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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. 19-0123
) OAH No. 2020031002
)
JACOB BRUCKER,) **DECISION AND ORDER**
License No. P32187)
Respondent.)
)
)
)

The attached Proposed Decision and Order dated October 14, 2020, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The Decision shall become effective on November 15, 2020.

It is so ordered.

DATED:

10/22/2020



Dave Duncan, MD,
Director
Emergency Medical Services Authority

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

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

JACOB BRUCKER,

License No. P32187

Respondent.

Agency Case No. 19-0123

OAH No. 2020031002

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on September 15, 2020, telephonically.

Cynthia Curry, Staff Attorney, Emergency Medical Services Authority, represented complainant Sean Trask, Chief, EMS Personnel Division of the Emergency Medical Services Authority, State of California.

Respondent Jacob Brucker was present at the hearing, representing himself.

The record closed and the matter was submitted for decision on September 15, 2020.

FACTUAL FINDINGS

1. On April 24, 2013, the Emergency Medical Services Authority (EMSA) issued Emergency Medical Technician-Paramedic (EMT-P) License No. P32187 to respondent, Jacob Brucker. The license was in full force and effect at all relevant times and will expire on April 30, 2021, unless renewed.

2. On February 18, 2020, complainant Sean Trask, in his official capacity as Chief, EMS Personnel Division of EMSA, issued an accusation seeking to impose discipline on respondent's license based on alleged misuse of alcoholic beverages.

3. On October 11, 2018, respondent was involved in a single-vehicle collision. Officers from the Fresno Police Department arrived to conduct a collision investigation. Upon contact with respondent, the officer noted that respondent had a strong odor of an alcoholic beverage on his breath, slurred speech, and bloodshot and watery eyes. Respondent told the officer he was unable to perform field sobriety tests due to back pain from the collision. Respondent submitted to a breath test, the results of which showed respondent's blood alcohol concentration to be 0.17 percent and 0.16 percent. Respondent was arrested for driving under the influence of alcohol (DUI). Complainant alleges respondent drove while under the influence and on duty. The evidence established that respondent was in his personal vehicle returning home after visiting with a friend.

4. At hearing, respondent was remorseful and took full responsibility for his misconduct. Respondent admitted that he drove while under the influence of alcohol, saying it was the biggest mistake of his life. Respondent states this was a singular occasion and that he will not re-offend. Respondent has no history of discipline on his license.

5. Respondent attended Alcoholics Anonymous (AA) meetings for six months, two to four times per week. Respondent last attended an AA meeting in July 2019. Respondent is willing to be placed on probation but objects to the alcohol and drug testing condition of probation, saying it will be an emotional and financial burden. Respondent contends that having to call in every day will be a daily reminder of the worst incident in his life. Respondent is currently unemployed and states he is unable to afford the cost of testing.

6. Respondent testified in an open and forthright manner at hearing, consistent with one who is telling the truth.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200, subdivision (c)(9), authorizes the EMSA to suspend or revoke the license of a licensee who misuses alcoholic beverages. Cause exists to discipline respondent's license based on respondent's misuse of alcoholic beverages as set forth in Factual Findings 3 and 4.

2. Having established cause for discipline exists, the issue is what level of discipline is required for protection of the public.

3. California Code of Regulations, title 22, section 100176, sets forth the criteria to evaluate rehabilitation of a licensee who is subject to license disciplinary action. The criteria include: the nature and severity of the act; evidence of any act committed subsequent to the act under consideration for grounds for discipline; the time that has elapsed since the commission of the act; the extent to which the person has complied with any terms of probation, restitution, or any other lawfully imposed

sanctions; if applicable, evidence of expungement pursuant to Penal Code section 1203.4, and any rehabilitation evidence submitted by the licensee.

4. Respondent acknowledged his mistake and took responsibility for his misconduct. Respondent has no other discipline against his license. However, respondent drank to excess, then drove his vehicle while impaired, endangering himself and everyone sharing the road with him. The consumption of alcohol before driving reflects a lack of professional judgment and breach of duty to the general public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.)

5. The disciplinary guidelines adopted by EMSA pursuant to California Code of Regulations, title 22, section 100173, recommend that for misuse of alcoholic beverages, the minimum discipline is stayed revocation and three years of probation; the maximum is revocation. Because respondent has accepted responsibility for his misconduct, the minimum level of discipline is appropriate. The terms requiring abstinence from alcohol and testing are necessary to ensure the protection of the public as respondent caused a collision while driving with a BAC that was twice the legal limit.

ORDER

License number P32187 issued to respondent Jacob Brucker is revoked. However, such revocation is stayed, and respondent is placed on probation for three year with 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.

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

During the probationary period, respondent shall notify the EMSA within 72 hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of his termination.

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 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, and local 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 certification, 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, and local 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 certification 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 certificate 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

certificate suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of either Chapter 6 of the California Code of Regulations, Title 22, Division 9, or the California Administrative Procedure Act, whichever process was used by the EMSA.

The issues to be resolved 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. 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. Abstinance 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.

11. Abstinance from the Use of Alcoholic Beverages

Respondent shall abstain from the use of alcoholic beverages.

12. Biological Fluid Testing

Respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by the EMSA or its designee. Respondent may use a lab pre-approved by the EMSA or may provide to the EMSA the name and location of an independent laboratory or drug/alcohol testing facility for approval by the EMSA. Lab approval shall be based on criteria regulating professional laboratories and drug/alcohol testing facilities as set forth in Chapter 3, Division 2, of the Business and Professions Code and Division 1 of Title 17 of the California Code of Regulations. When the EMSA requests a random test, respondent shall provide the required blood/urine sample by the time specified, or within 12 hours of the request if no time is specified. When the EMSA requests a random test, respondent shall ensure that any positive test results are conveyed telephonically by the lab to the EMSA within 48 hours, and all written positive or negative results are provided directly by the lab to the EMSA within ten days. Respondent shall be responsible for all costs associated with the drug/alcohol screening.

The EMSA may allow the random drug testing to be conducted by a laboratory under contract with respondent's employer to meet the requirement of random drug testing as set forth in this section. The results of the employer's random drug testing shall be made available to the EMSA in the time frames described above.

DATE: October 14, 2020

DocuSigned by:
Traci C. Belmore
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TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings