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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.: 12-0279  
) OAH No.:2014080379  
)  
)

**PATRICK YOUNG**  
License No. P24312

) **DECISION AND ORDER**  
)  
)  
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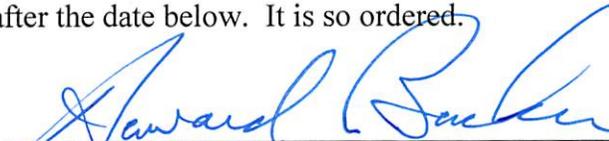
Respondent.

The attached proposed decision is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective 30 days after the date below. It is so ordered.

DATED:

*August 25, 2015*

  
Howard Backer, MD, MPH, FACEP, Director  
Emergency Medical Services Authority  
State of California

**BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA**

**In the Matter of the Accusation and Petition  
to Terminate Probation Against:**

**PATRICK M. YOUNG,  
EMT-P License No. P24312**

**Respondent.**

**Case No. 12-0279**

**OAH No. 2014080379**

**PROPOSED DECISION**

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on June 10, 2015, in Sacramento, California.

Complainant Sean Trask, Chief, EMS Personnel Division of the Emergency Medical Services Authority (EMSA), Health and Human Services Agency, was represented by Stephen Egan, Staff Counsel – Retired Annuitant.

Respondent Patrick M. Young was present and represented by Christopher C. K. Parkhurst, Attorney at Law.<sup>1</sup>

Evidence was received, the record was closed, and the matter was submitted for decision on June 10, 2015.

On June 25, 2015, the ALJ issued an Order Reopening Record until July 21, 2015, to (1) allow either party to present documentary evidence regarding whether EMSA initiated action to terminate probation or gave notice to respondent of EMSA's intent to initiate such action during respondent's probationary period; (2) present written argument regarding whether such action or notice of intent to initiate such action was sufficient to extend the period of probation pursuant to paragraph 9.C(1) of the Stipulated Settlement Agreement and Disciplinary Order signed by respondent on October 25, 2010; and (3) present documentary evidence regarding the current status of respondent's EMT-P license number P24312. Complainant's counsel submitted written argument addressing the points in the Order Reopening Record. The record was closed on July 21, 2015.

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<sup>1</sup> 1007 7th Street, Suite 302, Sacramento, CA 95814.

## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. Respondent received EMT-P License No. P24312 from EMSA on November 21, 2006. The license will expire on November 30, 2016.
2. On July 14, 2014, complainant acting solely in his official capacity filed the Accusation and Petition to Terminate Probation in this matter.
3. On July 23, 2014, respondent signed and submitted a Notice of Defense to EMSA. The hearing in this matter followed.

### *Prior Discipline*

4. Effective December 8, 2010, pursuant to a Stipulated Settlement Agreement and Disciplinary Order, EMSA revoked respondent's EMT-P License No. P24312, however, the revocation was stayed and respondent's license was placed on probation for three years. Respondent's term of probation with EMSA ended on December 8, 2013.
5. The basis for EMSA's 2010 disciplinary action was that on October 31, 2009, respondent was arrested in Butte County for driving under the influence of alcohol, with a blood alcohol content of .07 percent, as determined by a breath test, and that on February 1, 2010, in Butte County Superior Court, respondent pled no contest to a misdemeanor violation of Vehicle Code section 23103 (reckless driving).

### *Current Causes of Action*

#### FIRST CAUSE: DECEMBER 3, 2013 CONVICTION

6. On December 3, 2013, in the Sacramento County Superior Court, Case No. 12M06051, respondent pled nolo contendere to a misdemeanor violation of Harbors and Navigations Code section 655, subdivision (c); use of a watercraft with a blood alcohol concentration of over .08 percent. The court granted respondent a three-year term of informal probation, and ordered respondent to serve nine days in jail, pay fines and penalties in the amount of approximately \$580, and to complete a boater safety course. Respondent has completed the boater safety course, and is in compliance with the conditions of probation.
7. The circumstances leading to respondent's conviction are that on the morning of August 25, 2012, respondent and several friends set out on a trip up the Sacramento River. One of respondent's friends was the primary driver of the boat in which respondent was riding. At some point, the respondent took over driving in a five mile per hour zone. He had been driving for approximately five or ten minutes when a sheriff's boat approached. The deputy sheriff had seen a woman lying on the engine cover, which is a safety violation. The

The deputy sheriff asked respondent about the location of safety equipment and noticed a beer can in the driver's cup holder. The deputy sheriff asked respondent if he had consumed any alcohol. Respondent answered that he had consumed five or six beers that day. The deputy sheriff asked respondent to remove his sunglasses. Respondent's eyes were bloodshot and glassy. The deputy sheriff administered several field sobriety tests which respondent performed poorly. Respondent was arrested and later registered blood alcohol concentrations of .15 and .16 percent.

#### **SECOND CAUSE: EXCESSIVE USE OR MISUSE OF ALCOHOLIC BEVERAGES**

8. Complainant's allegation that respondent engaged in the excessive use or misuse of alcoholic beverages is based on the circumstances leading to his arrest, as described in Factual Finding 7, above. Respondent conceded these factual allegations at hearing and in his written description of events provided to EMSA on August 22, 2012.

#### **THIRD CAUSE: VIOLATION OF TERMS OF PROBATION**

9. Complainant's Petition to Terminate Probation is based on respondent's conviction of a misdemeanor violation of Harbors and Navigations Code section 655, subdivision (c) (use of a watercraft with a blood alcohol concentration of over .08 percent), and respondent's conduct underlying the conviction. Respondent's conduct was inconsistent with the terms of his probation with EMSA, including the prohibitions against consuming or misusing alcohol, and the requirement that he obey all laws.<sup>2</sup> On these bases, complainant alleges that good cause exists to revoke respondent's probation.

10. Complainant's Petition to Terminate Probation was not timely filed. Respondent was no longer on probation with the EMSA at the time the Accusation and Petition to Terminate Probation was issued on July 14, 2014. Respondent's term of probation with EMSA ended on December 8, 2013. (Factual Finding 4.) Unless the terms of probation specify otherwise, a petition to revoke or terminate probation must be filed while the licensee is on probation. (Cal. Admin. Hearing Practice (Cont. Ed. Bar 2nd ed. 1997) § 9.34 pp. 9-21 and 9-22 (rev. 10/13).)

11. The terms of respondent's past probation with EMSA do not specify that complainant may file a petition to terminate or revoke probation after the term of probation has expired. The relevant terms of probation are:

Respondent understands and agrees that if during the period of probation he fails to comply with any term or condition of probation, the Authority will initiate action to terminate probation and proceed with actual license suspension/revocation. Upon initiation of such an action, or the

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<sup>2</sup> No evidence was presented to support the allegation that respondent failed to notify the EMSA within 72 hours of being arrested.

giving of notice to Respondent of the Authority's intent to initiate such an action, the probationary period shall remain in effect until such time as a decision on the matter has been adopted by the Authority.

12. This term of respondent's past probation allowed the EMSA to extend the period of probation by either (a) filing a petition to revoke or terminate probation, or (b) giving written notice to respondent of its intent to initiate a petition to revoke or terminate probation. Complainant did not take either step prior to the end of respondent's term of probation. Complainant, therefore, has no authority to prosecute the pending Petition to Terminate Probation. (Cal. Admin. Hearing Practice (Cont. Ed. Bar 2nd ed. 1997) § 9.34 pp. 9-21 and 9-22 (rev. 10/13).)<sup>3</sup>

#### *Respondent's Background and Rehabilitation*

13. Respondent is 32 years old. He has worked as a paramedic with Cal Fire since 2007. He is currently employed as a captain, a position to which he was promoted in April 2015. Respondent previously worked as an engineer paramedic from February 2009 to April 2015. Prior to that, respondent was employed with Cal Fire as a firefighter paramedic in Riverside County from June 2007 to February 2009.

14. Respondent has complied with the terms of probation imposed by the Sacramento Superior Court. In addition, respondent participated in seven counseling sessions through the Cal Fire Employee Assistance Program (EAP). Respondent testified that he has gained substantial insight into the causes of his drinking, including his tendency to put a lot of pressure on himself. The EAP is a resource for respondent to remain free of alcohol abuse. Respondent also testified that his new responsibilities as a captain serve to remind him that it is essential to remain sober.

15. Respondent has experienced positive changes in his personal life, including becoming engaged and purchasing a home. Respondent feels that he has matured since his August 2012 arrest and subsequent conviction for boating while under the influence of alcohol.

16. California Code of Regulations, title 22, section 100176, subdivision (a) provides the rehabilitation criteria to be considered in evaluating the placement on probation, suspension, or denial of a license. The criteria include: (1) the nature and severity of the acts

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<sup>3</sup> Counsel for complainant argued that "EMSA can bring an enforcement action at any time as long as the offense that the *accusation* is based upon occurred during the probationary period." (Exhibit 10 [EMSA's reply to ALJ's invitation to address 3 issues], page 5, lines 9 and 10, emphasis added.) This assertion is not persuasive. First, there is no question that complainant has authority to file and prosecute the pending Accusation. Second, with respect to the filing of a Petition to Terminate Probation, the argument has no support in the probationary language or existing law.

or crimes; (2) evidence of any wrongful acts committed subsequent to the acts or crimes under consideration as grounds for placement on probation, suspension, or revocation; (3) the time that has elapsed since commission of the acts or crimes referred to in (1) or (2), above; (4) the extent to which respondent has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed; (5) if applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code; and (6) evidence, if any, of rehabilitation submitted by respondent.

17. The application of these criteria indicates that respondent's rehabilitation is substantial, but is still in progress. First, operating any vehicle while under the influence of alcohol always has potentially serious consequences. In this instance, the potential for injury as a consequence of respondent's boating while under the influence of alcohol is mitigated by the fact that he was driving the boat at very slow speeds. Second, there is no evidence that respondent has engaged in any misconduct subsequent to his August 2012 arrest for boating while under the influence. Third, the three years since respondent's arrest for boating under the influence is enough time to provide an initial indication that respondent is doing well, but not enough time to conclude that he is fully rehabilitated. Fourth, respondent has complied with the terms of his criminal court probation. Respondent engaged in conduct prohibited by the terms of his EMSA probation order by boating under the influence in August 2012. Fifth, neither of respondent's convictions in Sacramento or Butte County has been expunged pursuant to Penal Code section 1203.4. Sixth, other rehabilitation evidence indicates that respondent is progressing well. Respondent has taken full responsibility for his wrongdoing, both at hearing and in his written correspondence with the EMSA. He was promoted to captain subsequent to his arrest, indicating that he is doing well professionally. He has also purchased a home and is engaged to be married, lending credibility to respondent's testimony that he has matured since his arrest.

18. In light of all the circumstances, it is consistent with the public interest to permit respondent to maintain a license with terms and conditions of probation to ensure the public safety. In addition to the standard terms and conditions, the public safety will be ensured by adding the conditions that he abstain from the use of alcohol and nonprescribed controlled substances, and that he submit to random drug and alcohol testing throughout the period of probation. Given respondent's progress to date, including his promotion to captain at Cal Fire, a period of suspension would not serve to enhance the public safety.

## LEGAL CONCLUSIONS

### *The Burden and Standard of Proof*

1. To discipline respondent's license based on an Accusation, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. To discipline respondent's license based on a Petition to Terminate Probation, complainant bears the burden of proving the allegations by a preponderance of the evidence. *Sandarg v. Dental Bd. of Calif.* (2010) 184 Cal.App.4th 1434, 1440-1441. The term preponderance of the evidence means "more likely than not" *Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388, or "evidence that has more convincing force than that opposed to it." *People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567 (quoting BAJI No. 2.60).

*Applicable Statutes and Regulations*

3. Health and Safety Code section 1798.200 provides in pertinent part:

(b) The authority may deny, suspend, or revoke 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). . . .

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, 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:

[¶] . . . [¶]

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

[¶] . . . [¶]

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

4. California Code of Regulations, title 22, section 100175 provides:

(a) 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, or imposing an administrative fine pursuant to Section 1798.210 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.

(b) For the purposes of a crime, the record of conviction or a certified copy of the record shall be conclusive evidence of such conviction. "Conviction" means the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.

5. It has been established by clear and convincing evidence that respondent violated Health and Safety Code section 1798.200, subdivision (c)(6) (conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel) as set forth in the Factual Findings 6 and 7. Therefore, cause exists to discipline respondent's license pursuant to the First Cause of Action of the Accusation in this matter.

6. It has been established by clear and convincing evidence that respondent violated Health and Safety Code section 1798.200, subdivision (c)(9) (excessive use or misuse of alcoholic beverage) as set forth in the Factual Findings 7 and 8. Therefore, cause exists for discipline of respondent's license pursuant to the Second cause of Action of the Accusation in this matter.

7. It has not been established that there is legal cause to impose discipline pursuant to the Petition to Terminate Probation in this matter, as set forth in Factual Findings 9 through 12. No cause exists to terminate probation pursuant to the Third Cause of Action in this matter.

8. Based on the Factual Findings and Legal Conclusions as a whole, it is consistent with the public interest to allow respondent to maintain his EMT-P license with appropriate terms and conditions. In addition to the standard terms and conditions of probation, the public will be best protected by adding conditions requiring respondent to submit to random biological fluid testing for drugs and alcohol, and that he abstain from the use of alcohol and nonprescribed controlled substances.

## ORDER

License Number P24312 issued to respondent Patrick M. Young is revoked. However, such revocation is stayed and respondent is placed on probation for a period of three years upon the following terms and conditions:

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

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

2. **Personal Appearances:** As directed by EMSA, 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. Respondent shall be responsible for all of his costs associated with this requirement.

3. **Quarterly Report Requirements:** During the probationary period, respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by respondent with all the terms and conditions of his probation. If respondent submits his quarterly reports by mail, it shall be sent as Certified Mail.

4. **Employment Notification:** During the probationary period, respondent shall notify the EMSA in writing of any EMS employment. Respondent shall inform EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

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

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 EMSA shall be by certified mail.

5. **Notification of Termination:** Respondent shall notify EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of his termination.

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

6. **Functioning as a Paramedic:** The period of probation shall not run anytime that respondent is not practicing as a paramedic within the jurisdiction of California.

If respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, respondent must immediately notify EMSA, in writing, of the date of such departure and the date of return to California, if respondent returns.

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

7. **Obey All Related Laws:** 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. 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 respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then 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, respondent shall submit to EMSA a full and detailed account of the circumstances thereof. EMSA shall determine the applicability of the offense(s) as to whether respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

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

8. **Completion of Probation:** Respondent's license shall be fully restored upon successful completion of probation.

9. **Violation of Probation:** If during the period of probation respondent fails to comply with any term of probation, 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 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 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 respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

10. **Abstinence from Drug Possession and Use:** Respondent shall abstain from the possession, injection or consumption by any route of all controlled substances, dangerous drugs, or any drugs requiring a prescription unless prescribed under federal or state law as part of a documented medical treatment. Within fourteen days of obtaining such a prescription, respondent shall ensure that the prescribing professional provides the EMSA a

written report identifying the medication, dosage, the date the medication was prescribed, respondent's diagnosis, and the date the medication will no longer be required. This report must be provided to the EMSA directly by the prescribing professional.

If respondent has a lawful prescription when initially placed on probation, this same report must be provided within fourteen days of the commencement of probation.

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

11. Abstinence from the Use of Alcoholic Beverages: Respondent shall abstain from the use of alcoholic beverages.

12. Biological Fluid Testing: 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 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. 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, 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, respondent shall ensure that any positive test results are conveyed telephonically by the lab to EMSA within 48 hours, and all written positive or negative results are provided directly by the lab to EMSA within 10 days. Respondent shall be responsible for all costs associated with the drug/alcohol screening.

At EMSA's sole discretion, EMSA may allow the random drug testing to be conducted by 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 EMSA in the time frames described above.

DATED: August 17, 2015



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TIMOTHY J. ASPINWALL  
Administrative Law Judge  
Office of Administrative Hearings