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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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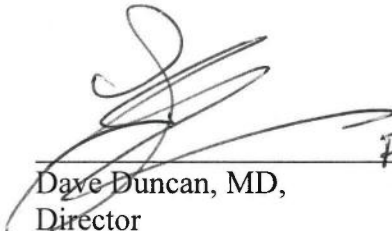
In the Matter of the Emergency Medical Technician- Paramedic License Held by:)	Enforcement Matter No. 18-0176
)	OAH No. 2020030711
)	
THOMAS DIXON,)	DECISION AND ORDER
License No. P36016)	
Respondent.)	
)	
)	

10 The attached Proposed Decision and Order dated August 7, 2020, is hereby adopted by
11 the Emergency Medical Services Authority as its Decision in this matter. The Decision shall
12 become effective on September 15, 2020.

13 It is so ordered.

14 DATED: 9/18/20

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For
Dave Duncan, MD,
Director
Emergency Medical Services Authority

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

In the Matter of the Accusation Against:

THOMAS DIXON, License No. P36016, Respondent.

Case No. 18-0176

OAH No. 2020030711

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 22, 2020.

Cynthia Curry, Attorney, represented Sean Trask (Complainant), Chief, EMS Personnel Division of the Emergency Medical Services Authority of the State of California (EMSA).

David J. Givot, Attorney at Law, represented Thomas Dixon (Respondent), who participated in the videoconference call.

Oral and documentary evidence was received. The record was left open until July 23, 2020, to allow Complainant to file and lodge a copy of the EMSA Recommended Guidelines for Disciplinary Orders and Conditions of Probation (EMSA Disciplinary Guidelines) currently in effect. Complainant timely filed a copy of the

EMSA Disciplinary Guidelines, effective July 26, 2008, which was marked and lodged as Exhibit 12, and the matter was submitted for decision on July 23, 2020.

SUMMARY

Complainant requests that EMSA discipline Respondent's Emergency Medical Technician-Paramedic (EMT-P) license, alleging he misused alcohol in a manner leading to a conviction for driving under the influence. Respondent asserts discipline is unwarranted. Clear and convincing evidence established cause for discipline, justifying a stayed revocation and a period of probation.

FACTUAL FINDINGS

1. On March 8, 2016, EMSA issued EMT-P license number P36016 to Respondent. The license is valid through March 31, 2022.
2. In an Accusation dated January 29, 2020, Complainant seeks to discipline Respondent's EMT-P license because of Respondent's August 23, 2018 conduct and subsequent criminal conviction for driving under the influence of alcohol in violation of Health and Safety Code section 1798.200, subdivisions (c)(6) and (c)(9).
3. In a letter dated March 9, 2020, Respondent's counsel confirmed his representation of Respondent and asserted defenses to the Accusation. The letter was deemed a notice of defense. This hearing followed.

Respondent's Criminal Conviction

4. On April 22, 2019, in the Superior Court, County of Orange, case number 19WM04116, the court convicted Respondent upon his pleas of guilty to violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (DUI) (count 1) and section 23152, subdivision (b), driving with 0.08 percent or more of alcohol in blood (count 2), both misdemeanors.

5. The court suspended imposition of sentence for count 1 and placed Respondent on three years' informal probation under terms and conditions including completing a six-month Level 2 First Offender Alcohol Program and a Victim Impact Counseling Program as well as paying various fines and fees. The court stayed the sentence for count 2 under Penal Code section 654.¹

6. The facts and circumstances underlying the April 22, 2019 criminal conviction are as follows: On August 23, 2018, Respondent drove his white Volkswagen van (vehicle) while under the influence of alcohol. According to the police report, a valet at the restaurant Respondent had visited had called the police at approximately 8:20 p.m. to report Respondent was driving while inebriated. A police officer spotted the vehicle and noted in his report that the vehicle "cut off the traffic in

¹ Penal Code section 654, subdivision (a), provides: "An act or omission that is punishable in different ways by different provisions of law shall be punishable under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other."

the No. 2 lane." (Exhibit 6, p. 068.) The police officer conducted a traffic stop, and upon contact with Respondent, the police officer observed that Respondent had the odor of an alcoholic beverage about his breath and person. When the police officer asked Respondent the time, Respondent answered 10 p.m., although the time was 8:31 p.m. The police officer also observed that Respondent's eyes were bloodshot and watery and Respondent displayed nystagmus in both eyes. When Respondent stepped out of the vehicle in response to the police officer's instructions, the police officer noted Respondent had an unsteady gait and "walked very slowly while focusing forward on his steps." (*Ibid.*)

7. Respondent refused to consent to a series of field sobriety tests at the site of the traffic stop. Consequently, based on the police officer's observation of Respondent's driving and Respondent's symptoms of inebriation, the police officer arrested Respondent for driving under the influence of alcohol. At the police station, Respondent consented to a blood test, and, at 9:01 p.m., Respondent provided a blood sample. He was found to have a blood alcohol content of 0.21 percent. Respondent told the police officer he had been drinking with friends and had three IPAs between 4:30 p.m. and 7:00 p.m.

8. Respondent's testimony at the administrative hearing confirmed his statement to the police that on the day of his arrest he had three to four 16-ounce beers over three hours. His timeline of events, however, was different than the timeline he provided to the police. According to Respondent, he started drinking around 2:30 p.m. and left the restaurant around 5:30 p.m. He admitted he had interacted with the valet after leaving the restaurant but asserted he walked around the shopping center where the restaurant was located until he felt ready to drive. At approximately 7:30 p.m., Respondent decided he was no longer impaired and began driving his vehicle.

Respondent testified he did not believe he was stopped by the police because of his driving; he believed he was stopped because of the phone call the police received. Respondent, however, did not explain why the police would have been called about his driving.

9. Respondent was not on duty at the time of his arrest, was not coming from or going to work, and was not subject to recall to report to work.

Respondent's Evidence

10. Respondent was 31 years old at the time of his arrest. The police report indicates Respondent was working at the Long Beach Fire Department when he was arrested. He currently is employed by the Los Angeles County Fire Department.

11. Complainant did not offer evidence showing Respondent suffered any prior criminal convictions or any prior EMSA license discipline. Respondent's license history indicates his EMT license is currently active but on probation but provides no details about the terms of the probation and which entity issued the probation. (Exhibit 4.)

12. Respondent testified he pleaded guilty to the DUI because he wanted to take ownership of what he had done. He has completed all terms of his probation. His probation is scheduled to end on April 21, 2022.

13. Respondent denied having any problem with alcohol and denied being an alcoholic. Respondent has never drunk alcohol at work and has never gone to work affected by alcohol. Respondent drinks socially, but not every day, and his drinking has never caused him to get out of control, dangerous, or violent. Other than

Respondent's DUI conviction, no evidence was offered to demonstrate Respondent has a problem controlling his alcohol intake.

14. Respondent testified he had learned from his criminal conviction. He now conveys to his colleagues and friends the risks and consequences of drinking too much, including the potential danger to other people.

LEGAL CONCLUSIONS

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

2. A paramedic is a health care professional. (Health & Saf. 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.)

First Cause of Action

3. The First Cause of Action of the Accusation alleges that Respondent's license is subject to discipline under Health and Safety Code section 1798.200, subdivision (c)(6), for conviction of a crime "substantially related to the qualifications, functions, and duties of prehospital personnel." California Code of Regulations, title 22, section 100175 provides in pertinent part: "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 his/her license in a manner consistent with the public health and safety.”

4. Respondent, through counsel, argued at hearing that his single DUI conviction was not substantially related to the qualifications, functions, and duties of his EMT-P license because the conviction was his only DUI conviction and he was not on duty at the time of his arrest. Respondent’s arguments are not persuasive.

5. It makes no difference that Respondent’s arrest occurred while he was off-duty and constituted private conduct. In *Griffiths v. Superior Court (Medical Board of California)* (2002) 96 Cal.App.4th 757, 771 (*Griffiths*), the court noted “[s]ubstantial legal authority provides that conduct occurring outside the practice of medicine may form the basis for imposing discipline on a license because such conduct reflects on a licensee’s fitness and qualifications to practice medicine. [Citations.]” EMSA also is not required to wait until Respondent’s abuse of alcohol crosses over into the workplace before taking steps to protect the public. (*In re Kelley* (1990) 52 Cal.3d 487, 495; *Griffiths v. Superior Court, supra*, 96 Cal.App.4th at p. 771 [rejecting contention that medical professional “can seal off or compartmentalize personal conduct so it does not affect the [medical professional’s] professional practice”].) Thus, Respondent’s off-duty behavior reflects on his fitness and qualifications to perform duties authorized by his EMT-P license, and conduct while off-duty can be a basis for license discipline.

6. Criminal convictions involving alcohol consumption, regardless of the number or when they take place, reflect a lack of sound professional and personal judgment that is relevant to a medical professional’s fitness and competence to practice because:

Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [Citation.]

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.

(*Griffiths, supra*, 96 Cal.App.4th at p. 770.)

7. Although *Griffiths* addressed the propriety of certain license discipline for a doctor with three DUI convictions, the court did not limit its discussion of the dangers of alcohol while driving to the facts of that case. While a physician and a paramedic may serve distinct roles within the medical community, members of both professions are knowledgeable about the effects of alcohol on one's ability to drive a car safely. The decision to drink and drive disregards that knowledge, reflects a lack of sound professional judgment, and presents a risk to the public. This is especially true for a paramedic where the safe transportation of patients is an important part of a paramedic's duties, and thus even a single alcohol-related driving conviction shows potential unfitness to provide safe transportation. (See Cal. Code Regs., tit. 22, § 100146, subd. (c) [scope of paramedic practice includes services performed "while at the scene of a medical emergency or during transport, or during interfacility transfer"].)

8. Accordingly, Respondent's DUI conviction is for a crime which is substantially related to the qualifications, functions, and duties of a paramedic because, to a substantial degree, the crime evidences Respondent's present or potential unfitness to perform the function authorized by his EMT-P license in a manner consistent with the public health and safety. (Cal. Code Regs., tit .22, § 100175.) Cause therefore exists to discipline Respondent's EMT-P license under Health and Safety Code section 1798.200, subdivision (c)(6). (Factual Findings 4 through 8; Legal Conclusions 1 through 7.)

Second Cause of Action

9. The Second Cause of Action of the Accusation alleges that Respondent's license is subject to discipline under Health and Safety Code section 1798.200, subdivision (c)(9), because Respondent's conduct reflected an "[a]ddiction to, the excessive use of, or the misuse of, alcoholic beverages."

10. Although Complainant offered no evidence to show that Respondent was addicted to or excessively used alcohol, Complainant established Respondent misused alcohol by drinking and driving when his blood alcohol content exceeded 0.20 percent, more than twice the legal limit of 0.08 percent. Cause therefore exists to discipline Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(9). (Factual Findings 4 through 8; Legal Conclusions 1, 2, and 9.)

Disposition

11. Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee but, rather, to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

12. The EMSA Disciplinary Guidelines list 14 factors that shall be considered when determining the appropriate discipline for licensee misconduct. (EMSA Disciplinary Guidelines, pp. 1-2.) As noted in Factual Findings 4 through 13, the factors apply in Respondent's case as follows:

(1) *Nature and severity of the act(s), offense(s), or crime(s) under consideration:* Respondent drove his vehicle while under the influence of alcohol, a misdemeanor offense. After his arrest, Respondent's blood alcohol content percentage was more than twice the legal limit.

(2) *Actual or potential harm to the public:* Respondent's conduct posed no actual harm to the public. However, his drinking while intoxicated was a serious risk of harm to himself, other motorists, cyclists, and pedestrians.

(3) *Actual or potential harm to any patient:* There was no actual or potential harm to any patient.

(4) *Prior disciplinary record:* Respondent's EMT-P license has no history of discipline.

(5) *Prior warnings on record or prior remediation:* No evidence was presented of any prior warnings on record or prior remediation.

(6) *Number and/or variety of current violations:* Respondent committed two violations arising from the August 23, 2018 incident.

(7) *Aggravating evidence:* No aggravating evidence was presented.

(8) *Mitigating evidence:* No mitigating evidence was presented.

(9) *Any discipline imposed by the paramedic's employer for the same occurrence of that conduct:* License information offered by Complainant indicates Respondent's EMT license is on probation. However, complainant proffered no evidence regarding the specifics of such discipline or whether it was imposed by Respondent's employer.

(10) *Rehabilitation evidence:* Respondent did not offer any evidence from his colleagues, friends, family, or supervisors vouching for his character. Respondent, however, took responsibility for his misconduct and testified he has learned from his criminal conviction.

(11) *In case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation:* Respondent has complied with the terms of probation for his April 22, 2019 conviction. His criminal probation terminates on April 21, 2022.

(12) *Overall criminal record:* No evidence of any prior criminal record was presented.

(13) *Time that has elapsed since the act(s) or offense(s) occurred:* Nearly two years have elapsed since the August 23, 2018 incident that resulted in Respondent's arrest and conviction.

(14) *If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4:* Not applicable. Because Respondent is on criminal probation, he is not eligible to petition for expungement of his conviction at this time.

13. The EMSA Disciplinary Guidelines set forth categories of license violations and the recommended level of discipline for each category. For a

substantially related criminal conviction, the maximum discipline is revocation, the minimum discipline is revocation stayed, with a one-year probation, and the recommended discipline is "variable depending on the nature of the crime with terms and conditions." (EMSA Disciplinary Guidelines, p. 6.) For addiction to, excessive use or misuse of alcohol, the maximum discipline is revocation, the minimum discipline is revocation stayed, with three years' probation with optional terms, and the recommended discipline is revocation stayed with a license suspension until successful completion of drug/alcohol detoxification diversion program and five years of probation with terms and conditions. (EMSA Disciplinary Guidelines, p 7.)

14. Here, Respondent demonstrated a lack of regard for public safety and poor judgment by driving under the influence of alcohol. The incident and criminal conviction are relatively recent but the conviction is Respondent's only offense and Respondent has satisfied the requirements of his probation. The incident did not involve patient care. No one was harmed as a result of the incident. Respondent has already completed a court-ordered alcohol diversion program, consisting of classes, self-help meetings, and group sessions, as a condition of his probation. Complainant has not shown Respondent is an alcoholic or regularly abuses alcohol.

15. Under all of the facts and circumstances, a three-year probationary period with terms specifically addressed to Respondent's alcohol misuse is appropriate. These terms require abstinence from alcohol (Optional Condition 2) and one year of random fluid testing (Optional Condition 3). One year of testing, instead of the recommended three years, is sufficient to protect the public and determine whether Respondent suffers from alcohol abuse given the absence of any evidence of alcoholism, excessive use of alcohol, or regular alcohol misuse. As Respondent has already completed a sixth-month DUI program, it is not necessary to require him to

enroll in a diversion or detoxification program (Optional Condition 4). In addition, Complainant did not offer any evidence that Respondent abused or is addicted to prescription drugs or other controlled substances, and therefore no need was established for close monitoring of Respondent's prescription drug use as required in Optional Condition 1. Therefore, Optional Conditions 1 and 4 and a suspension are not included below.

ORDER

License Number P36016 issued to respondent Thomas Dixon is revoked. However, such revocation is stayed and Respondent is placed on probation for three years upon the following 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 the 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. Abstinance from the Use of Alcoholic Beverages

Respondent shall abstain from the use of alcoholic beverages.

11. Biological Fluid Testing

For one year from the effective date of this Order, 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 licensed drug/alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and drug/alcohol testing facilities. 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 10 days. Respondent shall be responsible for all costs associated with the drug/alcohol screening.

At the EMSA's sole discretion, the EMSA may allow the random drug testing to be conducted by Respondent's employer to meet the requirement of random drug testing as set forth above. The results of the employer's random drug testing shall be made available to the EMSA in the time frames described above.

DATE: August 7, 2020

DocuSigned by:
Cindy F. Forman
CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings