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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician- Paramedic License of:) Enforcement Matter No. 19-0296
)
) OAH No. 2021080100
)
JUAN J. ZEPEDA,)
License No. P37192) **DECISION AND ORDER**
) Respondent.)
)
)

9 The attached Proposed Decision is hereby adopted by the Emergency Medical Services
10 Authority as its Decision in this matter. This Decision shall become effective thirty (30) days
11 after the date below. It is so ordered.

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13 DATED: 09/22/2022

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15 _____
Elizabeth Basnett, EMEDM
Acting Director
Emergency Medical Services Authority

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

In the Matter of the Accusation Against:

JUAN J. ZEPEDA,

License No. P37192

Respondent.

Enforcement Matter No. 19-0296

OAH No. 2021080100

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 9, 2022.

Erin L. Brennan, Attorney, represented complainant Kim Lew, Chief, EMS Personnel Division of the Emergency Medical Services Authority of the State of California (EMSA).

David J. Givot, Attorney at Law, represented respondent Juan J. Zepeda, who was present during the hearing.

The record closed and the matter was deemed submitted on August 9, 2022. By her own motion, the ALJ marked respondent's July 18, 2022 brief and complainant's August 1, 2022 reply brief, as Exhibits 11 and 12, respectively, to avoid confusion. The briefs along with respondent's opening brief originally were all marked as Exhibit 10.

SUMMARY

Complainant seeks to revoke respondent's paramedic license based on respondent's misdemeanor conviction for assault with a deadly weapon. Cause exists for discipline. Respondent presented sufficient evidence of rehabilitation and "extraordinary circumstances" to justify allowing him to keep his license on a probationary basis, subject to the terms and conditions specified in the Order below.

FACTUAL FINDINGS

Jurisdiction and Parties

1. EMSA issued Emergency Medical Technician-Paramedic (EMT-P) license number P37192 to respondent on February 16, 2017. The license is scheduled to expire on February 28, 2023.

2. On June 22, 2021, complainant executed the Accusation in her official capacity. The Accusation seeks to revoke respondent's EMT-P license pursuant to Health and Safety Code (Code) section 1798.200 and California Code of Regulations, title 22 (CCR), section 100174, subdivision (b)(2), based on his criminal conviction for misdemeanor assault with a deadly weapon.

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3. Respondent timely filed a Notice of Defense on July 6, 2021, requesting a hearing to present his defense to the charges in the Accusation.

4. All jurisdictional requirements have been met for the matter to proceed to hearing.

The Criminal Conviction at Issue

5. On March 10, 2020, in the Superior Court of California, County of Los Angeles, case number SA101766, an information was filed charging respondent with three criminal counts: (1) violation of Penal Code section 245, subdivision (b), assault with a deadly weapon (semiautomatic firearm), a felony; (2) violation of Penal Code section 422, subdivision (a), criminal threats, a felony; and (3) violation of Penal Code section 273.5, subdivision (a), corporal injury to a spouse/cohabitant, a misdemeanor. As a result of a plea negotiation on May 5, 2021, the Los Angeles County district attorney handling the matter requested the court to add a fourth count, i.e., a misdemeanor violation of Penal Code section 245, subdivision (a)(1), assault with a deadly weapon other than a firearm. Based on the plea agreement, respondent pleaded nolo contendere to the added misdemeanor charge. The court convicted respondent of violating Penal Code section 245, subdivision (a)(1), as a misdemeanor and dismissed all other counts.

6. Upon respondent's conviction, the court suspended imposition of sentence and placed respondent on summary probation for two years under terms and conditions, which included the following: serve one day in county jail less credit for one day; pay \$500 to a Domestic Violence Fund, enroll and complete 52 sessions of domestic violence counseling, relinquish the weapon involved in the matter for destruction, and obey the protective order issued by the court. The court, finding

"compelling circumstances," stayed all court fees and the restitution fund fine. (Ex. 6, p. A58.) As a result of the court order, respondent did not serve any time in prison after his conviction.

7. Respondent's criminal conviction stemmed from a complaint made on October 29, 2019, at approximately 3:40 a.m. to the Los Angeles Police Department (LAPD) of a potential domestic violence incident at respondent's home involving his former girlfriend, who for confidentiality reasons is referred to as J.B. LAPD officers responding to the complaint found J.B. in the bathroom of respondent's house. According to J.B.'s unsworn statement to the police, she and respondent broke up recently, but she remained in his home. During the evening of October 28, 2019, J.B. and respondent argued, and J.B. then left respondent's house. When she returned at 11:00 p.m., respondent was not home, and she found respondent's loaded pistol on her dresser. She then unloaded the gun and placed it in the living room. Respondent arrived home at 3:00 a.m., and she and respondent then argued over whether he could look at her phone. According to J.B., when she refused to allow him to do so, respondent physically wrestled the phone from her, scratching her arm. J.B. told the police respondent then threatened her with a firearm repeatedly and told her he was going to shoot her. J.B. then went to the neighbors' house to seek help. When the neighbors did not answer the doorbell, she returned to respondent's house and used her phone to call her boyfriend, who called the police. (Ex. 5.)

8. J.B. offered no explanation to the police as to how she retrieved her phone from respondent, why she did not call the police directly, or why, if she was in fear of respondent, she returned to respondent's home. The arresting police officer noted in the police records J.B. had a scratch on her arm. J.B. did not testify at the administrative hearing or submit a sworn statement describing the events leading up

to respondent's arrest. Her unsworn statements to the police constitute hearsay and therefore cannot be the basis of any finding without corroboration. (Gov. Code, § 11513, subd. (d).)

9. Respondent was arrested without incident. The police described him at the time of his arrest as "calm." (Ex. 5, p. A51.) The police found the gun allegedly used to threaten respondent's ex-girlfriend secured in a lockbox, which respondent unlocked for the police. Respondent did not make any statements to the police while in custody. He was later released after a few hours.

Respondent's Evidence

10. Respondent obtained his emergency medical technician certificate in 2007. He received his paramedic training at UCLA Geffen School of Medicine, and he became a nationally registered paramedic in January 2017. There is no history of discipline of respondent's EMT-P license. Except for the arrest and criminal conviction underlying the Accusation, respondent has never been arrested or convicted of any crime.

11. Respondent is a Firefighter III paramedic with the Los Angeles Fire Department (LAFD). He has been employed by LAFD for 15 years and is part of LAFD's Urban Search and Rescue team. He is certified to drive the tiller (the trailer portion of the fire truck/hook and ladder) and the fire engine trucks. Before working for LAFD, respondent worked as a lifeguard in high schools, colleges, and open water.

12. Respondent disputed J.B.'s description of what occurred on October 29, 2019, and he denied ever engaging in domestic violence in any relationship. According to respondent, he never threatened J.B. verbally or with a gun. He also never scratched her or caused her physical harm.

13. At hearing, respondent gave a detailed account of what happened the night of the incident. Respondent was in a relationship with J.B. for approximately three years. At the time, J.B. was training to be a Los Angeles County sheriff. J.B. was still living with respondent at the time of the incident, but the relationship had already ended, and J.B. was dating another sheriff. The day before the incident respondent requested J.B. to repay the \$20,000 that he had given to her. She refused to do so and became upset. The next evening, J.B. was at respondent's home before he arrived. When he entered his home, he found his gun loaded and lying on the living room floor. Respondent ordinarily keeps a gun, which is properly licensed, by his bedside for self-protection after his home was burglarized. When not on his bedside table, respondent stores his gun in a lockbox. Respondent concluded that J.B. had placed the loaded gun on the floor, and he became puzzled and frightened. He went into his bedroom and saw J.B. asleep. He then unloaded the gun, placed it in a lock box, and went into another bedroom to sleep.

14. At some time in the early morning hours, J.B. entered the bedroom and woke respondent. J.B. had gotten up early to prepare to attend the Sheriff's Academy that day. After a brief discussion, J.B. went into the bathroom to do her hair, and respondent followed. Respondent asked for J.B.'s phone because he wanted to see whether certain photographs were on it. J.B. first refused, but she then consented after respondent agreed not to seek repayment of the \$20,000 she allegedly owed him. After gaining access to J.B.'s cell phone, respondent became upset about the photographs she had taken. J.B. and respondent then argued about the photographs. During the argument, J.B. picked up a pair of scissors, and respondent believed she might attack him. He then ran from the bathroom, with J.B. chasing him. Respondent was fearful J.B. would hurt him so he threw J.B.'s phone on her bed. He then retreated into his bedroom, went to sleep, and had no further communications with J.B.

Unbeknownst to respondent, J.B. had texted her boyfriend after the interaction with respondent, and her boyfriend called the police. When respondent heard a helicopter overhead, he put on his bathrobe to go outside and see what was happening. He was surprised to see the police. The police entered the house and confirmed respondent's weapons were licensed and secured properly.

15. In November 2020, respondent's attorney submitted a memorandum to the Deputy District Attorney handling respondent's case. The memorandum cites evidence demonstrating that J.B. fabricated her injury, she was never in distress, and respondent never held her against her will. The memorandum also alleges that J.B. made several false and inconsistent statements in her written statement to the police about what happened after she returned from the neighbors' home. The memorandum additionally notes that J.B. has a history of mental health problems. (Ex. A.)

16. In May 2021, respondent accepted the plea bargain offered by the district attorney on the advice of his attorney and his union representative, even though he believed he had not committed any crime. (See *Arneson v. Fox* (1980) 28 Cal.3d 440, 449 [allowing a licensee to introduce evidence of extenuating circumstances by way of mitigation or explanation].) Because LAFD had stopped paying him after his arrest, respondent had gone 16 months without his regular salary, and he had depleted his financial savings. Respondent had no money to pay for the lawyer of his choice, and he was afraid to risk a long prison sentence with the public defender assigned to him. Without his regular salary, respondent also worried he would be unable to continue to meet his mortgage and other financial obligations. Respondent was concerned the court slowdown in reaction to the Covid-19 pandemic would further delay a trial and cause additional financial harm. LAFD agreed to

reinstate respondent if he pleaded nolo contendere to the misdemeanor charge and served a three-month unpaid suspension. Although no one made any promises about the impact of the plea on his paramedic license, no one told respondent would lose his license if he pleaded no contest to the misdemeanor charge.

17. Respondent satisfied the terms of his summary probation. He completed the court-ordered domestic violence training course and has abided by the terms of the protective order.

18. Respondent served his unpaid suspension with LAFD from May 10, 2021, to August 8, 2021. (Ex. F, p. B132.) He is currently working at LAFD Fire Station 3, C platoon, near downtown Los Angeles. He has been on full duty with no restrictions for a year. Outside of work, respondent is studying to promote to the ranks of captain and inspector. He expects to take the written promotion exam in October 2022.

19. Respondent has never been cited for any violations at work. His 2017 to 2018 LAFD performance evaluation found his firefighting and paramedic work more than satisfactory and noted his excellent attitude. (Ex. B, p. 44.) LAFD Captain Nathan Sweet wrote respondent works in an "extremely challenging" assignment yet he "continually displays a positive attitude not only within quarters, but with patients." (Ex. C, p. 46.) According to Captain Sweet, respondent "is an excellent representative for the Department" and an "asset to the Department, the Battalion and this assignment." (*Id.*, pp. 46-47.)

20. LAFD Captain and Paramedic Miguel Escobedo separately reviewed respondent's performance as a paramedic and concurred with Captain Sweet's opinion of respondent's work. Captain Escobedo noted respondent "displays a high degree of professionalism and is a hard worker." (Ex. C, p. B48.) He too characterized

respondent's attitude and approachability as "excellent." (*Ibid.*) Overall, Captain Escobedo found respondent "demonstrated himself as a skilled and competent employee, while demonstrating a willingness to learn his trade and to improve in every aspect of the job. . . . He continues to uphold the fine reputation and tradition of the [LAFD] and has become an asset to the citizens that he serves." (*Id.*, p. B49.)

21. Respondent has taken meaningful steps to ensure he will be better able to deal with difficult emotional situations in the future. Of his own volition, respondent enrolled in and successfully completed a 26-week anger management course. He also recently began weekly psychotherapy to explore his relationship issues and his contribution to his relationship difficulties.

22. Respondent submitted into evidence several letters sent to the District Attorney's Office from family, friends, and neighbors, all of whom were aware of respondent's alleged crimes. The letters noted respondent's compassion, helpfulness, and hard work. (Ex. A, B13–B28.) Character references from respondent's friends and associates knowledgeable about his past and more current activities attest to respondent's commitment to rehabilitation and positive change. (*See Werner v. State Bar of Cal.* (1954) 42 Cal.2d 187, 196–197; *Preston v. State Bar of Cal.* (1946) 28 Cal. 2d 643, 650–651 [character references of friends and associates are entitled to careful consideration and should weigh heavily in the scales of justice].)

23. Of particular note are the letters submitted to the District Attorney by respondent's fellow firefighters. Each of the letter writers was aware of respondent's alleged crimes. Kory Jackson, an LAFD Captain who has worked with respondent for 13 years, vouched for respondent's integrity, kindness, generosity, and dedication to his job, family, and community. Mr. Jackson also noted respondent's efforts, through seeking professional help as well as spiritual guidance, in making sure he never finds

himself in a comparable relationship situation. (Ex. A, p. B12.) Fernando Linares, who has worked at LAFD for 13 years and has known respondent for 10 years, attested to respondent's work ethic, character, and compassion. He noted respondent displayed "exemplary behavior" during high stress emergency calls." (*Id.*, p. B19.) Ivan Covin, an LAFD firefighter for 16 years, noted respondent was hard-working, polite, compassionate, and takes time with each patient to assess their medical issues. (*Id.*, p. B22.) David Nuno wrote of his positive experience as respondent's mentee at the LAFD. (*Id.*, p. B28.)

24. Respondent takes full responsibility for his poor relationship choices and his current predicament. He acknowledged he ignored all the red flags signaling the dangers of pursuing a relationship with J.B. He recognizes his poor choices have caused him emotional and financial distress and placed his career in jeopardy. He is committed to making sure he has the requisite psychological and emotional skills to deal with challenging situations and conflicts in the future. Respondent believes the loss of his paramedic license will mean the loss of a job he has excelled in and loves. Respondent's testimony was heartfelt and candid.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. EMSA is the state agency "responsible for the coordination and integration of all state activities concerning emergency medical services." (Code, § 1797.1). Emergency medical services are "the services utilized in responding to a medical emergency." (Code, § 1797.72.)

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2. Obtaining an EMT-P license requires education, training, and a licensing examination. Thus, in an action to revoke an EMT-P license, the agency bears the burden of proof by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) "Clear and convincing evidence" requires a finding of high probability. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

Applicable Law

3. EMSA may deny, suspend, or revoke any EMT-P license or may place any EMT-P license holder on probation if the license holder has committed "any fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel" or has been convicted "of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel." (Code, § 1798.200, subd. (b), (c)(5) & (c)(6).)

4. A crime or act is substantially related to the qualifications, functions, or duties of an EMT-P license holder "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." (CCR, § 100175, subd. (a).) The record of conviction or a certified copy of the record is conclusive evidence of the conviction. A conviction includes a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere. (CCR, § 100175, subd. (b).)

5. CCR section 100174, subdivision (b)(2), directs EMSA to revoke a paramedic license if the licensee "[h]as been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a

felony.” Subdivision (d) of CCR section 100174 defines an offense “punishable as a felony” as an offense for which the law prescribes imprisonment in the state prison as either an alternative or as the sole penalty, regardless of the sentence the particular defendant received. Subdivision (g) provides that EMSA may grant the license to persons otherwise precluded under subdivision (b), if “extraordinary circumstances exist to warrant such an exemption.”

First Cause for Discipline

6. Complainant alleges respondent’s EMT-P license is subject to discipline because respondent committed a fraudulent, dishonest, or corrupt act and was convicted of a crime and both the act and the crime are substantially related to the qualifications, functions, and duties of prehospital personnel, in violation of Code section 1798.200, subdivisions (b), (c)(5), and (c)(6).

7. The courts define assault with a deadly weapon as an “unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another with a deadly weapon.” (*People v. Rocha* (1971) 3 Cal.3d 893, 899 (citations omitted).) The characteristics and necessary elements of the offense “are the unlawful attempt, with criminal intent, to commit a violent injury upon the person of another, the use of a deadly weapon in that attempt, and the then present ability to accomplish the injury.” (*Id.*, n. 13, citing CALJIC 604, rev. ed. 1958.) An actual injury need not be caused.

8. Complainant did not prove by clear or convincing evidence that respondent engaged in any fraudulent, dishonest, or corrupt acts substantially related to the qualifications, functions, and duties of prehospital personnel. Respondent’s account of what occurred on October 29, 2019, is credible. Complainant offered no evidence to corroborate J.B.’s hearsay account. And even if corroborating evidence

existed, respondent's crime, assault with a deadly weapon, by its terms is not fraudulent, dishonest, or corrupt. Cause therefore does not exist to discipline respondent's license for the commission of fraudulent, dishonest, or corrupt acts under Code section 1798.200, subdivision (c)(5). (Factual Findings 5–8; Legal Conclusions 3, 4, 7.)

9. Complainant proved by clear and convincing evidence respondent was convicted of violating Penal Code section 245, subdivision (a), assault with a deadly weapon other than a firearm. (Factual Findings 5–8, Legal Conclusions 3, 4, 7.) Contrary to respondent's contention in his brief (exhibit 11), EMSA considers a plea of nolo contendere to be a criminal conviction, regardless of whether the plea is for a misdemeanor or felony. (CCR, § 100175, subd. (b); see also *Arneson, supra*, 28 Cal.3d at p. 449 [regardless of the motives impelling a nolo contendere plea, "the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged."]) Complainant also proved by clear and convincing evidence the crime of assault with a deadly weapon is substantially related to the qualifications, functions, or duties of an EMT-P license holder. Paramedics, by the nature of their work, aid vulnerable patient populations who have no choice but to accept the help offered to them. Paramedics also transport patients with little or no supervision. Patients should be confident the paramedic who is helping them will not threaten or cause injury. Cause therefore exists to discipline respondent's EMT-P license under Code section 1798.200, subdivision (c)(6).

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Second Cause for Discipline

10. The Second Cause for Discipline seeks to revoke respondent's license under CCR section 100174, subdivision (b)(2), because respondent was convicted of violating Penal Code 245, subdivision (a), which is a crime punishable as a felony, and was released from incarceration for his crime within the preceding 10 years.

11. Respondent disputes complainant's application of CCR section 100174, subdivision (b)(2), to his criminal conviction. In oral argument at hearing and pre-hearing briefing (exhibit 11), respondent contends his conviction for assault with a deadly weapon could not be "punishable as a felony" because the crime was charged as a separate misdemeanor count and therefore respondent's conviction could not have resulted in a punishment for a felony offense. Respondent asserts that his misdemeanor conviction became a "misdemeanor for all purposes" under Penal Code section 17, and therefore cannot be considered to be a crime "punishable as a felony" for purposes of CCR section 100174, subdivision (b).

12. Respondent's position is not supported by the language of CCR section 100174, subdivision (b)(2), or case law. As complainant persuasively points out, the regulation does not refer to crimes punished as felonies; instead, it is directed to crimes punishable as felonies thus encompassing "wobbler" crimes, i.e., those punishable as either a felony or a misdemeanor. (Ex. 10, p. A187.) Because the conduct underlying wobbler crimes can vary in its level of seriousness, the Legislature has empowered the courts to decide whether a crime should be classified as a felony or misdemeanor. (*People v. Tran* (2015) 242 Cal.App.4th 877, 885.) To do so, the prosecutor and court consider the "facts surrounding the offense and the characteristics of the offender." (*Id.* at p. 885 (citation omitted).)

13. The decision to charge and sentence respondent's crime as a misdemeanor reflected the decision by the prosecutor and the court to treat respondent with leniency and save court time and expense. (See *Necochea v. Superior Court* (1972) 23 Cal.App.3d 1012, 1015–1016.) The decision to downgrade the charge is not based on "the notion that a wobbler defense is "conceptually a misdemeanor." (*Id.* at p. 1016.) The prosecutor is always free to change the charge to a felony. (*Malone v. Superior Court* (1975) 47 Cal.App.3d 313, 317.) And, the downgrade to a misdemeanor does not prove respondent is free from blame. Rather it reflects the prosecutor and the court's decisions that "felony punishment, and its consequences, are not appropriate" and respondent is "not a member of the class of criminals convicted of an offense the Legislature intended to be subject to felony punishment." (*People v. Tran, supra*, 242 Cal.App.4th at p. 886.) Respondent's reliance on dicta in *County of Los Angeles v. Civil Service Commission* (1995) 39 Cal.App.4th 620 suggesting otherwise is misplaced. (See *Rusheen v. Drews* (2002) 99 Cal.App.4th 279, 285–288.)

14. Accordingly, the elements of the crime of assault with a deadly weapon remain the same regardless of whether it is charged as a felony or misdemeanor. By pleading no contest to the misdemeanor charge of assault with a deadly weapon, a charge punishable as a felony, respondent admitted to the essential elements of the offense. (*Rusheen v. Drews, supra*, 99 Cal.App.4th at p. 287.) His conviction thus falls within the scope of CCR section 100174, subdivision (b)(2). Cause therefore exists to discipline respondent's EMT-P license under CCR section 100174, subdivision (b)(2). (Factual Findings 5–8; Legal Conclusions 5, 7, 11 & 13.)

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Disposition

15. Although revocation of respondent's license is required by subdivision (b)(2) of CCR section 100174, subdivision (g) of the regulation exempts respondent from revocation if "extraordinary circumstances" exist. Subdivision (g) does not define what is meant by "extraordinary." Merriam-Webster online dictionary defines "extraordinary" as "going beyond what is usual, regular, or customary." ([www.Merriam-Webster.com/dictionary/extraordinary.](http://www.Merriam-Webster.com/dictionary/extraordinary)) To determine whether such "extraordinary circumstances" exist, respondent's rehabilitation and the circumstances surrounding respondent's arrest, plea, and conviction are considered.

16. EMSA's criteria to evaluate respondent's rehabilitation from his crime include the following: (1) the nature and severity of the underlying criminal conduct; (2) evidence of subsequent criminal conduct; (3) the amount of time elapsed since engaging in the underlying criminal conduct; (4) compliance with the terms of criminal probation; (5) evidence that the crimes for which the licensee was convicted have been dismissed pursuant to Penal Code section 1203.4; and (6) any rehabilitation evidence submitted by the licensee. (CCR, § 100176, subd. (a).)

17. EMSA also has set forth criteria to determine license discipline in its Recommended Guidelines for Disciplinary Orders and Conditions of Probation, effective July 26, 2008 (Guidelines). (Ex. 9.) These criteria, many of which mirror the criteria found in CCR section 100176, include the nature and severity of the crime, actual or potential harm to the public, actual or potential harm to any patient, prior disciplinary record, prior warnings on record, number and variety of current violations, aggravating evidence, mitigating evidence, any discipline imposed by the paramedic's employer for the same occurrence of that conduct, rehabilitation evidence, compliance with court-ordered criminal probation, overall criminal record, and the time elapsed

since the act occurred. (*Id.*, p. A137.) The Guidelines also state the recommended discipline for conviction of a substantially related crime ranges from one year of probation with terms and conditions to revocation, depending on the nature of the crime. (*Id.*, p. A142.)

18. Respondent has offered compelling evidence of mitigation and rehabilitation that goes beyond what is usual for someone convicted of assault with a deadly weapon. Although threatening an individual with a weapon is serious, respondent's crime was deemed a misdemeanor. Respondent has satisfied the terms of his criminal probation. His actions caused no harm to the public or any patient. Although J.B. accused respondent of scratching her arm, the allegation was unproven. Respondent has no prior disciplinary record. The criminal conviction giving rise to the Accusation is his only conviction. He has no prior arrest record. He has received no prior warnings from EMSA. His employer reinstated respondent to his position as a firefighter after a three-month suspension. Since that time, respondent has served without restrictions and without incident. Respondent's colleagues, neighbors, and family all vouched for his dedication to his community and the people under his care knowing of the criminal charges against him. Respondent has served as an active firefighter for 15 years, and his superiors have found him to be an asset to his department and his patients. He has taken the initiative to engage in various kinds of therapy to better himself and make sure he has the necessary skills to deal with emotionally challenging situations. (Factual Findings 10–24.)

19. In addition to his evidence of rehabilitation, the extraordinary circumstances surrounding respondent's plea and conviction support respondent's exemption from the automatic revocation requirements of CCR section 100174, subdivision (b)(2). The ostensible purpose of that subdivision is to protect patients

from the risk of harm by a paramedic who has committed serious crimes. Subdivision (b)(2) assesses the seriousness of a paramedic's criminal conduct not only by whether the crime is punishable as a felony but also by the nature of the penalty imposed, i.e., whether the court ordered incarceration for the crime. Subdivision (b)(2) does not penalize those paramedics who commit a crime punishable as a felony but for whom the court orders no jail time.

20. Respondent's crime falls within the scope of CCR, section 100714, subdivision (b), because of his one-day credited jail sentence. Respondent never spent any time incarcerated after his plea because of the court's decision that respondent's crime was not serious enough to warrant additional jail time. The district attorney and the court accorded respondent lenient treatment presumably based on their belief in the weakness of the prosecution's case against respondent and the strength of respondent's character. Thus, although respondent's crime was punishable as a felony, the court's punishment does not demonstrate respondent poses a danger to the public. Revoking respondent's license based on that one-day credited sentence is thereby excessively harsh and contrary to the intent of CCR, section 100714, subdivision (b).

21. In summary, the district attorney, the court, and respondent's employer have shown through their actions that respondent does not present any threat to the community he serves. Respondent's colleagues, family, and friends have likewise affirmed respondent's integrity and non-violent character. Respondent's 15 years of service as a firefighter without incident reflect his substantial and consistent service to others. And, respondent has undertaken steps through therapy and other means to make sure he has the skills both to avoid and to address difficult emotional situations. No evidence was offered suggesting respondent will re-offend or endanger any of his

patients. Respondent has therefore persuasively proven his rehabilitation and the existence of "extraordinary circumstances" warranting his exemption from CCR, section 100714, subdivision (b).

22. The purpose of license discipline is not to punish a licensee but to protect the public by removing practitioners who are dishonest, immoral, disreputable, or incompetent. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) The evidence shows respondent is honest, ethical, and highly competent, and has served his patients and his community well for more than 15 years. Outright revocation of respondent's license under these circumstances would not only unduly punish respondent but would deprive the public of a dedicated and highly competent paramedic. Given the facts presented here, public safety can be ensured by placing respondent's paramedic license on probation for three years with terms and conditions designed to ensure that he continues to comply with EMSA and other laws.

ORDER

Emergency Medical Technician-Paramedic license number P37192 issued to respondent Juan Zepeda is revoked. However, such revocation is stayed and respondent is placed on probation for three 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 the respondent's compliance with the terms and conditions of his probationary order.

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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 the 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.

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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. The respondent must provide a full, detailed written explanation of the reasons for and circumstances of his/her 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 the 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.

10. COMPLETION OF PROBATION: Respondent's license shall be fully restored upon successful completion of probation.

11. 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 the 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.

DATE: 09/07/2022



CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings