

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1944

Introduced by Assembly Member Gatto

February 23, 2012

An act to amend Sections 1798.200, 1798.201, 1798.202, and 1798.211 of the Health and Safety Code, relating to emergency medical services.

LEGISLATIVE COUNSEL’S DIGEST

AB 1944, as amended, Gatto. Emergency medical services: EMT-P discipline.

Under existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, the Emergency Medical Services Authority is responsible for establishing minimum standards and promulgating regulations for the training and scope of practice for an emergency medical technicians-paramedic (EMT-P) who is licensed under the act.

Existing law provides that the Emergency Medical Services Authority may deny, suspend, or revoke licenses issued under these provisions, or may place a licenseholder on probation, upon the occurrence of any of specified events. Existing law also authorizes the director of the authority and the medical director of a local emergency medical service (EMS) agency to temporarily suspend a license upon a determination that specified conditions have been met.

This bill would revise the procedures and requirements for discipline of an EMT-P to, among other things, require an investigation, as specified, and determination of disciplinary cause before the authority may deny, suspend, or revoke a license. The bill would require the

medical director of a local EMS agency to refer information regarding conduct that appears to constitute disciplinary cause to *the authority or the EMT-P's employer*, as specified. The bill would further require, in specified instances, if an ~~EMT-P's employer does not investigate a potential disciplinary course~~ *EMT-P is unemployed*, that the ~~medical director of a local EMS agency~~ *authority* conduct an investigation and take disciplinary action, as necessary.

By imposing new duties upon local officials, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The health and safety of Californians often depends on the
- 4 timely response and competent care of emergency medical service
- 5 (EMS) personnel.
- 6 (b) Whether it is an automobile accident, heart attack, near
- 7 drowning, unscheduled childbirth, gunshot wound, or other life
- 8 critical incident, emergency medical technicians (EMTs) provide
- 9 vital, lifesaving, prehospital attention to the public and assist in
- 10 transporting the sick or injured to an appropriate medical facility.
- 11 (c) Effective monitoring and supervision of an EMT's activity
- 12 performed under the authority of the certificate or license is an
- 13 integral component of ensuring the safe and efficient delivery of
- 14 lifesaving services to the public.
- 15 (d) While the state issues licenses to EMT-Paramedics
- 16 (EMT-Ps), multiple agencies and levels of government, from the
- 17 employer and the local emergency medical services agency to the
- 18 state's Emergency Medical Services Authority and its EMS
- 19 Commission, retain authority to impose EMT-P discipline with

1 no required coordination and often without regard for any
2 appropriately administered discipline imposed by those multiple
3 oversight agencies.

4 (e) The public's health and safety is best protected when policies
5 and procedures relative to EMT oversight are enforced in a
6 consistent and equitable manner and the public's interest is best
7 served when government works closest to the people.

8 (f) Recognizing this, in 2007, California adopted a system for
9 coordinated oversight of EMT-Is and EMT-IIs when the Legislature
10 enacted and the Governor signed Assembly Bill 2917 into law.
11 Consistent with that policy, California's EMS community and the
12 public they protect would be further served by adopting that same
13 system of coordinated oversight for EMT-Ps.

14 SEC. 2. Section 1798.200 of the Health and Safety Code is
15 amended to read:

16 1798.200. (a) (1) (A) Except as provided in paragraph (2),
17 an employer of an EMT-I or EMT-II may conduct investigations,
18 as necessary, and take disciplinary action against an EMT-I or
19 EMT-II who is employed by that employer for conduct in violation
20 of subdivision (c). The employer shall notify the medical director
21 of the local EMS agency that has jurisdiction in the county in which
22 the alleged violation occurred within three days when an allegation
23 has been validated as a potential violation of subdivision (c).

24 (B) Each employer of an EMT-I or EMT-II employee shall
25 notify the medical director of the local EMS agency that has
26 jurisdiction in the county in which a violation related to subdivision
27 (c) occurred within three days after the EMT-I or EMT-II is
28 terminated or suspended for a disciplinary cause, the EMT-I or
29 EMT-II resigns following notification of an impending
30 investigation based upon evidence that would indicate the existence
31 of a disciplinary cause, or the EMT-I or EMT-II is removed from
32 EMT-related duties for a disciplinary cause after the completion
33 of the employer's investigation.

34 (C) At the conclusion of an investigation, the employer of an
35 EMT-I or EMT-II may develop and implement, in accordance with
36 the guidelines for disciplinary orders, temporary suspensions, and
37 conditions of probation adopted pursuant to Section 1797.184, a
38 disciplinary plan for the EMT-I or EMT-II. Upon adoption of the
39 disciplinary plan, the employer shall submit that plan to the local
40 EMS agency within three working days. The employer's

1 disciplinary plan may include a recommendation that the medical
2 director of the local EMS agency consider taking action against
3 the holder's certificate pursuant to paragraph (3).

4 (2) If an EMT-I or EMT-II is not employed by an ambulance
5 service licensed by the Department of the California Highway
6 Patrol or a public safety agency or if that ambulance service or
7 public safety agency chooses not to conduct an investigation
8 pursuant to paragraph (1) for conduct in violation of subdivision
9 (c), the medical director of a local EMS agency shall conduct the
10 investigations, and, upon a determination of disciplinary cause,
11 take disciplinary action as necessary against the EMT-I or EMT-II.
12 At the conclusion of these investigations, the medical director shall
13 develop and implement, in accordance with the recommended
14 guidelines for disciplinary orders, temporary orders, and conditions
15 of probation adopted pursuant to Section 1797.184, a disciplinary
16 plan for the EMT-I or EMT-II. The medical director's disciplinary
17 plan may include action against the holder's certificate pursuant
18 to paragraph (3).

19 (3) The medical director of the local EMS agency may, upon a
20 determination of disciplinary cause and in accordance with
21 regulations for disciplinary processes adopted pursuant to Section
22 1797.184, deny, suspend, or revoke any EMT-I or EMT-II
23 certificate issued under this division, or may place any EMT-I or
24 EMT-II certificate holder on probation, upon the finding by that
25 medical director of the occurrence of any of the actions listed in
26 subdivision (c) and the occurrence of one of the following:

27 (A) The EMT-I or EMT-II employer, after conducting an
28 investigation, failed to impose discipline for the conduct under
29 investigation, or the medical director makes a determination that
30 the discipline imposed was not according to the guidelines for
31 disciplinary orders and conditions of probation and the conduct of
32 the EMT-I or EMT-II certificate holder constitutes grounds for
33 disciplinary action against the certificate.

34 (B) Either the employer of an EMT-I or EMT-II further
35 determines, after an investigation conducted under paragraph (1),
36 or the medical director determines after an investigation conducted
37 under paragraph (2), that the conduct requires disciplinary action
38 against the certificate.

39 (4) The medical director of the local EMS agency, after
40 consultation with the employer of an EMT-I or EMT-II, may

1 temporarily suspend, prior to a hearing, any EMT-I or EMT-II
2 certificate or both EMT-I and EMT-II certificates upon a
3 determination that both of the following conditions have been met:

4 (A) The certificate holder has engaged in acts or omissions that
5 constitute grounds for revocation of the EMT-I or EMT-II
6 certificate.

7 (B) Permitting the certificate holder to continue to engage in
8 the certified activity without restriction would pose an imminent
9 threat to the public health or safety.

10 (5) If the medical director of the local EMS agency temporarily
11 suspends a certificate, the local EMS agency shall notify the
12 certificate holder that his or her EMT-I or EMT-II certificate is
13 suspended and shall identify the reasons therefor. Within three
14 working days of the initiation of the suspension by the local EMS
15 agency, the agency and employer shall jointly investigate the
16 allegation in order for the agency to make a determination of the
17 continuation of the temporary suspension. All investigatory
18 information not otherwise protected by law held by the agency
19 and employer shall be shared between the parties via facsimile
20 transmission or overnight mail relative to the decision to
21 temporarily suspend. The local EMS agency shall decide, within
22 15 calendar days, whether to serve the certificate holder with an
23 accusation pursuant to Chapter 5 (commencing with Section 11500)
24 of Part 1 of Division 3 of Title 2 of the Government Code. If the
25 certificate holder files a notice of defense, the hearing shall be held
26 within 30 days of the local EMS agency's receipt of the notice of
27 defense. The temporary suspension order shall be deemed vacated
28 if the local EMS agency fails to make a final determination on the
29 merits within 15 days after the administrative law judge renders
30 the proposed decision.

31 (6) The medical director of the local EMS agency shall refer,
32 for investigation and discipline, any complaint received on an
33 EMT-I or EMT-II to the relevant employer within three days of
34 receipt of the complaint, pursuant to subparagraph (A) of paragraph
35 (1) of subdivision (a).

36 (b) (1) The authority may, upon determination of disciplinary
37 cause, deny, suspend, or revoke any EMT-P license issued under
38 this division, or may place any EMT-P license issued under this
39 division, or may place any EMT-P licenseholder on probation upon

1 the finding by the director of the occurrence of any of the actions
2 listed in subdivision (c) subsequent to either one of the following:

3 (A) An employer of an EMT-P, after conducting an investigation
4 pursuant to subdivision (b) of Section 1798.201, fails to impose
5 discipline for the conduct under investigation, or the authority
6 makes a determination that the discipline imposed was not
7 according to the guidelines for disciplinary orders, temporary
8 suspensions, and conditions of probation and the conduct of the
9 EMT-P constitutes grounds for disciplinary action against the
10 license.

11 (B) Either the employer of an EMT-P determines, after an
12 investigation conducted pursuant to subdivision (b) of Section
13 1798.201, or the ~~medical director~~ *authority* determines after an
14 investigation conducted pursuant to subdivision (c) of Section
15 1798.201, that the conduct requires disciplinary action against the
16 license.

17 (2) Proceedings against any EMT-P license or licenseholder
18 shall be held in accordance with Chapter 5 (commencing with
19 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
20 Code.

21 (c) Any of the following actions shall be considered evidence
22 of a threat to the public health and safety and may result in the
23 denial, suspension, or revocation of a certificate or license issued
24 under this division, or in the placement on probation of a certificate
25 holder or licenseholder under this division:

26 (1) Fraud in the procurement of any certificate or license under
27 this division.

28 (2) Gross negligence.

29 (3) Repeated negligent acts.

30 (4) Incompetence.

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

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

38 (7) Violating or attempting to violate directly or indirectly, or
39 assisting in or abetting the violation of, or conspiring to violate,

1 any provision of this division or the regulations adopted by the
2 authority pertaining to prehospital personnel.

3 (8) Violating or attempting to violate any federal or state statute
4 or regulation that regulates narcotics, dangerous drugs, or
5 controlled substances.

6 (9) Addiction to, the excessive use of, or the misuse of, alcoholic
7 beverages, narcotics, dangerous drugs, or controlled substances.

8 (10) Functioning outside the supervision of medical control in
9 the field care system operating at the local level, except as
10 authorized by any other license or certification.

11 (11) Demonstration of irrational behavior or occurrence of a
12 physical disability to the extent that a reasonable and prudent
13 person would have reasonable cause to believe that the ability to
14 perform the duties normally expected may be impaired.

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

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

25 (B) The failure to maintain confidentiality of patient medical
26 information, except as disclosure is otherwise permitted or required
27 by law in Part 2.6 (commencing with Section 56) of Division 1 of
28 the Civil Code.

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

31 (d) The information shared among EMT-I, EMT-II, and EMT-P
32 employers, medical directors of local EMS agencies, the authority,
33 and EMT-I and EMT-II certifying entities shall be deemed to be
34 an investigative communication that is exempt from public
35 disclosure as a public record pursuant to subdivision (f) of Section
36 6254 of the Government Code. A formal disciplinary action against
37 an EMT-I, EMT-II, or EMT-P shall be considered a public record
38 available to the public, unless otherwise protected from disclosure
39 pursuant to state or federal law.

1 (e) For purposes of this section, “disciplinary cause” means an
2 act that is substantially related to the qualifications, functions, and
3 duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat
4 to the public health and safety described in subdivision (c).

5 SEC. 3. Section 1798.201 of the Health and Safety Code is
6 amended to read:

7 1798.201. (a) When information comes to the attention of the
8 medical director of the local EMS agency that an EMT-P
9 licenseholder has committed any act or omission that appears to
10 constitute disciplinary cause as defined in subdivision (e) of Section
11 1798.200, the medical director of the local EMS agency shall refer
12 any information received regarding the conduct of the EMT-P
13 licenseholder to the relevant employer *or, if the licenseholder is*
14 *unemployed, to the authority* within three days of receipt of the
15 information so the employer *or the authority* may conduct an
16 investigation pursuant to this section.

17 (b) An employer of an EMT-P may conduct an investigation,
18 as necessary, and take disciplinary action against an EMT-P who
19 is employed by that employer for conduct in violation of
20 subdivision (c) of Section 1798.200. The employer shall notify
21 the authority within three days of *either the date of a decision not*
22 *to conduct an investigation or* the date an allegation has been
23 validated as a potential violation of subdivision (c) of Section
24 1798.200 and *the employer* has—~~a~~ made a determination of
25 disciplinary cause. At the conclusion of an investigation, the
26 employer of an EMT-P may develop and implement, in accordance
27 with the guidelines for disciplinary orders, temporary suspensions,
28 and conditions of probation adopted by the authority, a disciplinary
29 plan for the EMT-P. Upon adoption of the disciplinary plan, the
30 employer shall submit that plan to the authority and to the local
31 EMS agency medical director within three working days. The
32 employer’s disciplinary plan may include a recommendation that
33 the authority consider taking licensure action pursuant to
34 subdivision (b) of Section 1798.200. The employer shall notify
35 the authority and the medical director of the local EMS agency
36 that has jurisdiction in the county within three days of any action
37 taken by the employer pursuant to subdivision (a) of Section
38 1799.112 *or within three days of the conclusion of an investigation*
39 *that results in a determination by the employer to not impose*
40 *discipline.*

1 (c) If an EMT-P is not employed by an ambulance service
2 licensed by the Department of the California Highway Patrol or a
3 public safety agency or if that ambulance service or public safety
4 agency chooses not to conduct an investigation pursuant to
5 subdivision (a) for conduct in violation of subdivision (c) of Section
6 1798.200, the medical director of a local EMS agency *authority*
7 shall conduct the investigation, and, upon a determination of
8 disciplinary cause, take disciplinary action as necessary against
9 the EMT-P. ~~At the conclusion of the investigation, the medical~~
10 ~~director shall develop and implement, in accordance with the~~
11 ~~recommended guidelines for disciplinary orders, temporary~~
12 ~~suspensions, and conditions of probation adopted by the authority,~~
13 ~~a disciplinary plan for the EMT-P. The medical director's~~
14 ~~disciplinary plan shall be submitted to the authority within three~~
15 ~~days of adoption and may include a recommendation that the~~
16 ~~authority consider taking licensure action pursuant to subdivision~~
17 ~~(b) of Section 1798.200.~~

18 (d) If the employer of the EMT-P, pursuant to subdivision (b)
19 ~~or the medical director pursuant to subdivision (c)~~ sends a
20 recommendation to the authority for further investigation or
21 discipline of the licenseholder, the recommendation shall include
22 all documentary evidence collected by the employer ~~or medical~~
23 ~~director~~ in evaluating whether or not to make that recommendation.
24 ~~The~~ *This* recommendation and accompanying evidence *sent to the*
25 *authority* shall be deemed in the nature of an investigative
26 communication and be protected by Section 6254 of the
27 Government Code. In deciding what level of disciplinary action
28 is appropriate in the case *and is consistent with subdivision (b) of*
29 *Section 1798.200*, the authority shall consult with the employer
30 and medical director of the local EMS agency.

31 SEC. 4. Section 1798.202 of the Health and Safety Code is
32 amended to read:

33 1798.202. (a) The director of the authority or the medical
34 director of the local EMS agency, after consultation with the
35 relevant employer, may temporarily suspend, prior to hearing, any
36 EMT-P license upon a determination that: (1) the licensee has
37 engaged in acts or omissions that constitute grounds for revocation
38 of the EMT-P license; and (2) permitting the licensee to continue
39 to engage in the licensed activity, or permitting the licensee to
40 continue in the licensed activity without restriction, would present

1 an imminent threat to the public health or safety. When the
2 suspension is initiated by the local EMS agency, subdivision (b)
3 shall apply. When the suspension is initiated by the director of the
4 authority, subdivision (c) shall apply.

5 (b) The local EMS agency shall notify the licensee that his or
6 her EMT-P license is suspended and shall identify the reasons
7 therefor. Within three working days of the initiation of the
8 suspension by the local EMS agency, the agency shall transmit to
9 the authority, via facsimile transmission or overnight mail, all
10 documentary evidence collected by the local EMS agency relative
11 to the decision to temporarily suspend. The authority and the
12 relevant employer shall jointly investigate the allegation to
13 determine disciplinary cause as defined in subdivision (e) of
14 Section 1798.200. Within two working days of receipt of the local
15 EMS agency's documentary evidence, the director of the authority,
16 in consultation with the employer and consistent with Sections
17 1798.200 and 1798.201, shall determine the need for the licensure
18 action. Part of that determination shall include an evaluation of
19 the need for continuance of the suspension during the licensure
20 action review process. If the director of the authority determines
21 that the temporary suspension order should not continue, the
22 authority shall immediately notify the licensee that the temporary
23 suspension is lifted. If the director of the authority determines that
24 the temporary suspension order should continue, the authority shall
25 immediately notify the licensee of the decision to continue the
26 temporary suspension and shall, within 15 calendar days of receipt
27 of the EMS agency's documentary evidence, serve the licensee
28 with a temporary suspension order and accusation pursuant to
29 Chapter 5 (commencing with Section 11500) of Part 1 of Division
30 3 of Title 2 of the Government Code.

31 (c) The director of the authority shall initiate a temporary
32 suspension with the filing of a temporary suspension order and
33 accusation pursuant to Chapter 5 (commencing with Section 11500)
34 of Part 1 of Division 3 of Title 2 of the Government Code and shall
35 notify the director of the local EMS agency, and the relevant
36 employer.

37 (d) If the licensee files a notice of defense, the hearing shall be
38 held within 30 days of the authority's receipt of the notice of
39 defense. The temporary suspension order shall be deemed vacated
40 if the authority fails to make a final determination on the merits

1 within 15 days after the administrative law judge renders the
2 proposed decision.

3 SEC. 5. Section 1798.211 of the Health and Safety Code is
4 amended to read:

5 1798.211. When making a decision regarding a disciplinary
6 action pursuant to Section 1798.200, Section 1798.201, or Section
7 1798.210, the authority, and when applicable the administrative
8 law judge, shall give credit for discipline imposed by the employer
9 and for any immediate suspension imposed by the local EMS
10 agency for the same conduct.

11 SEC. 6. If the Commission on State Mandates determines that
12 this act contains costs mandated by the state, reimbursement to
13 local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.