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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician- Paramedic License of:)
Enforcement Matter No.: 09-0316)
CHRISTIAN D. VASQUEZ) **DECISION AND ORDER**
License No: P26948)
Respondent.)
_____)

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective thirty days after the date below. It is so ordered.

DATED: 11/15/2011


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:

CHRISTIAN D. VASQUEZ
License No. P26948,

Respondent.

Case No. 09-0316

OAH No. 2010100762

PROPOSED DECISION

This matter was heard by Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 12, 2011, in Los Angeles, California.

Cynthia L. Curry, Senior Staff Counsel, represented Complainant Sean Trask, Chief, Personnel Division, Emergency Medical Service Authority (EMSA), State of California (Complainant).

Christian D. Vasquez (Respondent) was present and represented himself.

Oral and documentary evidence was received at the hearing. The record was held open until May 31, 2011, for Respondent to submit additional documentary evidence. Respondent timely submitted a cover letter, dated May 28, 2011, with four letters attached: A letter dated May 26, 2011 from Andres Colmenares; a letter dated May 23, 2011 from Lina Quintanilla; a letter, in Spanish, dated May 24, 2011 from Luz M. Colmenares; and a letter dated May 23, 2011 from Clarissa Abijaoude-Vasquez. The cover letter and attached four letters are collectively identified as Exhibit B. No objections were received to the admissibility of the documents. Exhibit B is admitted into evidence.

The record was closed and the matter was submitted for decision on May 31, 2011.

FACTUAL FINDINGS

1. On January 27, 2009, the EMSA issued Emergency Medical Technician-Paramedic (EMT-P) License Number P26948 to Respondent. The license, which lapsed in January 2011, was in full force and effect at all times relevant to this matter.

2. Complainant brought the Accusation solely in his official capacity as Chief, Personnel Division, EMSA. Respondent timely requested a hearing.

3. a. On March 12, 2010, Respondent entered a plea of no contest and was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of .08% or more, a misdemeanor. Imposition of sentence was suspended and Respondent was placed on probation for three years, under terms including that he serve 13 days of community service, complete a three-month first offender alcohol treatment program, attend ten Alcoholics Anonymous (AA) meetings, pay fines and fees totaling \$374, and not operate a motor vehicle with any measurable amount of alcohol in his blood system.

3. b. The circumstances underlying this conviction occurred on January 29, 2010 after a friend's birthday celebration, when Respondent was observed by two California Highway Patrol officers to be driving his vehicle in such a way as to drift from his lane during a left turn. One of the officers initiated a traffic stop. Respondent exhibited signs of being under the influence of alcohol. Respondent was asked to perform field sobriety tests, which he failed. After his arrest, Respondent's blood alcohol content was determined to be .17/.16 percent.

3. c. Respondent's crime is substantially related to the qualifications, functions, and/or duties of a person holding a paramedic license, in that to a substantial degree it evidences a present or potential unfitness of a paramedic to perform the functions authorized by his license in a manner consistent with the public health and safety.¹ Specifically, driving under the influence of alcohol evidences a disregard for the safety of persons and property and evidences extremely poor judgment in the operation of a motor vehicle.

3. d. Respondent completed all terms and conditions of his probation. He completed the hours of community service. He paid the fines. He completed the three month alcohol treatment program, and attended the ten AA meetings ordered by the court.

4. EMSA conducted an investigation after it received notification of Respondent's arrest and conviction. The investigation, conducted by EMSA Special Investigator Brian Liomin, determined that Respondent had been driving while under the influence of alcohol.

5. During the hearing, Respondent confirmed that he was driving while under the influence of alcohol. He fully acknowledges that the facts presented by Complainant are correct. He agrees with EMSA that his conduct demonstrated poor judgment and evidenced a disregard for public safety. Respondent convincingly testified that the conviction has caused him to take a close look at his personal decisions, and that he does not want to again put at risk the career he worked so hard to obtain.

6. Respondent has taken steps to ensure that the conduct which led to the conviction does not recur. He attended the alcohol treatment program and AA classes required by his probation. In addition, respondent voluntarily sought treatment by attending

¹ See California Code of Regulations, title 22, section 100174, subdivision (a).

several therapy sessions to learn to manage the personal stress which led to his conduct. Respondent credibly testified that he no longer drives a vehicle after consuming alcohol.

7. Respondent is 31 years old. He is recently married and wishes to begin a family. He had worked in the emergency medical field for six years before losing his job as a result of the conviction. Respondent is currently enrolled at Los Angeles Valley College. He is studying to become a nurse. He is also working as a mental health worker at Mission Community Hospital.

8. The letters presented by Respondent in support of his continued licensure demonstrate that he is surrounded by a very supportive network of family and friends. The content of the letters also support Respondent's contention that he has changed since the conviction, and that it is unlikely for the conduct to recur. Lina Quintanilla, a family friend who has known Respondent for the past 10 years, wrote: "I have seen the remarkable change in [Respondent] since that unfortunate day back in 2010." Claimant's wife, Clarissa Abijaoude-Vasquez, articulately described Respondent's background, the stress he was under at the time of the incident that led to his conviction, and the steps he has taken since that time to assure that the conduct is not repeated, stating: "I have seen [Respondent] look introspectively and regain his sense of self, and subsequently reemerge stronger. He has evaluated relationships and circumstances that may have contributed negatively to his life and refocused on friendships and family that surrounds him with love, support and positive outlets."

9. The factors established by the EMSA to be considered in determining discipline of a licensee are applied to Respondent as follows:²

- A. Nature and severity of the act(s), offense(s), or crime(s) under consideration. Respondent's drunken driving conviction was a first offense.
- B. Actual or potential harm to the public. Only potential harm to the public was established.
- C. Actual or potential harm to any patient. No harm to any patient was established.
- D. Prior disciplinary record. Respondent has no prior history of discipline with the EMSA.

² These factors are part of the EMSA's "Recommended Guidelines for Disciplinary Orders and Conditions of Probation," dated July 10, 2002 (Guidelines), established pursuant to California Code of Regulations, title 22, section 100172, subdivision (d).

- E. Prior warnings on record or prior remediation. Respondent has received no prior warnings from the EMSA.
- F. Number and/or variety of current violations. There was only one violation. The number and variety of violations in this matter are therefore minimal.
- G. Aggravating evidence. No evidence of aggravation was established.
- H. Mitigating evidence. No evidence of mitigation was established.
- I. Rehabilitation evidence. Respondent presented evidence of rehabilitation, as described in factual finding numbers 6, 7 and 8.
- J. Compliance with terms of the sentence and/or court-ordered probation. Respondent completed all terms and conditions of his probation.
- K. Overall criminal record. No evidence was presented establishing that Respondent has any other criminal record.
- L. Time that has elapsed since the act(s) or offense(s) occurred. It has been one year, eight months since Respondent's drunken driving conviction. It has been approximately one year, ten months since the offense which led to the conviction.
- M. If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4. Respondent did not present evidence that the conviction has been expunged.

LEGAL CONCLUSIONS

1. *Burden and Standard of Proof.* Complainant bears the burden of proof in this case. The standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

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2. *First Cause for Discipline (Misuse of Alcohol).* Respondent is subject to disciplinary action under Health and Safety Code section 1798.200, subdivision (c) (9), in that it was clearly and convincingly established by his March 2010 conviction for drunken driving and the EMSA investigation that Respondent misused alcohol when he chose to drive his vehicle after consuming alcoholic beverages at his friend's birthday party. (Factual Findings 3, 4 and 5.)

3. *Second Cause for Discipline (Conviction of a Crime).* Respondent is subject to disciplinary action under Health and Safety Code section 1798.200, subdivision (c) (6), in that it was clearly and convincingly established that Respondent's conviction in 2010 for violating Vehicle Code section 23152, subdivision (b), was for a crime substantially related to the qualifications, functions, and/or duties of a licensed paramedic within the meaning of California Code of Regulations, title 22, section 100174, subdivision (a). (Factual Findings 3, 4 and 5.)

4A. *Disposition.* Minimum discipline in this case is warranted. Respondent demonstrated a lack of regard for public safety and poor judgment by driving under the influence of alcohol. The incident and conviction are recent but the conviction was a first offense and Respondent immediately took meaningful rehabilitative steps to address the behavior which led to the conviction. The incident did not involve patient care. No one was harmed as a result of the incident. Respondent fulfilled all terms of his criminal conviction. The EMSA's Guidelines recommend "variable depending on the nature of the crime with terms and conditions" for conduct resulting from the conviction of a crime. The EMSA's Guidelines recommend revocation stayed with a suspension until successful completion of drug/alcohol detoxification diversion program, and three years probation for discipline that is the result of addiction to or the misuse of alcoholic beverages, narcotics, dangerous drugs, or controlled substances. Here, Respondent has already completed an alcohol diversion program as a condition of his criminal probation. It has not been shown that Respondent is an alcoholic. The ALJ therefore recommends the minimum level of discipline for conviction of a crime, which is one year probation with terms and conditions aimed at addressing alcohol misuse. The optional conditions in the Order below requiring complete sobriety and random fluid testing will confirm that such is the case and that the public will not be jeopardized by Respondent retaining his license while on probation. In addition, the optional condition requiring Respondent to regularly attend alcohol dependency support group meetings is meant to provide Respondent with a continuing reminder of the seriousness of his misconduct in order to prevent him from doing it in the future. In light of the fact that Respondent has already participated in alcohol rehabilitation programs through his criminal probation, requiring him to participate in an alcohol diversion program (optional condition 4 of the Guidelines) is not warranted at this time. Respondent is not being required to function as a Paramedic (standard condition 6) because he is currently attending nursing school. (Factual Findings 1-9.)

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ORDER

Paramedic License No. P26948 issued to Respondent Christian D. Vasquez (the Respondent) is revoked pursuant to Legal Conclusions 2 and 3, jointly and separately. However, such revocation is stayed, and the Respondent is placed on probation for one year, upon 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 pre-hospital 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. 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 Health and Safety Code 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.

7. Completion of Probation

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

8. 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 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.

9. Abstinance 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 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 alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and 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 alcohol screening.

At the EMSA's sole discretion, the EMSA may allow the random testing to be conducted by the Respondent's employer to meet the requirement of random testing as set forth above. The results of the employer's random testing shall be made available to the EMSA in the time frames described above.

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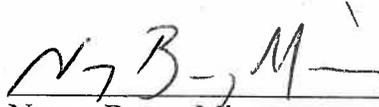
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11. Alcohol Dependency Support Group Attendance

The Respondent shall attend an alcohol dependency support group meeting (e.g., Alcoholics Anonymous) at least two times per month. In his quarterly reports to the EMSA, the Respondent shall provide verified documentation of such attendance, in a form specified by the EMSA. Respondent shall fulfill this term for the duration of his probation, unless the EMSA orders otherwise.

DATED: November 8, 2011



Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings