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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. 19-0196
) OAH No. 2019071172
)
MADISON MAUS,) **DECISION AND ORDER**
License No. P39153)
Respondent.)
)
)
)

The attached Proposed Decision and Order dated December 3, 2019, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The Decision shall become effective on January 3, 2020.

It is so ordered.

DATED:

12/5/19



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:**

MADISON MAUS, Respondent

Case No. 19-0196

OAH No. 2019071172

PROPOSED DECISION

Carmen D. Snuggs, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 7, 2019, in Los Angeles, California.

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

Respondent Madison Maus appeared and represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 7, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed the Accusation and Petition to Terminate Probation (Accusation and Petition) in his official capacity. Respondent timely submitted a Notice of Defense.

2. On August 27, 2018, the EMSA issued Emergency Medical Technician-Paramedic (EMT-P) License number P39153 (License) to respondent. The License is scheduled to expire on August 31, 2020.

Respondent's Probation Order

3. On a date not made clear by the record, a Statement of Issues was filed against respondent based on her 2018 criminal conviction for driving under the influence of alcohol. In the disciplinary action entitled, *In the Matter of the Emergency Medical Technician-Paramedic License Held by: Madison M. Maus*, EMSA Case No. 18-0138, the EMSA adopted a Stipulated Settlement Agreement and Disciplinary Order (Agreement), and issued a Decision and Order (Prior Order) effective August 20, 2018. In its Prior Order, the EMSA issued the License to respondent and revoked it upon issuance. However, the revocation was stayed and respondent was placed on probation for three years on certain terms and conditions. If respondent complied with all terms of the probation, her license would be returned without restrictions.

4. Condition 11(C) of respondent's probation states:

(1) Violation of Probation: Respondent understands and agrees that if during the period of probation she fails to

comply with any term or condition of probation, the [EMSA] will initiate action to terminate probation and proceed with actual license suspension/revocation. Upon initiation of such an action, or the giving of notice to Respondent of the [EMSA's] intent to initiate such an action, the probationary period shall remain in effect until a decision on the matter has been adopted by the [EMSA]. . . .

(2) If, for good cause, the [EMSA] brings an action to terminate Respondent's probation, the issues to be resolved at the hearing shall be limited to whether Respondent has violated any term of her probation sufficient to warrant termination of the probation and implementation of actual suspension/revocation. Respondent agrees that in any action by the [EMSA] to terminate probation, the charges and allegations in Statement of Issues No. 18-0138 shall be deemed true and fully admitted. . . .

5. Condition 11(A)(1) of respondent's probation states:

Abstinence from the Consumption of Alcohol and Drugs:
Respondent shall abstain from the consumption of any and all alcoholic beverages and non-prescription drugs during the entire term of the probationary period. At any time during the probationary period, the [EMSA] may direct Respondent, at Respondent's expense, to comply with random alcohol or drug testing by Preliminary Alcohol Screening (PAS) device or by laboratory test at the

discretion of the Authority. When the Authority requests a random test, Respondent shall provide the required urine or breath sample by the time specified, or within 12 hours of the request if not 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 ten (10) days. Respondent shall be responsible for all costs associated with the alcohol screening.

6. On October 25, 2018, respondent and EMSA Special Investigator Karen Kolman had an initial probation intake meeting. Kolman reviewed each page of the Agreement with respondent. In addition, Kolman explained to respondent that she was required to abstain from alcohol and drug use for the entirety of the probationary period, as well as how random testing worked. Respondent signed an Acknowledgement of Decision indicating that Kolman explained each condition of probation and that respondent understood each term of probation. (Exhibit 7.)

Alleged Probation Violation

7. On Monday, June 24, 2019, respondent was randomly selected by First Source Solutions (FSS), a company contracted by the EMSA to conduct random alcohol and controlled substance screenings of probationary licensees. Respondent timely submitted a urine sample. The drug/alcohol sample submitted by respondent was positive for Ethyl Glucuronide/Ethyl Sulfate (ETG/ETS) (alcohol). More specifically, Respondent's results for ETG LCMSMS (500) was >25,000 (the cut-off for a positive

reading is 500 ng), and her results for ETS LCMSMS (250) was 11739 (the cut-off for a positive reading is 250 ng). (Ex. 11.) Complainant alleged that respondent's test results reveal that she "consumed a large sum of alcohol within recent hours of the random screening," but there was no evidence that FSS, or anyone else, analyzed the results of respondent's screening and drew such a conclusion. However, in light of the fact that respondent's ETG and ETS results were approximately 50 and 47 times, respectively, higher than the positive cut-off range, Complainant established that respondent consumed a large sum of alcohol.

8. The day before the random test, Sunday June 23, 2019, respondent consumed alcohol while out with friends. The next day, she went to the gym and then went to the FFS screening. Respondent asserted that she did not work as an EMT-P on June 23 or 24, 2019, and that she did not drive while under the influence of alcohol.

9. On June 28, 2019, respondent received an email from EMSA employee Jaime Cichy, informing her of the positive test result and that she was in violation of probation Condition 1. Cichy informed respondent that she could submit a statement regarding the circumstances that led to the positive test results.

10. Respondent replied by email the same day and acknowledged consuming alcohol. She contended that the amount of alcohol in her system had to be minimal in light of the fact that she had consumed the alcohol the prior day and had gone to the gym. Respondent further noted that she had never tested positive in past screenings, she called in every day to determine whether she was required to test, and she submitted quarterly reports in compliance with her probation condition.

11. A. On June 29, 2019, respondent sent another e-mail to Mr. Cichy and again acknowledged that she consumed alcohol on June 23, 2019. She reasserted

that she did not drive while under the influence of alcohol. Respondent contended that she misunderstood the probation condition requiring her to abstain from alcohol. Respondent further contended that she understood the condition to prohibit her from having alcohol in her system while working as a paramedic and she was not using her License. She also raised this contention at the hearing. Respondent's testimony was not persuasive. The probation condition is unambiguous and cannot be misconstrued as anything but absolute abstention from alcohol. Moreover, as set forth in Factual Finding 6, respondent previously acknowledged understanding that she must abstain from alcohol and drug use during her probationary term. Even if respondent did misunderstand the abstention requirement, she is not excused from complying with the probation conditions that she agreed to.

B. Also in her June 29, 2019 email, respondent offered an apology and indicated that she reviewed the Agreement and now "fully understand[s] that [she] can't have any alcohol or drugs in my system working or not working as a paramedic. This situation will not happen again." (Ex. 14).

Respondent's Evidence

12. Respondent has worked in the medical field for six years. She worked for two ambulance companies between July 2014 and August 2017, and was inspired by her work to become a paramedic. She began attending the OCEMT Paramedic Program in September 2017. Respondent noted that she was arrested for the driving while under the influence of alcohol in December 2017, and after her arrest, she successfully completed an internship and clinical and hospital work before graduating from OCEMT in April 2018. Respondent then took and passed the paramedic examination in May 2018. In August 2018, she began working at Irvine Ranch Outdoor Center as an EMT, where she is responsible for organizing medications and

administering them to patients, as well as administering first aide. Respondent has not received any patient complaints during her time in the medical industry.

13. Respondent stated that she is currently on a "better path" in her life. She made a motion in the criminal court to terminate her probation in her criminal case. The court heard the motion on October 28, 2019, ordered respondent to complete 20 days of Cal Trans/Physical Labor, and issued a Minute Order indicating that respondent's probation will be terminated upon completion of the ordered community service. The court continued the motion to terminate probation to January 9, 2020, at which time respondent must submit proof of completion of Cal/Trans Physical Labor and the court will rule on the motion.

14. Respondent recently took the Los Angeles County Fire Department Firefighter Trainee examination. She was notified on October 3, 2019, that she received a score of 95.1. Respondent stated that it is her desire to further her career and fulfill her dream to serve her community.

15. A. Respondent stated that she did not recall reviewing the Agreement before signing it. However, she took ownership of her mistake of not abstaining from alcohol. Respondent attended a three-month, court-ordered drunk driving course and attended 10 Alcoholics Anonymous (AA) meetings in relation to her conviction. She conceded that she continued to consume alcoholic beverages after she was notified on June 29, 2019, of her positive random screening results, and asserted that she has been sober for one month. Respondent expressed an understanding that her alcohol consumption has not served her well and noted the criminal and administrative consequences she has suffered.

B. Respondent denied being addicted to alcohol, and stated that she previously used alcohol to "suppress" her mind. However, upon further questioning, she acknowledged that she did indeed suffer from alcoholism, but she does not attend AA meetings or have a sponsor. Respondent asserted that she is doing her best to not make the same mistakes with alcohol. When she experiences difficulty in her life, she does not drink but instead she goes to gym or for a walk, she currently socializes with a different group of friends, and she is seeking the assistance of a therapist. Respondent explained that she attended a one-hour therapy session one week prior to the hearing, and stated that her goal is to find a therapist that she likes. She asserted that her family provides support in her effort to maintain sobriety, and she expressed belief that she can comply with her probationary terms without incident. Respondent stated that she is amenable to participating in an outpatient program and obtaining a sponsor.

16. When all of the evidence is weighed and considered, respondent did not present sufficient evidence of rehabilitation to demonstrate it would be consistent with the public health, safety and welfare to impose any disciplinary action other than the immediate revocation of her paramedic license. Specifically, respondent continued to consume alcohol after June 29, 2019, when she reviewed the terms of the Agreement and understood she was required to abstain from all alcohol; she also continued to consume alcohol after the EMSA notified her on June 29, 2019, that her EMT-P license was subject to further discipline as result of her probation violation; she was initially unwilling to acknowledge her alcoholism; and she is currently not participating in any alcohol treatment program.

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. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1502.) 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.)

First Cause for Discipline

2. In the First Cause for Discipline Complainant alleges that cause for discipline exists under Health and Safety Code section 1798.200, subdivision (c)(5), which authorizes license discipline for “[t]he commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.” Complainant alleges that respondent violated this statute by consuming a large “sum” of alcohol within hours of her random screening while her probation required abstinence from alcohol. The standard of clear and convincing evidence applies.

3. A. Complainant’s contention (in the Accusation portion of the Accusation and Petition) that respondent has committed a fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of an EMT-P because she ingested a large amount of alcohol in violation of a condition of her license probation is not supported by the law or the facts. Although respondent’s

June 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 her system, in violation of any Penal Code or Vehicle Code law related to fraud, moral turpitude, or corruption. Rather, the evidence proved that respondent went out with her friends, she consumed alcohol, she did not drive while under the influence of alcohol, and she complied with the random selection testing process. In addition, respondent immediately acknowledged that she had consumed alcohol when notified by Cichy of the positive test results.

B. The basis of complainant's allegation relies upon a condition on respondent's license imposed by EMSA in settlement of an earlier disciplinary matter. The allegation that respondent committed a fraudulent, dishonest, or corrupt act by consuming alcohol within the recent hours of the random screening, in violation of a statute, relies on her 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 prove that respondent acted in a fraudulent, dishonest, or corrupt manner to establish a separate basis for license discipline.

4. For the reasons stated in Factual Findings 3 thru 11 and Legal Conclusions 1 thru 3, 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)(5).

Second for Cause for Discipline

5. In the Second Cause for Discipline, complainant alleges that respondent violated the terms of her license probation by consuming a large quantity of alcohol within hours of her random screening while her probation required abstinence from alcohol. The standard of preponderance of the evidence applies.

6. Respondent violated the terms of the Agreement, Condition 11(A)(1), that she 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 3 thru 11.

Disposition

7. At the administrative hearing, official notice was taken of exhibit 17, 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))¹ 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

¹ The underlying Statement of Issues in that case was not attached to the Agreement. However, because respondent suffered a conviction for driving while under the influence of alcohol, it is inferred that the EMSA alleged violation of the statute authorizing disciplinary action for the misuse of alcohol.

EMSA medical director considered respondent's criminal conviction as appropriate for imposition of less than the full minimum recommended discipline.

8. This is used as the starting point for consideration of the appropriate level of discipline for respondent's violation of her probation. She testified, without any contradictory evidence, that results from previous screenings were negative. Though respondent had drinks with her friends in violation of her probation, she did not drive afterwards nor was she proven to be in violation of any law.

9. 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).

10. A. Applying these factors, there is one act under consideration: a one-time violation of the condition to abstain from alcohol, in June 2019, which is in the nature of a moderate act. There was no harm to the public or any patient. The evidence established that respondent received negative results on prior random screenings, and she has complied with the remaining license probation conditions.

B. As rehabilitation, respondent has complied with the terms of probation related to her criminal conviction and, if she completes 20 days of Cal/Trans/Physical Labor, that criminal probation will end in January 2020. Moreover, since obtaining her probationary License, respondent passed and received a high score on Los Angeles County's Firefighter Trainee examination.

C. On the other hand, while respondent was forthcoming about her alcohol, it is concerning that respondent violated her license probation 10 months after the Agreement was reached with the EMSA. In aggravation, she continued to consume alcoholic beverages after receiving positive results on the FSS alcohol screening and after reviewing the probation condition requiring complete abstinence from alcohol. In addition, respondent acknowledged that she has a problem with alcohol but she does not attend AA meetings or have a sponsor.

11. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (See *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, 164.) 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, 184; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)


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12. Based upon Factual Findings 3 through 16, when all evidence is considered, including factors in aggravation, mitigation, and rehabilitation, respondent has not provided sufficient evidence of rehabilitation to ensure that she does not pose a threat to public health, safety, or welfare at this time.

ORDER

Emergency Medical Technician-Paramedic license P39153 issued to respondent Madison Maus is revoked.

DATE: December 3, 2019

DocuSigned by:

CARMEN D. SNUGGS

Administrative Law Judge

Office of Administrative Hearings