

**BEFORE THE MEDICAL DIRECTOR OF  
THE CONTRA COSTA COUNTY  
EMERGENCY MEDICAL SERVICES AGENCY**

**In the Matter of the Emergency Medical Technician**

**Certificate Held by:**

**NERIAH DANA LUTES**

**EMT Certificate No. E143380**

**Respondent.**

**Case No.19-0026**

**OAH No. 2020040861**

**PROPOSED DECISION**

Administrative Law Judge Linda Pollack, State of California, Office of Administrative Hearings, heard this matter by telephone on July 2, 2020.

Benjamin Keizer, Prehospital Care Coordinator, represented complainant Joseph Barger, M.D., Deputy Medical Director of Emergency Medical Services, Contra Costa County Emergency Medical Services Agency.

Respondent Neriah Danae Lutes represented herself and was present throughout the administrative hearing.

The matter was submitted for decision on July 15, 2020.

## **OTHER MATTERS**

The record was held open until July 15, 2020. Respondent had until July 8, 2020 to submit additional documents. Complainant had until July 15, 2020 to file any objections. Respondent submitted a certification of attendance at an anger management class, a log of AA meetings attended, and a list of prescriptions she is currently taking, all marked Exhibit A. Complainant timely filed an objection to the admission of these documents into the record. Complainant's objections are overruled; Exhibit A is admitted into evidence as administrative hearsay.

A protective order has been issued, concurrent with the proposed decision in this matter. Exhibits 3, 4, and 5 are sealed.

## **FACTUAL FINDINGS**

1. The Contra Costa County Emergency Medical Services Agency (agency) issued Emergency Medical Technician (EMT) Certificate No. 143380 to Neriah Danae Lutes (respondent) on November 2, 2018.
2. Respondent worked as an EMT at Bay Medic from November 2018 until March 3, 2020.
3. Effective March 3, 2020, David Goldstein, M.D., in his official capacity as the Medical Director of the agency, issued a Temporary Suspension Order suspending respondent's EMT certificate, pending a hearing pursuant to Health and Safety Code section 1798.200, subdivisions (a)(4) and (a)(5).
4. On March 12, 2020, Joseph Barger, M.D., in his official capacity as the Deputy Medical Director of Emergency Medical Services for the agency, filed an

accusation seeking to revoke respondent's EMT certificate. Respondent requested a hearing.

5. The accusation alleges that respondent engaged in conduct that constituted a threat to public health and safety pre-dating the issuance of her EMT certificate and that this conduct should have been, but was not disclosed to the agency. In addition, the agency alleges that this conduct continued while respondent held the certification. The alleged misconduct included fraudulent or dishonest representations, excessive misuse of alcohol and respondent's irrational behavior such that she lacks the ability to perform her job duties safely.

### **Pre-Certification Misconduct`**

6. Respondent has a history of alcohol-related incidents and law enforcement contacts that occurred before she obtained her EMT certificate. The agency was not aware of most of these incidents and contacts.

7. On August 6, 2015, when respondent was 18 years old, she was drinking with friends in Grass Valley, California. She consumed a substantial amount of alcohol. Police officers ticketed her and the other two under-age companions for being under the influence of alcohol. Respondent was released to an adult. She was required to take classes. No evidence was presented establishing that this conduct resulted in a conviction. Respondent disclosed this incident on her EMT application.

8. When respondent was 19 years old, she drank a substantial amount of alcohol and got lost trying to find her friend's apartment. Martinez police officers took her to spend the night in the "drunk tank." When she was released she had a court

date, attended court, but nothing was filed. The agency was unaware of this incident when she was hired.

9. In early 2018, respondent felt overwhelmed. She woke up one morning and drank. She felt things were “not worth it” and drank a substantial amount of alcohol and took over-the-counter weight-loss supplement pills. She was taken to the hospital by ambulance. She lied to the emergency medical personnel about what happened in order to be released. She was held involuntarily however, pursuant to Welfare and Institutions Code section 5150. Respondent described this incident as a “cry for help.” The agency was unaware of this incident when respondent was hired.

## **Post-Certification Misconduct**

10. Respondent moved to Sacramento in March 2019. She was lonely and unhappy, and had financial problems. This led to increased alcohol use. After two days of drinking and feeling suicidal, she took pills and woke up in the hospital. Respondent was again held involuntarily pursuant to Welfare and Institutions Code section 5150. Her blood alcohol concentration was measured at 0.38 percent. Respondent did not disclose this incident to the agency.

11. In May 2019, respondent had been drinking for three days. She and her boyfriend began fighting. Respondent cut her wrist intentionally during the argument. Law enforcement were called and she was taken to the hospital. Respondent was again held involuntarily pursuant to Welfare and Institutions Code section 5150. Her blood alcohol concentration was measured at 0.18 percent. Respondent did not disclose this incident to the agency.

12. In December 2019, respondent had been drinking for three days. On the third day, she and her boyfriend started arguing and she hit him in the face. Due to the noise and the late hour, neighbors called the police. The police arrested her and she spent three days in jail. She is currently charged with misdemeanor domestic violence and is awaiting disposition of this case. Respondent did not disclose this information to the agency.

### **Substance Abuse Evaluation**

13. Upon learning of respondent's December 2019 incident, the agency investigated respondent's alcohol use both before and after certification. Respondent consented to a recorded investigative interview (interview) by Ben Keizer, Pre-hospital Care Coordinator with the agency.

14. During the interview, respondent was shown the EMS Event Reporting Policy 6002 (Policy 6002). Policy 6002 requires prehospital personnel to report violations of the division or regulations adopted by the authority; addiction to or excessive use or misuse of alcohol; and irrational behavior to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected of an EMT may be impaired.

15. During respondent's interview, she was asked why she did not report both pre- and post-certificate incidents. Respondent said she was not familiar with Policy 6002 specifically. She completed EMS orientation training and may have reviewed it at that time but did not remember doing so. As to the December 2019 incident, respondent stated she did not know she had a duty to report it. The

incident occurred on a Sunday and when she returned to work that Friday, everyone at work already knew about it.

16. Respondent did not report the other instances of misconduct for the same reasons, adding that she also considered this information to be personal.

17. As part of the investigation, the agency asked respondent to submit to a substance abuse evaluation by Martin Leamon, M.D. Dr. Leamon is a clinical professor of psychiatry at the University of California at Davis, and certified, since 1996 in Addiction Psychiatry by the American Board of Psychiatry and Neurology. He has been performing occupational psychiatric evaluations since 1986.

18. As part of Dr. Leamon's evaluation on January 31, 2020, he reviewed the medical/psychiatric questionnaire respondent completed for the evaluation, her medical records from four medical facilities including psychiatric hospitalizations, and he conducted an 80-minute interview with respondent.

19. Dr. Leamon noted marked discrepancies between the information respondent provided him in the questionnaire and the information available in her medical records. During his interview with respondent she acknowledged that she had intentionally withheld information in the questionnaire about her drinking problem.

20. During the evaluation, respondent told Dr. Leamon that she felt she had hit rock bottom and did not plan to ever drink again.

21. Dr. Leamon diagnosed respondent with Alcohol Use Disorder, Severe, Alcohol-induced Depressive Disorder with onset during Intoxication, and Panic Disorder. He summarized that "Given the history and interview behavior, it would

not be unreasonable to expect that Ms. Lutes may continue to have further alcohol-related events and further episodes involving self-harm. Were her motivation to change, and were she to willingly and honestly engage in treatment, including ongoing biological monitoring, her prognosis could improve.”

## **Other Evidence**

22. Shortly after the December 2019 incident, respondent and her boyfriend moved to Reno to get a fresh start and to get away from friends who consume alcohol. They currently live with her mother and maternal grandparents. Respondent’s grandfather, Douglas Karpstein, now retired, was a Fire Chief and EMT for 27 years in Alaska.

23. Karpstein testified at the hearing and described respondent’s childhood as difficult. He and his wife took care of respondent after her mother left, when she was seven or eight, until respondent was 13 and went to live with her father, a recovering alcoholic. Karpstein caught her drinking once since she moved in, in March or April 2020. He told her she would have to leave if that continued. He believes she has been sober since that episode and has seen improvement in her attitude.

24. Respondent’s boyfriend, David Yartushenko, testified at the hearing. He met respondent in February 2019. He is supportive of respondent’s efforts to remain sober and he is proud of respondent’s progress. He feels this last incident was a wake-up call for her.

25. Amanda Weyant testified at the hearing. She has been an EMT since 2003 and was respondent’s co-worker at Bay Medic, where respondent worked from November 2018 until her EMT certificate was temporarily suspended. In June 2019, she

began partnering with respondent on a 24-hour shift every Sunday. She found respondent reliable and she trusted her skills and ability to take care of patients. She never saw respondent under the influence of alcohol at work. She only became aware of respondent's drinking issues after the December 2019 incident.

26. Respondent has struggled with drinking and mental health issues for a long time. She has suffered from panic attacks since freshman year in high school. Respondent began taking medication for depression recently. She is also exercising. She intends to find a therapist and participate in counseling. Respondent completed a court-ordered anger management class and has attended 30 Alcoholics Anonymous meetings. She plans to attend school in August 2020 to study fire science.

27. Respondent admitted to having a couple of drinks while in Nevada at her grandparent's home. She regrets this. She knows that she cannot drink at all. She takes responsibility for all of her misconduct, wants to improve, and is sad that her EMT certificate is in jeopardy.

## **LEGAL CONCLUSIONS**

1. This matter is governed by the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act (EMS Act), codified in Health and Safety Code<sup>1</sup> section 1797 et seq.

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<sup>1</sup> All further statutory references are to the Health and Safety Code.

2. Section 1798.200, subdivision (a)(3) states that the medical director of the local EMS agency may revoke any EMT certificate if the certificate holder has engaged in acts or omissions that constitute a threat to the public health and safety.

### **First Cause for Discipline**

3. Pursuant to section 1798.200, subdivision (c)(5), complainant alleges that respondent constitutes a threat because she committed fraudulent or dishonest acts that are substantially related to the qualifications, functions and duties of prehospital personnel, namely, she had a duty but failed to report events set forth in Factual Findings 8-12.

4. Respondent's application for an EMT certificate asked whether respondent had ever "been convicted of a crime." The evidence did not establish that respondent had any convictions or that she had a duty to disclose the incidents described in Factual Findings 8-12 during the application process. No cause exists to find that respondent committed dishonest acts by failing to report these incidents that occurred before she received her EMT certification.

5. Respondent does not recall receiving Policy 6002 or being aware of her duties pursuant to it. Complainant did not establish by competent evidence that respondent received notice of this policy. As a result, complainant has not proven that cause exists to discipline respondent for having committed dishonest acts by failing to disclose the incidents described in Factual Findings 8-12.

6. Hiding one's substance abuse history from a doctor, as found in Factual Finding 19, is not uncommon for a person suffering from a substance abuse disorder. While respondent was not forthcoming initially, she did eventually disclose her substance abuse history in the interview with Dr. Leamon. She is to be commended for

this. However, her failure to be honest on the questionnaire constitutes cause for discipline of respondent's EMT certificate pursuant to section 1798.200 subdivision (c)(5).

## **Second Cause for Discipline**

7. Pursuant to section 1798.200, subdivision (c)(7), complainant alleges that respondent violated or attempted to violate rules and regulations pertaining to prehospital personnel by failing to disclose the events set forth in Factual Findings 8 through 12. For the same reasons stated in Legal Conclusions 4 and 5, cause for discipline of respondent's EMT certificate does not exist, pursuant to section 1798.200 subdivision (c)(7).

## **Third Cause for Discipline**

8. Pursuant to section 1798.200, subdivision (c)(9), complainant alleges that respondent is addicted to alcohol and has engaged in the excessive use or misuse of alcohol. As set forth in Factual Findings 7-12, the evidence supports these allegations. Cause for discipline of respondent's EMT certificate exists, pursuant to section 1798.200 subdivision (c)(9).

## **Fourth Cause for Discipline**

9. Pursuant to section 1798.200, subdivision (c)(11), complainant alleges that respondent has demonstrated irrational behavior to the extent that a reasonable and prudent person would have reasonable cause to believe that respondent's ability to perform the duties normally expected by an EMT may be impaired. As set forth in Factual Findings 9-12 and 28, the evidence supports this allegation. Cause exists for

discipline of respondent's EMT certificate pursuant to section 1798.200 subdivision (c)(11).

## **Disciplinary Considerations**

10. The Contra Costa County Emergency Medical Services Agency utilizes the Model Disciplinary Orders, also known as the Recommended Guidelines for Disciplinary Orders and Conditions of Probation for EMT (Basic) and Advanced EMT, dated April 1, 2010, when considering license discipline. (Cal. Code Regs., tit. 22, § 100206.4.) The Model Disciplinary Orders were developed to provide the consistent and equitable imposition of discipline.

11. The Guidelines include the following factors to be considered in determining disciplinary action: the nature and severity of the conduct, actual or potential harm to the public or any patient, rehabilitation evidence, and time that has elapsed since the conduct occurred.

12. Respondent is to be commended for beginning her journey towards sobriety. She recognizes the loss she has suffered and appears to have gained some insight into the personal work needed to live a healthy life. She has actively placed herself amongst supportive people who love her, want the best for her and have committed to assisting her in this hard work. The suspension of her EMT certificate, her hospitalizations, and the pending criminal charges, all appear to have been impactful. Respondent's journey has just begun however.

13. Evidence of rehabilitation, particularly long-term sobriety, but also including ongoing involvement in programs such as Alcoholics Anonymous,

participation in therapy, taking prescribed medication, and, other steps that manifest rehabilitation, are sorely lacking at this time. In the absence of this type of evidence, respondent poses a risk to the public.

## **ORDER**

Emergency Medical Technician Certification Number 143380, issued to Neriah Danae Lutes, is revoked.

DATE: July 29, 2020

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*Linda Pollack*  
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LINDA POLLACK

Administrative Law Judge

Office of Administrative Hearings