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BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA


4 In the Matter of the Emergency Medical ) Enforcement Matter No. 20-0126  
5 Technician- Paramedic License Held by: ) OAH No. 2020070467  
6 )  
7 **KYRA SWERRIE,** ) **DECISION AND ORDER**  
8 License No. P36129 )  
9 Respondent. )  
10 )  
11 )  
12 )

13 The attached Proposed Decision and Order dated September 29, 2020, is hereby adopted  
14 by the Emergency Medical Services Authority as its Decision in this matter. The Decision shall  
15 become effective on November 1, 2020.

16 It is so ordered.

17 DATED:

18 *10/22/2020*

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20 \_\_\_\_\_  
21 Dave Duncan, MD,  
22 Director  
23 Emergency Medical Services Authority  
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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:**

**KYRA SWERRIE,**

**License No. P36129**

**Respondent.**

**Agency Case No. 20-0126**

**OAH No. 2020070467**

**PROPOSED DECISION**

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on August 31, 2020, by videoconference.

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

Respondent Kyra Swerrie was present at the hearing, representing herself.

The record closed and the matter was submitted for decision on August 31, 2020.

## **FACTUAL FINDINGS**

1. On June 11, 2020, complainant Sean Trask, in his official capacity as Chief, EMS Personnel Division of the Emergency Medical Services Authority (EMSA), issued the accusation and petition to revoke probation. Complainant alleges that respondent Kyra Swerrie consumed alcohol while on probation with a condition requiring abstinence from the consumption of alcohol, which constitutes both a misuse of alcohol and a violation of probation.

2. On April 8, 2016, EMSA issued Emergency Medical Technician-Paramedic (EMT-P) License No. P36129 to respondent. The license was in full force and effect at all relevant times and will expire on April 30, 2022, unless renewed.

3. On November 20, 2019, EMSA issued a decision and order, effective December 20, 2019, in which respondent's license was revoked. The basis for discipline was respondent's misuse of alcohol based on respondent's conviction in the Superior Court of California, County of Santa Clara, for violating Vehicle Code section 23103 pursuant to 23103.5, reckless driving involving alcohol (wet reckless) on July 17, 2019. However, the revocation was stayed, and respondent's license was placed on probation for three years, under certain terms and conditions, including submitting to random alcohol and drug testing and abstaining from the consumption of alcohol and drugs.

4. On March 17, 2020, respondent submitted a biological sample for testing. The testing laboratory submitted an amended analysis report that showed positive results for ETG/ETS. The same report showed a negative result for ethyl alcohol. Complainant failed to call any witness to explain these seemingly contradictory results or to explain what ETG/ETS is or how it relates to alcohol

consumption. Additionally, complainant did not call a witness to confirm the chain of custody for respondent's urine sample. The evidence presented at hearing did not establish what ETG/ETS is or how it relates to alcohol.

5. Respondent stated she has completely changed her lifestyle since being placed on probation, primarily by abstaining from alcohol. She admitted that she had been convicted of wet reckless in 2019 and that she remains on criminal probation. Respondent denied having consumed alcohol while on EMSA probation, stating there was an issue with the urine test on March 17, 2020. Respondent reports that she was contacted by the lab approximately five days after testing and told that she had not appeared. Respondent insisted she had. Several days later, respondent was notified of a positive test. Respondent has tested a total of nine times, and this was the only test that had a positive result.

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

## **LEGAL CONCLUSIONS**

1. Complainant must prove the allegations of the accusation by clear and convincing evidence, and it must prove the allegations in the petition to revoke probation by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

2. 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. Complainant alleges respondent violated this section by testing positive for consumption of alcohol on March 17, 2020, during her probationary period.

Complainant failed to call a witness from the lab to confirm the chain of custody of respondent's sample, or an expert to establish that the results demonstrated that respondent had consumed alcohol. Respondent credibly raised an issue with the chain of custody of the sample she provided to the laboratory and adamantly denied consuming alcohol. The evidence presented fails to meet the clear and convincing standard. Therefore, cause does not exist to suspend or revoke respondent's license pursuant to Health and Safety Code section 1798.200, subdivision (c)(9).

3. For the reasons set forth in Legal Conclusion 2, the evidence did not establish cause to revoke respondent's probation.

### **ORDER**

1. The accusation against respondent Kyra Swerrie, License No. P36129, is dismissed.

2. The petition to revoke respondent's probation is denied. Respondent shall remain on probation subject to the same terms and conditions imposed by the Decision and Order effective December 20, 2019.

DATE: September 29, 2020

DocuSigned by:  
Traci C. Belmore  
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**TRACI C. BELMORE**

Administrative Law Judge

Office of Administrative Hearings