

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

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

JOSEPH SILVERSTEIN
License No. P00913

Respondent.

Case No. 08-0233

OAH No. 2010040973

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 17, 2011, in Los Angeles.

Cynthia L. Curry, Senior Staff Counsel, represented Complainant.

Kim Scovis, Attorney at Law, represented Joseph Silverstein (Respondent), who was present.

Oral and documentary evidence was received, and argument was heard. The matter was submitted and the record was closed on March 17, 2011.

FACTUAL FINDINGS

1. Complainant Nancy Steiner filed the Accusation in her official capacity as Chief, EMS Personnel Division of the Emergency Medical Services Authority, State of California.
2. On January 15, 1992, the Emergency Medical Services Authority (Authority) issued Emergency Medical Technician-Paramedic (EMT-P) license number P00913 to Respondent. The license is valid through December 31, 2011, unless it is revoked or suspended as provided by law.
3. The Authority is the state agency responsible for all matters related to the licensure of paramedics. It requires paramedics to complete 48 hours of continuing education courses in order to renew their licenses. In addition, individual counties may have

their own local emergency medical services authority (local EMSA) which has its own rules and requirements for paramedics who practice within the county. Thus, a paramedic must comply with the state requirements of the Authority, as well as any rules and requirements of the local EMSA of the county which employs him or her as a paramedic.

4. The American Heart Association provides courses for Advanced Cardiac Life Support (ACLS) and for Pediatric Advanced Life Support (PALS). The local EMSA for Ventura County (county local EMSA) requires its paramedics to be certified by the American Heart Association every two years for ACLS and PALS. However, ACLS and PALS certification is not a requirement for licensure under state law.

5. Respondent is certified by the American Heart Association as an instructor/trainer for ACLS and PALS certification and re-certification. He has been an instructor/trainer for the American Heart Association since 1991. In addition to his paramedic license, Respondent is licensed by the California Medical Board as a physician assistant, and by the California Board of Registered Nursing as a registered nurse, certified emergency nurse, and a family nurse practitioner.

6. Respondent is an experienced trainer/instructor in the areas of advanced life support and emergency medicine. He has provided trainings for various medical professionals, such as paramedics, doctors, nurses, and medical students. Respondent has provided such trainings through his employment with Training Solutions and/or the training center at Ventura County Medical Center (VCMC). Training Solutions is not an authorized provider of continuing education for paramedics. VCMC is an authorized provider of continuing education for paramedics. Both Training Solutions and VCMC require Respondent to use the certificates and other materials they produce and provide to him. He is not allowed to produce his own materials for distribution at the Training Solutions or VCMC classes.

7. Respondent, as an employee of Training Solutions, conducted an ACLS training course on July 8, 2008, and a PALS training course on July 9, 2008. The ACLS class lasted four hours. The PALS class was three hours. At the end of each class, Respondent provided the participants with documents including the American Heart Association "provider card" for either ACLS or PALS, depending on the subject of the class, and a Training Solutions Certificate of Completion indicating the number of hours of the class was "8." The Certificates of Completion for the ACLS and PALS classes were prepared by Training Solutions. Training Solutions typed "8" in the space for "number of hours" on the certificates.

8. The Training Solutions Certificates of Completion include the typewritten statement, "Training Solutions is an approved provider by the California Board of Registered Nursing, Provider Number 13238 for 8 contact hours." There is no statement on the certificates regarding Training Solutions being an approved provider for paramedics. Respondent's testimony established that Training Solutions uses the same Certificate of

Completion form containing the Board of Registered Nursing statement for all of its trainings, no matter what particular group is being trained.

9. Jeff Golden (Golden) is a firefighter/paramedic for the Ventura County Fire Department. He attended both of Respondent's training classes on July 8 and 9, 2008. Golden testified at the hearing. At the time of Respondent's classes, Golden did not need continuing education credit as he had fulfilled the continuing education requirements for his paramedic license. He took Respondent's ACLS and PALS classes in order to get recertified as a paramedic by the county local EMSA. To do that, Golden needed the American Heart Association ACLS and PALS provider cards, and not the Training Solutions Certificate of Completion.

10. Golden wrote VCMC's provider number on his Training Solutions Certificates of Completion for the ACLS and PALS classes. In response to questions from some of the participants, Respondent told the class they should contact VCMC about whether paramedic continuing education credit was available. He told the class that he worked with the training center at VCMC, and gave the class VCMC's provider number so they could confirm that Respondent was on the VCMC training center roster. It was not established that Respondent represented to the class that paramedic continuing education credit was, in fact, available for the ACLS or PALS classes.

11. Golden paid Respondent a total of \$300 for both the ACLS and PALS classes. Respondent provided Golden an invoice as a receipt for his payment. On the invoice, the description for both classes included the phrase "continuing education units." According to Respondent, he uses the same standard template in preparing the invoices for his training classes. He acknowledged that his invoices should be customized for the specific group he is training. The inclusion of the phrase "continuing education units" is the result of inadvertence.

12. Golden has commented favorably on the substance of Respondent's classes and his ability as a trainer. He was impressed with Respondent's "high knowledge base in the Field of Emergency medical care," and that he was great at providing new American Heart Association information. Golden "will continue to talk about [Respondent] with high regard and recommend him to others throughout the County as he is a huge asset to Paramedics."

13. James Craig (Craig) is a firefighter/paramedic for the Ventura County Fire Department. He attended the PALS training given by Respondent on July 9, 2008. Craig submitted the Training Solutions Certificate of Completion to the Authority to claim continuing education credit for his paramedic license. It was not established, however, that Craig did so because of any representation made by Respondent that such credit was available. When the Ventura county local EMSA invalidated the class, Craig fell short of the 48 hour requirement, but he subsequently provided other documentation to meet the Authority's continuing education requirement for licensure. Like Golden, Craig has

commented favorably on the PALS training he received from Respondent, and he would gladly recommend him to others.

14. Respondent's demeanor was respectful of the proceedings and he testified in a straightforward and honest manner. His testimony was credible in all respects.

LEGAL CONCLUSIONS

1. The Authority is the state agency "responsible for the coordination and integration of all state activities concerning emergency medical services." (Health & Saf. Code, § 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 Authority 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:

[¶] . . . [¶]

(5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.

[¶] . . . [¶]

(7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

3. An act shall be considered to be substantially related to the qualifications, functions, or duties of a paramedic "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." (Cal. Code Regs., tit. 22, § 100174.)

4. EMS personnel, such as paramedics, are required to take continuing education courses for the purpose of maintaining their certification or licensure. "Continuing education (CE) is a course, class, activity, or experience designed to be educational in nature, with learning objectives and performance evaluations for the purpose of providing EMS personnel with reinforcement of basic EMS training as well as knowledge to enhance individual and system proficiency in the practice of pre-hospital emergency medical care." (Cal. Code Regs., tit. 22, § 100390.3.) The Authority's regulations state that one continuing education hour is earned for "[e]very fifty minutes of approved classroom or skills laboratory activity." (Cal. Code Regs., tit. 22, § 100390.4, subd. (a).)

5. Cause does not exist to discipline Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(5), in conjunction with California Code of Regulations, title 22, section 100174, for a dishonest act that is substantially related to the qualifications, functions, and duties of a paramedic. It was not clearly and convincingly established that the Certificates of Completion for Respondent's ACLS and PALS classes constituted a dishonest act by him. The certificates were prepared by Training Solutions, which required Respondent to distribute them. Further, the evidence established that the purpose of the classes was to provide training for ACLS and PALS certification by the American Heart Association, not paramedic continuing education.

6. Cause does not exist to discipline Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(5). It was not established that Respondent threatened the public health and safety by failing to provide legally required training hours for the paramedics' mandatory continuing education. Respondent's clear, convincing, and unrefuted testimony established that he gave the two training classes as an employee of Training Solutions, which is not an approved continuing education provider for paramedics. Respondent's actions were consistent with his awareness of Training Solutions non-approved status for paramedics. He conducted the classes in order that the participants could obtain their recertification for ACLS or PALS, as required by the American Heart Association.

7. Cause does not exist to discipline Respondent's EMT-P license, pursuant to Health and Safety Code section 1798.200, subdivisions (b) and (c)(7), for violating California Code of Regulations, title 22, section 100390.4, subdivision (a), for giving continuing education credit of eight hours where he provided only three to four hours of actual training. It was not clearly and convincingly established that Respondent conducted the training classes as paramedic continuing education. The weight of the evidence indicates the classes were given for the purpose of issuing ACLS and PALS recertification by the American Heart Association, which Respondent is qualified to do. Although one paramedic (Craig) attempted to claim continuing education credit for the PALS class, it was not established that he did so because of any representation made by Respondent.

8. As cause for discipline against Respondent's EMT-P license was not established by the evidence, the Accusation must be dismissed.

ORDER

Accusation No. 08-0233, filed against Emergency Medical Technician-Paramedic license number P00913 issued to Joseph Silverstein, is dismissed.

DATED: May 16, 2011



ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings