BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician – Paramedic License Held by:	Enforcement Matter No. 09-0184
JOHN A. ARMSTRONG,	OAH Case No. 2009100019
License Number P20453,	
Respondent.	

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on October 23, 2009, in Los Angeles, California.

Cynthia L. Curry, Senior Staff Counsel, represented Nancy Steiner (Complainant), Chief of the EMS Personnel Division, Emergency Medical Services Authority, State of California.

Ronald Richards, Attorney at Law, represented John A. Armstrong (Respondent). Respondent was present.

The parties submitted the matter for decision on October 23, 2009.

FACTUAL FINDINGS

1. On or about September 16, 2009, Complainant, acting in her official capacity, filed the Accusation. On or about September 28, 2009, Respondent filed the Notice of Defense.

2(a). The California Emergency Medical Services Authority of the State of California (the Authority) issued emergency medical technician – paramedic license number P20453 to Respondent on October 15, 2003. It expires on October 31, 2009, unless renewed, though as noted in Factual Finding 2(b), Respondent's license has been suspended pending the Authority's decision in this matter. The evidence did not establish whether Respondent had renewed or intended to renew his license.

2(b). On September 16, 2009, R. Steven Tharratt, M.D., MPVM, Director of the Authority issued an Order for Temporary Suspension Pending Hearing. The Director was apprised of facts describing the events set forth in the Factual Findings above, and found that

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician – Paramedic License Held by: JOHN A. ARMSTRONG, License Number P20453, Respondent.	Enforcement Matter No.: 09-0184 OAH No.: 2009100019

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 12/30/09.

IT IS SO ORDERED 12/2/09.

EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

By _____

rfm

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician – Paramedic License Held by:	Enforcement Matter No. 09-0184
JOHN A. ARMSTRONG,	OAH Case No. 2009100019
License Number P20453,	
Respondent.	

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on October 23, 2009, in Los Angeles, California.

Cynthia L. Curry, Senior Staff Counsel, represented Nancy Steiner (Complainant), Chief of the EMS Personnel Division, Emergency Medical Services Authority, State of California.

Ronald Richards, Attorney at Law, represented John A. Armstrong (Respondent). Respondent was present.

The parties submitted the matter for decision on October 23, 2009.

FACTUAL FINDINGS

1. On or about September 16, 2009, Complainant, acting in her official capacity, filed the Accusation. On or about September 28, 2009, Respondent filed the Notice of Defense.

2(a). The California Emergency Medical Services Authority of the State of California (the Authority) issued emergency medical technician – paramedic license number P20453 to Respondent on October 15, 2003. It expires on October 31, 2009, unless renewed, though as noted in Factual Finding 2(b), Respondent's license has been suspended pending the Authority's decision in this matter. The evidence did not establish whether Respondent had renewed or intended to renew his license.

2(b). On September 16, 2009, R. Steven Tharratt, M.D., MPVM, Director of the Authority issued an Order for Temporary Suspension Pending Hearing. The Director was apprised of facts describing the events set forth in the Factual Findings above, and found that

Respondent "engaged in acts that constitute grounds for revocation of his [paramedic] license and that permitting him to continue to engage in the activity allowed by his . . . license, or permitting him to continue in the activity allowed by his . . . license without restriction, would present an imminent threat to the public health and safety."

3. Complainant contends Respondent's emergency medical technician – paramedic license should be revoked for committing a corrupt act, unprofessional conduct, and committing an offense specified in Penal Code section 290.

4. Respondent contends his actions do not merit any license discipline.

5. On May 30, 2009, Respondent was participating in work-related training, and spent the night at the house of a colleague, in or around Palm Desert, California. Respondent was 36 years old at that time. During the evening, while at the house, Respondent drank approximately nine beers over five hours. The evidence did not establish that Respondent was inebriated. Respondent interacted with his colleague and his colleague's 16-year-old daughter, among others.

6. In the evening, on May 30, 2009, Respondent laid down on the living room floor to sleep. Respondent's colleague had originally offered Respondent his daughter's bedroom to sleep in, while his daughter would sleep in the living room, but Respondent declined and arranged to sleep in the living room himself. In the late evening, the daughter entered the living room presuming she would sleep there. Respondent explained that he intended to sleep in the living room, and told her she could return to her room. The girl stayed in the living room and she and Respondent began to talk about general matters.

7(a). At hearing, Respondent admitted to making several comments to the girl and touching her as set forth below.

7(b) Respondent talked to the girl about her boyfriend and inquired whether she was sexually active or abstinent. During this discussion, Respondent told the girl, "if you can masturbate, you can wait." He explained that this was a phrase he recalled from his time in the Navy. He claimed that by saying this to the girl, he was promoting abstinence. He denied asking the girl if she masturbated.

7(c). Respondent told the girl she was attractive and stated that she was "smoking hot." He explained that he used those words to make her feel good about herself. He further explained that he used the same words (smoking hot) to describe work-related things, like his firefighter boots and embers, and so such words were part of his common speech.

7(d). Respondent stated that he accidentally touched the girl's buttocks. He explained that in getting up from the floor, while the girl was on a sofa just above Respondent, Respondent pushed himself up from the floor and his arm and/or elbow brushed the girl's buttocks inadvertently. He apologized to her and continued to rise. He denied intentionally grabbing her buttocks in any way.

7(e). Respondent stated that he touched the girl in the region of her stomach and belly button. He explained that, at one point during their conversation, he jabbed at her stomach area with his fingers, as if to awaken her or ensure she was listening to him. He denied that there was any sexual nature to such touching.

7(f). Respondent stated that he touched the region of the girl's knee, as they discussed knee surgeries. He explained that his touching was more like palpations as they discussed surgically placed pins in his own knee, and the type of knee surgery the girl had had in the recent past. He denied touching her thigh.

7(g). Respondent kissed the girl's hand. He explained that he did so to say goodnight.

7(h). Respondent denied ever touching the girl's breasts in any way.

8. The 16-year-old girl did not testify.

9. In or about June 2009, an investigator for the Riverside County Sheriff's Office Sexual Assault/Child Abuse Unit investigated Respondent's actions regarding the events of the evening of May 30, 2009.

10. During two pre-text telephone calls[1] on June 10 and 11, 2009, between Respondent and the 16-year-old girl's father, Respondent explained his actions with respect to the girl. During the telephone calls, he stated that he had kissed the girl's buttocks in a playful manner and did not do so in a sexual way. He stated that he accidentally touched the girl's breast with his hand. At hearing, Respondent did not deny his statements on the pre-text telephone calls and failed to explain the inconsistency between the statements he made during the pre-text telephone calls and his testimony (regarding how he touched the girl's buttocks and whether he touched the girl's breast at all).

11. On June 12, 2009, Respondent met with the Sheriff's investigator at the fire station where Respondent is employed. He admitted that he told the girl she had "a nice set of cans," referring to her breasts. He explained to the investigator that he meant the comment as a compliment, a confidence-builder that he believed a 16-year-old girl would like to hear. In explaining his kissing of the girl's buttocks, he stated, "I was being a smart ass and joking around." He further stated he was "just playing grab ass" with her, then said, "not grab ass" but "just bull shitting with a girl." In explaining his touching of the girl's stomach area and belly button area, he stated, "I thought she would giggle and chuckle and I could make light of the conversation . . . like a tickle." He admitted to the investigator that the conversation with the girl made him feel "horny" at the time.

---

[1] The investigator explained that the pre-text telephone calls were telephone calls he arranged between Respondent and the 16-year-old girl's father, with the investigator listening and recording the conversation unbeknownst to Respondent.

12. Respondent is married and has a four-year-old child. His wife considers him a good husband and father. Respondent's wife testified on his behalf, however, her testimony is not given full weight, as she has motivation to show her husband in the best light possible. (Evid. Code, § 780, subd. (f).)

13. Respondent has a reputation as a good paramedic and overall good employee. There was no evidence that he has a drinking problem. He has never been disciplined at work, nor does he have a criminal record. Respondent has repeatedly apologized to the girl's father, and has consistently asserted that he did not mean to disrespect the girl or his colleague.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200 states 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 . . . 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:

[¶] . . . [¶]

(5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.

[¶] . . . [¶]

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

[¶] . . . [¶]

(C) The commission of any sexually related offense specified under Section 290 of the Penal Code.

2. California Code of Regulations, title 22, section 100173, states in part:

(a) The authority shall deny/revoke a paramedic license if any of the following apply to the applicant:

(1) Has committed any sexually related offense specified under Section 290 of the Penal Code.

3. California Code of Regulations, title 22, section 100174, states in part:

(a) For purposes of . . . placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 of the Health and Safety Code . . . a[n] . . . act shall be substantially related to the qualifications, functions and/or duties of a person holding a paramedic license . . . . A[n] . . . 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. California Code of Regulations, title 22, section 100175, states in part:

(a) At the discretion of the EMS Authority, the EMS Authority may issue a license subject to specific provisional terms, conditions, and review. When considering the . . . placement on probation, suspension, or revocation of a license pursuant to Section 1798.200 of the Health and Safety Code . . . the EMS Authority in evaluating the rehabilitation of the applicant and present eligibility for a license, shall consider the following criteria:

(1) The nature and severity of the act.

(2) Evidence of any act(s) committed subsequent to the act(s) . . . under consideration as grounds for . . . placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.

(3) The time that has elapsed since commission of the act(s) . . . referred to in subsection (1) or (2) of this section.

[¶] . . . [¶]

(6) Evidence, if any, of rehabilitation submitted by the person.

5. The evidence established that Respondent touched the underage girl's buttocks by kissing and/or touching by his arm or elbow, and accidentally touched her breast with his hand. Respondent also kissed her hand to say goodnight. He told her she had a "nice set of cans," referring to her breasts, and touched her bellybutton area with his fingers. Respondent argued that he had no sexual intentions toward the girl, but he admitted that he had become sexually aroused by his conversation with the girl. Respondent, an adult male, committed these acts on a 16-year-old girl, when they were alone together preparing to sleep. The evidence established that Respondent's actions toward the 16-year-old girl carried a sexual

connotation. However, the evidence did not establish that Respondent intended to have sex with the girl or induce her to act sexually with him in any way. Nonetheless, the acts had a sexual nature to them. Given this, and that the girl was a minor, his actions were highly inappropriate and corrupt within the meaning of Health and Safety Code, section 1798.200, subd. (c)(5).

6. As a paramedic, Respondent regularly encounters members of the public who may be alone and in highly vulnerable states. Respondent must be trusted to carry out his duties in a manner that respects the personal integrity of every patient. Respondent's admitted actions against the 16-year-old girl are contrary to that trust and reasonably raise the concern that he is capable of touching or otherwise annoying underage girls or women in an inappropriate manner while performing his duties as a paramedic. His actions evidence a present and potential unfitness to perform the functions of a licensed paramedic in a manner consistent with the public health and safety. (Cal. Code Regs., tit. 22, § 100174.) . Therefore, his actions are substantially related to a licensed paramedic's qualifications, functions, and duties. (*Id.*)

7. Cause exists to revoke or suspend Respondent's paramedic license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(5), for committing corrupt acts, as set forth in Factual Findings 1, 2, 5-13, and Legal Conclusions 1, and 3-6, 11, and 12.

8. The evidence did not establish that Respondent's actions constituted unprofessional conduct within the meaning of Health and Safety Code, section 1798.200, subd. (c)(12)(C). There was insufficient evidence to conclude, that his touching of the girl's buttocks, whether by inadvertently brushing them with his arm or elbow, or by kissing her buttocks, or touching her breast accidentally, meet the definition of sexual battery (See Pen. Code, §§ 290, and 243.4), or of annoying or molesting a minor under the age of 18. (See Pen. Code, §§ 290, and 647.6.) The evidence did not establish that any of Respondent's acts against the girl constituted any proscribed act in Penal Code section 290.

10. Cause does not exist to revoke or suspend Respondent's paramedic license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(12)(C), or California Code of Regulations, title 22, section 100173, subdivision (a)(1), for committing any sexually related offenses specified under Penal Code section 290, as set forth in Factual Findings 1, 2, 5-13, and Legal Conclusions 1, 2, and 8.

11. As cause exists to discipline Respondent's license, it is appropriate to consider the regulatory rehabilitation criteria. (Legal Conclusion 4.) Respondent's acts against a minor female are significantly severe, however, it is noted that at the time of this hearing, Respondent had not been convicted of any crime. Furthermore and saliently, the testimony of the girl was absent, and thus the tenor of Respondent's acts (whether predatory, or playful, as Respondent asserted) could not be determined. (Cal. Code Regs., tit. 22, § 100175, subd. (a)(1).) Respondent has not committed any subsequent acts that could be grounds for license discipline. (Cal. Code Regs., tit. 22, § 100175, subd. (a)(2).) The acts in question occurred recently, only approximately five months ago. (Cal. Code Regs., tit. 22, § 100175, subd.

(a)(3).) Respondent provided no persuasive evidence of rehabilitation. (Cal. Code Regs., tit. 22, § 100175, subd. (a)(6).)

12. Respondent's acts against the 16-year-old girl raise reasonable concerns for public safety while performing his duties as a licensed paramedic. While some criteria of rehabilitation are in his favor, others are not, namely that the acts complained of occurred recently, and he provided no persuasive evidence of rehabilitation. Furthermore, his credibility and evidence of good character and integrity were diminished by his explanations for some of his actions. For example, his explanation for using the words "smoking hot"—because he regularly uses those words in his work environment; and 2) his explanation for vulgarly referring to the girl's breasts as a "nice set of cans"—to compliment her and to boost her confidence—were both specious. Additionally, his statements on the pre-text telephone calls and/or to the Sheriff's investigator were inconsistent with his testimony. For example, he explained how he touched the girl's buttocks by testifying that it was an inadvertent brushing with his arm or elbow, but told the Sheriff's Department he playfully kissed the girl's buttocks. He testified that he touched her bellybutton/stomach area in an effort to see if she was paying attention to him, but told the Sheriff's Department that he touched her to tickle her. These inconsistencies call Respondent's honesty into question. Discipline is warranted.

13. Complainant argues that the regulations require revocation of his license. That argument, however, was predicated on a conclusion that Respondent had committed acts constituting any sexually related offense specified under Penal Code section 290. (Cal. Code Regs., tit. 22, § 100173, subd. (a)(1).) The evidence did not establish such a conclusion. The commission of a corrupt act may, in some or even most cases, merit revocation. In this case, the evidence established that Respondent used extremely poor judgment, acted immaturely, and touched the 16-year-old girl in a manner that was highly inappropriate. However, the evidence did not establish that he touched her sexually, to have sex with her, or to induce her in some sexual way. The evidence established that the recommended discipline of suspension and probation, set forth in the Authority's regulatory guidelines is appropriate. (Cal. Code Regs., tit. 22, § 100172) The evidence did not establish that the maximum discipline of revocation was merited; taking into consideration what the evidence conclusively established, revocation would be disproportionately severe. Placing his license on probation is required to ensure that Respondent is overseen while performing his licensed duties, and thus help ensure that Respondent acts appropriately with patients. Further, a probationary period with a term of suspension is warranted to emphasize the highly inappropriate nature of Respondent's actions against an under-aged girl. (Cal. Code Regs., tit. 22, § 100175, subd. (a).)

ORDER

1. License number P20453 issued to Respondent John A. Armstrong, is revoked, however such revocation is stayed and Respondent is placed on probation for three years upon the following terms and conditions:

Suspension

(a) License number P20453 issued to Respondent John A. Armstrong, is suspended for 60 days.

Probation Compliance

(b) 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.

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

Personal Appearances

(d) 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.

Quarterly Report Requirements

(e) 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 certified mail.

Employment Notification

(f) 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.

(g) 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.

(h) 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.

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

Notification of Termination

(j) Respondent shall notify the EMSA within 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.

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

Functioning as a Paramedic

(l) The period of probation shall not run anytime that Respondent is not practicing as a paramedic within the jurisdiction of California.

(m) 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.

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

Obey all Related Laws

(o) 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 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.

(p) 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.

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

Violation of Probation

(r) 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 suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

(s) 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.

Completion of Probation

(t) Respondent's license shall be fully restored upon successful completion of probation.

Dated: November 19, 2009

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

Respondent "engaged in acts that constitute grounds for revocation of his [paramedic] license and that permitting him to continue to engage in the activity allowed by his . . . license, or permitting him to continue in the activity allowed by his . . . license without restriction, would present an imminent threat to the public health and safety."

3. Complainant contends Respondent's emergency medical technician – paramedic license should be revoked for committing a corrupt act, unprofessional conduct, and committing an offense specified in Penal Code section 290.

4. Respondent contends his actions do not merit any license discipline.

5. On May 30, 2009, Respondent was participating in work-related training, and spent the night at the house of a colleague, in or around Palm Desert, California. Respondent was 36 years old at that time. During the evening, while at the house, Respondent drank approximately nine beers over five hours. The evidence did not establish that Respondent was inebriated. Respondent interacted with his colleague and his colleague's 16-year-old daughter, among others.

6. In the evening, on May 30, 2009, Respondent laid down on the living room floor to sleep. Respondent's colleague had originally offered Respondent his daughter's bedroom to sleep in, while his daughter would sleep in the living room, but Respondent declined and arranged to sleep in the living room himself. In the late evening, the daughter entered the living room presuming she would sleep there. Respondent explained that he intended to sleep in the living room, and told her she could return to her room. The girl stayed in the living room and she and Respondent began to talk about general matters.

7(a). At hearing, Respondent admitted to making several comments to the girl and touching her as set forth below.

7(b) Respondent talked to the girl about her boyfriend and inquired whether she was sexually active or abstinent. During this discussion, Respondent told the girl, "if you can masturbate, you can wait." He explained that this was a phrase he recalled from his time in the Navy. He claimed that by saying this to the girl, he was promoting abstinence. He denied asking the girl if she masturbated.

7(c). Respondent told the girl she was attractive and stated that she was "smoking hot." He explained that he used those words to make her feel good about herself. He further explained that he used the same words (smoking hot) to describe work-related things, like his firefighter boots and embers, and so such words were part of his common speech.

7(d). Respondent stated that he accidentally touched the girl's buttocks. He explained that in getting up from the floor, while the girl was on a sofa just above Respondent, Respondent pushed himself up from the floor and his arm and/or elbow brushed the girl's buttocks inadvertently. He apologized to her and continued to rise. He denied intentionally grabbing her buttocks in any way.

7(e). Respondent stated that he touched the girl in the region of her stomach and belly button. He explained that, at one point during their conversation, he jabbed at her stomach area with his fingers, as if to awaken her or ensure she was listening to him. He denied that there was any sexual nature to such touching.

7(f). Respondent stated that he touched the region of the girl's knee, as they discussed knee surgeries. He explained that his touching was more like palpations as they discussed surgically placed pins in his own knee, and the type of knee surgery the girl had had in the recent past. He denied touching her thigh.

7(g). Respondent kissed the girl's hand. He explained that he did so to say goodnight.

7(h). Respondent denied ever touching the girl's breasts in any way.

8. The 16-year-old girl did not testify.

9. In or about June 2009, an investigator for the Riverside County Sheriff's Office Sexual Assault/Child Abuse Unit investigated Respondent's actions regarding the events of the evening of May 30, 2009.

10. During two pre-text telephone calls[1] on June 10 and 11, 2009, between Respondent and the 16-year-old girl's father, Respondent explained his actions with respect to the girl. During the telephone calls, he stated that he had kissed the girl's buttocks in a playful manner and did not do so in a sexual way. He stated that he accidentally touched the girl's breast with his hand. At hearing, Respondent did not deny his statements on the pre-text telephone calls and failed to explain the inconsistency between the statements he made during the pre-text telephone calls and his testimony (regarding how he touched the girl's buttocks and whether he touched the girl's breast at all).

11. On June 12, 2009, Respondent met with the Sheriff's investigator at the fire station where Respondent is employed. He admitted that he told the girl she had "a nice set of cans," referring to her breasts. He explained to the investigator that he meant the comment as a compliment, a confidence-builder that he believed a 16-year-old girl would like to hear. In explaining his kissing of the girl's buttocks, he stated, "I was being a smart ass and joking around." He further stated he was "just playing grab ass" with her, then said, "not grab ass" but "just bull shitting with a girl." In explaining his touching of the girl's stomach area and belly button area, he stated, "I thought she would giggle and chuckle and I could make light of the conversation . . . like a tickle." He admitted to the investigator that the conversation with the girl made him feel "horny" at the time.

---

[1] The investigator explained that the pre-text telephone calls were telephone calls he arranged between Respondent and the 16-year-old girl's father, with the investigator listening and recording the conversation unbeknownst to Respondent.

12. Respondent is married and has a four-year-old child. His wife considers him a good husband and father. Respondent's wife testified on his behalf, however, her testimony is not given full weight, as she has motivation to show her husband in the best light possible. (Evid. Code, § 780, subd. (f).)

13. Respondent has a reputation as a good paramedic and overall good employee. There was no evidence that he has a drinking problem. He has never been disciplined at work, nor does he have a criminal record. Respondent has repeatedly apologized to the girl's father, and has consistently asserted that he did not mean to disrespect the girl or his colleague.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200 states 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 . . . 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:
>
> [¶] . . . [¶]
>
> (5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.
>
> [¶] . . . [¶]
>
> (12) Unprofessional conduct exhibited by any of the following:
>
> [¶] . . . [¶]
>
> (C) The commission of any sexually related offense specified under Section 290 of the Penal Code.

2. California Code of Regulations, title 22, section 100173, states in part:

> (a) The authority shall deny/revoke a paramedic license if any of the following apply to the applicant:
>
> (1) Has committed any sexually related offense specified under Section 290 of the Penal Code.

3. California Code of Regulations, title 22, section 100174, states in part:

(a) For purposes of . . . placement on probation, suspension, or revocation, of a license, pursuant to Section 1798.200 of the Health and Safety Code . . . a[n] . . . act shall be substantially related to the qualifications, functions and/or duties of a person holding a paramedic license . . . . A[n] . . . 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. California Code of Regulations, title 22, section 100175, states in part:

(a) At the discretion of the EMS Authority, the EMS Authority may issue a license subject to specific provisional terms, conditions, and review. When considering the . . . placement on probation, suspension, or revocation of a license pursuant to Section 1798.200 of the Health and Safety Code . . . the EMS Authority in evaluating the rehabilitation of the applicant and present eligibility for a license, shall consider the following criteria:

(1) The nature and severity of the act.

(2) Evidence of any act(s) committed subsequent to the act(s) . . . under consideration as grounds for . . . placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.

(3) The time that has elapsed since commission of the act(s) . . . referred to in subsection (1) or (2) of this section.

[¶] . . . [¶]

(6) Evidence, if any, of rehabilitation submitted by the person.

5. The evidence established that Respondent touched the underage girl's buttocks by kissing and/or touching by his arm or elbow, and accidentally touched her breast with his hand. Respondent also kissed her hand to say goodnight. He told her she had a "nice set of cans," referring to her breasts, and touched her bellybutton area with his fingers. Respondent argued that he had no sexual intentions toward the girl, but he admitted that he had become sexually aroused by his conversation with the girl. Respondent, an adult male, committed these acts on a 16-year-old girl, when they were alone together preparing to sleep. The evidence established that Respondent's actions toward the 16-year-old girl carried a sexual

connotation. However, the evidence did not establish that Respondent intended to have sex with the girl or induce her to act sexually with him in any way. Nonetheless, the acts had a sexual nature to them. Given this, and that the girl was a minor, his actions were highly inappropriate and corrupt within the meaning of Health and Safety Code, section 1798.200, subd. (c)(5).

6. As a paramedic, Respondent regularly encounters members of the public who may be alone and in highly vulnerable states. Respondent must be trusted to carry out his duties in a manner that respects the personal integrity of every patient. Respondent's admitted actions against the 16-year-old girl are contrary to that trust and reasonably raise the concern that he is capable of touching or otherwise annoying underage girls or women in an inappropriate manner while performing his duties as a paramedic. His actions evidence a present and potential unfitness to perform the functions of a licensed paramedic in a manner consistent with the public health and safety. (Cal. Code Regs., tit. 22, § 100174.) . Therefore, his actions are substantially related to a licensed paramedic's qualifications, functions, and duties. (*Id.*)

7. Cause exists to revoke or suspend Respondent's paramedic license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(5), for committing corrupt acts, as set forth in Factual Findings 1, 2, 5-13, and Legal Conclusions 1, and 3-6, 11, and 12.

8. The evidence did not establish that Respondent's actions constituted unprofessional conduct within the meaning of Health and Safety Code, section 1798.200, subd. (c)(12)(C). There was insufficient evidence to conclude, that his touching of the girl's buttocks, whether by inadvertently brushing them with his arm or elbow, or by kissing her buttocks, or touching her breast accidentally, meet the definition of sexual battery (See Pen. Code, §§ 290, and 243.4), or of annoying or molesting a minor under the age of 18. (See Pen. Code, §§ 290, and 647.6.) The evidence did not establish that any of Respondent's acts against the girl constituted any proscribed act in Penal Code section 290.

10. Cause does not exist to revoke or suspend Respondent's paramedic license, pursuant to Health and Safety Code section 1798.200, subdivision (c)(12)(C), or California Code of Regulations, title 22, section 100173, subdivision (a)(1), for committing any sexually related offenses specified under Penal Code section 290, as set forth in Factual Findings 1, 2, 5-13, and Legal Conclusions 1, 2, and 8.

11. As cause exists to discipline Respondent's license, it is appropriate to consider the regulatory rehabilitation criteria. (Legal Conclusion 4.) Respondent's acts against a minor female are significantly severe, however, it is noted that at the time of this hearing, Respondent had not been convicted of any crime. Furthermore and saliently, the testimony of the girl was absent, and thus the tenor of Respondent's acts (whether predatory, or playful, as Respondent asserted) could not be determined. (Cal. Code Regs., tit. 22, § 100175, subd. (a)(1).) Respondent has not committed any subsequent acts that could be grounds for license discipline. (Cal. Code Regs., tit. 22, § 100175, subd. (a)(2).) The acts in question occurred recently, only approximately five months ago. (Cal. Code Regs., tit. 22, § 100175, subd.

(a)(3).) Respondent provided no persuasive evidence of rehabilitation. (Cal. Code Regs., tit. 22, § 100175, subd. (a)(6).)

12. Respondent's acts against the 16-year-old girl raise reasonable concerns for public safety while performing his duties as a licensed paramedic. While some criteria of rehabilitation are in his favor, others are not, namely that the acts complained of occurred recently, and he provided no persuasive evidence of rehabilitation. Furthermore, his credibility and evidence of good character and integrity were diminished by his explanations for some of his actions. For example, his explanation for using the words "smoking hot"—because he regularly uses those words in his work environment; and 2) his explanation for vulgarly referring to the girl's breasts as a "nice set of cans"—to compliment her and to boost her confidence—were both specious. Additionally, his statements on the pre-text telephone calls and/or to the Sheriff's investigator were inconsistent with his testimony. For example, he explained how he touched the girl's buttocks by testifying that it was an inadvertent brushing with his arm or elbow, but told the Sheriff's Department he playfully kissed the girl's buttocks. He testified that he touched her bellybutton/stomach area in an effort to see if she was paying attention to him, but told the Sheriff's Department that he touched her to tickle her. These inconsistencies call Respondent's honesty into question. Discipline is warranted.

13. Complainant argues that the regulations require revocation of his license. That argument, however, was predicated on a conclusion that Respondent had committed acts constituting any sexually related offense specified under Penal Code section 290. (Cal. Code Regs., tit. 22, § 100173, subd. (a)(1).) The evidence did not establish such a conclusion. The commission of a corrupt act may, in some or even most cases, merit revocation. In this case, the evidence established that Respondent used extremely poor judgment, acted immaturely, and touched the 16-year-old girl in a manner that was highly inappropriate. However, the evidence did not establish that he touched her sexually, to have sex with her, or to induce her in some sexual way. The evidence established that the recommended discipline of suspension and probation, set forth in the Authority's regulatory guidelines is appropriate. (Cal. Code Regs., tit. 22, § 100172) The evidence did not establish that the maximum discipline of revocation was merited; taking into consideration what the evidence conclusively established, revocation would be disproportionately severe. Placing his license on probation is required to ensure that Respondent is overseen while performing his licensed duties, and thus help ensure that Respondent acts appropriately with patients. Further, a probationary period with a term of suspension is warranted to emphasize the highly inappropriate nature of Respondent's actions against an under-aged girl. (Cal. Code Regs., tit. 22, § 100175, subd. (a).)

ORDER

1. License number P20453 issued to Respondent John A. Armstrong, is revoked, however such revocation is stayed and Respondent is placed on probation for three years upon the following terms and conditions:

Suspension

(a) License number P20453 issued to Respondent John A. Armstrong, is suspended for 60 days.

Probation Compliance

(b) 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.

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

Personal Appearances

(d) 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.

Quarterly Report Requirements

(e) 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 certified mail.

Employment Notification

(f) 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.

(g) 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.

(h) 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.

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

Notification of Termination

(j) Respondent shall notify the EMSA within 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.

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

Functioning as a Paramedic

(l) The period of probation shall not run anytime that Respondent is not practicing as a paramedic within the jurisdiction of California.

(m) 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.

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

Obey all Related Laws

(o) 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 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.

(p) 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.

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

Violation of Probation

(r) 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 suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

(s) 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.

Completion of Probation

(t) Respondent's license shall be fully restored upon successful completion of probation.

Dated: November 19, 2009

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings