BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: MICKLE S. SKAGGS, Respondent.	Case No. 13-0216 OAH No. 2014030730

PROPOSED DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 13, 2014, in Sacramento, California.

Michael Jacobs, Senior Staff Counsel, Emergency Medical Services Authority (EMSA), represented complainant Sean Trask, Chief, EMS Personnel Division, Emergency Medical Services Authority, Health and Human Services Agency, State of California.

Michael S. Skaggs (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted on May 13, 2014.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in his official capacity.

2. On June 10, 2013, respondent filed an application for an Emergency Medical Technician-Paramedic (EMT-P) license. EMSA denied respondent's application, and respondent appealed.

3. At hearing, complainant moved to strike paragraph 12, lines 17 through 21, from the Statement of Issues. Respondent did not object, and the motion was granted.

Respondent's Conviction

4. On April 29, 2005, in the Superior Court of California, County of San Bernardino, Case No. FWV034261, respondent was convicted, upon a plea of guilty, of two counts of violating Penal Code section 261.5, subdivision (d), unlawful sexual intercourse with a minor under 16 years of age, felonies. Imposition of sentence was suspended, and

respondent was placed on formal probation for five years, upon the following terms: serve 180 days in county jail; participate in a counseling program; do not associate with females under the age of 18 except those approved by a probation officer, unless in the presence of a responsible adult who is aware of the nature of respondent's background and offense, and who has been approved by a probation officer; pay a restitution fine of $200; do not attack, strike, harass, threaten or sexually abuse victim; and do not be within 100 yards of victim.

5. The facts and circumstances of respondent's convictions are that, on April 8, 2005, respondent drove from his residence in Cottonwood, California, to a residence in Ontario, California, 564 miles away. The purpose of his trip was to meet a 15-year old female and to have sex with her. Respondent was 21 years old at the time. Respondent met the female by calling her, and communicated with her online for a period of one to two months. During their communications, the female initially told respondent that she was 17, but eventually disclosed to respondent that she was only 15. Despite her age, respondent drove to Ontario to meet her. On April 9, 2005, respondent went to the female's home. The female snuck respondent past her grandmother, who was babysitting the female and her younger brother, and did not see respondent enter the home. The female led respondent to her bedroom, where he remained until the following day.

While in the bedroom, respondent and the female engaged in sexual intercourse approximately four to five times. The following morning, the female's father discovered respondent in his daughter's bedroom and called police. Neither the female's father nor her mother knew that respondent was in their daughter's bedroom during the night. Respondent was subsequently arrested and charged.

Matters in Mitigation, Aggravation and Rehabilitation

6. On February 15, 2008, the court granted respondent's motion and issued an order terminating his probation.

7. On April 1, 2008, respondent's convictions were expunged pursuant to Penal Code section 1203.4. Both felony counts were reduced to misdemeanors pursuant to Penal Code section 17, subdivision (b).

8. Respondent was 21 at the time he engaged in sexual intercourse with a minor. He is now 30 years old. He admitted at hearing that he lied when interviewed by the police after the incident, stating that he thought the victim was 17. He told the officer that the victim was a "slut," blaming his victim for getting him into trouble. After his probation was terminated, the victim, now an adult, contacted respondent. He chose to enter into a relationship with his victim after she contacted him. They eventually began living together and contemplated marriage. They had a child together in 2009. Respondent did not feel he was doing anything improper when he chose to have a "consensual adult relationship" with the victim after he terminated his probation. He testified that at the time, he had no regard for the victim or her family, and he justified the act in his mind. At hearing, respondent

expressed remorse for his actions, admitted that he acted irresponsibly, and stated that there is no excuse for his actions.

9. On May 31, 2008, respondent received a Bachelor of Science degree in Biological Sciences from California State University, Chico. As part of his course studies, respondent took a Biomedical Ethics class in the summer of 2007. Respondent admitted at hearing that the class related mostly towards ethics in the medical field, but it also addressed ethical behavior in general. He learned about "doing the right thing when no one is looking." He also learned about making the best decision when faced with a moral dilemma.

10. On December 10, 2009, respondent completed a parenting class called "Big Steps for Little Feet" provided by Foothill Family Shelter.

11. Rick Presta, M.A.,[1] LMFT,[2] testified telephonically on respondent's behalf. He also wrote a letter on behalf of respondent for the hearing. Although the letter is not dated, Mr. Presta testified that he wrote the letter on or about April 15, 2014. Mr. Presta is a licensed marriage and family therapist in the State of California. From 2000 to 2006, Mr. Presta worked as a family therapist intern under the supervision of Dr. Ronald Armstrong. Mr. Presta received his license in 2006. Mr. Presta has treated over 1000 sexual offenders in the past 14 years. Respondent obtained treatment from Mr. Presta from 2005 to 2006.

Mr. Presta's testimony, which mirrored the contents of his letter, explained that treatment is broken down into three levels: Level 1 is for the less serious cases where it is determined that no criminal sophistication is present, nor is there a serious history of criminality; Level 2 is for certain felony convictions where there is significant history of sexual crimes or other documented evidence of either failure or unwillingness to comply with social norms or the rights of other people; and Level 3 is for the most serious child molesters and rapists. Mr. Presta has treated offenders in all three levels. Mr. Presta classified respondent as a person needing Level 1 treatment. As part of the treatment program, respondent completed a full sexual history and took a polygraph examination. The results showed no pervasive pattern of sexual deviancy, and that respondent had a single victim related to his conviction. Mr. Presta noted that people convicted of sex crimes who are in treatment have an average of eight or more victims over the course of their lifetime. Mr. Presta noted that respondent's crime was one of opportunity with no discernible planning or victim grooming.

Mr. Presta concluded that respondent's crime lacked criminal sophistication and that respondent did not meet the criteria for any diagnosable mental disorder on any of the five axes of the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition. In his professional opinion, Mr. Presta concluded that respondent poses no threat to reoffend. Mr. Presta's testimony was persuasive and credible.

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[1] Master of Arts.

[2] Licensed Marriage and Family Therapist.

12. Respondent submitted five letters of support, which were received in evidence and considered to the extent permitted under Government Code section 11513, subdivision (d).[3]

a. Ashton Lee is respondent's EMT partner at Medlife Ambulance. He has known respondent for over one year. He has known respondent to be responsible, professional, mature and a "stand up" man.

b. Dana Wilson is also respondent's co-worker at Medlife Ambulance, having worked with respondent for one and a half years. Ms. Wilson has observed respondent's professionalism and good conduct firsthand. Outside of work, Ms. Wilson attested that respondent lives a very responsible, stable life, and is a devoted father to his five-year old son.

c. Uziel Charles met respondent in 2010, and was his co-worker for County Rescue Ambulance in Orange County. As EMT partners, Mr. Charles observed respondent to always display good conduct and integrity towards their patients. In paramedic school, Mr. Charles witnessed many aspects of respondent's good character: maturity; intelligence; community service; and devotion to his young son as a single father. Mr. Charles described respondent as one who has learned from his past and has exemplified professionalism and has a good moral framework.

d. Viviana Skaggs, respondent's sister, attested that there was no excuse for respondent's actions, and that respondent has "gone above and beyond to prove the kind of person he really is during the 9 years since the incident." Ms. Skaggs attested that respondent completed a full year of rehabilitative counseling from 2005 to 2006, and that there has not been a single compromising situation that respondent has put himself into since his conviction. The counseling helped respondent identify his thought process when he chose to "date" a minor, and he fully understands his wrongdoing. In addition to rehabilitative counseling, respondent has obtained a Bachelor's degree, and completed a parenting class before the birth of his son. As a registered nurse, Ms. Skaggs deals with patients on a daily basis and deeply understands the value of their safety. Ms. Skaggs

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[3] Government Code section 11513, subdivision (d) states in pertinent part, "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ..."

feels that respondent would not pose a risk to the public as he has succeeded in rehabilitation.

e. Daniel Hallas is the father of the minor female involved in the incident that led to respondent's conviction. Mr. Hallas called the police when he discovered respondent in his daughter's bedroom in 2005. After his conviction, respondent provided a "heartfelt" apology in court that Mr. Hallas still remembers to this day. Mr. Hallas attested that respondent was remorseful, and paid his dues for his actions. When his daughter became an adult, she and respondent entered into a relationship, and had a son. Although they are no longer together and Mr. Hallas' daughter has since married, respondent and Mr. Hallas' daughter still maintain a positive relationship in the interest of their child. Respondent remains close with the Hallas family, and has been described by Mr. Hallas as a great father, a great person, and a positive role model for Mr. Hallas' 17-year old son, whom respondent takes to the gym to help him live a healthier lifestyle. Mr. Hallas attested that respondent lives a very honest, positive and selfless life. He believes that people can change, regain trust, and earn a second chance, as respondent has done. Mr. Hallas wholeheartedly supports respondent's efforts in becoming a paramedic.

13. The letters provide valuable insight into respondent's efforts at rehabilitation for the past nine years. Most compelling is the letter from Mr. Hallas, who himself was a "victim" of respondent's crime. He was in the best position to observe respondent's conduct during and immediately after the incident, after his conviction, during his probation, after his probation was terminated, and during the years since. His direct observations over the years of respondent's behavior, activities, level of maturity, judgment and responsibility, and remorse, reflect favorably on respondent's character and fitness as a future paramedic.

14. Respondent recently completed 30 hours of community service for "SCRAP for Youth," researching and collecting information to help youth to find local homeless shelters and transitional housing; employment; grants and scholarships; business ideas; special event days; local group home facilities; and local health centers.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200 states, 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). Proceedings against any EMT-P license or licenseholder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(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.

2. California Code of Regulations, title 22, section 100174, states, in pertinent part:

[¶] . . . [¶]

(b) The authority shall deny/revoke a paramedic license if any of the following apply to the applicant:

(2) Has been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a felony.

3. California Code of Regulations, title 22, section 100174, subdivision (g) provides that "[T]he Director of the Authority may grant a license to anyone otherwise precluded under subsections (a) and (b) of this section if the Director of the Authority believes that extraordinary circumstances exist to warrant such an exemption."

Substantial Relationship

4. As set forth in Findings 4 and 5, respondent's 2005 convictions were substantially related to the qualifications, functions and duties of a paramedic in that it evidences potential unfitness to perform the functions authorized by the license in a manner consistent with the public health and safety.

Cause for Denial

5. Cause exists, pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(6), to deny respondent's EMT-P license application by reason of Findings 4 and 5, and Legal Conclusions 1 and 3, in that respondent 's convictions are substantially related to the qualifications, functions and duties of paramedic.

6. Cause exists, pursuant to California Code of Regulations, title 22, section 100174, subdivision (b)(2), to deny respondent's EMT-P license application by reason of Findings 4 and 5, and Legal Conclusion 2, in that respondent's convictions were punishable as felonies[4] at the time he was convicted, and he has been released from incarceration during the preceding 10 years.

Rehabilitation Criteria

7. EMSA has adopted criteria to evaluate the rehabilitation of a licensee who is subject to license disciplinary action, which are set forth in California Code of Regulations, title 22, section 100176, which provides:

> (a) At the discretion of the Authority, the Authority may issue a license subject to specific provisional terms, conditions, and review. When considering the denial, placement on probation, suspension, or revocation of a license pursuant to Section 1798.200 of the Health and Safety Code, or a petition for reinstatement or reduction of penalty under Section 11522 of the Government Code, the Authority in evaluating the rehabilitation of the applicant and present eligibility for a license, shall consider the following criteria:
>
> (1) The nature and severity of the act(s) or crime(s).
>
> (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.
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> (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (1) or (2) of this section.

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[4] Respondent's felony convictions were reduced to misdemeanors pursuant to Penal Code section 17, subdivision (b) on April 1, 2008. (Finding 7.)

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the person.

8. The nature and severity of respondent's act were serious, in that respondent committed two counts of unlawful sexual intercourse with a 15-year old minor. Respondent did not commit subsequent acts or crimes that would constitute grounds for denial or other disciplinary action. Nine years have elapsed since the commission of the act which led to his criminal convictions. He complied with the terms of his probation, and obtained an order for early termination of his probation in February 2008. In April 2008, respondent's convictions were expunged pursuant to Penal Code section 1203.4. His two felony conviction counts were reduced to misdemeanors. Respondent underwent one year of therapy immediately after his conviction, served jail time, obtained a college degree, took parenting classes, obtained gainful employment as an EMT, assumed responsibility and expressed remorse for his crime. In the past nine years since his criminal conviction, respondent has demonstrated a commitment to leading a law abiding life. Under all of the facts and circumstances, respondent has shown considerable rehabilitation subsequent to his criminal convictions.

Extraordinary Circumstances Warranting an Exemption

9. As set forth under Legal Conclusions 2 and 6, EMSA shall deny respondent's license application absent extraordinary circumstances warranting an exemption. Notwithstanding that cause exists to deny respondent's application, the mitigating and rehabilitation evidence set forth in Findings 6 through 14, and Legal Conclusion 8, demonstrate that there is no likelihood of recidivism. Extraordinary circumstances exist warranting an exemption from denial. The tremendous efforts made by respondent to become a contributing citizen and a skilled emergency medical professional, as supported by a number of recommendations by responsible supporters, establish that it would not be against the public interest for respondent to hold a license as an EMT-P, so long as he fulfills a reasonable period of probation.

10. The disciplinary guidelines adopted by EMSA pursuant to California Code of Regulations, title 22, section 100173, have been considered in fashioning the appropriate terms and conditions of probation set forth below. The standard terms and conditions are recited below as terms and conditions 1 through 9.

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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 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 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

ORDER

The license application of respondent Mickle Staggs is hereby granted. Said license shall be immediately revoked, the order of revocation stayed, and respondent placed on probation for a period of five (5) 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 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 EMSA all Release of Information forms that the EMSA may require of the respondent.

2. **Personal Appearances:**

As directed by EMSA, respondent shall appear in person for interviews, meetings, and/or evaluations of 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 EMSA in writing of any EMS employment. The 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 the 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 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.

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 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.

Dated: May 27, 2014

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings