

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CORY M. MARX,

Respondent.

Case No. 15-0069

OAH No. 2017100219

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 July 12, 2018.

IT IS SO ORDERED this 12 day of June, 2018

By: Edward Becker

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

In the Matter of the Accusation Against:

CORY M. MARX
License No. P23985,

Respondent.

Case No. 15-0069

OAH No. 2017100219

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 1, 2018, in San Diego, California.

Cheryl Hsu, Staff Counsel, represented complainant, Sean Trask, Chief, EMS Personnel Division, Emergency Medical Services Authority, State of California.

Cory M. Marx, respondent, appeared on his own behalf.

The record was held open to permit complainant to submit email correspondence between the authority and respondent, which was received as Exhibit 28, and the matter was submitted on February 8, 2018. On February 23, 2018, the record was reopened to permit complainant to submit a new copy of the DVD, Exhibit 18, which contained corrupted files and could not be viewed. Upon receipt of the new DVD, marked as Exhibit 18A, the record was again closed.

SUMMARY

Following an investigation and before the accusation in this matter was filed, complainant issued a \$2,500 administrative fine to respondent based upon respondent's allegedly improper treatment of a patient on February 1, 2015. When respondent disputed the fine and sought a hearing to contest the imposition and amount of the fine, as he had the right to do, complainant withdrew the notice of fine and filed an accusation that sought the revocation of respondent's Emergency Medical Technician-Paramedic (EMT-P) license. Although complainant established cause to revoke respondent's license, because complainant violated statutes affording respondent due process, the maximum discipline that can be imposed in this case is imposition of a \$2,500 fine.

FACTUAL FINDINGS

Background

1. On September 1, 2006, the authority issued to respondent EMT-P license number P23985. There is no history of discipline against respondent's license.

2. On August 1, 2016, the authority issued to respondent a Notice of Administrative Fine (Notice of Fine), signed by Steven McGee, Administrative Adviser and Counsel. The Notice of Fine alleged respondent violated Health and Safety Code section 1798.200, subdivision (c)(7), for violating local protocol pertaining to downgrading an Advanced Life Support (ALS) response to Basic Life Support (BLS) on February 1, 2015. According to the Notice of Fine, a violation of Section 1798.200, subdivision (c)(7), carried a minimum fine of \$250 and a maximum fine of \$2,500 as provided in the authority's Recommended Guidelines for Disciplinary Orders and Conditions of Probation, dated July 26, 2008 (Disciplinary Guidelines). The Notice of Fine assessed a \$2,500 fine. Under the "Payment" heading, the Notice of Fine stated that payment of the fine would conclude the authority's action in the matter and "no further administrative process will be taken by EMSA." The Notice of Fine provided respondent with 60 days to pay the fine or dispute the fine, but if respondent failed to pay the fine or contact the authority to dispute the fine within 60 calendar days, the fine would be assessed by default and respondent would not be able to renew his license until such time as the fine was paid in full. The Notice of Fine concluded, "If you choose to dispute the fine, EMSA will issue a formal Accusation against your license and set the matter for a disciplinary hearing before an Administrative Law Judge."

3. On August 18, 2016, respondent emailed Mr. McGee, stating he wished to discuss the case. Mr. McGee responded the same day, stating that he could not communicate with respondent about specifics of the case if respondent was represented by counsel. However, he relayed "general information" about the fine, stating it was the lowest level of license discipline, "somewhat analogous to a traffic ticket." Mr. McGee represented that payment of the fine would close out the matter completely, but if respondent disputed the fine, "it is withdrawn and a formal accusation for license discipline with more specific allegations is issued in its place. [Respondent] would then have an opportunity to present a defense to the charges at an administrative hearing before an impartial administrative law judge."

An attorney who represented respondent in an action involving respondent's termination from employment by his former employer also emailed Mr. McGee, who provided the attorney with the same information.

4. On August 29, 2016, respondent emailed Mr. McGee and stated that he would be disputing the fine. Respondent also inquired how he would go about renewing his license. On August 30, 2016, Mr. McGee responded that the authority would be withdrawing the fine and he could renew the license as normal. Mr. McGee stated that within "the next few weeks" the authority would send respondent a "formal license accusation."

5. On March 7, 2017, complainant signed the accusation, which alleged that on February 1, 2015, respondent violated Health and Safety Code section 1798.200, subdivision (c)(7), by violating a provision of the Act or regulations adopted by the authority, and subdivision (c)(10), by functioning outside the supervision of local medical control. The accusation was based on the following allegations: Respondent responded to a call regarding a patient complaining of nausea and dizziness. Respondent performed an ALS assessment using a cardiac monitor. Before transporting the patient, respondent told his partner he was going to get some coffee and left the patient with a non-ALS-certified EMT. Respondent then went to a fast food restaurant and ordered food, before returning to the ambulance and transporting the patient to the emergency room. In the accusation, complainant requested the revocation of respondent's license.

6. Respondent timely submitted a notice of defense; this hearing ensued.

The February 1, 2015, Incident

7. On March 9, 2015, Matthew Gilligan, General Manager, Rural/Metro San Diego, submitted a Paramedic Investigation Request and attached letter to the authority. In the letter, Mr. Gilligan advised the authority that respondent had been terminated from Rural/Metro based on information reported by a paramedic student who was present during a ride-a-long with respondent on February 1, 2015.

8. Hong Nguyen is a Special Investigator for the authority. One of her duties included performing investigations involving paramedic discipline. As part of her investigation in this matter, Ms. Nguyen obtained documents from Rural/Metro; she also conducted interviews, including an interview of respondent.

TESTIMONY OF BRIDGET ROBINSON

9. Bridget Robinson has been a licensed paramedic since 2015. The following is a summary of her testimony: In February 2015, Ms. Robinson was a paramedic student at Southwestern College. As part of her curriculum, she was assigned to do a ride-a-long with Rural/Metro Medic 1 located in downtown San Diego. Ms. Robinson arrived at the station at approximately 6:30 a.m. for the beginning of the shift. At that time, Medic 1 was staffed by a paramedic and by EMT Kyle Weinstein. Immediately after the shift began, the three responded to the Trolley Station to assist a patient who was under the influence of drugs. The Rural/Metro personnel determined that the patient did not need to be transported, and the call was cleared. After returning to the station, respondent replaced the previous paramedic for the remainder of the shift.

At approximately, 7:30 a.m., Medic 1 was again dispatched to the Trolley Station to assist with the same patient, who was reported to have an altered mental status. When respondent and Mr. Weinstein approached the patient, they instructed Ms. Robinson to hang back, and she was not allowed to perform an assessment. The two began taunting the patient and were disrespectful. They accused him of calling 911 because he had just gotten out of

jail and did not want to return. They told the patient that he was wasting their time. Ms. Robinson felt that respondent and Mr. Weinstein were feeding off of each other. After approximately five minutes, respondent and Mr. Weinstein determined that they would take the patient to the hospital. Neither respondent nor Mr. Weinstein brought any equipment to the scene, including a gurney. The patient was under the influence of drugs, and his gait was unsteady. Ms. Robinson walked with the patient to the ambulance while respondent and Mr. Weinstein walked approximately 20 feet ahead. Ms. Robinson helped the patient into the ambulance. She conducted an assessment, which included taking his vitals and connecting him to a cardiac monitor. At this point, only Ms. Robinson and Mr. Weinstein were present in back of the ambulance. Respondent had left the scene to get food, leaving the patient alone with Ms. Robinson and Mr. Weinstein. Respondent returned with a bag of food and a drink several minutes thereafter. Respondent drove the ambulance to the hospital while eating. Respondent also made a radio report to the hospital while he was driving. While the patient was being transported, Mr. Weinstein asked respondent if it was permissible for him to start an IV as Mr. Weinstein was also a paramedic student. Respondent said it was fine, and Mr. Weinstein attempted, but was unsuccessful, in starting an IV. Starting an IV is outside the scope of practice for an EMT.

Ms. Robinson observed two other incidents involving respondent and Mr. Weinstein that caused her concern.¹ Several days later, when Ms. Robinson was again assigned to ride with Medic 1, she reported all the incidents to her college training coordinator. She felt that respondent and Mr. Weinstein had engaged in unprofessional conduct, and she did not want to ride with them. She initially wanted her complaint to remain anonymous because she felt there would be professional repercussions for reporting the incidents. Ms. Robinson had never met respondent or Mr. Weinstein prior to the ride-a-long. She denied that she made the complaint in retaliation for respondent having rebuked her during the shift for supposedly wandering off at the hospital.

Ms. Robinson submitted a written statement to Rural/Metro that was consistent with her testimony. Although the statement was undated, it appears Rural/Metro received it by February 9, 2015, when Rural/Metro began its investigation.

RESPONDENT'S STATEMENT TO RURAL/METRO

10. On February 10, 2015, Jeffrey Peters, a paramedic supervisor at Rural/Metro interviewed respondent. Following the interview, respondent provided his employer with a signed written statement summarized as follows. Respondent's first call was to the Trolley Station for an individual, who was known to use methamphetamine, loiter at the station, and be frequently contacted by police for being under the influence, and who respondent and his partner had frequently encountered. On the day of the incident, the Trolley police called for EMS at the patient's request. The patient often tried to evade going to jail by going with the medics but then refusing treatment once the police left. Respondent and his partner attempted to confirm why the patient had requested EMS. After an initial assessment,

¹ Complainant did not allege these other incidents as grounds for discipline.

respondent had a bathroom emergency and confirmed with his partner that his partner would remain with the patient while respondent ran to the nearest toilet. Respondent wrote, "Upon leaving an employee asked me if I would like a sandwich that was a wrong order and gave it to me, I took the bag and continued on the call." Respondent wrote that he did not believe his partner ever attempted to start an IV and that respondent did not assault or accost the patient.

Respondent stated that, during the shift, Ms. Robinson wandered off at the hospital and was found observing treatment of patients. Respondent admonished Ms. Robinson that doing so was a privacy violation, yet Ms. Robinson continued to wander off. At the end of the shift, respondent overheard Ms. Robinson talking negatively about Medic 1 to a student who was riding with another ambulance company. Respondent confronted Ms. Robinson and told her that he would arrange for her to finish the shift with another ambulance if she was that unhappy.

11. Mr. Weinstein submitted a written statement to Rural/Metro on February 12, 2015. That statement corroborated respondent's statements concerning the events surrounding the treatment of the patient. Mr. Weinstein remarked that respondent reported having stomach issues and was in an immediate need for a bathroom because he did not think he could make it to the hospital. Mr. Weinstein stayed with the patient and Ms. Robinson while respondent went to the Jack in the Box to use the restroom. Respondent returned with a sandwich that he said was made wrong and that the cashier had given him for free. Mr. Weinstein did not include in the statement that he, also, left the patient during the call to go to a convenience store.

CALL LOGS AND VIDEO SURVEILLANCE

12. Call logs for the incident established that at 7:33 a.m., Medic 1 and a San Diego Fire Department Engine 4 were dispatched to the Trolley Station to attend a sick person. The response was coded as a "Level 1 Medical," which means a high-priority ALS response. Medic 1 reported arriving on scene at 7:37 a.m. The engine company arrived on scene at 7:40 a.m., but cleared the call a minute later. There was no information that established who cancelled the engine company's call, but it was clear that the engine company never made contact with the patient.

The ambulance departed the scene for the hospital at 8:19 a.m. and arrived at Mercy Hospital at 8:29 a.m. Based on these time frames, the patient remained in the back of the ambulance for approximately 30 minutes.

13. As part of its investigation, Rural/Metro obtained surveillance footage from the San Diego Metropolitan Transit System (MTS), the entity that operates the Trolley Station. The video clips submitted by the authority show the encounter from four different vantage points. The video established respondent and Mr. Weinstein contacted the patient without bringing any equipment or a gurney from the ambulance. The two spoke with the patient for approximately eight minutes in the presence of MTS security. Respondent and

Mr. Weinstein then walked toward the ambulance, approximately 15 to 20 feet ahead of the patient, who was escorted by Ms. Robinson and followed by MTS security. Respondent and Mr. Weinstein waited at the top of the stairs for Ms. Robinson and the patient's arrival. Mr. Weinstein then walked past the patient. Complainant alleged that Mr. Weinstein went to a 7-Eleven convenience store, but this was not shown in the footage submitted. At 7:54 a.m., Mr. Weinstein returned to the ambulance.²

14. Surveillance footage from a Jack in the Box fast-food restaurant located across the street from where the ambulance was parked showed respondent waiting in line to purchase food for approximately 10 minutes. At no time during the video footage did respondent use the restroom.³

15. Mr. Weinstein completed a patient care report (PCR) that he and respondent signed. According to that report, a physical assessment was performed and vital signs were taken at 8:27 a.m., two minutes before the ambulance arrived at the hospital. The PCR indicated an ALS assessment was conducted at 7:45 a.m., and cardiac monitoring began at 8:39 a.m. According to the summary of events, the patient reported having smoked methamphetamine the night before and was feeling anxious and nauseous. There was no indication in the report that the patient initially refused transportation to the hospital and was being processed as Against Medical Advice (AMA),⁴ or that the patient's status was downgraded from an ALS patient to BLS patient, or that the hospital was notified of such a downgrade.

Grievance Proceedings

16. On February 19, 2015, after conducting an investigation, Rural/Metro terminated respondent and Mr. Weinstein's employment. Respondent submitted a grievance and the matter was referred to arbitration, where both Ms. Robinson and respondent provided

² In seeking respondent's and Mr. Weinstein's termination, Rural/Metro alleged that, after Mr. Weinstein returned to the ambulance at approximately 7:54 a.m., Mr. Marx left the ambulance and went to a nearby Circle K convenience store. This Circle K was clearly visible from one of the camera angles; however, each of the surveillance videos submitted by the authority ended at 7:54 a.m., immediately after Mr. Weinstein is seen walking back toward the ambulance. Thus, the surveillance video did not show respondent leaving the ambulance. Considering this was the central claim against respondent in this matter, it was unclear why the video clips submitted ended before this event was alleged to have occurred.

³ The surveillance video from the Jack in the Box was played at hearing. However, the clip was not contained on the DVD submitted into evidence by the authority.

⁴ According to San Diego County EMS Policy S-412, the term "AMA" is the refusal of treatment or transport by a patient against the advice of the medical personnel on scene or of the base hospital.

testimony under oath. Ms. Robinson's testimony was consistent with the factual matters set forth in her written statement and her testimony during this hearing.

17. Respondent testified under oath on the third day of the arbitration proceedings, September 1, 2016. His testimony is summarized as follows: On February 1, 2015, respondent was assigned to Medic 1 as a float medic. He was in the bathroom at the station when Medic 1 returned and the previous paramedic informed respondent there was another call. Respondent did a quick exchange of information, conducted a drug inventory with the outgoing paramedic, and then took over as Medic 1's paramedic. Respondent was assigned with Mr. Weinstein, his EMT partner, which was the first time the two worked together. While responding to the Trolley Station, Mr. Weinstein informed respondent that they had just been out on a call at the Trolley Station and were likely returning to see the same patient. The patient had previously refused treatment and did not have a chief complaint. Respondent recognized the patient as someone he had previously responded to on multiple occasions. When they arrived on scene, respondent saw the patient sitting on a bench, surrounded by people who respondent thought were firefighters from the engine company. Respondent said Medic 1 had a delayed response time, and since the engine company was closer, he thought they were already on the scene. Consequently, respondent and Mr. Weinstein did not bring any equipment or gurney to the scene because they thought the engine company had brought their equipment. When respondent contacted the patient, he realized it was police, and not an engine company, attending the patient.

Respondent spoke with the patient, who wanted only that respondent get him away from the police. The police told respondent they were about to arrest the patient, but the patient had requested the medics. The patient would not talk to respondent other than to ask him to get him away from the police. The patient denied having taken any alcohol or drugs. The police told respondent they had taken away a bottle and thrown it in the trash. Respondent looked in the trash and saw a Pepsi bottle with clear liquid in it. Respondent made the decision to move the patient away from the police. Respondent helped the patient up and asked his partner if he could take the patient while respondent spoke with the police. While the patient was up and walking with Mr. Weinstein and Ms. Robinson, respondent spoke with the police. Respondent then walked past the patient and Mr. Weinstein to prepare the ambulance for the patient.

Respondent maintained that the "patient" was not actually a patient until he stepped into the ambulance because the individual had no chief complaint other than a desire to get away from the police. Respondent said he was in the ambulance, had prepared the gurney, and had the monitor out when the patient got to the ambulance with Mr. Weinstein. Respondent took the patient's blood pressure and attached the heart monitor and performed an assessment. The patient kept saying that he wanted to get away from the police and then fell asleep. After letting the patient sleep for a few minutes, respondent asked the patient if he wanted to go to the hospital. The patient refused transport, and respondent went through the requirements to obtain a release, including confirming that the patient had not taken drugs or alcohol. The patient then signed an AMA on respondent's electronic notepad.

Respondent then told Mr. Weinstein that the patient had signed an AMA and asked him to remove the patient from the ambulance while respondent went to the bathroom.

Respondent initially went to the closest store, a liquor store (Circle-K), which had a sign stating there was no public restroom. The clerk told respondent that the restroom was for customers only so respondent bought a coffee, but the clerk then told respondent the bathroom was not working. Respondent went back to the ambulance. The patient was sitting on the gurney, ready to be removed. Respondent told Mr. Weinstein that he had not been able to use the restroom and was going to run across the street. Respondent went into the Jack in the Box, but when he entered, a person was walking into the restroom. Because respondent knew it would be a minute until the restroom was free, he decided to wait in line to get an egg and cheese sandwich. Medic 1 was always busy, and there might not be downtime later to get food. While he was waiting in line, the person in the restroom never came out. When the restaurant employee gave respondent his order, she told him there was an extra sandwich in the bag that was the result of a wrong order. The restroom was still not open for use; respondent felt he could make it back to the station without using a restroom.

When respondent returned to the ambulance, he was surprised to see Mr. Weinstein in the back of the ambulance with the patient. Mr. Weinstein told him the patient admitted to smoking methamphetamine and using alcohol. Respondent then told the patient that he had to take the patient to the hospital, and the patient agreed. Respondent drove the ambulance to the hospital with Mr. Weinstein and Ms. Robinson in the back of the ambulance with the patient. Respondent never spoke to Mr. Weinstein about starting an IV and he never observed any evidence on the patient that one had been attempted.

On February 10, 2015, respondent's supervisor interviewed respondent about Ms. Robison's complaint. Respondent prepared a statement at that time, but he testified that the written statement introduced at the hearing, purporting to contain his signature, was a forgery. Respondent said he took photos of the statement he wrote when his supervisor left the room. Although he had these photos on the phone, and they purportedly were date-stamped February 10, 2015, respondent's attorney had never produced them prior to his testimony at the hearing.⁵

Respondent denied he signed the PCR because the report was so poorly written he would never have signed it. Respondent said there was no record of the patient having signed an AMA because once they decided to transport, the AMA box was unchecked and cleared from the report. When shown the PCR, which indicated that vitals were taken just

⁵ At the arbitration, Rural/Metro objected to the introduction of this purported evidence on grounds that the actual document was not being introduced. The arbitrator noted that the written statement produced by Rural/Metro was on a Rural/Metro form, but the form depicted in the photograph was on a San Diego Fire Department form. The arbitrator determined that he would not receive the photograph as evidence. No evidence regarding the form respondent allegedly completed was offered as evidence at this hearing.

one time, at 8:27 a.m., minutes before arriving at the hospital, respondent said that the initial vitals he took were not recorded in the PCR.

Respondent's Statement to the Authority

18. On April 29, 2015, respondent submitted a written statement to Special Investigator Nguyen.⁶ The statement was similar to his testimony in the arbitration proceedings with some notable exceptions. Respondent wrote in his statement that after he conducted a complete head-to-toe ALS assessment in the back of the ambulance, the patient said he did not want to go to the hospital and that he wanted only to get away from the police. Respondent wrote that he asked Mr. Weinstein to figure out what the patient wanted to do because it looked like it would be a refusal, and respondent needed to go to the restroom to avoid the risk of "soiling" himself. This statement conflicted with respondent's testimony at the grievance hearing, in which he stated that he processed the patient as an AMA and had the patient sign a release, before he left the patient to use the restroom. Respondent wrote in his statement that, when he returned to the ambulance after having been unsuccessful in using the restroom at the convenience store, he again confirmed with the patient that the patient did not want to go to the hospital and that he asked Mr. Weinstein to complete the paperwork. Again, this statement conflicted with respondent's testimony in which he represented that when he returned to the ambulance Mr. Weinstein had completed the paperwork and was ready to discharge the patient from the ambulance. Respondent concluded in his statement that, after he had conducted an ALS assessment, he deemed it a BLS level call before leaving the patient with his EMT partner.

Relevant San Diego County EMS Policies

19. The following two San Diego County EMS (SDCEMS) policies were offered as evidence:

SDCEMS Policy No. S-412 establishes a procedure for a patient to refuse care or request an alternate disposition by EMS personnel. Section IV.D outlines the procedure a paramedic must follow for obtaining a downgrade of an ALS-dispatched patient from an ALS level of care to a BLS level of care. The policy requires contact with the base hospital for approval.

SDCEMS Policy No. P-401 identifies the scope of practice of paramedics.

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⁶ On March 29, 2016, investigator Nguyen interviewed respondent; the interview was recorded and transcribed. In the interview, respondent claimed difficulty remembering the details of the event and said the written statement he submitted to investigator Nguyen was his best recollection of what had occurred.

Testimony of Susan Smith

20. Susan Smith, R.N., is SDCEMS's prehospital coordinator. SDCEMS is responsible for conducting EMT investigations and discipline. Ms. Smith reviewed the report from Southwestern College in which a student reported misconduct by the paramedic and EMT during a ride-a-long. The report concerned Ms. Smith in that an EMT might have provided services outside his scope of practice.

Ms. Smith testified about respondent's claim that he properly downgraded the call from ALS to BLS. Ms. Smith noted that based on the dispatch information, the call was dispatched as an ALS call and was an "emergency patient" within the meaning of Policy S-412. Under Policy S-412, the base hospital is authorized to down grade the transportation and treatment needs of an ALS-dispatched patient from an ALS level of prehospital care to a BLS level of care only after a complete paramedic assessment and base hospital report has been completed. Thus, before respondent could relinquish care of the patient to his EMT partner, Mr. Weinstein, he was required to contact the base hospital and obtain approval. There was no evidence in the PCR that he did that.

Respondent's Testimony

21. Respondent testified that he has been in EMS for 16 years, 12 years of which included licensure as a paramedic. He currently works for a company that provides EMS-trained personnel to accompany extremely rich clients in case of emergency. He has never had any discipline imposed against him.

22. On February 1, 2015, respondent had continuous problems with Ms. Robinson wandering off and going into patient's rooms while they were at the hospital. Two hours before the shift ended, respondent gave her a final warning about her behavior, and she began to cry. He also observed Ms. Robinson talking negatively about Rural/Metro to an AMR ambulance crew; he told her that if she was not happy with Medic 1, he could make other arrangements. Respondent believed Ms. Robinson made her complaint in order to retaliate against respondent.

Respondent testified about his encounter with the patient. His testimony was similar to his testimony at the grievance hearing and his written statements in most regards, with some notable exceptions. When he was responding to the scene, Mr. Weinstein informed him that Mr. Weinstein had just been dispatched to the same location and it was probably the same patient. When respondent arrived on scene, he saw men in uniform surrounding the patient and believed they were from the engine company. Consequently, he did not think it was necessary to bring any equipment to the scene because that would have been the engine company's responsibility. Only upon arriving in the area where the patient was present did he realize that the persons surrounding the patient were police officers or MTS security, and not fire personnel.

Respondent maintained that the patient did not present with a chief complaint, except to say that he wanted to get away from the police. After hearing this, respondent walked the patient to the ambulance, performed an ALS assessment, including putting the patient on the cardiac monitor, and confirmed that the patient did not want to be transported to the hospital. For the first time, respondent testified that he radioed the base hospital and notified the base hospital that the patient was an AMA and had signed a release. Because there was still 10 to 15 minutes of paperwork left to complete, respondent left the ambulance to find a restroom. The patient was outside the ambulance when respondent went to the convenience store and the clerk told him the restroom was out of order. Respondent returned to the ambulance and found the patient had left the area. Respondent admitted he broke company policy by not radioing and advising that the unit was then available for calls, but he was suffering from colitis and had to find a restroom. He then went to the Jack in the Box, but the restroom was occupied, so he waited in line to order a sandwich.

When respondent returned to the ambulance he found the patient had returned. Mr. Weinstein informed him that the patient reported having smoked methamphetamine and having consumed an alcoholic beverage. Respondent decided that the patient needed to be transported, so he drove the ambulance to the hospital with the patient, Mr. Weinstein and Ms. Robinson in the back. While enroute, respondent again called the base hospital and reported that what he last called in as an AMA was now going to be a transport.

Respondent said the reason there was no proof that he had the patient sign an AMA was that the box for the electronic AMA form was on the tablet and would have been unchecked once the patient was transported. Respondent was adamant that he did not abandon his patient and that the patient was an AMA when he left to use the restroom. He described the accusation against him as "completely bogus."

Evaluation of the Evidence

23. Ms. Robinson's testimony was consistent, forthright, and credible.⁷ Her account of respondent's and Mr. Weinstein's actions was consistent with her written statement made within days of the event, her sworn testimony at respondent's grievance proceeding over a year later, and during this hearing. Respondent's attempt to impeach her credibility by suggesting she fabricated her version of events because he had chastised her during the ride-a-long was wholly unconvincing. Ms. Robinson had never met respondent or Mr. Weinstein prior to the ride-a-long. She had no motive to fabricate an account. Her version of events, unlike respondent's version, was corroborated by surveillance video. In

⁷ The credibility of the witnesses has been evaluated pursuant to the factors set forth in Evidence Code section 780: The demeanor and manner of the witness while testifying; the character of the testimony; the capacity to perceive at the time the events occurred; the character of the witness for honesty; the existence of bias or other motive; other statements of the witness which are consistent or inconsistent with the testimony; the existence or absence of any fact to which the witness testified; and the attitude of the witness toward the proceeding in which the testimony has been given.

fact, by reporting the misconduct to her school, and ultimately Rural/Metro, she placed herself at risk of future retaliation by other EMS personnel. Her disclosure and reporting the misconduct was admirable and took courage. It would have been easy for her to have ignored what she observed and simply request assignment with another medic in the future. She is to be commended for her actions.

24. In stark contrast to Ms. Robinson's testimony, respondent's testimony was unpersuasive and not credible. Respondent reported at least five versions of what happened in an effort to explain the events: his initial written statement to Rural/Metro, his written statement to the authority, his interview by investigator Nguyen, his sworn testimony during the grievance proceedings, and his testimony at this hearing were inconsistent. In each version, there were material discrepancies and inconsistencies. Notably, in respondent's written statement to Rural/Metro, which was made days after the incident, at no point did he state that he had discharged the patient as an AMA before he left to use the restroom. In fact, he wrote that Mr. Weinstein stayed with the patient while respondent went to use the restroom. Respondent did not disclose that he went to the convenience store and returned to the ambulance. His statement reflected that he used the restroom at the Jack in the Box and that the clerk gave him a sandwich that was made in error as he was walking out. Of course, respondent wrote this statement before he saw surveillance footage.

When respondent submitted a written statement to the authority, his story changed. In that statement, for the first time, respondent reported he performed a complete ALS assessment, but since it looked like the patient was going to refuse transport, he left the patient with Mr. Weinstein who was to determine what the patient wanted to do. After an unsuccessful attempt to use the restroom at the convenience store, which he did not mention in his previous statement, respondent returned to find the patient in the ambulance. At this point, Mr. Weinstein told him that the patient would be an AMA. Finally, respondent reported that he was not able to use the restroom at the Jack in the Box, but waited in line for food because he thought it might be his only opportunity to get food during the day.

At his grievance hearing, respondent testified that he did not bring any equipment to the scene because he thought the engine company was with the patient. For respondent, who had more than a decade experience in EMS, to mistake police officers for an engine company, is simply unbelievable. Moreover, respondent would have heard of the engine company's arrival on scene over the radio, but the call logs indicated that the engine company was cancelled one minute after arriving on scene, which was four minutes *after* Medic 1 arrived on scene. Furthermore, respondent testified that when he was ushering respondent to the ambulance, he initially stayed behind to talk to the police, after which he walked ahead of Mr. Weinstein and the patient to prepare the ambulance. This was clearly contradicted by the surveillance footage, which showed respondent and Mr. Weinstein walking approximately 15 to 20 feet ahead of the patient, who was escorted by Ms. Robinson. Additionally, for the first time, respondent testified that the patient signed an AMA *prior* to respondent leaving the ambulance to use the restroom, and he left the patient – who was no longer a patient because he had signed an AMA – with Mr. Weinstein to

discharge the patient from the ambulance. When respondent returned to the ambulance, the patient was still in the back, so respondent went to the Jack in the Box.

Finally, at the hearing, respondent for the first time claimed that the patient had signed an AMA and was *outside* the ambulance when respondent left to go to the convenience store. The patient was no longer present at the ambulance when respondent returned from the convenience store, so respondent went to the Jack in the Box.

25. Based on the numerous inconsistencies and respondent's implausible explanations, it is found that respondent gave false and misleading statements to the authority and during this hearing. Ms. Robinson's testimony is credited over respondent's testimony in its entirety. Respondent expressed no remorse and denied any misconduct. There was no evidence that he has been rehabilitated.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (Evid. Code § 115.) The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

However, because the conduct in this disciplinary matter cannot result in an order that suspends, limits, or revokes respondent's license, for the reasons discussed below, the burden is on complainant and the preponderance of the evidence standard applies. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.)

Applicable Statutes

2. EMT-Paramedics are subject to the provisions of the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, contained in Health and Safety Code section 1797 et seq. Regulations pertaining to paramedics are contained in California Code of Regulations, title 22, section 100135 et seq.

3. Health & Saf. Code, § 1798.200 provides:

(b) The authority may deny, suspend, or revoke 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).

Proceedings against any EMT-P license or licenseholder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(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:

[¶] . . . [¶]

(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.

(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.

4. Health and Safety Code section 1798.210 provides:

(a) The authority may impose an administrative fine of up to two thousand five hundred dollars (\$2,500) per violation on any licensed paramedic found to have committed any of the actions described by subdivision (c) of Section 1798.200 that did not result in actual harm to a patient. Fines may not be imposed if a paramedic has previously been disciplined by the authority for any other act committed within the immediately preceding five-year period.

(b) The authority shall adopt regulations establishing an administrative fine structure, taking into account the nature and gravity of the violation. The administrative fine shall not be imposed in conjunction with a suspension for the same violation, but may be imposed in conjunction with probation for the same violation except when the conditions of the probation require a paramedic's personal time or expense for training, clinical observation, or related corrective instruction.

(c) In assessing the fine, the authority shall give due consideration to the appropriateness of the amount of the fine with respect to factors that include the gravity of the violation,

the good faith of the paramedic, the history of previous violations, any discipline imposed by the paramedic's employer for the same occurrence of that conduct, as reported pursuant to Section 1799.112, and the totality of the discipline to be imposed. The imposition of the fine shall be subject to the administrative adjudication provisions set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) If a paramedic does not pay the administrative fine imposed by the authority and chooses not to renew his or her license, the authority may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the authority may have to require a paramedic to pay costs.

[¶] . . . [¶]

(f)(1) Except as provided in paragraph (2), the authority shall not license or renew the license of any paramedic who has failed to pay an administrative fine ordered under this section.

(2) The authority may, in its discretion, conditionally license or renew for a maximum of one year the license of any paramedic who demonstrates financial hardship and who enters into a formal agreement with the authority to reimburse the authority within that one-year period for the unpaid fine.

[¶] . . . [¶]

(h) Nothing in this section shall preclude the authority from imposing an administrative fine in any stipulated settlement. . . .

Cause Exists to Discipline Respondent's License

5. Cause exists to discipline respondent's license pursuant to Health and Safety Code section 1798.200, subdivision (c)(10). Respondent operated outside the supervision of medical control in the field care system operating at the local level when he failed to properly downgrade an ALS patient to a BLS level of care as required under SDCEMS Policy S-412, and abandoned his patient to purchase food at a restaurant.⁸

⁸ Although complainant alleged respondent failed to provide the minimum level of care, complainant did not establish how doing so constituted operating "outside the supervision of medical control" as prohibited in this Subdivision. Complainant did not allege respondent committed gross negligence (subd. (c)(2)) or repeated negligence (subd. (c)(3)).

6. Cause exists to discipline respondent's license pursuant to Health and Safety Code section 1798.200, subdivision (c)(7). The accusation alleged that respondent abandoned his ALS patient, failed to downgrade the call to a BLS call, and had a duty to remain with the patient until transferring him to a higher medical authority. The accusation did not cite any statutes or regulations respondent is alleged to have violated by these actions. Although respondent violated Policy S-412 (the only policy complainant submitted as evidence other than the general scope of practice of a paramedic), local EMS policies are not statutes or regulations. Thus, the violation of local EMS policy is not cause for discipline under Subdivision (c)(7). However, because respondent was found to have independently violated Subdivision (c)(10), he necessarily violated Subdivision (c)(7).

Complainant Violated Respondent's Right to a Hearing to Contest the Fine

7. The authority initiated disciplinary action against respondent when, on August 1, 2016, it delivered to him a Notice of Fine pursuant to Section 1798.210, which authorizes the authority to impose an administrative fine against a paramedic found to have committed a violation of Section 1798.200, subdivision (c). The authority imposed the maximum allowable fine of \$2,500. The notice stated that payment of the fine would conclude the authority's action in the matter and "no further administrative process will be taken" by the authority. The notice provided respondent with 60 days to pay or dispute the fine. It notified him that if he failed to pay the fine or contact the authority to dispute the fine within 60 days, the fine would be assessed by default and would need to be satisfied in order to renew his license. Finally, the notice provided, "If you choose to dispute the fine, EMSA will issue a formal Accusation against your license and set the matter for a disciplinary hearing before an Administrative Law Judge."

Under Section 1798.210, subdivision (c), "The imposition of the fine shall be subject to the administrative adjudication provisions set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code." The referenced chapter, entitled "Administrative Adjudication: Formal Hearings," along with Chapter 4.5 (Gov. Code, § 11400 et seq.), entitled "Administrative Adjudication: General Provisions" constitute the administrative adjudication provisions of the Administrative Procedures Act (APA). (Gov. Code, § 11400, subd. (a).) Thus, in granting the authority the power to issue administrative fines for violation of the Prehospital Emergency Medical Care Personnel Act, the legislature provided a procedural mechanism for an EMT-P to challenge the fine through a formal administrative hearing under the APA.

The Notice of Fine stated that if respondent disputed the fine, the authority would issue a formal accusation and set the matter for a disciplinary hearing before an Administrative Law Judge (ALJ). Respondent timely notified the authority that he was disputing the fine. Complainant filed an accusation, but instead of requesting a \$2,500 fine, complainant sought to revoke respondent's license. By disputing the fine, respondent was afforded an administrative hearing – a hearing to contest the revocation of his license.

Notably, nowhere in the Notice of Fine does complainant inform respondent that, if he elected to dispute the fine, his license would be subject to revocation. The only statement provided was that the authority would “issue a formal Accusation against your license and set the matter for a disciplinary hearing.” This is insufficient to place respondent on notice that, if he disputed the fine, his license would be subject to revocation. The term “Accusation” is nowhere contained in the Prehospital Emergency Care Personnel Act, but rather, is referenced only in Government Code section 11503. The Notice of Fine did not reference Government Code section 11503. Had respondent consulted Section 1798.210, under which authority complainant issued the fine, he would have seen that imposition of the fine was subject to the formal adjudication procedures of the APA. Subdivision (b), would have informed him that a fine could not be imposed in addition to suspension. Consequently, any reasonable person would be under the belief that exercising his or her right to dispute the fine would result in an administrative hearing *regarding that fine*.⁹ Nowhere in Section 1798.210 does it provide that contesting the fine could result in placing the license in jeopardy of revocation. Section 1798.200, subdivision (b), provides the exclusive power for the authority to revoke or suspend a license.

In conclusion, a person receiving the Notice of Fine would be of the reasonable belief that contesting the fine would result in an administrative hearing on the fine and the fine alone. Complainant failed to provide respondent an administrative hearing on the fine, which is what he was statutorily entitled to under Section 1798.210, subdivision (c).

8. Complainant contends the fine was akin to a settlement offer – if respondent paid the fine the matter would be concluded, if he disputed the fine, the fine would be withdrawn and the authority would seek revocation of his license. Even if this had been made clear in the Notice of Fine – which it was not – there are serious statutory and due process concerns with this argument. Namely, it places respondent in a position of having to decide whether to forego his statutory *right* to contest the fine or the amount of the fine, or place his license in jeopardy of revocation.

Complainant’s counsel indicated that complainant proceeded in this manner in order to seek resolution of the case to avoid litigation costs involved with filing an accusation.

⁹ Complainant contends that the subsequent email communication between respondent and the authority’s counsel, Mr. McGee, made clear to respondent that disputing the fine would result in the authority filing an accusation to revoke his license. But the emails complainant submitted make no such representation. Specifically, Mr. McGee wrote that if respondent disputed the fine “it is withdrawn and a formal accusation for license discipline with more specific allegations is issued in its place. [Respondent] would then have an opportunity to present a defense to the charges at an administrative hearing before an impartial administrative law judge.” Although Mr. McGee referenced “license discipline” he did not say the authority would seek license revocation. An administrative fine is listed in the authority’s Disciplinary Guidelines as the lowest level of *disciplinary action*. Thus, it would be logical to conclude that the license discipline to which Mr. McGee referred was the administrative fine.

Putting aside for a moment the questions this raises regarding the authority's duty to protect the public, complainant could have achieved this result in two different scenarios: complainant could have initiated settlement negotiations *prior* to initiating any disciplinary action, or complainant could have filed an accusation seeking revocation and then sought to settle the matter by collecting a fine. In either situation, respondent would have faced the same decision whether to pay a fine and settle the matter, or proceed to an administrative hearing where he would face the possibility that his license could be revoked.¹⁰ But the critical difference between these scenarios and the approach taken by complainant is that respondent would not have faced the possibility of *increased* punishment simply *because* he exercised his statutory right consistent with due process.¹¹ The requirements of due process extend to administrative adjudications. (*Withrow v. Larkin, supra*, 421 U.S. at p. 46.) "The right to practice one's profession is sufficiently precious to surround it with a panoply of legal protection" (*Emslie v. State Bar* (1974) 11 Cal.3d 210, 226), including a disciplinary

¹⁰ In the criminal context, the United States Supreme Court has recognized that "[w]hile confronting a defendant with the risk of more severe punishment clearly may have a 'discouraging effect on the defendant's assertion of his trial rights, the imposition of these difficult choices [is] an inevitable'—and permissible—'attribute of any legitimate system which tolerates and encourages the negotiation of pleas.' [Citation.]" (*Bordenkircher v. Hayes* (1978) 434 U.S. 357, 364.) California courts have similarly recognized that "... under appropriate circumstances a defendant may receive a more severe sentence following trial than he would have received had he pleaded guilty; the trial itself may reveal more adverse information about him than was previously known." (*In re Lewallen* (1979) 23 Cal.3d 274, 281.)

¹¹ An example in the criminal context would be the following: a criminal defendant is charged and convicted of a misdemeanor in an inferior court. He then exercises his statutory right to a *de novo* trial in superior court, but before the trial commences, the prosecutor dismisses the misdemeanor charge and obtains an indictment for a felony based on the same conduct at issue in the misdemeanor case. Such was the situation addressed by the Court in *Blackledge v. Perry* (1974) 417 U.S. 21. The Court concluded "it was not constitutionally permissible for the State to respond to Perry's invocation of his statutory right to appeal by bringing a more serious charge against him prior to the trial *de novo*." (*Id.* at pp. 28–29.) The Court explained: "A prosecutor clearly has a considerable stake in discouraging convicted misdemeanants from appealing and thus obtaining a trial *de novo* in the Superior Court, since such an appeal will clearly require increased expenditures of prosecutorial resources before the defendant's conviction becomes final, and may even result in a formerly convicted defendant's going free. And, if the prosecutor has the means readily at hand to discourage such appeals—by 'upping the ante' through a felony indictment whenever a convicted misdemeanant pursues his statutory appellate remedy—the State can insure that only the most hardy defendants will brave the hazards of a *de novo* trial." (*Id.* at p. 27–28.) The presumption of vindictiveness is therefore a prophylactic rule designed to protect a defendant's due process rights where there is a danger the government might retaliate against him or her for exercising a constitutional or statutory right. (*In re Bower* (1985) 38 Cal.3d 865, at p. 879.)

hearing consistent with the requirements of due process. (*Conway v. State Bar* (1989) 47 Cal.3d 1107, 1113).

Although the same level of due process protections are not required for administrative hearings as in judicial proceedings (*Withrow v. Larkin* (1975) 421 U.S. 35, 53), the analogy to constitutionally impermissible conduct in the criminal conduct bears noting. In this case, the authority elected to file an accusation seeking revocation, not based on respondent's conduct or the facts of the case, but because respondent elected to exercise his right of appeal to dispute the fine.

In *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327 (CTA), a public school district dismissed a teacher for misconduct, and the dismissal was upheld by the adjudicator at an administrative hearing requested by the teacher. State law provided that the state could charge the teacher half the cost of the hearing, including the cost of the adjudicator. The teacher raised a facial challenge to the constitutionality of this provision.

In CTA, the state had identified the law's purpose as "discouraging 'meritless administrative proceedings'" and "preventing groundless challenges to disciplinary proceedings." (*Id.* at p. 341). The court found these descriptions misleading because the law required every suspended or dismissed teacher to share the cost of the adjudicator, regardless of "the teacher's subjective good faith belief in the merits of his or her position" or the "objective reasonableness" of that position. (*Id.* at p. 342.) The law required teachers to pay even when they prevailed at the hearing but a court later overturned the decision, or when the hearing resulted in a reduction in the discipline imposed. Thus, the Court determined the law's true purpose was to discourage "hearing requests in which the teacher happens not to prevail" (*id.* at p. 341) which was not a proper legislative goal.

Finally, the Court held that even if the state's improper goal of discouraging unsuccessful hearings and instead focus on its interest in conserving public resources was not considered, to require unsuccessful teachers to pay half the cost of the adjudicator would still violate due process. In reaching this conclusion, the Court analyzed the law under the three-part test the United States Supreme Court set forth in *Mathews v. Eldridge* (1976) 424 U.S. 319, which was created to evaluate due process challenges to a procedural scheme. Applying this standard, the Court held that the state's interest in "conserving resources or discouraging hearings that happen to result in an administrative or judicial decision against a teacher" was outweighed by "the teacher's strong interest in presenting his or her side of the case and in invoking the discretion of the adjudicator [or] the public's interest in preventing erroneous or arbitrary dismissals or suspensions of teachers in our public schools." (CTA, *supra*, 20 Cal.4th at p. 357.)

CTA is similar to this case because the authority's goal here was to discourage respondent from exercising his right to a hearing by imposing on him the possibility that his license would be revoked. Although the authority's interest in conserving resources by avoiding litigation costs (arguably at the expense of public protection) is a legitimate interest, as in CTA, it does not outweigh respondent's interest in obtaining a hearing.

Ultimately, the determination of whether there was a constitutional due process violation is within the province of the courts and is not required for disposition of this case. As previously noted, the administrative adjudication provisions of the APA apply to the authority's license revocation hearings (Health & Saf. Code, § 1798.200, subd. (b)) and administrative fine hearings (Health & Saf. Code, § 1798.210, subd. (c).) The APA contains its own "Administrative Adjudication Bill Of Rights." (Gov. Code, § 11425.10) Among the statutory protections are: the agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence; and the agency shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding. (*Id.*, subd. (a)(1) & (a)(2).) The Notice of Fine served on respondent pursuant to Health and Safety Code section 1798.210 failed to provide respondent with notice that the APA formal hearing process was applicable. Furthermore, by depriving respondent the ability to appeal the fine, the authority impermissibly curtailed respondent's opportunity to be heard, which included the right to present and rebut evidence concerning the fine. Accordingly, complainant's actions violated the Administrative Adjudication Bill of Rights (Gov. Code, § 11425.10, subds. (a)(1) & (a)(2)) and the statutory requirement to provide respondent a formal APA hearing to contest the fine. (Health & Saf. Code, § 1798.210, subd. (c)).

Having concluded that complainant violated statutory requirements, the final step is to determine the proper remedy. Because a \$2,500 fine was the maximum penalty that could have been imposed had complainant provided respondent an opportunity to contest the fine, it is the maximum penalty that can be imposed now. Any contrary result would condone the violation of statutes designed to protect respondent's constitutional right to due process. In consideration of this result, it was *complainant* who elected to pursue the matter against respondent by simply assessing a fine. Thus, it cannot be argued that complainant is unjustly prejudiced by this result. The level of discipline imposed is exactly the discipline that complainant originally sought. The fact that complainant proceeded in this manner in order to prevent incurring litigation costs – at the expense of public protection – should give the authority pause for how it deals with similar situations in the future. This decision in no way comments on complainant's authority to engage in settlement negotiations, but it does call into question the *procedure* by which these "settlements" are conducted.

Appropriate Level of Discipline

9. Health and Safety Code section 1798.211 provides that in considering disciplinary action "the administrative law judge, shall give credit for discipline imposed by the employer and for any immediate suspension imposed by the local EMS agency for the same conduct."

10. California Code of Regulations, title 22, section 100176, subdivision (a), requires the authority to consider the following criteria in evaluating the rehabilitation of a licensee applicable to this case: the nature and severity of the acts, evidence of any acts

committed subsequent to the acts under consideration, the time that has elapsed since commission of the acts, and evidence, if any, of rehabilitation submitted by the person.

11. The administrative law judge must use the “EMS Authority Recommended Guidelines for Disciplinary Orders and Conditions of Probation”, dated July 26, 2008, as a guide in making any recommendations to the authority for discipline of a paramedic applicant or license holder found in violation of Section 1798.200. (Cal. Code Regs., tit. 22, § 100173, subd. (d).) For violations of subdivisions (c)(7) and (c)(10), the minimum recommended fine is \$1,00 and \$250, respectively, and the maximum is \$2,500.


12. Administrative proceedings to impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.) Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of a licensee’s misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Further, fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

13. Given due consideration to the circumstances of the misconduct, the dishonesty involved subsequent to the misconduct, respondent’s complete lack of remorse, and a record devoid of rehabilitation evidence, a maximum fine of \$2,500 is appropriate.

ORDER

Respondent shall pay an administrative fine of \$2,500 within 60 days of the effective date of this decision.

DATED: March 9, 2018

DocuSigned by:

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ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings