BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician-Paramedic License Held by: SHAWN A. TANJI, License No. P24161, Respondent.	Case No. 07-0162 OAH No. 2008110173 (Accusation)

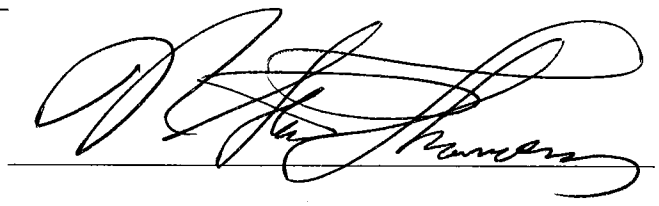
DECISION

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

This Decision shall become effective 5/13/09.

IT IS SO ORDERED.

Date: 4/13/09



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PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, at San Diego, California on January 5, and March 19, 2009.

Senior Counsel for the Emergency Medical Services Authority, Cynthia L. Curry, represented complainant.

Shawn A. Tanji (respondent) represented himself.

Oral and documentary evidence was received on January 5, 2009, and the record was left open until February 23, 2009 so the parties could submit closing briefs.

On January 13, 2009, the Office of Administrative Hearings received complainant's motion to re-open the record so complainant could provide newly obtained evidence. The evidence complainant seeks to introduce was unavailable to complainant at the time of the hearing. Consequently, good cause existed to re-open the matter to take additional evidence and the record was ordered re-opened on January 14, 2009.

Further hearing in this matter was scheduled for March 19, 2009. Respondent was served with the Notice of Hearing setting forth the date, time and place of the continued hearing. The parties appeared for the hearing and the continued hearing occurred on March 19, 2009. At the conclusion of the hearing, the matter was submitted.

FACTUAL FINDINGS

1. The Accusation against respondent was filed by Nancy Steiner (complainant), while acting in her official capacity as Chief of the Emergency Medical Services Authority (the EMSA) Personnel Division, State of California.

2. On October 18, 2006, the EMSA issued respondent an Emergency Medical Technician-Paramedic (EMT-P) license, License number P24161. At all relevant times, respondent's EMT-P license was, and currently is, in full force and effect.

3. On August 20, 2007, respondent was convicted, after entry of guilty pleas, in the Mono County Superior Court, case number MFE-07-1613, of one count of violating California Penal Code section 273.5, subdivision (a) (battery on a co-habitant) and one count of violating California Penal Code section 236 (false imprisonment), misdemeanor crimes involving force, violence, threat and intimidation, which are substantially related to the qualifications, functions and duties of pre-hospital personnel.

4. The facts and circumstances underlying respondent's 2007 convictions are as follows: For approximately one year prior to March 17, 2007, respondent had an "on again, off again" relationship with his "girlfriend." Just prior to March 17, 2007, respondent's then "ex-girlfriend" contacted respondent and convinced him to join her and two of her male friends (the friends) on a snowboarding trip to Mammoth Lakes located in Mono County, California. Respondent was living in Los Angeles, California at the time, and he agreed to pick the friends up at the airport. After picking the friends up at the airport, respondent, his ex-girlfriend, and the friends drove to Mammoth Lakes where they had rented a condominium. It is unclear when the group arrived at Mammoth Lakes; however, on March 17, 2007, after a "day of drinking mixed drinks," respondent and his ex-girlfriend became involved in an argument. Respondent testified that the argument culminated in respondent blocking his ex-girlfriend from leaving the condominium and then throwing dog food in her face. Respondent's ex-girlfriend eventually called the police.

The police arrived at the scene, interviewed respondent's ex-girlfriend (the victim), the friends and respondent. The police report contained the following relevant statements from the victim:

> "Upon my arrival, I was contacted by a very hysterical female adult, [the victim]. [The victim] was awaiting our arrival in the manager's office. [The victim] stated her ex-boyfriend [respondent] was 'drunk' and 'out of control.' [The victim] stated [respondent] had been drinking since about midnight Saturday morning. [Respondent] was still in the condominium. [The victim] further related [respondent] held her in the condominium earlier in the day against her will for approximately two hours. [The victim] told me that [respondent] did this by sitting on her while she laid [sic] in bed. While [respondent] was sitting on her, he was flicking her in the face and harassing her.

> [The victim] also told me [respondent] smeared dog food in her face, and dragged her out of a bedroom by her hair while she was on the ground. When she attempted to call 911, [respondent] took the cell phone from her hand. . . . (Exh. 6.)"

After interviewing the victim, the officers obtained the following information from one of the friends: The friend said he witnessed respondent pull the victim on the ground and watched respondent "smash" dog food in the victim's face.

The officers observed and noted the following physical evidence: "[The victim] sustained minor injuries to her shoulder, right elbow and face. [The victim] claimed her elbow was very sore from falling to the ground. She had red scratch marks on her neck and head. She had bruising under both eyes. . . ." (Exh. 6.)

Ultimately, respondent was arrested, and later convicted of false imprisonment and battery on a co-habitant. A subsequent breath test conducted approximately four and one-half hours after respondent's arrest revealed a blood alcohol content of 0.183 percent.

5. As a result of the convictions, respondent was placed on formal probation for three years on certain terms and conditions, including paying $1,795 in fines and penalties, not consuming or possessing alcoholic beverages, submitting to chemical testing of respondent's blood or breath for the detection of alcohol at the request of any peace officer or probation officer, participating in counseling, completing a batterer's program pursuant to Penal Code section 1203.97, performing 20 hours of community service, attending AA meetings weekly and serving 60 days incarceration in county jail.

6. At the time of his arrest, as well as during his testimony at the instant hearing, respondent denied pulling the victim's hair and flicking her in the face. As previously noted in Finding 4, above, respondent only admitted to briefly blocking the victim's egress from the condominium and throwing, not rubbing, dog food in the victim's face. Respondent's denials are not credible given the statements of the friends in combination with the emotional and physical condition of the victim, as witnessed by the police officers at the time of respondent's arrest. Either respondent is trying to minimize his conduct or else he was too intoxicated at the time to remember what occurred with any degree of accuracy. In either case, the evidence reveals that respondent was more out of control and violent during the incident in question than he is currently willing to admit.

Evidence of Rehabilitation and in Mitigation

7. Although respondent is still on probation as a result of his convictions, he has paid his fines and penalties, he has been attending AA meetings, he served his jail sentence, he has completed his batterer's program (although he still has to take a test before he receives his certificate of completion), and he is still being counseled by a psychotherapist who specializes in substance abuse and addiction. Respondent also intends to petition for early

termination of probation and expungement of his convictions pursuant to Penal Code section 1203.4.

8. Respondent has been involved with emergency service work.

9. Respondent testified that he quit drinking as a result of his March 17, 2007 arrest, and has completely abstained from consuming alcohol since that date.

The Newly Obtained Evidence

10. After presenting the evidence that led to the above Findings, counsel for complainant obtained conviction records revealing that on October 10, 2007, respondent was convicted, after entry of a guilty plea, in the Los Angeles County Superior Court, case number 7WA01247, of one count of violating California Penal Code section 273.5, subdivision (a) (battery on a co-habitant), a misdemeanor crime involving force, violence, threat and intimidation, which is substantially related to the qualifications, functions and duties of pre-hospital personnel.

Respondent's Explanation concerning the October 10, 2007 Conviction

11. The facts and circumstances underlying respondent's October 10, 2007 conviction (the Los Angeles conviction) were not established. Respondent testified in vague terms about an "incident" that occurred between him and the same "girlfriend" who was involved in the altercation that led to respondent's August 20, 2007 conviction (the Mono conviction). Respondent testified that the "incident" leading to the Los Angeles conviction actually occurred "six months prior to the Mono County case." According to respondent, he was not at home when his girlfriend called the police to complain about respondent. The police arrived and took a report. No charges were filed until "after the Mono County incident." Apparently, after the Mono case, respondent's girlfriend pushed for prosecution in the Los Angeles matter. Respondent testified that he "pled to some sort of battery she [the girlfriend] claims happened." As a result, respondent was placed on probation, which he served concurrently with the sentence imposed as a result of the Mono conviction.

12. Respondent disclosed both the Los Angeles and Mono convictions in his September 2, 2008 EMT-P license renewal application.

LEGAL CONCLUSIONS

1. Cause exists for discipline pursuant to Health and Safety Code section 1798.200 because, as set forth in Findings 3, 4, 5,and 10, respondent was convicted of crimes substantially related to the qualifications, functions and duties of a licentiate.

2. Cause exists for discipline pursuant to Health and Safety Code section 1798.200 because, the circumstances underlying respondent's convictions, as set forth in Finding 4, reveal that respondent misused/abused alcoholic beverages.

3. Cause exists for discipline pursuant to California Code of Regulations, title 22, section 100173, subdivision (b)(4) because, as set forth in Findings 3, 4, 5,and 10, respondent was convicted of two separate misdemeanor crimes involving force, violence, threat or intimidation within the preceding five year.

4. The mitigating evidence and evidence of rehabilitation, as set forth in Findings 7, 8, 9, 11, and 12, is insufficient to establish that it would not be contrary to the public health, safety and welfare to allow respondent to remain licensed. California Code of Regulations, title 22, section 100173, subdivision (b)(4) provides, in pertinent part:

> "(b) The authority shall deny/revoke a paramedic license if any of the following apply to the applicant:
>
> * * *
>
> (4) Has been convicted of two misdemeanors within the preceding five years for any offense relating to force, violence, threat, or intimidation. (Emphasis added.)"

Respondent now has three convictions involving force, violence, threat, and intimidation resulting from two separate incidents; one that occurred in Los Angeles and one that occurred in Mono County. The incidents occurred within months of one another and evidence that respondent is a repeat offender. Accordingly, respondent falls within the revocation mandate of California Code of Regulations, title 22, section 100173, subdivision (b)(4).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's EMT-P license, License number P24161 is revoked.

DATED: April 9, 2009

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings