

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

In the Matter of Emergency Medical
Technician Certificate held by:

ERIK A. MCLENNAN,

EMT Certificate E111530

Respondent.

Enforcement Case No. 17-0031

OAH No. 2017120186

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on January 8, 2018, in Oakland, California.

Aaron Doyle, Prehospital Care Coordinator, Professional Standards Program, represented complainant Patricia Frost, R.N., M.S., P.N.P., Director of Emergency Medical Services, Contra Costa County Emergency Medical Services Agency.

Respondent Erik A. McLennan represented himself and was present throughout the administrative hearing.

The matter was submitted for decision on January 8, 2018.

FACTUAL FINDINGS

1. The Contra Costa County Emergency Medical Services Agency (agency) issued Emergency Medical Technician (EMT) Certificate No. E111530 to Erik A. McLennan (respondent) on January 28, 2015.
2. On October 10, 2017, 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).

3. On October 20, 2017, Patricia Frost, R.N., M.S., P.N.P., in her official capacity as the Director of Emergency Medical Services for the agency, filed an accusation seeking to revoke respondent's EMT certificate. Respondent filed a notice of defense and this hearing followed.

Cause for Discipline

4. On October 4, 2017, respondent was employed as an EMT with American Medical Response, West, Inc. (AMR), which is an emergency ambulance service provider in Contra Costa County. Respondent was acting in the capacity as a paramedic intern on that date. It was the last day of respondent's paramedic internship and his shift was from 5:00 p.m. to 5:00 a.m. At the end of his shift, claimant's preceptor advised him that she was referring him for remediation.

5. Sometime after midnight on the early morning of October 5, 2017, an AMR employee entered the bathroom at an AMR Operations Center in Concord, and found a hypodermic syringe on the bathroom sink with a small amount of fluid inside and blood on the needle. The employee brought it to a supervisor's attention. The supervisor reviewed video surveillance tape and found that only three employees had entered the bathroom between the time she had been in the bathroom and the time the syringe was found. Respondent was one of the three; all three were placed on administrative leave and ordered to submit to urine tests. The other two employees' urine tested negative for controlled substances.

6. At approximately 8:00 p.m. on October 5, 2017, Scott Newlin, a supervisor with AMR, called respondent and advised him of a sensitive situation and directed him to report to the AMR Deployment Center to meet with him. Respondent told Newlin he could not come in, but would be in the following morning.

The next morning, respondent's father appeared without respondent. He spoke with Chad Newland, Operations Manager of the Contra Costa County Division of AMR. Newland supervises and manages all AMR personnel, including EMT's and paramedics. After discussing the matter with Newland, respondent's father stated that respondent would report for a urine test.

7. When respondent arrived, he met privately with a union representative. She then advised Newland that respondent had admitted that he had left the syringe in the bathroom, that he had injected heroin while on duty, and that he was severely addicted to heroin. The union representative asked if respondent could resign in lieu of termination; Newland agreed, as long as respondent submitted to a urine test. Shortly thereafter, respondent submitted his resignation and was escorted by Newlin to a test site to provide a urine sample.

8. A report dated October 11, 2017, revealed that respondent's urine tested positive for morphine¹ and codeine.

9. AMR reported the incident to the agency. Michelle Voos was assigned to conduct an investigation. As a part of the investigation, Voos participated in an administrative interview of respondent on October 20, 2017. During the interview, respondent admitted that he had started using heroin approximately six months before his resignation from AMR. He had begun by ingesting small amounts, but developed a higher tolerance to the drug and began using it around the clock. Several months before the incident at work, he tried to wean himself from the drug by introducing OxyContin,² but was unable to do so. Respondent reported that he would experience severe withdrawal symptoms if he did not continue using heroin. As of early October, he was no longer able to work a 12-hour shift without using heroin while on duty. Respondent conceded that he used an AMR syringe to inject heroin while on duty as a paramedic intern on the morning of October 5, 2017.

Respondent's Evidence

10. Respondent is 29 years old. He was battling anxiety and depression when the paramedic school he was attending closed suddenly before he completed the program. At the same time, an important personal relationship broke off. Respondent had lost touch with many of his friends and was feeling isolated while he was performing his paramedic internship; he turned to drugs as a coping mechanism. Initially, respondent believed he could control his use. When he was unable to control it, he unsuccessfully tried to wean himself. He was not eating and was rapidly deteriorating. Respondent was using heroin during his internship and was aware that he was performing poorly. Respondent realizes that he was putting his coworkers and patients at risk.

11. After his shift on October 5, 2017, respondent returned to the apartment where he was living, despondent and afraid. He flushed the drugs in his possession down the toilet and contacted his parents for help. After meeting with AMR representatives, respondent's parents took him to Kaiser for treatment and made an appointment for him to move into a residential substance abuse treatment program in Sonoma County. They dropped respondent off at the facility on the afternoon of October 8, 2017, but received a call at 2:00 a.m. the next morning advising them that the facility was being evacuated due to a fire in the area. Respondent left the facility at that time.

12. On October 10, respondent was evaluated at Kaiser. Frederick Craig Burrows, M.F.T., of the Kaiser Chemical Dependency Services program wrote a letter dated January 2, 2018, in which he confirms the evaluation and that respondent participated, as recommended,

¹ Morphine and codeine are controlled substances. Morphine is a metabolite of heroin.

² OxyContin is an opiate and a controlled substance.

in a day treatment program, which consisted of an intensive outpatient, partial-hospitalization treatment program. The program met seven days per week, Monday through Friday from 9:00 a.m. to 3:00 p.m., and on weekends from 9:00 a.m. to 12:30 p.m. Patients receive education, group therapy and individual counseling. Respondent began on October 11 and completed the program on October 28, 2017.

Respondent then chose to continue to the next level of treatment, the Intensive Recovery Program (IRP). The IRP meets five days per week for one to two-hour sessions. Patients continue to receive education, group therapy and individual counseling. Respondent was in compliance with the program as of January 2, 2018. Both the intensive outpatient program and the IRP require non-forensic urinalysis once or twice weekly.

13. In addition to the Kaiser programs, respondent has attended several Narcotics Anonymous and Alcoholics Anonymous meetings each week.

14. Respondent felt he was succeeding in the Kaiser program so he abandoned efforts to enroll in a residential drug treatment program. He is living with his parents who lend support to his recovery efforts.

15. Respondent exhibited remorse and shame during his testimony. He is thankful that no one was hurt as a result of his misconduct. Respondent loved his work as an EMT and was excited to become a paramedic. He hopes to return to the field.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an action to revoke an EMT certificate, the agency bears the burden of proof by a preponderance of the evidence. (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434, 1441.)

Cause for Discipline

2. Health and Safety Code section 1798.200 states, in pertinent part:

[¶] . . . [¶]

(a)(3) The medical director of the local EMS agency may, upon a determination of disciplinary processes adopted pursuant to Section 1797.184, deny, suspend, or revoke any EMT-I or EMT-II certificate issued under this division, or may place any EMT-I or EMT-II certificate holder on probation upon the finding by that medical 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:

[¶] ... [¶]

(5) The commission of any fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.

[¶] ... [¶]

(7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

[¶] ... [¶]

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

3. As set forth in Factual Findings 4 through 9, respondent committed a dishonest act when he used an AMR syringe to inject heroin while on duty. Cause for discipline of respondent's EMT certificate exists pursuant to Health and Safety Code section 1798.200, subdivision (c)(5).

4. An act that evidences unfitness of a certificate holder to perform the functions authorized by the certificate because it poses a threat to the public health and safety constitutes a violation of regulations pertaining to prehospital personnel. (Cal. Code Regs., tit. 22, §§ 100202.1, 100208.) Using a narcotic while on duty evidences unfitness to perform the functions of an EMT. As set forth in Factual Findings 4 through 9, respondent violated regulations pertaining to prehospital personnel. Cause for discipline exists pursuant to Health and Safety Code section 1798.200, subdivision (c)(7).

5. As set forth in Factual Findings 4 through 9, respondent was addicted to and misused narcotics while acting as an EMT. Cause for discipline exists pursuant to Health and Safety Code section 1798.200, subdivision (c)(9).

Disciplinary Considerations

6. 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. (Cal. Code Regs., tit. 22, § 100206.4.) The Model Disciplinary Orders were developed to provide consistent and equitable discipline.

Appendix A of the Model Disciplinary Orders recommends that in cases of drug related investigations by a certificate holder while on duty, the appropriate discipline is the issuance of a temporary suspension order and revocation of the certificate. It is further recommended that a certificate holder demonstrate two years of sobriety when applying for reinstatement, and obtain a medical and psychiatric evaluation by a physician certified in addiction medicine by the American Society of Addiction Medicine or the American Board of Psychiatry and Neurology, at applicant's expense, within 30 days of re-applying for certification, and that random testing and workplace monitoring will be required.

Although deviation from a recommendation in the Model Disciplinary Orders is at times appropriate, the evidence does not support a deviation in this matter. Respondent's misconduct was extremely serious, occurred over a period of months and occurred in the workplace. It is notable that respondent has accepted full responsibility for his misconduct and cooperated with the agency and AMR at an early stage of their investigations. He is commended for enrolling in substance abuse treatment immediately. However, addiction to heroin is a very serious matter. The work of an EMT is very stressful and EMT's have access to controlled substances while on the job. Before restoring respondent to this environment, his sobriety must be very stable. Should respondent be successful with documented treatment over a sustained period of time, he can apply for reinstatement of his EMT certification. At this time, protection of the public warrants revocation of his certificate.

ORDER

Emergency Medical Technician Certificate No. E111530, issued to respondent Erik A. McLennan, is revoked.

Dated: January 29, 2018

DocuSigned by:

Jill Schlichtmann

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JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings