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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician- Paramedic License Held by:) Enforcement Matter No. 18-0024
) OAH No. 2018120309
)
MARK A. SUAREZ,) **DECISION AND ORDER**
License No. P28529)
Respondent.)
)
)
)

10 The attached Proposed Decision and Order dated January 2, 2020, is hereby adopted by
11 the Emergency Medical Services Authority as its Decision in this matter. The Decision shall
12 become effective on February 6, 2020.

13 It is so ordered.

14 DATED: 1/6/2020



Dave Duncan, MD,
Director
Emergency Medical Services Authority

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

In the Matter of the Accusation Against:

MARK A. SUAREZ,

License No. P28529,

Respondent.

Case No. 18-0024

OAH No. 2018120309

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), on December 4, 2019, in Los Angeles, California. Sean Trask (Complainant), Chief of the Emergency Medical Services Authority (EMSA) of the State of California, EMS Personnel Division, was represented by Cheryl Hsu, Staff Counsel. Mark A. Suarez (Respondent) appeared and was represented by Negin Yamini, Attorney at Law.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 4, 2019.

On December 5, 2019, Complainant filed with OAH a letter attaching the Proposed Decision in the Los Angeles County EMSA's disciplinary action against Respondent based on the same facts and circumstances in this matter. The documents were served on Respondent's counsel. Complainant's December 5, 2019 letter asserted that the Proposed Decision "may offer insight and also is res judicata for the matter before you as well." In order to allow Respondent to respond to Complainant's late submission, the ALJ re-opened the record in this matter until December 20, 2019. Complainant's December 5, 2019 submission was marked as Exhibit 13, and Respondent was given until December 20, 2019, to file any written response to Exhibit 13.

On December 9, 2019, Complainant filed with OAH a letter attaching the Los Angeles County EMSA's Decision and Order adopting the Proposed Decision contained in Exhibit 13. The December 9, 2019 submission was marked as Exhibit 14.

On December 19, 2019, Respondent submitted a written response to Exhibit 13, opposing Complainant's assertion of res judicata. Respondent's December 19, 2019 submission is marked as Exhibit I. Respondent argued that Complainant cited no legal bases for the assertion of res judicata and that the assertion was made untimely. These arguments were meritorious. Additionally, Exhibit 14 cannot be given collateral estoppel effect because the decision in that matter is not yet final. The statutory time has not lapsed for any order of reconsideration by the agency, (Gov. Code, § 11521 [30 days from effective date of decision]), including any stay ordered by the agency (Gov. Code, § 11519), and for the filing of any petition for judicial review (Gov. Code, § 11523 [30 days from the last date on which reconsideration can be ordered]).

Exhibits 13 and I are lodged, but not admitted into evidence. Exhibit 14 is admitted solely for the purpose of taking official notice of the current status of Respondent's certificate with Los Angeles County.

The record was closed and the matter was submitted for decision on December 20, 2019.

FACTUAL FINDINGS

1. Complainant is the Chief of the California EMSA.
2. On July 25, 2018, Complainant filed the Accusation in this matter while acting in his official capacity. Respondent filed a Notice of Defense, and this matter ensued.
3. Respondent is a California licensed paramedic. The EMSA issued California Emergency Medical Technician Paramedic (EMT-P) license number P28529 to Respondent on June 7, 2010. Concurrent with the filing of the Accusation, the EMSA suspended Respondent's EMT-P license pending resolution of this matter. Respondent's EMT-P license is scheduled to expire June 30, 2020.
- 4A. Respondent previously held EMT certificate number E038673 (local EMT certificate), issued by LACFD. In a Decision and Order, issued December 9, 2019, effective January 9, 2020, the EMSA for the County of Los Angeles (LA County EMSA) revoked Respondent's local EMT certificate (local Decision). The local Decision is not yet final, and the time frame for agency reconsideration and judicial review are still pending.

4B. The local Decision arose from the same facts and circumstances as those in this matter. Those facts and circumstances are detailed below.

5. Respondent was previously employed by the Los Angeles County Fire Department (LACFD) as a firefighter/paramedic. He was assigned to Fire Station 97.

6A. On February 6, 2018, LACFD Assistant Chief Jim Enriquez reported to Glendora Police Department (GPD) Detective Stein that Respondent, while acting as a firefighter/paramedic, had stolen controlled medications from patients in January and February 2018. On February 8, 2018, LACFD sent a letter to the California EMSA reporting Respondent's thefts of patient medication. Robert Orozco, a civilian investigator with the Los Angeles County EMSA, was also notified by LACFD that Respondent may have engaged in violations as an EMT.

6B. The investigations of GPD, LACFD, and the Los Angeles County EMSA uncovered the following thefts by Respondent:

(1). During a January 18, 2018 emergency response, Respondent stole a patient's controlled medication for his own use. The patient's husband later went to Fire Station 97 and informed the Fire Captain that his wife's prescription bottle of hydrocodone¹ was missing.

(2). During a January 21, 2018 emergency response, Respondent stole the patient's controlled medication for his own use. On January 26, 2018, the patient's

¹ Hydrocodone is an opioid used to treat pain.

empty prescription bottle for Tramadol² was found in the firefighter specialists' dormitory trash at Station 97.

(3). During a February 8, 2018 emergency response, Respondent stole the patient's controlled medication for his own use. On about February 14, 2018, the patient's empty prescription bottle for Percocet (a brand name for oxycodone with acetaminophen) was found at Fire Station 97.

(4). During a February 14, 2018 emergency response, Respondent stole the patient's controlled medication for his own use. On February 16, 2018, pursuant to a search warrant, Respondent's lockers and turnout gear at Fire Station 97 were searched. The patient's empty prescription bottle for Tramadol was found under Respondent's rain gear at Fire Station 97.

6C. Pursuant to the search warrant, the GPD pulled Respondent's California Department of Justice Controlled Substances Utilization Review and Evaluation (CURES) patient activity report and discovered that, during the prior 12 months, Respondent had filled 13 prescriptions for Tramadol, one prescription for acetaminophen with codeine, and two prescriptions for acetaminophen with hydrocodone.

7A. On February 16, 2018, GPD officers went to Respondent's residence to speak to him. Several times during that conversation, Respondent denied stealing any of the patients' prescription medications.

² Tramadol is a narcotic-like drug used to treat pain.

7B. At the administrative hearing, Respondent testified that he was "up front [with] police" when he was caught. This assertion was inaccurate. Respondent's candor was not evident until April 2, 2019.

8. On April 2, 2019, Respondent was interviewed by LACFD and Los Angeles County EMSA representatives. During that interview, Respondent was cooperative and candid. Respondent admitted that, in January and February 2018, while answering emergency calls to several patient's homes, he stole the patients' controlled medications and consumed them because he was addicted to painkillers. Respondent explained that he had sustained a back injury in 2015, and his primary care physician had prescribed very strong pain medication that Respondent took for several years. When Respondent's pain did not resolve, his primary care physician referred him to a pain specialist who recognized the danger of Respondent's long-term consumption of the medications and discontinued the prescriptions. By that time Respondent was addicted to the pain medications.

9. Respondent testified at the administrative hearing. His demeanor was respectful and generally forthright. He explained the history of his addiction, his violations in an effort to feed his addiction, and his subsequent rehabilitative efforts to remain clean and sober.

10. Respondent is 44 years old. He joined the United States Army in 1995 and served eight years as a combat medic. While deployed, he helped treat traumatic injuries, including many devastating injuries caused by land mines. Following his military service, Respondent did not immediately recognize that he was suffering from Post-Traumatic Stress Disorder (PTSD).

11. After his discharge from the Army in 2003, Respondent began employment as an EMT driver-attendant with Cole-Schaefer Ambulance Service. He also worked for one year as a juvenile probation officer at Orange County Juvenile Hall. In 2006, Respondent began working as a firefighter with LACFD.

12A. In 2015, Respondent suffered a mid-back injury while engaging in an employment-related drill laying out heavy firehoses. His back pain did not resolve with rest and over-the-counter medications, so his physician prescribed Tramadol and hydrocodone. Respondent's 2015 injury was exacerbated by a 2018 work-related back injury for which Respondent was again prescribed pain medications.

12B. After his 2015 injury, Respondent continued to work as a firefighter paramedic. He experienced escalating pain and took increasing amounts of pain medications, eventually developing a tolerance and then an addiction to the drugs. As his pain and addiction intensified, Respondent began taking greater risks to self-medicate, eventually stealing patients' medications from their homes and consuming the drugs.

12C. During the same time, Respondent had nightmares flashing back to his time in the military. However, he remained unaware that he was suffering from PTSD.

12D. Although the LACFD had initiated a peer support group, Respondent chose not to participate, and he did not inform his supervisors about his struggles with addiction due to his perceived stigma in acknowledging both addiction and mental disability. He believed there was a culture on the job of having to "just deal with the pain." Respondent also did not request any leaves of absence because he understood that if a firefighter takes time off, "someone has to work it for you," causing resentment by the employee having to cover the shift.

13. After Respondent's thefts were discovered, Respondent began his rehabilitative efforts.

14. Respondent's sobriety date is February 16, 2018. From February 20 through 26, 2018, Respondent participated in the Inpatient Detox Program at Pacific Grove Hospital in Riverside, California. Thereafter, Respondent began the outpatient program at Pacific Grove Hospital, which he completed on April 20, 2018.

15A. While Respondent was participating in treatment at Pacific Grove Hospital, another veteran referred him to the Substance Treatment and Recovery (STAR) Program offered by the Veterans Administration (VA), Loma Linda Healthcare System. On May 14, 2018, Respondent began the VA STAR Program, which is a five-phase outpatient program. During his participation in the STAR Program, Respondent was diagnosed with PTSD.

15B. Phase One of the STAR Program is a 28-day intensive outpatient program requiring attendance five days per week. The sessions include various group sessions, psych-educational classes (e.g., anger management, stress management, triggers/cravings, relapse-prevention tools, etc.), spirituality classes, recreational activities, 12-Step-based meetings, and cognitive behavioral-based group sessions. Phases Two and Three involve less frequent meetings of psychotherapy groups which identify and address veterans' immediate concerns and prior trauma. Phase Four deals with the transition from the structure of the STAR Program to maintaining sobriety in daily living. Phases One through Four all include random urinalysis drug screens, to which Respondent submitted with negative results.

15C. Since about April 2019, Respondent has been voluntarily participating in Phase Five of the STAR program, which is an optional after-care program. He attends

Phase Five group therapy sessions on Mondays from 2:30 p.m. to 4:00 p.m.

Respondent also attends Narcotics Anonymous (NA) meetings Mondays and Fridays from 7:30 p.m. through 9:00 p.m.

16. In addition to the STAR Program, Respondent participates in the VA's Star Trauma Recovery Integration Program and Education (STRIPES) Program that offers psycho-educational group sessions for veterans dealing with PTSD. He attends STRIPES group sessions Tuesdays and Thursdays from 4:00 p.m. to 5:00 p.m. In a letter dated September 5, 2019, Ryan R. Sanft, LCSW, the Program Director for the VA PTSD intensive outpatient program, confirmed Respondent's participation and progress in the program and opined that Respondent "can work in active employment" without any contraindication.

17. As of the time of the administrative hearing, Respondent had completed 21 months of drug rehabilitative treatment. During that time, Respondent was subject to urinalysis drug screening and never tested positive.

18A. On February 23, 2018, a misdemeanor criminal complaint was filed against Respondent in the Los Angeles County Superior Court in case number 8WC01256-01 charging him with four counts of petty theft in violation of California Penal Code sections 484, subdivision (a), and 490.2. The theft counts were related to Respondent's theft of patient prescription medications.

18B. On September 17, 2018, three of the charges were dismissed pursuant to a plea negotiation. For the remaining charge, Respondent was placed on military diversion until September 2020, contingent on Respondent's continued participation in diversion programs which included the STAR Program. Respondent is required to continue participating in urinalysis drug screens.

19. At the administrative hearing, Respondent expressed remorse for his theft of patients' medications. When he thinks about how he stole from patients, it "disgusts" him, and he is "really bothered" that patients in pain were deprived of their pain medication.

20. Respondent is not currently employed. He has a four-year-old son to support.

21. Respondent would like to return to work as a paramedic and EMT. He believes that he would be "safe on the job." If he regains employment as a paramedic and suffers further back injury and pain, Respondent plans to disclose his pain to his supervisors and inform them that he cannot take opiates due to his addiction. He would also request to take an injury leave.

22. Respondent understands that there is no cure for his addiction and that he cannot ever stop treatment. He intends to continue treatment for the remainder of his life.

23. Respondent has the support of colleagues who submitted reference letters on his behalf. They collectively characterized him as a person of high character and a professional, competent, and dedicated employee.

LEGAL CONCLUSIONS

1. These proceedings are governed by the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (Health & Saf. Code, § 1797 et seq.) and applicable regulations.

2. Health and Safety Code section 1798.200, subdivision (b), authorizes the California EMSA to deny, suspend or revoke an EMT-P license for "any of the actions listed in subdivision (c)." Health and Safety Code section 1798.200, subdivision (c), provides, in pertinent part:

(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 holder or license holder under this division: [¶] . . . [¶]

(5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel. [¶] . . . [¶]

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

(9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

3. Pursuant to California Code of Regulations, title 22, section 100175, subdivision (a), "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."

4. Health and Safety Code section 11170 states, "No person shall prescribe, administer, or furnish a controlled substance for himself."

5. Cause exists to revoke Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(5), for committing fraudulent, dishonest, or corrupt acts substantially related to the qualifications, functions, and duties of an EMT/paramedic, as set forth in Factual Findings 3 through 8.

6. Cause exists to revoke Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(8), for violating or attempting to violate Health and Safety Code section 11170, a state statute that regulates controlled substances, as set forth in Factual Findings 3 through 8.

7. Cause exists to revoke Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(9), for addiction to, excessive use of, and misuse of narcotics and controlled substances, as set forth in Factual Findings 3 through 8.

8A. California Code of Regulations, title 22, section 100176 provides:

When considering the denial, placement on probation, suspension, or revocation of a license pursuant to Section 1798.200 of the Health and Safety Code, or a petition for reinstatement or reduction of penalty under Section 11522 of the Government Code, the [California EMSA] in evaluating the rehabilitation of the applicant and present eligibility for a license, shall consider the following criteria:

(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.

(6) Evidence, if any, of rehabilitation submitted by the person.

8B. Additionally, the EMSA must use the "Recommended Guidelines for Disciplinary Orders and Conditions of Probation," dated July 26, 2008 (Guidelines), when determining the appropriate discipline for a licensed paramedic found to be in violation of Health and Safety Code section 1798.200. The Guidelines require the following factors to be considered: (1) Nature and severity of the acts, offenses, or crimes; (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; and (14) if applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4.

8C. The Guidelines include recommended minimum and maximum levels of discipline for the violations listed in Health and Safety Code section 1798.200, subdivision (c). The recommended discipline for addiction to or misuse of controlled substances is a stayed revocation with five years of probation, suspension until successful completion of a drug/alcohol detoxification/diversion program, and probationary conditions requiring abstinence from drugs and alcohol, biological fluid testing, and a psychiatric/medical evaluation. The recommended discipline for both the commission of dishonest acts and for violating any state statute regulating controlled substances is a stayed revocation with three years of probation, a 60-day suspension, and probationary conditions requiring abstinence from drugs and alcohol, biological fluid testing, a psychiatric/medical evaluation, and an ethics course. The maximum level of discipline for all three violations is revocation, and the minimum discipline is a stayed revocation with three years of probation and the same probationary conditions listed above. Respondent committed all three of these violations, the combination of which should warrant more severe discipline than the commission of only one of the violations.

9A. Additionally, a weighing of the requisite factors for determining the level of discipline tilts the scale toward greater discipline. Although Respondent has no history of license discipline, the violations he committed were egregious. In responding to emergency calls, Respondent entered patients' homes and stole their

pain medications for his personal consumption. In doing so, Respondent deprived patients of their pain medication, resulting in their actual harm. Additionally, Respondent's addiction, self-administration of controlled substances, and propensity for theft posed a potential risk of harm to the public. Furthermore, Respondent's larceny was not an isolated incident, but occurred at least four times before he was caught. Respondent's sustained and temporally recent conduct illustrated his proclivity for dishonesty and his inclination to misuse his position of trust to take advantage of the vulnerable persons for whom he was supposed to be providing emergency care. Indeed, his misconduct rose to such a serious level that the LA County EMSA) revoked Respondent's local EMT certificate and criminal charges were leveled against him.

9B. Respondent has expressed remorse for his misconduct and has accepted responsibility for his actions. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933; *In the Matter of Brown, supra*.) However, mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) In this case, Respondent's 2018 misconduct is fairly recent and his rehabilitation efforts, although earnest and dedicated, comprise only 22 months. Any determination of rehabilitation would be premature given the length and severity of his addiction and the dishonest and illegal endeavors in which he engaged to obtain controlled substances. Additionally, Respondent must complete the remaining 10 months of diversion in order to gain dismissal of the criminal charge against him. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that a respondent has engaged in good

behavior while on probation, parole, or diversion. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

9C. Given the foregoing, a longer record of rehabilitation efforts and a more sustained period of demonstrated sobriety is necessary in order to provide adequate public protection. Consequently, revocation of Respondent's EMT-P license is warranted at this time.

ORDER

Emergency Medical Technician Paramedic license number P28529, issued to Mark Suarez, is revoked.

DATE: January 2, 2020

DocuSigned by:
Julie Cabos-Owen
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JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings