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BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

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

**BRYAN RUSSELL**  
License No. P14798

Respondent.

)  
) Enforcement Matter No. 18-0096  
) OAH No. 2019020340  
)

**DECISION AND ORDER**

The attached Proposed Decision is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.

This Decision shall become effective thirty (30) days after the date below. It is so ordered.

DATED:

8/5/2019



Julie Souliere  
Acting Director  
Emergency Medical Services Authority



OFFICE OF ADMINISTRATIVE HEARINGS

State of California

GENERAL JURISDICTION DIVISION  
320 West Fourth Street, Suite 630, Los Angeles CA 90013  
(213) 576-7200 phone  
www.dgs.ca.gov/OAH

Department of General Services

Governor Gavin Newsom

August 01, 2019

Emergency Medical Services Authority  
10901 Gold Center Drive, Suite 400  
Rancho Cordova, CA 95670-6073  
Attn: Sean Trask, Chief  
Personnel Division

**Subject:** Russell, Bryan  
OAH No. 2019020340  
Agency No. 18-0096

Enclosed are the following:

- The original Proposed Decision
- An agency order of adoption. If the Proposed Decision is adopted, please return a copy of the signed adoption order to the Office of Administrative Hearings.
- The original Decision
- Exhibits numbered: *Please see attached Exhibit List*  
Please make sure you have received all listed exhibits. If exhibits are missing, please contact OAH immediately.
- Email copy of the Proposed Decision to:
- The above referenced case was resolved prior to conclusion of the hearing. We are returning the enclosed original exhibits 1 – x to you.

ref  
Encl.  
Transmittal Form  
OAH 60 (Rev. 04/09)

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Regional Offices

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**OFFICE OF ADMINISTRATIVE HEARINGS**

State of California

**EXHIBIT / WITNESS LIST**

OAH 23 (rev. 2/03)

OAH No. 2019020340

Agency No. 18-0096

ALJ: Matthew Goldsby

<i>Agency / Complainant:</i> Emergency Medical Services Authority	<i>Case Name / Respondent:</i> Bryan Russell
<i>Attorney / Rep.:</i> Cynthia Curry	<i>Attorney / Rep.:</i>

Marked for I.D.	Hearing Dates: 7/16/2019	Evidence Admitted Date - AH - Jurisdiction	Marked for I.D.	Evidence Offered - (via Witness)	Evidence Admitted Date - AH - Jurisdiction
	Evidence Offered - (via Witness)				
1.	Pleadings	JN	A.	Email	AH
2.	License renewal app	X			
3.	Notice of Intent and declaration	X			
4.	Notice of Intent and declaration	X			
5.	R statement of explanation	X			
6.	Resignation from Fire Dept	X			
7.	Renewal Application 2014	X			
8.	Renewal Application 2016	X			
9.	Renewal Application 2018	X			
10.	Lopez Letter	X			
11.	H&S Code section 1798.200	ON			
12.	Regulations	ON			
13.	Guidelines	ON			

COMPLAINANT WITNESSES	RELEASED	RESPONDENT WITNESSES	RELEASED
		1. Bryan Russell	

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

**In the Matter of the First Amended Accusation against:**

**BRYAN RUSSELL, Respondent**

**Enforcement Matter No. 18-0096**

**OAH No. 2019020340**

**PROPOSED DECISION**

Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 16, 2019, in Los Angeles, California.

Cynthia Curry, Attorney with the Emergency Medical Services Authority (Authority), appeared and represented complainant Sean Trask, Chief of the EMS Personnel Division of the Authority.

Respondent Bryan Russell appeared and represented himself.

Oral and documentary evidence was received. The record was closed on July 16, 2019.

The record was reopened to July 26, 2019, for complainant to file the declaration of Brad Beltram, which was missing from Exhibit 3. On July 23, 2019, complainant filed a complete Exhibit 3, including the declaration of Brad Beltram, in

the order intended to be presented at hearing. The received documents were marked for identification as Exhibit 3 and admitted in place and stead of the incomplete exhibit presented at hearing.

The record was closed and the matter was submitted for decision on July 26, 2019.

## **FACTUAL FINDINGS**

### **Jurisdictional and Background Facts**

1. Complainant brought the Accusation in his official capacity. Respondent timely submitted a Notice of Defense.

2. On June 2, 1998, the Authority first issued respondent Emergency Medical Technician-Paramedic (EMT-P) license number P14798. Respondent's EMT-P was most recently renewed on or after May 18, 2018, and is valid through May 31, 2020.

3. Respondent worked as a paramedic for the Huntington Beach Fire Department (Employer) for 20 years. He last worked for the Employer on November 2, 2018, the effective date of his resignation.

### **2018 Renewal Application**

4. Respondent was required to maintain an active and valid EMT-P license as a condition for employment as a paramedic. On or about April 2, 2018, respondent completed a Paramedic License Renewal Application (Application) with the Authority. The Application was filed with the Authority without a signature.

5. Paramedics are required to show at least 48 hours of continuing education (CE) as part of their renewal application.<sup>1</sup> Respondent reported 43.5 hours of instructor-based CE and 5 hours of approved self-study CE coursework. In his handwriting, respondent furnished the dates, course titles, approved prehospital course provider, approved prehospital course provider number, and the number of hours for each course.

6. The Authority assigned analyst Brad Beltram to conduct a random audit of respondent's CE compliance. On December 11, 2017, Mr. Beltram notified respondent of the audit and instructed him to complete and sign the Application, and attach copies of his CE certificates.

7. Respondent signed the Application declaring under penalty of perjury that the contents were true and correct to the best of his knowledge and belief. In addition, he furnished a series of CE certificates.

8. On April 23, 2018, Mr. Beltram notified respondent of his inability to complete the processing of the Application because the CE hours reported on February 29, 2016, through April 29, 2016, were outside the licensure cycle and could not be used for his license renewal. Respondent was advised that he would need to document an additional 10.5 hours of CE for the renewal of his license.

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<sup>1</sup> Cal. Code Regs., tit. 22, § 100167, subd. (a)(2).

9. Thereafter, respondent furnished certificates reflecting 12.5 hours of additional CE to meet the 48-hour requirement. However, on May 9, 2018, Mr. Beltram notified respondent that some providers were unable to verify that respondent actually took the courses. Respondent was informed that he would be required to take 18 hours of additional CE and pay a \$50 late fee to complete his renewal.

10. Believing he had cured the deficiency by furnishing certificates for 12.5 hours of CE, respondent expressed confusion to Mr. Beltram. In an email to respondent, Mr. Beltram explained:

The next step is verifying completion with the CE providers who issued the [CE certificates] (usually in the form of a roster). Verifying that you did indeed take the classes on the dates indicated on the certificates. In verifying these CE's the provider came back with a list of them they could not verify, so these hours could not be accepted as valid CE.

(Exhibit 3, page 12.)

11. Respondent completed an additional 18 hours of continuing education. By May 18, 2018, respondent was able to show satisfactory proof of having completed the required 48 hours of CE units within the required period of time, and the Authority issued respondent a renewed EMT-P license.

### **2014 and 2016 Renewal Applications**

12. On April 4, 2018, Mr. Beltram prepared a Paramedic Licensure Unit Enforcement Application Review Request expressing his concerns that respondent was submitting CE certificates that were "inaccurate and possibly fraudulent." (Exhibit 3.)

13. To investigate further, the Authority requested Jeff Lopez, Battalion Chief for the Employer, to review the CE courses that respondent reported on his 2014 and 2016 renewal applications and confirm whether the reported courses were actually conducted on the dates reported.

14. Chief Lopez prepared a table comparing the data reported by respondent to the Authority with the Employer's records. None of the dates reported by respondent matched the dates on which the courses were actually conducted. The Employer had no record of respondent completing 12 of the reported courses. The Employer had no record that nine of the courses claimed by respondent were actually conducted. Complainant presented clear and convincing evidence to support the allegations at paragraph 13, subparagraphs (a) through (v), of the First Amended Accusation.

15. Respondent testified consistent with his written statement to the Authority that, over time, he had accumulated continuing education certificates after taking continuing education courses, that each certificate contained some preprinted data, including the name of the course, the CE hours, and provider name, but that the date of the course was routinely left blank. Respondent saved the CE certificates in an envelope and routinely inserted an estimated completion date when filling out his renewal applications. Respondent did not inquire with his Employer or the course provider to verify the dates before entering them on the applications, even though the Employer maintained a roster and records relating to the courses presented. Respondent explained to the Authority in his written statement, "I had no idea that the date on the CE slip had to match up with the roster date." (Exhibit 5.) He credibly testified that he realized that his practice was wrong.



## **Disciplinary Considerations**

16. Respondent has been licensed for more than 20 years and has no record of prior discipline.

17. There is no evidence that respondent has caused any injury or harm to the public in his practice as a paramedic.

18. Respondent separated from his wife in 2015 and spent \$75,000 in attorney fees litigating the dissolution of his marriage in contested family law proceedings.

19. On November 2, 2018, while the Employer was investigating respondent's CE compliance records, respondent resigned from his employment.

20. Chief Lopez acknowledged in his declaration,

This problem of inaccurate dates on CE slips ... was a common problem for our personnel because [the Employer] had been in the practice of issuing pre-printed CE slips without dates on them and we expected the student to put the date on the CE slips themselves. I have changed the CE slip process after learning that students were often adding an approximate date to CE slips and making audits more difficult.

(Exhibit 4, pages 2-3.)

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. The standard of proof in an administrative action seeking to suspend or revoke a certificate that requires substantial education, training, and testing is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Clear and convincing evidence requires a finding of high probability; the evidence must be so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

### **Governing Law**

3. This matter arises under the statutes and regulations promulgated under the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (Act). (Health & Saf. Code, § 1797 et seq.; Cal. Code Regs., tit. 22, § 10056 et seq.)

4. The Authority may deny, suspend, or revoke any EMT-P license issued under the Act, or may place any EMT-P license or any EMT-P license holder on probation, upon a finding by the director of fraud in the procurement of a certificate or license. (Health & Saf. Code, § 1798.200, subds. (b) and (c)(1) and (c)(5).)

5. The Authority may deny, suspend, or revoke any EMT-P license issued under the Act, or may place any EMT-P license or any EMT-P license holder on probation, upon the finding by the director of the commission of any fraudulent or

dishonest act which is substantially related to the qualifications, functions and duties of prehospital personnel. (Health & Saf. Code, § 1798.200, subs. (b) and (c)(5).)

6. An act is 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 the paramedic's license in a manner consistent with the public health and safety. (Cal. Code Regs., tit. 22, § 100175.)

### **Evaluation**

7. Actual fraud is committed with the suggestion, as a fact, of that which is not true, by one who does not believe it to be true. (Civ. Code, § 1572, subd (1).) Knowledge of a false statement may be established by a showing the declarant lacked an honest belief in the truth of the matter stated, or that the statement was made carelessly and recklessly, in a manner not warranted by the information available to the declarant. (*Wishnick v. Frye* (1952) 111 Cal. App. 2d 926.)

8. "Dishonesty" necessarily includes the element of bad faith and means fraud, deception, betrayal, faithlessness. (*Hogg v. Real Estate Com'r* (1942) 54 Cal.App.2d 712, 717.) The term denotes an absence of integrity. (*Chodur v. Edmonds* (1985) 174 Cal.App.3d 565, 572.)

9. In this case, respondent represented to the Authority that he completed specific course work on specific dates. Clear and convincing evidence established that he never completed some of the specified coursework, and of the coursework he actually completed, he had not completed much of the coursework on the specified dates. Respondent engaged in fraud and dishonesty because he lacked an honest belief that he took CE courses as represented on his renewal applications. Respondent

reported his CE compliance carelessly and recklessly in a manner not warranted by information that was available to him.

10. Cause exists to impose discipline against respondent's EMT-P license pursuant to Health and Safety Code section 1798.200, subdivision (c)(1), because he engaged in fraud in the procurement of his license renewals, and committed acts of fraud and dishonesty.

11. Cause exists to impose discipline against respondent's EMT-P license pursuant to Health and Safety Code section 1798.200, subdivision (c)(5), because he committed acts of fraud and dishonesty substantially related to his qualifications for license renewal.

#### **Level of Discipline**

12. When considering the denial, placement on probation, suspension, or revocation of a license pursuant to Section 1798.200 of the Health and Safety Code, the Authority is required to consider the following criteria in evaluating the rehabilitation of the applicant and present eligibility for a license:

(1) The nature and severity of the act(s) or crime(s).

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (1) or (2) of this section.

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the person.

(Cal. Code Regs., tit. 22, § 100176, subd. (a).)

13. The Authority may impose an administrative fine up to \$2,500 per violation on a licensed paramedic found to have committed any of the actions described at Health and Safety Code section 1798.200, subdivision (c), that did not result in actual harm to a patient. (Health & Saf. Code, §§ 1798.210, subd. (a), 1798.200, subd. (c); see also Legal Conclusions 4 and 5.) 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. (*Id.*)

14. In considering disciplinary action, credit shall be given for discipline imposed by an employer. (Health & Saf. Code, §§ 1798.211.)

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15. In this case, the nature of the misconduct involved fraud and dishonesty. Although there is evidence he engaged in this deceptive practice in his 2014 and 2016 renewal applications, there is no evidence that respondent engaged in any act of fraud or dishonesty subsequent to the acts under consideration as grounds for discipline under Health and Safety Code section 1798.200. On the contrary, the evidence shows that respondent presented satisfactory proof to Mr. Beltram that he fully complied with his CE requirements for his 2018 renewal.

16. Respondent has held an EMT-P license for more than 20 years and has no prior history of discipline. Although a violation of Health and Safety Code section 1798.200 is presumed to pose a risk to public safety, there is no evidence to show that respondent has caused any actual harm or injury to any patient. Additionally, credit is given to the fact that respondent resigned from his employment while the Employer investigated his CE compliance. Respondent credibly acknowledged the wrongfulness of his actions, an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) The Employer acknowledged that its practice of issuing undated CE slips was a contributing factor and common problem, and declared a change in its procedures to prevent a recurrence.

17. The task in disciplinary cases is preventative, protective and remedial, not punitive. (*In re Kelley* (1990) 52 Cal.3d 487.) On this record, outright revocation of respondent's license would be unduly punitive. Suspending respondent's license for 30 days and imposing an administrative fine will be adequate to prevent a recurrence and to protect the public. Because the violations of Health and Safety Code section 1798.200 involved fraud and dishonesty, the amount of \$2,500 is a reasonable and appropriate administrative fine.

## ORDER

1. License number P14798 issued to respondent Bryan Russell is suspended for 30 days.
2. An administrative fine of \$2,500 is imposed on respondent Bryan Russell, license number P14798.

DATE: August 1, 2019

DocuSigned by:  
*Matthew Goldsby*  
MATTHEW GOLDSBY  
Administrative Law Judge  
Office of Administrative Hearings