

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

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

ANTHONY RIVERA,
License No. P21451

Respondent.

Case No. 10-0344

OAH No. 2010120730

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 7, 2011, in San Diego, California.

Cynthia L. Curry, Senior Staff Counsel, Emergency Medical Service Authority, State of California, represented Complainant, Sean Trask, Chief, Emergency Medical Service Personnel Division, Emergency Medical Services Authority, State of California (Authority).

Eduardo A. Rivera, Attorney at Law, represented Anthony Rivera (Rivera or Respondent), who was present throughout the administrative hearing.

On January 10, 2011, the matter was submitted after additional documents requested by the court were received.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 3, 2010, the Accusation was signed on behalf of Complainant, Sean Trask, Chief, Emergency Medical Service Personnel Division, Emergency Medical Services Authority, State of California. The Accusation and an Order for Temporary Suspension Pending Hearing was served on respondent based on respondent's failure to renew his paramedic license, his failure to possess a current California paramedic license and his failure to possess accreditation from the local Emergency Medical Services (EMS) agency while working as a paramedic for the Calexico Fire Department in Imperial County, California. Respondent stipulated to all the facts in the Accusation, except that he denied the allegations which asserted that when he was interviewed by an investigator from the EMSA on November 18, 2010, he had allowed and knew that his license had lapsed when he

performed Advanced Life Support Services (ALS) as an EMT Paramedic. Respondent timely filed a notice of defense and requested a hearing.

On January 7, 2010, the record was opened, jurisdictional documents were provided, documentary evidence was produced, sworn testimony was taken, and closing arguments were given. On January 10, 2010 additional documents requested by the court were received and the matter was submitted.

Stipulated Facts

All parties stipulated to the truth of the following matters:

2. At all times relevant, Rivera worked as a paramedic for Calexico Fire Department in Imperial County, California. Rivera provided Advance Life Support (ALS) procedures.

3. Possession of a valid paramedic license and accreditation from a local EMS agency are prerequisites to functioning as a paramedic and performing ALS procedures in the State of California.

4. On August 19, 2004, Rivera received his Paramedic license, which was valid through August 31, 2006. Thereafter, Rivera applied for and received a renewal license that was valid through August 31, 2008.

5. From August 31, 2008 through the present, Rivera possessed neither a valid California paramedic license nor valid accreditation from Imperial County EMS Agency to function as a paramedic.

Rivera's Testimony

6. Rivera readily admitted that he failed to properly renew his EMT license. He testified that he mailed copies of all his certificates of establishing that he had completed continuing educational courses and a check to pay for the due/fees owed to the State. He believed he had complied with all renewal requirements since he did not hear from the State after submitting the certificates and fees. In addition, during time he believed his license was renewed, he was busy completing the procedures and testing related to his anticipated promotion to the position of Captain in the Calexico Fire Department. Rivera did not intend to let his license lapse. While Rivera said he completed all required continuing education courses to obtain a renewed license and sent certificates of completion and a bank check for renewal, he did not provide evidence of a canceled check or bank records to support that claim. Rivera provided copies of certificates related to the completion of the continuing educational courses, which would have satisfied renewal requirements. Rivera continued to practice as an EMT without a valid license until the base hospital raised the renewal issue in November 2010. Once Rivera became aware of the lapsed license, he initially concluded that he would only be required to pay a late fee in order to have his license reinstated.

Rivera provided documentary evidence indicating that in the summer of 2008, he changed his place of residence three times. Rivera did not notify the State of his changes of address information. He took full responsibility for this oversight. Because he never received any documents from the State regarding his paramedic license, Rivera believed everything was in order. He is now aware of the severe consequences related to the failure to properly renew his license. As a result of this incident, Rivera was reassigned.

On December 3, 2010, an Order for Temporary Suspension Pending Hearing was issued.

Except for the incident giving rise to this Accusation, Rivera has never been reprimanded, disciplined, or given any type of warning related to his functioning as an EMT-Paramedic. He reasonably believed that he was current with all the requirements of license renewal based on the numerous continuing education courses he completed from 2008 to the present. He expressed how honored and privileged he has been to be able to serve in the fire and EMS field for the past 9 years. In addition, the fact that Rivera's employer was promoting him to Captain provided additional evidence that Mr. Rivera conducted himself in professional manner worthy promotion.

Mr. Rivera expressed sincere remorse and was visibly distraught throughout the proceedings. He is willing to meet and comply with any condition of probation and he promised to meet required standards at the highest level. His testimony was sincere and believable.

