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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.: 15-0146
) OAH No.: 2016020713
)
6 **RICKY F. SEWARD**) **DECISION AND ORDER**
License No. P24439)
)
Respondent.)

The attached Proposed Decision and order dated August 30, 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 1, 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:

RICKY F. SEWARD,
License No. P24439,

Respondent.

Case No. 15-0146

OAH No. 2016020713

PROPOSED DECISION

Administrative Law Judge Debra D. Nye-Perkins, Office of Administrative Hearings, State of California, heard this matter in Riverside, California, on August 2, 2016.

Craig L. Stevenson, Senior Staff Counsel/Retired Annuitant, represented complainant Sean Trask, Chief of the EMS Personnel Division of the Emergency Medical Services Authority (EMSA or Authority).

Respondent Ricky F. Seward appeared on his own behalf.

The matter was submitted for decision on August 2, 2016.

FACTUAL FINDINGS

License Background

1. On January 5, 2007, EMSA issued Emergency Medical Technician-Paramedic (EMT-P) license number P24439 to respondent. His license is valid through January 31, 2017, unless revoked or suspended.

Jurisdictional Information

2. On July 22, 2016, complainant executed the First Amended Accusation in the above - captioned matter in his official capacity. The First Amended Accusation alleged that respondent violated Health and Safety Code section 1798.200, subdivision (c)(9), for his

excessive use, or misuse, of alcohol and his actions driving after drinking excessive amounts of alcohol on May 20, 2015.

3. Respondent timely submitted his Notice of Defense.

Prior Discipline

4. On January 21, 2011, complainant executed an Accusation against respondent alleging that respondent was convicted on September 10, 2010¹, in San Bernardino County Superior Court, in case No. TSB1000106, of violating Vehicle Code section 23103, reckless driving, a misdemeanor. The circumstances alleged in the Accusation were that respondent was arrested after driving a vehicle with a blood alcohol content of 0.10 percent on December 13, 2009.

5. On February 14, 2011, a Stipulated Settlement Agreement and Disciplinary Order (Stipulated Settlement Agreement) was signed by Daniel R. Smiley, Acting Director of EMSA, in his official capacity, after it had been executed by respondent and the Acting Chief of Enforcement of EMSA. Pursuant to the Decision and Order resulting from the Stipulated Settlement and effective March 14, 2011, respondent's EMT-P License No. P24439 was revoked, and revocation was stayed for three years subject to probationary terms and conditions, including that respondent abstain from the use of illegal drugs and alcohol, submit to random alcohol screening tests, and comply with other standard terms of probation. Respondent successfully completed his probation on March 14, 2014.

Respondent's 2015 Arrest and Prior Convictions

6. On May 20, 2015, respondent was arrested for driving a motor vehicle while under the influence of alcohol with a blood alcohol concentration of over 0.08 percent. No evidence was provided to establish a resulting conviction based upon this arrest.

7. Complainant established the circumstances of the 2015 arrest through California Highway Patrol Officer James Eagleman's testimony and narrative police report, which was received into evidence.² Respondent also testified regarding the circumstances of his arrest.

¹ The September 10, 2010, date referenced in the Accusation appears to be a typographical error. The actual conviction date established by court documents is September 15, 2010.

² These factual findings are based in part on information included in police reports received under *Lake v. Reed* (1997) 16 Cal.4th 448, 461-62, 464, which held that portions of a law enforcement officer's report, including the officer's observations and the party's admissions, are admissible in an administrative proceeding over a hearsay objection.

8. On September 15, 2010, respondent was convicted on his plea of nolo contendere in the Superior Court of California, County of San Bernardino, in case No. TSB1000106 to violation of Vehicle Code section 23103, wet reckless driving, a misdemeanor.³ Respondent was placed on probation for 36 months with terms and conditions including paying fines and restitution totaling \$2,156; attending and completing a wet reckless program; not driving a vehicle with any measurable amount of alcohol in his system; and submitting to a blood alcohol test upon the request of an arresting officer. The circumstances of this conviction were established through respondent's testimony, as well as the arresting police officer's narrative report, which was received into evidence.

Testimony of Officer James Eagleman regarding the 2015 Arrest

9. James Eagleman has worked as a California Highway Patrol officer for about six-and-a-half years. He has had about 52 hours of formal training on the recognition of driving under the influence of alcohol. He was certified in July 2012 as a drug recognition expert. Officer Eagleman has made approximately 300 arrests for driving under the influence of drugs or alcohol during his career.

Officer Eagleman was on routine patrol in Riverside County on May 20, 2015, when at about 4:18 a.m. he and his partner were called to a traffic collision. When they arrived at the scene at about 4:45 a.m., Officer Eagleman observed a vehicle that had crashed into a guardrail on a windy, rural mountain road. Officer Eagleman observed respondent sitting outside the vehicle on the guardrail. The vehicle had struck the guardrail and landed on the shoulder of the road just before a 400 to 500 foot descent off of a cliff. Officer Eagleman observed that respondent had red and watery eyes and demonstrated objective signs of being intoxicated. He also observed the smell of alcohol emanating from respondent's person. Respondent told the officers that he had been driving at the time of the collision which was about 3:00 a.m. Respondent told the officers that he had fallen asleep behind the wheel of his vehicle and hit the guardrail. He further stated that about 10 minutes after the accident a truck driver stopped to help and took him to "Running Springs" so that he could get reception on his mobile telephone. Respondent stated he then got a ride from a different driver back to his vehicle. When the officers asked him if he had been drinking that evening, respondent told the officers that he had consumed five beers. Respondent told the officers that he had not consumed any alcohol after the collision happened. When they asked him why he did not call the police earlier, given that the accident happened at about 3:00 a.m., respondent answered that he did not have any reception on his mobile phone to make such a call.

³ The court records for this conviction indicate that respondent was previously convicted on September 28, 2000, for violation of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. Respondent testified about the circumstances of the 2000 conviction.

Officer Eagleman administered field sobriety tests to respondent, including the horizontal gaze nystagmus test, the Romberg test, the finger to nose test, and the one leg standing test. Respondent failed those tests. Officer Eagleman also administered a preliminary alcohol screen (PAS) breath test twice to respondent. The PAS test results indicated that respondent's blood alcohol concentration was 0.110 percent on the first test and 0.108 percent on the second. Officer Eagleman then arrested respondent for driving while intoxicated.

At the time of the arrest, officer Eagleman looked at respondent's mobile phone and noted that the phone had three out of four reception bars available to it, indicating that respondent would have been able to place a telephone call from the mobile phone at the scene of the accident with no problems. After his arrest, respondent spontaneously stated to the officers that the truck driver gave him a shot of whiskey which he drank after the accident.

10. After his arrest, a blood alcohol concentration test was performed on respondent. The results of that blood alcohol test were not offered into evidence.

Circumstances Underlying the 2010 Conviction

11. On December 13, 2009, respondent was arrested for driving under the influence of alcohol. The circumstances of his arrest were obtained from the arresting officer's narrative report admitted into evidence and summarized below. The officer received a radio call at 4:45 a.m. of a vehicle driving through a road closure. At about 4:50 a.m. the officer received a radio call of a vehicle that had run off the road and had become stuck in the snow. The officer arrived on the scene and observed the vehicle stuck on a downhill embankment after having struck a barbed wire fence. The officer observed respondent in the driver's side of the vehicle with obvious symptoms of intoxication. The officer administered field sobriety tests to respondent, which he failed. The officer obtained two PAS breath samples from respondent. The results of the PAS tests showed that respondent had 0.146 percent blood alcohol content, and 0.164 percent blood alcohol content. Respondent was then arrested.

Respondent's Testimony

12. Respondent is 38 years old. He currently works as a paramedic at Big Bear Fire Department, where he has worked for the past 17 years. He has worked as a paramedic for about 10 years. Prior to working as a paramedic, he worked at Big Bear Fire Department as a fire fighter with Emergency Medical Technician training. He is the father of two children, ages 11 and 15, and is currently in the process of divorcing from his wife.

13. Respondent testified that the first time he was arrested for driving under the influence of alcohol was in 2000. He stated that on the night of his arrest in 2000 he had been celebrating a friend's birthday and had been drinking at various bars. Respondent stated that he was driving while intoxicated and was in the process of pulling out of a gas

station on his way to a club when he was pulled over by the police for not having his headlights on. He stated the police officer immediately recognized he was intoxicated, and he was arrested. Respondent admitted he was intoxicated that night and should not have been driving. He stated he did not contest the charges brought against him after that arrest because he was driving with over the legal limit of alcohol in his system.

14. Respondent also testified regarding the circumstances giving rise to his 2010 conviction. At the time of his arrest in December 2009, respondent was separated from his wife. He stated that while he is not addicted to alcohol, during the time he was separated from his wife, he "drank more than he normally did." He said that on the night of December 13, 2009, he had been drinking alcohol and was giving a friend a ride home and his vehicle slid off the road in the snow. He stated that although he had been drinking, according to the Department of Motor Vehicles he "was not guilty of breaking the law." He said that he was convicted of "wet reckless" and, he believed that meant that he was driving with a blood alcohol content that was not over the legal limit.

Respondent stated that after the December 13, 2009, accident, he stopped drinking alcohol for a number of years. He stated that in the fall of 2014 he started seeing a counselor because of the stress related to his separation from his wife and upcoming divorce. He said that at the end of 2014, he began drinking alcohol again "with the advice of my counselor." Respondent said that he was going through a divorce from his wife during that time and his counselor told him that it was ok "to let loose a bit." Respondent stated that since the end of 2014 he drank alcohol occasionally, maybe once a month or less.

15. With regard to the 2015 arrest, respondent testified that in the early morning of May 20, 2015, he did not drive his vehicle "over the legal [alcohol] limit" and was not intoxicated when he drove his vehicle that night. Instead, he claimed he was "extremely tired" and fell asleep while driving. Respondent stated that he had finished a 48 hour shift at work at about 6:00 a.m. on May 19, 2015, and then he drove to Riverside, California to attend an eight hour class. After he completed the class, he attempted to drive back to Big Bear, but the freeway was blocked with traffic. Instead, he went to a mall for about 30 minutes, during which time he consumed one beer. He left the mall to drive to a girlfriend's house in Ontario where he drank about one and a half beers and ate food. He was at the girlfriend's home for a couple of hours. Respondent then left his girlfriend's home and drove to a club in San Bernardino at about 9:00 p.m. He claimed that he did not drink any alcohol at the club. Respondent left the club and went to San Manuel and drank two beers over the course of another two hours. He also had a meal at San Manuel. Respondent said that he gave himself "time to sober up," had a non-alcoholic drink, and waited over an hour before driving. Respondent stated that when he started driving at about 2:00 a.m., he was sober but extremely tired. He said he knows the dangers of driving while intoxicated and was not taking that chance. He stated that he stands by his decision to drive that night, despite his extreme exhaustion. Respondent stated that if he had been drunk at the time he started driving at 2:00 a.m., he would not have made it as far as he did up the mountainous road. He was about 10 minutes from home when he had his accident and had been driving for about

45 minutes. Respondent stated that he did "doze off a few times" while driving and ultimately fell asleep and struck the guardrail.

After he struck the guardrail, respondent got out of his vehicle to assess the damage. He stated that a car stopped to help, but he told the driver he was fine and he would call for help. He stated that after the car drove away, he realized that he had no reception on his mobile phone. Thereafter, respondent stated that a truck driver picked him up and told respondent that he had called in the accident to police. According to respondent, the truck driver "called in the accident" and then took respondent to a gas station about 10 minutes away and dropped him off. Respondent stated that he asked the truck driver for a cigarette, and the truck driver gave him a shot of whiskey, which he drank. At the gas station respondent bought a bottle of water and asked the attendant at the gas station to use the phone so he could call his insurance company with the understanding that the insurance company would tell him what to do. According to respondent, another customer at the gas station drove him back to the accident scene. Respondent claimed that he got back to the accident scene about one hour after the accident. He also claimed that he waited an additional 45 minutes after returning to the accident scene before the police arrived. When the police arrived, respondent claimed he told the police he had been drinking but "was ok to drive." He said that after the officers administered the field sobriety tests, he was arrested. He stated that he told the officers that he drank a shot of whiskey after the accident.

16. Respondent stated that he began counseling in the fall of 2014 during the time he and his wife were starting the divorce process. He started the counseling to manage the stress associated with the upcoming divorce. He said the last time he drank alcohol was November 2015, when he attended a wedding and had a single glass of champagne. Later in his testimony he stated that at the November wedding he had two glasses of wine with dinner. Respondent repeatedly testified that he is not an alcoholic and does not have a drinking problem.

Respondent has not attended counseling recently; his last counseling visit was in March 2016. Respondent stated that in December 2015 he voluntarily attended an alcohol treatment program for four months, three days per week, through his community mental health services. He stated that he did so because of his arrest and the issues in this Accusation, but he reiterated that he was not an alcoholic and was not drinking over the legal limit on the morning of his accident in 2015. Respondent stated that he also began attending Alcoholic Anonymous (AA) meetings around the same time period because of his 2015 arrest. He attended the AA meetings once a week for several months. Respondent provided no documentary evidence of his counseling, alcohol treatment program, or AA meeting attendance.

Other Evidence

17. Respondent provided a Notification of Findings and Decision and Order of Set Aside (Findings) from the Department of Motor Vehicles (DMV) related to the suspension of

his driver's license after his 2015 arrest. Respondent testified that the document was provided to him after he had a hearing at the DMV regarding his driver's license suspension. The suspension of his driver's license was set aside following the hearing. According to the Findings, the DMV concluded that while respondent was lawfully arrested for driving under the influence of alcohol, he was not driving the vehicle when he had 0.08 percent or more by weight of alcohol in his blood. As part of their findings, the DMV decided that respondent drank whiskey from a truck driver after his accident.⁴

LEGAL CONCLUSIONS

1. The EMSA is the state agency "responsible for the coordination and integration of all state activities concerning emergency medical services." (Health and Safety Code, section 1797.1.) Emergency medical services (EMS) are "the services utilized in responding to a medical emergency." (Health & Saf. Code, § 1797.72.)
2. The Authority has jurisdiction to proceed in this matter pursuant to Health and Safety Code section 1798.200. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are non-penal; 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.)
3. The standard of proof in an administrative proceeding seeking to suspend or revoke a certificate that requires substantial education, training, and testing is "clear and convincing evidence" to a reasonable certainty. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong to

⁴ The DMV's findings regarding this matter are not precedential in this case and do not preclude the EMSA's findings on these issues. In *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342-344, the California Supreme Court set forth the doctrine of issue preclusion. According to the court, the doctrine of issue preclusion "precludes relitigation of issues argued and decided in prior proceedings," when six criteria are met. These criteria are: (1) "The issue sought to be precluded from relitigation must be identical to that decided in a former proceeding;" (2) the issue to be precluded "must have been actually litigated in the former proceeding;" (3) the issue to be precluded "must have been necessarily decided in the former proceeding;" (4) "the decision in the former proceeding must be final and on the merits;" (5) "the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding;" and (6) application of issue preclusion must be consistent with the public policies of "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." Application of these factors dictates that because the DMV and the EMSA are not the same party or in privity with each other, and respondent's driver's license and paramedic's license are not identical, issue preclusion does not apply.

command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

Applicable Law

4. Health and Safety Code section 1798.200 provides in relevant part:

(b) The authority may . . . suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c) . . .

Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the . . . suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate or licenseholder under this division:

[¶]...[¶]

(9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

5. For the purposes of denial, placement on probation, suspension, or revocation, of a license pursuant to Section 1798.200 of the Health and Safety Code, a crime or act shall be substantially related to the qualifications, functions and/or duties of a person holding a paramedic license under Division 2.5 of the Health and Safety Code. A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a paramedic if to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety. (Cal. Code Regs., tit. 22, § 100174, subd. (a).)

EMSA's Disciplinary Guidelines

6. EMSA has developed "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" dated July 26, 2008 (Guidelines), which are incorporated by reference in EMSA's regulations at California Code of Regulations, title 22, section 100172.

Section III of the Guidelines sets forth categories of violations and the recommended levels of discipline for each

category. For misuse or excessive use of alcohol, the maximum discipline is revocation and the minimum discipline is revocation stayed, with three years' probation with standard terms and conditions. (Guidelines, p. 7.)

Section II of the Guidelines sets forth factors to be considered when determining the appropriate discipline to be imposed in a given case. The factors include: The nature and severity of the act, offense, or crime under consideration; the actual or potential harm to the public or any patient; prior disciplinary record; prior warnings on record or prior remediation; the number and/or variety of current violations; aggravating evidence; mitigating evidence; any discipline imposed by the paramedic's employer for the same occurrence of that conduct; rehabilitation evidence; in cases with a criminal conviction, compliance with the terms of the sentence and/or court-ordered probation; overall criminal record; time that has elapsed since the act or offense occurred; and if applicable, evidence of expungement proceedings under Penal Code section 1203.4. (Guidelines, pp. 1-2.)

Cause Exists to Revoke Respondent's EMT-P License

7. Cause exists to discipline respondent's EMT-P license pursuant to Health and Safety Code section 1798.200, subdivision (c)(9). Respondent used alcohol in such a manner as to be a danger to himself and others on May 20, 2015.

Evaluation Regarding the Degree of Discipline

8. Consistent with EMSA's disciplinary guidelines, under the circumstances of respondent's conduct, and in order to ensure public protection, respondent's license should be revoked. Respondent abused alcohol to such an extent that police were required to arrest him for his safety and for the safety of others on May 20, 2015. Respondent's testimony that he was sober at the time of the accident on May 20, 2015, thereafter took a sip of whiskey from a truck driver, returned to the accident scene by way of another customer at a gas station, and then waited another 45 minutes for police to arrive before he was found intoxicated, pushes the boundaries of plausibility. This incident occurred after respondent had already incurred two prior arrests for driving while drinking. One arrest resulted in a conviction for driving under the influence, and the other resulted in a conviction for "wet reckless" driving. Despite his extensive experience with arrests for driving while intoxicated, respondent still argued that he reasonably took a sip of whiskey after the accident and during the time he was waiting for the police to arrive on the scene. Respondent provided no evidence other than his own testimony to support this argument.

The reasonable conclusion resulting from the weight of the evidence is that respondent was driving a vehicle while intoxicated when he had an accident. His actions call into question his ability to exercise sound judgment in the performance of his duties as a paramedic. “[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice.” (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772-3, citing *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

Respondent repeatedly testified that he does not have a problem with alcohol consumption and was sober, but very tired, at the time of the 2015 accident. Respondent testified that he voluntarily stopped drinking alcohol for a period of time after his December 2009 arrest for driving under the influence of alcohol, but started drinking again in 2014 when enduring the stresses of his divorce. It is noted that he was required to remain sober from March 14, 2011, to March 14, 2014, pursuant to the terms of the Decision and Order of the EMSA. While respondent attended some AA meetings and an alcohol treatment program in an effort to address the issues in this Accusation, he continued to drink alcohol on occasion and has made no commitment to sobriety. Respondent has failed to establish that he is rehabilitated.

ORDER

Respondent Ricky F. Seward’s EMT-P License No. P24439 is hereby revoked.

DATED: August 30, 2016.

DocuSigned by:

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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings