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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical
Technician- Paramedic License of:
JOSEPH R. COMSTOCK
License No. P27983
Respondent.

)
) Enforcement Matter No.: 15-0210
) OAH No.: 2016050923
)


) **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 30 days after the date below. It is so ordered.

DATED:

October 24, 2017


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:

JOSEPH R. COMSTOCK,
License No. P27983,

Respondent.

Case No. 15-0210

OAH No. 2016050923

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on July 11, 2017.

Craig L. Stevenson, represented complainant Sean Trask, Chief of the EMS Personnel Division of the Emergency Medical Services Authority (EMSA or Authority).

David J. Givot, Attorney at Law, represented respondent Joseph R. Comstock.

The matter was submitted on July 11, 2017.

FACTUAL FINDINGS

License Background

1. On December 30, 2009, EMSA issued Emergency Medical Technician - Paramedic (EMT-P) license number P27983 to respondent. His license expired on December 31, 2015, and its current status is "lapsed." There was no evidence presented of any history of discipline against that license.

Jurisdictional Information

2. On March 18, 2016, complainant executed the Accusation in the above-captioned matter in his official capacity. The Accusation alleged two causes for discipline: First, respondent violated Health and Safety Code section 1798.200, subdivision (c)(7), violation of any provision or regulation adopted by the authority pertaining to prehospital personnel, by violating San Diego Emergency Medical Services Authority (SDEMSA) Protocol S-415, Protocol S-407, and Protocol S-414 for failing to perform an assessment,

offer transportation, obtain a release, and complete a report with regard to an 84 year-old patient while responding to a call on July 14, 2015. Second, respondent violated Health and Safety Code section 1798.200, subdivision (c)(10), functioning outside the supervision of medical control in the field care system operating at the local level, for his failure to comply with protocols, regulations and statutes which required him to provide the minimal level of required care for the 84-year-old patient on July 14, 2015.

3. Respondent timely submitted his Notice of Defense.

Complainant's Evidence

TESTIMONY OF BRIAN HENDERSON

4. Brian Henderson is an Emergency Medical Technician for the City of San Diego and has held that position for the past five years. He received his Emergency Medical Technician certification from Miramar College. His duties include responding to emergency medical calls within the City of San Diego, assisting the paramedic during those emergency responses, and restocking the ambulance. His position is as a basic Emergency Medical Technician and he provides basic cardio-pulmonary resuscitation and provides oxygen, but he does not provide advanced cardio-pulmonary resuscitation, does not put in an intra-venous line, and does not give advanced medications. Mr. Henderson works with a paramedic who would provide those advanced services during emergency responses.

5. Mr. Henderson testified that on July 14, 2015, he was working on an ambulance with respondent, who was the paramedic, when their ambulance was called to an emergency for what the dispatcher described as a "sick person" in an area of San Diego known as Zone 32. Mr. Henderson stated that the emergency call at issue on July 14, 2015, happened at the end of their work shift. Mr. Henderson stated that the emergency was a "level 4" emergency and as a result there was no fire engine present and only he and respondent were on the scene of the emergency. Mr. Henderson testified that he and respondent brought the trauma bag and machines to measure the patient's vital signs to the upstairs of an apartment where the patient was sitting in a chair. Mr. Henderson described the apartment as a "board and care" facility, which is an independent living facility for people with some sort of medical need. Mr. Henderson recalled that the patient's primary complaint was that he did not feel well and needed his prescriptions filled. Mr. Henderson stated that he did not remember the specifics of what happened during this emergency response and could not provide any information regarding whether respondent made a complete assessment of the patient.

6. Mr. Henderson stated that during the emergency response, the owner of the "board and care" apartment was present with the patient. Respondent performed the assessment of the patient and took the patient's history and physical information. Mr. Henderson did not do that assessment and had no recollection of the patient's assessment or medical history. Mr. Henderson only recalled that the patient took "quite a few" medications

and had concerns with his health, but Mr. Henderson had no idea for what purpose the patient took the medications.

7. According to Mr. Henderson, during the emergency response to the patient's apartment on July 14, 2015, the owner of the apartment, who was also a roommate of the patient, and respondent became involved in an argument because respondent was being disrespectful to the patient. According to Mr. Henderson, the respondent was belittling the patient. Mr. Henderson stated that he would not want a member of his family to be spoken to the way that respondent spoke to this patient because it was disrespectful. Mr. Henderson testified that the interaction between respondent and the patient made him uncomfortable because of the disrespect that respondent showed toward the patient. After witnessing the exchange between respondent and the patient, the owner of the apartment became very upset with respondent and called him arrogant. Thereafter, respondent told Mr. Henderson that the environment was getting hostile and they were going to leave as a result. Respondent and Mr. Henderson did not transport the patient to the hospital, but Mr. Henderson believed that the patient should have been transported. However, Mr. Henderson did not know whether the patient had a medical complaint during the emergency response and had no idea whether the patient had agreed to make alternative transportation arrangements to go to the hospital at that time. Mr. Henderson recalled that "there was some discussion about" alternative transportation arrangements, but he did not know if that happened.

8. On cross examination Mr. Henderson testified that he is familiar with the policies and procedures of EMSA, including Policy 415, which requires that the emergency responders contact the base hospital if a patient is not capable of making their own medical decisions. Mr. Henderson stated that during their emergency response on July 14, 2015, the patient was alert and "oriented times three" and was not a minor. Mr. Henderson again admitted that he did not know if the patient had a medical complaint. Mr. Henderson admitted that being rude to a patient is not a violation of any particular policy or procedure of EMSA to his knowledge.

9. Mr. Henderson also stated that at the time of this emergency response on July 14, 2015, he had been working as the bridge Emergency Medical Technician, which means assisting a paramedic, for only two to three months. Mr. Henderson testified that he is familiar with PERT, which is the psychiatric emergency response team, but that he is not trained on when it is necessary to contact PERT.

TESTIMONY OF LINDA CURTIS-SMITH

10. Linda Curtis-Smith is a special investigator with EMSA and has held that position since 2015. Prior to this position she worked as an investigator for the Department of Public Health conducting investigations, including investigations of nursing home abuse. She has worked as an investigator since 2004 and has taken all of the required investigation courses from the state. Ms. Curtis-Smith was assigned to investigate this matter during her normal course of business as a special investigator for EMSA. She stated that the investigation started because someone filed a complaint with EMSA about respondent's

behavior on the emergency call on July 14, 2015. As part of her investigation she gathered all available documents, including emails from the person who filed a complaint with EMSA, contacted and interviewed witnesses, and drafted a report summarizing her investigation.

11. Ms. Curtis-Smith testified that she attempted to contact the patient from the July 14, 2015, emergency call, but she was unable to locate that person because he no longer lived at the same address and there was no known new address for him. Ms. Curtis-Smith was also unable to locate the two roommates of the patient who were present during the July 14, 2015, emergency call. However, Ms. Curtis-Smith did interview the owner of the apartment, who was still living at that address. In her report Ms. Curtis-Smith referred to the owner of the apartment as Witness 2. Ms. Curtis-Smith also interviewed Mr. Henderson and interviewed respondent twice as part of her investigation. She summarized all of her interviews in her report. In addition, Ms. Curtis-Smith obtained the medical records of the patient from Sharp Grossmont Hospital for when he was admitted on July 14, 2015, at 7:10 p.m. She summarized those medical records in her report.

12. Ms. Curtis-Smith's report summarized the written statement received from the patient initiating the investigation in this matter. The statement from the patient was sent via email and stated as follows:

My name is [Patient] and I would like to fill [*sic*] a complaint with you about the Paramedic who responded to the 911 call I made. This Paramedic with unit 84 was extremely rude and would not listen to a word that I had to say. He made me feel bad and was upsetting me because I felt bad asking for help when I needed help.

13. Ms. Curtis-Smith's report also summarized the statements included in two emails received from each of the patient's two roommates. The emails also complained about respondent's demeanor towards the patient and that respondent was "down talking" to the patient. One of the roommates, who also identified herself as the apartment owner, complained that respondent turned off her TV without asking her, was rude and went on a rant, and "did not check [the patient's] vital signs before making [*sic*] assumption nothing was wrong with him."

14. Ms. Curtis-Smith's report included an interview summary of the apartment owner, also identified as one of the patient's roommates, and as Witness 2, and as the patient's caregiver. The apartment owner reiterated the information in her email and also stated to Ms. Curtis-Smith that during the emergency response on July 14, 2015, respondent was "in the living room with his arms crossed, in a military stance, barking orders and questions," while other paramedics would be calm and reassuring, and respondent "might be better off doing paperwork or something."

15. Ms. Curtis-Smith summarized in her report Mr. Henderson's written statement regarding the incident which was provided to her.¹ Her summary of that statement provided as follows:

EMT Henderson describes the scene as male patient sitting in a chair with a bag in his hands. A household member removed a barking dog from the room. The ambulance crew introduced themselves and began assessment. Patient1 was hard of hearing, so Respondent turned off the television. A female came out of the kitchen stating she was the caregiver. EMT Henderson describes Patient1 as being anxious stating he had not slept for several days and was out of meds. He asked to be taken to the hospital. Respondent suggested to Patient1 alternatives to 9-1-1 such as a bus or taxi. EMT Henderson states he witnessed Respondent tell Patient1, "How would you feel if someone down the street was having a major emergency and we could not help them because we are with you filling your prescription?" EMT Henderson says it was the general idea of what was said, and not word for word. Patient1 admitted he would feel bad and that it isn't fair, but then life isn't fair. EMT Henderson witnessed a second roommate come out and suggest PERT to which Respondent said that it was not a PERT situation. EMT Henderson then observed the caregiver come out of her room and tell Respondent, "You are the most arrogant person I have ever met." She then began yelling at Respondent about his lack of respect and turning off her television. Respondent and caregiver argued. Respondent announced the scene was getting hostile and that they were leaving. EMT Henderson observed that Respondent was asked his name several times, to which Respondent did not respond. The caregiver then followed the crew outside yelling at Respondent, he then yelled back "Joey!" EMT Henderson confirms in his statement that vitals were not taken and medications not checked. EMT Henderson describes Patient1 as looking distraught and was last seen looking for his bus card in his wallet.

16. Ms. Curtis-Smith also summarized in her report each of the two interviews of respondent regarding the July 14, 2015, incident. She first interviewed respondent by telephone on August 14, 2015. She summarized that interview in part as follows:

¹ Notably, a written statement from Mr. Henderson was not received into evidence. Accordingly, the only evidence of the content of the written statement was the summary provided in Ms. Curtis-Smith's report.

Respondent states he has 13 years' experience in the field and in his estimation Patient1 did not require medical care. Respondent admits to responding to the independent living facility, admits to turning off the television (he says all firemen do it), and admits to not assessing or transporting Patient1. Respondent said there were mitigating circumstances. He claims the 9-1-1 dispatch call indicated it was a Level 4 for a medication refill. When he arrived at the residence, Patient1 did not have a medical complaint other than he was mad at his psychiatrist because he had not prescribed him Ativan and he couldn't sleep. Respondent admits to informing Patient1 that calling for a ride to the pharmacy was inappropriate; that he needed to have a medical complaint. Respondent said he discussed with Patient1 his options for getting to the pharmacy via other means. Respondent denies giving Patient1 the "little kid or heart attack" scenarios as reported by Witness1 and Witness2. . . . Respondent relayed his disappointment in the whole system that some minor thing like this would make it to the "state" level. When asked about his partner's (EMT Henderson's) opinion, Respondent said his partner was only in the field for about three weeks and did not have the experience he had. Respondent also asked me what his obligation was to tell someone his name. After all, he stated, it was right there on his badge. Respondent was referring to not telling Patient1, Witness1, and Witness2 his name when they asked.

17. Ms. Curtis-Smith interviewed respondent by telephone again on January 19, 2016. She summarized that interview in her report as follows:

Respondent asked what was taking so long and did I have an estimated completion time on the investigation. I informed him that I was waiting for the hospital records before finishing my report. Respondent reiterated that Patient1 told him he did not have a "chief complaint." That Patient1 was alert and oriented x3 and that San Diego County Protocols state that he can do a "no aid release" and not write a Patient Care Report (PCR). Respondent became argumentative saying he had the experience and ability to determine who required medical help and who did not and that he was just trying to save Patient1 money. Respondent said it was his civic responsibility to not financially over-burden the care system. Respondent reiterated that Patient1 did not want medical care, just a ride to the pharmacy. That it wasn't necessary to do a medical release/waiver per San Diego County Protocols. Respondent insisted he and Patient1 were on good terms when he left, it was the roommates that

complained because they wanted a new television. Respondent said Witness2 was mad at him, claiming he broke the television when he turned it off.

18. Ms. Curtis-Smith testified and concluded in her report that based on her investigation respondent violated Health and Safety Code sections 1798.200, subdivisions (c)(3) and (c)(5)² because four witnesses stated that respondent demonstrated unprofessional conduct and failed to medically assess, provide care, or transport the patient. She wrote that medical records confirmed that the patient “was sick, required overnight psychiatric observation, medication adjustment, and regulation of vital signs.”

19. On cross-examination, Ms. Curtis-Smith admitted that all of the contents of her report came from witnesses, and that different witnesses made different statements about some information. She also admitted that she reviewed the patient’s medical records, but she is not a medical expert and cannot testify regarding the interpretation of medical records. She admitted that her report is simply a reflection of what others told her and that some of that information was from people who had heard the information from others.

MEDICAL RECORDS FOR THE PATIENT FROM JULY 14, 2015.

20. A certified copy of the medical records from Sharp-Grossmont Hospital for the patient at issue was received into evidence. The medical records indicate that the patient walked into the hospital at 7:10 p.m. on July 14, 2015, with a chief complaint of “psychiatric evaluation” and unable to sleep. After a history and physical was performed on the patient, doctors determined that his glucose was elevated but not substantially. The patient was admitted to the hospital to “regulate his medications” and for psychiatric evaluation. The physician evaluating him prior to his admission wrote:

At this point, he is pending Psychiatric Services reevaluation, but I do feel the patient can be medically cleared. I do not feel there is an acute medical condition arising from my history and physical exam that warrants acute treatment or hospitalization.

The hospital records indicate that the patient was discharged from the hospital on July 15, 2015, at 10:58 a.m. after his medication adjustment and psychiatric evaluation.

Respondent’s Evidence

21. Respondent submitted no documentary or testimonial evidence at the hearing and did not testify on his own behalf. Complainant did not call respondent to testify at the hearing.

² Neither of these code sections are alleged to have been violated in the accusation. Instead, the accusation only alleges violation of Health and Safety Code section 1798.200, subdivisions (c)(7) and (c)(10).

LEGAL CONCLUSIONS

1. EMSA is the state agency “responsible for the coordination and integration of all state activities concerning emergency medical services.” (Health and Saf. Code, § 1797.1.) Emergency medical services (EMS) are “the services utilized in responding to a medical emergency.” (Health & Saf. Code, § 1797.72.)

2. The Authority has jurisdiction to proceed in this matter pursuant to Health and Safety Code section 1798.200. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.)

3. The standard of proof in an administrative proceeding seeking to suspend or revoke a certificate that requires substantial education, training, and testing is “clear and convincing evidence” to a reasonable certainty. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

Applicable Law

4. Health and Safety Code section 1798.200 provides in relevant part:

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

San Diego County EMSA's Treatment Protocols

5. San Diego County EMSA has adopted and promulgated policies that define and govern the roles, responsibilities, and scope of practice of accredited prehospital responders. San Diego County EMSA Treatment Protocols S-407, S-414, and S-415 are at issue in this matter.

6. Protocol S-407 provides "guidelines for transportation of patients" after it has been determined that the patient requires transportation "from the scene of the incident to the most accessible and appropriate facility."

7. Protocol S-414 provides "guidelines for Emergency Medical Technicians (EMTs) (all levels) in San Diego County to determine the appropriateness of either: (A) discontinuing or withholding resuscitative measures, or (B) obtaining Base Hospital Physician Order for pronouncement of patients in cardiac arrest while in the prehospital setting."³

8. Protocol S-415 provides as its purpose "[t]o identify conditions under which EMT, AEMTs and paramedics shall, when encountering an emergency patient, contact a base hospital for notification, medical direction, or to give report; or (for EMTs) contact a receiving hospital to verify appropriate transport destination and give report." Protocol S-415 states that "Aid Unnecessary" for "calls in which the person for whom 9-1-1 was called does not meet the definition of 'emergency patient,' and has agreed to make alternative transportation arrangements if necessary." Protocol S-415 defines "Emergency Patient" as follows:

Any person for whom 9-1-1/EMS system has been activated and who meets the following criteria:

³ Notably, this Protocol was cited in the Accusation under the First Cause for Discipline as having been violated because respondent "did not obtain a release from the patient in contravention of SDEMSA protocols S-414 and S-415." However, Protocol S-414 appears to not be applicable in this matter as the patient was never in cardiac arrest and did not require resuscitative measures.

1. Has a chief complaint or suspected illness or injury; or
2. Is not oriented to person, place, time, or event; or
3. Requires or requests field treatment or transport; or
4. Is a minor who is not accompanied by a parent or legal guardian and is ill or injured or appears to be ill or injured.

Protocol S-415 further provides under section (IV)(B) base hospital contact is required by paramedics in the following situations:

- (1) Any emergency patient transport by paramedics, including transports by paramedic ambulance to a BL destination following downgrade to BLS.
- (2) Any emergency patient treatment involving ALS medications or skills (except EKG monitoring).
- (3) Any emergency patient assessment involving abnormal vital signs, or an altered level of consciousness.
- (4) Any suspicion that the emergency patient (or designated decision maker [DDM]) is impaired by alcohol or drugs.
- (5) The emergency patient/DDM is unable to comprehend or demonstrate an understanding of his/her illness or injury.
- (6) The emergency patient meets criteria as a trauma center candidate (T-460).
- (7) The emergency patient is >65 years of age and has experienced an altered/decreased level of consciousness, significant mechanism of injury, or any fall.
- (8) An emergency patient who is a minor is ill or injured or is suspected to be ill or injured.
- (9) Whenever paramedics have a question regarding appropriate treatment or disposition of the patient.

Evaluation

9. The only direct evidence provided by complainant to establish that respondent violated any code section, regulation or protocol was the testimony of Mr. Henderson, who

testified that respondent made an assessment of the patient on July 14, 2015. Mr. Henderson admitted that he was not qualified to make such an assessment and did not do so. Mr. Henderson's testimony directly conflicted with the indirect evidence of his written statement summarized in Ms. Curtis-Smith's report that respondent failed to assess the patient on July 14, 2015. However, Mr. Henderson's testimony at the hearing was credible that respondent performed an assessment of the patient. Mr. Henderson also testified that the patient was not a minor, was oriented x3 (person, place, time or event), and he did not know if the patient required or requested transport. Mr. Henderson testified that he had no idea whether the patient had a medical complaint, illness or injury and that determination was made by respondent. Accordingly, complainant failed to establish that the patient met the definition of "emergency patient" under Protocol S-415 so as to require base hospital contact, a report, or any transportation at all.

Furthermore, complainant provided no evidence to establish that the patient ever required any sort of resuscitative measures and accordingly Protocol S-414 is simply not applicable at all. Complainant also failed to establish that the patient required transportation to a facility and failed to establish that respondent did not make alternative arrangements with the patient for transportation to a facility. In fact, the medical records demonstrate that the patient did go to the hospital that night by some means other than an ambulance. Mr. Henderson testified that he recalled that there was some discussion between respondent and the patient regarding other transportation, but he did not recall the specifics of that conversation.

Complainant failed to establish any of the facts asserted in the accusation alleged against respondent's EMT-P license, other than respondent was rude to the patient. The evidence did establish that respondent was rude and discourteous to the patient on July 14, 2015. However, respondent's rudeness does not violate any protocol, regulation or code section cited in the accusation in this matter.

Cause Does Not Exist to Discipline Respondent's EMT-P License

10. Cause does not exist to discipline respondent's paramedic license pursuant to Health and Safety Code section 1798.200, subdivision (c)(7). Complainant failed to establish that respondent violated, attempted to violate, assisted or abetted in the violation of, or conspired to violate any provision or regulation adopted by the authority pertaining to prehospital personnel in his treatment of the patient on July 14, 2015.

11. Cause does not exist to discipline respondent's paramedic license pursuant to Health and Safety Code section 1798.200, subdivision (c)(10), functioning outside of the supervision of medical control in the field care system. Complainant failed to establish that respondent failed to comply with protocols, regulations, and statutes regarding prehospital personnel, or failed to provide the minimum level of required care for his patient on July 14, 2015.

ORDER

The Accusation No. 15-0210 filed against respondent, Joseph R. Comstock, is dismissed.

DATED: August 10, 2017

DocuSigned by:
Debra Nye-Perkins
73AD8C1200DE42D

DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings