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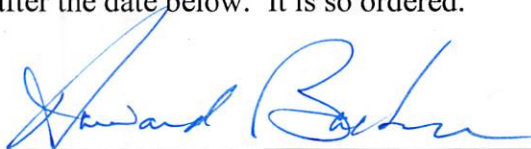
BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician- Paramedic License of: ) Enforcement Matter No.: 16-0335  
) OAH No.: 2018030252  
)  
6 **LAMONT T. MONTGOMERY** ) **DECISION AND ORDER**  
License No. P23822 )  
Respondent. )  
\_\_\_\_\_ )

The attached Proposed Decision is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.  
This decision shall become effective 30 days after the date below. It is so ordered.

DATED:

*May 16, 2018*



Howard Backer MD, MPH  
Director  
Emergency Medical Services Authority

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

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

LAMONT MONTGOMERY,

License Number P23822,

Respondent.

Enforcement Matter No. 16-0335

OAH Case No. 2018030252

**PROPOSED DECISION**

Irina Tentser, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 25, 2018, in Los Angeles, California.

Frank Coats, Senior Staff Counsel, represented Complainant, Sean Trask, Chief, EMS Personnel Division, California Emergency Medical Services Authority (Authority).

Samantha M. Swanson, Attorney, represented Lamont Montgomery (Respondent), who was present throughout the proceeding.

Evidence was received by oral stipulations, documents, and testimony at the hearing. The record was closed and the matter was submitted for decision at the conclusion of the hearing on April 25, 2018.

**FACTUAL FINDINGS**

1. On January 23, 2018, Complainant issued the Accusation to Respondent. On March 2, 2018, Complainant filed the Accusation. On February 6, 2018, Respondent filed the Notice of Defense.

2. The Authority issued emergency medical technician – paramedic license number P23822 to Respondent on July 21, 2006. The license is scheduled to expire on July 31, 2018.

3. Complainant seeks to discipline Respondent’s emergency medical technician – paramedic (EMT-P) license on grounds that 1) he was convicted of a crime that is

substantially related to the qualifications, functions, and duties of prehospital personnel and 2) he was convicted of three misdemeanors within five years for offenses relating to force, violence, and intimidation. Complainant argues, accordingly, that outright revocation of Respondent's license is the only penalty that can be imposed in this proceeding. Complainant has offered certified copies of the record of Respondent's convictions as the primary evidence in support for these contentions. Respondent asserts his innocence. He contends that his convictions, which he asserts were each based on a plea of nolo contendere, do not constitute convictions and do not constitute an express admission of guilt of the charged offenses, and therefore, the record of his convictions cannot be grounds for disciplining his license. Respondent also argues that his convictions are not substantially related to his qualifications, functions, and duties of prehospital personnel because they involved domestic disputes and were therefore unrelated to his EMT-P license.

*Respondent's 2014 Criminal Conviction for Assault*

5. On October 9, 2014 in the Superior Court of California for the County of Riverside, in case number RIF1305720, Respondent was convicted, based on his plea of guilty, of violating Penal Code section 240 (assault),<sup>1</sup> a misdemeanor. This crime is an offense relating to force, violence, threat, or intimidation. (Cal. Code Regs., tit. 22, § 100174, subdivision (b)(4).)

6. The court granted Respondent summary probation for a period of 36 months on certain terms and conditions, including obey all laws, ordinances, and court orders; incarceration for two days; performance of 20 hours of community service through a non-profit organization; pay a fee of \$500 to the Domestic Violence Fund; pay victim restitution; submit to immediate search; complete a 52-week Domestic Violence Program; not knowingly own, possess or have control of any firearm, deadly weapon, ammunition or related paraphernalia for 10 years; give written notice to the probation officer 24 hours before changing residence and not move without the approval of the probation officer; not annoy, harass, threaten, or disturb the peace of the victim; pay pre-sentence incarceration costs of \$284.84; and pay a booking fee of \$428.21. The court further ordered that any valid Domestic Violence protection or restraining order existing during the period of probation was incorporated into the probation terms. Respondent's probation from the 2014 conviction was scheduled to expire on October 9, 2017.

7. The facts and circumstances underlying the 2014 conviction are that on May 31, 2013, after spending the night with his ex-girlfriend and discussing the possibility of getting back together, Respondent woke up, drank Vodka, and went through his ex-girlfriend's cell phone. After discovering messages from another man in her cell phone, Respondent and his ex-girlfriend began to argue. During the argument, Respondent hit his ex-girlfriend, causing visible markings to her breast area, buttocks, and left upper arm.

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<sup>1</sup> Penal Code section 240 provides that: "An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another."

(Exhibit 7.) Respondent's and his ex-girlfriend's one-year-old daughter was present during the incident.

8. At hearing, Respondent minimized his responsibility for the 2013 incident, attributing his assault of his ex-girlfriend on the hurt feelings he felt at discovering her infidelity. Respondent incorrectly testified that he pled no contest, instead of guilty, to assault, asserting that he accepted the plea negotiation on the advice of his counsel in order to minimize the financial, emotional, and time burden to himself and his family that would have resulted from choosing to go to trial and fight the charges against him.

9. Respondent complied with some of the terms of his 2014 probation, completing the court-ordered 52-week Domestic Violence Program and 20 hours of community service. However, Respondent did not successfully complete the probation stemming from his conviction, as he initially incorrectly testified at hearing, because on September 15, 2017, while still on probation from his 2014 conviction, Respondent was convicted for domestic battery child abuse and endangerment. (Factual Finding 13.)

*The Authority's November 17, 2014 Notice of Warning*

10. By letter dated November 17, 2015, the Authority informed Respondent that it had reviewed the information surrounding his May 31, 2013 arrest, conducted an investigation, and that while the Authority disapproved of Respondent's actions, it would not be taking any disciplinary action against his license and would be closing its investigation. (Exhibit 9, p. 079.)

11. The letter further notified Respondent that "the California Code of Regulations, Title 22 (Regulation), section 100174 states that a paramedic license shall be revoked if the paramedic "Has been convicted of two misdemeanors within the preceding five years for any offense relating to force, violence, threat, or intimidation." (Exhibit 9, p. 079.) Accordingly, the Authority warned Respondent as follows: "**should further incidents occur which necessitate review by the [Authority], we will consider all facts and evidence, both past and present, in reaching appropriate licensure action.**" (*Id.*)

12. At hearing, Respondent acknowledged that he received the Authority's letter and its warning when it was issued in November 2014. He was therefore aware that any further convictions within the stated time period could potentially result in his license being revoked pursuant to California Code of Regulations, title 22, section 100174.

*Respondent's 2017 Criminal Conviction for Domestic Battery and Child Abuse and Endangerment*

13. On September 15, 2017, in the Superior Court of California for the County of Los Angeles, in case number 7IN00094, Respondent was convicted, based on his plea of

nolo contendere,<sup>2</sup> of violating Penal Code section 273.5, subdivision (a)<sup>3</sup> (domestic battery with corporal injury), and Penal Code section 273a, subdivision (b) (willful harm or injury to child; endangering person or health),<sup>4</sup> misdemeanors. Both of Respondent's crimes are for offenses relating to force, violence, threat, or intimidation. (Cal. Code Regs., tit. 22, § 100174, subdivision (b)(4).)

14. The court granted Respondent summary probation for a period of 48 months on certain terms and conditions, including pay a \$30 criminal conviction assessment, a \$40 court operations assessment, \$100 in court costs, \$150 restitution fine, and \$500 to the Domestic Violence Fund; pay \$400 in restitution to the victim; perform 60 days of community labor; not own, use or possess any dangerous or deadly weapons, including firearms, knives or other concealable weapons; complete a 52-week Domestic Violence Treatment Program; complete a 52-week Parenting Skills Program; obey the protective order issued in this case or any other case; submit to search and seizure; and obey all laws, ordinances, and court orders. Respondent was served with a copy of the protective order issued for the two victims in court.

15. As of the hearing date, Respondent had completed approximately 26 weeks of the 52-week court mandated domestic violence and parenting classes. His probation is not scheduled to be completed until 2021.

16. The only source presented at hearing regarding the facts and circumstances of Respondent's 2017 domestic battery and child abuse and endangerment conviction was

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<sup>2</sup> In the Accusation, Complainant inconsistently pled both that Respondent pled nolo contendere and guilty to these offenses. (Exhibit 1, pp. 004, 006.) In fact, he pled nolo contendere to the domestic battery and child abuse and endangerment charges. (Exhibit 6, p. 039.)

<sup>3</sup> Penal Code section 273.5, subdivision (a) makes it a crime to willfully inflict corporal injury resulting in a traumatic condition on a spouse or cohabitant. As used in this section, "traumatic condition" is defined as "a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck." (Pen. Code, § 273.5, subd. (d).)

<sup>4</sup> Penal Code section 273a, subdivision (b), provides: "Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor."

Respondent's testimony. As a result, the facts surrounding the conviction are not only unclear based on Respondent's vague description of the events that led to the conviction, but of dubious credibility based on Respondent's inconsistent testimony regarding the timing of his 2017 conviction and what plea he entered for the 2014 conviction.<sup>5</sup> In sum, according to Respondent, the incident that led to his 2017 conviction resulted after he and his current girlfriend, who were co-habiting at the time of the incident, engaged in a physical altercation, initiated by his girlfriend, with his now four-year old daughter and his girlfriend's eight year-old daughter present, after his girlfriend took his truck without his permission, leaving him and his daughter stranded. According to Respondent, he and his daughter followed his girlfriend to his uncle's house on foot where the argument and physical altercation took place. Respondent testified that his mother, who was present during the altercation, physically separated him and his girlfriend while they were fighting. Based on Respondent's vague and unclear testimony, the evidence did not establish the details of Respondent's actions or behaviors, or which child Respondent abused.

17. At hearing, Respondent deflected responsibility for the events that led to his 2017 conviction onto his girlfriend and other stressors. He attributed his violent reaction to his girlfriend's action of taking his truck; to the fact that he was emotionally distraught based on his grandmother's and aunt's illnesses and deaths; was sleep deprived and stressed from his EMT-P work-related pressures; and was under financial pressures. Respondent testified that he pled no contest to the charges against him based on the advice of his attorney and to prevent additional stress to his family as a result of the arrest and prosecution.

18. Respondent was convicted of three misdemeanor convictions (i.e., assault, domestic battery with corporal injury, and child abuse and endangerment) within five years preceding the date of the Accusation for offenses relating to force, violence, threat, or intimidation. (Factual Findings 5 and 13.)

### *Mitigation and Rehabilitation*

19. Respondent testified that he has learned to identify triggers that led to his past violent actions through both voluntary therapy and from his court-mandated domestic violence and parenting classes. Respondent's claims of rehabilitation are afforded little weight based on his failure to acknowledge his responsibility for the actions that led to his convictions at hearing and the fact that he did not identify what specific tools he had learned through therapy to prevent future instances of violence.

20. Respondent testified that he continues to be in a relationship with the girlfriend who was the victim of his 2017 conviction and acts as a father to the girlfriend's eight year-old daughter. In addition, Respondent testified that he parents his four-year old daughter, whom he sees on weekends, from his relationship with the ex-girlfriend who was the victim of his 2014 conviction. According to Respondent, he lives alone.

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<sup>5</sup> Respondent incorrectly testified that he pled nolo contendere, instead of guilty, as the court record's state to the 2014 assault charge.

21. Respondent testified that his off-the-job assault, domestic violence, and child abuse and endangerment convictions should not be used by the Authority as a basis to discipline his license because they are unrelated to his EMT-P job duties. He asserts that his convictions are based on isolated instances of conduct and not indicative of his overall behavior. As of 2018, Respondent had worked as a firefighter paramedic for the City of Anaheim Fire Department for 10 years without an on-the-job incident. He has a reputation as a good paramedic who works well in the community. (Exhibit A.)

22. Fire Captain and Arson Investigator Grant Riley of the City of Anaheim Fire & Rescue Department (Department) testified and submitted a character reference letter in support of Respondent. (Exhibit C.) Captain Riley described that he has been Respondent's supervisor for the past 15 months and has worked with Respondent for the past 10 years. He testified that Respondent is his "best guy" and excels at working with the public. He described that Respondent is expected to work in high pressure situations effectively with the public as a firefighter paramedic. Captain Riley testified that while he is generally aware of Respondent's convictions, he considers them to be related to Respondent's personal and domestic life, rather than his professional life. Captain Riley admitted, however, that he had "very limited knowledge" about the facts and circumstances that led to Respondent's convictions. He further testified that he did not know what the Department's policy was for off-duty conduct by firefighter paramedics, like Respondent, and that no investigation had been conducted by the Department regarding the incidents that led to either of Respondent's conviction. Accordingly, based on Captain Riley's admitted lack of knowledge regarding the specific facts that underlie Respondent's convictions and the failure of the Department to take any steps to ascertain whether the convictions were related to his functions, duties, and qualifications as a firefighter paramedic, his testimony that Respondent's convictions are not related to his firefighter paramedic position is afforded little weight.

23. In addition to Captain Riley's character reference letter, Respondent submitted the following three letters in support of his continued licensure:

a. Anaheim Fire & Rescue Department Deputy Chief of Operations Patrick Russell described Respondent's positive work ethic and team spirit, writing that Respondent is "a great asset to our organization and the community we serve." (Exhibit B.) Deputy Chief Russell's letter makes no mention of Respondent's convictions and what, if any, impact they have on his opinion of Respondent.

b. The Salvation Army's Lighthouse Corps, Senior Counselor and Pastor Joseph Moore, conducts Respondent's court-ordered domestic violence and parenting sessions. According to Pastor Moore, as of April 13, 2018, Respondent had completed 26 sessions of domestic violence and parenting, and completed an additional 10 individual counseling sessions. (Exhibit D.) He described Respondent's progress as ongoing and "satisfactory." (*Id.*)

c. Anaheim Fire & Rescue Captain and Paramedic Dave Barry described Respondent as an "excellent paramedic" whose patient care "is gentle, caring, and thorough."

(Exhibit E.) Captain Barry's letter makes no mention of Respondent's convictions and what, if any, impact they have on his opinion of Respondent.

## LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's EMT-P license under Health and Safety Code section 1798.200, subdivision (c)(6), for conviction of a crime that is substantially related to the qualifications, functions, and duties of an EMT-P and is evidence of a threat to the public health and safety, as set forth in Factual Finding Number 13 and Legal Conclusion 3.

2. Cause exists to revoke or suspend Respondent's EMT-P license under California Code of Regulations, title 22, section 100174, subdivision (b)(4), for conviction of three misdemeanors within the preceding five years for offenses relating to force, violence, threat, or intimidation, as set forth in Factual Finding Numbers 5, 13, and 18 and Legal Conclusion 8.

3. Health and Safety Code section 1798.200 states, in pertinent part, that:

"[¶] . . . [¶]

"(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division or may place any EMT-P license holder 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 license holder under this division:

[¶] . . . [¶]

"(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction."

4. California Code of Regulations, title 22, section 100175, states the criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of an EMT-P license holder and state, in part:

"Substantial Relationship Criteria for the . . . , Placement on Probation, Suspension, or Revocation of a License



“(a) For the purpose of . . . , placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 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.

“(b) For the purposes of a crime, the record of conviction or a certified copy of the record shall be conclusive evidence of such a conviction. “Conviction” means the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.”

5. California Code of Regulations, title 22, section 100139 defines “Paramedic” or “EMT-P,” as [a]n individual who is educated and trained in all elements of prehospital advanced life support (ALS); whose scope of practice to provide ALS is in accordance with the standards prescribed by this Chapter [Cal. Code Regs., tit. 22, div.9, ch.4].”

6. Section 1797.2 provides defines “advanced life support” as:

“[S]pecial services designed to provide definitive prehospital emergency medical care, including, but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of specified drugs and other medicinal preparations, and other specified techniques and procedures administered by authorized personnel under the direct supervision of a base hospital as part of a local EMS system at the scene of an emergency, during transport to an acute care hospital, during interfacility transfer, and while in the emergency department of an acute care hospital until responsibility is assumed by the emergency or other medical staff of that hospital.”

7. Respondent’s argument that his 2017 convictions for domestic battery with corporal injury and child abuse and endangerment should not form a basis for license discipline because it is not for offenses that are substantially related to the qualifications, functions, and duties of an EMT-P is unconvincing. As set forth in Factual Findings 13, 16, and 17, Respondent’s 2017 criminal convictions were substantially related to the qualifications, functions and duties of an EMT-P, pursuant to California Code of Regulations, title 22, section 100175, in that Respondent engaged in an act of violence against another person, involving injury to that person, and child abuse and endangerment to a small child, who was present to the domestic batter with corporal injury. His conduct demonstrated a disregard for the health and safety of others. Further, the ability to remain calm, control anger, and react appropriately in situations of stress is crucial to the duties of a licensed EMT-P, who must frequently deal with patients in emergency situations and heavy workloads. The conduct giving rise to the convictions displayed an inappropriate reaction to stress in Respondent’s personal life, thereby evidencing Respondent’s potential unfitness to perform the duties of a licensed EMT-P.

8. California Code of Regulations, title 22, section 100174, subdivision (b)(4) states, in pertinent part:

“The Authority shall deny/revoke a paramedic license, if any of the following apply to the applicant:

“[¶] . . . [¶]

“(4) Has been convicted of two (2) misdemeanors within the preceding five (5) years for any offense relating to force, violence, threat, or intimidation.”

*Discipline*

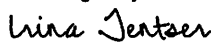
9. In this case, Respondent’s hearing request that the ALJ exercise discretion in applying a level of discipline other than revocation is untenable. Even if, based on the totality of the circumstances, public protection could be adequately protected by imposing a measure of discipline on Respondent’s license other than revocation, the language of California Code of Regulations, title 22, section 100174, subdivision (b)(4) is clear and unambiguous in its use of the word “shall,” as set forth in Legal Conclusion 8. Accordingly, the ALJ has no discretion in determining the level of discipline in this matter and is mandated by the language of the regulation to order the revocation of Respondent’s license based on the fact that Respondent was convicted of three misdemeanors within five years (i.e., assault, domestic battery, and child abuse/endangerment), for offenses relating to force, violence, threat, and intimidation, as set forth in Factual Findings 5, 13, and 18.

10. Based on Legal Conclusions 2, 8, and 9, it is not necessary to examine the rehabilitative criteria pursuant to California Code of Regulations, title 22, section 100176.

**ORDER**

License number P23822 issued to Respondent Lamont Montgomery is hereby revoked.

Dated: May 15, 2018

DocuSigned by:  
  
\_\_\_\_\_  
IRINA TENTSER  
Administrative Law Judge  
Office of Administrative Hearings