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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. 19-0213  
)  
) OAH No. 2022080810  
**DERIK VICTOR OAKES,** )  
License No. P18215 ) **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

  
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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:**

**DERIK VICTOR OAKES, Respondent**

**Agency Case No. 19-0213**

**OAH No. 2022080810**

**PROPOSED DECISION**

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 8, 2023, from Sacramento, California.

Frances Valdez, Staff Attorney, represented Kim Lew (complainant), Chief, EMS Personnel Division of the Emergency Medical Services Authority (Authority).

Brian Gabriel, Attorney at Law, represented Derik Victor Oakes (respondent), who was present throughout the hearing.

Evidence was received and the hearing concluded on March 8, 2023. The record was held open until March 9, 2023, to allow respondent to submit redacted copies of certain exhibits. Respondent did so, the record closed, and the matter was submitted for decision on March 9, 2023.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On November 28, 2001, the Authority issued respondent Emergency Medical Technician-Paramedic (EMT-P) License Number P18215. The license is active and will expire on November 30, 2023, unless renewed.

2. On January 12, 2023, complainant signed and later filed the First Amended Accusation (Accusation) against respondent alleging cause to discipline his license based on his July 2021 conviction for possessing assault weapons<sup>1</sup> and the underlying conduct. Respondent filed a Notice of Defense. This hearing followed.

### **Respondent's Conviction**

3. On July 27, 2021, in the Superior Court of California, County of El Dorado, case number P20CRF0146, respondent was convicted, on his plea of no contest, of violating Penal Code section 30605, subdivision (a) (unlawful possession of assault weapons), a misdemeanor. The charge to which respondent pled no contest listed 17 separate firearms he unlawfully possessed. The court suspended imposition of sentence and placed respondent on informal probation for one year with terms and conditions that required him, among other things, to serve one day in jail, with credit for time served; obey all laws; surrender all contraband firearms; not own any firearms, deadly weapons, ammunition, or ballistic armor; and pay \$220 in fines and fees.

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<sup>1</sup> "Assault weapon" refers to any firearm identified in Penal Code section 30510 or described in Penal Code section 30515.

4. The circumstances underlying the conviction occurred on July 18, 2019, when agents with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and officers of the California Highway Patrol (CHP) and the El Dorado County Sheriff's Office served and executed a search warrant at respondent's house. The agents and officers sought the warrant after respondent bought a device through the Internet that would enable him to convert certain semiautomatic pistols into fully automatic weapons. The agents and officers opened respondent's gun safe, in which they found 19<sup>2</sup> assault weapons that were not properly registered.

### **Authority's Evidence**

5. Matthew Hiatt is a CHP Investigator who was present during the search of respondent's home. He has been a CHP officer for 23 years and an investigator for 14 years. He explained that since 1989, all assault weapons in California must be registered. Registration helps law enforcement in many ways, including tracing guns used in crimes. The laws governing which firearms qualify as assault weapons has changed over time, but all the guns in respondent's safe required registration since June 2018.

6. During the search, Mr. Hiatt interviewed respondent about the guns found in his home. Respondent told Mr. Hiatt he believed two rifles were registered when he bought them, but all the others were unregistered because respondent built them himself. Mr. Hiatt inventoried and photographed the guns. In doing so, he noticed many of them had what appeared to be serial numbers. Mr. Hiatt is familiar

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<sup>2</sup> The evidence did not establish why respondent's conviction related to 17 firearms when the officers and agents found 19 firearms.

with how several gun manufacturers stylize their serial numbers and noticed the numbers on respondent's guns were inconsistent with those conventions. Respondent explained he added the serial numbers himself to try to comply with the law. He also explained he modified the guns in a way he thought made them legal to own, but that the laws changed frequently, and he did not want to alter the guns in a way that might permanently damage them. He denied any ill intentions and stated he owned the guns for personal protection.

### **Respondent's Evidence**

7. Respondent has worked for the Sacramento Metro Fire Department since 2002. He has been a fire captain for the past 11 years. He also answers calls as a paramedic. His wife is a nurse practitioner, their 19-year-old son is an EMT, and their 12-year-old son is a student. Respondent enjoys his job because he likes helping people, finds it challenging and rewarding, and has had the opportunity to render life-saving care to people "multiple times." He is proud that his wife and oldest son work in similar service-oriented careers. He has never had any workplace discipline or previous license discipline and believes he can continue to do his job safely.

8. When respondent was eight years old, he and his mother were robbed at gunpoint. That experience greatly affected respondent. As an adult, he obtained a permit to carry a concealed firearm for personal protection. Over time, competitive shooting became a hobby and a way for him and his wife and oldest son to connect. They frequently compete in "three-gun" competitions, which involve shooting pistols, rifles, and shotguns. Different competitions and events call for expertise with different calibers of weapons, so respondent and his wife and oldest son owned several different guns.

9. Respondent has taken firearms classes and learned how to build, modify, and maintain guns. In approximately 2013, he and his wife started taking classes at Gray Ops Specialty Training, Inc. Between 2015 and 2017, respondent took courses such as "Tactical Carbine Skills Builder," "Fundamental Tactical Handgun," "Intermediate Tactical Handgun," "Intermediate Distance Carbine/Vehicle Defense," and "Low Light – No Light II Training." The training courses focused on safely handling, storing, and operating different kinds of guns. Beginning in 2017, respondent started teaching similar courses for Gray Ops. His students routinely include law enforcement officers and federal agents.

10. Through his own experiences and his interactions with others at shooting competitions, respondent identified certain aspects of firearms that occasionally made them unreliable. He learned how to improve and customize his and his family's guns to make them more reliable. He began building his own guns in approximately 2011. In 2012, he bought a book called *California Gun Laws* and tried to "adhere to all the laws [he] could read and understand." From the book, respondent learned that self-manufactured guns did not require serial numbers. However, the author recommended using serial numbers to help law enforcement identify the guns in the event they became lost or stolen. Respondent adopted this practice in 2012. He stamped his guns with a moniker he created ("Firefight Arms"), the town where he lives (Rescue, CA), his name or initials, and a series of numbers corresponding to dates important to him such as his birthday. He chose this information because he believed it met the ATF's parameters for serial numbers that commercial gun manufacturers would use.

11. Over time, respondent had "difficulty deciphering exactly what the law was as [it] continued changing." He believes every gun taken from his house during

the search was at some point legal to own in California, but acknowledged he failed to comply with the law because he did not learn about more recent changes in the law.

12. Respondent paid all court-ordered fines and fees and completed the conditions of his criminal probation in July 2022. Although a condition of his criminal probation was to serve one day in jail, he was given credit for time served for the four hours he was in custody the day of his arrest. He did not serve any jail time following his conviction. On September 21, 2022, the court set aside his conviction, ordered his no contest plea withdrawn, and dismissed the charges against him pursuant to Penal Code section 1203.4. On December 5, 2022, respondent received a new permit to carry a concealed firearm from the El Dorado County Sheriff's Office.

## **Analysis**

13. Complainant alleged three grounds to discipline respondent's license. First, complainant alleged the conduct underlying respondent's conviction was fraudulent, dishonest, or corrupt, and was substantially related to the qualifications, functions, or duties of prehospital personnel. Second, complainant alleged respondent was convicted of a crime that is substantially related to the qualifications, functions, or duties of prehospital personnel. Finally, complainant alleged respondent was convicted and released from incarceration within the past ten years for an offense punishable as a felony.

### **FRAUDULENT, DISHONEST, OR CORRUPT ACT**

14. Complainant argued respondent's conduct leading to his criminal conviction constituted fraud, dishonesty, or corruption. Specifically, complainant alleged respondent "deliberately and stubbornly refused to register or relinquish his contraband firearms to dishonestly escape detection that he was manufacturing and

possessing them. He likewise etched fabricated serial numbers on the weapons in a dishonest attempt to conceal that he was responsible for their manufacture.”<sup>3</sup> The evidence did not support this allegation. To the contrary, respondent’s crime involved only the unlawful possession of assault weapons. Rather than attempting to escape detection, respondent credibly testified that he stamped serial numbers onto his self-manufactured guns based on the recommendation from the author of *California Gun Laws* and to help identify them in the event they were lost or stolen. Complainant did not prove that respondent’s conduct constituted fraud, dishonesty, or corruption.

### **SUBSTANTIALLY RELATED CONVICTION**

15. Complainant established that respondent was convicted of unlawful possession of assault weapons. Whether that conviction is substantially related to the qualifications, functions, or duties of a paramedic is a question of law and therefore addressed in the Legal Conclusions below. (*Donaldson v. Dept. of Real Estate* (2005) 134 Cal.App.4th 948, 954.)

### **CONVICTION AND RELEASE FROM INCARCERATION FOR A CRIME PUNISHABLE AS A FELONY**

16. Complainant alleged respondent’s license is subject to mandatory revocation because within the last 10 years he was convicted and released from

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<sup>3</sup> See First Amended Accusation, paragraph 16.



incarceration for a crime punishable as a felony.<sup>4</sup> Specifically, complainant argued respondent's sentence to serve one day in jail, which he served via credit for his pre-conviction custody, constituted incarceration. Respondent argued he was not incarcerated and therefore never released from incarceration. Respondent is correct.

17. The criminal court never sentenced respondent. Instead, it suspended imposing a sentence and placed respondent on probation for one year with terms and conditions. One term was that respondent would serve one day in jail, but the court immediately and simultaneously credited him for his time in pre-conviction custody. Probation is revocable, and if respondent had violated to terms of his probation, the court could have revoked probation and sentenced him to imprisonment for up to one year. (Pen. Code, § 30605, subd. (a).) However, respondent did not violate the terms of his probation, and as a result was never sentenced. Subsequently, his conviction was set aside and the charges against him dismissed. Under these circumstances, respondent was not incarcerated. As a result, he was never released from incarceration, and the regulation requiring mandatory license revocation does not apply.

#### **REHABILITATION AND APPROPRIATE LEVEL OF DISCIPLINE**

18. Before determining the appropriate discipline, complainant must consider not only respondent's conduct, but also any evidence offered in mitigation, aggravation, or rehabilitation. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) In evaluating respondent's rehabilitation, complainant must consider: the nature and severity of the

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<sup>4</sup> Although respondent's conviction was a misdemeanor, unlawful possession of assault weapons can be punished as a felony. (Pen. Code, §§ 30605, subd. (a), 1170, subd. (h), 17, subd. (a).)

act, offense, or crime; actual or potential harm to the public or a patient; prior disciplinary record, warnings, or remediation; number and/or variety of current violations; compliance with the terms of criminal sentencing; overall criminal record; the time that has elapsed since commission of the act or offense; and evidence of expungement under Penal Code § 1203.4. (Cal. Code Regs., tit. 22, § 100208, subd. (c).)

19. The Authority has adopted guidelines for use in license discipline actions. The guidelines provide for “progressive discipline, unless the facts and circumstances of a particular case warrant more substantive discipline.” Under the progressive discipline system, “[a] fine is considered the least intrusive discipline that can be imposed followed by probation, suspension, and then revocation.” According to the guidelines, the recommended discipline based on a criminal conviction ranges from full revocation to revocation stayed with one year of probation under appropriate terms and conditions. The Authority recognizes these are guidelines and acknowledges there may be departures in individual cases depending upon mitigating or aggravating circumstances. According to the guidelines, “When the administrative law judge recommends discipline that is less than the minimum or which exceeds the maximum, a full explanation shall be included as to the nature of the act that warrants unusual consideration.”

20. In this case, it is appropriate to deviate from the recommended discipline in the guidelines. Respondent testified openly and honestly, and he was a credible and truthful witness. He explained the circumstances that led to his conviction and took responsibility for his unlawful conduct. “Fully acknowledging the wrongfulness of [one’s] actions is an essential step towards rehabilitation.” (*Seide v. Com. of Bar Examiners* (1989) 49 Cal.3d 933, 940.) His conduct did not result in any actual harm to

patients. In addition, he completed all conditions of his criminal probation and his conviction has been dismissed under Penal Code section 1203.4.

21. Revoking respondent's license, even if the revocation is stayed subject to probationary terms, would be unduly punitive. Respondent has been a paramedic for more than 20 years without license discipline. Although he violated the law, his conduct did not harm any patients. He has demonstrated rehabilitation from his misconduct and showed that he is unlikely to repeat such behavior. Considering the totality of the circumstances, and pursuant to the Authority's progressive discipline system, the appropriate discipline for respondent's misconduct is an administrative fine.

## **LEGAL CONCLUSIONS**

1. In an action to discipline an EMT-P license, complainant bears the burden to prove her case by clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855–856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Once cause for discipline is established, the burden of proof shifts to respondent to demonstrate sufficient rehabilitation by a preponderance of the evidence. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App.156, 164.) "Preponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." (*People v. Condley* (1977) 69 Cal.App.3d 999, 1008.)

## **Causes for Discipline**

3. The Authority may discipline an EMT-P's license based on the licensee's "commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel." (Health & Saf. Code, § 1798.200, subd. (c)(5).) As discussed in Factual Finding 14, complainant did not prove that respondent engaged in a fraudulent, dishonest, or corrupt act. Cause therefore does not exist to discipline respondent's license under Health and Safety Code section 1798.200, subdivision (c)(5).

4. The Authority may discipline an EMT-P's license based on the licensee's "[c]onviction of any crime that is substantially related to the qualifications, functions, and duties of prehospital personnel." (Health & Saf. Code, § 1798.200, subd. (c)(6).) A conviction is substantially related to the qualifications, functions, or duties of a paramedic "if to a substantial degree it evidences unfitness of a certificate holder to perform the functions authorized by the certificate in that it poses a threat to the public health and safety." (Cal. Code Regs., tit. 22, § 100208, subd. (a).)

5. As discussed in Factual Findings 3 and 4, respondent was convicted of unlawfully possessing 17 assault weapons. "[T]he proliferation . . . of assault weapons poses a threat to the health, safety, and security of all citizens of [California.]" (Pen. Code, § 30505, subd. (a).) On that basis, respondent's conviction, which contributed to the proliferation of assault weapons, posed a threat to the health, safety, and security of the public. Consequently, respondent's conviction was substantially related to the qualifications, functions, or duties of a paramedic, and cause exists to discipline his license pursuant to Health and Safety Code section 1798.200, subdivision (c)(6).

6. The Authority may discipline an EMT-P's 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." (Cal. Code Regs., tit. 22, § 100214.3, subd. (c)(6).) As discussed in Factual Findings 16 and 17, respondent was not incarcerated for his crime, and therefore was never released from incarceration. Consequently, complainant did not prove cause to discipline his license pursuant to California Code of Regulations, title 22, section 100214.3, subdivision (c)(6).

### **Appropriate Level of Discipline**

7. The Authority "may impose an administrative fine of up to two thousand five hundred dollars (\$2,500) per violation against a licensed paramedic found to have committed any of the actions described by subdivision (c) of Section 1798.200 that did not result in actual harm to a patient." (Health & Saf. Code, § 1798.210, subd. (a).) According to the Authority's guidelines, disciplinary options include an "[a]dministrative [f]ine of up to \$2,500 per violation – provided the violation did not result in actual harm to the patient and the paramedic had not been disciplined by the authority for any other act committed within the immediately preceding five-year period."

8. As discussed in Factual Findings 20 and 21, respondent's misconduct did not result in actual harm to a patient, and he has no prior license discipline. When considering the circumstances as a whole and applying the Authority's disciplinary guidelines, an administrative fine in the amount of \$1,000 is appropriate.

**ORDER**

Respondent Derik Victor Oakes shall pay a \$1,000 fine to the Authority within 60 days of the effectiveness of this decision, or subject to a payment plan the Authority approves.

DATE: April 6, 2023

  
Sean Gavin (Apr 6, 2023 14:39 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings