BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: IAN HOGAN, Respondent.	Case No. 12-0169 OAH No. 2013020035

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 12, 2014, in Sacramento, California.

Michael D. Jacobs, Senior Staff Counsel, represented Sean Trask (complainant), Chief of the Emergency Medical Services Authority (Authority or EMSA), Emergency Medical Services Personnel Division.

Ian Hogan (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on May 12, 2014.

FACTUAL FINDINGS

1. On April 9, 2012, respondent filed an application (Application) with the Authority for licensure as an Emergency Medical Technician-Paramedic (EMT-P). The Authority denied respondent's Application, and respondent appealed from the denial. Complainant has filed a Statement of Issues seeking to deny respondent's Application based upon his two alcohol-related convictions described below.

2. On December 2, 2008, in the Fresno County Superior Court, Case No. M08911455, respondent, upon a plea of nolo contendere, was convicted of violating Vehicle Code section 23103, reckless driving involving alcohol (wet reckless), a misdemeanor. The court suspended imposition of sentence and placed respondent on probation for three years. Respondent was ordered to serve 15 days in county jail, enroll in the adult offender work program, complete a 12-hour drug and alcohol program, and pay fines and fees.

3. The incident underlying respondent's wet reckless conviction occurred on December 27, 2007. The police stopped respondent after he was observed driving at night without his headlights on. When the police stopped respondent, they smelled a strong odor of alcohol and observed an empty six pack of beer. Respondent admitted to the police that he had consumed approximately seven to eight beers. Respondent was 26 years old at the time of his arrest.

4. On June 29, 2010, in Fresno County Superior Court, Case No. M10912712, respondent, upon a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content (BAC) of .08 percent or more, (DUI), a misdemeanor. Respondent was subject to an enhancement because his BAC was greater than .15 percent. The court suspended imposition of sentence and placed respondent on probation for three years. He was ordered to serve 25 days in jail, enroll in the adult offender work program, complete an 18-month multiple offender alcohol program, and pay fines and fees.

5. The incident underlying respondent's DUI conviction occurred on January 3, 2010. Respondent was stopped after he pulled out in front of a police officer, cutting her off. The police officer noticed an odor of alcohol emanating from respondent. Respondent's BAC was measured at .23 percent.

6. Respondent disclosed his convictions on his Application. He has complied with all the terms and conditions of his most recent probation. He successfully completed the 18-month DUI program, which consisted of over 25 group counseling sessions, 25 face-to-face sessions and weekly Alcoholics Anonymous (AA) meetings. He has paid all court-ordered fines and fees.

7. Respondent enlisted in the Marine Corps when he was 19 years old. He was promoted to the rank of Sergeant in three years and two months. While he was in the Marines, he received a top secret security clearance and several service awards. He was honorably discharged in 2006 after five years in the service. Respondent was certified to inspect turbine engines. In 2007, he received his certification as an Emergency Medical Technician (EMT). In 2009, he was hired as a seasonal firefighter by the California Department of Forestry and Fire Protection (Cal Fire). He worked as a seasonal firefighter for two years. He was then promoted to Firefighter II and became a full-time employee of Cal Fire. More recently, he has been promoted to the position of Fire Apparatus Engineer. He has also obtained a real estate salesperson license.

8. Respondent is currently 33 years old. He is married and has three children. He attended paramedic school while working full time and supporting his family. He has worked hard to pay off all his student debt.

9. Cal Fire Battalion Chief Joshua Nettles testified on respondent's behalf. Chief Nettles has been employed by Cal Fire for 15 years. He hired respondent and directly supervised him for two years in 2009 and 2010. Chief Nettles testified that respondent did everything that he was asked, including performing emergency services. He showed up for

work early and always finished all his assignments. All his performance evaluations were satisfactory or better. At no time did respondent ever act in a manner that would have lead Chief Nettles to suspect that he was under the influence of alcohol while at work.

10. Dystiny Hogan is respondent's wife. They have been married for nine years. At the hearing, she described her husband as a very dedicated, loyal, honest, and hardworking husband and father. She watched respondent as he struggled through his alcohol-related convictions. She testified that he was "very remorseful" and felt that he had let his family down. Respondent has significantly decreased his alcohol consumption. According to Ms. Hogan, respondent has put a lot of time, effort and sacrifice into becoming a paramedic.

11. Respondent submitted eight character references from family members, friends and a coworker. All of them attested to the determination and effort respondent puts into achieving the goals he sets for himself. They described him as dependable, hard-working, and honest. All are aware of his past mistakes with alcohol and the efforts he has made to overcome them.

12. The Authority has issued Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines). These Guidelines state that the following factors should be considered when reviewing the rehabilitation of an applicant:

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;
11. In case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation;
12. Overall criminal record;
13. Time that has elapsed since the act(s) or offense(s) occurred;
14. If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4.

The Guidelines also include maximum, recommended and minimum discipline for each of the grounds for denial of a license set forth in Health and Safety Code section 1798.200, subdivision (c). (See Legal Conclusions below.) In the Accusation, complainant alleged cause for license denial under Health and Safety Code section 1798.200, subdivisions (c)(6), conviction for substantially-related crimes, and (c)(9), misuse of alcoholic beverages. The

minimum penalty for misuse of alcoholic beverages is probation for three years with standard probationary terms and conditions, plus optional terms and conditions relating to abstinence from the use of alcohol, biological fluid testing, participation in a diversion program, and a psychiatric/medical evaluation.

13. Respondent has been convicted of two alcohol-related crimes. The incident underlying the second conviction occurred approximately four and one-half years ago. Respondent recognized the serious consequences that could result from drinking and driving. There was no indication that respondent has ever been at work as a firefighter or EMT while he was under the influence of alcohol or suffering from the results of previous consumption. He testified in a direct and candid fashion. He took responsibility for his criminal conduct. He has fully complied with the terms of his most recent criminal probation. He completely abstained from alcohol for about a year. He now only consumes alcohol on rare occasions and does not drink and drive. He does not consume any alcohol before going to work. His character references were strong and positive.

14. When the factors set forth in the Guidelines are applied to this case, they support imposition of the minimum discipline set forth in the Guidelines for misuse of alcoholic beverages. Granting respondent a license under these terms and conditions would ensure that the public health, safety and welfare are adequately protected.

LEGAL CONCLUSIONS

1. Pursuant to Health and Safety Code section 1798.200, subdivision (c), the Authority may deny an EMT-P license to an applicant who has engaged in actions constituting a "threat to the public health and safety" including:

> (6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.
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> [¶]...[¶]
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> (9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

2. Respondent's alcohol-related convictions (Findings 2 through 5) were for crimes substantially related to the qualifications, functions, and duties of prehospital personnel such as EMT-P's. Given the significant responsibilities of EMT-P's, the Authority must have adequate assurances that they are not under the influence of alcohol when they are on duty. Respondent's alcohol-related convictions therefore constitute cause to deny his license application pursuant to Health and Safety Code section 1798.200, subdivision (c)(6).

3. The fact that respondent was determined to have a blood alcohol content of .23 percent when he drove on January 3, 2010 (Finding 5) shows that he misused alcohol on that day. Complainant therefore established cause to deny respondent's license application under Health and Safety Code section 1798.200, subdivision (c)(9).

4. As set forth in Finding 14, when all the evidence is considered, granting respondent a license and placing him on probation for three years under the minimum discipline terms and conditions set forth in the Authority's Guidelines would be sufficient to ensure that the public health, safety and welfare are adequately protected.

ORDER

The application of respondent Ian Hogan for an Emergency Medical Technician-Paramedic license is hereby GRANTED, and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed, and respondent placed on probation for a period of three (3) years on 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 his probationary order.

Respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of respondent.

2. Personal Appearances:

As directed by the EMSA, respondent shall appear in person for interviews, meetings, and/or evaluations of respondent's compliance with the terms and conditions of the probationary order. Respondent shall be responsible for all of his costs associated with this requirement.

3. Quarterly Report Requirements:

During the probationary period, respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by respondent with all the terms and conditions of his probation. If respondent submits his quarterly reports by mail, they shall be sent by certified mail.

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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 seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of his termination.

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

6. Functioning as a Paramedic:

The period of probation shall not run anytime that respondent is not practicing as a paramedic within the jurisdiction of California. If respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, 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 Health and Safety Code 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 his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Within 72 hours of being arrested, cited or criminally charged for any offense, respondent shall submit to the EMSA a full and detailed account of the circumstances thereof.

The EMSA shall determine the applicability of the offense(s) as to whether 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 his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, respondent and the EMSA shall be bound by 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 the Use of Alcoholic Beverages:

Respondent shall abstain from the use of alcoholic beverages.

11. 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 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 twelve (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 forty-eight (48) hours, and all written positive or negative results are provided directly by the lab to the EMSA within ten (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.

12. Drug/Detoxification/Diversion Program:

Within 30 days after being ordered by the EMSA based upon the recommendation of the psychiatrist or physician who conducts the evaluation pursuant to paragraph 13 below, 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.

13. Psychiatric/Medical Evaluation:

Within 30 days after the effective date of this decision, and on a periodic basis as specified by a licensed physician, psychiatrist, or other specialist as determined by the director of the EMSA, respondent shall submit to a medical/psychiatric evaluation. The physician/psychiatrist must be approved by the EMSA prior to the evaluation. Respondent shall be responsible for all costs associated with the evaluation.

The EMSA shall have the sole discretion to determine if respondent may practice as a paramedic until such time as the psychiatrist or physician evaluates and determines that respondent is mentally and/or physically fit to practice safely as a paramedic.

DATED: May 14, 2014

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings