

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

BRIAN J. MADDOX
License No. P23611,

Respondent.

Case No.: 09-0008

OAH No.: 2009050153

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

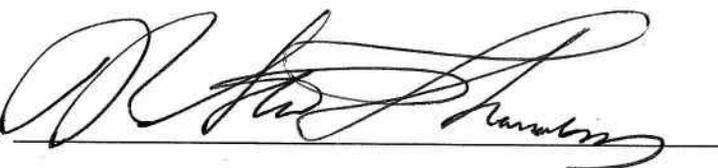
11/29/09

IT IS SO ORDERED

10/30/09

EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

By



rfm

**BEFORE THE
EMRGENCY MEDICAL SERVICES AUTHORITY
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In the Matter of the Emergency Medical
Technician – Paramedic License Held by:

BRIAN J, MADDUX
License No. P23611

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Case No. 09-0008

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PROPOSED DECISION

This matter was heard by Humberto Flores Administrative Law Judge with the Office of Administrative Hearings in Bakersfield, California on August 27, 2009.

Cynthia L. Curry, Senior Staff Counsel, represented Complainant.

Respondent Brian J. Maddox appeared and was represented by Joseph P. Hanson, Attorney at Law.

Evidence was received and the matter was submitted for decision.

FACTUAL FINDINGS

1. Nancy Steiner, Chief, EMS Personnel Division of the Emergency Medical Services Authority, State of California (EMSA), made and filed the Accusation in her official capacity.
2. Respondent is currently licensed as an EMT – P (License No. P23611). Said license is valid until May 31, 2010. Respondent’s license was temporarily suspended on March 27, 2009, pursuant to Health and Safety Code section 1798.202, subdivision (b).
3. Respondent’s license allows him to perform various medical procedures, including advanced life support procedures while at the scene of a medical emergency, or during transport, or during inter-facility transfer.

4. On December 12, 2008, in the Superior Court of California, County of Kern, State of California (Case No. BM717733A), respondent entered a plea of nolo contendere and was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol. The offense is substantially related to the duties, functions and qualifications of a licensee.

5. Imposition of sentence was suspended and respondent was placed on probation for a period of three years on certain terms and conditions, including, inter alia, that he serve two days in the county jail, complete a first offender alcohol program, and pay fines and fees totaling \$1,729.

6. The facts and circumstances underlying the conviction were that on July 27, 2007, respondent drove a vehicle under the influence of alcohol and rolled his vehicle over near an orchard. When the arresting police officer arrived at the scene, he noticed respondent walking out of the orchard with cuts on his hands and broken glass on his clothing. Respondent took a Preliminary Alcohol Screening Test which registered a blood alcohol concentration (BAC) of .26%, which is more than three times the legal limit of .08%. Respondent was arrested. On September 13, 2007, the District Attorney filed a complaint against respondent in the Superior Court charging violations of Vehicle Code sections 23152, subdivision (a), driving under the influence of alcohol; 23152, subdivision (b), driving with a BAC of .08% or higher; and 16028, subdivision (c), failing to have proof of financial responsibility.

7. On February 23, 2009, respondent reported for work at Hall Ambulance Service in Bakersfield, California. At approximately 1:00 p.m., respondent told his partner that he was going to take a break and go to a convenience store to get some chewing tobacco. In fact, respondent purchased and consumed a bottle of vodka. Respondent returned twenty minutes later and told his partner that he "did not feel like himself" and wanted to go home. Respondent's partner advised their supervisor by radio that she was taking respondent home. Respondent's supervisor met them at respondent's home and noticed that respondent appeared to be intoxicated. Respondent admitted to his supervisor that he had consumed a bottle of vodka at approximately 1:00 p.m., while on duty. The supervisor took respondent to a clinic where respondent was given a breathalyzer test which revealed that his BAC was .25%. A second test performed 20 minutes later, revealed a BAC of .272%.

8. Respondent submitted a renewal application for paramedic licensure on May 9, 2008. The renewal application contained a question which asked: "Are there any criminal charges currently pending against you?" Respondent checked "no" in response to the question. In fact, respondent had three criminal charges pending against him at the time he submitted the renewal application, as set forth in Factual Finding 6. Respondent testified that he did not disclose his pending charges because his attorney for the criminal proceedings told him that the charges against him were weak and would be dismissed. This does not excuse respondent's failure to disclose the pending charges. He understood the question and knowingly gave a false answer.

9. Respondent has been licensed as a paramedic for five years. He admitted that he is an alcoholic with a substantial history of alcoholism in his family. He is remorseful for his actions both on and off the job. Since his conviction, respondent has taken important steps toward rehabilitation. He completed an outpatient alcohol rehabilitation program and continues to attend Alcoholics Anonymous (AA). Respondent's wife is providing moral support; and his father-in-law, Gordon Hill, acts as respondent's "unofficial AA sponsor." Mr. Hill is a minister and has worked many years for the Los Angeles County Sheriff. Respondent's father-in-law has substantial experience working with alcoholics. He testified that he is convinced that respondent takes his rehabilitation seriously and is on the right path toward overcoming alcoholism.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke the licenses and licensing rights of respondent Brain J. Maddox pursuant Health & Safety Code section 1798.200, subdivision (c)(6), and California Code of Regulations, title 22, section 100174, based on respondent's conviction and underlying conduct which resulted in said conviction as set forth in Factual Findings 6 and 7.

2. Cause exists to suspend or revoke the licenses and licensing rights of respondent Brain J. Maddox pursuant Health & Safety Code section 1798.200, subdivision (c)(9), based on respondent's addiction to alcohol and misuse of alcohol as set forth in Factual Finding 7.

3. Cause exists to suspend or revoke the licenses and licensing rights of respondent Brain J. Maddox pursuant Health & Safety Code section 1798.200, subdivisions (c)(1) and (c)(5), for providing false information in his renewal application in that he failed to disclose pending criminal charges, as set forth in Factual Finding 8.

4. Respondent's conviction and misconduct are a result of his alcoholism. His efforts at rehabilitation have been substantial since February 2009; and he now has a good support system including his wife and his father-in-law. However, respondent's alcoholism has been an on-going problem as evidenced by his alcohol related accident and the BAC results when he was tested. Further, respondent is still on probation for his 2007 conviction. Respondent should be encouraged to overcome his alcoholism. However, the EMSA's main concern is to protect the public. While there is cause for outright revocation in this case, the record in this case supports a disciplinary order that contains a lengthy period of suspension during which respondent will be required to meet certain conditions that directly address his alcohol abuse so that the public will be adequately protected.

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ORDER

The Emergency Medical Technician – Paramedic License No. P23611, issued to Respondent Brian J. Maddox is revoked. However, that said revocation is stayed and respondent is placed on probation for five years under the following terms and conditions:

1. Suspension

Respondent's Emergency Medical Technician – Paramedic License No. P26311 is suspended for a period of six months beginning on the effective date of this decision.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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 (excluding the suspension period).

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.

8. Obey 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.

9. Abstinence from the Use of Alcoholic Beverages:

The respondent shall abstain from the use of alcoholic beverages.

10. Biological Fluid Testing:

The 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, the 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, the 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. The 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 the 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.

11. Drug/Detoxification/Diversion Program:

Within 30 days of the effective date of this decision, the respondent shall enroll and participate in an alcohol diversion or counseling program approved by the EMSA. The respondent shall participate in the program until appropriate medical supervision determines that further treatment and rehabilitation is no longer necessary.

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

12. Psychiatric/Medical 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, the respondent shall submit to a psychiatric evaluation. The psychiatrist must be approved by the EMSA prior to the evaluation. The respondent shall be responsible for all costs associated with the evaluation.

Within 90 days of the effective date of this decision, and on a periodic basis as specified by a licensed physician, the respondent shall submit to a medical evaluation. The physician must be approved by the EMSA prior to the evaluation. The respondent shall be responsible for all costs associated with the evaluation.

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

13. Completion of Probation:

The respondent's license shall be fully restored upon successful completion of probation.

14. 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 suspension/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 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 the respondent has violated any term of his/her probation sufficient to warrant termination of probation and implementation of actual suspension/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.

DATED: October 26, 2009



HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings