

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

STEPHEN KRISMAN,

License No. P24905

Respondent.

Case No. 07-0247

OAH No. 2008090807

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by
the _____ as _____ Decision in the above-entitled matter.

This Decision shall become effective 3/27/09.

IT IS SO ORDERED.

Date: 2/27/09



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PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on February 4, 2009.

David P. Chan, Deputy Attorney General, represented Complainant Nancy Steiner, Chief of the State of California, Emergency Medical Services Authority, Personnel Division.

Joseph H. Rose, Esq. and Tamiya Davis, Esq., Rose Law Firm P.C., represented Respondent Stephen Krisman, who was present during the hearing.

The matter was submitted on February 4, 2009.

FACTUAL FINDINGS

1. Nancy Steiner filed Accusation and Petition to Terminate Probation, Case No. 07-0247, dated April 25, 2008, against Stephen Krisman (Respondent) in her official Capacity as Chief, Personnel Division, Emergency Medical Services Authority (EMSA), State of California.

Respondent filed a Notice of Defense, requesting a hearing in this matter.

2. On February 15, 2006, in the Superior Court of California, County of San Diego, in the case entitled *The People of the State of California v. Stephen W. Krisman*, Case No. CN202889, on his plea of guilty, Respondent was convicted of violation of Vehicle Code section 23103, subdivision (a) per Vehicle Code section 23103.5, Acceptance of Guilty

Plea to Violation of Vehicle Code section 23103 in Lieu of Charge for Violation of Vehicle Code section 23152 (Driving a Vehicle Under the Influence of Alcohol).

The facts and circumstances underlying the conviction are that, on October 15, 2005, a California Highway Patrol (CHP) Officer approached Respondent's vehicle while he was parked on the side of the road, seat belted behind the wheel, with the key in the ignition and the engine running, talking on the telephone. CHP Officer Newberry smelled the odor of alcohol on Respondent's breath; Respondent admitted drinking five beers; he had thick slurred speech, and his eyes were red and watery. Officer Newberry administered field sobriety tests, and Respondent failed. He was arrested for driving under the influence of an alcoholic beverage. Ultimately, it was determined that Respondent's blood alcohol content was .10.

As a consequence of the conviction, the Court placed Respondent on summary probation for three years, and ordered him, among other things, to pay a fine of \$1,450.00 and attend and to complete the First Conviction Program.

3. On October 21, 2006, Respondent filed a Paramedic License Application. He disclosed his conviction for violation of Vehicle Code section 23103, subdivision (a) pursuant to Vehicle section 23103.5, Acceptance of Guilty Plea to Violation of Vehicle Code section 23103 in Lieu of Charge for Violation of Vehicle Code section 23152 (Driving a Vehicle Under the Influence of Alcohol) (Finding 2).

4. On April 24, 2007, Alan H. Rabin, M.D. (Dr. Rabin) performed a medical evaluation to establish that Respondent was not impaired or addicted by reason of alcohol or substance abuse and that he did not pose a threat to public health and safety if he worked as a paramedic. In order to perform this evaluation, Dr. Rabin interviewed Respondent and obtained a history; according to his report, Dr. Rabin administered tests that included Michigan Alcohol Screen Test (MAST), AUDIT and Substance Abuse Subtle Screening Inventory (SASSI); in addition, according to his report, Dr. Rabin contacted EMSA. According to this report, Dr. Rabin concluded that Respondent did not have an alcohol or substance abuse problem and that he was safe to work as a paramedic.

5. By letter, dated May 1, 2007, Charles Teddington (Teddington), EMSA Chief of Enforcement, notified Respondent that his application for an unconditional license had been denied because he violated Health and Safety Code section 1798.200, subdivisions (c)(6) and (c)(9); however, if, within forty five (45) days of the date of the letter, Respondent submitted evidence of a medical evaluation that demonstrated that he was not impaired or addicted by reason of alcohol or substance abuse and he did not pose a threat to public health and safety if he worked in the prehospital environment, EMSA would consider issuing him a provisional license; upon receipt of the foregoing information, the medical evaluation and the facts and circumstances underlying his conviction would be considered to determine whether a provisional license would be issued; he advised Respondent of his appeal rights if Respondent elected not to agree to the foregoing and wished to contest the action of EMSA.

6. In response to the letter from the Chief of Enforcement, Dr. Rabin's report was submitted to EMSA.

7. On May 1, 2007, Respondent signed the Stipulated Agreement to a Provisional License (Stipulated Agreement). By its terms, Respondent agreed to denial of his application for an unrestricted EMT-P license; the denial was stayed, and EMSA issued Respondent a provisional EMT-P license on probationary status for a period of two years and included the following relevant terms and conditions.

"(1) **Obey All Laws:** Applicant shall fully comply with all terms and conditions of this order. Applicant shall fully cooperate with the Authority for any reasonable monitoring, investigations, and evaluation of Applicant's compliance with the terms and conditions of this provisional license order. Applicant shall immediately execute and submit to the Authority all Release of Information forms that the Authority may require of Applicant. Applicant shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200.

(9) **Violation of Provisional Licensure/Probation:** Applicant understands and agrees that a failure to abide by the terms during the period of provisional licensure shall result in the allegations and charges in the Authority's May 1, 2007, notification of licensure denial being conclusively established as true; the Authority shall be relieved of any burden of proving the truth of the allegations and charges contained therein; the Authority shall summarily deny any licensure, approval, or reinstatement, without the necessity of a hearing; and Applicant waives any right of entitlement, if any, to a hearing on said summary action of denial, or to any due process proceedings or rights, if any."

(10) **Effective Date of Agreement:** The terms of this Agreement shall be effective immediately upon signature of the Director or his designee."

The Director signed the Stipulated Agreement on May 7, 2007. Pursuant to a the Stipulated Agreement, EMSA issued a provisional Emergency Medical Technician - Paramedic (EMT-P) Number P24905 to Respondent effective May 7, 2007.

8. On September 27, 2007, in the Superior Court of California, County of San Diego, North County Division, in the case entitled *People of the State of California v. Stephen W. Krisman*, Case Number CN231048, on his plea of guilty, Respondent was convicted of violating Penal Code section 148.5, subdivision (c), False Report of Crime to Law Enforcement Employee.

The facts and circumstances underlying the conviction are that on May 5, 2007, Respondent called "911" emergency dispatch and made a false report that a stabbing had taken place at Ron's Red Eye Bar. In truth and in fact, Respondent knew that no stabbing had occurred.

As a consequence of the conviction, the Court placed Respondent on summary probation for three (3) years and ordered him to pay fines of \$600 (suspended \$100) and ordered him to complete 15 days in the work service program.

Unless terminated early, Respondent remains on criminal probation until September 27, 2010.

9. The crime of which Respondent has been convicted involved dishonest acts and is substantially related to the qualifications, functions and duties of prehospital personnel within the meaning of Title 22, California Code of Regulations, section 100174, by reason of Finding 8.

10. Respondent notified EMSA of his arrest and subsequent conviction for violation of Penal Code section 148.5, subdivision (c), (False Report of Crime to Law Enforcement Employee), by telephone (on May 7, 2007) and in writing (in his quarterly report, dated October 7, 2007).

11. There is extensive evidence in the record regarding the incident that occurred on the night of May 5, 2007 that resulted in Respondent's conviction.

In the evening, at or about 8:30 p.m., Respondent and his girlfriend joined some friends for dinner at J.J. Purty Landers, a restaurant in Fallbrook, California. During dinner, Respondent drank two beers. After a few hours, between 11:30 p.m. and midnight, Respondent and Tiana D'Amico (D'Amico), his girlfriend, rode with a friend to Ron's Red Eye Bar (Ron's). The parking lot was dimly lit, and the bar was dark except for the stage lighting where the musician was playing. When they arrived, Respondent and D'Amico found the small bar crowded. Respondent followed his girlfriend into the bar. She walked to the rear of the bar, and Respondent followed. Because it was crowded, they were separated. As he attempted to walk to the rear of the bar, Respondent accidentally bumped into Henry Cazares (Cazares), a man who had a reputation for violence. Sheriff's Deputy Scott Swannie (Deputy Swannie) described Cazares as a "bully." Cazares became angry; he and Respondent had words. Cazares grabbed Respondent by the ears tightly, put pressure on his head and pulled his head down forcefully to Respondent's waist. In response, Respondent grabbed Cazares' wrists; Cazares fell to ground; and Respondent held him there until the bouncer grabbed him. The bouncer escorted Cazares from the bar.

Cazares returned with ten other men and began verbally abusing Respondent again. They appeared aggressive and hostile to Respondent. Respondent knew that there had been stabbings inside the taco shop that was within walking distance of Ron's. Respondent and his girlfriend were afraid. Respondent believed that the men would attack, possibly stab him. He panicked, went into the bathroom, called "911" and told the dispatcher that he was a paramedic and that there had been a stabbing at the bar; he believed that law enforcement would respond more rapidly if he said there had been a stabbing. When he walked out of the restroom, Cazares and two other men swung at Respondent. Sheriff's deputies arrived within minutes thereafter.

Sheriff's Deputies Schmidt and Swannie broke from their response to another priority call to which they had been dispatched minutes prior and responded with lights and sirens at a high rate of speed to Ron's.

Deputy Swannie testified that Respondent appropriately called "911" but should not have reported it as a stabbing.

12. For the past 18 months, Respondent has been employed as a paramedic by Cal Fire, formerly known as California Department of Forestry and Fire Protection. He testified that he works in the Riverside unit out of Beaumont.

13. Respondent offered evidence of rehabilitation. He recognizes that his conduct was dishonest, inappropriate and wrong. He expressed remorse and accepted responsibility for his actions. Immediately he admitted that he lied and that there had been no stabbing to the first law enforcement officer that he encountered at Ron's on the night of May 5, 2007, and he apologized to Deputy Sheriff Swannie for his actions. Respondent disclosed the incident to EMSA within two days after the incident and subsequently in his quarterly report filed with EMSA.

With the exception of the convictions that are the subject of this disciplinary proceeding, there is no evidence Respondent has suffered any other conviction or has engaged in any other misconduct that could result in discipline of his EMT-P license.

14. Complainant alleged that Respondent's second conviction violated the terms and conditions of his provisional license.

The criminal acts that resulted in the subsequent conviction occurred less than four days after Respondent executed the Stipulated Agreement, but prior to the effective date of the Stipulated Agreement, the date it was signed by the EMSA Director. Respondent's conviction for this conduct occurred after the Stipulated Agreement became effective. There is no evidence that EMSA stated or intended Respondent be bound by its terms and conditions prior to the effective date of the Stipulated Agreement.

Health and Safety Code section 1798.200 describes the conduct that EMSA considers "evidence of a threat to the public health and safety" and constitutes grounds to deny or discipline a certificate or license; relevant to this case is subdivision (c)(5) of this statute, which states, in pertinent part: "The commission of any fraudulent, dishonest or corrupt *act* which is substantially related to the qualifications, functions and duties of prehospital personnel . . . (emphasis added)." Title 22, California Code of Regulations, section 100174, subdivision (a) sets forth EMSA's criteria for denial or discipline of a license. Title 22, California Code of Regulations, section 100175 sets forth EMSA's rehabilitation criteria when considering denial or discipline of a license.

The Stipulated Agreement and all relevant EMSA statutes and regulations refer to "conduct" or "acts," not "conviction." Considering the foregoing, insufficient evidence was offered to establish that Respondent's most recent conviction (Finding 8) violated the terms

of the Stipulated Agreement because he engaged in the criminal acts prior to the effective date of the Stipulated Agreement.

LEGAL CONCLUSIONS

1. Pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c) (5) and (6), cause exists to discipline Respondent's EMT-P license in that he has been convicted of a crime that is substantially related to the qualifications, functions and duties of an EMSA licensee and for violation of his probation, by reason of Findings 8 and 9.

2. Insufficient evidence was offered to establish that Respondent's conviction (Finding 8) violated the terms and conditions of his provisional license, by reason of Findings 14.

3. Administrative proceedings to revoke, suspend or impose discipline on professional licenses are not intended to punish the licensee, but rather to protect the public. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, [45 Cal.Rptr.2d 486]; *Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.App.4th 763, [72 Cal.Rptr.2d 624]).

4. The facts, the violations of law by Respondent and EMSA rehabilitation criteria¹ have been considered. Multiple convictions for driving under the influence of alcohol are substantially related to the qualifications, functions or duties of a paramedic, but not one. There is no dispute that Respondent's second conviction of dishonesty was substantially related. It has been 18 months since Respondent engaged in dishonest acts. Respondent's crime demonstrates bad judgment and dishonesty. However, Respondent established significant evidence of mitigation. Considering the foregoing, it would not be contrary to the public interest to grant Respondent a properly conditioned license at this time.

ORDER

License Number P15655 issued to Respondent Stephen Krisman is revoked. Provided, however, said revocations is stayed, and Respondent Stephen Krisman is placed on probation for two (2) years on the following terms and conditions.

1. License number P15655 is issued to Respondent is suspended for sixty (60) days, with thirty (30) days stayed. Said suspension shall begin the first day after the effective date of this Decision.

2. Respondent shall comply with all terms and conditions of this probationary order. He shall cooperate with the EMSA in the monitoring, investigation and evaluation of his compliance with the terms and conditions of this probationary order.

¹ California Code of Regulations, title 22, section 100175.

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

3. As directed by the EMSA, Respondent shall appear in person for interviews, meetings, and/or evaluations of his compliance with the terms and conditions of this probationary order. Respondent shall be responsible for all of his costs associated with this requirement.

4. During the period of probation, Respondent shall submit quarterly reports covering each calendar quarter; he shall certify, under penalty of perjury, and document compliance by him with all terms and conditions of his probation. If he submits his quarterly reports by mail, he shall do so by certified mail.

5. During the period of probation, Respondent shall notify EMSA, in writing, of (a) any EMS employment and (b) the name and address of any prospective EMS employer prior to accepting employment.

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

Respondent shall authorize any EMS employer to submit performance evaluations and other reports which EMSA may request that relate to the qualifications, functions and duties of prehospital personnel.

All notifications to EMSA shall be by means of certified mail.

6. Within seventy-two (72) hours after termination by his prehospital medical care employer, for any reason, Respondent shall notify EMSA. Respondent shall provide a full, detailed written explanation of the reasons and circumstances of his termination.

All notifications to EMSA shall be by means of certified mail.

7. The period of probation shall be tolled during any period of time that Respondent is not practicing as a paramedic within the jurisdiction of California.

During the probationary period, if Respondent leaves the jurisdiction of California to practice as a paramedic, Respondent must immediately notify EMSA, in writing, of the date of such departure and, if he returns, the date of return.

All notifications to EMSA shall be by means of certified mail.

8. Prior to completion of probation, if Respondent's criminal convictions are expunged pursuant to Penal Code section 1203.4, he shall provide documentary evidence of the foregoing or a written statement that it has not been.

Prior to release from probation, Respondent shall provide documentary evidence to EMSA that he has successfully completed probation in his criminal case (*People of the State of California v. Stephen Krisman*, Case Number CN231048).

9. Within ninety (90) days of the effective date of this Decision, Respondent shall take an Ethics course; prior to taking the course, Respondent shall obtain approval from EMSA that said course is appropriate. Upon completion of the Ethics course, Respondent shall submit proof to EMSA that he has fulfilled the course requirement.

All notifications to EMSA shall be by means of certified mail.

10. 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 Health and Safety Code section 1798.200. To permit monitoring of compliance with this term, if Respondent has not submitted fingerprints to EMSA in the past as a condition of licensure, he shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within forty-five (45) days of the effective date of this Decision.

Within seventy-two (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 as to whether he violated any federal, state, local laws, statutes, regulations, written policies, protocols or rules governing the practice of medical care as a paramedic.

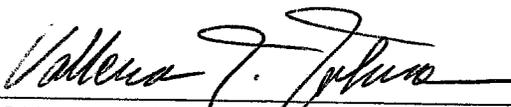
All notifications to EMSA shall be by means of certified mail.

11. During the period of probation, if Respondent fails to comply with any term of probation, EMSA may initiate action to terminate probation and implement actual license revocation. Upon initiation of such an action or the giving of 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 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 revocation.

12. Upon successful completion of probation, Respondent's license shall be fully restored.

DATED: February 26, 2009



VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings