

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CLAYTON STRONG,

EMT-Paramedic License No. P28359

Respondent.

Case No. 14-0212

OAH No. 2015050571

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on October 22, 2015, in Sacramento, California.

Stephen J. Egan, Senior Staff Counsel, represented complainant Sean Trask, Chief of the Personnel Division of the Emergency Medical Services Authority (EMSA), State of California.

Respondent Clayton Strong represented himself. His father, David Strong, appeared with him.

Evidence was received, the record was closed, and the matter was submitted for written decision on October 22, 2015.

**SUMMARY**

Complainant seeks to discipline respondent's EMT-Paramedic license based on his possession and misuse of the controlled substances morphine, Xanax, and methadone on or shortly before June 20, 2014. Cause exists to discipline respondent's license. He did not present sufficient evidence to establish his continued fitness to perform the duties of a licensed EMT-Paramedic in a manner consistent with public health, safety, and welfare, even under a probationary license. Therefore, respondent's EMT-Paramedic license should be revoked.

///

## FACTUAL FINDINGS

### *Background*

1. Complainant signed the Accusation solely in his official capacity on April 17, 2015. The Accusation seeks to discipline respondent's Emergency Medical Technician-Paramedic license based on his violation of a federal or state statute or regulation regarding narcotics, dangerous drugs, or controlled substances and addiction to, excessive use of, or misuse of narcotics, dangerous drugs, or controlled substances.

2. EMSA issued Emergency Medical Technician-Paramedic License No. P28359 (EMT-Paramedic license) to respondent on March 29, 2010. The EMT-Paramedic license expires March 31, 2016, unless renewed or revoked. There is no history of prior discipline of the EMT-Paramedic license.

3. Respondent was certified as an Emergency Medical Technician (EMT) by the Mountain-Valley Emergency Medical Services Agency, the Local EMS Agency, sometime in or before 2006. He began working for American Medical Response (AMR) in Stanislaus County as an EMT in 2006, and he continued working there as a paramedic after he received his EMT-Paramedic license. Respondent voluntarily resigned his employment, effective June 25, 2014.

### *The Events of June 20, 2014*

4. Respondent arrived early for his shift with AMR on the afternoon of June 20, 2014, because he had a meeting scheduled with his union representative Drew McGuire and AMR Operations Supervisor Paul Harper. Shortly after he arrived, he saw Casey Corner, the Administrative Supervisor and Safety Risk Manager for AMR, and asked her a question. Ms. Corner noticed respondent's was speaking slowly, making deliberate movements when moving his body, and "appeared to not be right." She asked him if he was under the influence of any substance, and he responded "no," explaining he was tired and had not been sleeping well lately because he and his wife had recently separated. Ms. Corner dismissed respondent to attend his meeting with Mr. McGuire and Mr. Harper.

5. Ms. Corner spoke with Mr. Harper after his meeting with respondent and asked Mr. Harper if he noticed anything unusual about respondent's behavior during the meeting. Mr. Harper disclosed that he found it interesting that he had to ask respondent the same questions multiple times throughout the meeting because respondent was having difficulty comprehending what was being asked of him. Based on that information and her own observations of respondent's behavior, Ms. Corner became concerned that respondent was under the influence of drugs and/or alcohol. Therefore, she contacted Jan Bells, AMR Safety Risk Manager, for advice. Ultimately, the decision was made to ask respondent to submit to a drug test.

6. Ms. Corner and Mr. Harper asked respondent to submit to a urinalysis, which he ultimately agreed to. Ms. Corner, Mr. Harper, Mr. McGuire (the union representative), and respondent drove to the testing location. Shortly after they arrived, Mr. McGuire and respondent asked to speak with Ms. Corner in the hallway. During that conversation, respondent disclosed that he had been taking Norco for quite some time after an accident in which he suffered a back or neck injury. He further stated that he was having a problem with Norco, and asked for Ms. Corner's help with getting off of it. Ms. Corner told him he needed to complete the drug testing process, but she would provide whatever assistance she could.

7. Respondent returned to AMR's administrative offices with Mr. Harper, Ms. Corner, and Mr. McGuire after the urinalysis, and was placed on unpaid administrative leave pending the outcome of the results of the urinalysis. Five days later, respondent tendered his letter of resignation. And three days after that, AMR received the results of his urinalysis, which was "verified positive" for benzodiazepines, methadone, and opiates/morphine. It was negative for Norco.

#### *Respondent's Interview with an EMSA Investigator*

8. Respondent was interviewed about the incident by an EMSA investigator on October 24, 2014. He was less than forthcoming and sometimes provided contradictory responses during the interview, which impaired the credibility of his responses. For instance, the investigator asked whether respondent was currently taking any prescription medications. While he stated he currently was not, he explained he was prescribed Norco for leg and hip pain as a result of a motorcycle accident approximately 10 days prior to the incident. Respondent also explained he was prescribed Xanax two years prior, and believed he took one tablet at the end of his shift on the day prior to the incident. He also stated, "if I had worked the night before [the incident] then I took one [Norco] when I got off around 3 a.m.. But that leaves 11 hours something to that affect [sic], but nothing in the time zone that would have affected me working."

But when asked specific details about the motorcycle accident, respondent disclosed having a prior prescription for Norco for the treatment of chronic back pain. And when asked to elaborate about his taking Xanax, he explained he was prescribed that medication to help him cope with his sister's death four years ago. He claimed the prescription lasted him four years because he rarely took the medication. Respondent stated it was likely he took Xanax the week prior to the accident, but he did not take any within three to four days of the incident.

Respondent also admitted to having taken his sister's leftover morphine and methadone on June 16 or 17, 2014, because he made a "very poor decision it was pretty uncomfortable and I thought it was ... that I had taken the dose of the Norco's [sic] and that those other ones would make me more comfortable. Not in a getting high sense or anything like that, just that my back was pretty uncomfortable that was the reasoning behind it."

9. Respondent told the investigator he had been attending Alcoholics Anonymous and/or Narcotics Anonymous meetings every day of the week for three months as of the date of the interview (October 24, 2014). He also said he underwent a period of self-reflection after the incident, during which he realized he had come to rely on alcohol and Norco as a “crutch.” In the past, he would consume alcohol on only two occasions each year, but he noticed that prior to the incident (he was not more specific as to when) he was drinking four beers each week. Respondent also had discussions with his wife and father about his need for substance abuse treatment. He claimed to be sober from drugs and alcohol.

No evidence of whether respondent continued attending Alcoholics Anonymous and/or Narcotics Anonymous meetings or participated in any other substance abuse treatment program after his October 24, 2014 interview was introduced at hearing.

#### *Respondent's Evidence*

10. Respondent did not testify at hearing, did not call any witnesses, and did not introduce any documents. No evidence that respondent had a valid prescription at any time for morphine or methadone was introduced at hearing. The sole evidence that he had a valid prescription for Xanax and Norco was his October 24, 2014 statement to the EMSA investigator, which was not credible for the reasons previously discussed.

#### *Summary*

11. The clear and convincing evidence established that respondent violated a state statute which prohibits the possession of a controlled substance without a valid prescription.<sup>1</sup> A sample of his urine taken on June 20, 2014, tested “verified positive” for benzodiazepines, methadone, and opiates/morphine. Opiates/morphine and methadone are each Schedule II controlled substances (Health & Saf. Code, § 11055, subds. (b)(1)(L) [opiates/morphine], (c)(14) [methadone]), and Xanax, a benzodiazepine, is a Schedule IV controlled substance (Health & Saf. Code, § 11057, subd. (d)(1)). Having a valid prescription for any of those controlled substances was an affirmative defense respondent had the burden of proving, and he did not produce credible evidence that he ever possessed a valid prescription for any controlled substance. (See, *People v. Hill* (1934) 140 Cal.App. 389 [possession of a valid prescription is an affirmative defense to a charge of violating Health & Saf. Code, § 11350, subd. (a)].) In fact, he admitted the methadone and morphine was prescribed for his sister.

Respondent's positive urinalysis and Ms. Corner's and Mr. Harper's description of respondent's behavior established he was under the influence of multiple controlled substances on June 20, 2015, a violation of Health and Safety Code section 11550, subdivision (a). Additionally, the facts that respondent's urinalysis was positive for opiates/morphine, methadone, and Xanax and he did not have a valid prescription for any of

---

<sup>1</sup> Health and Safety Code section 11350 subdivision (a), prohibits the possession of a controlled substance without a valid prescription.

those controlled substances established that he misused each of those drugs on or shortly before June 20, 2014.

*Consideration of EMSA's Disciplinary Guidelines*

12. EMSA has adopted Recommended Guidelines for Disciplinary Orders and Conditions of Probation (July 26, 2008) (Guidelines) for consideration when determining the appropriate level of discipline to impose for various types of misconduct. The Guidelines specify that the following factors shall be considered when determining the appropriate level of discipline:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Prior warnings on record or prior remediation;
6. Number and/or variety of current violations;
7. Aggravating evidence;
8. Mitigating evidence;
9. Any discipline imposed by the paramedic's employer for the same occurrence of that conduct;
10. Rehabilitation evidence;
- [¶] ... [¶]
13. Time that has elapsed since the act(s) or offense(s) occurred  
....

The Guidelines further provide:

The recommended discipline should be imposed in the absence of any aggravating or mitigating evidence. The administrative law judge may propose any discipline between the minimum discipline and maximum discipline for a particular violation. 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. The director of the EMSA has the final determination as to the discipline to be imposed.

And the Guidelines provide the following with regard to the particular grounds alleged for disciplining respondent's EMT-Paramedic license:

8. **Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.**
  - # Maximum Discipline: Revocation.
  - # Recommended Discipline: Revocation stayed, 60 day suspension, and 3 years probation with terms and conditions.
  - # Minimum Discipline: Revocation stayed, and 3 years probation with terms and conditions.
  - # Minimum Conditions in of Probation: All Standard Conditions and Optional Conditions: 1, 2, 3, 4, 10.
  
9. **Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.**
  - # Maximum Discipline: Revocation.
  - # Recommended Discipline: Revocation state, suspension until assessment and successful completion of drug/alcohol detoxification diversion program, and 5 years probation with terms and conditions.
  - # Minimum Discipline: Revocation stayed, and 3 years probation with terms and conditions.
  - # Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 1, 2, 3, 4, 10.

(Bold in original.)

13. Respondent's violation of the statutory provisions prohibiting possession of a controlled substance without a valid prescription and being under the influence of a controlled substance are of serious concern to EMSA given his access to controlled substances as an EMT-Paramedic. The potential for him to be under the influence of one or more controlled substances while responding to a call for service presents an unacceptable risk of harm to the public and his patients. In aggravation of such misconduct, respondent was not forthright and completely honest when speaking with the EMSA investigator on October 24, 2014. And while the evidence of his attendance at Alcoholics Anonymous and/or Narcotics Anonymous meetings and that he underwent a period of self-reflection is reflective of rehabilitation, such rehabilitation is incomplete since there was no evidence of

continued attendance at those meetings or of any participation in a substance abuse treatment program after his interview with the EMSA investigator.

14. Complainant demonstrated by clear and convincing evidence to a reasonable certainty the existence of cause to discipline respondent's EMT-Paramedic license for the reasons discussed in the Legal Conclusions below. When all the evidence discussed above is considered, there is insufficient evidence of respondent's rehabilitation to establish his continued ability to perform the duties of a licensed EMT-Paramedic in a manner consistent with public health, safety, and welfare, even under a probationary license. Therefore, his EMT-Paramedic license should be revoked.

## LEGAL CONCLUSIONS

### *Applicable Standard/Burden of Proof*

1. Complainant has the burden of demonstrating legal cause to discipline respondent's EMT-Paramedic license, and he must do so by clear and convincing evidence, to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856-857.) Clear and convincing evidence requires a finding of high probability. The evidence must be so clear that it leaves no substantial doubt. The evidence must be strong enough to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594; *In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

### *Legal Cause for Discipline*

2. An EMT-Paramedic license may be disciplined if the licensee has violated or attempted to violate "any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances." (Health & Saf. Code, § 1798.200, subd. (c)(8).) Respondent violated Health and Safety Code section 11350, subdivision (a), when his urinalysis was positive for the presence of controlled substances as explained in Factual Findings 6 through 8 and 11. He also violated Health and Safety Code section 11550, subdivision (a), by being under the influence of multiple controlled substances on June 20, 2014. Therefore, cause exists to discipline his EMT-Paramedic license pursuant to Health and Safety Code section 1798.200, subdivision (c)(8).

3. An EMT-Paramedic license may be disciplined for "the misuse of ... controlled substances." (Health & Saf. Code, § 1798.200, subd. (c)(9).) Respondent misused controlled substances on or before June 20, 2014, as explained in Factual Findings 6 through 8 and 11. Therefore, cause exists to discipline his EMT-Paramedic license pursuant to Health and Safety Code section 1798.200, subdivision (c)(9).


*Conclusion*

4. Cause exists to discipline respondent's EMT-Paramedic license for the reasons explained in Legal Conclusions 2 and 3, individually and collectively. When all the evidence is considered, respondent did not sufficiently demonstrate his continued fitness to perform the duties of a licensed EMT-Paramedic in a manner consistent with public health, safety, and welfare, even under a probationary license, as discussed in Factual Findings 12 through 14. Therefore, his EMT-Paramedic license should be revoked.

ORDER

Emergency Medical Technician-Paramedic License No. P28359 issued to respondent Clayton Strong is REVOKED.

DATED: November 13, 2015

  
COREN D. WONG  
Administrative Law Judge  
Office of Administrative Hearings