

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMES D. CONLEY,

Respondent.

Case No. 15-0002

OAH No. 2015050395

**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 Oct 10, 2015.

IT IS SO ORDERED this 10 day of Sept, 2015

By: Edward Rubin

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMES DALLON CONLEY,

Paramedic License No. P17705,

Respondent.

EMSA No. 15-0002

OAH No. 2015050395

**PROPOSED DECISION**

This matter was heard before Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 17, and August 6, 2015, in Sacramento, California.

Stephen Egan, Senior Staff Counsel, represented Sean Trask (complainant), Chief, Emergency Medical Services Personnel Division, Emergency Medical Services Authority (EMSA).

James D. Conley (respondent) appeared on June 17, 2015, and represented himself.

On June 17, 2015, respondent requested a continuance of the hearing to obtain counsel to represent him. Complainant objected to the continuance because he had subpoenaed two out-of-town witnesses to testify. The continuance was denied, however, the hearing was bifurcated to allow complainant to present evidence on June 17, 2015, and respondent to present his case on August 6, 2015.

On August 6, 2015, respondent failed to appear. Complainant submitted the remainder of his documentary evidence and made closing arguments. The record was closed and the matter was submitted.

**FACTUAL FINDINGS**

1. On March 25, 2015, complainant made and filed this Accusation in his official capacity. Respondent timely requested a hearing by filing a Notice of Defense. An administrative hearing was held pursuant to Government Code section 11505.

2. On June 20, 2001, EMSA issued respondent an Emergency Medical Technician-Paramedic (Paramedic) license, No. P17705. The license, which lapsed on June 30, 2015, was in full force and effect at all times relevant to this matter.

3. At all times relevant, the Oakland City Fire Department was respondent's employer.

4. Respondent's license allowed him to perform various medical procedures, including advanced life support, while at the scene of a medical emergency, during transport of an injured or ill person to a medical facility, or during transfer of a patient between medical facilities. Respondent held his license at the time he committed the acts set forth below.

#### *Corrupt Act*

5. On January 1, 2015, respondent was arrested for a violation of Penal Code section 242 (battery). Respondent chose to complete a diversion program and the charge was dismissed.

6. The circumstances underlying the arrest occurred on June 15, 2014, at approximately 1:20 p.m., when respondent, with his minor son, went to a Batteries and Bulbs store in Vacaville, California, to return a battery. Respondent had paid cash for the battery and wanted cash back in return. The cashier explained that store policy did not allow cash returns over \$20. Respondent became upset. To resolve the issue, the cashier processed a credit to respondent's bank card for the entire purchase price of the battery. With the transaction complete, respondent began walking towards the front door of the store with his son. On his way out, a store clerk standing near the front door said to respondent, "have a nice day."

Respondent left the store briefly, reentered, and charged the store clerk. With his son watching, respondent grabbed the clerk's shoulders, picked him up, and shoved him up against an end display unit, almost impaling the clerk on the display rods. Respondent stood chest to chest with the clerk, wagged his finger the clerk's face, and with a loud, raised voice said: "don't say shit to me." Another store clerk got in between the two men and attempted to separate them. Respondent turned and left the store with his son. Police responded later, took statements, and observed bruises and scrapes on the clerks involved in the incident.

7. Respondent did not testify at hearing; as such, no rehabilitation evidence was received. In closing, complainant argued for a 90-day suspension, three to five years' probation, individual counseling, and anger management classes for respondent.

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## LEGAL CONCLUSIONS

### *Applicable Statutes and Regulations*

1. The statutes and regulations which govern the licensing of Paramedics are contained at Health and Safety Code section 1797 et seq. and California Code of Regulations, title 22, section 100135 et seq.

2. Health and Safety Code section 1798.200, subdivision (c)(5), provides that the EMSA may discipline the license of a paramedic who has engaged in actions constituting a “threat to the public health and safety” including “[t]he commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.”

3. The California Code of Regulations, title 22, section 100174, subdivision (a), provides that:

For the purposes of denial, placement on probation, suspension, or revocation, of a license . . . [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.

### *Cause for Denial*

4. Under California Code of Regulations, title 22, section 100174, subdivision (a), respondent’s unwarranted battery on members of the public evidences a present and potential unfitness of a paramedic to perform the functions authorized by his license in a manner consistent with the public health and welfare. Therefore, respondent’s act is substantially related to the qualifications, functions, or duties of a paramedic.

5. Cause for discipline of respondent’s Paramedic license was established pursuant to Health and Safety Code section 1798.200, subdivision (c)(5), in that respondent’s behavior exhibited a threat to public health and safety when he battered members of the public.

### *Fitness for Licensure*

6. The Authority has issued Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines). These Guidelines state that the following factors shall be considered when determining the appropriate discipline: nature and severity of the act, as well as number and/or variety of current violations; actual or potential harm to the public or a patient; prior disciplinary record, including warnings on record or prior

remediation and any discipline imposed by the paramedic's employer for the same occurrence of that conduct; aggravating, mitigating, and rehabilitation evidence; in case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation; overall criminal record; time that has elapsed since the act; if applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4. (Cal. Code Regs., tit. 22, § 100173, subds. (c) & (d).)

7. Respondent did not testify at hearing. His failure to appear for the second day of hearing, which was organized at his request, shows a lack of concern for his licensure and his responsibilities as a paramedic. That said, no prior discipline was presented.

Respondent has completed his court mandated diversion program. It has been 14 months since the underlying incident and eight months since his arrest.

8. The Guidelines include maximum, minimum, and recommended discipline for each of the grounds for disciplinary action set forth in Health and Safety Code section 1798.200, subdivision (c). Complainant proved that respondent should be disciplined for a violation of Health and Safety Code section 1798.200, subdivisions (c)(5), because his behavior was a threat to public health and safety that is substantially related to the qualifications, functions, and duties of prehospital personnel. The recommended discipline set forth in the Guidelines for such conduct is a stayed revocation, 60-day suspension, and a three-year probation with standard probationary terms and conditions. Complainant argued for a 90-day suspension, three to five years' probation, counseling, and anger management classes.

### *Conclusion*

9. Respondent bears the burden of proving that he is currently of such good character that he does not pose a threat to the public that he serves. As set forth in Factual Finding 7, respondent did not provide any evidence of rehabilitation. As such, a suspension and a period of monitoring are necessary to assure EMSA that respondent no longer poses a risk to the public. When all of the evidence is considered, a 90-day suspension, three-year probation, and probationary terms and conditions are appropriate to ensure that the public health, safety and welfare are adequately protected.

### ORDER

License Number P17705 issued to respondent, James Conley, is revoked. However, such revocation is stayed and respondent is placed on a 90-day suspension, probation for three years, and the following terms and conditions:

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**1. Probation Compliance:**

Respondent shall fully comply with all terms and conditions of the probationary order. Respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of respondent's compliance with the terms and conditions of his probationary order.

Respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of respondent.

**2. Personal Appearances:**

As directed by the EMSA, respondent shall appear in person for interviews, meetings, and/or evaluations of respondent's compliance with the terms and conditions of the probationary order. Respondent shall be responsible for all of his costs associated with this requirement.

**3. Quarterly Report Requirements:**

During the probationary period, respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by respondent with all the terms and conditions of his probation. If respondent submits his quarterly reports by mail, they shall be sent by certified mail.

**4. Employment Notification:**

During the probationary period, respondent shall notify the EMSA in writing of any EMS employment. Respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, respondent shall submit proof in writing to the EMSA of disclosure, by respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of respondent's probation.

Respondent authorizes any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

Any and all notifications to the EMSA shall be by certified mail.

**5. Notification of Termination:**

Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of his termination.

Any and all notifications to the EMSA shall be by certified mail.

**6. Functioning as a Paramedic:**

The period of probation shall not run anytime that respondent is not practicing as a paramedic within the jurisdiction of California. If respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, respondent must immediately notify the EMSA, in writing, of the date of such departure and the date of return to California, if respondent returns.

Any and all notifications to the EMSA shall be by certified mail.

**7. Obey All Related Laws:**

Respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Health and Safety Code section 1798.200. To permit monitoring of compliance with this term, if respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Within 72 hours of being arrested, cited or criminally charged for any offense, respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the offense(s) as to whether respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

Any and all notifications to the EMSA shall be by certified mail.

**8. Completion of Probation:**

Respondent's license shall be fully restored upon successful completion of probation.

**9. Violation of Probation:**

If during the period of probation respondent fails to comply with any term of probation, the EMSA may initiate action to terminate probation and implement actual license suspension/revocation. Upon the initiation of such an action, or the giving of a notice to respondent of the intent to initiate such an action, the period of probation shall remain in effect until such time as a decision on the matter has been adopted by the EMSA. An action to terminate probation and implement actual license revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issues to be resolved at the hearing shall be limited to whether respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

**10. Ethical Practice of EMS:**

Within 90 days of the effective date of this decision, respondent shall submit to the EMSA, for its prior approval, a course in Ethics. Respondent must complete this course during his probation period.

Upon completion by respondent of the Ethics course, respondent shall submit proof to the EMSA that he fulfilled all course requirements.

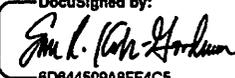
Any and all notifications to the EMSA shall be by certified mail.

**11. Stress/Anger Management:**

Within 90 days of the effective date of this decision, respondent shall enroll and participate in a local, court approved, stress/anger management program, which respondent shall complete during his probation. Upon completion by respondent of the approved program, respondent shall submit proof to the EMSA that he has fulfilled all course requirements.

Any and all notifications to the EMSA shall be by certified mail.

DATED: September 1, 2015

DocuSigned by:  
  
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ERIN R. KOCH-GOODMAN  
Administrative Law Judge  
Office of Administrative Hearings