

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

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

PETER M. TAGLIERE,
License No. P20123

Respondent.

Enforcement Matter No.: 15-0216

OAH No. 2016080897

PROPOSED DECISION

Irina Tentser, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, State of California, heard this matter on December 8, 2016 at Los Angeles, California.

Stephen J. Egan, Senior Staff Counsel, represented Sean Trask (Complainant).

Dana S. Martinez, Attorney, represented Peter M. Tagliere (Respondent), who was present throughout hearing.

Oral and documentary evidence was received. The record was left open for the parties to submit written closing briefs no later than December 16, 2016. On December 16, 2016, Respondent filed and served his closing brief, marked as Exhibit H. On December 19, 2016, Complainant filed its Closing Brief, marked as Exhibit 19. Both briefs were considered.

The matter was submitted for decision on December 19, 2016.

In reviewing the record and preparing the Proposed Decision for this case, the ALJ found that Exhibit 7, pages 114 to 117, and Exhibit 16, pages 142 to 144, contained medical information/records of a witness. Accordingly, based on the good cause described above, the ALJ, reopened the record on December 22, 2016, and provided notice to the parties in accordance with Cal. Code Regs., tit. 1, § 1022 of the motion and made the motion to issue a protective order and place Exhibit 7, pages 114 to 117, and Exhibit 16, pages 142 and 144, under seal pursuant to Cal. Code Regs., tit. 1, § 1030.

The parties were ordered to file any opposition to the ALJ's motion no later than January 10, 2017. No opposition was received from the parties to the ALJ's motion.

The ALJ issued a protective order placing Exhibit 7, pages 114 to 117, and Exhibit 16, pages 142 to 144 under seal on January 19, 2017.

The record closed and the matter was submitted for decision on January 20, 2017.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant made the Accusation and Petition to Terminate Probation (the Accusation) in his official capacity as the Chief, Emergency Medical Services Personnel Division of the California Emergency Medical Services Authority (EMSA) of the State of California.

2. On July 22, 2003, Respondent was issued emergency medical technician-paramedic (EMT-P) license number P20123 by the EMSA. The license is scheduled to expire on July 31, 2017.

3. On September 22, 2014, the EMSA Authority Director adopted a Decision and Order (Decision and Order), which became effective on October 22, 2014, placing Respondent's EMT-P license on probation for three years. Respondent's license discipline was based on findings that he violated the Health and Safety Code by physically abusing a patient under his care.

4. Complainant now seeks to discipline Respondent's EMT-P license and terminate his probation based on an incident that occurred on June 26, 2015.¹

June 26 Incident

5. On June 26, J.H.² (Patient), who was approximately five months pregnant, and E. L. (EL) were at a restaurant having dinner with their five children. Patient's water broke and the family left the restaurant to seek medical care for Patient. EL began driving Patient to search for the nearest hospital. At some point, Patient began to bleed.

¹ All dates refer to 2015 unless otherwise indicated.

² Initial are used in lieu of full names to protect the individuals' privacy.

6. As he was driving, EL called 911 seeking emergency medical care for Patient. The 911 operator directed EL to stop at the Los Angeles City Fire Station 60 (the Station) to obtain help. EL pulled up to the Station as directed.

7. At approximately the same time, Respondent arrived at the Station in a “plug buggy”³ to report to work. Respondent exited the vehicle and approached EL.

8. EL informed Respondent that Patient was pregnant; had gone into labor; and her water had broken. Respondent did not assess Patient and provided no care to her, despite being told of the circumstances of the Patient and the request by the Patient's husband for help. Instead, Respondent told EL he could continue to drive Patient to the hospital himself or that Respondent could call them an ambulance.⁴

9. Approximately 30-40 seconds after EL and Respondent began speaking, the Station's ambulance returned to the Station. Firefighter-Paramedic Christopher Beaty (Beaty) was the passenger and Firefighter- Paramedic Kasahara (Kasahara) was the driver of the ambulance.

10. Beaty was informed Patient was in labor and her water had broken. Beaty did not assess the Patient and provided no care to her, despite being told of the circumstances of the Patient and the request by EL for help.

11. Kasahara backed the ambulance into the Station. Kasahara did not assess the Patient and provided no care to her.

12. Based on communication between Respondent, Beaty, and Kasahara, a “still alarm”⁵ related to Patient was generated to begin LAFD treatment. However, neither Respondent nor Beaty communicated to EL and Patient that LAFD intended to care for Patient. Instead, Respondent walked away from EL to retrieve equipment from his plug-buggy and Beaty went to the ambulance to get an ePCR (Electronic Patient Care Reporting) to document the incident.

³ A Los Angeles Fire Department (LAFD) pick-up truck.

⁴ Complainant did not establish through clear and convincing evidence that Respondent stated “We don't deliver babies here” in response to EL's request for assistance and/or that Respondent was aware Patient was bleeding. (Exh. 1 at p. 007.) Respondent denied making the statements and being told that Patient was bleeding. EL and Patient testified they could not recall their exchange with Respondent in detail. Therefore, in light of Respondent's denial, there is insufficient evidence to sustain the allegations.

⁵ According to Respondent, a “still alarm” is an alarm that originates at the fire station level based on something that happens outside of the dispatch system.

13. As Beaty was walking back to EL's vehicle after retrieving the ePCR from the ambulance, he saw the vehicle leave and heard EL yell as he drove off something to the effect of, "I can't believe that you're not going to help my wife."

14. As a result of EL's and Patient's reasonable belief, based on the totality of the exchange between them and Respondent, that LAFD was not going to provide care for Patient and her urgent need for medical care, EL left the Station and drove Patient to the hospital himself. +K

15. Patient's baby was delivered stillborn during transport. Upon arrival at the hospital, Patient was immediately rushed into the emergency room.

Complainant Did Not Provide Sufficient Evidence To Discipline Respondent's License

16. Complainant conducted an investigation of the June 26 incident and determined that Respondent's actions in failing to provide an assessment, treatment, or transportation to Patient were grossly negligent, incompetent, violated local protocols, and violated the terms of his probation.

17. Respondent testified he initially had no apparent personnel, vehicle or equipment to render aid Patient; acted reasonably under the circumstances in providing EL with the option of driving Patient to the hospital himself; and intended to care for Patient after the Ambulance returned to the Station.

18. In seeking to discipline Respondent's license, the Accusation alleges three causes of action: (1) violation of Emergency Medical Services (EMS) Act (EMS Act)⁶ section 1798.200, subdivisions (c)(2), gross negligence, and (c)(4), incompetence; (2) violation of EMS Act section 1798.200, subdivisions (c)(7)⁷; and (3) violation of the terms of probation imposed on Respondent's EMT-P license.

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⁶ The EMS Act is codified in Health and Safety Code sections 1797 through 1799.207. All future section references are to the EMS Act unless otherwise noted.

⁷ [I would quote the section or spell out what "this division is." Is it the Act?] Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this division or the regulation adopted by the authority pertaining to prehospital personnel. (Exh. 1 at p. 008.)

A. Insufficient Evidence Was Presented by Complainant to Establish Respondent's Actions were Grossly Negligent or Incompetent.

19. Complainant presented no evidence that Respondent's actions, as described in factual findings 5 through 15, were grossly negligent or incompetent. No evidence established the relevant standard of care or how Respondent failed to meet the standard of care.

20. Complainant provided no testimony, expert or otherwise, regarding the practice of paramedicine or how Respondent's actions on June 26 deviated from practice standards. Accordingly, there is insufficient evidence to make a finding that Respondent's actions constituted "gross negligence" or "incompetence," as those terms are respectively defined in EMS Act sections 1798.200, subdivisions (c)(2) and (c)(4).

B. Insufficient Evidence Was Presented by Complainant to Establish Respondent's Actions Violated Authority Rules

21. Complainant presented no evidence that Respondent violated any Authority rules. The second cause of action asserts Respondent's actions "violate the following local protocols adopted by the Los Angeles EMS Agency," and quotes Los Angeles County EMS Agency Ref No. 808.1 (Ref No. 808.1). No evidence was presented that Ref No. 808.1 was adopted by the Los Angeles EMS Agency.

22. The text of Ref No. 808 in the Accusation is vague and drafted in bullet points without any context. Complainant presented no testimony on how these rules apply to Respondent's actions on June 26. As a result, insufficient evidence exists to support a finding that Respondent violated EMS Act section 1798.200, subdivision (c)(7).

C. Insufficient Evidence Was Presented by Complainant to Establish Respondent Violated the Terms of His Probation

23. Complainant's third cause of action, that Respondent violated the terms of his probation, is predicated on the allegation that Respondent violated the EMS Act on June 26. (Exh. 1 at p.010.) Because Complainant failed to establish Respondent was grossly negligent, incompetent or violated any Authority rule, as described in factual findings 16 through 22, Complainant has not provided sufficient evidence Respondent violated his probation.

LEGAL CONCLUSIONS

Jurisdiction, Burden of Proof, and Standard of Proof

1. EMSA develops and adopts standards for EMT-P training and scope of practice. (§ 1797.172, subd. (a).) Sole responsibility over EMT-P licensure and

licensure renewal is vested in the EMSA. (§ 1797.172, subd. (c).) EMSA has jurisdiction to proceed in this matter pursuant to section 1798.200, based on factual findings 1 and 2.

2. The standard of proof in an administrative proceeding seeking to suspend or revoke a certificate that requires substantial education, training, and testing is “clear and convincing evidence.” (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Complainant bears the burden of proof to establish through clear and convincing evidence that Respondent’s license warrants discipline.

Applicable Law

3. Section 1798.200 provides, in pertinent part:

“(b) The authority may . . . 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 . . . suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate or licenseholder under this division:

“[¶]...[¶]

“(2) Gross negligence.

“[¶]...[¶]

“(4) Incompetence.

“[¶]...[¶]

“(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.”

4. “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 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 § 100175, subd. (a).)

5. The Decision and Order placing Respondent on probation requires him “to obey all federal state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200.” (Exh. 17 at p. 171.) Violation of probation by Respondent authorizes EMSA “to initiate action to terminate probation and proceed with actual license suspension/revocation.” (*Id.* at 172.)

Determination of Issues

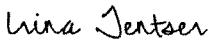
6. Cause does not exist to suspend or revoke Respondent’s EMT-P license pursuant to section 1798.200, subdivisions (c)(2), (c)(4), or (c)(7) because there was insufficient evidence to establish that Respondent was grossly negligent, incompetent, or that he violated or attempted any law enforced by the EMSA in relation to Patient on June 26, as described in factual findings 3 through 23 and legal conclusions 1 through 4.

7. Cause does not exist to impose the stayed discipline and revoke Respondent’s license because there was insufficient evidence to find Respondent violated the terms of his probation, as described in factual findings 3 through 23 and legal conclusions 1 through 6.

ORDER

The Accusation against Respondent Peter M. Taglieri, license number P20123 is dismissed.

DATED: February 8, 2017

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IRINA TENTSER
Administrative Law Judge
Office of Administrative Hearings