

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARK ROBERTSON,

Respondent.

Case No. 18-0167

OAH No. 2019090692

**ORDER OF DECISION**

**DECISION**

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

This Decision shall become effective on December 19, 2019.

IT IS SO ORDERED this 20<sup>th</sup> day of November.

By: \_\_\_\_\_  


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EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**MARK ROBERTSON, Respondent**

**Case No. 18-0167**

**OAH No. 2019090692**

**PROPOSED DECISION**

Dena Coggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 24, 2019, in Sacramento, California.

Complainant Sean Trask, Chief, EMS Personnel Division of the Emergency Medical Services Authority (EMSA), was represented by Cheryl Hsu, Staff Counsel.

Respondent Mark Robertson was present and represented himself.

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

## **FACTUAL FINDINGS**

1. On July 9, 2018, EMSA issued respondent Emergency Medical Technician-Paramedic (EMT-P) License No. P39024. The license will expire on July 31, 2020, unless renewed or revoked.

2. On July 10, 2019, complainant, acting solely in his official capacity, filed the Accusation in this matter based upon a conviction respondent received for unlawful possession of marijuana for the purpose of sale.

3. Respondent timely filed a Notice of Defense. This matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

### **February 2019 Conviction**

4. On February 25, 2019, in the Sacramento Superior Court, Case No. 18FE015951, respondent, on a plea of nolo contendere, was convicted of violating Health and Safety Code section 11359, subdivision (b), unlawful possession of marijuana for the purpose of sale, a misdemeanor. Imposition of sentence was suspended and respondent was placed on three years of informal probation. He was ordered to serve 60 days in jail, and ordered to pay court fines and fees.

5. The facts underlying the conviction arose in July and August 2018, when the Sacramento Sheriff's Department investigated respondent's and his wife's home on suspicion that they were illegally growing marijuana inside of the home. Investigators obtained receipts for items relating to a marijuana "grow" (i.e., cultivation process) in respondent's trash can. Investigators thereafter obtained a warrant to search

respondent's home, and conducted a warranted search in August 2018. Inside respondent's home, the deputies found a garage converted into three rooms. The garage was being used to cultivate and process marijuana. Two of the three rooms were framed and constructed to house plants and growing equipment. Respondent's in-home marijuana grow had been recently harvested and no growing plants were located during the search, but deputies located approximately one and one-half pounds of processed marijuana and \$3,900 in cash stored in shoeboxes.

6. Respondent told the investigating deputy that he had never been in the marijuana grow rooms, never tended the plants or operated lighting or watering systems, and was not involved in cultivation of marijuana at his home. Respondent's statements were later contradicted by recorded conversations with his wife while she was in jail, and during his testimony at the hearing, as discussed below. Respondent's three minor children resided in the home also, and had access to the marijuana grow area. Following the investigation, respondent was arrested and transported to jail.

### **Respondent's Evidence**

7. Respondent testified that he has been an emergency medical technician (EMT) and EMT-P for a total of 15 years without incident. He is married and has three minor children, ages seven, 13, and 16. Respondent has been a volunteer Cub Scout den leader for two months, and a youth sports coach for approximately 12 years, and helps with sports field maintenance in the City of Rancho Cordova. He was employed at Sacramento Fire as a Firefighter EMT from 2013 to June 2019. Respondent was on administrative leave from August 2018 to June 2019, when he lost his job. Respondent was unemployed until August 2019, when he was hired as a part-time paramedic at American Medical Response. In September 2019 he was hired full-time as a paramedic for American Legion Ambulance. Respondent has been an instructor at a local junior

college teaching fire technology since 2016. He previously worked for another fire department as a firefighter EMT from 2006 until 2013.

8. Respondent did not contest the allegations in the Accusation. He was aware of the marijuana grow in his garage, which was started in approximately 2016. His wife used the marijuana for medicinal purposes pursuant to a marijuana use license. Respondent encouraged her to use marijuana because marijuana helped her with her medical issues. According to respondent, his wife had a valid Sacramento County medical permit to grow medicinal marijuana in the home at the time of the search warrant, but they did not have a permit from the City of Rancho Cordova that allowed him to grow marijuana. He believed he had the proper permits at the time they were growing marijuana. Respondent denied selling marijuana to others and he denied that his children were aware of the marijuana grow. He no longer has a marijuana grow in his home.

9. Respondent has not used marijuana in 15 years. He testified that he has taken multiple drug tests over the last six months with negative results for drugs. He took responsibility for the illegal marijuana grow and acknowledged that he should have obtained the correct permit to legally grow marijuana. He does not have a criminal history. He has paid all court fines and fees relating to his conviction. At the time of hearing, he had one outstanding community service day remaining to be completed. He is currently on probation until February 2022 and is in full compliance with its terms and conditions.

10. Respondent submitted five support letters, written by his former Captain and immediate supervisor, three coworkers, and his wife. The work-related letter writers consistently described respondent as an integral part of the team, professional, courteous, calm in stressful situations, a hard worker, and possessed of a strong work

ethic. Only two of the four work-related letter writers are aware of respondent's conviction. Respondent's wife described respondent as a great person and great parent.

## **Discussion**

11. The Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Disciplinary Guidelines) effective July 26, 2008, submitted by complainant and issued by EMSA, set forth the following rehabilitation criteria to consider when determining the appropriate level of discipline to be imposed on a licensee:

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 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.

12. Respondent was convicted of a serious crime — possession of marijuana for the purpose of sale. Respondent's conviction occurred less than a year ago and he remains on criminal probation until February 2022. The potential harm to the public in having an illegal marijuana grow in his home was substantial, particularly because his minor children could have easily accessed the marijuana illegally growing in his garage. Respondent's conduct evidences a present or potential unfitness to perform the functions authorized by his license in a manner consistent with public health and safety.

13. Despite these factors, respondent has no prior disciplinary record relating to his license or prior or subsequent criminal record following the conviction at issue. He has had a stable career as an EMT and EMT-P for 15 years and he received positive support letters from his former supervisor and coworkers. Respondent was remorseful and accepted full responsibility for his actions, and did not shift blame to others for his misconduct. He candidly explained his wrongdoing and how he would avoid such conduct in the future. Although the evidence showed respondent was not completely honest when initially providing statements to law enforcement regarding the marijuana grow, he was honest and forthcoming at the hearing. His demeanor at the

hearing was open and straightforward. His explanation that he was growing marijuana for his wife's medicinal use was credible. Respondent has complied with the terms of his criminal probation and has paid his court-ordered fines and fees relating to his conviction.

14. Based upon the evidence, complainant established cause to discipline respondent's license, as set forth in the Legal Conclusions. However, respondent provided sufficient evidence of rehabilitation to show that the public health, safety, and welfare will be adequately protected if respondent maintains his licensure subject to probationary terms and conditions.<sup>1</sup>

## LEGAL CONCLUSIONS

1. 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.)

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<sup>1</sup> There was no evidence to show that respondent has been or is addicted to drugs or alcohol, nor were any reasonable concerns raised about his use of drugs or alcohol. Therefore, although respondent will be required to comply with a drug-abstention order, no additional probationary conditions or terms requiring him to submit to biological fluid testing, enroll in a diversion program, or undergo a psychiatric/medical evaluation will be imposed in the Order below.



2. Health and Safety Code section 1798.200, subdivisions (b) and (c), provide in pertinent part:

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c). . . .

(c) 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 or licenseholder 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.

[¶] . . . [¶]

(8) Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.

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3. California Code of Regulations, title 22, section 100175 provides:

(a) For the purposes of denial, placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 of the Health and Safety Code, or imposing an administrative fine pursuant to Section 1798.210 of the Health and Safety Code, a crime or act shall be substantially related to the qualifications, functions and/or duties of a person holding a paramedic license under Division 2.5 of the Health and Safety Code. A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a paramedic if to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety.

(b) For the purposes of a crime, the record of conviction or a certified copy of the record shall be conclusive evidence of such conviction. "Conviction" means the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.

4. As set forth in Factual Findings 4 through 6, and 12, complainant established that respondent violated Health and Safety Code section 1798.200, subdivision (c)(6) (conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel). Therefore, cause exists to discipline his license based upon this violation.

5. As set forth in Factual Findings 4 through 6, complainant established that respondent violated Health and Safety Code section 1798.200, subdivision (c)(8) (violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances). Therefore, cause exists to discipline his license based upon this violation.

6. When all of the evidence is considered, respondent provided sufficient evidence of rehabilitation to ensure that he does not pose a threat to public health, safety, or welfare at this time, if he maintains his licensure on a probationary basis.

## **ORDER**

License Number P39024, issued to respondent Mark Robertson, is revoked. However, such revocation is stayed and respondent's license is placed on probation for three (3) years upon the following terms and conditions:

### **1. Probation Compliance**

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

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

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## **2. Personal Appearances**

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

## **3. 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. If respondent submits his quarterly reports by mail, it shall be sent as Certified Mail.

## **4. Employment Notification**

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

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

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

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

## **5. Notification of Termination**

Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of 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 respondent is not practicing as a paramedic within the jurisdiction of California.

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

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

## **7. Obey All Related Laws**

Respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 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.

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

#### **8. Completion of Probation**

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

#### **9. Violation of Probation**

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

The issues to be resolved at the hearing shall be limited to whether respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

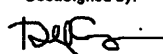
## 10. Abstinence from Drug Possession and Use

Respondent shall abstain from the possession, injection or consumption by any route of all controlled substances, dangerous drugs, or any drugs requiring a prescription unless prescribed under federal or state law as part of a documented medical treatment. Within 14 days of obtaining such a prescription, respondent shall ensure that the prescribing professional provides the EMSA a written report identifying the medication, dosage, the date the medication was prescribed, respondent's diagnosis, and the date the medication will no longer be required. This report must be provided to the EMSA directly by the prescribing professional.

If respondent has a lawful prescription when initially placed on probation, this same report must be provided within 14 days of the commencement of probation.

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

DATE: November 18, 2019

DocuSigned by:  
  
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DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings