

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

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

**RICHARD F. ARCHIBALD
License No. P14588**

Respondent.

Enforcement Matter No. 12-0061

OAH No. 2013030145

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

**MICHAEL D. FIELDS
License No. P27283**

Respondent.

Enforcement Matter No. 12-0062

OAH No. 2013030263

PROPOSED DECISION

These cases were consolidated for hearing and heard by Administrative Law Judge Nancy L. Rasmussen, State of California, Office of Administrative Hearings, on August 6 and 7, 2013, in Oakland, California.

Senior Staff Counsel Michael Jacobs represented complainant Sean Trask, Chief, EMS Personnel Division, Emergency Medical Services Authority (EMSA), State of California.

Brett F. Sherman, Attorney at Law, Goyette & Associates, Inc., A Professional Corporation, represented respondents Richard F. Archibald and Michael D. Fields, who were present.

The record was held open for the parties to submit additional written argument. Complainant's brief was received on August 16, 2013, and was marked as Exhibit 25 for identification. Respondents' brief was received on August 26, 2013, and was marked as Exhibit C for identification.

On August 26, 2013, the record was closed and the matter was deemed submitted for decision.

FACTUAL FINDINGS

Background

1. Respondent Richard F. Archibald (Archibald) holds emergency medical technician-paramedic (EMT-P) license number P14588 issued by EMSA. The license was issued on March 10, 1998, and the current expiration date is March 31, 2014. Since August 2006, Archibald has worked for the San Francisco Fire Department (SFFD) as a firefighter/paramedic.

2. Respondent Michael D. Fields (Fields) holds emergency medical technician-paramedic (EMT-P) license number P27283 issued by EMSA. The license was issued on May 13, 2009, and the current expiration date is May 31, 2015. In January 2011, Fields was hired by SFFD as a firefighter/EMT. In May 2013, he was promoted to firefighter/paramedic.

Incident on December 9, 2011

3. On Friday, December 9, 2011, at 12:20 a.m., James Moore called 911 to request an ambulance for his 86-year-old mother, Eunicetene Criner. Moore said that his mother was "laying out in the floor again" and he needed to take her to the hospital. The 911 dispatcher asked Moore questions about his mother, ascertaining that she was conscious, breathing normally, and not bleeding or vomiting. Moore said "she keeps falling out," explaining "she can't walk and she won't tell me what's wrong with her," but he clarified that she had not fallen down. Moore told the dispatcher that his mother was "getting Alzheimer's."¹ He said "I'm trying to make up my mind to call or not to call, but I'm tired of listening to her" When the dispatcher sought clarification, Moore said he was tired of listening to his mother say she would not go to the hospital. When the dispatcher asked him if she was having any pain, Moore responded, "Yeah, but she won't tell me what they are."

¹ When he testified at the hearing, Moore explained that his mother was never diagnosed with Alzheimer's disease or dementia. However, when she was in the hospital after surgery (which Moore thinks was in June 2010), she became agitated and tried to pull out her catheter. When Moore tried to calm her down, she fought him and pulled his glasses off. This is when a doctor told Moore his mother had dementia. For several months prior to December 9, 2011, Moore had been staying at his mother's home during the day to fix her meals and care for her. After an incident where Criner forgot about a tea kettle on the stove, causing smoke to fill her home and someone to call the fire department, Moore had told her she could not use the stove or cook for herself.

The dispatcher asked whether he found her moaning, and Moore said, "Yeah, yeah, moaning."

4. At 12:23 a.m., respondents Archibald and Fields were dispatched to Criner's home in SFFD ambulance Medic 58. Archibald was the paramedic and Fields was the EMT. They were sent out Code 2, meaning an urgent response but no lights and siren. The dispatcher's information on the CAD (computer-aided dispatch), which respondents saw on their MDT (mobile data terminal) screen, included the following:

DESCRIPTION: 86 YEAR OLD, FEMALE, CONSCIOUS,
BREATHING, NO PRIORITY SYMPTOMS
. . . SHE IS COMPLETELY ALERT (RESPONDING
APPROPRIATELY).
. . . SHE IS BREATHING NORMALLY.
. . . SHE HAS OTHER PAIN.
. . . SHE IS NOT BLEEDING (OR VOMITING BLOOD).
. . . THE PROBLEM IS: SICK.

The CAD did not indicate that Criner had Alzheimer's disease or dementia.

5. Respondents arrived at Criner's home at 12:30 a.m., and they spent 11 minutes there. Moore met them at the front door and led them upstairs to his mother's apartment. Moore told them she would not get up off the floor and he was tired of dealing with her. Respondents found Criner lying on the floor of her bedroom, conscious. It cannot be determined exactly what was said or done during the interaction of respondents with Criner and Moore. However, respondents did talk with both Criner and Moore. Criner was angry that respondents were there and angry at Moore for calling 911. She said she had gotten down on the floor and did not need any help. Archibald asked Criner questions to determine her "alert and oriented" status, and after some verbal back-and-forth she answered his questions such that respondents determined she was "alert and oriented times four" (oriented to person, place, time and event). Criner denied having any medical problems or complaints, and she was adamant that she did not want to go to the hospital. Criner refused to let Archibald take her blood pressure and vital signs, but he claims that while he was kneeling down and questioning her he held her wrist long enough to determine that she had a strong radial pulse of about 80. Criner told them she had gotten down on the floor because she wanted to be there, and she would get up when she was good and ready. She did not want respondents to touch her, and she flailed her arms and legs when they attempted to help her up off the floor. Fields knelt down to talk to Criner while Archibald took Moore out into the hallway to talk to him. Criner was no more cooperative with Fields than she had been with Archibald.

From what Moore told him, Archibald understood that Moore and Criner had argued after he told her she needed to go to bed. Then she had laid down on the floor and refused to get up. Respondents thought Criner had been on the floor for a relatively short time, when

she had actually been on the floor for over a day.² During the time she had been lying on the floor, Criner had not eaten and had only sipped water Moore brought her. Archibald testified that he asked Moore how long Criner had been on the floor and Moore told him she had been on the floor for about 30 minutes when he called 911. This testimony is not credible. Archibald did not tell this to Franey when she interviewed him on December 20, and it is not plausible that Moore would have said Criner had been on the floor for just 30 minutes. It seems likely that respondents did not ask, and Moore did not mention, how long Criner had been on the floor.

Since she had been lying on the floor Criner had urinated on herself and the carpet. Moore had argued with her about soiling the carpet and getting evicted by the landlord, and he had attempted to clean up. Fields noticed Criner's urinary incontinence, as he told Franey when she interviewed him. (Fields testified at the hearing that he did not recall Criner being incontinent or telling Franey she was, but he recalled there being a strong smell of Lysol or some other cleaning product coming from the bathroom.) It was not established that Archibald knew Criner was incontinent.

When Archibald asked Moore whether Criner had any medical problems or took any medications, Moore mentioned that she sometimes had stomach problems and showed him a bottle of Protonix, which is used to treat GERD (gastroesophageal reflux disease). Moore said nothing about Criner having a "bad heart," which in his testimony he asserted she had. Criner apparently did not like to go to the doctor and was not under a doctor's care. Moore did not tell respondents that Criner had been moaning.

It was not established that Moore told Archibald and/or Fields that Criner had dementia, Alzheimer's, or that she was "crazy." Moore gave contradictory testimony about whether he told them she had dementia, and his assertion that he made a circular motion with his index finger next to his head to indicate she was crazy is not credible. He did not tell Franey that (he said he told Archibald that Criner had dementia), and Moore's memory is admittedly poor for the events of December 9. Moore did tell the 911 dispatcher his mother was getting Alzheimer's, but respondents did not know this because the dispatcher did not include this information in the CAD.

Respondents did not ask Moore what his relationship to Criner was, and he did not tell them. Moore was 68 or 69 at the time, and Archibald assumed he was Criner's husband. Moore and Criner had been arguing and seemed mad at each other. It appeared to respondents that Criner was throwing a tantrum and refusing to get off the floor to spite Moore.

² When he was interviewed 10 days after this incident by Sheriff's Lieutenant Babe Franey, Moore said Criner had been lying on the floor since Wednesday, December 7. He said that on Tuesday, December 6, she had gotten out of bed to lie on the floor three times, but each time he had gotten her back into bed. Moore's testimony at the hearing that Criner had been lying on the floor since Sunday, December 4, is not credible.

Respondents did not believe Criner had an altered mental status or that she was in any way not competent to make her own decisions regarding medical evaluation and transport to a hospital. She was alert and oriented and able to hold a conversation. "Mouthy" and "sassy" are how respondents described Criner to Franey. Criner was not under the influence of alcohol or drugs.

Respondents offered several times to transport Criner to the hospital to be checked out, and each time she refused. Archibald asked Moore if he had a power of attorney to make medical decisions for Criner, and he did not know what that was. Archibald explained to Moore what a power of attorney is, and Moore said he did not have one. Archibald asked Moore, "Does she make her own decisions," and Moore replied, "Yes." Archibald told Moore they could not take Criner to the hospital unless she consented. Although respondents did not feel Criner presented a danger to herself or others, Archibald offered to call the police to evaluate her for a hold under Welfare and Institutions Code section 5150. Moore and Criner both said they did not want the police called. Archibald gave Moore the phone number for social services at California Pacific Medical Center (CPMC) and suggested he contact them for assistance in getting a power of attorney or getting someone to mediate the situation between him and Criner. Respondents conferred and decided there was nothing more they could do. Although Moore wanted Criner taken to the hospital, respondents believed they would be violating her rights if they transported her to the hospital against her will. They also did not see any medical necessity for her to go to the hospital.

6. Respondents left Criner's home, and at 12:41 a.m., Archibald called the dispatcher and "cleared" the call as "no merit." Archibald did not feel that Criner had a medical problem; he considered the call to be a "citizen assist." Respondents did not complete a patient care report (PCR) because they did not consider Criner to be a medical patient.

Events after December 9, 2011

7. Criner continued to lie on the floor for three more days, and Moore and his son were unable to pick her up to get her into bed. On Monday, December 12, 2011, after initially seeking help at the Social Security office, Moore phoned Adult Protective Services (APS). He reported that his mother had been on the floor since Wednesday, December 7, refusing to get up, that she had not eaten since then, and that she was urinating on herself. When Moore was advised to call 911, he explained that paramedics had been out earlier and said they could not take her to the hospital because she did not want to go. APS reported the call to the San Francisco Police Department, which informed SFFD and also dispatched police officers to Criner's home. SFFD dispatched an ambulance from American Medical Response (AMR). SFFD Rescue Captain Ehrhardt Groothoff also responded to the scene.

8. The police officers helped facilitate AMR's assessment and transport of Criner to CPMC by talking to her and telling her that she was going to get help and could not refuse. The only evidence regarding Criner's physical and mental condition on December 12 is hearsay and insufficient to support any factual findings. Criner died at CPMC on December

15. At the hearing Moore could not recall the cause of death, but he told Franey on December 19 that his mother had died from a heart attack and stroke.

9. On December 12, Groothoff wrote a memo that initiated an investigation of the events of December 9 when respondents went to Criner's home.

10. Lt. Franey is assigned to the San Francisco Department of Emergency Management, and the San Francisco Emergency Services Agency (SFEMSA) is within this department. Her duties involve conducting investigations for SFEMSA. On December 13, SFFD CQI (Continuous Quality Improvement) Captain Justin Schorr faxed a sentinel event report to Franey summarizing the events of December 9. Schorr also phoned Franey to tell her he was gathering documentation on the matter.

11. On December 14, an SFFD captain asked each of the respondents to write a brief summary of the December 9 call for the CQI committee. Respondents were unaware of what had happened with Criner after they left her or that an investigation had been initiated. They sat down at a computer and collaborated on a General Form memo to the CQI committee. Their memos contained the identical summary, as follows:

1. On this run a man called 911 because his wife was mad at him and refused to get off the floor of their bedroom.
2. Upon arrival RP told us he was mad at his wife and wanted us to take her away. RP was an adult, a/ox4, had no medical complaints, no mech of any injury and stated she never called 911. M58 offered to call SFPD if they needed and they both stated no.
3. At this point there was no medical need. M58 cleared the scene and returned back to service.

12. On December 16, Schorr notified Franey that SFFD was requesting that SFEMSA investigate the case, and he provided her with all the paperwork he had obtained. Franey conducted her investigation, during which she interviewed Moore, Archibald and Fields. On February 15, 2012, she issued her report and sent a copy to the state EMSA Enforcement Unit.

13. On February 15, 2012, the EMSA Enforcement Unit opened a case on respondents, and on January 22, 2013, EMSA Special Investigator Jeff Virnoche completed his investigation.

14. On January 28, 2013, complainant filed the accusations against respondents in this matter.

Charge of Gross Negligence

15. The accusations allege that each respondent committed gross negligence in his handling of the Criner call, as follows:

Respondent's abandonment of the patient was an extreme departure from the standard of care which, under similar circumstances would have ordinarily been exercised by a reasonable and prudent person trained and licensed as a paramedic and accredited by San Francisco EMSA while engaged in the performance of his or her duties

As part of the charge of gross negligence, the accusations further allege the following specific departures from the standard of care and violations of SFEMSA protocols and policies:

- Failure to conduct and document a primary survey patient assessment (SFEMSA Protocol P-001).
- Failure to provide the patient with or document "routine medical care" (SFEMSA Protocol P-002).
- Failure to conduct or document a secondary survey patient assessment (SFEMSA Protocol P-002).
- Failure to obtain, by asking relevant questions of the patient's son, a detailed history of the patient's present complaint and medical condition.
- Failure to recognize, appropriately respond to, or document obvious signs of a potentially life-threatening medical condition, and failure to act on observations of the patient and information from her son revealing the patient lacked the mental capacity to make rational decisions regarding her own welfare and care, i.e., she suffered from altered mental status and was required to be transported to the hospital (SFEMSA Policy Reference 4040, section III D).
- Failure to comply with the procedure for patient release and non-transport (SFEMSA Policy Reference 4040, section III E).
- Failure to initiate standard treatment protocols (SFEMSA Policy Reference 2001, section III 1).

16. The issue at the heart of this case is whether respondents acted properly in treating Criner as competent to make her own decisions about medical care and in finding no medical necessity for her to go to the hospital. If they did act properly, they were not required to follow all the protocols and policies required for interactions with medical patients. SFEMSA Policy Reference 4040, section III, addresses the issue of competence, providing, in relevant part:

D. Patient Competence

1. All persons at the scene of a prehospital emergency, who meet the criteria for allowing self-determination, shall be allowed to make such decisions regarding their medical care, including the refusal of evaluation, treatment and/or transport.

The criteria for allowing self-determination of medical care include:

- a) Competence is defined as alert, oriented, able to understand and verbalize an understanding of the nature and consequences of their medical care decision; and
- b) Adult is defined as:
 - (1) Eighteen years of age or greater
 - [¶] . . . [¶]

2. *Any person at the scene of a prehospital emergency who requested an EMS response, or for whom an EMS response was requested and who presents with one or more of the following conditions shall be considered incapable of making a competent decision regarding medical care and shall be transported to the closest appropriate medical facility for further evaluation:*

- a) *Altered mental status, from any cause including altered vital signs, influence of drugs and/or alcohol, psychiatric illness, metabolic causes (e.g., CNS infection or hypoglycemia), dementia or head trauma;*
- b) *Attempted suicide, danger to self or others, or verbalizing a suicidal intent, or on a 5150 hold;*
- c) *Acting in an irrational manner to the extent that a reasonable person would believe that the ability to make a competent decision is hindered;*
- d) *Severe injury or illness to the extent that a reasonable and competent person would seek further medical care; and*
- e) *Patient consent in these circumstances is implied, meaning that a reasonable and competent adult would allow the appropriate medical treatment under similar circumstances.*

[Italics added.]

17. John Francis Brown, M.D., the Medical Director of SFEMSA, provided the only expert evidence on the issue of gross negligence. His understanding of the facts of this case came from Franey's report, which contains summaries of her interviews with Moore and respondents and which includes the PCR completed by AMR on December 12, 2011. In his

testimony Dr. Brown discussed the protocols and policies cited in the accusation and what he believes respondents should have done in this case. He believes respondents acted improperly in treating Criner as competent to make her own decisions about medical care. In Dr. Brown's opinion, respondents' conduct in not treating Criner as a medical patient and not following protocols and policies for patient assessment and transport constituted an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a reasonable and prudent person in a similar capacity. However, Dr. Brown's opinion was premised on his assumption that Moore told respondents his mother had dementia (signifying an altered mental status and lack of competence), and this was not established by the evidence. Therefore, Dr. Brown's opinion does not support a determination that respondents' conduct constituted an extreme departure from the applicable standard of care, i.e., gross negligence.

Other Matters

18. In view of the fact that respondents had not been told Criner had dementia and did not know she had been lying on the floor for over a day without eating, her behavior in refusing to get up and refusing to let respondents examine her or transport her to the hospital, while strange, would not have appeared so irrational that a reasonable person would believe that her ability to make a competent decision was hindered (thus triggering her implied consent to transport and evaluation). Criner's urinary incontinence, of which Fields was aware, does not change this.

19. Especially in hindsight, respondents' failure to correctly ascertain Moore's relationship to Criner, and their assumption that this was just a domestic dispute, makes it appear that they were very sloppy in their handling of the call. In retrospect, respondents should have asked Moore additional questions to elicit further information about Criner, and they should have considered Criner incapable of making a competent medical decision and transported her to the hospital. If necessary, they could have called the police for assistance in dealing with Criner's objections and resistance. However, given Criner's alert and oriented status and what respondents knew at the time, it cannot be determined that they were derelict in failing to elicit more information and in failing to consider her to be a medical patient.

20. Considering all the facts and circumstances as of December 9, 2011, respondents acted properly in treating Criner as competent to make her own decisions about medical care and in finding no medical necessity for her to go to the hospital.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200, subdivision (b), authorizes EMSA to suspend or revoke an EMT-P license or place an EMT-P licensee on probation for any of the actions listed in subdivision (c) of that section. Subdivision (c) provides, in relevant part:

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.

[¶] . . . [¶]

(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. The first cause of action is under Health and Safety Code section 1798.200, subdivision (b), and subdivision (c)(2), alleging gross negligence. It was not established that respondents' conduct constituted gross negligence, so no cause for license discipline exists under this section.

3. The second cause of action is under Health and Safety Code section 1798.200, subdivision (b), and subdivision (c)(7), alleging violations of protocols, regulations and statutes governing prehospital personnel. Besides the SFEMSA protocols and policies set forth in Finding 15, the only provision respondents are alleged to have violated is SFEMSA Policy Reference 6010, requiring completion of a PCR for all patient contacts. It was not established that respondents violated any of these protocols and policies, because they properly considered Criner not to be a medical patient. However, even if these violations had been established, they would not constitute cause for license discipline under Health and Safety Code section 1798.200, subdivision (b) and subdivision (c)(7). Subdivision (c)(7) pertains to "provisions of this division or the regulations adopted by the authority," which means state statutes or EMSA regulations. SFEMSA protocols and policies are not within the scope of this subdivision.

4. The third cause of action is under Health and Safety Code section 1798.200, subdivision (b), and subdivision (c)(10), alleging a failure to follow SFEMSA protocols and provide the minimum level of required care for Criner and documentation of the call. Since paramedics are required to function within set parameters and follow set protocols, a failure to follow local protocols would constitute functioning outside the supervision of medical control in the field care system at the local level. However, because it was not established

that respondents violated any SFEMSA protocols and policies, no cause for license discipline exists under Health and Safety Code section 1798.200, subdivision (b), and subdivision (c)(10).

5. Since no cause for license discipline has been found, it is not necessary to address respondents' contention that EMSA is precluded from taking disciplinary action in this case by a one-year limitation period under the Firefighters Procedural Bill of Rights Act (Gov. Code, §§ 3250, et seq.).

ORDER

The accusations against respondent Richard F. Archibald and respondent Michael D. Fields are dismissed.

DATED: September 17, 2013


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings