

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

In the Matter of the Accusation Against:

SHAYNE M. MARSHALL, Respondent

Agency Case No. 23-0218

OAH Case No. 2024010440

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on January 30, 2024, by videoconference and telephone from Sacramento, California.

Phillip L. Arthur, Deputy Attorney General, represented Kim Lew (complainant), Chief, California Emergency Medical Services (EMS) Authority, EMS Personnel Division.

Shayne M. Marshall (respondent) represented himself.

Evidence was received, the record closed, and the matter submitted for decision on January 30, 2024.

FACTUAL FINDINGS

Jurisdiction

1. On September 10, 2020, the EMS Authority issued respondent Emergency Medical Technician-Paramedic (EMT-P) License No. P41777 (license). The license expires on September 30, 2024, unless renewed.

2. On January 10, 2024, complainant, in her official capacity, signed and later filed Accusation No. 23-0218 (Accusation) against respondent. Complainant asserts cause to discipline respondent's license based on a March 9, 2023 incident involving respondent's interactions with a patient at the Sutter Medical Center Emergency Room (SMC ER) in Sacramento, California. Specifically, complainant alleges three causes for discipline: (1) violation of the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, Health and Safety Code¹ section 1797 et seq. (EMS Act) or corresponding regulations; (2) 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; and (3) mistreatment or physical abuse of a patient. Complainant seeks revocation of respondent's license.²

¹ All further statutory references are to the Health and Safety Code, unless otherwise noted.

² At hearing, the parties stipulated to amend the Accusation to substitute the "County of Sacramento Emergency Medical Services Agency Program Document:

On January 10, 2024, the EMS Authority's Director also issued an Order for Temporary Suspension Pending Hearing pursuant to section 1798.202 (Suspension Order). The Suspension Order suspended respondent's ability to work or volunteer as an EMT-P until a final determination on the merits of the Accusation.

3. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

The March 9, 2023 Incident

4. Complainant offered video footage of, and the testimony of several percipient witnesses to, the March 9, 2023 incident. On March 9, 2023, respondent was employed by the Sacramento County Fire Department (SCFD) as an EMT-P. That day, he assisted another SCFD EMT-P, Robert Swonger, with transporting a patient from the Sacramento County Jail to the SMC ER. The patient was an arrestee under the influence of alcohol and potentially narcotics. The patient was initially irate and upset at jail staff, but calmed down during the transport to the SMC ER. Mr. Swonger and respondent brought the patient into the SMC ER on an elevated gurney, with both of the patient's hands handcuffed to the gurney's rails.

5. Once in the SMC ER, respondent approached the patient and lifted his hands in prayer, telling the patient "I am praying for you." The patient became verbally aggressive. Respondent initially turned away from the patient and went towards the nurse's station. A short while later, respondent returned and faced the patient. The

Behavioral Crisis/Restraint" for any references to the "S-SV EMS Agency ALS/BLS Field Manual, Reference No. M-11 Behavioral Emergencies" in paragraphs 13, 18, and 20.

video footage shows that respondent interacted with the patient, with the patient visibly angry and agitated, and respondent smiling and laughing. The patient then spat at respondent.

6. Around that time, the patient swung his unrestrained legs off the side of the gurney. That is a safety issue because the patient could cause the gurney to fall over, causing injury to the patient. Consequently, respondent went to the front of the gurney to press a button to lower the gurney. The patient again spat at respondent. Respondent staggered back for a moment and then tried to get control of the patient's kicking legs. While attempting to restrain the patient's legs, the patient kicked respondent's head. Several persons, including SMC ER staff, police officers, and SFD personnel, then engaged the patient to restrain him. The gurney was successfully lowered and respondent stepped away. At the time, seven persons other than respondent were standing around the gurney restraining the patient.

7. Shortly thereafter, respondent re-engaged by pushing his way in between Officer Rahul Singh and an SMC ER staff member standing around the patient's gurney. Officer Singh heard respondent say: "You fucked up now, motherfucker." Respondent lifted himself onto the gurney and put his knee and shin in the area of the patient's groin. Respondent then bounced up and down approximately four or five times. The patient reacted in pain, shouting "you got my nuts, you got my nuts." Respondent then disengaged, and a nurse led respondent away to wipe the spit off his face.

8. Mr. Swonger did not observe respondent's actions at the patient's groin because Mr. Swonger was focused on restraining the upper part of the patient's body at that time. However, respondent later told Mr. Swonger that "I jumped on his balls."

9. Mr. Swonger has since reviewed video footage of the incident. As an EMT-P with well over 20 years of experience, he found respondent's actions unnecessary and inappropriate. Although EMT-Ps sometimes place themselves on a patient's knees or legs to restrain the patient, there was no need for respondent to bounce up and down on the patient's groin. It is not an approved or accepted form of restraint. Moreover, seven other individuals were already engaged in restraining the patient when respondent got on top of the patient. In Mr. Swonger's opinion, respondent's actions were calculated to hurt, not restrain, the patient.³

Respondent's Evidence

10. Respondent testified at hearing. Respondent admits telling the patient that he would pray for him. Usually, patients respond well to that statement, but this patient became very agitated and said "some very vulgar things." Respondent denies ever taunting or laughing at the patient. However, the patient spat at respondent a few times and kicked respondent in the head.

11. Respondent admits subsequently jumping onto the patient's groin area and bouncing up and down. Although there were already seven other persons involved in restraining the patient at the time, respondent believed that the two individuals at the patient's feet did not have adequate control of the patient's legs. Thus, he jumped onto the patient to try and get the patient's pelvic girdle area flat on

³ Complainant offered the testimony of another EMT-P, Joe Uva, who was present during the March 9, 2023 incident. However, given evidence of a history of animosity between Mr. Uva and respondent, Mr. Uva's testimony was not considered in deciding this matter.

the gurney. He did so to effectively restrain the patient and to prevent injuries to the two individuals at the patient's feet. Respondent never intended to injure the patient. Any injury was merely incidental to respondent's efforts to restrain the patient. Respondent also denies stating "You fucked up now, motherfucker."

12. Respondent was very upset by the March 9, 2023 incident. He was personally injured when the patient kicked him, but is also remorseful for inadvertently hurting the patient. Shortly after the incident, he enrolled in a week-long trauma retreat. He is currently seeing a psychiatrist and attends weekly sessions with a therapist.

13. Respondent enjoys helping people by working as an EMT-P. It is also his sole source of income to support his four children. He strongly desires to retain his license and is willing to comply with appropriate probation conditions.

Analysis

14. Complainant's and respondent's versions of events are irreconcilable in material respects. Thus, it is necessary to determine which version is more credible.

15. It is well-settled that the trier of fact may accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted. (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67 [citations omitted].) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Nevarov v. Caldwell* (1958) 161 Cal.App.2d 762, 777.) Moreover, the trier of fact may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

The testimony of "one credible witness may constitute substantial evidence." (*Kearl v. Bd. of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

16. Complainant established by clear and convincing evidence that respondent failed to appropriately de-escalate his conflict with the patient. To be sure, the patient was verbally aggressive and under the influence of alcohol and potentially narcotics. Additionally, respondent credibly testified that his initial comment about praying for the patient was well-intentioned. However, instead of disengaging after the patient responded in a hostile manner, respondent continued to interact with and further provoked the patient. The video footage plainly shows respondent smiling and laughing while the patient was visibly angry and agitated, after which the patient spat at respondent. Respondent's contrary testimony is inconsistent with the video footage and lacks credibility.

17. Complainant also established by clear and convincing evidence that respondent used excessive force when he lifted himself onto the gurney, put his knee and shin in the area of the patient's groin, and bounced up and down approximately four or five times. At the time, both of the patient's hands were handcuffed to the gurney's rails, the gurney was lowered, and seven persons other than respondent were already restraining the patient. Mr. Swonger, an experienced EMT-P, credibly testified that respondent did not use an approved or accepted form of restraint, and his actions appeared calculated to hurt, not restrain, the patient. Indeed, the most reasonable explanation was that respondent acted out of anger after the patient spat at him and kicked him in the head. That explanation is also consistent with Officer Singh's testimony that he heard respondent say: "You fucked up now, motherfucker." Respondent's contrary testimony lacks credibility when the evidence as a whole is considered.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving the allegations in the Accusation and establishing cause for discipline. The standard of proof in an administrative action seeking to discipline a license 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.) 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.)

Cause for Discipline

2. The EMS Authority may discipline an EMT-P license "upon the finding by the director of the occurrence of any of the actions listed in subdivision (c)." (§ 1798.200, subd. (b)(1).) Subdivision (c) provides, in part:

(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.

[...]

(12) Unprofessional conduct exhibited by any of the following:

(A) The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of their duties would use if confronted with a similar circumstance. Nothing in this section shall be deemed to prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace officer, or a peace officer who is acting in the dual capacity of peace officer and EMT-I, EMT-II, or EMT-P, from using that force that is reasonably necessary to effect a lawful arrest or detention.

[...]

(§ 1798.200, subd. (c)(7), (10), & (12)(A).)

3. California Code of Regulations, title 22, section 100175, subdivision (a), provides:

For the purposes of denial, placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 of the Health and Safety Code, or imposing an administrative fine pursuant to Section 1798.210 of the Health and Safety Code, a crime or act shall be substantially related to the qualifications, functions and/or duties of a person holding a paramedic license under Division 2.5 of the Health and Safety Code. A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a paramedic if to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by her/his license in a manner consistent with the public health and safety.

4. "The local EMS agency, using state minimum standards, shall establish policies and procedures approved by the medical director of the local EMS agency to assure medical control of the EMS system." (Health & Saf. Code, § 1797.220.) In accordance with that mandate, the County of Sacramento EMS Agency issued a "Program Document: Behavioral Crisis/Restraint" approved by its medical director (BC&R Policy).

The BC&R Policy requires paramedics to “[a]ttempt verbal de-escalation with a calm and reassuring approach and manner prior to involuntary restraint of the patient.” Additionally, the BC&R Policy requires paramedics to “[u]se the least restrictive or invasive method of restraint that will protect the patient . . . Use of all restraints will be in a humane manner, affording the patient as much dignity as possible.”

5. Complainant established by clear and convincing evidence that respondent violated the BC&R Policy when he failed to appropriately attempt de-escalation of his conflict with the patient and subsequently used excessive force on the patient. The BC&R constitutes a policy properly established under the authority of the EMS Act. Thus, respondent also violated the EMS Act, and cause exists to discipline respondent’s license under section 1798.200, subdivision (c)(7).

6. By respondent’s foregoing violations of the BC&R Policy, he functioned outside the supervision of medical control in the field care system operating at the local level. Thus, complainant also established by clear and convincing evidence that cause exists to discipline respondent’s license under section 1798.200, subdivision (c)(10).

7. Complainant established by clear and convincing evidence that respondent mistreated and physically abused the patient when respondent used excessive force on the patient. Thus, cause exists to discipline respondent’s license under section 1798.200, subdivision (c)(12)(A).

8. Respondent’s misconduct on March 9, 2023 is substantially related to the qualifications, functions and/or duties of an EMT-P within the meaning of California Code of Regulations, title 22, section 100175, subdivision (a). Respondent’s actions

demonstrate an inability to control his anger and exercise self-restraint. This is troubling because EMT-Ps frequently deal with behavioral crises in vulnerable patient populations. Thus, respondent's actions evidence to a substantial degree present or potential unfitness to perform the functions of an EMT-P in a manner consistent with the public health and safety.

Appropriate Discipline

9. Respondent's misconduct was extremely serious. While working as an EMT-P, he provoked an already-hostile patient and used excessive force on that patient. His actions resulted in patient harm when, at a minimum, the patient experienced pain. Although the patient was hostile and under the influence of substances, EMT-Ps are expected to deal appropriately and professionally with challenging patient populations. Respondent's inability to control his anger and exercise self-restraint raises serious concerns regarding his temperament and suitability to work as an EMT-P. Although respondent testified that he is remorseful and under the care of a psychiatrist and therapist, he offered no documentation of specific treatment for anger management.

10. When the record as a whole is considered, there is insufficient rehabilitation evidence at this juncture to consider placing respondent on probation. Revocation of respondent's license is necessary to protect public health, safety, and welfare.

ORDER

Emergency Medical Technician-Paramedic License No. P41777 issued to respondent Shayne M. Marshall is REVOKED pursuant to each of the pled causes for discipline, jointly and separately.

DATE: February 28, 2024

Wim vanRooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings



State of California

GOVERNMENT CODE

Section 11521

11521. (a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

(Amended by Stats. 2004, Ch. 865, Sec. 34. Effective January 1, 2005.)



State of California

GOVERNMENT CODE

Section 11522

11522. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

(Amended by Stats. 1985, Ch. 587, Sec. 4.)



State of California

GOVERNMENT CODE

Section 11523

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to the petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the cost for the preparation of the transcript, the cost for preparation of other portions of the record and for certification thereof. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. If the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. If the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

(Amended by Stats. 2005, Ch. 674, Sec. 23. Effective January 1, 2006. Operative July 1, 1997, by Sec. 98 of Ch. 938.)



State of California

CODE OF CIVIL PROCEDURE

Section 1013

1013. (a) In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. Service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, 12 calendar days if the place of address is the Secretary of State's address confidentiality program (Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code), and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(b) The copy of the notice or other paper served by mail pursuant to this chapter shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing.

(c) In case of service by Express Mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by Express Mail; otherwise at that party's place of residence. In case of service by another method of delivery providing for overnight delivery, the notice or other paper shall be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed

in the cause and served on the party making service; otherwise at that party's place of residence. Service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document served by Express Mail or other method of delivery providing for overnight delivery shall be extended by two court days. The extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(d) The copy of the notice or other paper served by Express Mail or another means of delivery providing for overnight delivery pursuant to this chapter shall bear a notation of the date and place of deposit or be accompanied by an unsigned copy of the affidavit or certificate of deposit.

(e) Service by facsimile transmission shall be permitted only where the parties agree and a written confirmation of that agreement is made. The Judicial Council may adopt rules implementing the service of documents by facsimile transmission and may provide a form for the confirmation of the agreement required by this subdivision. In case of service by facsimile transmission, the notice or other paper shall be transmitted to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which they have filed in the cause and served on the party making the service. Service is complete at the time of transmission, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document, which time period or date is prescribed by statute or rule of court, shall be extended, after service by facsimile transmission, by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(f) The copy of the notice or other paper served by facsimile transmission pursuant to this chapter shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted, or to be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice or other paper was transmitted.

(g) Electronic service shall be permitted pursuant to Section 1010.6 and the rules on electronic service in the California Rules of Court.

(h) Subdivisions (b), (d), and (f) are directory.

(Amended by Stats. 2022, Ch. 686, Sec. 2. (AB 1726) Effective January 1, 2023.)