Cedric Cesena's Testimony

7. Cedric Cesena, an EMS Manager in Quality Improvement, County of Imperial, became aware of Rivera's lapsed license on November 12, 2010, as a result of being contacted by Darin Smith, the base hospital coordinator, who reviewed respondent's licensed status on the EMS website. On November 15, 2010, Cesena prepared a memorandum that addressing the issue of the lapsed license. An investigation immediately followed, which resulted in a finding that Rivera performed ALS duties when his license had lapsed. When Cesena asked Rivera about his licensed status, Rivera told Cesena that he had enough CEU to recertify and that he had sent renewal paperwork to the state in a timely fashion. In addition, Rivera told Cesena about his multiple address changes during the last certification period. Rivera told Cesena that it was possible that his paperwork was lost in the mail. Cesena's testimony was straightforward and direct.

Peter Mercado's Testimony

8. Peter Mercado is the Fire Chief for the City of Calexico's Fire Department. Once Mercado found out that Rivera's license lapsed, Rivera was reassigned. Mercado was very familiar with the quality of Rivera's work and he had recommended Rivera for promotion to the position of Fire Captain. In the memo, Mercado confirmed that Rivera participated in many exams for the promotion and that Rivera attained the highest score on the written exam. The memorandum noted that Rivera's performance in the assessment

center exercise, which consisted of a simulated emergency where Rivera's ability to manage an emergency, was outstanding. Rivera's results on the oral interview were deemed "superior" by the evaluation panel. Mercado looked forward to having Rivera as a member of his supervising team and Mercado highly recommended Rivera for the position of Fire Captain. Mercado's testimony was believable and provided insight into Rivera's clinical skills and commitment. Mercado's testimony also supported and corroborated Respondent's testimony concerning the time and effort he spent in obtaining the promotion.

Letter of Recommendations and Performance Evaluation

9. Rivera provided letters of recommendation from supervisors and co-workers. Fire Captain Diego Favila had known respondent for many years and believed Rivera was ethical, dedicated, honest, professional and compassionate. Fire Captain Gonzalez had known Rivera on a personal and professional basis for more than nine years. He worked in the field with Rivera and witnessed his professionalism with co-workers and the public. He considered Rivera a valuable and loyal firefighter. Geovanni Raygosa, a Firefighter/EMT for Calexico, was trained by Rivera. Raygosa described Rivera as a valued mentor with a vast clinical knowledge. He described Rivera as a true professional, a natural leader, and a master of critical thinking and decision-making.

In 2006, Rivera was Employee of the Quarter and received a Certificate of Appreciation. In November 11, 2010 Rivera was recommended for promotion to Fire Captain. By all accounts, Rivera demonstrated outstanding clinical skills that were further supported by the impressive performance evaluations. Rivera demonstrated competence and took great pride in his work.

LEGAL CONCLUSIONS

Statutory Authority

1. California Health and Safety Code section 1797 states:

This division shall be known and may be cited as the Emergency Medical Services System and the Pre-hospital Emergency Medical Care Personnel Act.

2. California Health and Safety Code section 1797.1 states:

The Legislature finds and declares that it is the intent of this act to provide the state with a statewide system for emergency medical services by establishing within the Health and Welfare Agency the Emergency Medical Services Authority, which is responsible for the coordination and integration of all state activities concerning emergency medical services.

3. California Health and Safety Code section 1797.52 states:

“Advanced life support” means special services designed to provide definitive pre-hospital emergency medical care, including, but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of specified drugs and other medicinal preparations, and other specified techniques and procedures administered by authorized personnel under the direct supervision of a base hospital as part of a local EMS system at the scene of an emergency, during transport to an acute care hospital, during interfacility transfer, and while in the emergency department of an acute care hospital until responsibility is assumed by the emergency or other medical staff of that hospital.

4. California Health and Safety Code section 1797.172 states in part:

(a) The authority shall develop and, after approval by the commission pursuant to Section 1799.50, adopt minimum standards for the training and scope of practice for EMT-P.

(b) The approval of the director, in consultation with a committee of local EMS medical directors named by the EMS Medical Directors Association of California, is required prior to implementation of any addition to a local optional scope of practice for EMT-Ps proposed by the medical director of a local EMS agency.

(c) Notwithstanding any other provision of law, the authority shall be the agency solely responsible for licensure and licensure renewal of EMT-Ps who meet the standards and are not precluded from licensure because of any of the reasons listed in subdivision (d) of Section 1798.200. Each application for licensure or licensure renewal shall require the applicant's social security number in order to establish the identity of the applicant. The information obtained as a result of a state and federal level criminal offender record information search shall be used in accordance with Section 11105 of the Penal Code, and to determine whether the applicant is subject to denial of licensure or licensure renewal pursuant to this division. Submission of fingerprint

images to the Department of Justice may not be required for licensure renewal upon determination by the authority that fingerprint images have previously been submitted to the Department of Justice during initial licensure, or a previous licensure renewal, provided that the license has not lapsed and the applicant has resided continuously in the state since the initial licensure.

(d) The authority shall charge fees for the licensure and licensure renewal of EMT-Ps in an amount sufficient to support the authority's licensure program at a level that ensures the qualifications of the individuals licensed to provide quality care. The basic fee for licensure or licensure renewal of an EMT-P shall not exceed one hundred twenty-five dollars (\$125) until the adoption of regulations that specify a different amount that does not exceed the authority's EMT-P licensure, license renewal, and enforcement programs. The authority shall annually evaluate fees to determine if the fee is sufficient to fund the actual costs of the authority's licensure, licensure renewal, and enforcement programs. If the evaluation shows that the fees are excessive or are insufficient to fund the actual costs of the authority's EMT-P licensure, licensure renewal, and enforcement programs, then the fees shall be adjusted accordingly through the rulemaking process described in the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Separate additional fees may be charged, at the option of the authority, for services that are not shared by all applicants for licensure and licensure renewal, including, but not limited to, any of the following services:

(1) Initial application for licensure as an EMT-P.

(2) Competency testing, the fee for which shall not exceed thirty dollars (\$30), except that an additional fee may be charged for the cost of any services that provide enhanced availability of the exam for the convenience of the EMT-P, such as on-demand electronic testing.

(3) Fingerprint and criminal record check. The applicant shall, if applicable according to subdivision (c), submit fingerprint images and related information for

criminal offender record information searches with the Department of Justice and the Federal Bureau of Investigation.

(4) Out-of-state training equivalency determination.

(5) Verification of continuing education for a lapse in licensure.

. . .

(f) At the option of the authority, fees may be collected for the authority by an entity that contracts with the authority to provide any of the services associated with the EMT-P program. All fees collected for the authority in a calendar month by any entity designated by the authority pursuant to this section to collect fees for the authority shall be transmitted to the authority for deposit into the Emergency Medical Services Personnel Fund within 30 calendar days following the last day of the calendar month in which the fees were received by the designated entity, unless the contract between the entity and the authority specifies a different timeframe.

5. California Health and Safety Code section 1797.177 states:

No individual shall hold himself or herself out to be an EMT-I, EMT-II, EMT-P, or paramedic unless that individual is currently certified as such by the local EMS agency or other certifying authority.

6. California Health and Safety Code section 1797.178:

No person or organization shall provide advanced life support or limited advanced life support unless that person or organization is an authorized part of the emergency medical services system of the local EMS agency or of a pilot program operated pursuant to the Wedworth-Townsend Paramedic Act, Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2

7. California Health and Safety Code section 1798.200 subdivisions (b), (c) (7) state in part:

. . .

(b) The authority may deny, suspend, or revoke 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). Proceedings against any EMT-P license or license holder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(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 license holder 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 pre-hospital personnel.

. . .

Regulatory Authority

8. Title 22, California Code of Regulations section 100145 states in part:

(a) A paramedic may perform any activity identified in the scope of practice of an EMT-I in Chapter 2 of this Division, or any activity identified in the scope of practice of an EMT-II in Chapter 3 of this Division.

(b) A paramedic shall be affiliated with an approved paramedic service provider in order to perform the scope of practice specified in this Chapter.

(c) A paramedic student or a licensed paramedic, as part of an organized EMS system, while caring for patients in a hospital as part of his/her training or continuing education under the direct supervision of a physician, registered nurse, or physician assistant, or while at the scene of a medical emergency or during transport, or during interfacility transfer, or while working in a small and rural hospital pursuant to Section 1797.195 of the Health and Safety Code, may perform the following procedures or administer the following medications when such are approved by the medical director of the local EMS agency and are included in the written policies and procedures of the local EMS agency.

(1) Basic Scope of Practice:

. . .

(C) Perform pulmonary ventilation by use of lower airway multi-lumen adjuncts, the esophageal airway, stomal intubation, and adult oral endotracheal intubation.

. . .

(E) Administer intravenous glucose solutions or isotonic balanced salt solutions, including Ringer's lactate solution.

. . .

(G) Use glucose measuring device.

9. Title 22, California Code of Regulations section 100165, subdivision (a)(1) provides:

(a) In order to be accredited an individual shall:

(1) Possess a current California paramedic license.

10. Title 22, California Code of Regulations section 100174, subdivision (a) provides:

(a) 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.

Disciplinary Guidelines EMS Authority

The disciplinary guidelines contain factors that should be considered when determining the appropriate discipline. The factors include:

1. Nature and severity of the act;
2. Actual or potential harm to the public;
3. Prior disciplinary record;
4. Prior warning on record or prior remediation;
5. Number and or/variety of current violations;
6. Mitigating evidence;
7. Any discipline imposed by the paramedic's employer for the same occurrence of that conduct;
8. Aggravating evidence.

Evaluation

Rivera has no prior disciplinary record, no prior warnings, and no prior remediation. Rivera was a valued and loyal employee who was in the process of being promoted to Fire Captain. Rivera admitted that he failed to properly renew his license, that he failed to notify the State of his new addresses as required, and that he failed to comply with all requirements

for accreditation. These acts are substantially related to the qualifications, functions and or duties of a person holding a paramedic license because possessing a valid and current paramedic license and accreditation from a local emergency medical services agency is a prerequisite to functioning as a paramedic and performing ALS procedures in California. Rivera missed two renewal application periods, once in 2008 and once in 2010. When Rivera became aware of the situation, he erroneously believed that he would be able to pay a late fee and that his license would be reinstated. Evidence showed he was not accredited by the Imperial County Emergency Medical Services Agency when he was working for Calexico City Fire Department. However, the fact that his employer was initiating the steps to promote Rivera to Captain, constituted strong evidence that Mr. Rivera was conducting himself in a safe and competent manner worthy of a promotion. No evidence suggested Rivera attempted to deceive his employer. Rivera was never reprimanded for any patient care issues and he provided proof of his continuing education that demonstrated his belief that he was currently licensed. Under the circumstances, the public will be protected by placing Rivera on three years probation.

Cause Exists to Impose a Probationary License upon Rivera

11. Cause exists to impose discipline. It would not be contrary to the public interest to place Rivera on probation for a period of three years on standard terms and conditions of probation and special terms of probation that require Rivera to submit an application with any associated fees, to obtain accreditation and certification as required, and to notify the Authority of his current address. Imposing an outright revocation would, under the circumstances, simply involve punishment and would not serve to protect the public.

This conclusion is based on all factual findings and on all legal conclusions.

ORDER

Emergency Medical Technician-Paramedic License No. P21451 issued to Respondent, Anthony Rivera, is revoked; however, the order of revocation is stayed and Respondent's license is placed on three years probation and is subject to the following terms and conditions of probation:

1. **Probation Compliance:**

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

Respondent shall immediately execute and submit to the EMSA all Releases 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 cost 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 shall authorize any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of pre-hospital personnel.

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

5. Notification of Termination:

Respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his pre-hospital 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 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 the 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 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 of 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 issue to be resolved at the hearing shall be limited to whether respondent violated any term of his probation sufficient to warrant termination of probation and implementation of actual 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. Submit an Application with Fees:

Within 10 days of the effective date of the decision, respondent shall submit a valid paramedic application with any and all fees, including any associated late fees. Included in the application will be copies of any and all the continuing educational courses completed from August 31, 2008 to the present. In order to maintain the paramedic license, respondent

must renew his license every two years using the forms provided by the Authority pursuant to Title 22, California Code of Regulations, section 100143.

Any and all notification to EMSA shall be by certified mail.

11. **Obtain Accreditation and Certification to Practice in Local EMS:**

Within 30 days of the effective date of the decision, respondent shall provide evidence of accreditation by the local EMS agency within the jurisdiction where he works pursuant to Title 22, California Code of Regulations, section 100142. Also within 30 days of the effective date of the decision, respondent shall possess a current certification from the local certifying entity pursuant to California Health and Safety Code sections 1797.177 and 1797.178.

Any and all notification to EMSA shall be by certified mail.

12. **Provide Current Address to Authority:**

Within 10 days of the effective date of the decision, respondent shall provide the Authority of his current mailing address. Respondent shall notify the Authority of any changes of the official or current mailing address, providing his name, license number, the old address and the new address within 30 days pursuant to Title 22, California Code of Regulations section 100164 subdivision (g).

Any and all notification to EMSA shall be by certified mail.

DATED: January 20, 2011



CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings