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BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician- Paramedic License Held by: ) Enforcement Matter No.: 15-0018  
) OAH No.: 2016020722  
)  
JAMES C. OH ) **DECISION AND ORDER**  
License No. P18343 )  
)  
Respondent. )

The attached Proposed Decision and order dated September 23, 2016, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The decision shall become effective 30 days after the date of signature.

It is so ordered.

DATED:

*September 27, 2016*

  
Howard Backer, MD, MPH, FACEP  
Director  
Emergency Medical Services Authority

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

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

JAMES C. OH,

License No. P18343,

Respondent.

Case No. 15-0018

OAH No. 2016020722

**PROPOSED DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 30, 2016, in San Diego, California.

Craig Stevenson, Attorney, represented complainant, Sean Trask, Chief EMS Personnel Division, Emergency Medical Services Authority, State of California (EMSA).

James Oh, respondent, represented himself.

The matter was submitted on August 30, 2016.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On January 11, 2016, complainant signed the accusation in his official capacity. The accusation alleged that Mr. Oh's license should be revoked because he suffered a felony conviction in 2014, and was addicted to the excessive use of alcohol.<sup>1</sup>

Respondent timely filed a notice of defense after being served with the required jurisdictional documents and this hearing ensued.

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<sup>1</sup> The accusation was amended at the start of hearing to strike the word "parole" in the Third Cause of Action at line 16 and insert the word "probation."

### *Respondent's License History*

2. On January 16, 2002, EMSA issued Emergency Medical Technician-Paramedic License No. P18343 to respondent. That license is current and will expire on January 31, 2016, unless renewed or revoked. No information was introduced at hearing regarding whether Mr. Oh renewed his license in 2016, but presumably he did.

### *Prior Discipline<sup>2</sup>*

3. In 2008 EMSA filed an accusation against Mr. Oh, Enforcement Matter No. 07-0330, alleging that on November 7, 2007, he was convicted in Riverside County Superior Court of violating Penal Code section 245, subdivision (a)(1), assault upon another person with a deadly weapon other than a firearm, a misdemeanor. The court ordered him to serve 120 days in jail, placed him on three years of summary probation, ordered him to enroll in a 52 week domestic violence program, to perform 20 hours of community service and to pay fines and fees totaling \$730.

The accusation filed in that matter alleged that on August 20, 2007, Murrieta police responded to a report of spousal battery. Upon arriving at Mr. Oh's home, the officer observed Ms. Oh with a swollen left eye with redness and bruising, red marks under both eyes, dried blood on her lip and pants, and redness at the front of her neck. She told the officer she had pain in her nose and believed it was broken. The officer observed that her nose appeared slightly curved. The officer then observed Mr. Oh walk to the driveway holding a can of beer. Mr. Oh was arrested for spousal battery and the officer noted an alcoholic odor on his breath and that his speech was slurred. Reportedly, when they arrived at the jail, Mr. Oh stated, "You've got yourself a wife beater." The accusation detailed the violent beating Mr. Oh inflicted on his wife and sought discipline because of Mr. Oh's conviction and because he was addicted to the excessive use of alcohol.

Mr. Oh and EMSA executed a stipulated settlement agreement and disciplinary order that was effective August 20, 2008. The order revoked Mr. Oh's license, stayed the revocation, suspended his license for 60 days with credit for 30 days served, and placed Mr. Oh on probation for three years with terms and conditions.

### *Respondent's 2014 Arrest and 2015 Conviction*

4. On July 7, 2014, Todd Franco went to the Murrieta Police Department and requested that a "courtesy copy" police report be written, after he was advised by the Los Angeles County Sheriff's Department that an initial report of an incident involving Mr. Franco and respondent was not taken. Mr. Franco gave a statement and Murrieta police

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<sup>2</sup> The prior discipline was not referenced in the accusation filed in this matter.

prepared a report.<sup>3</sup> Mr. Franco stated that on July 5, 2014, in Los Angeles County, Mr. Oh and Mr. Franco, who were acquaintances, were in a verbal argument that escalated into a physical confrontation. Mr. Oh, Mr. Franco, and their families, as well as other families, were staying at a hotel because their daughters were in town for a softball tournament. During the physical confrontation, Mr. Oh punched Mr. Franco with a closed fist, striking Mr. Franco in the right eye, causing an orbital fracture. A Los Angeles County Sheriff's deputy responded to the scene and Mr. Franco went to the hospital where he was treated and released. Mr. Franco provided medical records, had bruising on his face, and had numerous surgical sutures around his eye.

5. A July 7, 2014, Murrieta police report<sup>4</sup> documented that Mr. Franco reported that Mr. Oh was texting him harassing messages. Mr. Franco showed the officer the texts and a message Mr. Oh had posted on Facebook. In the Facebook message, Mr. Oh posted, "so if you kick the sh\*\*<sup>5</sup> out of a guy that has been a racist and has said nothing good about bring [sic] Asian, r u a bad guy?" Mr. Franco advised that he was afraid to contact Mr. Oh to tell him to stop and the officer said he would speak with Mr. Oh. When the officer told Mr. Oh not to contact Mr. Franco, Mr. Oh reportedly told the officer that he would "exercise his First Amendment rights to free speech and he could contact Mr. Franco if he wanted to." Thereafter, Mr. Oh "sent a couple more harassing texts to Mr. Franco" that the officer attached to his report. Those texts corroborated Mr. Franco's statements. The officer informed Mr. Oh that the Los Angeles County Sheriff would be investigating the incident, that the officer was concerned about the text messaging, and advised Mr. Oh that he should not be confessing to a crime on Facebook.

The next morning Mr. Franco again contacted Murrieta police showing them a text message he had received from Mr. Oh in which Mr. Oh stated he was not "electronically harassing" Mr. Franco but confronting him and expected an apology for the bigotry Mr.

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<sup>3</sup> The police report was received pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448. That case considered the kinds of hearsay evidence that are admissible under Government Code section 11513 in an administrative proceeding. That opinion concluded that a law enforcement officer's direct observations memorialized in the officer's report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule and were sufficient to support a factual finding. The opinion concluded that admissions by a party memorialized in the report were admissible under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the Supreme Court concluded that other hearsay statements set forth in the officer's report could be used for the purpose of supplementing or explaining other evidence, but that they were not sufficient by themselves to support a factual finding unless – as with the public employee records exception to the hearsay rule and the party admission exception to the hearsay rule – such hearsay would be admissible over objection in civil actions.

<sup>4</sup> The report was received pursuant to *Lake v. Reed, Id.*

<sup>5</sup> Mr. Oh wrote the swear word.

Franco had shown towards Mr. Oh. Mr. Oh also texted that he would be contacting Mr. Franco's employer "tomorrow" and "exposing you." The officer noted that the text message violated his warning not to contact Mr. Franco and he advised Mr. Franco how to obtain a restraining order.

6. A Los Angeles County Sheriff's report documented that the report was being prepared after receiving a copy of the report taken by Murrieta police. The attached Murrieta report contained copies of the texts between Mr. Oh and Mr. Franco, witness statements, and medical reports. The Los Angeles County sheriff's office contacted witnesses and authored a supplemental report. Witnesses described Mr. Oh as being intoxicated, belligerent and throwing a "sucker punch" at Mr. Franco. They claimed Mr. Oh was upset because Mr. Franco had sexually assaulted his wife (See Finding of Fact No. 11.) and because Mr. Franco told Mr. Oh not to swear in front of the children at the hotel pool.

7. The criminal probation report was received under *Lake v. Reed*, supra, and contained documents pertaining to the investigation. The report noted that Mr. Oh "is a firefighter, an individual trained to help people and render aid. However, in the present matter, he chose to inflict great injury upon the victim. He even went so far as to refuse to follow police instructions to not contact the victim following the incident." The report referenced Mr. Oh's 2007 conviction and noted, "It appears that he has a violent disposition. He is presumptively ineligible for probation, and his suitability is in question." The report concluded by recommending that the "proceedings be suspended" and "probation be granted for a period of three years." No explanation in the report or at hearing was given for why the recommendation in the report contradicted the findings in the report.

8. On January 1, 2015, during his arraignment, the court ordered Mr. Oh to cease posting comments on Facebook regarding the incident. Mr. Oh was charged with violating Penal Code 245, subsection (a)(4), committing an assault by means of force likely to produce great bodily injury, a felony. The district attorney further charged: when committing that offense, Mr. Oh personally inflicted great bodily injury on Mr. Franco within the meaning of Penal Code section 12022.7, subdivision (a), also causing the offense to be a felony.

9. On September 18, 2015, Mr. Oh pled nolo contendere to violating Penal Code 245, subsection (a)(4), a felony. In exchange for his plea, the district attorney struck the great bodily injury allegation. The court noted it had considered the probation report. The court suspended disposition of sentence and placed Mr. Oh on probation for five years with terms and conditions including paying fines, fees and restitution, serving 65 days of community labor, staying away from Mr. Franco, paying restitution to Mr. Franco in the amount of \$4,729.42, paying restitution to Rawlings<sup>6</sup> in the amount of \$1,833.91, not drinking any alcoholic beverage and staying away from places where serving alcohol is the primary business. The court further advised Mr. Oh that "social media comments can be viewed as harassment."

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<sup>6</sup> No information about Rawlings or this restitution was introduced at hearing.

The court documents indicated that if Mr. Oh completed all the terms of his probation and had no new offenses and no contact with Mr. Franco, he would be “entitled to a reduction to a misdemeanor and early termination of probation.”

On August 10, 2016, the Los Angeles County Superior Court issued an order for dismissal pursuant to Penal Code section 1203.4. The court set aside Mr. Oh’s guilty plea, entered a plea of not guilty and dismissed the conviction.

*Other Police Reports Introduced at Hearing*

10. A 2013 Murrieta police report<sup>7</sup> received under *Lake v. Reed*, supra, documented that on September 12, 2013, officers responded to a domestic disturbance at Mr. Oh’s home. Mr. Oh’s son called 911, telling dispatch that his parents were arguing and his mother had thrown bowls of soup on the floor, cutting his father’s foot. Mr. Oh told police at the scene that he had been arrested for domestic violence approximately five years ago and “went through a rough time at work and at home.” After talking to Mr. Oh and his wife, the officer determined there was no crime and reported the incident to CPS because children were present during the argument.

11. On August 4, 2014, Ms. Oh reported a sexual assault to the Murrieta Police Department. The report was received under *Lake v. Reed*, supra, and contained documents pertaining to the investigation. Ms. Oh told police that on August 4, 2013, while at a restaurant with friends and family, a photograph was taken. While the group was assembling, Mr. Franco put his arm around Ms. Oh and squeezed her left breast. Ms. Oh said that this incident led to escalating tensions between Mr. Franco and her husband because their children are in the same softball league and they came in contact with each other quite often. Murrieta police contacted Mr. Franco who admitted to the incident but stated he had apologized afterwards to Mr. and Mrs. Oh.

*Documents Introduced by Mr. Oh*

12. Mr. Oh introduced documents verifying his attendance at Alcoholics Anonymous (AA) meetings.

13. Mr. Oh introduced documents verifying his completion of his court-ordered community service hours.

14. Mr. Oh introduced certificates documenting his successful completion of the court-ordered anger management program.

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<sup>7</sup> The facts documented in this police report were not referenced in the accusation filed in this matter.

## *Letters of Reference*

15. Gary W. Alexander, Captain I, Los Angeles fire Department, wrote that he has been a longtime friend and coworker, as well as Mr. Oh's captain and also his supervisor for nine months. Before that time he and Mr. Oh worked in the same Battalion at a very active fire station. He described Mr. Oh as a good paramedic whom he would want on his crew "without hesitation." Mr. Alexander referenced his own duties and experience identifying individuals lacking in professional standards, writing that this qualified him to evaluate Mr. Oh's character. Mr. Alexander wrote that Mr. Oh performs effectively in group settings, as well as when working alone. He has the ability to perform effectively in leadership or followership capacity. Mr. Oh has the "ability to articulate effective guidance in the midst of disorder and confusion." Mr. Oh does not boast about his achievements or seek recognition, but appears humble and unassuming. He described Mr. Oh as trustworthy, dependable and one who will readily assist family and friends in need. Mr. Alexander wrote that he "highly recommend[s] [Mr.] Oh for a second chance to keep his paramedic license" as he believes "everyone deserves a second chance."

16. Chris Randolph has been a firefighter/paramedic for 12 years and worked with Mr. Oh for six years. He described Mr. Oh as "a very proficient paramedic" who had "great compassion" for his patients. Based upon what he observed, Mr. Randolph requested being assigned to Mr. Oh on a permanent basis and considers Mr. Oh his "paramedic mentor." He described how Mr. Oh reviews and analyzes each run so that he can become better on the next run. Mr. Randolph has also spent much time socializing with Mr. Oh and his family and described him as a "wonderful father and husband" and as a "very caring, attentive, loving father and husband" that "shows through the strong bond he has with his family." Mr. Randolph wrote that "the event that has brought [Mr. Oh] to this hearing is not who he is. In my 6 years of knowing [Mr. Oh] I have NEVER seen a violent side to him, and I have seen him being physical [sic] assaulted, spit on, and called many horrible things by unruly patients. That is not at all who he is." [Capitalization in the original.]

17. Marcus Portis, Firefighter/Paramedic III, has been employed 12 years as a firefighter paramedic and worked four years with Mr. Oh. He wrote that Mr. Oh's "hard work ethic and desire to achieve excellence is inspiring to me and the other crew members. His intelligence and competence is well respected." Mr. Portis praised Mr. Oh's attention to detail, upkeep of their vehicles, and how he implemented creative ideas and donated his own money to upgrade and customize the apparatus that would help serve the community better. He described Mr. Oh as a leader who helps train the new interns and as the "strongest paramedic" at the station "with a wealth of knowledge." He believes that Mr. Oh's leadership and management skills would make him a good candidate for Fire Captain. He also praised him for his work with the Korean community that the station serves, as Mr. Oh speaks Korean fluently. He described the compassion and concern Mr. Oh shows patients and his polite and respectful manner with colleagues and hospital staff. He also described how Mr. Oh is "very effective and calm during high stress incidents." He highly encouraged EMSA to allow Mr. Oh to maintain his license as he "truly believe[s Mr.] Oh has taken every measure to learn from and correct the mistake of his past."

18. John Putnam, R.N., has known Mr. Oh since 1998 when Mr. Putnam was working in a local emergency room. They became friends, due in part to Mr. Oh's "pleasant demeanor each time he brought in a new patient to the emergency room." Mr. Putnam was sad to learn that Mr. Oh lost his job because of the incident, a devastating loss, but one that "is not nearly as devastating as potentially losing the license that enables you to look for other work." Mr. Putnam described Mr. Oh as a "devoted family man and one of the most dedicated fathers I have had the pleasure of meeting. His family depends on him and his salary." Mr. Putnam has never known Mr. Oh to be violent or rude; he "has always been the epitome of professionalism and kindness." Mr. Putnam acknowledged that Mr. Oh's actions that led to his conviction were uncalled for, but "being that alcohol was involved, his normal judgment, clearly, was not forefront in his mind. I feel sure we can all admit that we have used less-than-perfect judgment when drinking likely, that lack of judgment results in embarrassment or heartfelt apology. It is unfortunate that [Mr. Oh's] lack of judgment results in medical bills and treatment for the other party. That being said, to take away someone's ability to support their family financially is, in my opinion, extreme." Mr. Putnam wrote that Mr. Oh's "incident did not happen at work, and was in no way related to his ability or function as a paramedic. It did not involve controlled substances or negligent patient care. There is no history of such behavior before [and] there have never been any aggression issues at work. Even RN's who have drug issues are not striped [sic] of their license initially. They are offered diversion and are given a change [sic] to get their life together."

19. Jeff Lengyel, Principal, Disaster Management Systems, Inc., wrote that Mr. Oh is a full-time employee of the company, the primary provider of triage tags and MCI training in the United States. Restoring Mr. Oh's license would allow Mr. Oh to instruct CE courses on the subject of disaster response and disaster medicine.

20. Arnold Dangan, Recruit Firefighter/Paramedic, Sacramento Metropolitan Fire District, wrote that Mr. Oh was his paramedic preceptor and he has known him for eight years "since my internship." He wrote that Mr. Oh "surpassed my expectations as a preceptor and has since become my mentor in becoming a firefighter." He wrote that Mr. Oh has many great attributes, providing excellent teaching, feedback and assistance to colleagues. He described Mr. Oh as "calm and collected," with good communication skills and one who builds a good rapport with staff. He described Mr. Oh as "an excellent role model" with a professional demeanor and passion towards the fire service, community and patients.

21. Although all the letters were highly complimentary of Mr. Oh, none of them referenced changes in Mr. Oh's behavior following his conviction, his recovery from alcohol abuse, or his changed behavior following completion of the anger management course. Mr. Portis referenced that Mr. Oh had taken steps to correct mistakes of the past, but did not elaborate. Mr. Putnam's letter indicated that he did not appear to have any knowledge of the prior discipline or the fact that it also involved physical abuse, and did not reference anything about Mr. Oh's abuse of alcohol. Moreover, Mr. Putnam failed to appreciate that the goal of discipline is to prevent future harm; as such, a licensee's actions need not occur during the

course and scope of work in order to be substantially related. (*Griffiths v. Superior Court*, (2002) 96 Cal.App.4th 757.) Nothing in Mr. Lengyel's or Mr. Danganan's letters made any reference to Mr. Oh's conviction or addressed rehabilitation/mitigation factors.

### *Witness Testimony*

22. Mr. Oh became extremely tearful during his testimony, profusely apologizing for his actions on the night in question and assuring complainant that he has addressed both the alcohol and physical abuse. He described that through AA he no longer drinks and has addressed his alcohol abuse. He provided documentation corroborating that testimony. He also actively participated in the court ordered anger management program and from it has learned to walk away and not engage when he is upset. He expressed great remorse at the fact that Mr. Franco's family witnessed his assault, as well as his own daughter to whom he had to explain his actions. Mr. Oh testified that this event does not define who he is, he is a good man, and this incident has been very devastating to him and his family.

Mr. Oh testified that all the families were staying at a hotel because of a softball tournament. They had been hanging out by the pool and drinking all afternoon. Later, he got into an argument with Mr. Franco who had made some disparaging racial remarks to Mr. Oh. Moreover, in the past, Mr. Franco had groped Ms. Oh's left breast so tensions were high between the two men. Mr. Oh admitted to striking Mr. Franco and took complete responsibility for his actions. Mr. Oh's testimony and demeanor at this hearing demonstrated that he is extremely remorseful for his conduct. In addition, the documents demonstrated that he has made great strides to rehabilitate himself from this incident and ensure that he never acts this way again. It was clear that the man who appeared in court is not the same man who struck Mr. Franco.

Mr. Oh described the devastation this incident has caused. He was terminated from his employment, his daughter was expelled from the softball league, and his family is in danger of losing their home. He asked if there were any way to retain his license. Mr. Oh acknowledged that he was convicted of a felony but he was advised by the district attorney that once he completed his court-ordered probation, he was eligible to have the felony conviction reduced to a misdemeanor and dismissed pursuant to Penal Code section 1203.4, something he did this past spring.

23. Jessica Oh testified about the breast groping incident and how it had festered between her husband and Mr. Franco. She described the long-standing relationship between the two families, and issues they had in the past. She described her love, respect, and admiration for her husband; testifying about how proud she is of him. She described that his lifelong dream was to be a paramedic because he nearly died from a serious injury when he was a child, but the care he received from the paramedic saved his life, making him want to pursue that profession. She described a recent incident at the airport when Mr. Oh assisted a stricken passenger, administering CPR to bring the passenger back to life. Ms. Oh pleaded for mercy, begging that her husband's license not be revoked and described his great skill and love of his profession. Ms. Oh offered no testimony about Mr. Oh's 2007 battery upon

her. Instead, Ms. Oh testified about the profound changes in her husband since he stopped drinking and completed the anger management course. Ms. Oh's testimony was heartfelt, credible and sincere.

### *Disciplinary Guidelines*

24. EMSA developed disciplinary guidelines in consultation with EMS constituent groups from across the state. The purpose of the guidelines is to provide consistent and equitable discipline in cases dealing with violations of the Health and Safety Code. EMSA uses the guidelines as a standard in settling disciplinary matters and directs administrative law judges to use them as a guide in fashioning a disciplinary recommendation in a contested matter. The recommended discipline should be imposed in the absence of any aggravating or mitigating evidence. If an administrative law judge recommends discipline that is less than the minimum or which exceeds the maximum, the guidelines require that a full explanation be included to make clear why the case warrants unusual consideration. EMSA's director has the final determination related to administrative discipline.

The guidelines provide that the following factors may be considered in determining the measure of discipline to be imposed. In determining an appropriate suspension period, EMSA or an administrative law judge may give credit for a suspension term imposed by a respondent's employer.

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

Under EMSA guidelines, the conviction for any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel carries a maximum disciplinary recommendation of revocation and a minimum disciplinary recommendation of revocation stayed, with three years of probation with terms and conditions.

Under EMSA guidelines, the addiction to the excessive use or misuse of alcohol carries a maximum disciplinary recommendation of revocation and a minimum disciplinary

recommendation of revocation stayed, with three years of probation with terms and conditions.

Under EMSA guidelines, criteria to be considered when determining rehabilitation for alcohol abuse includes, but is not limited to, successful completion of an alcohol treatment program (a minimum of six months duration), employment with a pre-hospital care provider, for a minimum of six months with documentation from the employer that the employer was aware of the previous alcohol abuse problems, a minimum of one year between the time of the second offense and the effective date of the prior order.

#### *Argument*

25. Complainant argued that respondent's substantially related conviction and misuse of alcohol constituted cause to revoke his license.

26. Mr. Oh profusely apologized for his actions and asked for leniency and mercy.

### LEGAL CONCLUSIONS

#### *Purpose of Administrative Discipline*

1. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.)

#### *The Standard of Proof*

2. The standard of proof in an administrative action seeking to suspend or revoke a certificate that requires substantial education, training, and testing is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

3. Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

4. Substantial education, training, and experience is required to apply for a paramedic license in California, and the applicant must pass a nationwide written and practical qualifying examination before licensure; a licensee must meet continuing education requirements after licensure. On this basis, the clear and convincing standard of proof applies in this disciplinary proceeding.

*Relevant Statutory Authority*

5. Health and Safety Code section 1797.1 provides:

The Legislature finds and declares that it is the intent of this act to provide the state with a statewide system for emergency medical services by establishing within the Health and Welfare Agency the Emergency Medical Services Authority, which is responsible for the coordination and integration of all state activities concerning emergency medical services.

6. Health and Safety Code section 1797.7 provides for dual control over paramedic practice in the state and in each local jurisdiction.

7. Health and Safety Code section 1798.200 authorizes EMSA to discipline a licensee. Subdivision (6) authorizes EMSA to discipline a licensee convicted of a substantially related crime. Subdivision (9) authorizes EMSA to discipline a licensee who is addicted to the excessive use or misuse of alcohol.

*Applicable Regulations*

8. California Code of Regulations, title 22, section 10073, provides that the administrative law judge “shall use” the EMSA guidelines when making recommendations for discipline.

9. California Code of Regulations, title 22, section 100174, subdivision (a)(4), provides that EMSA “shall . . . revoke a paramedic license” if the licensee is on parole or probation for any felony. Subdivision (b), provides that the EMSA “shall . . . revoke a paramedic license” if the licensee “has been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a felony. Subdivision (g) provides that EMSA may grant the license to persons otherwise precluded under subdivision (b), if “extraordinary circumstances exist to warrant such an exemption.”

10. California Code of Regulations, title 22, section 100175, provides that a crime is considered substantially related if it evidences present or potential unfitness of a paramedic to perform the functions authorized by the license in a manner consistent with the public health and safety.

11. California Code of Regulations, title 22, section 100176, provides that the rehabilitation criteria to be considered include the nature and severity of the act or crime, evidence of acts committed subsequent to the act or crime under consideration, the time that has elapsed since commission of the act or crime, the extent to which the individual has complied with any court-ordered terms, whether the conviction has been expunged, and other evidence of rehabilitation.

*Evaluation*

12. Mr. Oh, who was previously disciplined for abusing alcohol and inflicting injury on another, and who was convicted of that battery, engaged in similar conduct again. While he has taken great strides to change his behavior and abstain from alcohol, he did so while under court order, an order that only was removed one month before this hearing. Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Mr. Oh's conviction was expunged only one month ago. Too little time has elapsed to conclude that he has been rehabilitated, especially in light of the history presented here. Public protection requires revocation of his license.

*Cause Exists to Impose Discipline*

13. Cause exists to discipline Mr. Oh's license under Health and Safety Code section 1798.200, subdivision (c)(6). The clear and convincing evidence established that Mr. Oh was convicted of a substantially related crime.

14. Cause exists to discipline Mr. Oh's license under Health and Safety Code section 1798.200, subdivision (c)(9). The clear and convincing evidence established that Mr. Oh excessively misused alcohol and, while under the influence, assaulted another person. Thereafter, despite police warnings, he continued to harass that individual online.

15. Cause does not exist to discipline Mr. Oh's license under California Code of Regulations, title 22, section 100174, subdivision (a)(4), as Mr. Oh is not on probation as his conviction was expunged and he was not on probation when he struck Mr. Franco.

16. Cause does not exist to discipline Mr. Oh's license under California Code of Regulations, title 22, section 100174, subdivision (b)(2), as Mr. Oh was not "convicted and released from incarceration" during the past 10 years for an offense punishable as a felony. Although his conviction was punishable as a felony, he was not "convicted and released from incarceration," as he was never placed in custody for his conviction. The superior court suspended imposition of sentence and placed Mr. Oh on probation, thereafter dismissing the conviction pursuant to Penal Code section 1203.4.

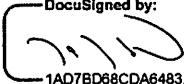
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ORDER

License number P18343 issued to James Oh, respondent, is revoked pursuant to legal conclusions 1-8 and 10-14, jointly and separately.

DATED: September 23, 2016

DocuSigned by:  
  
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MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings



GENERAL JURISDICTION DIVISION

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Department of General Services

Governor Edmund G. Brown Jr.

September 23, 2016

Emergency Medical Services Authority  
Attn: Director  
10901 Gold Center Drive, Suite 400  
Rancho Cordova, CA 95670-6073

**Subject:** Oh, James C.  
OAH No. 2016020722  
Agency No. 15-0018

Enclosed are the following:

- The original Proposed Decision
- An agency order of adoption. If the Proposed Decision is adopted, please return a copy of the signed adoption order to the Office of Administrative Hearings.
- The original Decision
- Exhibits numbered: 1 - 19.

Please make sure you have received all listed exhibits. If exhibits are missing, please contact OAH immediately.

- Email copy of the Proposed Decision to:
- The above referenced case was resolved prior to conclusion of the hearing. We are returning the enclosed original exhibits 1 – x to you.

MAM:gv

Encl.

Transmittal Form  
OAH 60 (Rev. 04/09)

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