

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MANUEL E. TENORIO
License No. P24116

Respondent.

Case No. 13-0345

OAH No. 2014120824

In the Matter of the Accusation Against:

NICOLAS A. RIDDALL
License No. P18277

Respondent.

Case No. 13-0432

OAH No. 2014120825

PROPOSED DECISION

Administrative Law Judge Angela Villegas (ALJ), State of California, Office of Administrative Hearings, heard this matter on November 17, 2015, in Los Angeles, California.

Craig L. Stevenson, Senior Staff Counsel, Emergency Medical Services Authority (Authority), represented complainant.

David J. Givot, attorney at law, represented both respondents, who were also present.

These cases were consolidated by an order dated May 18, 2015. At the administrative hearing, complainant's counsel agreed to a single proposed decision for both cases, rather than two separate proposed decisions. (Cal. Code Regs., tit. 1, § 1016, subd. (d).)

Evidence was received, and the matter was submitted for decision on November 17, 2015.

REDACTION AND SEALING OF CONFIDENTIAL INFORMATION

After the administrative hearing, the ALJ discovered the unredacted name of a patient in exhibits 1 and 2. The ALJ redacted the patient's name, except for initials.

The ALJ likewise discovered numerous instances of the patient's unredacted name throughout exhibit 11, which purported to be medical records regarding the patient. It was impracticable for the ALJ to redact these references,¹ and redaction could not ensure that some references would not be missed; therefore, exhibit 11 was ordered sealed.

In addition, the ALJ discovered that exhibits 18 through 20 contained unredacted names of, and medical information regarding, the patient referred to above. Exhibit 18 also contained unredacted names and/or medical information concerning other individuals involved in emergency calls and/or complaints unrelated to the present matter. In addition, exhibit 18 through 20 contained what appeared to be confidential employment information regarding respondents and others. It was impracticable for the ALJ to redact these references;² therefore exhibits 18 through 20 were also ordered sealed.

FACTUAL FINDINGS

1. Complainant Sean Trask, Chief of the Authority's EMS Personnel Division, filed the Accusations in his official capacity. Respondents filed Notices of Defense requesting a hearing.

2. Respondent Tenorio is alleged to hold paramedic license number P24116; respondent Riddall is alleged to hold paramedic license number P18277. (Exs. 1A and 2A.) Competent evidence was not presented indicating the dates of issuance and expiration of respondents' licenses, their license histories, or their current license status. The only evidence concerning respondents' licensure appeared in jurisdictional documents and an investigator's case summaries. (Exs. 1 and 2.) The jurisdictional documents were received solely for jurisdictional purposes, and the other materials were not supported by sufficient foundational evidence to overcome respondents' hearsay objection. Nevertheless, respondents did not dispute the fact of their licensure.³

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¹ Complainant's counsel agreed to perform the redactions and was given the opportunity to do so, but did not.

² Again, complainant's counsel did not redact these references, although given the opportunity to do so. Information concerning events other than the one alleged in the Accusations was not relevant to the present proceeding, and has not been considered. (Gov. Code, § 11513, subs. (c) and (f).)

³ The Tenorio Accusation (ex. 2A) alleges that his license expired October 31, 2014; the same expiration date appears in an investigator's case summary regarding respondent Tenorio (ex. 2B). Legal authority for the exercise of jurisdiction over an expired license was not cited, and the ALJ was unable to locate it.

3. (a) Guidelines and bulletins promulgated by various local emergency medical service agencies govern the practice of paramedics working in Los Angeles County, and for LAFD. (Exs. 12-16.)

(b) These guidelines and bulletins indicate that patients having an acute cardiac problem may present with symptoms other than chest pain. In particular, elderly, female, and/or diabetic patients may present with symptoms such as weakness, dizziness, syncope, nausea, vomiting, or other diffuse complaints.

(c) Accordingly, when confronted with an elderly, diabetic, female patient with such complaints, the guidelines and bulletins require paramedics to use a 12-lead electrocardiogram (EKG) on the patient, to assist with diagnosis and treatment, in case the patient's symptoms are due to an acute myocardial infarction. In addition, two guidelines (exs. 14 and 15) indicate the use of oxygen and an intravenous line (IV) for patients displaying symptoms that could be associated with a cardiac event.

4. The Accusations allege that on September 19, 2010, both respondents were employed by LAFD as paramedics. (Exs. 1A and 2A.) Competent evidence was not adduced to establish that allegation.

5. Complainant presented documentary evidence tending to confirm respondents' employment (e.g., exs. 3 and 18-20), but those documents lacked sufficient support to overcome respondents' hearsay objection. The documents were admitted over respondents' authentication/foundation objection, pursuant to Government Code section 11513, subdivision (c), as "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs[.]" Nevertheless, under Government Code section 11513, subdivision (d), hearsay evidence to which a timely objection has been asserted cannot support a finding unless an exception to the hearsay rule applies. If no exception applies, then hearsay evidence may be used only to supplement or explain other evidence.

6. The documents were not shown to qualify as either official records pursuant to Evidence Code section 1280 or business records pursuant to Evidence Code section 1271. For example, no evidence was presented of the circumstances under which the documents were created, the timing of the documents' creation, or the reliability of the sources of information or the method and time of preparation. (Evid. Code, §§ 1271; 1280.) While the documents presented by complainant appeared genuine, and very likely *could* have been supported with evidence qualifying them as official and/or business records, that qualifying evidence was not presented.

7. Exhibit 18 was accompanied by a records-custodian's declaration in response to a subpoena, averring that the documents were true and correct copies of materials in LAFD's files. There was no indication that complainant complied with Government Code section 11514 with regard to the custodian's declaration; therefore, it could not be received as non-hearsay evidence. (Gov. Code, § 11514, subd. (a).) Even if the custodian's declaration could be so received, it would not be sufficient to qualify the documents

contained in exhibit 18 as official or business records, because it did not contain the foundational information necessary to do so.⁴ (Evid. Code, §§ 1271; 1280.)

8. No other evidence was presented regarding respondents' employment. The two witnesses who testified for complainant did not have personal knowledge of any facts in the case. One testified solely as an expert; the other was an investigator for the Authority. Furthermore, when respondents elected not to testify, they were not examined pursuant to Government Code section 11513, subdivision (b).

9. The Accusations further allege that on September 19, 2010, in the course of respondents' employment as LAFD paramedics, they responded to a 911 call regarding an 84-year-old diabetic female who was pale and sweaty, and having difficulty breathing, with pain in her arm and chest. (Exs. 1A and 2A.) The Accusations allege that, when respondents arrived on the scene, they found the patient in distress and moaning, with abdominal pain, weakness, body aches, nausea, and vomiting, and that the patient's medical history included diabetes, and her medications included propranolol, a cardiac medication.

10. According to the Accusations and the guidelines and bulletins governing paramedic practice in Los Angeles County and LAFD, these factors placed the patient at high risk for a cardiac event. The Accusations allege that despite this risk, respondents failed to use a 12-lead EKG on the patient and failed to take other lifesaving measures, including placing an IV and providing oxygen, as called for by the guidelines and bulletins governing paramedic practice.

11. Competent evidence was not presented establishing these allegations. As previously noted, no witness with personal knowledge of the facts testified.

12. (a) The evidence did include an Emergency Medical Service Report (EMS Report) (ex. 4; also appears in exs. 11 and 18-20), which recounted an emergency call corresponding to the one described in the Accusations. But the EMS Report was not supported by sufficient evidence to overcome respondents' hearsay objection. (See Factual Findings 5 and 6.)

(b) Moreover, the EMS Report did not refer to either respondent, and from it alone, it could not be determined who rendered emergency care to the patient. In addition, it could not be determined from the EMS Report what kind of EKG, if any, was used on the patient. What appears to be an EKG printout strip was presented as part of exhibit 4 (and with other exhibits), but the EKG printout does not identify the patient in any way, and competent evidence was not presented showing that it reflected the use of an EKG with fewer than 12 leads. The EMS report did reflect the non-use of oxygen and an IV.

⁴ Moreover, the documents contained within exhibit 18 were not responsive to the subpoena (ex. 17), which requested "[a]udio recording[s]" of LAFD interviews with both respondents. (*Id.*) The documents contained within exhibit 18 do not include such recordings, or even transcripts of such recordings.

13. No other competent evidence was presented as to what occurred in connection with the emergency call for the patient, or of respondents' involvement in it.

(a) Exhibit 19 contained a document entitled, "Agreement and Release Re: Settlement of Administrative Investigation and Punitive Action" (Agreement), containing factual recitations in which respondent Riddall admitted that on September 19, 2010, as an LAFD paramedic, he had responded to an emergency call for "an 84 year old female with chest and arm pain" and that he "had failed to follow proper medical protocol, when he failed to obtain a 12-lead ECG as required by [LAFD] policy[.]"⁵ (Ex. 19.)

(b) Respondent Riddall's admissions in exhibit 19, in and of themselves, are within the hearsay exception for party-opponent admissions. (Evid. Code, § 1220.) Nevertheless, the document in which they appear—the Agreement—was not supported by evidence sufficient to overcome respondents' hearsay objection. It was not shown to qualify as a business or official record, or under any other hearsay exception. Moreover, the Agreement was not offered for any non-hearsay purpose: e.g., as legally-operative language showing the existence of an obligation. Rather, its sole relevance to this proceeding was to establish the truth of the matters asserted in the recitals.⁶

(c) Hence, the Agreement cannot support a finding that respondent Riddall engaged in the conduct alleged. No similar instrument was offered regarding respondent Tenorio.

(d) Other documents among those purporting to be respondents' personnel records indicated that respondents were indeed the paramedics who took the call involving the 84-year-old diabetic female patient. But as previously explained, none of those documents had sufficient support to overcome respondents' hearsay objection, and thus cannot sustain a finding that respondents engaged in the conduct alleged.

14. Because respondents' conduct was not established by the evidence presented, it could not be determined whether respondents violated the guidelines and/or bulletins referred to above. At the administrative hearing, complainant's counsel also referred to respondents as having been "negligent" in their treatment of the patient. Negligence was not

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⁵ ECG is another abbreviation for electrocardiogram. (Testimony of Trevor Douville.)

⁶ Evidence Code section 622, creating a presumption that the facts recited in a written instrument are true, does not apply. Even setting aside the hearsay problem and the absence of authentication, that presumption applies only as between the parties to the instrument in question. In this case, the Authority was not a party to the instrument.

alleged against respondents.⁷ Even if it had been, the evidence presented was insufficient to establish negligence on respondents' part, for the same reasons as previously explained.

LEGAL CONCLUSIONS

1. The Accusations seek to discipline respondents' paramedic licenses pursuant to Health and Safety Code section 1798.200, subdivisions (c)(7) ("[v]iolating . . . any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel"), and/or (c)(10) ("[f]unctioning outside the supervision of medical control in the field care system operating at the local level").

2. Complainant had the burden to establish grounds for discipline. Complainant did not meet the burden as to either respondent's license.

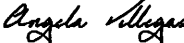
3. Complainant's evidence did not show that either respondent held the license or employment alleged, or engaged in the conduct alleged. (Factual Findings 3-14.) Accordingly, complainant failed to establish that either respondent should be disciplined under Health and Safety Code section 1798.200, subdivision (c)(7) or (c)(10). Furthermore, because complainant's evidence did not include either respondent's licensing history or status, even without the other evidentiary deficiencies, the imposition of any discipline would risk exceeding the Authority's jurisdiction. (Factual Finding 2.)

ORDER

1. The Accusation against respondent Manuel E. Tenorio, license number P24116, is dismissed.

2. The Accusation against respondent Nicolas A. Riddall, license number P18277, is dismissed.

Dated: November 30, 2015

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ANGELA VILLEGAS
Administrative Law Judge
Office of Administrative Hearings

⁷ Gross negligence and repeated negligent acts are among the grounds listed in Health and Safety Code section 1798.200, subdivision (c), for discipline against a paramedic.

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

NICOLAS RIDDALL
License No. P18277

and

MANUEL E. TENORIO
License No. P24116,

Respondents.

Agency Case Nos. 13-0345 &
13-0432

OAH Nos. 2014120824 &
2014120825

DECISION

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

This Decision shall become effective _____.

IT IS SO ORDERED _____.

EMERGENCY MEDICAL SERVICES AGENCY
STATE OF CALIFORNIA

By _____

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