BEFORE THE
CONTRA COSTA COUNTY
EMERGENCY MEDICAL SERVICES AGENCY

In the Matter of the Emergency Medical Technician Certificate held by: DARIAS PARRIS WILLIAMS, Certificate No. E044758 Respondent.	Case No. 17-0029 OAH No. 2017120198

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on December 21, 2017, in Oakland, California.

Aaron Doyle, Prehospital Care Coordinator, represented complainant Patricia Frost, RN, MS. PNP, Director of Emergency Medical Services, Contra Costa County Emergency Medical Services Agency.

Respondent Darias Parris Williams was present at the hearing and represented himself.

The matter was submitted for decision on December 21, 2017.

FACTUAL FINDINGS

1. Respondent Darias Parris Williams holds Emergency Medical Technician (EMT) Certificate No. E044758, issued by the Contra Costa County Emergency Medical Services Agency (Agency).

2. On July 23, 2012, respondent was convicted of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving under the influence of alcoholic beverages, with a blood alcohol content of .08 percent or higher). As a result of this conviction, respondent entered into a Stipulation Agreement with the Agency in April 2013. Pursuant to the Stipulation Agreement, respondent's EMT certificate was revoked, the revocation stayed, and respondent was permitted to retain his EMT certificate for a probationary period of three years. Respondent was subject to probation conditions including abstaining from the use of alcoholic beverages and

submitting to biological fluid testing. Respondent's probation commenced on May 16, 2013.

3. The Agency previously sought revocation of respondent's EMT certificate, due to several violations of the probation conditions, including respondent's failure to report for random biological fluid testing. A hearing was conducted by an Administrative Law Judge, who issued a proposed decision recommending dismissing the Agency's Accusation and Petition to Revoke Probation and fully restoring respondent's EMT certificate. The Agency did not adopt the Administrative Law Judge's proposed decision. On October 24, 2016, the Agency issued a Decision and Order in which it determined that respondent had violated the terms and conditions of probation. Respondent's probation was extended for a period of 18 months, effective 30 days from the date of the Decision. The original terms and conditions of probation were imposed, including the requirements that respondent abstain from the use of alcoholic beverages and submit to biological fluid testing.

4. On September 1, 2017[1], respondent was directed to appear for biological fluid testing. He appeared at Quest Diagnostics in Sunnyvale and submitted a urine sample. The urine sample tested positive for ethyl glucuronide (EtG), a metabolite of alcohol which remains present for up to 80 hours after the consumption of alcohol. Respondent's sample tested at 301 nanograms per milliliter. The threshold for a positive test result used by the testing lab is 250 nanograms per milliliter.

5. On September 16, 2017, the Agency was informed of the positive test by Geralyn Deatherage, Clinical Program Manager of ArcPoint Labs. ArcPoint Labs administers the biological fluid testing program for individuals with probationary EMT certificates issued by the Agency.

6. On September 20, 2017, the Agency issued the Accusation and Petition to Revoke Probation in this matter and also issued a Temporary Suspension Order Pending Hearing, immediately suspending respondent's probationary EMT certificate.

7. On September 20, 2017, after being notified of the positive test result, respondent contacted ArcPoint Labs and visited the Quest location where the September 1 test was performed. Respondent was reported to have screamed and been hostile, accusatory, and threatening towards the staff of ArcPoint and Quest. Quest notified ArcPoint that it reported the incident to the police and that it would no longer provide testing for respondent.

8. Also on September 20, 2017, respondent spoke with Aaron Doyle, the

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[1] The Agency's pleading incorrectly alleges that the incident took place on September 12, 2017.

Agency's Prehospital Care Coordinator. Doyle suggested that respondent arrange to take a Phosphatidylethanol (PEth) test. A PEth test is a blood test which can detect alcohol use which occurred during the previous three weeks. On September 21, 2017, respondent arranged for a PEth test as well as a "5 Panel Urine and Alcohol Test" through a third-party service, Request a Test. Respondent took the tests at a LabCorp facility in Sunnyvale. Respondent testified that the sample taken for the PEth test was lost. The urine test came back negative for all substances, including alcohol.

9. Respondent offered into evidence a letter dated October 2, 2017, purporting to be written by Jason Ferrier, Operations Team Lead of Request a Test. The letter states that respondent ordered the PEth test and 5 Drug and Alcohol Urine Test on September 21, 2017; that his specimens were collected at LabCorp in Sunnyvale that day; and that "Request aTest was informed by Labcorp's toxicology department that [respondent's] blood specimen was lost and never received for testing."

Respondent did not seek to have any further testing after this date, such as an additional PEth test or a hair test.

10. Respondent adamantly denied ingesting alcoholic beverages since he has been on probation, and insisted that he is "100 percent innocent." He speculated that the positive result for EtG on September 1 was due to incidental exposure to alcohol, possibly through his use of hand sanitizer and a nasal decongestant. Respondent added that his research confirmed that false positives for EtG due to incidental exposure are common and that the EtG test cannot determine the source of the metabolite it detects. Respondent believes that the EtG test is an unfair test to use for monitoring probation compliance because there can be a positive result even if the individual did not drink alcohol. Respondent is very upset that his blood sample for the PEth test was lost due to negligence on the part of the lab. He insisted that this test would have exonerated him.

11. Respondent acknowledged that he was very upset when he learned that he had tested positive and that he may have allowed his frustration to show when he contacted ArcPoint and Quest on September 20. He admitted raising his voice but denied making threatening remarks.

12. Respondent expressed anger at the Agency which he believes has not treated him fairly and which he believes is "corrupt." Respondent believes that he has not been given a fair opportunity to prove that he was not in violation of probation. He also expressed frustration that the Agency did not honor the decision of the Administrative Law Judge during the previous disciplinary matter.

13. Respondent fully complied with the terms of criminal probation imposed following his DUI conviction, including completing a four-month first offender program. Respondent was only 22 years old at the time of the offense and

states that he accepted responsibility for his conduct and learned a great deal. Respondent is frustrated that his EMT certificate has now been on probation for 55 months in light of the fact that the underlying conviction took place more than five years ago and he has not reoffended.

14. Respondent was on a hiring list for an ambulance company for five years. He was expecting to be hired in November, but because his EMT certificate was suspended as of September 20, he lost this opportunity.

15. Respondent has aspired to be a firefighter since childhood. He has worked as a volunteer firefighter with the Cordelia Fire Protection District since March 2017, and his continued ability to do so requires an EMT certificate.

In a letter dated December 1, 2017, William Untalan, Captain of the Cordelia Fire Protection District, wrote that respondent volunteered as a "Resident Firefighter" for six months. During his shifts, respondent performed various tasks including responding to emergency calls. Captain Untalan described respondent as professional, respectful, hardworking, honest, and proficient at firefighting and EMS skills.

In a letter dated December 5, 2017, Keith Martin, Fire Chief of Cordelia Fire Protection District, wrote that respondent "is a hard working individual that is progressing through his probationary process with our fire district. He gets along well with his coworkers and is an intricate part of this department. We are looking forward to this issue being cleared up and [respondent] returning back to our fire district."

16. Respondent has worked as a security guard for HighCom Security Services, Inc., for the past four years. In a November 20, 2017 letter, Brendon Cooley, Director of Protective Services of HighCom, wrote that respondent is an exemplary employee. Cooley described respondent as honest, hardworking, a team player, an effective communicator, a man of character, and an asset to the company.

17. In an undated letter, Akinwale Ajayi, a teacher at Peres Elementary School, wrote that he has known respondent for more than 10 years. Ajayi met respondent when respondent was an adolescent living in a group home where Ajayi worked as a counselor. Ajayi mentored respondent, who played on a basketball team Ajayi coached. Ajayi related that respondent was a team player, a talented athlete, and very intelligent. More recently, respondent traveled from his home in Hayward to Ajayi's home in Hercules so that Ajayi could tutor respondent in preparation for applying to the fire academy. Respondent has also volunteered with Ajayi for numerous charitable organizations, including the Bay Area Rescue Mission. Respondent has visited Ajayi's preschool class to speak with the children about firefighting. Ajayi believes that respondent is responsible, focused, and dedicated to his pursuit of a career as a firefighter.

Ultimate Finding

18. A preponderance of the evidence established that respondent violated probation by consuming alcoholic beverages. Respondent tested positive for EtG on September 1, 2017. This test establishes alcohol use within the previous 80 hours. Respondent's assertion that he suffered a false positive due to incidental exposure to hand sanitizer and nasal decongestant was not persuasive. The testing lab allowed for incidental exposure by establishing a cutoff for a positive test at 250 nanograms per milliliter. It is regrettable that respondent's attempt to submit a blood specimen for PEth testing was unsuccessful. Upon learning that the blood specimen was lost, respondent could have submitted another sample for testing to help reassure the Agency that he has not been consuming alcoholic beverages. He declined to do so at any time up until the date of the hearing. Respondent's evidence failed to rebut the Agency's evidence that he consumed alcohol, on an unknown date prior to September 1, 2017.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200, subdivision (c)(9), provides that the Medical Director may impose discipline on an EMT certificate holder for "addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances." The evidence established that respondent tested positive for EtG on September 1, 2017, indicating that he consumed alcohol. The evidence did not establish when, where, or how much alcohol respondent consumed. The Agency failed to establish that respondent's use of alcohol was excessive or constituted misuse. Cause for discipline pursuant to Health and Safety Code section 1798.200, subdivision (c)(9), was not established.

The Agency also seeks to discipline respondent for the 2012 DUI conviction. Respondent has already been disciplined for this offense. Further discipline based on the 2012 conviction is not warranted.

2. The conditions of respondent's probation require respondent to abstain from the use of alcoholic beverages. On an unknown date prior to September 1, 2017, respondent consumed alcoholic beverages, resulting in a positive test for EtG. Cause to revoke respondent's probation was established in light of the matters set forth in Findings 2 through 4, and 18.

3. Respondent has been on probation since 2013, as a result of a DUI offense. This conviction raised concerns about respondent's fitness to practice safely as an EMT because it involved the dangerous misuse of alcohol. Because of concerns of ongoing alcohol abuse, respondent was required to abstain from consuming alcoholic beverages and to submit to testing. Respondent failed to submit to testing and his probation was extended by 18 months. Within a year, respondent

tested positive for alcohol use. Respondent strenuously denies the violation, but his evidence that the positive test was due to incidental exposure to alcohol-containing substances was not persuasive.

Respondent wrongly accuses the Agency of treating him unfairly. The Agency afforded respondent the opportunity to retain his EMT certificate in light of his DUI conviction and again after he failed to comply with several conditions of probation, including failing to submit to drug testing. Even after learning of the positive test result, the Agency encouraged respondent to seek further testing to prove that he is not consuming alcohol.

Because the Agency cannot trust that respondent is abstaining from alcohol use, revocation is warranted. It would pose a risk to the public's safety to permit him to retain an EMT certificate.

ORDER

The petition to revoke probation is granted and the stay of revocation is set aside. The order revoking EMT Certificate No. E044758, issued to respondent Darias Parris Williams, is imposed.

DATED: January 9, 2018

DocuSigned by:
Karen E Reichmann
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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE

Case Name: Williams, Darias Parris **OAH No.: 2017120198**

I, Michele Lewis, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 1515 Clay Street, Suite 206, Oakland, CA 94612. On January 09, 2018, I served a copy of the following document(s) in the action entitled above:

PROPOSED DECISION

to each of the person(s) named below at the addresses listed after each name by the following method(s):
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Aaron Doyle
Contra Costa County EMS
1340 Doyle Drive, Suite 126
Martinez, CA 94553

Darias Parris Williams
163 Pearce
Hercules, CA 94547

VIA US Mail and
VIA Email (E-Service)aaron.doyle@hsd.cccounty.us;

☒ **United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package for collection and mailing, in accordance with the Office of Administrative Hearings' ordinary business practices, in Oakland, California. I am readily familiar with the Office of Administrative Hearings' practice for collecting and processing documents for mailing. Correspondences are deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid.

☒ **Electronic Transmission.** Based on a court order or the agreement of the parties to accept service by electronic transmission, the document(s) were distributed to the person(s) by secure electronic transmission (OAH Secure e-File) with a notification and document link sent to the email address(es) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Oakland, California on January 09, 2018.

DocuSigned by:
Michele Lewis
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Michele Lewis, Declarant