

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical
Technician – Paramedic License Held by:

JAMES R. PINTUS,

License No. P28590,

Respondent.

Case No. 12-0172

OAH No. 2014070100

PROPOSED DECISION

Administrative Law Judge Debra D. Nye-Perkins, Office of Administrative Hearings, State of California, heard this matter in Riverside, California, on March 4, 2015.

Craig L. Stevenson, Senior Staff Counsel, represented complainant, Sean Trask, Chief of the Emergency Medical Services (EMS) Personnel Division of the Emergency Medical Services Authority (EMSA), State of California.

John H. Bakhit, Attorney at Law, represented respondent, James R. Pintus, who was present during the hearing.

This matter was submitted on March 4, 2015.

FACTUAL FINDINGS

Jurisdictional Matters and License History

1. On March 10, 2014, Sean Trask, Chief of the EMS Personnel Division of EMSA, issued the Accusation in the above-captioned matter in his official capacity. On March 31, 2014, respondent timely submitted a Notice of Defense.

2. On June 21, 2010, EMSA issued Emergency Medical Technician-Paramedic (EMT-P) license number P28590 to respondent. Respondent's license is valid through June 30, 2016, unless revoked. Respondent has no history of prior discipline on his EMT-P license.

Respondent's Conviction

3. On February 15, 2013, respondent was convicted, on his plea of guilty, of misdemeanor battery, defined as "any willful and unlawful use of force or violence upon the person of another," in violation of Penal Code 242, in the Riverside County Superior Court, Case No. BLM1200422. As a result of this conviction, the court placed respondent on three years' informal probation with various terms and conditions of probation, including requirements that respondent provide forty hours of community service through the Alternative Sentencing Program, pay victim restitution, pay fines and fees, not have any direct or indirect contact with Jennifer Wolfe (Klein), and obey all laws. Respondent successfully completed his community service within one month of being placed on probation.

On March 24, 2014, respondent filed a petition for dismissal of his conviction pursuant to Penal Code 1203.4. On April 11, 2014, the Riverside County Superior Court entered an Order of Dismissal whereby respondent's plea of guilty was vacated; a plea of not guilty was entered; and the complaint was dismissed.

Circumstances of Conviction

4. On March 27, 2012, respondent was taking a class at Blythe Ambulance Service, where he was employed as an Emergency Medical Technician (EMT). The class was given by Jennifer Wolfe, now Jennifer Klein¹, Clinical Education Manager for American Medical Response, the parent company to Blythe Ambulance Service. Ms. Klein did not work in the Blythe area and was not familiar with it. The class began in the morning and was scheduled to last until the end of the day. Before lunch, respondent sent text messages to Ms. Klein that were sexual in nature.

5. At lunchtime on March 27, 2012, respondent offered to give Ms. Klein a ride to a Subway restaurant. She accepted. Ms. Klein rode in the passenger seat of respondent's pickup truck as respondent drove to the Subway. Ms. Klein was wearing a skirt.

The drive to the Subway was uneventful, but on the drive back to Blythe Ambulance Service respondent put his hand on Ms. Klein's thigh and attempted to lift her skirt. In response, Ms. Klein pushed respondent's hand away and told him to stop. Respondent touched her thigh and attempted to raise her skirt three or four more times before arriving back at Blythe Ambulance Service. Each time, Ms. Klein told respondent to stop and pushed his hand away.

6. After they arrived back at Blythe Ambulance Service, Ms. Klein reported the incident to Paramedic Supervisor Mike Wallace. After Ms. Klein reported the incident,

¹ Jennifer Wolfe was married on March 20, 2014, and thereafter became Jennifer Klein.

respondent left the premises for the remainder of the day. Ms. Klein reported the incident to the Blythe Police Department later that day.

Testimony of Jennifer Klein

7. Jennifer Klein, formerly Jennifer Wolfe, is employed as an EMT course coordinator for Estrella Community College in Avondale, Arizona. She has held that employment since July 2014. Before that, she was employed by American Medical Response as Clinical Education Coordinator for four years. She has worked as an EMT and paramedic for at least fifteen years.

8. On March 27, 2012, Ms. Klein was teaching at Blythe Ambulance Service. The training was scheduled to last two days. Ms. Klein was the only instructor in a class of ten to fifteen students. On the morning of March 27, 2012, respondent sent several text messages to Ms. Klein. She testified that she did not think anything of the texts and did not understand them to be of a sexual nature. While she testified that respondent did not flirt with her before the return to Blythe Ambulance Service from Subway, the Blythe Police Report states that "Wolfe (Klein) also stated that Pintus was sending her text messages that were sexual in nature throughout the day, and made similar comments during class breaks which she just took as jokes and brushed them off."

9. Ms. Klein testified that she and respondent had a normal conversation while driving to the Subway. After arriving at the Subway and getting food, she and respondent got back into his pickup truck to return to Blythe Ambulance Service. On the return trip, respondent put his hand on Ms. Klein's thigh and attempted to push her skirt up. Ms. Klein stated that her legs were crossed and that respondent attempted to separate her legs. She pushed his hand away and told him to stop. Despite her protest, respondent repeated this behavior three or four more times. Ms. Klein testified that at one point she smacked respondent's hand while she was telling him to stop.

10. After returning to the Blythe Ambulance Service, respondent told Ms. Klein, "Well, I only have one more shot at this before we get back," after which he again attempted to lift her skirt. Ms. Klein hit him in an effort to make him stop. According to Ms. Klein, they both got out of the truck, respondent ran in front of Ms. Klein, and he prevented her from entering the classroom. He asked, "Did I get inside your head?" He prevented her from passing through the door, after which he smirked and permitted her to enter the building.

11. Ms. Klein reported the incident after she returned from the Subway. At some point soon thereafter, respondent left the premises and did not return to the class.

After she finished teaching the class that day, Ms. Klein reported the incident to the Blythe Police.

Investigation by Emergency Medical Services Authority

12. Dalayna Crawford is a special investigator for the EMS Authority. She conducted an investigation related to Ms. Klein's accusations and drafted a report that summarized her investigation on November 22, 2013.

13. Ms. Crawford interviewed respondent and Ms. Klein; she reviewed the Blythe Police Report; an incident report from Blythe Ambulance Service that included a statement from Ms. Klein and from respondent; and Riverside County Court Case No. BLM1200422.

14. Ms. Crawford's investigative report included a summary of her interviews with respondent and Ms. Klein. The interview summaries were consistent with Ms. Klein's and respondent's testimony in this hearing. Ms. Crawford concluded that respondent violated Health and Safety Code Section 1798.200, subdivision (c)(6), because he was convicted of a substantially related crime – battery – in violation of Penal Code section 242, "making him a threat to the public health and safety."

Testimony of James R. Pintus

15. Respondent is a 30-year-old firefighter employed by the Imperial County Fire Department. He applied for this employment in September 2012, before he was charged with a crime. Respondent received his Bachelor of Science degree in Fire Protection, with a minor in Administration, from California State University, Los Angeles in 2008. He began his career as an Emergency Medical Technician in 2003. He received his paramedic certificate and license in 2010.

16. After he was charged with battery in the Riverside County Superior Court, respondent informed his supervisor at the Imperial County Fire Department of the criminal charges. At that time, respondent was a probationary employee. In connection with being on probation, respondent was evaluated every three months. If he was released from his employment during probation for any reason, he had no recourse.

17. Respondent disputed Ms. Klein's testimony concerning the events on March 27, 2012. Specifically, he stated that before lunchtime, he made sexual advances to Ms. Klein by text and she seemed receptive. Respondent testified that he and Ms. Klein exchanged jokes of a sexual nature during breaks before lunchtime, and she seemed receptive to those exchanges.

18. Respondent admitted touching Ms. Klein's thigh in on the ride back from the Subway, but he claimed the touching was consensual and Ms. Klein did not object. He testified that Ms. Klein never expressed any disapproval of his touching while they were in the truck.

19. Respondent disputed Ms. Klein's testimony that he prevented her from entering the classroom after they returned from the Subway. He claimed that he simply opened the door for her so she could enter the classroom.

20. Respondent testified that he pled guilty to a simple battery on February 15, 2013, because he was afraid of the risk of being convicted of sexual battery under Penal Code 243.4, a conviction that would have required him to register as a sex offender. He said he entered a guilty plea to a simple battery in exchange for the dismissal of the sexual battery charge.

21. Since his conviction, respondent has learned to never mix his professional and personal life. He has married and is in a committed relationship with his wife. He testified that he has no reason to ever make any sexual advance to any woman now that he is married.

Respondent's Documentary Evidence

22. Respondent provided five performance evaluations, four of which were from his current employer, the Imperial County Fire Department. One performance evaluation was from Blythe Ambulance Service.

The performance evaluation from Blythe Ambulance Service was dated June 27, 2011, and stated that respondent either met or exceeded expectations in his position as a paramedic.

The four performance evaluations from the Imperial County Fire Department stated that respondent met all expectations. The November 14, 2013, performance evaluation stated that respondent exceeded expectations for the task of training and providing instruction to hourly and volunteer personnel. The January 30, 2014, performance evaluation stated that respondent exceeded expectations for the task of providing emergency medical treatment for sick and injured individuals and for the rescue and evacuation of persons in dangerous and life-threatening situations.

23. Respondent provided a letter of reference from Tony Rouhotas, Jr., the Fire Chief of the Imperial County Fire Department.

Respondent testified that after he was charged in the criminal case, he told Mr. Rouhotas that he was charged with a misdemeanor battery, but he did not tell Mr. Rouhotas about the nature of the conviction or provide any specific information regarding the circumstances of the offense.

Mr. Rouhotas's letter stated that respondent was an asset to the Imperial County Fire Department and brought "a true ethic-based mannerism with his job performance." The letter stated that respondent "meets and actually exceeds my expectations" for his current

position as firefighter. The letter stated that Mr. Rouhotas holds respondent to a high standard and that he has nothing negative to say about respondent.

24. Salvador Flores, a Fire Captain with the Imperial County Fire Department and respondent's current supervisor, submitted a letter of reference.

Respondent testified that after he was charged in the criminal case, he told Mr. Flores the specific details of the allegations. Respondent also told Mr. Flores about his conviction and all the circumstances related to it.

Mr. Flores's letter states that he was "aware of [respondent's] misdemeanor during the respondent's probation year," the first year of his employment with the Imperial County Fire Department. The letter stated that respondent's work as a paramedic and firefighter met and surpassed the department's requirements. Mr. Flores's letter further stated that respondent's "behavior as an employee have [sic] never left any area for concern [H]e is a person of high moral standards and always respectful." The letter also stated, "I have had the honor of meeting his beautiful family and have observed a healthy home with high values."

25. Respondent provided a letter of explanation to EMSA, dated July 12, 2013, in which he explained the circumstances related to the March 27, 2012, incident. The content of that letter was consistent with his testimony in this matter. The July 12, 2013, letter stated that respondent voluntarily resigned his employment with the Blythe Ambulance Serve to avoid having contact with Ms. Klein. He said he submitted his resignation by email on March 29, 2012. His letter to EMSA included documents demonstrating his completion of the community service requirements and a certificate of completion for a paramedic refresher course that provided him with 48 hours of continuing education credits.

LEGAL CONCLUSIONS

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

2. EMSA has jurisdiction to proceed in this matter pursuant to Health and Safety Code section 1798.200.

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. Board of Medical 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 licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (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:

[¶]...[¶]

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or certified copy of the record shall be conclusive evidence of the conviction.

[¶]...[¶]

5. 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, a crime or act must be substantially related to the qualifications, functions or duties of a person holding a paramedic license under Division 2.5 of the Health and Safety Code. A crime or 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 her or his license in a manner consistent with the public health and safety. (Cal. Code Regs., tit. 22, § 100175, subd. (a).)

EMSA's Disciplinary Guidelines

6. EMSA developed "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" dated July 26, 2008 (Guidelines), which are incorporated by reference in EMSA's regulations at California Code of Regulations, title 22, section 100173.

Section III of the Guidelines sets forth categories of violations and the recommended level of discipline for each category, which are incorporated in the EMSA regulations at California Code of Regulations, title 22, section 100208. For conviction of any crime that is substantially related to the qualifications and duties of prehospital personnel, the maximum penalty is revocation; the recommended discipline varies depending on the nature of the crime; the minimum discipline is revocation stayed and one year probation with terms and conditions (Guidelines, p. 6.)

Section II of the Guidelines sets forth factors to be considered when determining the appropriate discipline to be imposed in a given case. The factors include: the nature and severity of the act, offense, or crime under consideration; the actual or potential harm to the public or any patient; prior disciplinary record; prior warnings on record or prior remediation; the number and/or variety of current violations; aggravating evidence; mitigating evidence; any discipline imposed by the paramedic's employer for the same occurrence of that conduct; rehabilitation evidence; in cases with a criminal conviction, compliance with the terms of the sentence or court-ordered probation; overall criminal record; time that has elapsed since the act or offense occurred; and, if applicable, evidence of expungement proceedings under Penal Code section 1203.4. (Guidelines, pp. 1-2.)

Cause Exists to Discipline Respondent's EMT-P License

7. Cause exists to discipline respondent's EMT-P license pursuant to Health and Safety Code section 1798.200, subdivision (c)(6). Respondent was convicted of misdemeanor battery on February 15, 2013. Under Health and Safety Code section 1798.200, subdivision (c), and based on the nature of the offense and the facts and circumstances surrounding that offense, it is determined that respondent's conviction is substantially related to the qualifications, functions and duties of a paramedic.

Evaluation Regarding the Degree of Discipline

8. Respondent has no prior disciplinary record. He has no other criminal conviction. It has been only two years since his conviction and three years since the incident occurred that resulted in his conviction. Respondent has obtained expungement of his conviction under Penal Code 1203.4. The circumstances of his conviction are very serious. However, respondent has worked diligently to establish himself as a reliable, moral and safe firefighter with the Imperial County Fire Department, and he has received very positive reviews from his direct supervisor, who is aware of the circumstances of his conviction. He has since married and has established a stable home and family.

9. Based upon an evaluation of the factors set forth in the Guidelines and California Code of Regulations, title 22, section 100208, and given persuasive evidence of respondent's progress toward rehabilitation, respondent's license should be revoked, the order of revocation should be stayed, and respondent should be placed on probation for a period of one year. Terms and conditions of probation will require respondent to remain law abiding, to report any arrest within 72 hours, to disclose the fact of the probationary status of

his paramedic license and the reason for it to his employer and immediate supervisor, and to complete an approved ethics course. This measure of discipline will adequately protect the public.

ORDER

EMT-P License No. P28590 issued to respondent, James R. Pintus, is revoked; however, the order of revocation is stayed, and respondent is placed on one year probation upon the following terms and conditions:

1. **Probation Compliance**

Respondent shall fully comply with all terms and condition of the probationary order. Respondent shall fully cooperate with the local EMS agency (LEMSA) 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 LEMSA and Release all Information forms that the LEMSA may require of respondent.

2. **Personal Appearances**

As directed by the LEMSA, 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 payment of 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, it shall be sent as registered mail.

4. **Employment Notification**

During the probationary period, respondent shall notify the LEMSA in writing of any EMS employment. Respondent shall inform the LEMSA 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 LEMSA 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 shall direct any EMS employer to submit performance evaluations and other reports which the LEMSA may request that relate to the qualifications, functions, and duties of a paramedic, an EMT-I and/or AEMT.

Any and all notifications to the LEMSA shall be by registered mail.

5. Notification of Termination

During the probationary period, respondent shall notify the LEMSA 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 LEMSA shall be by registered mail.

6. Functioning as a Paramedic, an EMT-I or AEMT

The period of probation shall not run anytime that respondent is not practicing as a paramedic, an EMT-I or AEMT within the jurisdiction of California.

If respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, EMT-I or AEMT, respondent must immediately notify the LEMSA, in writing, of the date of such departure and the date of return to California, if he returns.

Any and all notifications to the LEMSA shall be by registered mail.

7. Obey All Related Laws

Respondent shall obey all federal, state, and local laws, statutes, regulations, and local written policies, protocols and rules governing the practice of medical care as a paramedic, an EMT-I or AEMT. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if respondent has not submitted fingerprints to the LEMSA in the past as a condition of certification, then he shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within forty-five (45) days of the effective date of this decision.

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

Any and all notifications to the LEMSA shall be by registered mail.

8. Ethical Practice of EMS

Within 90 days of the effective date of this decision, respondent shall submit to the LEMSA, 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 LEMSA that he fulfilled all course requirements.

Any and all notifications to the LEMSA shall be by registered mail.

9. Violation of Probation

If, during the period of probation, respondent fails to comply with any term of probation, the LEMSA may initiate action to terminate probation and implement actual certificate 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 LEMSA. An action to terminate probation and implement actual certificate suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of either Chapter 6 of the California Code of Regulations, Title 22, Division 9, or the California Administrative Procedure Act, whichever process was used by the LEMSA.

The issues to be resolved 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. Respondent and the LEMSA 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. Completion of Probation

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

DATED: March 30, 2015.


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