continued abstinence, a substance abuser may arrest the deleterious manifestations of the disease. The length of time necessary to show meaningful and sustained rehabilitation varies from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

12. When an addict asserts he is no longer using drugs or alcohol, he must present reliable evidence that his "'long-standing addiction is permanently under control' [citation] and that he has undergone 'a meaningful and sustained period of successful rehabilitation' [citation]." (*Walker v. State Bar* (1989) 49 Cal.3d 1107, 1119.) "His own verbal assurances that he will never drink or take drugs again are not sufficient proof that he has overcome a history of alcohol and drug abuse. . . ." (*Id.*, p. 1120.)

13. "The evidentiary significance of an applicant's 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.)

14. Because persons "under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an individual did not commit additional crimes or continue addictive behavior while in prison or while on probation or on parole." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Cause Exists to Discipline Ms. Fogle's License and Terminate Her EMSA Probation

15. Complainant established by clear and convincing evidence that cause exists to discipline Ms. Fogle's license under Health and Safety Code section 1798.200, subdivision (c)(6), because she was convicted of a substantially related crime on November 13, 2018, when she was convicted of driving with a measurable blood alcohol causing injury. Ms. Fogle's act of driving while under the influence of alcohol and her conviction were substantially related to the duties of a paramedic as they evidenced her present or potential unfitness to perform the functions authorized by

her license in a manner consistent with the public health and safety. Her actions demonstrated poor judgment and not only put the public at risk, but actually injured three members of the public.

16. Complainant established by a preponderance of the evidence that grounds exist to terminate Ms. Fogle's probation and reinstate the stayed penalty of revocation because on November 13, 2018, she was convicted of a substantially related crime after the effective date of EMSA's decision.

17. Complainant established by clear and convincing evidence that cause exists to discipline Ms. Fogle's license under Health and Safety Code section 1798.200, subdivision (c)(9), because she excessively used or misused alcohol, had a BAC of .091 percent, and, while under the influence, drove her vehicle causing an accident that injured others.

18. Complainant established by a preponderance of the evidence that grounds exist to terminate Ms. Fogle's probation and reinstate the stayed penalty of revocation because of her excessive use of alcohol and resulting motor vehicle accident that injured others.

19. Complainant established by clear and convincing evidence that cause exists to discipline Ms. Fogle's license under California Code of Regulations Title 22, Section 100174, subdivision (b)(2). Ms. Fogle was convicted of a felony with multiple enhancements on November 13, 2018.

20. Complainant established by a preponderance of the evidence that grounds exist to terminate Ms. Fogle's probation and reinstate the stayed penalty of revocation because of her November 13, 2018, felony conviction with multiple enhancements.

Causes for Discipline or Termination of EMSA Probation Not Established

21. Complainant did not establish by clear and convincing evidence that cause exists to discipline Ms. Fogle's license under Health and Safety Code section 1798.200, subdivision (c)(8). No evidence refuted Ms. Fogle's testimony that she was lawfully prescribed the medications found in her system when her blood was drawn on September 9, 2018. No evidence was offered that Ms. Fogle "unlawfully consumed" controlled substances or violated federal or state laws regulating controlled substances.

22. Complainant did not establish by a preponderance of the evidence that grounds exist to terminate Ms. Fogle's probation and reinstate the stayed penalty of revocation for unlawfully consuming controlled substances or that she violated federal or state laws regulating controlled substances.

23. Complainant did not establish by either clear and convincing evidence or a preponderance of evidence that grounds exist to discipline Ms. Fogle's license for violating Terms 1, 2, and 7 of EMSA's decision as it was not yet in effect on September 9, 2018, when Ms. Fogle was involved in a DUI.

Disciplinary Guidelines

24. EMSA developed disciplinary guidelines in consultation with Emergency Medical Services (EMS) constituent groups from across the state. The purpose of the guidelines is to provide consistent and equitable discipline in cases dealing with violations of the Health and Safety Code. EMSA uses the guidelines as a standard in settling disciplinary matters and directs administrative law judges to use them as a guide in fashioning a disciplinary recommendation in a contested matter. The

recommended discipline should be imposed in the absence of any aggravating or mitigating evidence. If an administrative law judge recommends discipline that is less than the minimum or which exceeds the maximum, the guidelines require that a full explanation be included to make clear why the case warrants unusual consideration. EMSA's director has the final determination related to administrative discipline.

The guidelines outline the factors to be considered in determining the measure of discipline to be imposed. Those factors include: the nature and severity of the act(s), offense(s), or crime(s) under consideration; the actual or potential harm to the public; the actual or potential harm to any patient; prior disciplinary record; prior warnings on record or prior remediation; the number and/or variety of current violations; the aggravating and mitigating evidence; any discipline imposed by the paramedic's employer for the same occurrence or conduct; rehabilitation evidence; compliance with terms of the sentence and/or court-ordered probation; overall criminal record; time that has elapsed since the act(s) or offense(s) occurred; and evidence of Penal Code section 1203.4 expungement proceedings. Those factors were considered.

Under EMSA guidelines, the conviction for any crime that is substantially related to the qualifications, functions, and duties of prehospital personnel carries a maximum disciplinary recommendation of revocation and a minimum disciplinary recommendation of revocation stayed, with one year of probation with terms and conditions.

Under EMSA guidelines, addiction to, the excessive use of, or misuse of alcoholic beverages, narcotics, dangerous drugs, or controlled substances, carries a maximum disciplinary recommendation of revocation and a minimum disciplinary recommendation of revocation stayed, with three years of probation with terms and conditions.

Under EMSA guidelines, violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances carries a maximum disciplinary recommendation of revocation and a minimum disciplinary recommendation of revocation stayed, with three years of probation with terms and conditions.

The guidelines also contain criteria to be considered when determining rehabilitation for alcohol abuse offenses. Those criteria were considered.

Evaluation

25. Ms. Fogle's act of driving while under the influence of alcohol in 2018 and her 2018 conviction for DUI were substantially related to the duties of a paramedic and evidenced her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health and safety. While under the influence of alcohol, Ms. Fogle drove her vehicle causing an accident that injured three other people, in addition to herself. Her actions demonstrated a lack of sound professional and personal judgment and not only put the public at risk, but actually injured members of the public, as well as her husband and herself.

Ms. Fogle was released from custody less than three months ago and is currently on formal probation, which is not scheduled to end until January 2024. Although the EMSA decision was not yet in effect, Ms. Fogle agreed just one month before she drove a motor vehicle with a BAC above the legal limit to obey all laws. Her 2018 DUI conviction showed that she cannot. Ms. Fogle's felony conviction also falls under the mandatory revocation provision of the paramedic license provisions.

ORDER

The stayed revocation granted to respondent Rachel Fogle is set aside and her EMT-P license no. P33621 is revoked.

DATE: October 23, 2019

DocuSigned by:
Marion J. Vomhof
383DFD82F8954A4...
MARION VOMHOF

Administrative Law Judge

Office of Administrative Hearings