

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical
Technician-Paramedic License Held by:

CHRISTOPHER S. BUCK,

License No. P15709,

Respondent.

Enforcement Matter No. 08-0005

OAH No. 2008080532

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Emergency Medical Services Authority as its Decision in the above-entitled matter.

This Decision shall become effective on 1/9/09.

IT IS SO ORDERED _____.



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PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on October 16, 2008.

Larry Mercer, Deputy Attorney General, represented Complainant Nancy Steiner.

Duane W. Reno, Attorney at Law, represented Respondent Christopher S. Buck, who was present.

The record was left open for the submission of written closing statements. Complainant waived an initial closing argument. Respondent's Post-Hearing Memorandum was timely received and marked Exhibit F for identification. Complainant's Reply Letter Brief was timely received and marked Exhibit 7 for identification.

The record closed on November 6, 2008.

FACTUAL FINDINGS

1. Complainant Nancy Steiner filed the Accusation in her official capacity as Chief of the EMS Personnel Division of the Emergency Medical Services Authority of the State of California (Authority).
2. On May 6, 1999, the Authority issued Emergency Medical Technician-Paramedic (EMT-PM) license number P15709 to Christopher S. Buck (Respondent). The license is scheduled to expire on May 31, 2009.
3. On February 29, 2008, in the Alameda County Superior Court, Respondent was convicted by his plea of no contest of a violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of 0.08 percent or higher. Respondent

was placed on probation for three years under terms and conditions that included serving four days in a weekend-work program and completing the Level One DUI program.

4. Respondent's conviction was the result of his conduct on December 17, 2007. At approximately 5:30 p.m. off-duty Alameda County Deputy Sheriff S. Samiotes called the Livermore Police Department to report that he had seen a truck, later identified as driven by Respondent, being driven erratically. In a written statement, Deputy Samiotes related that he had seen "the truck swerve within both lanes of traffic about five different times. On one occasion, [it] swerved into the #1 lane of traffic and nearly side swiped another vehicle. The other vehicle had to swerve and brake quickly to avoid a collision with [Respondent's truck]."

An enforcement stop was made by Livermore police officers. Officer Glen Robbins approached Respondent and smelled an odor of alcohol emanating from the truck. He noticed that Respondent had bloodshot and watery eyes, slurred speech, and a flushed face. Respondent told Robbins that he had been at Buffalo Bill's restaurant earlier and that he had consumed "a few beers" and "jack and coke" cocktails. Respondent also told Robbins that "he felt a little buzz but that he was OK" and that he had run a red light because he was texting his girlfriend.

Respondent did not pass a field sobriety test and Robbins administered a breath test. The result was 0.144 percent blood alcohol. Robbins arrested Respondent. A subsequent blood test from a sample taken at 6:25 p.m. revealed that Respondent had a 0.18 percent blood alcohol level.

5. Respondent testified that, on the morning of December 17, he had been working on a Christmas toy drive by picking up and delivering toys. At noon he and co-workers had lunch at Buffalo Bill's, where he consumed three beers. He then went to the Funky Monkey for about two hours, where he consumed three "jack and cokes." Respondent thought at the time that he was safe to drive and was heading home when he was stopped. He now knows that his ability to drive was impaired.

6. As regards his criminal probation conditions, Respondent has completed a 15-week DUI class, paid fines and completed community service. He related the terms of his probation that apply to alcohol consumption as follows: he cannot be found to have driven with any amount of alcohol in his system for three years; he must submit to a sobriety test at any time without probable cause; and, if he violates probation he will lose his license for one year and serve jail time. Respondent does not believe he has a problem with alcohol consumption and has not sought any additional counseling or treatment for alcohol abuse.

7. Respondent has been employed by the City of Hayward for seven years. In 2007 he was a Class B Firefighter and was allowed to drive emergency vehicles. This ability was lost because of his conviction. He is eligible now "to re-test" but has chosen not to. Although his current position does not require driving (the City contracts with an outside company for ambulance services) Respondent is required as a City employee to have a valid

driver's license. Another consequence of his conviction was that, during the time that his driver's license was suspended, Respondent "had a pay step taken away."

8. Robert Neri is the Emergency Medical Services Coordinator for the City of Hayward and a registered nurse. He testified on Respondent's behalf. Neri explained that the City is "a first responding advanced life support agency." Agency staff are first on the scene and provides pre-hospital care until an ambulance arrives. Employees in Respondent's position do not transport patients. They may ride in the ambulance to continue to give care. Hence, Respondent's driving restriction did not impact his ability to perform his job.

Neri learned of Respondent's conviction when Respondent told him about it in February of 2008. He has not observed Respondent to perform differently in his position since the conviction. Neri has never observed Respondent to be under the influence of alcohol. He sees Respondent regularly at work, but they do not socialize. Neri believes that Respondent performs his job in a satisfactory manner.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200, subdivision (c)(6), authorizes license discipline where a licensee has been convicted of a crime that is substantially related to the qualifications, functions, and duties of prehospital personnel. Title 22, California Code of Regulations, section 100174, provides "A crime or act shall be considered substantially related . . . if to a substantial degree it evidences present or potential unfitness of a paramedic to perform duties or functions authorized by his license in a manner consistent with the public safety."

Respondent contends that the crime of drunk driving is not substantially related to a paramedic's duties. This is not correct. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757 the court concluded that conduct that "threatens personal safety and places the safety of the public in jeopardy" is substantially related to the duties of a physician. That matter involved the discipline of a physician following three alcohol-related convictions, but the analysis pertains to any health care professional. Driving while under the influence of alcohol directly threatens the public safety. It is common knowledge that scores of people are hurt or killed by drunk drivers every year. Although no one was harmed by Respondent's actions, he was observed driving so erratically that an off-duty deputy felt it necessary to report him to the police. Health care and public safety professionals know better than the average citizen the risks inherent in drinking and driving. The fact that Respondent nonetheless drank alcohol and drove raises serious concerns about his judgment and fitness to be an emergency medical technician/paramedic and is evidence of unfitness.

Cause for license discipline therefore exists by reason of the matters set forth in Finding 3.

2. Health and Safety Code section 1798.200, subdivision (c)(9), authorizes paramedic license discipline for the misuse of alcoholic beverages. Driving with a blood

alcohol level of .08 percent or greater constitutes such misuse and this conduct is substantially related to the duties of a paramedic (see Legal Conclusion 1). Cause for license discipline therefore exists by reason of the matters set forth in Findings 3 through 5.

3. Respondent also contends that, because Complainant did not demonstrate that Respondent's ability to do his present job has been negatively affected by his conviction or misuse of alcohol, the Accusation must be dismissed. Respondent confuses Respondent's license as an emergency medical technician/paramedic with his present position as a firefighter/paramedic with the City of Hayward. It is the scope of duties permitted by his licensure that is of justifiable concern to the Authority and the public – not his duties in his present position.

Similarly, Respondent's reliance on cases that concern possession of marijuana and consensual sexual acts is misplaced. These actions, whether criminal or not, are not analogous to driving under the influence of alcohol, an action that greatly threatens others.

4. Cause having been established, it remains to determine the appropriate discipline. All things considered, it is concluded that the public interest and safety will be sufficiently protected by a three-year term of probation with appropriate terms and conditions.

Title 22, California Code of Regulations, section 100172, subdivision (d), contains disciplinary guidelines promulgated by the Authority. The basis for discipline of Respondent is both a criminal conviction and misuse of alcohol and the guidelines contain suggestions for conditions under both circumstances. In this case, however, the facts do not warrant the full panoply of conditions that may be appropriate when the evidence has demonstrated a serious and continuing problem with alcohol use. The conditions are therefore adjusted accordingly.

ORDER

License number P15709 issued to Respondent Christopher S. Buck is revoked; however, the revocation is stayed and Respondent is placed on probation for three years pursuant to the following terms and conditions:

1. Probation Compliance: The respondent shall fully comply with all terms and conditions of the probationary order. The respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of the respondent's compliance with the terms and conditions of his probationary order.

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

2. Personal Appearances: As directed by the EMSA, the respondent shall appear in person for interviews, meetings, and/or evaluations of the respondent's compliance with the terms and conditions of the probationary order. The respondent shall be responsible for all of his costs associated with this requirement.
3. Quarterly Report Requirements: During the probationary period, the respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by the respondent with all the terms and conditions of his probation. If the respondent submits his quarterly reports by mail, it shall be sent as certified mail.
4. Employment Notification: During the probationary period, the respondent shall notify the EMSA in writing of any EMS employment. The respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, the respondent shall submit proof in writing to the EMSA of disclosure, by the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of the respondent's probation.

The 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: The respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. The 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 the respondent is not practicing as a paramedic within the jurisdiction of California.

If the respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, the respondent must immediately notify

the EMSA, in writing, of the date of such departure and the date of return to California, if the respondent returns.

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

7. **Obeys All Related Laws:** The 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. The 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 the respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then the 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, the 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 the respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

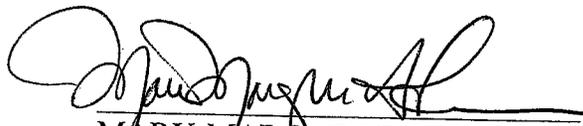
Any and all notifications to the EMSA shall be by certified mail.

8. **Completion of Probation:** The respondent's license shall be fully restored upon successful completion of probation.
9. **Violation of Probation:** If during the period of probation the respondent fails to comply with any term of probation, the EMSA may initiate action to terminate probation and implement actual license revocation. Upon the initiation of such an action, or the giving of a notice to the 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 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 the respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual revocation. At the hearing, the 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. Compliance with Criminal Probation Order: The respondent shall comply with all of the terms and conditions set forth by the court in the case of People v. Christopher S. Buck, Alameda County Superior Court case number 126071-9, and shall provide proof of satisfactory completion of the criminal probation before probation in this case is terminated.

DATED: December 4, 2008



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings