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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. 21-0259
)
) OAH No. 2022110215
PETER HECTOR,)
License No. P28933) **DECISION AND ORDER**
Respondent.)
)
)

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

DATED: July 13, 2023



David Konieczny, Designee
Paramedic Disciplinary Review Board
Emergency Medical Services Authority

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

In the Matter of the Accusation against:

PETER HECTOR,

License No. P28933

Respondent.

Agency No. 21-0259

OAH No. 2022110215

PROPOSED DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter on April 18, 2023, by videoconference.

Authority Counsel Francis Valdez represented Complainant Kim Lew (Complainant), Chief, Personnel Division of the Emergency Medical Services Authority (EMSA). Attorney Seth Weinstein represented Respondent Peter Hector (Respondent), who was present throughout the hearing.

Testimony and documentary evidence was received and argument was heard. The record closed and the matter was submitted for decision on the hearing day.

SUMMARY

Complainant seeks to revoke Respondent's paramedic license based on his misdemeanor conviction for driving while under the influence of alcohol. Cause exists to discipline Respondent's license. Applying the criteria set out in the agency's disciplinary guidelines, Respondent presented sufficient evidence of rehabilitation to warrant allowing him to retain his license on a probationary basis subject to appropriate terms and conditions.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 20, 2010, EMSA issued Emergency Medical Technician-Paramedic (EMT-P) license number P28933 to Respondent. An EMT-P is a health care professional who may perform various medical procedures, including advanced life support procedures, while at the scene of a medical emergency or during transport. The license is scheduled to expire on October 31, 2024.

2. On August 22, 2022, Complainant signed an Accusation charging Respondent with incurring a criminal conviction for a crime substantially related to the qualifications, functions, and duties of his profession and for addiction to, and abuse of alcohol. Respondent filed a notice of defense and this matter ensued.

Respondent's Criminal Conviction

3. On June 29, 2022, in the Superior Court of California, Los Angeles County, Respondent pled no contest and was convicted of violating Vehicle Code section

23152, subdivision (b) (driving with a blood alcohol concentration exceeding .08 percent), a misdemeanor. The criminal court sentenced Respondent to one day in jail and three years' probation with terms and conditions including enrollment and participation in a three-month licensed first offender alcohol and drug education and counseling program and an "AB-541" (alcohol awareness) program. Court records indicate Respondent successfully completed the court's requirements but he remains on probation.

4. The facts and circumstances underlying Respondent's June 2022 criminal conviction are that Respondent, after drinking copious amounts of alcohol, attempted to drive home and collided into a parked car. A police officer's field test administered at the scene reflected Respondent was inebriated at the accident scene and blood test, administered more than two hours after the police originally interviewed him, reflected a blood alcohol level of .26, more than three times the legal limit.

Respondent's Evidence

5. Respondent testified at the hearing. Regarding his professional background, Respondent stated that, after graduating from high school, he joined the army for four years, where he was deployed to Kosovo, Kuwait, and Iraq. Respondent was discharged in 2004 and decided to pursue a career as a firefighter and paramedic, working as a bartender while completing his training. Since receiving his license in 2010, Respondent has worked continuously as a firefighter and paramedic. Respondent has been working for his current employer, West Covina Fire Department since 2012, working regular 48-hour shifts and additional overtime shifts as necessary, which has increasingly become the case.

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6. Respondent has been drinking heavily since he was a high school senior, a period of approximately 21 years. Respondent stressed, however, he has never been impaired while on duty. Respondent acknowledged there is a heavy drinking culture prevalent in his profession.

7. Just prior to his arrest, which occurred on October 1, 2021, Respondent worked almost continuously over a two-week period battling wildfires. That day, he started drinking at lunch, and consumed two or three drinks. He then went to his parents' home where he had two drinks before dinner and several more with dinner. After leaving his parents' home, he stopped at a bar, where he had an indeterminate number of drinks. Respondent attempted to drive himself home but collided into and drove partially over a parked truck.

8. Respondent managed to exit his vehicle after the accident and then sat on the curb waiting for the police. During his testimony, Respondent admitted he substantially understated how much alcohol he drank when a police officer interviewed him.

9. Respondent considers October 1, 2021, to be his sobriety date. In addition to the court-ordered programs, Respondent attended and successfully completed a rehabilitation program specializing in assisting first responders. At the hearing, he maintained he no longer has any desire to drink. He attends Alcoholics Anonymous meetings approximately once a week and consults with a therapist from time to time.

10. Respondent introduced the testimony of City of Ontario Police Officer Aaron Bodsan to corroborate Respondent's contention that he no longer drinks. Officer Bodsan attended the same rehabilitation program for first responders as

Respondent; they became friends while attending the program and, since then, have been sharing an apartment. At the hearing, Officer Bodsan stated he is frequently around Respondent and can attest he no longer drinks.

11. At the outset of its investigation, EMSA directed Respondent to undergo an examination and assessment by Dr. Matthew Torrington, a family medicine doctor with a specialty in addiction medicine. On October 22, 2022, Dr. Torrington examined Respondent and prepared a report. Although the report was commissioned by EMSA, it was introduced into evidence by Respondent. According to Dr. Torrington's report, he had Respondent undergo a "14 point of care urine test . . . [which] was negative . . . for EtG (a long acting alcohol metabolite), THC, morphine, methadone, buprenorphine, oxycodone, benzodiazepines, phenobarbital, amphetamine, methamphetamine, cocaine, and MDMA." (Exh. A, p. B2.) After further assessing Respondent, Dr. Torrington concluded Respondent did not meet the criteria for "alcohol use disorder." (Exh. A, p. B3.) Dr. Torrington concluded his report as follows:

At this time, [Respondent] is fit for duty. He is in many ways more fit than at other times in his recent past. With substance use disorders there is always a chance for relapse to dysfunctional behavior, but one year of sustained sobriety after a significant precipitating event bodes extremely well for [Respondent's] long term prognosis. If there are any signs of destabilization, I would recommend prompt re-evaluation. If there is any indication that Mr. Hector returns to alcohol use, I would strongly consider re-entry into structured treatment followed by some form of

biological testing to confirm abstinence for months to years to document that he remains alcohol free.

(Exh. A, p. B3.)

12. Two captains from Respondent's current employing fire department testified at the hearing. Captain Andrew Michael Robertson has worked for the West Covina Fire Department for 18 years, has worked there with Respondent for the last 10 years, and is one of his supervisors. Captain Robertson considers Respondent to be an exceptionally good employee. He is aware of Respondent's criminal record and this information has not changed his opinion of, and trust in, Respondent. Captain Matthew Brent Jackson has worked for the West Covina Fire Department for 15 years. He serves as Respondent's supervisor when Respondent works overtime shifts. Like Captain Robertson, Captain Jackson is aware of Respondent's drinking and his criminal conviction and continues to believe Respondent is fit for duty.

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, § 1792.72.) (Further statutory citations are to the Health and Safety Code unless otherwise designated.)

2. As the moving party in the proceeding, Complainant bears the burden of proof. (Evid. Code, § 500.) Because obtaining an EMT-P license requires education, training, and a licensing examination, it is considered a professional license and therefore Complainant must establish grounds for disciplining Respondent's license by

clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

Causes for Discipline

3. The First Cause of Action of the Accusation alleges Respondent's license is subject to discipline under 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. Particularly in licensure involving medical treatment, excessive drinking can be reflective of unfitness for duty even when, as in the instant case, it occurs off-duty. (See *Griffiths v. Superior Court (Medical Board of California)* (2002) 96 Cal.App.4th 757, 771 [rejecting the contention that a medical professional "can seal off or compartmentalize personal conduct" so it does not impact the professional's conduct or judgment when working.]) Thus, Respondent's criminal conviction constitutes cause for discipline. (Factual Finding 3 and Legal Conclusions 3 & 4.)

5. The Second Cause of Action of the Accusation alleges that Respondent's license is subject to discipline under section 1798.200, subdivision (c)(9), because Respondent's conduct involved addiction and misuse of alcohol. Blood test results, the criminal conviction, and Respondent's testimony established Respondent has abused alcohol. Respondent's alcohol abuse constitutes a second cause for discipline. (Factual Findings 3, 4, 6, & 7 and Legal Conclusion 5.)

Disposition

6. EMSA promulgated the Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Rev. 7/26/08) (Guidelines) for determining the appropriate level of discipline once cause has been established. The Guidelines set out criteria to consider. The relevant criteria for the instant case are: (i) the nature and severity of the acts or crimes giving rise to the disciplinary matter; (ii) whether there was harm or potential harm to the public or any patient; (iii) any prior discipline or remediation; (iv) mitigation or aggravation evidence; and (v) whether the respondent is in compliance with any court orders.

7. The Guidelines also provide recommended ranges of penalties for specific violations. For a substantially related criminal conviction, the maximum discipline is revocation, the minimum discipline is revocation stayed, with a one-year probation. (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, including drug and alcohol testing. (Guidelines, p. 7.)

8. Respondent argued, in light of his period of sobriety, completion of both voluntary and court-ordered rehabilitation programs, and his otherwise clean disciplinary record with EMSA and his employer, any discipline imposed should be limited to a year's probation with no drug or alcohol testing.

9. Applying the Guidelines' criteria and the circumstances of the case, Respondent's suggested penalty would not be consistent with the public interest. The

main issue is Respondent's heavy alcohol use, not just at the time leading to his arrest and criminal conviction but for an extended period before that. His accident did not result in injury to himself or anyone else but, given the extent of his inebriation, this appears to have been just a matter of luck. Under these circumstances, his transgressions are serious and raise safety concerns both to the public and the patients for whom Respondent may care.

10. Respondent presented a number of positive factors in mitigation, including his participation in rehabilitation programs, including one he attended on his own volition. He does not have any disciplinary record before the instant matter and he has the support and respect of his superiors, signs that he is capable of working in a disciplined and effective manner. Nonetheless, he has been sober for a fraction of the time he routinely used and potentially abused alcohol. Sobriety requires life-time efforts to stay the course. A suspension period is not necessary because Respondent has already completed rehabilitation programs and undergone a medical assessment. However, public safety concerns warrant that he work under restricted conditions, including drug and alcohol testing, for an extended period of time. Consistent with the order below, Respondent's license will be placed on probationary status for three years with appropriate terms and conditions, consistent with the Order below.

ORDER

Emergency Medical Technician-Paramedic license number P28933 issued to Respondent Peter Hector 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.

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, they 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.

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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, he 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 he 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 he 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 any admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

Additional Conditions of Probation

1. ABSTINENCE 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 prescription unless prescribed under federal or state law as part of a documented medical treatment. Within fourteen 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 medicine was prescribed, Respondent's diagnosis, and the date the medication will no longer be required. The 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 fourteen days of the commencement of probation.

Any and all notifications to the EMSA shall be by certified mail.

2. ABSTINENCE FROM THE USE OF ALCOHOLIC BEVERAGES. Respondent shall abstain from the use of alcoholic beverages.

3. 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 any 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 laboratories and drug/alcohol testing facilities. 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.

At the EMSA's sole discretion, the EMSA may allow the random drug testing to be conducted by Respondent's employer to meet the requirements of random 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: **05/23/2023**

Deena R. Ghaly
Deena R. Ghaly (May 23, 2023 09:20 PDT)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings