

**BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**ALEXANDER BAKER,**

**Emergency Medical Technician-Paramedic  
License No. P29848**

**Respondent.**

Enforcement Matter No. 12-0307

OAH No. 2014060011

**PROPOSED DECISION**

This matter was heard before Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 20, 2014, and February 9, 2015, in Sacramento, California.

Craig Stevenson, Counsel, Emergency Medical Services Authority (EMSA), represented complainant.

Joseph W. Rose, Attorney at Law, Rose Law, represented respondent Alexander Baker.

Evidence was received and the matter was submitted on February 9, 2015.

**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 Riggs Ambulance Service, Inc., in Merced, California. EMSA first issued EMT-P license number P29848 to respondent on June 27, 2011, and his license is valid through June 30, 2015.

3. At all times relevant to the allegations in the accusation, Riggs Ambulance Service operated an advanced life support program under the medical direction and management of Merced County Emergency Medical Services Agency (Merced EMS), a

division of the Merced County Department of Public Health. Merced EMS was statutorily mandated to establish policies and procedures that govern the County's emergency services system according to State standards. (Health & Saf. Code, §1797.220; Cal. Code Regs., tit.22, §§100148, 100170.) In compliance with the enabling statutes and regulations, the Merced EMS adopted policies that define and govern the roles, responsibilities, and scope of practice of accredited prehospital responders employed by approved EMS providers such as Riggs Ambulance Service.

4. The Merced County EMS Agency Adult Treatment Protocols, Advanced Airways, reads in pertinent part:

All patients that have been intubated must have end-tidal CO<sub>2</sub> detectors placed to confirm tube placement. Documentation confirming tube placement shall include color change by the CO<sub>2</sub> detector or an attachment of capnography wave form strips with documentation of capnography values. Documentation should also include visualization of the cords, good lung sounds, absent epigastric sounds, and rise and fall of the chest, the size of the tube and the centimeters at which it is secured. The paramedic must re-confirm tube placement after movement and document that assessment on the PCR [patient care report].

5. On June 9, 2012, respondent and his EMT partner Megan Hazeltine were dispatched by Riggs Ambulance Service to render emergency medical care to an adult female whose husband had called 9-1-1 to report that his wife had stopped breathing. The Merced Fire Department EMTs were already caring for the 39-year-old woman by providing CPR when respondent and Ms. Hazeltine arrived. The woman was lying on the floor of an upstairs bedroom in cardiac arrest. Ms. Hazeltine suctioned the woman who was vomiting copiously and respondent inserted an endotracheal tube to provide oxygen to her lungs. Respondent asked Ms. Hazeltine to listen for lung sounds with her stethoscope and she listened to both lungs and reported to respondent she heard lung sounds bilaterally. She also listened to the abdomen for epigastric sounds that might indicate that the endotracheal tube was improperly placed in the esophagus. She heard no epigastric sounds. Respondent was unable to secure the endotracheal tube with the attached Velcro strap which is designed to run behind the patient's head and secure the device at the teeth line. The amount of vomit rendered the Velcro strap ineffective. Respondent concluded that taping the device in place would also be fruitless because of the vomit, so he asked the firefighters to try and hold the tube in place as the patient was carried to the ambulance downstairs.

6. The patient was loaded into the ambulance and transported the short distance to the emergency department of Merced Medical Center, which took approximately four minutes. Respondent radioed the Medical Center that they were bringing a "Code Blue" (patient not breathing) patient and the Medical Center's resuscitation team was assembled to care for the patient.

7. There was a conflict in the testimony regarding whether the patient arrived in the resuscitation room of the hospital emergency department with the endotracheal tube in the esophagus instead of the trachea. Respondent testified that he rechecked the patient's lung sounds during transportation and confirmed the proper placement of the tube. The emergency room physician testified that within a minute of receiving the patient, she noticed that the patient's stomach was distended which prompted her to ask if the patient was pregnant. She was told the patient was not pregnant. The emergency room physician testified that she heard gurgling sounds in the patient's stomach and detected no lung sounds. She confirmed the misplacement of the tube with a laryngoscope. She reintubated the patient and confirmed the proper placement of the tube. Ms. Hazeltine testified that the emergency room doctor initially reported good lung sounds after listening with her stethoscope, and then quickly reported things were not good. Ms. Hazeltine testified that she and respondent were confused and respondent debated the placement of the tube with the doctor, with respondent disavowing any responsibility for the misplacement of the tube. Neither respondent nor the emergency room doctor recalled such a debate in their respective testimony. An emergency room record which is supposed to reflect simultaneous recording of significant events in the treatment showed the passage of approximately 12 minutes between the patient's arrival and her reintubation by the emergency room physician. The emergency room physician conceded in her testimony that this seemed like a long time to reestablish an airway for a patient who was not breathing.

8. Other evidence established that an endotracheal tube can become dislodged during transportation of a patient, particularly if the tube cannot be secured beyond holding it in place by hand. Also, the emergency room physician, despite her testimony that the tube was misplaced and probably had been for at least ten minutes based on the distension of the abdomen, signed the Prehospital Care Report Summary presented to her by respondent acknowledging "MD verification of ET placement."

9. Although both parties focused considerable attention on this issue, the evidence did not clearly establish whether the endotracheal tube was initially placed correctly by respondent in the trachea and became dislodged, or was never properly placed. This unresolved question is not critical to the resolution of the allegations in the Accusation, however, as none of the alleged causes for license discipline is based on the placement of endotracheal tube.

10. At no time did respondent make use of an end-tidal CO<sub>2</sub> detector to confirm the proper placement of the endotracheal tube. At least two types were available among the supplies in the ambulance. One type, known as a colorimetric device, uses a type of litmus paper to determine the level of exhaled carbon dioxide, if any, being emitted from the tube. Various colors correspond with the amount of detected CO<sub>2</sub>. The other type, regarded as the "gold standard," is capnography, an electronic device that when hooked up to the heart monitor produces wave forms on the monitor (and wave form strips) and digital readouts reflecting exhaled carbon dioxide. Normal carbon dioxide digital readings are between 35 and 45. Respondent did not use either device. However, respondent falsely recorded on the Prehospital Care Report Summary that at 2:11 a.m., he began "End-tidal CO<sub>2</sub> Monitoring."

He repeated the false assertion in the portion of the report entitled "TREATMENT/MEDICATION COMMENTS." Respondent also recorded a fabricated reading of "45" for the "ETCO2 VALUE" in the report.

11. Respondent was interviewed about the incident by Riggs Ambulance supervisors, the former Quality Review Manager for the Merced County EMS agency, and State EMSA investigator Chao. Although respondent suggested in at least one of the interviews that he might have used the colorimetric end-tidal device based on past practice, he generally conceded that no end-tidal CO<sub>2</sub> device had been used. In his testimony at the administrative hearing, respondent acknowledged that he did not use any CO<sub>2</sub> measuring device. He explained that he was focused on getting the relatively young patient to the hospital quickly and was rushing to do so. He saw the patient's vocal cords when he inserted the endotracheal tube, and he felt confident that the tube was properly placed as confirmed by his partner's report of lung sounds bilaterally and no epigastric noises. When he began filling out his Prehospital Care Summary on an electronic tablet, the required fields relating to the use of an end-tidal device prompted his realization that he had not used the required device. He entered, however, that he had done so and included what he knew to be a normal value for exhaled carbon dioxide. He explained that he wanted to complete the report and obtain the emergency room doctor's signature so he could leave the hospital. He completed the electronic report after the call while sitting in a restaurant with his EMT partner. Respondent testified that he felt that he had to enter some number for the digital value of carbon dioxide as a "placeholder," and that he intended to speak to supervisors and amend the report later but forgot to do so. This testimony was not credible, based on the totality of the evidence relating to the incident. Rather, the evidence established that respondent made false entries to cover up his failure to adhere to protocols.

12. It was not established, as alleged in the First Cause for License Discipline, that respondent was guilty of gross negligence. The EMS regulations define the phrase 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> None of complainant's witnesses testified that respondent's failure to use an end-tidal CO<sub>2</sub> device constituted gross negligence.<sup>2</sup> Respondent produced evidence that in 2012, Merced County paramedics used an end-tidal CO<sub>2</sub> detection device in 85 percent of cases, and in 2013, they used such a device in 78 percent of cases. These figures were similar to those in other northern California jurisdictions. Allison Lowder, Director of Clinical Operations at Pro Transport-1, where respondent currently works, has been a paramedic for 14 years and has taught more than 150 paramedics at Foothill College. She established that the capnography device is the most reliable end-tidal CO<sub>2</sub> measuring

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instrument. She said that a paramedic's failure to use an end-tidal CO<sub>2</sub> detection device does not constitute gross negligence as the phrase is defined by EMSA.

13. Respondent failure to use an end-tidal CO<sub>2</sub> detection device violated the Merced County EMS agency protocol recited in Factual Finding 4. The parties agreed that such a violation of protocols constituted functioning outside the supervision of medical control in the field care system operating at the local level.

14. Respondent committed dishonest acts that are substantially related to the qualifications, duties and functions of prehospital personnel by falsely entering in the Prehospital Care Summary that he had used an end-tidal CO<sub>2</sub> device and that the CO<sub>2</sub> level was 45.

#### *Findings in Mitigation and Rehabilitation*

15. Linda Diaz was responsible for quality control at Merced County EMS when the incident occurred. She is one of the people who interviewed respondent about the events. She consulted with the Merced County Medical Director and they agreed to refer the matter to the State EMSA which led to the Accusation in this matter. Ms. Diaz has been a registered nurse for 25 years and worked in emergency departments for 14 years. For the last 10 years, she has worked for EMS agencies. She is currently employed as Program Manager for Pro Transport-1, a medical transport company, where respondent also works. She sees him once a month. She described respondent as polite, professional, and nice to work with. She feels that respondent is not a danger to the health and safety of his patients.

16. Megan Hazeltine, the EMT who partnered with respondent on the day that the events that led to the Accusation occurred, described respondent as honest and competent. She regarded him as a "wonderful paramedic" compared to others with whom she has worked.

17. As noted above, Allison Lowder is the Director of Clinical Operations at Pro Transport -1 and she has been a licensed paramedic for 14 years. She is acquainted with respondent in his capacity as Station Manager for the Santa Clara office of Pro Transport-1. Respondent has a reputation for being honest and straightforward. He has had no quality of care issues. Ms. Lowder expressed that while it was not gross negligence for respondent to have neglected to use an end-tidal CO<sub>2</sub> device, his misrepresentation in the patient care record that he had done so and the false reading were "very serious." She nonetheless felt that that the conduct did not warrant the revocation of respondent's license.

18. Douglas Masters also works for Pro Transport-1 as a paramedic. He has worked with respondent and evaluated him. He passed respondent with "no flags." He regularly uses an end-tidal CO<sub>2</sub> detector, but said they were not widely available until recently.

19. Jeronimo Carlos has been the Operations Manager for Pro Transport-1 for six years. He has been an EMT for nine years. He interviewed respondent for the Station

Manager job respondent now holds. Respondent oversees all of the Santa Clara activities of the medical transport company. He is regarded as very honest and responsible.

20. Eduardo Salazar has been a paramedic for 12 years and was an EMT for two years. He has performed many intubations, but does not always use an end-tidal CO<sub>2</sub> detection device. He relies on other tests such as lung sounds, the absence of epigastric noises, and the rising and falling of a patient's chest. He works for Pro Transport-1.

21. Respondent related that the incident was his approximately third code blue call after he was licensed as a paramedic. The earlier calls included a supervisor and the end-tidal CO<sub>2</sub> device was placed on the endotracheal tube by the EMT. He acknowledged that this experience was no excuse for his omission and the responsibility for ensuring the use of the device was his as the paramedic. Respondent has been the Santa Clara Station Manager for Pro Transport-1 for one year, supervising 30 other paramedics. He has worked for the company for three and one-half years. Respondent has gone on hundreds of calls since the June 9, 2012 incident that included administration of CPR, cardiac arrest patients, and the use of endotracheal tubes. The incident and the investigation that followed taught him to slow down and do the right thing, rather than just get by. He has learned to seek help when needed, and when things go awry, he does not procrastinate in informing supervisors. Respondent completed an ethics workshop sponsored by Pro Transport-1.

## LEGAL CONCLUSIONS

1. 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). Proceedings against any EMT-P license or licenseholder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(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.

**(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.**

**(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.**

**2. Respondent is subject to discipline pursuant to Factual Findings 2 through 14 by reason of Health and Safety Code section 1798.200, subdivisions (b) and (c), subsections (5), (7), and (10). Respondent failed to follow applicable protocols requiring the use of an end-tidal CO<sub>2</sub> detection device for the endotracheal tube. Respondent dishonestly entered in the Prehospital Patient Care electronic record that he had used such a device and dishonestly entered a fabricated digital value for exhaled carbon dioxide in the record. The failure to follow the applicable protocols constituted functioning outside the supervision of the Merced County Medical Director.**

**3. California Code of Regulations, title 22, section 100176, lists the criteria for assessing rehabilitation when considering, among other EMSA actions, discipline imposed pursuant to Health and Safety Code section 1798.200. They are:**

**(1) The nature and severity of the act(s) or crime(s).**

**(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.**

**(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (1) or (2) of this section.**

**(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.**

**(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.**

**(6) Evidence, if any, of rehabilitation submitted by the person.**

4. As one of respondent's own witnesses testified, respondent's attempt to cover up his omission was "very serious." It has been almost three years since the June 9, 2012 incident. Since then, respondent has performed in an apparently competent manner as a paramedic to the extent that his current employer has promoted him to Station Manager in charge of 30 other paramedics. There have no other reported quality of care incidents and respondent is regarded as an honest professional by his peers and supervisors. Respondent has learned to be more patient and scrupulously follow required protocols. When mistakes occur, he now understands that he must alert his management and report such incidents accurately. The appropriate disposition of this matter is the revocation of respondent's paramedic license and staying the revocation on appropriate terms and conditions for a reasonable period of probation.

**ORDER**

EMT-P license number P29848 issued to respondent Alexander Baker is revoked pursuant to Legal Conclusions 1 through 4. However, such revocation is stayed and respondent is placed on probation for three (3) years upon the following conditions:

**Standard Conditions of Probation**

It is the responsibility of the EMSA to monitor paramedics placed on probation consistent with the terms and conditions of the probationary order.

**1. Probation Compliance:**

Respondent shall fully comply with all terms and conditions of the probationary order. Respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of respondent's compliance with the terms and conditions of his probationary order.

Respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of respondent.

**2. Personal Appearances:**

As directed by the EMSA, respondent shall appear in person for interviews, meetings, and/or evaluations of respondent's compliance with the terms and conditions of the probationary order. Respondent shall be responsible for all of his costs associated with this requirement.

**3. Quarterly Report Requirements:**

During the probationary period, respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by respondent with all the terms and conditions of his probation. If respondent submits his quarterly reports by mail, it shall be sent as Certified Mail.

**4. Employment Notification:**

During the probationary period, respondent shall notify the EMSA in writing of any EMS employment. Respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, respondent shall submit proof in writing to the EMSA of disclosure, by the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of respondent's probation.

Respondent authorizes any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

Any and all notifications to the EMSA shall be by certified mail.

**5. Notification of Termination:**

Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of his termination.

Any and all notifications to the EMSA shall be by certified mail.

**6. Functioning as a Paramedic:**

The period of probation shall not run anytime that respondent is not practicing as a paramedic within the jurisdiction of California.

If respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, respondent must immediately notify the EMSA, in writing, of the date of such departure and the date of return to California, if respondent returns.

Any and all notifications to the EMSA shall be by certified mail.

**7. Obey All Related Laws:**

Respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Within 72 hours of being arrested, cited or criminally charged for any offense, respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the offense(s) as to whether respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

Any and all notifications to the EMSA shall be by certified mail.

**Additional Conditions Imposed in Accordance with EMSA Penalty Guidelines<sup>3</sup>**

**8. Educational Course Work:**

Within 120 days of the effective date of this decision, respondent shall submit to the EMSA proof of completion of 20 hours of education in areas substantially related to the offense as stated in the accusation and to the satisfaction of the EMSA.

Any educational program may include community service to reinforce the learning objectives of the educational program.

All courses must be approved by the EMSA. Within thirty-five (35) days after completing the course work, respondent shall submit evidence of competency in the required education. Submittal of a certificate or letter from the instructor attesting to respondent's competency shall suffice.

Any and all notifications to the EMSA shall be by certified mail.

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**9. Ethical Practice of EMS:**

Within 90 days of the effective date of this decision, respondent shall submit to the EMSA, for its prior approval, a course in Ethics. Respondent must complete this course during his

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probation period.

Upon completion by respondent of the Ethics course, respondent shall submit proof to the EMSA that he fulfilled all course requirements.

Any and all notifications to the EMSA shall be by certified mail.

Completion of Probation

10. Completion of Probation:

Respondent's license shall be fully restored upon successful completion of probation.

11. Violation of Probation:

If during the period of probation respondent fails to comply with any term of probation, the EMSA may initiate action to terminate probation and implement actual license suspension/revocation. Upon the initiation of such an action, or the giving of a notice to respondent of the intent to initiate such an action, the period of probation shall remain in effect until such time as a decision on the matter has been adopted by the EMSA. An action to terminate probation and implement actual license suspension/revocation shall be initiated.

DATED: March 9, 2015



KARL S. ENGEMAN  
Administrative Law Judge  
Office of Administrative Hearings