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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:) Enforcement Matter No.: 14-0133
) OAH No.: 2014070427
)
6 **PETER M. TAGLIERE**) **DECISION AND ORDER**
License No. P20123)
)
Respondent.)

The attached Proposed Decision and order dated September 17, 2014, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The Order for Temporary Suspension Pending Hearing dated June 26, 2014, is hereby lifted immediately. The remaining portions of the decision shall become effective 30 days after the date of signature.

It is so ordered.

DATED:
September 22, 2014


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:

PETER M. TAGLIERE
License No. P20123

Respondent.

Case No. 14-0133

OAH No. 2014070427

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 5 and 6, 2014, in Los Angeles.

Michael Jacobs, Senior Staff Counsel, represented complainant.

David J. Givot, Attorney at Law, represented respondent Peter M. Tagliere.

Oral, documentary, video, and stipulated evidence was received. The record was closed and the matter was deemed submitted on August 6, 2014.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On June 24, 2014, complainant Sean Trask made and filed the Accusation solely in his official capacity as Chief, EMS Personnel Division, Emergency Medical Services Authority, State of California. The Accusation seeks discipline against respondent's license for his conduct during an incident on June 29, 2013.

2. On July 23, 2013, the Emergency Medical Service Authority (EMSA) issued Emergency Medical Technician-Paramedic (EMT-P) license number P20123 to Peter Tagliere (Respondent). The license is valid through July 31, 2015, unless revoked or suspended as provided by law. Respondent is presently a paramedic with the Los Angeles Fire Department (LAFD).

3. On July 8, 2014, Respondent filed a Notice of Defense, in which he requested a hearing to permit him to present his defense to the charges in the Accusation.

June 29, 2013 Incident

4. On June 29, 2013, at approximately 6 p.m., Respondent and his partner, firefighter-paramedic Cory Taillon, were dispatched as Rescue Ambulance 39 to the Sepulveda Orange Line Bus Station in response to a call for assistance from the Los Angeles County Sheriff's Transit Services Bureau. The sheriff deputies at the scene requested paramedic assistance with a 53-year-old man (patient) who was in custody and believed to be under the influence of unknown controlled substances and alcohol. When Respondent and Taillon arrived at the scene, they found the patient handcuffed and seated in the back of a sheriff's department patrol car. The deputies told the paramedics that they found the patient caught on the rails of a bus bench.

5. The paramedics assisted the patient out of the patrol car and onto a gurney and examined him. During their examination of the patient, the paramedics smelled alcohol on his breath, and saw that his eyes were bloodshot and glassy. The patient appeared agitated and upset, and his speech was incoherent and only a few of his words were understandable. When a sheriff's deputy removed the handcuffs, the patient resisted lying down on the gurney and tried to get up. The paramedics requested that the deputy reapply the handcuffs. The deputy handcuffed each of the patient's wrists to the handrails on the gurney. Chest and leg restraints were also applied to secure the patient to the gurney. The paramedics placed the gurney with the patient in the back of the ambulance for transport to a nearby hospital. Taillon drove the ambulance while Respondent rode in the back with the patient and a deputy sheriff. During the approximately five-minute ride to the hospital, the patient spit towards the back of the ambulance. Respondent told the patient not to spit.

6. At the hospital, the paramedics removed the gurney with the patient from the back of the ambulance. The paramedics spoke to the emergency room doctor who came to greet them. The patient began spitting at or around the doctor. The doctor went back inside the hospital to put on a spit gown. Paramedic Taillon adjusted the gurney from a horizontal position to a partially seated position. As Taillon stood behind the head of the gurney, the patient began spitting at Taillon. The patient's saliva got on Taillon's face and inside his mouth. Taillon stepped back from the gurney to gather himself. The sheriff's deputy was standing to the side of gurney controlling the patient's head. Upon realizing that the patient had spit on Taillon, Respondent went up to the patient and said, "If you spit in my face, I will fucking punch you in the face." The patient spit towards Respondent's chest area. Respondent then threw two punches towards the patient's head. The first punch hit the patient's face. The second punch missed because the patient moved his head.

7. As the gurney with the patient was being pushed towards the doorway of the hospital, the patient's foot was hanging off the side of the gurney after he had tried to kick the sheriff's deputy. The patient's foot prevented the gurney from being pushed through the door way. Respondent kicked the patient's foot out of the way and the gurney was pushed through the doorway and into the hospital.

8. Respondent did not report to hospital staff that he had punched the patient's face or kicked his foot. Respondent did not document his actions on the prehospital care report, and has no explanation why he did not do so. Respondent testified he performed a visual inspection of the patient's face and saw no injury. According to Taillon, the patient did not complain of any pain or injury from the punch to his face. The evidence did not establish the extent of any harm suffered by the patient from Respondent's punch to his face or kicking of his foot.

9. At the time of the incident, Respondent was employed by the LAFD. The LAFD suspended Respondent for eight days without pay for the incident. On July 16, 2013, Respondent was returned to duty and allowed to work as a paramedic only under the supervision of a Captain. Respondent completed approximately two hours of remedial training from a nurse educator regarding LAFD policies and procedures. Respondent was subsequently cleared to work as a paramedic on a rescue ambulance.

10. The June 29, 2013 incident was reported to the Los Angeles Police Department and the Los Angeles City Attorney's office for review. No criminal charges were filed against Respondent, based on the City Attorney's determination that, given the state of the evidence and mitigating factors, there was no offense and no further investigation was needed.

Mitigation / Rehabilitation

11. Respondent is married and has three children. Respondent has been a paramedic for 12 years. He has worked for the LAFD for 10 years.

12. Respondent does not dispute that he punched the patient in the face and kicked his foot while on duty as a paramedic on June 29, 2013. Respondent admitted that there is no explanation or excuse that justifies his misconduct with the patient. His admits that his conduct was inappropriate and he used a poor choice of words by using profanity in addressing the patient. He expressed sincere remorse for his mistreatment of the patient. He explained that his reaction was due, in part, to the patient having spit in his partner's mouth, which raised concerns about the transmission of disease through the patient's saliva. Respondent admitted that he lost his self-control and self-awareness at the time he punched the patient, which he admitted was a poor decision. Respondent acknowledged that there were other means available to address the patient's spitting, such as placing a spit mask or hood over the patient's face. Respondent did not use those means because the patient was already in

an agitated state. Based on his experience and judgment, Respondent determined that placing a cover on the patient's face would likely increase his agitation.

13. Respondent also attributes his misconduct to his failure to recognize and manage the stress in his professional life and financial difficulties in his personal life. At the time of the incident, Respondent was assigned as a rescue ambulance paramedic at Fire Station 39, which is a busy station that handles a high volume of calls. As a rescue ambulance paramedic at Fire Station 39, Respondent worked many overtime days, 72-hour shifts, typically responded to three to five calls after midnight, and rarely slept at night. In addition, Respondent did not have an exercise or wellness routine, which left him no release for his stress. The work situations that caused Respondent's stress have changed since the incident.

14. Respondent now works as a paramedic at Fire Station 88, which has a lower call volume than his previous station. He is well regarded as a paramedic by his co-workers and supervisor at Fire Station 88. Steven J. Bakery has been Respondent's supervisor for the past 11 months. Bakery is a 28 year member of the LAFD. In a letter dated July 18, 2014, Bakery wrote, in part: "I can speak about my observations of [Respondent's] work ethic, character, loyalty, teamwork and bedside manner over the past 11 months. He has demonstrated all of these traits without fail, day in and day out. He is a senior member of my team who consistently fills a roll of an acting supervisor, lead paramedic, intern paramedic trainer and subject matter expert in regards to policy and procedures. [Respondent] is an outstanding paramedic when performing his duties and responsibilities on scene of an incident. He is focused, stays on task, gains excellent situational awareness, and communicates well. His skill set in regards to emergency medicine, identifying signs and symptoms along with patient care, are excellent. [Respondent] has been an outstanding addition to our assignment." (Exh. B.) Bakery further states in his letter that he is aware of the June 29, 2013 incident, and that [Respondent] "has taken full responsibility for the event that took place and has made it a training tool for our people."

15. Respondent's performance evaluation at Fire Station 88 for the period July 1, 2013, to July 1, 2014, which was prepared by Bakery, rated Respondent's performance as a paramedic as "Satisfactory Plus." In the area of paramedic skills, Respondent was rated as excellent "because of his professionalism towards the public." The evaluation further states: "He has a genuine compassion towards people, and is competent in making the right call for patient assessment and treatment. [Respondent] has an outstanding knowledge of paramedic protocol and procedures." (Exh. B.)

16. Respondent has implemented recommendations he received from Robert T. Scott, Ph.D., who is the Department Psychologist and Director of the LAFD Behavioral Health & Wellness Program. Respondent, on his own accord, sought out treatment from Dr. Scott in August 2013, two months after the incident with the patient. Respondent presented a letter dated July 28, 2014, by Dr. Scott. In that

letter, Dr. Scott noted that, when he first met Respondent in August 2013, he found that Respondent was showing signs of psychological burnout and emotional exhaustion, and that he had no strategy for stress management or regular exercise. To deal with stress at work and at home, Dr. Scott made a number of recommendations to Respondent "including an immediate exercise/wellness routine, reduction of overtime work, and a recommendation to move to a slower station." In July 2014, Respondent returned to Dr. Scott for some individual sessions. As stated in his letter, Dr. Scott was found that Respondent followed all of his recommendations, and that his "demeanor, mood and presentation had changed as a result of his ongoing wellness routines." Dr. Scott concludes his letter by stating his opinion that he "would tend to view [Respondent's] behavioral reaction of striking a patient on June 29th, 2013 as an aberration (a lapse from a sound mental state) in an otherwise positive and dedicated 10-year career. That is not to minimize or detract from the seriousness of what he did but more to explain that given his state of 'burnout' at the time --- one can see that a reaction of that sort has a higher chance of occurring when chronic lack of sleep, exhaustion, and mental fatigue is not kept in check. Clearly [Respondent] is responsible for monitoring and taking care of his stress levels --- he is well aware of that fact now." (Emphasis in original.) (Exh. A.)

17. In addition to implementing Dr. Scott's recommendations, Respondent has become involved in the men's group at his church and meets once a week with a mentor. He also enrolled in the LAFD Leadership Academy in order to learn how to lead himself and to be a better employee. Respondent presented a letter by Paul R. Nelson, who is a Captain II in the LAFD with 33 years of experience. Nelson is also a lead facilitator for the LAFD Leadership Academy. In a letter dated July 19, 2014, Nelson wrote that Respondent was a top student in the Leadership Academy who kept up with the class curriculum and was eager to participate in the class discussions. Nelson further wrote, "In the three months [Respondent] has been in the program, I can say he understands the Leadership theories." Nelson has worked overtime with Respondent on various occasions, noting, in his letter: "He is a person that you can count on to get the job done. [Respondent's] character is that of a motivated, self-starter, and hardworking individual. On the emergency calls I responded with [Respondent], he showed professionalism, knowledge of his job, and had the bed side manner I would want my family members to receive."

18. Respondent presented letters from other firefighters and/or paramedics which generally described him as a capable and competent paramedic. Daniel Lynch and Richard Diede testified at the hearing as character witnesses for Respondent, and also wrote letters on Respondent's behalf. (Exh. B.) Both Lynch and Diede commended Respondent for his outstanding work as a paramedic.

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LEGAL CONCLUSIONS

1. The EMSA is the state agency "responsible for the coordination and integration of all state activities concerning emergency medical services." (Health and Safety Code, section 1797.1.) Emergency medical services (EMS) are "the services utilized in responding to a medical emergency." (Health & Saf. Code, § 1797.72.)

2. Pursuant to Health and Safety Code section 1798.200, subdivision (b), the EMSA may deny, suspend, revoke, or place on probation any EMT-P license upon the finding of the occurrence of any of the actions listed in subdivision (c). Subdivision (c) reads in pertinent part as follows:

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:

[¶] . . . [¶]

(12) Unprofessional conduct exhibited by any of the following:

(A) The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance. . . .

3. Cause exists to discipline Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(12), for unprofessional conduct, in that Respondent mistreated and physically abused a patient by using excessive force when, on June 29, 2013, he punched the patient in the face and kicked his foot, based on Factual Findings 4-10.

4. Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

5. The EMSA has developed "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" dated July 26, 2008 (Guidelines), which are incorporated by reference in the EMSA's regulations. (Cal. Code Regs., tit. 22,

§ 100173, subd. (c). The administrative law judge shall use the Guidelines as a guide in making any recommendations to the EMSA for discipline of a paramedic license holder found in violation of Health and Safety Code section 1798.200. (Cal. Code Regs., tit. 22, § 100173, subd. (d).)

6. Section III of the Guidelines set forth categories of violations and the recommended level of discipline for each category. For unprofessional conduct involving the mistreatment or physical abuse of a patient resulting from excessive force, the "maximum" discipline is revocation, the "minimum" discipline is a stayed revocation and three years' probation, and the "recommended" discipline is a stayed revocation, 60-day suspension, and three years' probation. (Guidelines, p. 8.) The minimum conditions of probation are the EMSA's standard conditions of probation and optional conditions 6 (ethics course) and 9 (oral skills exam). (Guidelines, p. 8.)

7. Section II of the Guidelines set forth factors to be considered when determining the appropriate discipline to be imposed in a given case. The factors are: the nature and severity of the act, offense, or crime under consideration; the actual or potential harm to the public or any patient; prior disciplinary record; prior warnings on record or prior remediation; the number and/or variety of current violations; aggravating evidence; mitigating evidence; any discipline imposed by the paramedic's employer for the same occurrence of that conduct; rehabilitation evidence; in cases with a criminal conviction, compliance with the terms of the sentence and/or court-ordered probation; overall criminal record; time that has elapsed since the act or offense occurred; and if applicable, evidence of expungement proceedings under Penal Code section 1203.4. (Guidelines, pp. 1-2.)

8. Based on a consideration of the Guidelines, the recommended discipline of a stayed revocation with three years' probation is appropriate for this case. There is no dispute that Respondent mistreated the patient with excessive force by punching him in the face in response to his spitting, and kicking his foot to move it out of the way so the gurney could move through the hospital doorway. Receiving a punch to the face resulted in actual or potential harm to the patient, although the extent of such harm was not established by the evidence. Respondent has been a paramedic for 12 years. No evidence was presented of any prior discipline against his paramedic license. There are mitigating factors in this case, including that the patient was spitting at Respondent and his partner and was agitated and uncooperative; and Respondent was not properly managing the stress in his personal and professional life. Respondent's mistreatment of the patient was an aberration and resulted from his unaddressed state of burnout and stress. No criminal charges were filed against Respondent due to the incident. The LAFD did not terminate Respondent's employment but, instead, imposed an eight-day suspension, which Respondent served. Approximately 14 months have passed since the incident. During that time, Respondent has followed the recommendations of Dr. Scott to better manage the stress in his life, he has transferred to a fire station with a lower call volume for its rescue ambulance, he is more involved in church activities, and he completed a

leadership training course. Respondent has expressed remorse and acknowledged responsibility for his mistreatment of the patient on June 29, 2013. Since that time, he has safely and competently performed his duties as a rescue ambulance paramedic without any subsequent similar incidents and received favorable performance evaluations.

9. Under the Guidelines, the recommended discipline for Respondent's misconduct includes a 60-day suspension and optional probation conditions 6 (ethics exam) and 9 (oral skills exam). The 60-day suspension is not necessary. Respondent has already served an eight-day suspension imposed by his employer. Having him serve another suspension for a longer period does not promote public protection. Nor is optional probation condition 9 necessary. Respondent's recent performance evaluations confirm that he is safely and competently performing his duties as a paramedic. The more appropriate optional probation conditions for this case are optional condition 6 (ethics exam) and optional condition 7 (stress/anger management). Condition 7 will reinforce the strategies for stress management that Respondent learned and implemented at the recommendation of the LAFD's Department Psychologist, Dr. Scott.

ORDER

License Number P20123 issued to the respondent, Peter M. Tagliere, is revoked. However, such revocation is stayed and the respondent is placed on probation for three years upon the following terms and conditions:

1. Probation Compliance:

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

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

2. Personal Appearances:

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

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3. Quarterly Report Requirements:

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

4. Employment Notification:

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

Additionally, the 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 the respondent's probation.

The 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:

The respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. The 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 the respondent is not practicing as a paramedic within the jurisdiction of California.

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

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

7. Obey All Related Laws:

The 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. The 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 the respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then the 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, the 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 the 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.

8. Completion of Probation:

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

9. Violation of Probation:

If during the period of probation the 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 the 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 and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issues to be resolved at the hearing shall be limited to whether the respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, the respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

10. Ethical Practice of EMS:

Within 45 days of the effective date of this decision, the respondent shall submit to the EMSA, for its prior approval, a course in Ethics. The respondent must complete this course during his probation period.

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

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

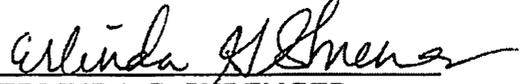
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11. Stress/Anger Management:

Within 60 days of the effective date of this decision, the respondent shall enroll and participate in a local, court approved, stress/anger management program, which the respondent shall complete during his probation. Upon completion of the approved program, the respondent shall submit proof to the EMSA that he has fulfilled all course requirements.

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

DATED: September 17, 2014



ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings