

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

In the Matter of Emergency Medical
Technician Certificate held by:

JOSHUA ENEA,

EMT Certificate E074035,

Respondent.

Enforcement Case No. 17-0025

OAH No. 2017080913

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on January 22, 2018, in Oakland, California.

Colin Wood, Deputy County Counsel, represented complainant Patricia Frost, R.N., M.S., P.N.P., Director of Emergency Medical Services, Contra Costa County Emergency Medical Services Agency.

No appearance was made by or on behalf of respondent Joshua Enea.

The record closed and the matter was submitted for decision on January 22, 2018.

FACTUAL FINDINGS

1. Respondent Joshua Enea and his attorney, Scott Burrell, were properly served with the Accusation and Notice of Hearing on the Accusation, pursuant to Government Code sections 11505 and 11509. Inasmuch as no appearance was made by or on behalf of respondent, this hearing proceeded by default pursuant to Government Code section 11520.

2. The Contra Costa County Emergency Medical Services Agency (Agency) issued Emergency Medical Technician (EMT) Certificate No. E074035 to respondent in 1998. (The month and day of issuance was not established by the record.). The certificate will expire on July 31, 2018, and is subject to recertification unless it is revoked or suspended.

3. On July 24, 2017, the Agency received an arrest notification from the California Department of Justice that respondent had been arrested for possessing child pornography, in violation of Penal Code section 311.11, subdivision (a). The Agency conducted an administrative investigation and learned that respondent had been employed by the San Francisco Police Department as a peace officer.

4. On July 28, 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. The suspension order was based upon the Medical Director's preliminary determination that respondent had engaged in conduct that constituted grounds for revocation of his EMT certificate, and that permitting him to continue to perform activities authorized by his certificate posed an imminent threat to the health and safety of the public.

5. On July 28, 2017, the Agency sent respondent a letter, by registered mail, advising him of the administrative investigation and notifying him that his certificate had been temporarily suspended. The Agency directed respondent to contact the Agency within 10 days to schedule an administrative interview. Respondent did not respond to the letter.

6. On August 4, 2017, Aaron Doyle, Prehospital Care Coordinator, signed an Accusation for Patricia Frost, R.N., M.S., P.N.P., in her official capacity as the Director of Emergency Medical Services for the Agency. The Accusation filed against respondent seeks to revoke respondent's EMT certificate. Respondent filed a notice of defense and this hearing followed.

7. On November 3, 2017, Doyle personally delivered to respondent's attorney, a Notice of Intent to introduce at hearing the declarations of Doyle and Sergeant Carman Batan, of the San Francisco Police Department. No objection was filed by or on behalf of respondent.

8. The declaration of Sergeant Batan, dated November 3, 2017, and the investigation reports and forensic findings attached to her report, establish that in February 2017, law enforcement officers executed search warrants on respondent's home, vehicle, mobile phone, computer, and thumb drives, and found that these devices contained child pornography. Respondent was arrested and charged with violating Penal Code section 311.11, subdivision (a).

9. No evidence was submitted by or on behalf of respondent.

LEGAL CONCLUSIONS

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.)

2. Pursuant to Health and Safety Code section 1798.200, subdivision (a)(3), the medical director of the local EMS agency may impose discipline on any EMT-I or EMT-II certificate, where the certificate holder engages in any of the actions set forth in Health and Safety Code section 1798.200, subdivision (c).

Causes for discipline

3. While the matters set forth in Factual Finding 8 established that respondent possessed child pornography and was charged with violating Penal Code section 311.11, subdivision (a), it was not established that respondent was convicted of such offense. Accordingly, cause does not exist to discipline respondent's EMT certificate pursuant to Health and Safety Code section 1798.200, subdivision (c)(12)(C) (commission of sexually related offense).

4. Based upon respondent's possession of child pornography, as set forth in Factual Finding 8, cause exists to discipline respondent's EMT certificate pursuant to Health and Safety Code section 1798.200, subdivision (c)(5) (commission of any corrupt act that is substantially related¹ to the qualifications, functions, and duties of prehospital personnel).

5. Based upon respondent's possession of child pornography, as set forth in Factual Finding 8, cause exists to discipline respondent's EMT certificate pursuant to Health and Safety Code section 1798.200, subdivision (c)(7) (violating any law or regulations pertaining to prehospital personnel).

Disciplinary determination

6. The 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 (Guidelines), dated April 1, 2010. Under the Guidelines, the maximum recommended discipline for respondent's violations of Health and Safety Code section 1798.200, is license revocation and the minimum recommended action is a stayed revocation with probation. The factors used to determine the appropriate discipline include:

¹ An act is substantially related to the qualifications, functions, and duties of prehospital personnel if it evidences a present unfitness of the certificate holder to perform the functions authorized by his certificate in a manner consistent with public safety. (Cal. Code Regs., tit. 22, § 100208, subd. (a).)

the nature and severity of the offense; actual or potential harm to the public, including harm to any patient; rehabilitation evidence; and mitigating or aggravating evidence.

7. In determining whether or not license revocation is appropriate in any case, the overriding concern is the protection of the public. In the instant case, respondent was found to have possessed child pornography. Respondent failed to appear at the hearing or otherwise present any evidence of rehabilitation or mitigation. Under these circumstances, the Agency lacks assurances that respondent can be trusted to perform duties authorized by his certificate in a manner consistent with public safety. Revocation of respondent's license, therefore, is the appropriate discipline.

ORDER

Emergency Medical Technician Certificate No. E074035, issued to respondent Joshua Enea, is revoked.

Dated: February 21, 2018

DocuSigned by:
Diane Schneider
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DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings