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BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Emergency Medical  
Technician- Paramedic License of:  
**ROBERT ANTHONY**  
License No. P17450  
Respondent.

) Enforcement Matter No.: 14-0280  
) OAH No.: 2015120827  
)  
)

**DECISION AND ORDER**

The attached Proposed Decision is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective 30 days after the date below. It is so ordered.

DATED:

8/16/16

  
Howard Backer MD, MPH  
Director  
Emergency Medical Services Authority

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Emergency Medical  
Technician-Paramedic License Held by:

ROBERT ANTHONY,

Emergency Medical Technician-Paramedic  
License No. P17540

Respondent.

Enforcement Matter No. 14-0280

OAH No. 2015120827

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Timothy J. Aspinwall, Office of Administrative Hearings, State of California, on July 18, 2016, in Sacramento, California.

Stephen J. Egan, Staff Counsel, Emergency Medical Services Authority (EMSA), represented complainant.

Sean D. Currin, Esq., Mastagni Holstedt, PC, represented Robert Anthony (respondent) who was present.

Evidence was received, the record was closed, and the matter was submitted on July 18, 2016.

**FACTUAL FINDINGS**

1. Sean Trask (complainant) brought the accusation solely in his official capacity as the Chief of the EMSA, State of California.

2. At all times relevant to the allegations in the accusation, respondent was a California licensed paramedic employed by the Sacramento Fire Department and was working under a valid EMT-P license as a paramedic. EMSA issued an initial EMT-P license number P17540 to respondent on December 7, 2011. His license is valid through December 31, 2016.

3. At all times relevant to the allegations in the accusation, the Sacramento Fire Department operated an advanced life support (ALS) program in Sacramento County under the medical direction and management of the Sacramento Emergency Medical Services Agency (SEMSA). As a local EMS agency, SEMSA was statutorily mandated to establish policies and protocols that govern and assure medical control of the Sacramento County's emergency medical services system according to state standards. (Health & Saf. Code, § 1797.220; Cal. Code Regs., tit. 22, § 100170.) In compliance with the enabling statutes and regulations, SEMSA adopted policies that define and govern the roles, responsibilities, and scope of practice of accredited prehospital responders employed by approved EMS providers such as the Sacramento Fire Department.

4. Complainant contends that respondent failed to follow SEMSA protocols while responding to a call regarding a solo automobile accident on August 24, 2014, involving an 84-year old man who drove an automobile through a cinderblock wall adjacent to a traffic intersection, and that respondent is therefore guilty of gross negligence, incompetence, and improperly functioning outside the supervision of medical control. Respondent disputes these allegations, contending that he and the other members of the emergency response team properly assessed the automobile driver pursuant to the applicable SEMSA protocols and correctly found that he was a "person" not a "patient," and that it was therefore unnecessary to follow the protocol applicable to "patients."

5. Pursuant to the SEMSA Program Document # 2101.14 - Patient Initiated Refusal of Service and/or Transport, "Person" and "Patient" are defined as follows:

Person: Any person encountered by emergency medical personnel shall meet ALL the following conditions:

1. Does not manifest any evidence of illness or injury by witnessed history or personal complaint.
2. Exhibits no sign of impaired capacity to understand the urgent nature of their medical condition.
3. Refuses any assessment by out of hospital personnel.

Patient: Any person encountered by emergency medical personnel who meets ANY of the following conditions:

1. Manifests any evidence of illness or injury.
2. Exhibit signs of impaired capacity to understand the urgent nature of their medical condition.
3. Any person who requests an assessment.

#### *Fire Department's Response to Automobile Accident*

6. On August 24, 2014, respondent was dispatched to a solo automobile collision on the surface streets of Sacramento. Respondent arrived at the scene at approximately 6:52

a.m., along with an EMT and the driver of Fire Engine 10. The captain arrived by separate vehicle. Respondent was the paramedic in charge at the scene.

7. The scene of the collision was a four-way intersection controlled by traffic lights. The automobile driver had made a left turn at the intersection and driven through a cinderblock wall into the yard of a private residence located at the corner. The portion of the wall the automobile driver had driven through was not reinforced by concrete or steel rebar.

8. When respondent arrived at the scene, he observed the broken cinderblock wall and an automobile located approximately 30 feet into the yard of the residence on the corner. Respondent located the driver of the automobile who was walking around the vehicle without limping or any other signs of pain or injury. The captain and the EMT on the scene also observed the driver to be walking without limping, grimacing, or showing other signs of pain.

9. Respondent approached the driver. The driver gestured by putting his hands up and said "no need, no need." Respondent asked the driver if he was hurt, and the driver said "no." Respondent next asked the driver if he was okay. He said "yes," and lifted his shirt exposing his chest. Respondent did not see any signs of injury or bruising. Respondent asked the driver whether he wanted help, and the driver responded "no."

10. Respondent noticed that the driver spoke with a very strong Asian accent. Respondent intentionally varied his questions so that it would be nonsensical for the driver to answer either "yes" or "no" to all of the questions. In this way, respondent tested the driver's ability to comprehend the questions. Respondent was satisfied that the driver understood his questions, that he was not injured, and that he did not want any help.

11. At this point respondent concluded that the driver was a "person" not a "patient," based on respondent's observations outlined above that the driver (1) did not appear to be injured or complain of any injury, (2) appeared to understand the questions asked by respondent, and (3) refuse treatment by answering "no" to the question whether he wanted any help, and held up his hands and said "no need, no need." The EMT on the scene agreed with respondent's assessment that the driver was a "person" not a "patient."

12. Respondent also looked at the automobile to see whether there was any damage to the exterior or interior of the vehicle that would evidence injury to the driver and thus categorize him as a "patient." Respondent estimated the speed of the vehicle at the time it collided with the cinderblock wall to be approximately 25 to 30 mph, based upon the damage to the vehicle and its placement in the yard. There were no intrusions into the front or driver's side of the vehicle or any other potential "mechanism of injury." If there had been a "mechanism of injury," respondent's practice would have been to call the hospital to have a physician speak with the driver or send a third year medical resident to evaluate him.

13. The EMT on the scene gave the driver an ice pack to be used later if he felt stiffness or pain. The EMT provided the ice pack as a matter of courtesy and customer

service. The EMT told the captain he had given an ice pack to the driver, and that he had done so as a courtesy and not because he had observed any injury. The captain was satisfied with the EMT's reasons for providing the ice pack.

14. Respondent briefed the captain at the scene regarding his observations and conclusion that the driver was a "person" and did not require treatment or transportation to the hospital. The captain considered respondent's statement in the context of his own observations at the scene, which included that the driver had been walking around the collision scene without any sign of pain or injury, stating that he was not hurt. Also, the captain observed that the cinderblock wall was not reinforced, and shattered when the automobile went through it. If the wall had been solid concrete, the level of impact would have been much greater, and the captain would have been more suspicious about possible significant injury. Based on the captain's observations, he did not have any reason to doubt respondent when he said the driver was not injured. With the captain's approval, respondent and the other members of Fire Engine 10 left the collision scene at approximately 7:01 a.m. They had been at the scene for approximately eight minutes.

#### *Police Department's Response to Automobile Accident*

15. Two officers from the Sacramento Police Department were dispatched to the collision scene at approximately 6:48 a.m., on August 24, 2014. When the officers arrived at the scene, the emergency response team from the Fire Department was already there, and told the officers that the driver was not injured.

16. The police officers initiated questioning with the driver. They utilized a language interpreter through the telephonic "language line." The driver told the officers he had driven into the wall intentionally because he wanted to commit suicide. He told the officers he is going blind and his family is not good, and he just wanted to end his life.

17. Based on these statements, the police officers transported the driver to the hospital for a psychiatric evaluation. At the hospital, while the nursing staff was examining the patient one of the officers observed redness approximately 8 inches in diameter across the left side of the driver's ribs.

#### *Driver's Statement*

18. On September 24, 2014, the automobile driver was interviewed by an investigator with the Sacramento Fire Department's Professional Standards Unit. The driver stated that when the Fire Department emergency response team arrived he was not injured, did not feel any pain, and that he told the firemen he did not feel any pain and that he was not hurt. He also stated that he used an ice pack given to him by one of the firemen when he began to feel some pain after the firemen left the scene. He said the firemen had treated him well. He said he was discharged from the hospital on the day of the collision. The staff at the hospital took x-rays which showed no broken bones.

### *Investigative Findings*

19. Patrick Hansen is an investigator for the Sacramento Fire Department's Professional Standards Unit. During his career with the Fire Department and with the Sacramento Police Department he has investigated over 5,000 vehicle collisions. Investigator Hansen was assigned to conduct an internal affairs investigation following a complaint from the UC Davis Medical Center (UCDMC) that the Fire Department's emergency response team did not recognize that the driver met certain critical trauma criteria, including the injury observed at the emergency department, the driver's age, language barriers, and a vehicle speed at the time of collision in excess of 40 mph. The driver's age and the speed of the vehicle in excess of 40 mph are factors under the Trauma Triage Critical listed in SEMSA Protocol 5053.14.

20. In response to this complaint, and as directed by his superiors, Investigator Hansen interviewed the automobile driver and all of the personnel from the Fire and Police Departments who responded to the scene of the collision. Investigator Hansen also examined the automobile and went to site of the collision.

21. Investigator Hansen prepared written interview summaries and testified at hearing regarding his findings. Investigator Hansen's interview summaries and findings are consistent with Factual Findings 6 through 18, above.

22. Based on his examination of the automobile involved in the collision and the site of the collision, Investigator Hansen concluded that the automobile was traveling at approximately 25 to 30 mph when it collided with the cinderblock wall. Based on his interviews with the automobile driver and the responding personnel from the Fire and Police Departments, Investigator Hansen testified that respondent did not commit any violation of the SEMSA protocols.

23. Following Investigator Hansen's investigation and report, the Sacramento Fire Department, acting through Deputy Chief Michael Bartley, imposed informal discipline in the form of a "Documented Counseling" based on the Fire Department's conclusion that respondent failed to recognize critical trauma criteria listed in SEMSA Protocol 5053.14, including the driver's age and language barriers, and that respondent incorrectly recognized the driver as a "patient" rather than a "person" pursuant to SEMSA Protocol 2101.14. The conclusions in the Documented Counseling are given little weight because complainant did not provide testimony regarding the specific reasons for the Documented Counseling from persons involved in the decision.

### *Discussion*

24. The EMS regulations define the phrase "gross negligence" to mean: "An extreme departure from the standard of care which, under similar circumstances would have ordinarily been exercised by a reasonably prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties if confronted with a similar

circumstance.”<sup>1</sup> The EMS regulations define the word “incompetence” to mean: “The lack of possession of that degree of knowledge, skill, and ability ordinarily possessed and exercised by a licensed and accredited paramedic.”<sup>2</sup> Incompetence generally refers to an absence of qualification, ability or fitness to perform a specific professional function or duty. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040; *Pollack v Kinder* (1978) 85 Cal.App.3d 833.)

25. None of complainant’s witnesses testified that respondent’s conduct constituted gross negligence or incompetence as defined by EMSA.<sup>3</sup> Indeed, Professional Standards Unit Investigator Patrick Hansen, called by complainant, testified that he saw no violation of the SEMSA protocols based on his review of the facts and interviews of persons involved. The allegations of gross negligence and incompetence were therefore not established by the evidence.

26. It was not established, as alleged in the Second Cause for Discipline, that respondent was guilty of functioning outside the supervision of medical control in the field care system operating at the local level. The evidence at hearing is that respondent acted within the SEMSA protocols when he assessed the driver as a “person,” and that he reported his assessment to the captain at the scene. The allegation that respondent was acting outside the supervision of medical control was therefore not established by the evidence.

## LEGAL CONCLUSIONS

### *The Standard of Proof*

1. The standard of proof in an administrative action seeking to suspend or revoke a certificate that requires substantial education, training, and testing is “clear and convincing evidence.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

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<sup>1</sup> This definition is derived from the EMSA’s disciplinary guidelines that are incorporated as regulations. (Cal. Code Regs., tit.22, § 100173.)

<sup>2</sup> *Ibid.*

<sup>3</sup> License disciplinary cases heard under the California Administrative Procedure Act require expert testimony where the professional significance of underlying facts seems beyond lay comprehension. (*Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 141.)

*Applicable Law*

2. Health and Safety Code section 1798.200, subdivisions (b) and (c), reads, in pertinent part:

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the 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 holder or licenseholder under this division:

[¶] ... [¶]

(2) Gross negligence.

[¶] ... [¶]

(4) Incompetence.

[¶] ... [¶]

(10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

*Cause Does Not Exist to Impose Discipline*

3. Cause does not exist to impose discipline under Health and Safety Code section 1798.200, subdivisions (c)(2) or (3). Clear and convincing evidence did not establish gross negligence or incompetence by respondent.

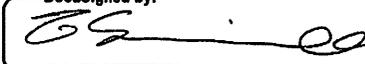
4. Cause does not exist to impose any discipline under Health and Safety Code section 1798.200, subdivision (c)(10). Clear and convincing evidence did not establish that respondent functioned outside the supervision of medical control.

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ORDER

The Accusation in Case No. 14-0280 filed against Robert Anthony, Emergency Medical Technician-Paramedic License No. P17540 is dismissed.

DATED: August 11, 2016

DocuSigned by:  
  
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TIMOTHY J. ASPINWALL  
Administrative Law Judge  
Office of Administrative Hearings