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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

JAMES D. BARR
License No. P28048

Respondent.

) Enforcement Matter No.: 13-0304
) OAH No.: 2014050683

) **DECISION AND ORDER**

The attached Proposed Decision and order dated January 22, 2015, is hereby adopted by the
Emergency Medical Services Authority as its Decision in this matter.

This decision shall become effective 15 days after the date of signature.

It is so ordered.

DATED:

January 26, 2015


Howard Backer, MD, MPH, FACEP
Director
Emergency Medical Services Authority

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

In the Matter of the Accusation Against:

JAMES D. BARR,
EMT-P License No. P28048

Respondent.

Case No. 13-0304

OAH No. 2014050683

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on January 5, 2015, in Sacramento, California.

Craig L. Stevenson, Senior Staff Counsel, represented complainant Sean Trask, Chief of the Personnel Division of the Emergency Medical Services Authority (EMSA), State of California.

Respondent James D. Barr represented himself.

Evidence was received, the record was closed, and the matter was submitted for written decision on January 5, 2015.

SUMMARY

Complainant seeks to discipline respondent's Emergency Medical Technician-Paramedic license on the grounds that he violated various provisions of the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (Act) (Health & Saf. Code, § 1797 et seq.) during and immediately after a call for service on August 4, 2013. Cause exists to discipline his license. Respondent failed to introduce evidence of sufficient insight into his inappropriate behavior on that day to demonstrate his continued ability to perform the duties of a paramedic in a manner consistent with public health, safety, and welfare, even on a restricted basis. Therefore, his Emergency Medical Technician-Paramedic license should be revoked.

FACTUAL FINDINGS

Background

1. Complainant signed the Accusation solely in his official capacity on May 5, 2014.
2. EMSA issued Emergency Medical Technician-Paramedic License No. P28048 (EMT-Paramedic license) to respondent on January 25, 2010. The EMT-Paramedic license expires January 31, 2016, unless renewed or revoked. There is no history of prior discipline of the EMT-Paramedic license.
3. Respondent was certified as an Emergency Medical Technician by the San Joaquin Emergency Medical Services Agency, the Local EMS Agency, on April 7, 2006. He was subsequently accredited as a Paramedic on February 8, 2010. His current accreditation expires January 31, 2015, unless renewed or revoked.
4. Respondent worked for Manteca District Ambulance Service from August 7, 2007, through August 28, 2013, first as an Emergency Medical Technician and then as a Paramedic. His employment was terminated effective August 28, 2013, based on his conduct during and after the August 4, 2013 call for service, which is discussed further below.

The August 4, 2013 Call for Service

5. On August 4, 2013, respondent and his former partner, EMT Serena VanDyke, were dispatched to a medical call at approximately 6:43 a.m. While there was a conflict in the evidence as to the specific nature of the call, the persuasive evidence established that respondent's initial understanding of the nature of the call was that it involved complaints of shortness of breath.
6. By the time respondent and Ms. VanDyke arrived on scene, EMTs from the Manteca Fire Department had already arrived and begun their initial assessment of the patient. Respondent entered the apartment, but Ms. VanDyke stayed outside due to its small size. After respondent announced his presence, he backed out of the apartment and stood in the doorway while the EMTs from the Manteca Fire Department took the patient's vital signs and made an initial assessment. He heard the patient complaining of feeling sick for the past couple of days, feeling nauseous, and having a headache.
7. After the EMTs with the Manteca Fire Department provided respondent with the patient's initial vital signs, the decision was made to transport her to Kaiser Hospital. Therefore, fire department personnel assisted respondent and Ms. VanDyke with loading the patient into the back of the ambulance.
8. After the patient was loaded into the back of the ambulance, Ms. VanDyke climbed in the back with her. Respondent asked Ms. VanDyke if she needed anything, she

stated she did not, and respondent climbed into the ambulance and drove to Kaiser Hospital, which was about five minutes away. Up to that point in the call, he had not personally taken the patient's vital signs or administered any type of first aid to her.

9. When they were approximately two minutes away from the hospital, Ms. VanDyke told him that the patient was complaining of chest pains. Respondent asked Ms. VanDyke to take the patient's vital signs and hook her up to an EKG machine to monitor her heart rhythms. Ms. VanDyke reported that the patient's vital signs were "hypertensive, pulse rate was irregular." She also reported that the EKG machine was showing irregular heart rhythms. Respondent continued driving to the hospital without stopping or rendering any aid to the patient.

10. After arriving at Kaiser Hospital, the ambulance remained parked in the ambulance bay for several minutes while respondent climbed into the back of the ambulance and began administering advanced life support care to the patient. This was the first time during the service call that he had administered any type of first aid to the patient. Respondent also asked Ms. VanDyke to start an IV for the patient and check the patient's blood glucose levels, which she did.

11. After care of the patient was transferred to hospital staff, respondent completed the patient care report.¹

¹ The patient care report must include the following information:

- (1) The date and estimated time of incident.
- (2) The time of receipt of the call (available through dispatch records).
- (3) The time of dispatch to the scene.
- (4) The time of arrival at the scene.
- (5) The location of the incident.
- (6) The patient's:
 - (A) Name;
 - (B) Age;
 - (C) Gender;
 - (D) Weight, if necessary for treatment;

Interrelationship between EMSA and the Local EMS Agency (LEMSA)

12. While the Act gives EMSA the sole and exclusive responsibility for licensing EMT-Paramedics, it tasks the LEMSA with responsibility for implementing an emergency medical services system and exercising medical control over approved EMS providers within its area of jurisdiction. (Health & Saf. Code, §§ 1797.172, subd. (c), 1797.204, and 1797.206; Cal. Code Regs., tit. 22, § 100145, 100148, and 100170.) Additionally, the LEMSA is required to establish policies and procedures that govern and assure medical control over its medical services system according to state standards. (Health & Saf. Code, § 1797.220; Cal. Code Regs., tit. 22, § 100148.)

13. At all times relevant, the San Joaquin EMS Agency was the LEMSA with authority over Manteca District Ambulance Services.

(E) Address;

(F) Chief complaint; and

(G) Vital signs.

(7) Appropriate physical assessment.

(8) The emergency care rendered and the patient's response to such treatment.

(9) Patient disposition.

(10) The time of departure from scene.

(11) The time of arrival at receiving facility (if transported).

(12) The name of receiving facility (if transported).

(13) The name(s) and unique identifier number(s) of the paramedics.

(14) Signature(s) of the paramedic(s).

(Cal. Code Regs., tit. 22, §100171, subd. (e).)

Failure to Follow Applicable Policies and Procedures

14. As of August 4, 2013, the San Joaquin EMS Agency had adopted EMS Policy No. 5701, entitled “Routine ALS Care:”

Routine ALS² Medical Care shall consist of the following:

- A. Standard precautions
- B. Provision of appropriate BLS³ care in accordance with EMS Agency policy
- C. ECG monitoring
- D. IV access as indicated (may use saline lock when appropriate)
- E. Obtain blood glucose level, as indicated
- F. Transport
- G. Follow ALS treatment policies as indicated

The BLS care that was relevant on August 4, 2013, was the provision of supplemental oxygen to the patient.

15. Additionally, EMS Policy No. 5704 (ALS Patient Assessment – Primary

² Health and Safety Code section 1797.52 defines “ALS” as:

“Advanced life support” means special services designed to provide definitive prehospital emergency medical care, including, but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of specified drugs and other medicinal preparations, and other specified techniques and procedures administered by authorized personnel under the direct supervision of a base hospital as part of a local EMS system at the scene of an emergency, during transport to an acute care hospital, during interfacility transfer, and while in the emergency department of an acute care hospital until responsibility is assumed by the emergency or other medical staff of that hospital.

³ Health and Safety Code section 1797.60 defines “BLS” as follows:

“Basic life support” means emergency first aid and cardiopulmonary resuscitation procedures which, as a minimum, include recognizing respiratory and cardiac arrest and starting the proper application of cardiopulmonary resuscitation to maintain life without invasive techniques until the victim may be transported or until advanced life support is available.

Survey) was in effect, which identifies its purpose as being “to identify and immediately correct life-threatening problems.” In fulfilling that purpose, the EMT-Paramedic is required to: 1) check for life-threatening conditions; 2) introduce himself to the patient; and 3) determine the chief complaint or mechanism of injury.

16. EMS Policy No. 5705, which is entitled “ALS Patient Assessment – Secondary Survey,” identifies its purpose as identifying “problems which, though not immediately life or limb threatening, could increase patient morbidity and mortality.” The Policy requires the EMT-Paramedic to take the patient’s history and examine the patient’s head and face, neck, chest, abdomen, pelvis/genital-urinary, shoulder and upper extremities, lower extremities, and back.

17. EMS Policy No. 5713 entitled “ALS Narrow Complex Tachycardia; AFib/AFlutter” requires the EMT-Paramedic to take the followings steps for patients who are conscious:

- A. Place on 12 Lead ECG only if chest pain is present.
- B. Establish an IV of normal saline TKO.
- C. Monitor and transport patient.
- D. Consider reversible causes of tachycardia.
- E. Consult with Base Hospital Physician for medication orders if transport time > 10 minutes or change in patient condition.

18. The treatment required under EMS Policy No. 5719 (“ALS Chest Pain”) consists of the following:

- A. Oxygen 12 - 15 lpm via non-rebreather mask.
- B. IV of normal saline TKO.
- C. Administer nitroglycerin 0.4 mg SL – if systolic blood pressure is above 90 mmHg. May repeat every 5 minutes if signs/symptoms persist and systolic BP remains above 90 mmHg.
- D. If patient is able to swallow, give Aspirin 325 po.
- E. Perform 12 Lead ECG – Initiate STEMI Alert if indicated.
- F. Transport.

19. While evidence of exactly when the August 4, 2013 service call became an ALS call was unclear, it was undisputed that the call was an ALS call no later than when respondent’s partner informed him that the patient was complaining of chest pains and the EKG monitor showed irregular heart rhythms. The undisputed testimony was at that point respondent should have immediately stopped the ambulance, switched places with his partner, and begun administering ALS care. However, respondent did not begin administering such care, or any other care, until approximately two minutes later after they had already arrived at the hospital. Therefore, he failed to follow the following policies by not taking the following actions:

Policy Not Followed	Action Not Taken
EMS Policy No. 5701	Provide Supplemental Oxygen
EMS Policy No. 5704	Conduct Primary Survey
EMS Policy No. 5705	Conduct Secondary Survey
EMS Policy No. 5713	Place Patient on 12 Lead ECG Monitor
EMS Policy No. 5719	Perform 12 Lead ECG

Aiding or Abetting the Violation of the Applicable Scope of Practice

20. The scope of practice of an EMT is more limited than that of an EMT-Paramedic. For example, the former is limited to rendering “basic life support, rescue and emergency medical care to patients.” (Cal. Code Regs., tit. 22, § 100063, subd. (a)(2).) That includes obtaining diagnostic signs such as “temperature, blood pressure, pulse and respiration rates, pulse oximetry, level of consciousness, and pupil status” and “transport[ing] patients.” (Cal. Code Regs., tit. 22, § 100063, subd. (a) (3), (12).) An EMT is also allowed to “set up for ALS procedures, under the direction of an Advanced EMT or Paramedic.” (Cal. Code Regs., tit. 22, § 100063, subd. (a)(14).) An EMT is not, however, allowed to interpret heart rhythms shown on an ECG monitor, insert an IV into a patient, or check a patient’s blood glucose level, three functions which fall exclusively within the scope of practice of an EMT-Paramedic. (Cal. Code Regs., tit. 22, §100146, subd. (c)(1)(A), (F), (J).)

21. Ms. VanDyke did not exceed the scope of practice applicable to an EMT on August 4, 2013, when she rode in the back of the ambulance with the patient after leaving the patient’s apartment. Nor did she exceed her scope of practice when she connected the patient to the EKG monitor at respondent’s direction or when she told him that the patient’s blood pressure had dropped significantly. Ms. VanDyke did, however, exceed her scope of practice when she checked the patient’s blood glucose level and inserted an IV. And while she was allowed to take the patient’s pulse rate and blood pressure and report the results to respondent, she was not allowed to interpret the heart rhythms shown on the EKG monitor and conclude that the patient had an irregular heart rhythm. Ms. VanDyke took each of those actions at respondent’s direction while he was driving the ambulance. Therefore, he aided and abetted her violation of the regulations specifying her permissible scope of practice.

Commission of a Fraudulent, Dishonest, or Corrupt Act that is Substantially Related

22. Respondent was responsible for preparing the patient care record after the August 4, 2013 call for service. (Cal. Code Regs., tit. 22, §§ 100170, 100171, subd. (e).) While he prepared such record, he said the following about the accuracy of the information he provided during a subsequent investigation into his conduct:

None of the treatment listed on that PCR is correct. The times are not correct either. The only time that is correct is the MDA response, arrival, and destination at hospital. The rest were

filled in based on when treatment would have been done if in the right order. The hospital did not know that we were sitting in the ambulance doing treatment.

That is my signature on the last page, I signed Serena's signature for her. She did not look at the PCR. Serena knew that I signed her signature and never objected. I did make the hospital radio contact; I told them we were in route with a BLS patient was stable vitals.

Therefore, respondent committed fraudulent, dishonest, and corrupt acts that are substantially related to the qualifications, functions, and duties of an EMT-Paramedic when he completed the patient care record and forged Ms. VanDyke's signature on it.

Evidence of Respondent's Fitness for Licensure

23. Respondent's conduct during and immediately after the August 4, 2013 service call came to light when Ms. VanDyke told their Division Manager, Jonathan Mendoza. Mr. Mendoza initiated an investigation into respondent's conduct, which included interviewing respondent.

24. During his interview, respondent was initially given an opportunity to disclose what had happened during and immediately after the August 4, 2013 service call when Mr. Mendoza asked whether there was anything about that service call respondent wanted to disclose. When respondent answered in the negative, Mr. Mendoza disclosed what Ms. VanDyke had reported, and then respondent was forthcoming about his conduct.

25. The results of Mr. Mendoza's investigation were forwarded to EMSA, and the matter was assigned to Special Investigator Kymberly L. Mitchell for investigation. Special Investigator Mitchell's investigation included interviewing respondent. Respondent spoke openly and candidly about his conduct during the August 4, 2013 service call. He also admitted he provided false information on the patient care record as discussed in Factual Finding 22

26. During his interviews with Mr. Mendoza and Special Investigator Mitchell, respondent showed little insight into his conduct on August 4, 2013. He initially denied any wrongdoing when Mr. Mendoza made a general inquiry about the service call. Respondent was more forthcoming only after he had a general understanding of what Mr. Mendoza already knew.

During his interview with Special Investigator Mitchell, respondent tried to shift blame to Ms. VanDyke by explaining that she did not object to being in the back of the ambulance with the patient and did not say she needed anything when respondent asked just before he climbed into the driver's seat. And while he admitted forging Ms. VanDyke's signature on the patient care report, he also explained that she knew he did so and did not

object.

27. At hearing, respondent explained that he understands that he made some “huge errors,” which he regrets “more than anything.” However, remorse alone does not demonstrate fitness for licensure. (See, *In re Menna* (1995) 11 Cal.4th 975, 991.) A truer indication of whether respondent remains fit for licensure despite his August 4, 2013 conduct was his testimony that he believed complainant was portraying the call for service in a more negative light than it actually was. Such testimony misses the point, as the analysis of respondent’s continued fitness for licensure focuses on whether his conduct demonstrates that he is a threat to public health and safety. And that analysis focuses not so much on the results of his past conduct, but whether he has gained sufficient insight into that conduct such that it is unlikely to occur again in the future.

28. EMSA has adopted Recommended Guidelines for Disciplinary Orders and Conditions of Probation (July 26, 2008) (Guidelines) for consideration when determining the appropriate level of discipline to impose for various types of misconduct. The Guidelines identified the following relevant criteria for consideration: “1. Nature and severity of the act(s), offense(s), or crime(s) under consideration; 2. Actual or potential harm to the public; 3. Actual or potential harm to any patient; 4. Prior disciplinary record; ... 6. Number and/or variety of current violations; 7. Aggravating evidence; ... 9. Any discipline imposed by the paramedic’s employer for the same occurrence of that conduct; 10. Rehabilitation evidence; ... 13. Time that has elapsed since the act(s) or offense(s) occurred”

29. The Guidelines further provide:

These disciplinary guidelines provide progressive discipline, unless the facts and circumstances of a particular case warrant more substantive discipline. A fine is considered the least intrusive discipline that can be imposed followed by probation, suspension, and then revocation.

In determining the appropriate discipline, the EMSA or an administrative law judge shall give credit for discipline imposed by the employer and for any immediate suspension imposed by the local EMS agency for the same conduct, pursuant to Section 1798.211.

The recommended discipline should be imposed in the absence of any aggravating or mitigating evidence. The administrative law judge may propose any discipline between the minimum discipline and maximum discipline for a particular violation. When the administrative law judge recommends discipline that is less than the minimum or which exceeds the maximum, a full explanation shall be included as to the nature of the act that warrants unusual consideration. The director of the EMSA has

the final determination as to the discipline to be imposed.

30. The range of potential discipline for violating the statutes respondent is alleged to have violated ranges from stayed revocation and three years' probation with terms and conditions to revocation. The recommended discipline is stayed revocation, actual suspension, and probation for three years with terms and conditions.

31. When considering all the evidence discussed above in conjunction with the Guidelines, respondent failed to demonstrate that he has gained sufficient insight into his August 4, 2013 conduct such that he no longer poses a threat to public health and safety. He failed to accept full responsibility for his actions by initially denying any wrongdoing to Mr. Mendoza and then attempting to shift blame to Ms. VanDyke during his interview with Special Investigator Mitchell and subsequently at hearing. Therefore, respondent's EMT-Paramedic license should be revoked.

LEGAL CONCLUSIONS

1. An EMT-Paramedic license may be disciplined if the licensee has functioned "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." (Health & Saf. Code, § 1798.200, subdivision (c)(10).) As discussed in Factual Findings 14 through 19, respondent failed to follow proper policies for providing ALS treatment to the patient on August 4, 2013, until after he had arrived at Kaiser Hospital, which was approximately two minutes after she had begun complaining of chest pains and Ms. VanDyke informed him that the patient was having irregular heart rhythms. Therefore, cause exists to discipline respondent's EMT-Paramedic license pursuant to Health and Safety Code section 1798.200, subdivision (c)(10).

2. An EMT-Paramedic license may be disciplined if the licensee has violated or attempted to violate directly or indirectly, or assisted in or abetted the violation of, or conspired to violate, "any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel." (Health & Saf. Code, § 1798.200, subdivision (c)(7).) Respondent allowed Ms. VanDyke to exceed her permissible scope of duties on August 4, 2013, when he allowed her to interpret the patient's heart rhythms as shown on the EKG monitor, check her glucose levels, and insert an IV as explained in Factual Findings 20 and 21. Therefore, cause exists to discipline his license pursuant to Health and Safety Code section 1798.200, subdivision (c)(7).

3. An EMT-Paramedic license may be disciplined if the licensee has committed "any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel." (Health & Saf. Code, § 1798.200, subdivision (c)(5).) For the reasons explained in Factual Finding 22, respondent committed fraudulent, dishonest, and corrupt acts when he purposely provided false information in the patient care record and then forged Ms. VanDyke's signature on it. Therefore, cause exists

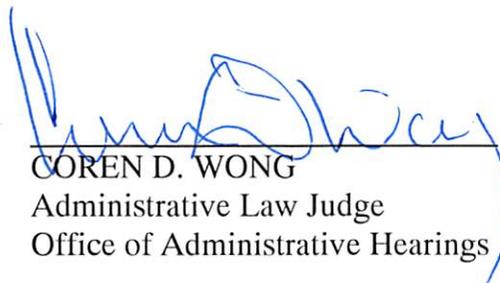
to discipline his license pursuant to Health and Safety Code section 1798.200, subdivision (c)(5).

4. Cause exists to discipline respondent's EMT-Paramedic license for the reasons discussed in Legal Conclusions 1 through 3, individually, and collectively. When all the evidence discussed above is considered, respondent failed to prove that he no longer poses a risk to public health and safety, even on a restricted basis, for the reasons explained in Factual Findings 28 through 31. Therefore, his license should be revoked.

ORDER

Emergency Medical Technician-Paramedic License No. P28048 issued to respondent James D. Barr is REVOKED.

DATED: January 22, 2015



COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings