

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SYNTHEA SCHON,

Respondent.

Case No. 13-0276

OAH No. 2015080396

ORDER OF DECISION

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Emergency Medical Services Authority as its Decision in the above-entitled matter.

This Decision shall become effective on February 12, 2016.

IT IS SO ORDERED this 12 day of February, 2016

By: 

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SYNTHEA SCHON,

Emergency Medical Technician-Paramedic
License No. P22211

Respondent.

Case No. 13-0276

OAH No. 2015080396

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on January 5, 2016.

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

Synthea Schon (respondent) appeared and represented herself.

Evidence was taken, the record was closed and the matter was submitted on January 5, 2016.

JURISDICTIONAL FINDINGS

1. Sean Trask, Chief, EMS Personnel Division of the EMSA made the charges and allegations contained in the Accusation in his official capacity only. The Accusation was filed April 14, 2015, and was timely served on respondent.

2. Respondent timely filed a Notice of Defense in response to the Accusation and requested an evidentiary hearing. This hearing followed.

3. The EMSA has jurisdiction to revoke, suspend, deny the issuance or reissuance of, any Emergency Medical Technician-Paramedic (EMT-P) license in the State of California.¹ The EMSA has sole responsibility for EMT-P licensure and licensure renewal

¹ Health and Safety Code section 1798.200.

in the State of California.² The EMSA's regulations define an EMT-P, commonly known as a paramedic, as a person who is educated and trained in all elements of prehospital advanced life support; whose scope of practice is to provide advanced life support in accordance with standards prescribed by Chapter 4 of Division 9 of title 22 of the California Code of Regulations.

ISSUES

1. Did respondent "function outside the supervision of medical control in the field care system operating at the local level," in violation of Health and Safety Code section 1798.200, subdivision (c)(10), because she worked as a paramedic between March 31, 2011 and April 30, 2013, without a validly renewed license?

2. Did respondent ignore her obligation to obtain the necessary license and pay the required license fees for her renewal, and, if so, did her failure demonstrate that she lacks the professionalism required to perform the duties of a paramedic consistent with minimum standards of care prescribed by the EMS Act, the EMSA's regulations and local policies?

3. Did respondent's failure to retrieve the deficiency notice sent by the EMSA and correct the deficiency, cause her to become unlicensed, continuing to practice as a paramedic, and thereby constitute a threat to the public health and safety such that it warrants revocation of her EMT-P license?

STANDARD AND BURDEN OF PROOF

1. The burden of proof for all of the allegations made in this matter rests upon the EMSA and requires the EMSA to prove the allegations by "clear and convincing" evidence.³ Clear and convincing evidence requires a finding of high probability. Clear and convincing evidence means the proof in support of the allegations must be clear, explicit and unequivocal, so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind.⁴

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² Health and Safety Code section 1797.172, subdivision (c).

³ *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.

⁴ *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.

RESOLUTION OF ISSUES

1. Respondent was not proved to have functioned outside the supervision of medical control in the field care system operating at the local level because she worked as a paramedic between March 31, 2011 and April 30, 2013, without a validly renewed license. Violation of Health and Safety Code section 1798.200, subdivision (c)(10) was not proved.

2. Respondent did not ignore her obligation to obtain the necessary license and pay the required license fees for her renewal. Respondent's failure pay the required license fees for her renewal and a returned check charge was inadvertent and unknowing, and did not demonstrate that she lacks the professionalism required to perform the duties of a paramedic consistent with minimum standards of care prescribed by the EMS Act, and/or the EMSA's regulations and local policies.

3. Respondent's failure to retrieve the deficiency note sent by the EMSA and correct the deficiency, causing her to become unlicensed, was unknowing, unintentional and completely inadvertent, and was not proved to have constituted a threat to the public health and safety such that it warrants revocation of her EMT-P license.

4. Respondent's complete lack of knowledge that her renewal check had been returned for nonsufficient funds, ultimately resulting in the lapse of her license, and her conduct after she received notice that her license had lapsed, convincingly demonstrate that she is not a threat to public health and safety, and that there is no basis in law or fact to revoke her license as an EMT-P.

FACTUAL FINDINGS

1. The EMSA issued respondent EMT-P license number P22211 on April 7, 2005. Respondent's EMT-P license is current and valid through June 30, 2016. The EMSA's records contain no history of any previous disciplinary action against respondent's license.

2. Respondent submitted her Renewal Paramedic License Application by mail to the EMSA on May 3, 2011. Respondent enclosed a check for the renewal fees drawn on USAA Bank. Respondent's check was returned to the EMSA approximately a week later, dishonored due to insufficient funds.

3. The EMSA promptly renewed respondent's paramedic license in active status upon receipt of the check and the renewal application, effective May 1, 2011, with an expiration date of April 30, 2013. The EMSA sent respondent a wallet-size evidence of licensure, showing her license was active and renewed through April 30, 2013. The EMSA sent respondent her license showing it was renewed and active well before becoming aware her check for the renewal fees was returned dishonored.

4. Respondent was embroiled in the midst of a contentious divorce at the time she wrote her renewal check to the EMSA. Respondent's check was drawn on a USAA checking account to which she had access and her own checks, but was under the control of her estranged husband. Respondent's ex-husband was the exclusive recipient of all bank statements and any notices from the bank regarding advice that any particular check might be dishonored. Respondent did not receive notice nor was she aware that her check was dishonored, from the bank, her ex-husband or from the EMSA, until May 24, 2013 (below).

5. The EMSA mailed respondent a notice on June 9, 2011(notice), at her address on file, informing her that her check had been returned dishonored due to insufficient funds. The EMSA's notice advised respondent that her failure to return payment within thirty days of the date of the notice would result in her paramedic license renewal application being deemed incomplete and placed in a lapsed status, and her license status would revert to expired on her previous expiration date. The notice also advised respondent that if she submitted the payment, plus a \$25 charge for the dishonored check, her license would be renewed, effective the day after her expiration date. The notice also advised respondent that it was illegal to practice as a paramedic without a currently valid paramedic license. The EMSA received the notice back from the United States Post Office (USPS) on July 14, 2011, undelivered, unclaimed, and unable to forward.

6. Respondent testified credibly and persuasively that at the time the notice was sent by the EMSA, she was having considerable difficulty with the delivery of her mail. She filed a complaint with the USPS, and the problem was ultimately resolved after her local post office investigated. She credibly and persuasively testified that the first time she saw the notice was at the evidentiary hearing, and she had no knowledge of the notice's offer to make the payment for renewal fees in arrears, plus the \$25 charge, with no additional consequence to obtaining her renewal until at least May 24, 2013.

7. The EMSA acted on September 14, 2011 to change respondent's paramedic license status to lapsed, effective April 30, 2011.

8. Respondent was completely unaware of the lapse of her license or that her check had been returned dishonored until May 24, 2013. Respondent received notice that there was a problem with her license status and that it was lapsed through a phone call by one of the EMSA's special investigators who had been attempting to contact her and let her know that her license renewal did not process and that her license had lapsed. Respondent immediately went to the EMSA public counter in a panic, as she described it, to attempt to renew her license and pay any fees or penalties in arrears. Respondent tried to submit a completed renewal application at the counter. Respondent was advised by the EMSA's front counter staff that since her license had been lapsed for more than a year, she would have to complete again virtually all of the requirements for initial licensure in order to renew her license. Respondent was told a number of the license prerequisites and requirements been changed and/or been made more comprehensive since her initial licensure. Respondent also discovered during the front counter conversation that the EMSA did not have her correct address, so she corrected her address of record.

which she performed duties for which a paramedic license was required, and performed clinical services, as well as advanced life support services.

11. Respondent's employer AMR had no idea respondent's license had lapsed, nor did the San Joaquin County Local Emergency Medical Authority, until respondent told them on or just after May 24, 2013. Respondent's employment was immediately suspended by AMR, until such time as she could obtain renewal of her license.

12. Respondent reapplied for renewal of her license on May 30, 2014, after having completed 98 hours of paramedic and clinical education through the San Joaquin County LEMSA, CTI Roseville, CTI Livermore, and CE Solutions, between April 17, 2013⁵ and May 13, 2014. Respondent provided evidence she passed the National Registry of EMT's Advanced Level Exam and met the other requirements specified in the EMSA's May 24, 2013 notice. Respondent's license was reissued on June 9, 2014. Respondent was immediately rehired by AMR, and has continued to work for AMR full time since that date.

13. Respondent testified she had absolutely no idea that her license had lapsed, that her check had been returned dishonored, or that she had been working as a paramedic without a license since her 2011 renewal failed. Respondent's testimony was credible and persuasive, and there was considerable collateral evidence that corroborated her claims.

14. Respondent claimed she had every reason to believe that her license had been routinely renewed, as had been her several previous biannual renewals, as she received her wallet copy of her new license, as she expected, showing that she had a valid renewed license through May 2013. She did not receive notice otherwise until the EMSA's investigator made phone contact with her just before May 24, 2013 and told her of the problem. Respondent pointed out that the EMSA's Certificate Registry on its website continued to show her license status as valid and renewed through that same date, and it was not proved otherwise. Respondent's employer AMR and the San Joaquin County Emergency Medical Authority continued to operate under the same misapprehension regarding the status of her respondents license through the same time period, having no idea respondent's license was not renewed and active.

15. Respondent explained that the matter of renewing her license was not the simple matter of paying the amount of the renewal fee plus the dishonored check charge, as was suggested during the evidentiary hearing. Respondent pointed out that no one in their right mind would fail to renew if that could be accomplished simply by paying the license fee arrearage and the dishonored check charge, or intentionally fail to respond to the EMSA's notices to pay the renewal and charges, as opposed to going through what she had to do as a

⁵ The EMSA accepted some credits for CE obtained before respondent was advised what she needed to renew on May 24, 2013. The May 24, 2013 notice to respondent allowed for credit for CEs taken up to two years previous, and respondent took CE from time to time before she received notice her license was lapsed because she needed to do so believing she was still an active licensee for her next renewal cycle.

9. The EMSA sent respondent a letter at her new address of record on May 24, 2013, in which the conversation at the EMSA public counter, the reasons the EMSA refused to accept her renewal application and the requirements for respondent to renew her license were documented. The EMSA letter advised respondent that her renewal application was being returned to her with the notice, so that if she wished to continue with the process for licensure, she could complete her application by submitting the items requested with the notice in summary as follows:

- a. Repay the EMS Authority a fee of \$25 for the dishonored check she wrote for her renewal in 2011, payable only by money order or cashier's check to the EMS Personnel Fund.
- b. Due to the lengthy lapse of licensure, submit copies of 72 continuing education hours (CEs) through certificates or other appropriate documentation, such as unofficial transcripts of applicable college courses, documentation from an approved training program of clinical training, precepting and/or teaching. Respondent was permitted to use any courses from a college or university earned in the past two years. If her CEs were over two (2) years old and out of her licensure cycle, she was required to provide new CEs.
- c. Submit fingerprints for a criminal history check from the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).
- d. Show proof that respondent has passed NREMT written and/or practical paramedic exam. If respondent did not have evidence of a current pass of the NREMT, a letter of support was permitted to be offered on her behalf to the NREMT, to allow her to take the assessment exam to complete reinstatement of her California Paramedic license.

9. The EMSA's website Certificate Registry showed respondent's license status as current and active through April 30, 2013, for an undetermined time but at least several months after the incomplete 2011 renewal, and the subsequent lapse of her license, despite the problem with the dishonored renewal fees check. The EMSA evidently did not promptly realize and correct the error on its Certificate Registry.

10. Respondent has been employed full-time at all times relevant to this Decision as a paramedic with American Medical Response (AMR), Stockton, California. Respondent's paramedic license is an absolute necessity for her to work as a paramedic for AMR. Respondent did not dispute that she continued to work with AMR as a paramedic between May 1, 2011, when her license would have expired, had it not been renewed, through May 24, 2013, when she first received knowledge that her license had lapsed and not been renewed, and she could not continue to work. Respondent did not dispute that during that period of time that her license was lapsed she continued to work full-time for AMR as a paramedic and that during that time, she responded to approximately 1531 calls for service in

result of the lapse, essentially being required to qualify all over again "from scratch" for the issuance of her license.

16. Respondent's explained her difficulties stemmed from a contentious divorce. The problems became much worse after the EMSA special investigator told her about the lapse of her license and she went to the EMSA's offices to try to straighten out what she was certain was just a misunderstanding or miscommunication. Respondent promptly told AMR of her lapsed license, and immediately lost her employment and her income, greatly increasing the difficulty of obtaining the additional courses and meeting requirements that she was told must be completed before her license could be renewed. Respondent found that was required to demonstrate her skills, abilities and competence as a paramedic as if she were a new licensee at a time when she had no income, little savings and considerable family responsibilities.

17. Respondent devoted most of the following year to obtaining the additional education and required training needed to renew her license. Respondent's circumstances became dire; she was homeless for a period of time, had to have her children cared for by her parents, and had to borrow money from family and friends in order to survive and to pay for the course work required to renew her license. Respondent thus completed the renewal requirements at considerable personal cost, exhibiting motivation and perseverance, revealing her assessment of the value of her licensure, and recognition of the need to be fully qualified.

18. There is no evidence in this record that respondent has ever had any question raised by any person or entity about her skills, competency, or abilities as a paramedic in providing life-support, critical care, advanced life support or any other services she has provided as a paramedic. Respondent's employer values her and immediately put her back to work as a paramedic working full time as soon as her license was renewed.

19. There is no evidence that respondent's skills, abilities, or competence as a paramedic in providing all services permitted to a paramedic licensee were ever compromised or questioned during the period of time she believed she was still licensed and continue to work as a paramedic, but her license was in lapsed status. There was no evidence presented from respondent's employer AMR, from the San Joaquin County EMS or from any health care professional that would have had occasion to know, of any question or complaint about respondent's competence, safety or skills during any of the 1531 calls to which she responded as a paramedic with AMR when her license was lapsed.

20. The EMSA did not produce any evidence of a recommendation for suspension or revocation from a Medical Director of an LEMSA, nor any evidence that a Medical Director of the LEMSA made a recommendation or expressed an opinion that respondent's conduct described in the EMSA's investigation constituted evidence of a threat to public health and safety, within the meaning of Health and Safety Code section 1798.200. } ?

LEGAL CONCLUSIONS

1. California Code of Regulations, title 22, section 100173, subdivision (b) provides, "Before any disciplinary proceedings are undertaken, the Authority shall evaluate all information submitted to or discovered by the Authority, including, but not limited to, a recommendation for suspension or revocation from a medical director of a LEMSA, for evidence of a threat to public health and safety pursuant to section 1798.200 of the Health and Safety Code.

2. Section 100173, subdivision (b) above requires that "before any disciplinary proceedings are undertaken," the EMSA shall evaluate whether a recommendation for suspension or revocation from a Medical Director of an LEMSA has been submitted, based upon whether there exists evidence of a threat to public health and safety. The EMSA did not produce any evidence of a recommendation for suspension or revocation from a Medical Director of an LEMSA, nor any evidence that a Medical Director of an LEMSA made a recommendation or expressed an opinion that respondent's conduct described in the EMSA's investigation constituted evidence of a threat to public health and safety within the meaning of Health and Safety Code section 1798.200. The EMSA's failure to produce a LEMSA Medical Director's recommendation for suspension or revocation, or opinion that respondent's conduct constituted a threat to public health and safety reflects a lack of evidence in support of a claimed violation of Health and Safety Code section 1798.200.

3. Health and Safety Code section 1798.200, provides, in part, as follows:

[¶] ... [¶]

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c).

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate holder or licenseholder under this division:

[¶] ... [¶]

(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.

[¶] ... [¶]

(e) For purposes of this section, “disciplinary cause” means an act that is not substantially related to the qualifications, functions, and duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat to the public health and safety described in subdivision (c).

4. There is very little authority in existence to assist with what it means for a paramedic to be “functioning outside the supervision of medical control,” as that term is used in section 1798.200, subdivision (c)(10). Health and Safety Code section 1797.90 defines “Medical control” as “the medical management of the emergency medical services system pursuant to the provisions of Chapter 5 (commencing with Section 1798). Health and Safety Code section 1798 is the only other provision of law that even indirectly speaks to the matter. Section 1798 provides that the medical direction and management of an emergency medical services system shall be under the medical control of the medical director of the local EMS agency. This medical control shall be maintained in accordance with standards for medical control established by the authority. Medical control shall be within an EMS system which complies with the minimum standards adopted by the authority, and which is established and implemented by the local EMS agency. These provisions delegate the matter of a paramedic’s “supervision” by medical control to the local EMS, which, in this case, is the San Joaquin County EMS. The delegated authority to the local EMS to exercise supervision of medical control appears to dovetail with the requirements of California Code of Regulations, title 22, section 100173, subdivision (b) that require as a condition precedent to taking disciplinary action the consideration of an opinion from a Medical Director of a LEMSA regarding whether respondent’s conduct constituted evidence of a threat to public health and safety within the meaning of section 1798.200 of the Health and Safety Code.

5. There was no evidence that any patient’s health, safety or welfare was jeopardized or placed at any additional risk because respondent continued to practice as a paramedic at a time her license was lapsed, as set forth in the Factual Findings. There was no evidence that respondent’s skills, capabilities or competence were compromised during this period of time. There was no complaint or concern expressed by respondent’s employer, the San Joaquin County EMS or any health care professional who had occasion to work with or appraise her work during the time she worked but her license was lapsed. There was evidence that respondent’s activities as a paramedic during the 1531 calls for service she made during the time her paramedic license was lapsed were required to be closely supervised by her employer AMR, and overseen by the local EMS, neither of whom found fault with her work during this lapsed license period.

6. California Code of Regulations (CCR), title 22, section 100175 provides, in pertinent part:

(a) For the purposes of denial, placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 of the Health and Safety Code, or imposing an administrative fine pursuant to Section 1798.210 of the Health

and Safety Code, a crime or act shall be substantially related to the qualifications, functions and/or duties of a person holding a paramedic license under Division 2.5 of the Health and Safety Code. A crime or act shall be considered to be substantially no ***if to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety.*** (Emphasis added.)

7. Health and Safety Code section 1798.200 requires proof that any acts constituting cause for disciplinary action be substantially related to the qualifications, functions or duties of a paramedic. Substantially related is defined above as conduct that “to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety.”

8. The EMSA failed to prove that respondent’s conduct evidences present or potential unfitness to perform her duties as a paramedic consistent with the public health and safety. The EMSA failed to prove, beyond speculation based upon license status alone, anything respondent did or failed to do, that reflected actual or potential unfitness to perform as a paramedic consistently with the public health or safety. There was no evidence that respondent’s conduct as a paramedic on any of the 1531 calls for service she responded to as a paramedic at the time her license was lapsed was anything other than fully consistent with the public health and safety. The absence of any evidence from respondent’s employer during the entire lapse period, AMR, or opinion from the Medical Director of the San Joaquin County EMS that respondent’s conduct constituted the placing of any patient’s health, safety or welfare in jeopardy during the time her license was lapsed is significant. Respondent’s conduct after she was informed of the lapsed status of her license was exemplary, responsible, and demonstrated a strong commitment to being a licensed paramedic and meeting all the requirements to demonstrate her skills, competence and abilities.

9. Violation of Health and Safety Code section 1798.200, subdivision (c)(10) was not proved. Respondent’s conduct as set forth in the Factual Findings was not proved to have constituted conduct outside the scope of medical management of the local EMS, or conduct that was substantially related to the qualifications, functions or duties of a paramedic within the meaning of California Code of Regulations, title 22, section 100175, as set forth in the Legal Conclusions above.

10. Health and Safety Code section 1797.177 provides that no individual shall hold himself or herself out to be an EMT-I, EMT-II, EMT-P, or paramedic unless that individual is currently certified as such by the local EMS agency or other certifying authority.

11. Respondent continued to practice as a paramedic during a period of time when her license was lapsed, as set forth in the Factual Findings. Respondent's conduct can be described as "holding herself out to be a paramedic," at a time when she was not currently certified by the local EMS or the EMSA, only in the most technical sense. Respondent's failure was completely inadvertent, unintentional and unknowing. Respondent did continue to operate as if she were licensed in the reasonable but mistaken belief that she was properly licensed, until she was advised otherwise on May 24, 2013. The EMSA presented no evidence of the existence of any facts that would have or should have alerted respondent that her license had lapsed and/or were such that a reasonable licensee should have checked further to verify her status rather than continuing to practice. Respondent received her renewal in current status from the EMSA, as she always had, shortly after she sent to her renewal application in 2011. Respondent received no information from AMR, the San Joaquin County local EMS, or from the EMSA's license status portion of its webpage after she received her renewal that would have or should have placed her on notice that her understanding was mistaken or inaccurate. The EMSA presented no evidence upon which it can be reasonably concluded that respondent could be or should be faulted for her lack of knowledge that her license was lapsed during the period of time she continued to practice. There was no evidence that respondent continued to hold herself out to be a paramedic from the time she first received notice that her license had lapsed.

12. Whether a violation of Health and Safety Code section 1797.177 was proved is a matter of whether the provision can be violated unknowingly, unconsciously, and without any evidence that respondent was holding herself out to be a paramedic at a time when she knew or reasonably should have known that her license was lapsed. The EMSA's allegation rests upon respondent's license status alone, in essence, contending that the statute constitutes a strict liability proposition for the licensee. But use of the words "hold herself out" in the statute tends to rebut a strict liability only means for violation, and implies proof of at least some level of culpable knowledge is required that the person is practicing as a paramedic under circumstances that would lead a reasonable person to believe that if the licensee's paramedic license is not valid, the person knew or had reason to know that fact. There was no evidence of any facts that respondent knew or should have known her paramedic license was not in effect between April 2011 and April 2013, the period her license was lapsed, and it is not reasonable to conclude otherwise. The alleged violation of Health and Safety Code section 1797.177 was therefore not proved.


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ORDER

The Accusation is DISMISSED.

DATED: February 5, 2016

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STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings