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2 BEFORE THE  
3 EMERGENCY MEDICAL SERVICES AUTHORITY  
4 STATE OF CALIFORNIA

5 In the Matter of the Accusation against: )

) Enforcement Matter No.: 19-0199

) OAH No. 2019090443

6 **COREY L. LEE** )

License No. P29997 )

7 Respondent. )

) **DECISION AND ORDER**

8 )  
9 )  
10 I. INTRODUCTION

11 This matter was heard on August 5, 2020, by Dave Duncan, MD, Director of the State of  
12 California Emergency Medical Services Authority ("Authority"), pursuant to the provisions of  
13 the Administrative Procedure Act ("Act")<sup>1</sup>, subsequent to the hearing held on March 4, 2020,  
14 by Administrative Law Judge Joseph D. Montoya of the Office of Administrative Hearings.

15 II. PARTIES

16 1. Dave Duncan MD is the Director of the Authority. The Director makes this decision  
17 in his official capacity as Director of the Authority, and not otherwise.

18 2. Respondent holds Emergency Medical Technician-Paramedic ("EMT-P") license  
19 number P29997 which was first issued on August 8, 2011, and is valid through August 31,  
20 2021.

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25 <sup>1</sup> The Act is codified at California Government Code Section 11370 et. seq.

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### III. JURISDICTION

The power to adopt, modify or reject a proposed decision is granted to the Authority directly by the provisions of California Government Code, Section 11517, which provide:

“11517. (a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member of the agency who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c) (1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

1 (E) Reject the proposed decision, and decide the case upon the record, including the  
2 transcript, or upon an agreed statement of the parties, with or without taking additional  
3 evidence. By stipulation of the parties, the agency may decide the case upon the record  
4 without including the transcript. If the agency acts pursuant to this subparagraph, all of  
5 the following provisions apply:

6 (i) A copy of the record shall be made available to the parties. The agency may require  
7 payment of fees covering direct costs of making the copy.

8 (ii) The agency itself shall not decide any case provided for in this subdivision without  
9 affording the parties the opportunity to present either oral or written argument before the  
10 agency itself. If additional oral evidence is introduced before the agency itself, no agency  
11 member may vote unless the member heard the additional oral evidence.

12 (iii) The authority of the agency itself to decide the case under this subdivision includes  
13 authority to decide some but not all issues in the case.

14 (iv) If the agency elects to proceed under this subparagraph, the agency shall issue its  
15 final decision not later than 100 days after rejection of the proposed decision. If the  
16 agency elects to proceed under this subparagraph, and has ordered a transcript of the  
17 proceedings before the administrative law judge, the agency shall issue its final decision  
18 not later than 100 days after receipt of the transcript. If the agency finds that a further  
19 delay is required by special circumstance, it shall issue an order delaying the decision for  
20 no more than 30 days and specifying the reasons therefor. The order shall be subject to  
21 judicial review pursuant to Section 11523.”

#### 22 IV. HISTORY

23 Pursuant to an appeal of the Accusation and Petition to terminate Probation, a hearing  
24 was noticed and held in this matter on March 4, 2020, before Administrative Law Judge Joseph  
25 D. Montoya with the Office of Administrative Hearings in Los Angeles, California. Respondent  
appeared at this hearing and was represented by counsel David J. Givot. Senior Staff Counsel  
Cynthia Curry represented the Authority.

On or about April 5, 2020, the Authority received a copy of the proposed decision. On or  
about May 4, 2020, the Authority served Respondent with a copy of the Administrative Law  
Judge’s proposed decision and order and informed him that it had not adopted the Proposed  
Decision and Order. The Authority ordered a copy of the transcript, and set the matter for a  
written hearing. Respondent was informed that he could present written argument to the  
Director on or before July 15, 2020, the date set for the written hearing. Respondent, through

1 counsel, submitted further argument. The original Accusation, the evidence submitted at the  
2 Administrative hearing, the Administrative Law Judge's proposed decision, a copy of the hearing  
3 transcript, and the additional argument submitted by Respondent were all considered in this  
4 Decision and Order.

#### 5 V. DISCUSSION

6 Respondent's license was subject to discipline for violating his agreed-to  
7 probation (EMSA Case no.16-0174) by testing positive for methamphetamine on a random drug  
8 test during the term of his probation, which required abstinence from the use of illegal drugs.  
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10 The Administrative Law Judge found under legal conclusion 24., page 8 of the decision  
11 that "Based on the totality of the evidence, Respondent had Methamphetamine in his system on  
12 June 20, 2019, but he did not voluntarily ingest it. It is more likely that he ingested,  
13 unknowingly, a contaminated and counterfeit pill that Benitez had placed in Respondent's  
14 container at some point prior to June 20, 2019."

15 Thus, the question in this matter is not whether Respondent ingested methamphetamine,  
16 but the circumstances of the ingestion. The ALJ found it likely that he ingested counterfeit  
17 Aderall that had been placed in Respondent's prescription bottle unbeknownst to him by a friend  
18 who had allegedly borrowed some of his medication, and then replaced it with illegally obtained  
19 Aderall. This explanation for the unknowing ingestion relies on several factors: 1. Respondent's  
20 friend knew he had a prescription for Aderall and knew where the bottle was kept; 2.  
21 Respondent's friend knew that there were sufficient pills to "borrow" and replace; 3. The pills  
22 that were replaced were in fact counterfeit and not actual Aderall; 4. Respondent noticed no  
23 difference after ingesting the supposedly counterfeit Aderall.  
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1 To believe all of the above strains credulity to the breaking point. Even assuming that  
2 points 1 and 2 above are believable, there was no proof offered that the pills that were  
3 “borrowed” and replaced were in fact counterfeit; it was just an assumption based upon the fact  
4 that Respondent had tested positive for methamphetamine. The fact that Aderall can be  
5 counterfeited does not mean that pills that were supposedly replaced were counterfeited.  
6 Respondent offered no proof, other than his and his friend’s testimony, that the pills in his  
7 prescription had in fact been replaced with counterfeit Aderall.  
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9 It is the opinion of the Director that the testimony regarding the unknowing ingestion of  
10 methamphetamine is not credible. It is the Director’s opinion that Respondent did in fact violate  
11 the terms of his probation by testing positive for methamphetamine. The Director therefore  
12 believes that the dismissal of the action as set forth in the Administrative Law Judge’s proposed  
13 decision should not be adopted.

#### 14 VI. DECISION AND ORDER

15 The Director of the Authority therefore finds the following:

16 WHEREAS, the PROPOSED DECISION of the Administrative Law Judge and the NOTICE  
17 CONCERNING PROPOSED DECISION in this matter were served upon Respondent in  
18 accordance with Government Code section 11517; the Authority notified Respondent that the  
19 Authority considered, but did not adopt, the PROPOSED DECISION; and  
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21 WHEREAS, the Respondent was afforded the opportunity to present written argument,  
22 and presented written argument through counsel; and

23 WHEREAS, the Director of the Emergency Medical Services Authority has considered  
24 the record, and now finds that;

25 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION of the

1 Administrative Law Judge is hereby not adopted by the Director of the Emergency Medical  
2 Services Authority as its Decision in this matter, and is replaced with the following:

3 ORDER

4 A. Emergency Medical Technician-Paramedic License No. P29997 issued to Respondent  
5 **COREY L. LEE**, is revoked; however, such revocation is stayed and Respondent's license  
6 is placed on probation to continue until May 25, 2021 with the following terms and  
7 conditions:

8 (1) Abstinence from the Consumption of Alcohol and Drugs: Respondent shall abstain  
9 from the consumption of any and all alcoholic beverages and non-prescription drugs  
10 during the entire term of the probationary period. At any time during the  
11 probationary period, the Authority may direct Respondent, at Respondent's expense,  
12 to comply with random alcohol or drug testing by PAS device or by laboratory test at  
13 the discretion of the Authority. When the Authority requests a random test, the  
14 respondent shall provide the required urine or breath sample by the time specified, or  
15 within 12 hours of the request if no time is specified. When the Authority requests a  
16 random test, the respondent shall ensure that any positive test results are conveyed  
17 telephonically by the lab to the Authority within 48 hours, and all written positive or  
18 negative results are provided directly by the lab to the Authority within ten (10) days.  
19 The Respondent shall be responsible for all costs associated with the alcohol  
20 screening.

21 (2) Probation Compliance: Respondent will fully comply with all terms and conditions  
22 of this Agreement. Respondent will fully cooperate with the Authority in its  
23 monitoring, investigation, and evaluation of Respondent's compliance with the terms  
24 and conditions of this Agreement. Respondent will immediately execute and submit  
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1 to the Authority all Release of Information forms that the Authority may require of  
2 Respondent.

3 (3) Employment/LEMSA Notification: During the probationary period, Respondent  
4 shall continuously update the Authority as to his EMS employment/LEMSA  
5 accreditation with the following measures:

6 (a) Within ten days of the effective date of this Agreement, Respondent will submit the  
7 name, address and telephone number of his current EMS employer(s), and all Local  
8 Emergency Medical Services Agencies (LEMSA) where Respondent is accredited, to the  
9 Authority.

10 (b) Within ten days of any change in EMS employment or accrediting LEMSA,  
11 Respondent will notify the Authority of such change and will provide the Authority with  
12 the employer's name, address, and telephone number, and the name of the new  
13 accrediting LEMSA.

14 (c) Respondent will notify his EMS employer and all LEMSAs where Respondent is  
15 accredited, of the terms and conditions of this Agreement by providing to them a copy of  
16 this Agreement. Within ten days of the effective date of this Agreement, Respondent will  
17 submit proof to the Authority that he has made these notifications.

18 (d) Respondent shall, within ten days of applying for any new EMS employment or  
19 applying for accreditation with a new LEMSA, submit proof to the Authority that he has  
20 notified the prospective EMS employer or LEMSA of these terms and conditions by  
21 providing a copy of this Agreement to the prospective employer or LEMSA. Respondent  
22 shall inform the Authority in writing of the name and address of any prospective EMS  
23 employer prior to accepting new employment or any new LEMSA where Respondent  
24 receives accreditation.  
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1 (e) Notification of Termination: Respondent will notify the Authority in writing within  
2 72 hours of his resignation or termination, for any reason, from any EMS employment.  
3 Respondent will provide in the notification letter a full and detailed explanation of the  
4 reasons for and the circumstances of his resignation or termination.

5 (6) Personal Appearances: As directed by the Authority, Respondent will appear in  
6 person for interviews, meetings, and evaluations of Respondent's compliance with the  
7 terms and conditions of this Agreement. Respondent is responsible for all of his costs  
8 associated with this requirement.

9 (7) Quarterly Report Requirements: Respondent will submit quarterly reports, due on or  
10 before January 15, April 15, July 15, and October 15, for each preceding quarter, to the  
11 Authority wherein Respondent certifies under penalty of perjury that he has met the terms  
12 and conditions of his probation. Respondent will provide whatever documentation is  
13 necessary to document compliance with the terms and conditions of probation. If  
14 Respondent fails to meet any of the terms or conditions, Respondent will provide the  
15 Authority with a written explanation for such failure.

16 (8) Maintain Active License: Respondent will maintain an active license with the  
17 Authority in order for the probationary period to run. Should Respondent's license lapse  
18 or expire by operation of law or otherwise during the probationary period, upon renewal  
19 or reinstatement, the license will be subject to any and all terms and conditions of this  
20 probation that remain unsatisfied.

21 (9) Obey All Related Laws: Respondent shall obey all federal, state and local laws,  
22 statutes and regulations, written policies, protocols and rules governing the practice of  
23 medical care as a paramedic. Respondent shall not engage in any conduct that constitutes  
24 grounds for disciplinary action pursuant to EMS Act section 1798.200. Within 72 hours  
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1 of being arrested, cited or charged for any offense, Respondent shall submit to the  
2 Authority a full and detailed account of the circumstances thereof.

3 The Authority shall determine whether the offense constitutes a violation of any federal,  
4 state or local laws, written policies, protocols or rules governing the practice of medical  
5 care as a paramedic. To permit monitoring of compliance with this term, if Respondent  
6 has not submitted fingerprints to the Authority in the past as a condition of licensure,  
7 Respondent shall submit his fingerprints by Live Scan and pay the appropriate fees  
8 within forty-five days of the effective date of this Agreement.

9 (10) Notifications/Submissions: Any and all notifications and submissions to the  
10 Authority shall be sent by certified mail or e-mail. When emailing notifications and  
11 submissions, Respondent must receive a return e-mail from the Authority to assure the  
12 notification or submission was timely received.

13 B. Completion of Probation: Respondent's license shall have unrestricted status upon  
14 successful completion of probation. Successful completion entails complying with all  
15 terms and conditions listed in paragraph A., above.

16 C. Violation of Probation:


17 (1) Respondent understands and agrees that if during the period of probation  
18 he fails to comply with any term or condition of probation, the Authority will initiate  
19 action to terminate probation and proceed with actual license suspension or revocation.  
20 Upon initiation of such an action, or upon giving notice to Respondent of the Authority's  
21 intent to initiate such an action, the probationary period shall remain in effect until the  
22 Authority has adopted a decision on the matter. An action to terminate probation and  
23 implement actual license suspension or revocation shall be initiated and conducted  
24 pursuant to the hearing provisions of the California Administrative Procedure Act.  
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1 (2) If such an action ensues, the issues to be resolved at the hearing shall be limited to  
2 whether Respondent has violated any term of his probation sufficient to warrant  
3 termination of the probation and implementation of license suspension or revocation. At  
4 the hearing, Respondent and the Authority shall be bound to the admissions contained in  
5 the terms of probation and neither party shall have a right to litigate the validity or  
6 invalidity of such admissions.  
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8 This DECISION and ORDER shall become effective 30 days upon the date of signature below.

9 Dated:

10 9/10/2020

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13 Dave Duncan, MD,  
14 Director  
15 Emergency Medical Services Authority  
16 State of California  
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**BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA**

**In the Matter of the Accusation and Petition to Terminate  
the Probation of the Emergency Medical Technician-**

**Paramedic License Held by:**

**COREY L. LEE, Respondent**

**Enforcement Matter 19-0199**

**OAH No. 2019090443**

**PROPOSED DECISION**

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 4, 2020, in Los Angeles, California.

Complainant Sean Trask was represented by Cynthia Curry, Attorney, Emergency Medical Services Authority. Respondent Corey L. Lee was present, and was represented by David J. Givot, Attorney at Law.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 4, 2020.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Complainant brought this action while acting in his official capacity as Chief, EMS Personnel Division of the California Medical Services Authority (Authority).

2. Respondent holds Emergency Medical Technician-Paramedic (EMT-P) License no. P 29997, which license is valid through August 31, 2021. Respondent was first licensed in August 2011.

3. On April 25, 2017, Respondent entered into a stipulation whereby his EMT-P license was placed on probation for three years, with the probation term starting on May 25, 2017.

4. After the Accusation and Petition to Terminate Probation (Accusation) was served on Respondent, he filed a Notice of Defense, contesting the allegations against him. This proceeding ensued. All jurisdictional requirements have been met.

### **Respondent's Probation**

5. (A) The root of Respondent's probationary status is a conviction for driving under the influence (DUI). On February 1, 2017, Respondent was convicted in the Superior Court for violating Vehicle Code section 23152, subdivision (b), driving

with a blood alcohol level of .08 or above.<sup>1</sup> The conviction was based on Respondent's no contest plea, and he was thereby convicted of a misdemeanor.

(B) The court placed Respondent on summary probation for three years, with various terms and conditions typical of such probation grants. For example, Respondent was required to pay fines, fees, penalties and assessments totaling \$1,549; to complete a six-month alcohol education course, to not drive with measurable alcohol or drugs in his system, and to obey all laws.

6. Complainant filed an Accusation against Respondent as a result of his DUI conviction. Thereafter, Complainant and Respondent entered into a Stipulated Settlement Agreement and Disciplinary Order (Stipulation). On April 25, 2017, the Stipulation and its attendant order was adopted as the Authority's Decision by the Director of the Authority, Howard Backer, MD, MPH, FACEP.

7. There were a number of probation terms included in the Stipulation, not all of which will be repeated here. The salient terms are:

(A) That Respondent's license was revoked, the revocation was stayed, and the license was placed on probation for three years.

(B) Respondent was required to abstain from consumption of alcohol and non-prescription drugs while on probation, and he would have to submit, at his own expense, to random alcohol and drug testing, and as directed by the Authority.

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<sup>1</sup> Respondent was arrested by the California Highway Patrol on June 27, 2016, and preliminary alcohol screenings measured his blood alcohol level at 0.17 percent.

(C) Respondent was to participate in an outpatient program at his own expense. The program was to be approved by the Authority.

(D) Violation of probation could lead to a termination of probation and revocation of Respondent's license.

### **The Positive Drug Test**

8. On June 20, 2019, Respondent underwent a urine test by FS Solutions, after being randomly selected for the test. FS Solutions contracts with the Authority to conduct alcohol and drug tests. Respondent tested positive for Methamphetamine, an illegal drug that is a Schedule II Controlled Substance under federal law.

9. On July 9, 2019, Jamie Cichy, an employee in the Authority's Case Management and Probation Services Enforcement Unit, sent an e-mail to Respondent informing him that the June 20, 2019 test had come back positive for Amphetamine and Methamphetamine.<sup>2</sup>

10. On July 10, 2019, Respondent wrote to Cichy and asserted he had abstained from drugs and alcohol, but noted that he had a prescription for Adderall, which he understood from the Adderall's container contained Amphetamine.

11. Prior to receiving Respondent's July 10, 2019 e-mail, Cichy had taken steps to learn if Respondent's Adderall prescription could have accounted for the positive urine test. On July 9, 2019, Cichy e-mailed Ashley Sanders, at FS Solutions, and asked for a medical review in light of Respondent's prescription. Sanders had

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<sup>2</sup> The time lapse of 19 days from test to report is explained, in part, on exhibit 6, where it states "report delayed due to incomplete or missing information."

previously told Cichy that Dr. Ferguson, a physician at FS Solutions, had informed Sanders that Adderall is prescription Amphetamine, but it doesn't contain Methamphetamine. Further, Dr. Ferguson had explained that Amphetamine is a metabolite of Methamphetamine, which indicated that the Methamphetamine found in the test did not come from Respondent's prescription Adderall.

12. On July 15, 2019, Respondent sent another e-mail to Cichy regarding the positive test. He explained he had spoken to Dr. Ferguson, who had expressed interest in any over-the-counter medications that Respondent might have taken. Respondent reviewed his activities for several days prior to the test, and could not pinpoint any over-the-counter culprits, nor could he recall any work around his house where some substance could have been ingested. He did note that on June 13, 2019, while fighting a fire, he breathed in toxic smoke, which left him with respiratory problems for several days. However, the nature of any toxins in the smoke cannot be pinpointed.

13. Complainant's expert, Samuel J. Stratton, MD, MPH, testified at the hearing, and explained that the substance found in the test was a metabolite of Methamphetamine, and not the Amphetamine that would be found in Respondent's prescription Adderall. The test revealed "D Methamphetamine," which is associated with prescription weight drugs, while the less noxious "L Methamphetamine" is found in over-the-counter drugs. He also acknowledged that some Adderall is counterfeited and can contain methamphetamine, and that such counterfeit Adderall is found "on the street."

### **Respondent's Defense**

14. Respondent testified on his own part. He is a firefighter, engineer, and EMT paramedic with the City of Downey Fire Department. Thus, he can drive a fire

engine, but not a fire truck. He has been a paramedic since 2011. He has not been disciplined by the City, though he was placed on paid administrative leave after this proceeding began.

15. Respondent testified that he has never knowingly ingested Methamphetamine, and he testified that he has abstained from alcohol and non-prescription drugs during his probation with the Authority. When informed of the positive test in July 2019, he thought that there had been some mistake, as he has not used Methamphetamine. Respondent testified that the June 2019 test is the only positive test; all others have been negative. Complainant did not produce evidence of other failed tests.

16. Respondent testified that at some point after this matter arose, his longtime friend, who also has a prescription to Adderall contacted Respondent and admitted to having taken some of Respondent's Adderall, and then replaced it later with some of his own. His friend admitted to sometimes obtaining Adderall on the street to augment his prescription. The name of Respondent's friend is Jake Benitez.

17. Before Jacob Benitez testified at the administrative hearing, Complainant's counsel raised the issue of the witness incriminating himself, as he would be testifying to obtaining or furnishing illegal drugs. After thinking about that issue, Benitez said he would testify anyway.

18. Benitez has known Respondent since high school, more than 20 years. Benitez has Attention Deficit Disorder, and is prescribed Adderall for his condition. Benitez testified that at times he takes more Adderall than is prescribed to him. Benitez is in the real estate business, and sometimes has projects, presentations, or conferences that tax him such that he takes more than the prescribed dose. He has at



times taken some of Respondent's Adderall, later replacing it with Adderall he has obtained, including on the street. Benitez has done so without Respondent's knowledge or consent. Being Respondent's friend has given him routine access to Respondent's home, and Benitez knows where Respondent keeps the medication.

19. Benitez learned of Respondent's positive test and believed that he could have contaminated Respondent's supply of Adderall. (Respondent had previously testified that he gets 90 pills at a time from Kaiser.) Benitez admitted his wrongdoing, and agreed to testify at the hearing.

20. Allen Hodge testified on Respondent's part. Hodge spent 21 years in various assignments with the Los Angeles County Sheriff's office, and is now a reserve deputy. He attested, based on his experience and training, and interaction with other deputies, that counterfeit Adderall is available on the street.

21. Official Notice was taken of a news release by the federal Drug Enforcement Administration (DEA), issued in August 2019. The news release, exhibit C, describes how the DEA had seized pills that had been "pressed to exactly mimic genuine Adderall pills. . . . [which testing revealed] were fake and made with methamphetamine." (Ex. C, p. 2.) Exhibit F detailed the conviction and sentencing of an individual who had counterfeited drugs, including Adderall; he was sentenced to 21 years in prison.

### **Other Matters**

22. The witnesses were credible in their testimony, both in terms of content and in their demeanor. Respondent was straightforward in his testimony, answering questions without hint of prevarication, he appeared guileless throughout the proceeding. Benitez also answered questions in a straightforward way, despite being

troubled by the warnings and admonitions of Complainant's counsel that he risked self-incrimination by his testimony. Those warnings and admonitions were explained by the ALJ. Benitez essentially testified that he, at this point in time, had to do the right thing. Both men denied concocting some defense, and those denials were credible.

23. Only the single drug/alcohol test of June 20, 2019 has been positive. The exact number of tests performed on Respondent before or since that day is not disclosed by the record, but it can be inferred that the number is such that if there was ongoing alcohol or illicit drug use on Respondent's part, it would be detected. There is no evidence of untoward job performance by Respondent up until the time he was placed on paid leave.

24. Based on the totality of the evidence, Respondent had Methamphetamine in his system on June 20, 2019, but he did not voluntarily ingest it. It is more likely that he ingested, unknowingly, a contaminated and counterfeit pill that Benitez had placed in Respondent's container at some point prior to June 20, 2019. Respondent is permitted to take his prescription Adderall under the terms of his probation.

## **LEGAL CONCLUSIONS**

1. Jurisdiction to proceed in this matter pursuant to the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act, known as the

EMS Act, Health and Safety Code section 1797, et seq,<sup>3</sup> and specifically section 1798.200, based on Factual Findings 1 through 4.

2. The First Cause of Action alleged two grounds for discipline, each based on the positive test of June 20, 2019. First it was asserted that Respondent's license was subject to discipline pursuant to section 1798.200, subdivision (c)(8), for violating federal or state laws regulating narcotics or dangerous drugs. The second assertion was that Respondent's license was subject to discipline under section 1798.200, subdivision (c)(9), for addiction to, excessive use of, or the misuse of alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

3. (A) As to the claim that Respondent violated state or federal law regulating narcotics and dangerous drugs, the evidence indicates that Respondent did not knowingly ingest an illegal substance. (See Factual Findings 14 through 24.) Nor is there any evidence of addiction or excessive use of drugs; one positive test does not establish an addiction or excessive use. Voluntary use of a dangerous drug such as Methamphetamine, even on one occasion, could amount to misuse of such substances. Again, on this record, it cannot be concluded Respondent willfully ingested the narcotic.

(B) Cause has not been established to discipline Respondent's license pursuant to section 1798.200, subdivision (c)(8) or (c)(9), based on the foregoing.

4. The Second Cause of Action asserts that Respondent violated his probation term by testing positive for Methamphetamine. Cause has not been established to discipline Respondent's license for violation of probation. As set forth in

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<sup>3</sup> All further statutory citations are to the Health and Safety Code.

**Factual Findings 14 through 24, it has not been established that Respondent intentionally ingested the substance.**

**5. (A) The finding and conclusion that Respondent did not knowingly or intentionally ingest Methamphetamine is based on a number of factors. First, Respondent testified in a sincere and guileless manner that he does not use drugs, and has abstained from alcohol while on probation. That latter assertion is established by the record; he has not tested positive for alcohol, and it was alcohol that brought him before the Authority. There is no evidence that he ever used hard drugs prior to the June 20, 2019 test.**

**(B) The testimony of Benitez was credible; he was making statements against his penal interest, under oath, and his manner of testimony was credible.**

**(C) Respondent has been tested since June 2019 and has had negative tests. This implies that Respondent does not have some addiction, whether to alcohol or drugs.**

**(D) While Respondent and his friend could have concocted the defense, in the judgement of the undersigned, based on observing the witnesses, and the isolated nature of the positive test, that did not occur here.**

**6. Complainant argued that Respondent's license should be revoked because he will not admit his wrongdoing, is not accepting responsibility, and such is needed to establish rehabilitation. However, our Supreme Court has recognized that the continued assertion of innocence may in some cases be evidence of good character, rather than proof that an applicant for a professional license is lacking in remorse, and therefore unfit. Thus, the Court "question[ed] the wisdom of denying an applicant admission to the bar if that denial rests on the applicant's choosing to assert**

his innocence regarding prior charges rather than to acquiesce in a pragmatic confession of guilt, . . . ” (*Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 744-745.) The Court held that an applicant should not be required to make “an artificial act of contrition” in order to obtain a requested license where other factors to be considered establish fitness for the profession in question. (*Hall, supra*, at 745.) The rule enunciated in *Hall* should apply here, where there is no evidence of any problems in Respondent’s performance of his duties.

7. Complainant argued that at the least Respondent should be subjected to an evaluation and enter a program because of his one-time ingestion of Methamphetamine. This was tied to Dr. Stratton’s testimony. However, on this record, such steps are not necessary to protect the public. Just as a one-time conviction for DUI doesn’t establish that the driver is an alcoholic, or that license discipline is necessary, a one-time ingestion of a narcotic, prescribed or not, does not establish that a person needs to participate in a long-term detoxification program.<sup>4</sup>

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<sup>4</sup> See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 767, where the Medical Board’s authority to discipline a physician’s license for more than one DUI was upheld. The Court stated that “[i]t is undoubtedly true that not every conviction involving alcohol warrants the suspension or revocation of a professional license . . . .” (96 Cal.App.4th at 779.) The court went on to say that a single conviction might reflect a personal problem that would allow action before the licensee’s practice was affected by such a personal problem. Thus, every case should be determined on its own merits, and on this record a stringent response is not necessary.

8. The purpose of proceedings of this type is to protect the public, not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.)

Respondent does not appear to present a danger to the public.

9. Based on all the foregoing, this matter should be dismissed.

## ORDER

The Accusation and Petition to Terminate Probation against Respondent Corey L. Lee is hereby dismissed.

DATE: April 3, 2020

DocuSigned by:  
*Joseph D. Montoya*  
JOSEPH D. MONTOYA  
Administrative Law Judge  
Office of Administrative Hearings