

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician- Paramedic License Held by:) Enforcement Matter No. 20-0176
) OAH No. 2020110107
)
REBECCA SCHWENGER,) **DECISION AND ORDER**
License No. P20428)
Respondent.)
)
)
)
)

The attached Proposed Decision and Order dated April 14, 2021 is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The Decision shall become effective on May 15, 2021.

It is so ordered.

DATED: 4/19/21



Dave Duncan, MD,
Director

Emergency Medical Services Authority

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

In the Matter of the Accusation against:

Rebecca Schwenger, Respondent

Agency Case No. 20-0176

OAH No. 2020110107

PROPOSED DECISION

Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 24 and March 15, 2021, by videoconference, from Sacramento, California.

Gary Binkerd, Attorney, Emergency Medical Service Authority, State of California, represented complainant, Sean Trask, Chief, Emergency Medical Service Personnel Division, Emergency Medical Services Authority (EMSA), State of California.

Joseph W. Rose, Attorney at Law, Rose Law, represented Rebecca Schwenger (respondent).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 15, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 8, 2003, EMSA issued an Emergency Medical Technician-Paramedic (paramedic or EMT-P) license number P20428 to respondent. On April 28, 2015, respondent's license was suspended, when EMSA Director Dave Duncan, M.D. issued an Order for Temporary Suspension Pending Hearing, pursuant to Health and Safety Code¹ section 1798.200, subdivision (a)(3), finding respondent engaged in acts that constitute grounds for revocation of her license and permitting her to continue in the activity allowed by her EMT-P license, with or without restriction, would present an imminent threat to the public health and safety. Respondent did not appeal the Order, and her license remains suspended to date.

2. On July 27, 2020, complainant, acting solely in his official capacity, filed an Accusation seeking to discipline respondent's license for violating section 1798.200, subdivisions (c)(7) and (9). Specifically, complainant alleged, on July 10, 2020, respondent reported to work while under the influence of alcohol. On or about September 21, 2020, respondent timely filed a notice of defense and requested an administrative hearing pursuant to Government Code sections 11505 and 11506. This hearing followed.

¹ All further statutory references are to the Health and Safety Code unless otherwise specified.

Motion to Strike

3. At hearing, respondent made an oral Motion to Strike paragraph 12 of the Accusation. Paragraph 12 alleges, in 2009, EMSA took disciplinary action against respondent for reporting to work under the influence of alcohol. Complainant wants to offer testimonial evidence of the conduct underlying the 2009 discipline as an independent cause for discipline in the instant matter. Respondent objects.

4. First, respondent's EMT-P license has no prior discipline. Instead, in 2009, EMSA investigated an allegation that respondent had reported to work under the influence. However, EMSA subsequently closed the investigation, and took no disciplinary action. Second, respondent relied upon EMSA's investigation findings and moved forward. To allow EMSA to reopen, reinvestigate, and/or relitigate allegations from 12 years ago, when memories have faded and evidence is lost, does not provide respondent with the required due process hearing; she has a property interest in her license, and a right to defend it in a timely fashion. In 2009, EMSA made a decision, to open and close an investigation against respondent, and not seek any discipline against her license; EMSA must live with its decision. The Motion to Strike paragraph 12 for the purposes of proving an independent cause for discipline or as evidence of a prior disciplinary action is GRANTED.

Background

5. At all times relevant, respondent was employed as a paramedic with MedStar Ambulance of Mendocino County, Inc. doing business as Ukiah Ambulance (MedStar). MedStar offered two types of ambulance services: Advance Life Support (ALS) and Basic Life Support (BLS). To provide ALS services, an ambulance must be

staffed with at least one paramedic. To provide BLS services, an ambulance must be staffed with at least one EMT.

Conduct at Issue

6. On July 10, 2020, respondent was scheduled to work as a paramedic and preceptor, beginning at 8:00 a.m. at the MedStar South Station. She was assigned to an ambulance with Alex Byers, EMT, and Stasia Laughlin, EMT and paramedic intern. At 7:51 a.m., Theresa Gowan, EMT-P and MedStar Director of Operations, telephoned respondent to transfer the "on-duty supervisor of the day" duties. Instead, respondent told Ms. Gowan she was sick, had been vomiting since 6:00 a.m., and was unable to report to work at 8:00 a.m. for her shift. Respondent promised to call back in eight hours with an update on her condition, and at that time, she would assess whether she could report to work to finish her shift.

7. At 10:40 a.m., respondent called Ms. Gowan and said she was feeling better and could report to work at 5:00 p.m. or 6:00 p.m. At 6:00 p.m., Ms. Gowan telephoned respondent, who was in her vehicle, driving to work. Ms. Gowan provided respondent with the "supervisor of the day" report, including the number and type of ambulances available for the remainder of the shift: one BLS ambulance and four ALS ambulances. Ms. Gowan told respondent that the ALS ambulances should only be used for nearby BLS transfers, and the extended transfers (beyond Santa Rosa and St. Helena), were to be completed by the BLS ambulance. Respondent arrived at work at 6:30 p.m.

8. At approximately 7:15 p.m., respondent dispatched an ALS ambulance for a BLS-interfacility transfer (IFT) from Ukiah to San Jose. Ms. Gowan was monitoring the radio; she telephoned respondent and asked why an ALS ambulance was being sent

on a BLS transfer. Respondent told Ms. Gowen there were two other transfers to dispatch, one to San Jose and one to Sacramento, and respondent was sending ALS ambulances on both. Ms. Gowan asked respondent if she remembered their earlier conversation and her directions; respondent said she did not recall the conversation or Ms. Gowan's directions.

9. Since respondent's arrival, Ms. Laughlin watched respondent exhibiting objective signs of intoxication: unsteady on her feet, unbalanced while sitting, flushed in the face, slurring her words, telling the same story repeatedly, and smelling of alcohol. Ms. Laughlin was concerned and did not believe respondent should be providing patient care. Without respondent, the ambulance was not able to provide ALS services. Thus, Ms. Laughlin decided to seek coverage for their South Station ALS ambulance.

10. Ms. Laughlin took Mr. Byers outside and told him, "we're taking the ambulance to Central Station for supplies" or words to that effect. Ms. Laughlin knew the Central Station had an ALS ambulance available to respond to calls. Ms. Laughlin, Mr. Byers, and respondent then took their ambulance to the Central Station.

11. At 7:45 p.m., Ms. Laughlin called Ms. Gowen, reported being scared because respondent appeared to be intoxicated, and detailed her observations. Ms. Gowen then officially took the South Station ALS ambulance out-of-service, transferred the on-duty supervisor calls back to herself, and told Ms. Laughlin to return their ambulance to the South Station. Ms. Laughlin complied.

12. Ms. Gowen called Lea Bergem, MedStar Human Resources, and the two agreed to meet at the South Station to speak with respondent. At approximately 9:00 p.m., Mses. Gowen and Bergem arrived at the South Station and spoke to respondent.

They observed respondent to have an unsteady gait, slurred speech, and noted she was repeating herself. Ms. Bergem asked if respondent would submit to a breathalyzer test; respondent agreed.

13. Ms. Bergem drove respondent to the Alcohol and Drug Testing Services of Ukiah, immediately adjacent to the South Station. Alcohol Technician Connie Lopez administered the first breathalyzer test to respondent at 9:28 p.m. and reported a result of 0.255 percent blood alcohol level (BAC). Ms. Lopez told respondent to have a seat in the waiting area and in 15 minutes, she would administer the second test. Respondent sat down and was looking at her phone; after a few minutes, respondent stood up, said she had to make a phone call, and walked out of the testing site. Ms. Lopez told Ms. Bergem, respondent is not supposed to leave the facility between tests. Mses. Lopez and Bergem opened the front door of the testing site and saw respondent walking across the street away from the testing site, back towards the South Station. Respondent turned back and yelled, "tell them I resigned." At 9:33 p.m., Ms. Bergem received an email from respondent, stating:

I'm sorry that I apparently have not met up to the high expectations of this company and the things perceived about me. Please accept my resignation effective today. I apologize for any inconvenience this has caused. I wish you, the company and the employees much success. Thank you for the opportunities you have afforded me. Sincerely,
Rebecca Schwenger.

14. At 9:34 p.m., Ms. Bergem called Ms. Gowan and reported respondent had tested positive for alcohol, she had verbally resigned, and was walking back to the South Station. Ms. Bergem then drove back to the station. When respondent got to

the station, she found Ms. Gowen and turned over her MedStar badge. Ms. Gowen asked respondent if she needed a ride home and if she could help. Respondent replied, "I have demons I need to deal with." When respondent could not secure her own ride home, she accepted a ride from Ms. Bergem.

Report to EMSA

15. On July 16, 2020, Ms. Gowen filed a report with EMSA detailing the circumstances underlying respondent's resignation from MedStar. EMSA issued the Order for Temporary Suspension Pending Hearing on July 27, 2020.

Respondent's Evidence

16. Respondent is 46 years old. She has been married for 24 years, and lives in Lucerne with her husband. Together, they are a certified resource family for foster care children; beginning in 2001, and renewing their certification every two years, they have fostered and adopted 10 children and are currently seeking to adopt their grandson. Presently, they have three minor children (ages 6, 12, 14) and three adult children (ages 18, 20, 21), completing college classes remotely, living at home.

17. Respondent has also been very active in her community. She has spent countless hours volunteering with the Lion's Club, the library, and the fire department/district. She has also acted as a free BLS instructor and has served on the school board.

18. In 1994, respondent began working as a fire engineer and EMT in Cordelia. In 1997, respondent completed a Bachelor of Science in agricultural and managerial economics with a minor in applied biological systems technology from the University of California, Davis. In 2003, she received her paramedic certification from

Northern California Training Institute and immediately started working as a paramedic for American Medical Response (AMR) (2003-2009). Since then, respondent has held firefighter/paramedic positions with various fire districts, including Contra Costa Fire District (2003-2004), Rumsey Rancheria Fire District (2004-2006), Ukiah Valley Fire (2006-2019), Northshore Fire Protection District (2015-2017), and Esparto Fire Protection District (2004-present), as a volunteer.

19. Respondent has been a First Responder for more than 30 years. She estimates responding to more than 20,000 calls; of those, 20 calls haunt her. For example, in October 2017, respondent was involved in an active shooter call, and had the shooter point a gun directly at her at close range. After the incident, there was no critical incident stress debriefing and no post-incident analysis by the fire district. In January 2018, a driver and vehicle went into a lake, and was submerged upside-down. Respondent was called to don dive gear for a water rescue. Respondent found the driver unconscious and brought her to the surface for resuscitation, but she expired. When respondent went back to the car, she felt an infant car seat behind the driver, but she had zero visibility, and had to return to the surface. At the same time, respondent and her husband were raising their grandson, still an infant, and respondent panicked about whether an infant was also in the vehicle. Respondent collected herself, returned to the submerged vehicle, and found no one else. Again, after the incident, there was no critical incident stress debriefing and no post-incident analysis by the fire district.

20. In September 2019, respondent retired from her full-time position as an engineer/paramedic/acting captain with the Ukiah Valley Fire due to on-the-job injuries. She continued to work for MedStar as a part-time paramedic, but she had a lot of unscheduled time. She began to mentally revisit some of her most upsetting

cases. The drive from her home in Lucerne to MedStar Ukiah is approximately 35 to 40 minutes. Respondent dubbed it the “trail of tears,” noting each place along the journey she had responded to the scene of an accident and watched people die. She began having nightmares and difficulty sleeping. She began drinking alcohol alone to cope. Typically, respondent would fill a 32-ounce Yeti drink container with ice, vodka, and orange juice, or ice, spiced rum and diet coke. The more she drank each day, the more alcohol she needed to maintain the numbing effects. Respondent denied drinking alcohol on any day she was scheduled to work for MedStar; however, she admitted, on July 10, 2020, she drank almost two 32-ounce Yeti containers worth of alcohol, before reporting to work at approximately 6:30 p.m.

21. Respondent admitted telling Ms. Gowan she was sick, at approximately 8:00 a.m.; at the time, respondent thought she might have food poisoning. However, after telling Ms. Gowan she was sick, respondent began drinking. After drinking almost two 32-ounces Yeti containers worth of alcohol, respondent felt better. She called Ms. Gowan and said she was able to work. When respondent left for work, she did not feel intoxicated, so she drove 40 minutes from Lucerne to Ukiah. At work, respondent did not feel intoxicated and thought she was acting normally. When she heard her breathalyzer test results, she was “disgusted and ashamed; this is not who I am.”

TREATMENT: IN-PATIENT CARE

22. On July 11, 2020, respondent called the International Association of Fire Fighters (IAFF) Center for Excellence for Behavioral Health Treatment and Recovery in Maryland and sought help. The next day, she began an IAFF in-patient treatment program in Maryland. IAFF licensed professional counselor (LPC) Elie Madison assessed respondent, diagnosing her with alcohol use disorder, severe post-traumatic stress disorder (PTSD), generalized anxiety disorder, and major depressive disorder (MDD).

The IAFF in-patient treatment program included intensive individual and group therapy and biological fluid testing. Respondent completed the IAFF in-patient treatment program on August 20, 2020, after 38 days. Taylor Kennerly, Case Manager, noted respondent "successfully demonstrated that she has received the skills necessary to carry out a lifestyle in recovery."

23. Abby Morris, M.D., IAFF Medical Director, testified at hearing. Dr. Morris completed a Bachelor of Science in human development and family studies from Cornell University in 1993, before earning her Medical Degree from Georgetown University in 1996. She completed an internship in internal medicine at Georgetown University Hospital, and a residency in psychiatry at Johns Hopkins Hospital. She is board-certified in psychiatry and addiction medicine and has worked in a variety of practice settings, including private practice. Dr. Morris described IAFF as a safe place for First Responders to share, process, and learn tools to cope with the job-related stress of repeatedly seeing horrific events, as well as human injury and death.

24. Dr. Morris personally oversaw respondent's in-patient treatment program and helped her develop an individualized plan of care. Dr. Morris confirmed respondent completed all objectives and interventions at IAFF and successfully completed the program. Respondent maintained her sobriety during her in-patient stay. The plan of care also included the administration of Naltrexone, which binds to the endorphin receptors in the body and blocks the effects and feelings of alcohol, and also reduces alcohol cravings. Dr. Morris observed that respondent "worked incredibly hard," was a "role-model" and "helped others," and that her "attitude change was unbelievable, in a good way." Dr. Morris opined: "[respondent] did not have enough emotional language to process her on-the-job experiences. She was numb to her emotions."

25. Dr. Morris believes respondent is safe to practice as a paramedic, with supervision. Further still, recovering alcoholics "need purpose to feel motivated" to maintain their sobriety; and relapse is more common for anyone sitting at home doing nothing. Dr. Morris believes respondent will benefit greatly if she is able to regain her EMT-P license and provide patient care again. Dr. Morris is proud of respondent for facing the stress of this administrative hearing without relapse.

TREATMENT: OUT-PATIENT CARE

26. After returning from the IAFF in-patient program, respondent was referred to Robert Gardner, M.D., addiction medicine and psychiatry, at the Lucerne Community Clinic for the administration of Vivitrol, an opioid receptor antagonist that blocks endorphins released by intoxicants like alcohol from binding to their neuroreceptors, thereby ending the good feeling associated with being under the influence of alcohol. Dr. Gardner administers respondent an injection every 28 days. Respondent submitted a letter authored by Dr. Gardner, signed and dated February 23, 2021, explaining when Vivitrol is used as a part of a treatment plan that includes counseling, it helps prevent relapse after alcohol detoxication by reducing alcohol cravings.

27. In addition, respondent sees Laura DeBaun, Licensed Marriage and Family Therapist (LMFT), in Lakeport, for individual counseling. She also attends Alcoholics Anonymous (AA) meetings at least three times per week at Lakeport Fellowship and virtually with former IAFF participants. Her AA sponsor is Wendy Thorn, who testified in support of respondent. Respondent is currently on step four of the 12-step program. Last week, respondent sent letters to Mses. Gowen and Bergem apologizing for her conduct on July 10, 2020.

28. Today, respondent openly admits she is a recovering alcoholic. She has been sober for eight months. She has a prevention plan in place and a strong support network of family and friends. Before her retirement, respondent only drank alcohol at social functions. After retirement, she began reliving her most traumatic on-the-job experiences, and used alcohol to cope. Respondent admits thinking she might have a problem with alcohol before July 10, 2020. Her family has a history of alcoholism and two of her adult children told her she was drinking too much. Nonetheless, she continued to drink. Today, respondent has tools to deal with her triggers and emotional language to process the persistent traumatic exposures she had as a paramedic and firefighter. She describes her current state as a "mindset shift."

29. Respondent would like to continue to work as a First Responder, paid or unpaid. Currently, Northshore Fire Protection District is in great need of a paramedic, and they are willing to employ respondent.

PROFESSIONAL AND COMMUNITY SUPPORT

30. Respondent submitted five letters of support from fellow First Responders,² as well as a letter and testimony from Peter Bushby, Ukiah Valley Fire Authority (UVFA) Retired Fire Captain/Paramedic, and Michael Ciancio, Northshore Fire Protection District Fire Chief. Her fellow First Responders include: Rickey Dean, UVFA

² Respondent also submitted four recommendation letters signed and dated in 2010. The 2010 letters attest to respondent's abilities as a paramedic and firefighter but were not solicited for the purposes of this license hearing and do not speak to the topics of concern in this matter, including respondent's alcohol use, her recovery, or her current ability to safely practice.

Captain/Paramedic; Gabriella Navarretti, AMR Paramedic; Ryan Nelson, UVFA Captain/Paramedic; Travis Hindmarch, Paramedic; and Carrie Joy Clark, Madison Volunteer Fire Department, Volunteer Firefighter. Ms. Navarretti and Mr. Nelson submitted unsigned letters, and Mr. Dean and Ms. Navarretti did not make their declarations under penalty of perjury, an EMSA requirement for character letters. Nonetheless, the five authors uniformly laud respondent's kindness, skill, and ability to practice as a paramedic. They describe respondent as professional and responsible, and dedicated and compassionate, who had a momentary lapse in judgement, which is not indicative of her overall character.

31. Mr. Ciancio has known respondent for 32 years, and described her as honest, ethical, reliable, diligent, contentious, and professionally competent. Since she retired, respondent has volunteered at Northshore. She helps with logistics for emergency calls, traffic control, operating a fire engine, and teaching young firefighters. In October or November 2020, respondent told Mr. Ciancio about the circumstances leading to the suspension of her license. She admitted to him she was a recovering alcoholic, as well as having appeared for work with MedStar while under the influence. Mr. Ciancio concedes respondent made an unwise decision and used poor judgment when she reported to work impaired, but he knows respondent is working on resolving her problems and "wants to make things right." He knows she is a "tough cookie" and believes she will be successful in anything "she puts her mind to."

32. Mr. Bushby has known respondent for 10 years and supervised her for eight years at UVFA. He described respondent as intelligent and confident, with outstanding paramedic skills, and a good reputation. Respondent told Mr. Bushby about the circumstances leading to the suspension of her license. Mr. Bushby still

believes in respondent. He knows many First Responders who have turned to alcohol to deal with their persistent exposure to traumatic events. Nonetheless, he was shocked by respondent's behavior because to appear at work under the influence of alcohol was "so out of character." However, Mr. Bushby noted "everybody makes mistakes."

This was a blip in a career that spans many years of providing an upstanding service for those in need. Trust me when I say [respondent] immediately took and is taking the correct steps to rectify her lapse in judgment. I guaranty this will never happen again!

Discussion

33. First Responders are a unique group of people. Each day, they rush into burning building to save others, with little concern for their own safety, when everyone else is rushing out. They are repeatedly exposed to gore, death, loss, pain, and heartbreak, and persistent traumas which can overwhelm the bravest of heroes. The average person is ill-equipped to process a single traumatic event, and First Responders are confronted by daily traumas. Nonetheless, the emotional difficulty of the job does not excuse poor decision-making, bad choices, or reporting to work intoxicated.

34. The daily traumas of the job ultimately took a toll on respondent. Unfortunately, she did not seek help and instead turned to alcohol. On July 10, 2020, respondent was confronted by her own bad behavior, a BAC of 0.255 percent three hours after reporting for work. She resigned from MedStar rather than face any discipline. However, the next day, she sought help and engaged the services of the

IAFF. Since then, she has remained engaged in alcohol abuse treatment, and today, she is eight months sober.

35. At hearing, respondent was open and honest. She admitted she was an alcoholic in recovery. She is committed to sobriety for the rest of her life. IAFF gave respondent the tools to process and cope with being a paramedic exposed to persistent traumas. She continues in individual therapy and attends AA meetings three times per week. She is also monitored by Dr. Gardner, an addiction specialist, and prescribed Vivitrol. In sum, respondent has had a mental shift. She now understands her demons and how to process through them. She has no desire to drink alcohol and continues to support her sober journey with individual and group therapy. She also has a large support network to lean on if she needs them. Respondent's resolve, along with her commitment to rehabilitation, and the support of Dr. Morris among others, suggests respondent is not a risk to the public, so long as she remains on her sober journey, with professional oversight.

LEGAL CONCLUSIONS

1. Pursuant to the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (section 1797 et. seq.), the EMSA is the State agency responsible for the licensing of emergency medical responders, including an EMT and EMT-P. To exercise these powers and perform the duties conferred upon it, the EMSA has adopted rules and regulations to carry out the purposes of the Act. (§ 1797.107.)

2. Pursuant to section 1798.200, subdivision (c), any of the following actions shall be considered evidence of a threat to the public health and safety and may result

in the denial, suspension, or revocation, or in the placement on probation of an EMT-P license:

(7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

[¶] . . . [¶]

(9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

3. For the purposes of license discipline pursuant to section 1798.200, an act must be substantially related to the qualifications, functions and/or duties of a person holding a paramedic license. (Cal. Code Regs., tit. 22, § 100175, subd. (a).) An "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 her license in a manner consistent with the public health and safety." (*Ibid.*)

4. Cause exists to discipline respondent's license pursuant to section 1798.200, subdivisions (c)(7) and (9); in that respondent appeared for work as an EMT-P while under the influence of alcohol. Specifically, a breathalyzer test revealed a BAC of 0.255 percent more than three hours after her arrival, showing an unfitness to perform the functions of an EMT-P in a manner consistent with the public health and safety.

Discipline

FACTORS TO CONSIDER

5. The EMSA has issued Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Disciplinary Guidelines) for violations of the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act. The Disciplinary Guidelines recommend consideration of all facts and circumstances, with the safety of the public being paramount; and suggest disciplinary actions be calculated to aid in the rehabilitation of the licensee, to the extent it is not inconsistent with public protection.

In determining whether revocation, suspension or probation should be imposed, the Disciplinary Guidelines suggest consideration of the following factors: nature and severity of the act under consideration and time elapsed since the act; actual or potential harm to the public or any patient; prior disciplinary or warnings on record or prior remediation by EMSA or the employer; number and/or variety of current violations; and aggravating, mitigation, and rehabilitation evidence.

REQUIRED ALCOHOL REHABILITATION

6. The Disciplinary Guidelines also identify criteria to be considered in determining rehabilitation for alcohol/drug abuse, including:

Successful completion of a drug/alcohol treatment program (a minimum of 6 months duration). The treatment program may be a combined in-patient/out-patient and aftercare program. The program shall include at least the following elements: (1) chemical-free treatment philosophy; (2)

individual and/or group counseling; (3) random, documented biological fluid testing; (4) Participation in support groups; (5) education about addictive disease; (6) adherence to a 12-step recovery program philosophy or equivalent; (7) written documentation of participation in a 12-step recovery group or equivalent.

RECOMMENDED PENALTIES

7. For violations of section 1798.200, subdivision (c)(7), the Disciplinary Guidelines list a maximum penalty of revocation, a minimum penalty of revocation stayed and three years of probation, and a recommended penalty of 60-day suspension, revocation stayed and three years of probation. For violations of section 1798.200, subdivision (c)(9), the Disciplinary Guidelines list a maximum penalty of revocation, a minimum penalty of revocation stayed and three years of probation, and a recommended penalty of revocation stayed and five years of probation, with additional terms and conditions including the completion of a diversion program and a psychiatric assessment finding the licensee is safe to practice.

Finally, “[i]n determining the appropriate discipline, the EMSA or an administrative law judge shall give credit for discipline imposed by the employer and for any immediate suspension imposed by the local EMSA agency for the same conduct.” (§ 1798.211.) In this case, the EMSA suspended respondent’s license more than eight months ago, on July 27, 2020. She did not appeal the suspension. As such, respondent’s license will remain suspended until a final decision is adopted by the EMSA in this matter, which is more than the 60 days prescribed by the Disciplinary Guidelines.

DETERMINATION

8. In applying the disciplinary factors, it is determined that a penalty of revocation stayed and five years of probation, with terms and conditions to include enrollment in a diversion program and a psychiatric assessment finding respondent is safe to practice. The probation terms and conditions are tailored to protect the public, allow respondent the ability to complete her rehabilitation, and provide adequate assurances to the EMSA that respondent is safe to complete the duties of an EMT-P going forward.

ORDER

License Number P20428 issued to respondent, Rebecca Schwenger, is REVOKED pursuant to Legal Conclusion 4. However, such revocation is STAYED and respondent is placed on probation for five 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 respondent's compliance with the terms and conditions of her 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 her 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 her probation. If respondent submits her 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 72 hours after termination, for any reason, with her prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of her termination.

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

6. **Functioning as a Paramedic:** The period of probation shall not run anytime that respondent is not practicing as a paramedic within the jurisdiction of California.

If respondent, during her 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 her 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 her 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. **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 a prescription unless prescribed under federal or state law as part of a documented medical treatment. Within 14 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 medication was prescribed, respondent's diagnosis, and the date the medication will no longer be required. This 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 14 days of the commencement of probation.

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

11. **Abstinence from the Use of Alcoholic Beverages:** Respondent shall abstain from the use of alcoholic beverages.

12. **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 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.

13. **Drug/Detoxification/Diversion Program:** Within 60 days of the effective date of this decision, respondent shall enroll and participate in a

drug/detoxification/diversion program approved by the EMSA. Respondent shall participate in the program until appropriate medical supervision determines that further treatment and rehabilitation is no longer necessary.

If respondent voluntarily withdraws from the drug/detoxification/diversion program or respondent is expelled from the program, such withdrawal or expulsion shall constitute a violation of probation by respondent. Respondent shall be responsible for all costs associated with such drug/detoxification/diversion program.

14. **Ethical Practice of EMS:** Within 60 days of the effective date of this decision, respondent shall submit to the EMSA, for its prior approval, a course in Ethics. Respondent must complete this course during her probation period.

Upon completion by respondent of the Ethics course, she shall submit proof to the EMSA that she fulfilled all course requirements.

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

15. **Psychiatric Evaluation:** Within 60 days of the effective date of this decision, and on a periodic basis as specified by a psychiatrist certified by the American Board of Psychiatry and Neurology, or other specialist as determined by the director of the EMSA, respondent shall submit to a psychiatric evaluation. The psychiatrist must be approved by the EMSA prior to the evaluation. Respondent shall be responsible for all costs associated with the evaluation.

DATE: April 14, 2021



ERIN R. KOCH-GOODMAN

Administrative Law Judge

Office of Administrative Hearings