

AMENDED IN SENATE JUNE 28, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY APRIL 30, 2012

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, 1798.211, and 1799.112 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 *require*, among other things, ~~require a decision by an employer to decline an investigation or an investigation, as specified, and certain determinations by the authority or an investigation by the EMT-P employer, as specified,~~ and a determination of disciplinary cause, before the authority may deny, suspend, or revoke a license. *This bill would permit only an employer with physician oversight, including by contract, to conduct an investigation.* The bill would authorize the medical director of a local EMS agency to refer information regarding conduct that appears to constitute disciplinary cause to the authority ~~or~~ and the EMT-P's employer, as specified. The bill would further require, in specified instances, if an EMT-P is unemployed, that the 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.

1 (c) Effective monitoring and supervision of an EMT's activity
2 performed under the authority of the certificate or license is an
3 integral component of ensuring the safe and efficient delivery of
4 lifesaving services to the public.

5 (d) While the state issues licenses to EMT-Paramedics
6 (EMT-Ps), multiple agencies and levels of government, from the
7 employer and the local emergency medical services agency to the
8 state's Emergency Medical Services Authority and its EMS
9 Commission, retain authority to impose EMT-P discipline with
10 no required coordination and often without regard for any
11 appropriately administered discipline imposed by those multiple
12 oversight agencies.

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

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

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

25 1798.200. (a) (1) (A) Except as provided in paragraph (2),
26 an employer of an EMT-I or EMT-II may conduct investigations,
27 as necessary, and take disciplinary action against an EMT-I or
28 EMT-II who is employed by that employer for conduct in violation
29 of subdivision (c). The employer shall notify the medical director
30 of the local EMS agency that has jurisdiction in the county in which
31 the alleged violation occurred within three days when an allegation
32 has been validated as a potential violation of subdivision (c).

33 (B) Each employer of an EMT-I or EMT-II employee shall
34 notify the medical director of the local EMS agency that has
35 jurisdiction in the county in which a violation related to subdivision
36 (c) occurred within three days after the EMT-I or EMT-II is
37 terminated or suspended for a disciplinary cause, the EMT-I or
38 EMT-II resigns following notification of an impending
39 investigation based upon evidence that would indicate the existence
40 of a disciplinary cause, or the EMT-I or EMT-II is removed from

1 EMT-related duties for a disciplinary cause after the completion
2 of the employer's investigation.

3 (C) At the conclusion of an investigation, the employer of an
4 EMT-I or EMT-II may develop and implement, in accordance with
5 the guidelines for disciplinary orders, temporary suspensions, and
6 conditions of probation adopted pursuant to Section 1797.184, a
7 disciplinary plan for the EMT-I or EMT-II. Upon adoption of the
8 disciplinary plan, the employer shall submit that plan to the local
9 EMS agency within three working days. The employer's
10 disciplinary plan may include a recommendation that the medical
11 director of the local EMS agency consider taking action against
12 the holder's certificate pursuant to paragraph (3).

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

28 (3) The medical director of the local EMS agency may, upon a
29 determination of disciplinary cause and in accordance with
30 regulations for disciplinary processes adopted pursuant to Section
31 1797.184, deny, suspend, or revoke any EMT-I or EMT-II
32 certificate issued under this division, or may place any EMT-I or
33 EMT-II certificate holder on probation, upon the finding by that
34 medical director of the occurrence of any of the actions listed in
35 subdivision (c) and the occurrence of one of the following:

36 (A) The EMT-I or EMT-II employer, after conducting an
37 investigation, failed to impose discipline for the conduct under
38 investigation, or the medical director makes a determination that
39 the discipline imposed was not according to the guidelines for
40 disciplinary orders and conditions of probation and the conduct of

1 the EMT-I or EMT-II certificate holder constitutes grounds for
2 disciplinary action against the certificate.

3 (B) Either the employer of an EMT-I or EMT-II further
4 determines, after an investigation conducted under paragraph (1),
5 or the medical director determines after an investigation conducted
6 under paragraph (2), that the conduct requires disciplinary action
7 against the certificate.

8 (4) The medical director of the local EMS agency, after
9 consultation with the employer of an EMT-I or EMT-II, may
10 temporarily suspend, prior to a hearing, any EMT-I or EMT-II
11 certificate or both EMT-I and EMT-II certificates upon a
12 determination that both of the following conditions have been met:

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

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

19 (5) If the medical director of the local EMS agency temporarily
20 suspends a certificate, the local EMS agency shall notify the
21 certificate holder that his or her EMT-I or EMT-II certificate is
22 suspended and shall identify the reasons therefor. Within three
23 working days of the initiation of the suspension by the local EMS
24 agency, the agency and employer shall jointly investigate the
25 allegation in order for the agency to make a determination of the
26 continuation of the temporary suspension. All investigatory
27 information not otherwise protected by law held by the agency
28 and employer shall be shared between the parties via facsimile
29 transmission or overnight mail relative to the decision to
30 temporarily suspend. The local EMS agency shall decide, within
31 15 calendar days, whether to serve the certificate holder with an
32 accusation pursuant to Chapter 5 (commencing with Section 11500)
33 of Part 1 of Division 3 of Title 2 of the Government Code. If the
34 certificate holder files a notice of defense, the hearing shall be held
35 within 30 days of the local EMS agency's receipt of the notice of
36 defense. The temporary suspension order shall be deemed vacated
37 if the local EMS agency fails to make a final determination on the
38 merits within 15 days after the administrative law judge renders
39 the proposed decision.

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

(b) (1) The authority may, upon determination of disciplinary cause, deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c) subsequent to either one of the following:

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

(B) Either the employer of an EMT-P determines, after an investigation conducted pursuant to subdivision (b) of Section 1798.201, or the authority determines after an investigation conducted pursuant to subdivision (c) of Section 1798.201, that the conduct requires disciplinary action against the license.

(2) Proceedings against any EMT-P license or licenseholder 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 licenseholder under this division:

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

(2) Gross negligence.

(3) Repeated negligent acts.

(4) Incompetence.

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

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

8 (7) Violating or attempting to violate directly or indirectly, or
9 assisting in or abetting the violation of, or conspiring to violate,
10 any provision of this division or the regulations adopted by the
11 authority pertaining to prehospita! personnel.

12 (8) Violating or attempting to violate any federal or state statute
13 or regulation that regulates narcotics, dangerous drugs, or
14 controlled substances.

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

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

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

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

25 (A) The mistreatment or physical abuse of any patient resulting
26 from force in excess of what a reasonable and prudent person
27 trained and acting in a similar capacity while engaged in the
28 performance of his or her duties would use if confronted with a
29 similar circumstance. Nothing in this section shall be deemed to
30 prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace
31 officer, or a peace officer who is acting in the dual capacity of
32 peace officer and EMT-I, EMT-II, or EMT-P, from using that force
33 that is reasonably necessary to effect a lawful arrest or detention.

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

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

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

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

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

1798.201. (a) When information comes to the attention of the medical director of the local EMS agency that an EMT-P licenseholder has committed any act or omission that appears to constitute disciplinary cause as defined in subdivision (e) of Section 1798.200, the medical director of the local EMS agency may, if he or she determines that disciplinary action may be necessary, refer any information received regarding the conduct of the EMT-P licenseholder to the relevant employer ~~or~~, and to the authority, or if the licenseholder is unemployed, to the authority within three days of receipt of the information so the employer or the authority may conduct an investigation pursuant to this section.

(1) If the act or omission occurred while the EMT-P licenseholder was off duty, the medical director of the local EMS agency shall refer the information directly to the authority for investigation. The medical director of the local EMS agency shall also notify the relevant employer.

(2) If the act or omission is a potentially criminal act, the medical director of the local EMS agency shall refer the information directly to the authority and to the employer who shall jointly conduct an investigation.

(b) An employer of an EMT-P may conduct an investigation, as necessary, and take disciplinary action against an EMT-P who is employed by that employer for conduct in violation of subdivision (e) of Section 1798.200, *and the employer shall conduct an investigation under the circumstances described in*

1 *paragraph (2) of subdivision (a). Only an employer with physician*
2 *oversight, including by contract, may conduct an investigation.*
3 The employer shall notify the authority within three days of either
4 the date of a decision not to conduct an investigation or the date
5 an allegation has been validated as a potential violation of
6 subdivision (c) of Section 1798.200 and the employer has made a
7 determination of disciplinary cause. At the conclusion of an
8 investigation, ~~if the employer determines that disciplinary action~~
9 ~~against an EMT-P may is required,~~ *the employer shall develop*
10 *and implement, in accordance with the guidelines for disciplinary*
11 *orders, temporary suspensions, and conditions of probation adopted*
12 *by the authority, a disciplinary plan for the EMT-P. Upon adoption*
13 *of the disciplinary plan, the employer shall submit that plan to the*
14 *authority and to the local EMS agency medical director within*
15 *three working days. The employer's disciplinary plan may include*
16 *a recommendation that the authority consider taking licensure*
17 *action pursuant to subdivision (b) of Section 1798.200. The*
18 *employer shall notify the authority and the medical director of the*
19 *local EMS agency that has jurisdiction in the county within three*
20 *days of any action taken by the employer pursuant to subdivision*
21 *(a) of Section 1799.112 or within three days of the conclusion of*
22 *an investigation that results in a determination by the employer to*
23 *not impose discipline.*

24 *(1) If an employer conducts an investigation, the employer shall*
25 *notify the authority of the status of the investigation every 60 days*
26 *and complete the investigation within 120 days.*

27 *(2) (A) If the employer is not able to complete the investigation*
28 *within 120 days, the employer shall defer the investigation to the*
29 *authority.*

30 *(B) Any action taken by the employer against an EMT-P in*
31 *connection with the investigation of an act or omission shall be*
32 *taken into consideration and applied to any licensure action*
33 *imposed by the authority.*

34 *(c) If an EMT-P is not employed, the authority shall conduct*
35 *the investigation, and, upon a determination of disciplinary cause,*
36 *take disciplinary action as necessary against the EMT-P pursuant*
37 *to subdivision (b) of Section 1798.200.*

38 *(d) If the employer of the EMT-P, pursuant to subdivision (b)*
39 *sends a recommendation to the authority for further investigation*
40 *or discipline of the licenseholder, the recommendation shall include*

1 all documentary evidence collected by the employer in evaluating
2 whether or not to make that recommendation. This recommendation
3 and accompanying evidence sent to the authority shall be deemed
4 in the nature of an investigative communication and be protected
5 by Section 6254 of the Government Code. In deciding what level
6 of disciplinary action is appropriate in the case and is consistent
7 with subdivision (b) of Section 1798.200, the authority shall consult
8 with the employer and medical director of the local EMS agency.

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

11 1798.202. (a) The director of the authority or the medical
12 director of the local EMS agency, after consultation with the
13 relevant employer, may temporarily suspend, prior to hearing, any
14 EMT-P license upon a determination that: (1) the licensee has
15 engaged in acts or omissions that constitute grounds for revocation
16 of the EMT-P license; and (2) permitting the licensee to continue
17 to engage in the licensed activity, or permitting the licensee to
18 continue in the licensed activity without restriction, would present
19 an imminent threat to the public health or safety. When the
20 suspension is initiated by the local EMS agency, subdivision (b)
21 shall apply. When the suspension is initiated by the director of the
22 authority, subdivision (c) shall apply.

23 (b) The local EMS agency shall notify the licensee that his or
24 her EMT-P license is suspended and shall identify the reasons
25 therefor. Within three working days of the initiation of the
26 suspension by the local EMS agency, the agency shall transmit to
27 the authority, via facsimile transmission or overnight mail, all
28 documentary evidence collected by the local EMS agency relative
29 to the decision to temporarily suspend. The authority and the
30 relevant employer shall jointly investigate the allegation to
31 determine disciplinary cause as defined in subdivision (e) of
32 Section 1798.200. Within two working days of receipt of the local
33 EMS agency's documentary evidence, the director of the authority,
34 in consultation with the employer and consistent with Sections
35 1798.200 and 1798.201, shall determine the need for the licensure
36 action. Part of that determination shall include an evaluation of
37 the need for continuance of the suspension during the licensure
38 action review process. If the director of the authority determines
39 that the temporary suspension order should not continue, the
40 authority shall immediately notify the licensee that the temporary

1 suspension is lifted. If the director of the authority determines that
2 the temporary suspension order should continue, the authority shall
3 immediately notify the licensee of the decision to continue the
4 temporary suspension and shall, within 15 calendar days of receipt
5 of the EMS agency's documentary evidence, serve the licensee
6 with a temporary suspension order and accusation pursuant to
7 Chapter 5 (commencing with Section 11500) of Part 1 of Division
8 3 of Title 2 of the Government Code.

9 (c) The director of the authority shall initiate a temporary
10 suspension with the filing of a temporary suspension order and
11 accusation pursuant to Chapter 5 (commencing with Section 11500)
12 of Part 1 of Division 3 of Title 2 of the Government Code and shall
13 notify the director of the local EMS agency, and the relevant
14 employer.

15 (d) If the licensee files a notice of defense, the hearing shall be
16 held within 30 days of the authority's receipt of the notice of
17 defense. The temporary suspension order shall be deemed vacated
18 if the authority fails to make a final determination on the merits
19 within 15 days after the administrative law judge renders the
20 proposed decision.

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

23 1798.211. When making a decision regarding a disciplinary
24 action pursuant to Section 1798.200, 1798.201, or 1798.210, the
25 authority, and when applicable the administrative law judge, shall
26 give credit for discipline imposed by the employer and for any
27 immediate suspension imposed by the local EMS agency for the
28 same conduct.

29 SEC. 6. Section 1799.112 of the Health and Safety Code is
30 amended to read:

31 1799.112. (a) EMT-P employers shall report in writing to the
32 local EMS agency medical director and the authority within three
33 days, and provide all supporting documentation within 30 days,
34 of whenever any of the following actions are taken:

35 (1) An EMT-P is terminated or suspended for disciplinary cause
36 or reason.

37 (2) An EMT-P resigns following notice of an impending
38 investigation based upon evidence indicating disciplinary cause
39 or reason.

1 (3) An EMT-P is removed from paramedic duties for
2 disciplinary cause or reason following the completion of an internal
3 investigation.

4 (b) The reporting requirements of subdivision (a) do not require
5 or authorize the release of information or records of an EMT-P
6 who is also a peace officer protected by Section 832.7 of the Penal
7 Code.

8 (c) For purposes of this section, “disciplinary cause or reason”
9 means only an action that is substantially related to the
10 qualifications, functions, and duties of a paramedic and is
11 considered evidence of a threat to the public health and safety as
12 identified in subdivision (c) of Section 1798.200.

13 (d) Pursuant to subdivision (i) of Section 1798.24 of the Civil
14 Code, upon notification to the paramedic, the authority may share
15 the results of its investigation into a paramedic’s misconduct with
16 the paramedic’s employer, prospective employer when requested
17 in writing as part of a preemployment background check, and the
18 local EMS agency.

19 (e) The information reported or disclosed in this section shall
20 be deemed in the nature of an investigative communication and is
21 exempt from disclosure as a public record by subdivision (f) of
22 Section 6254 of the Government Code.

23 (f) A paramedic applicant or licensee to whom the information
24 pertains may view the contents, as set forth in subdivision (a) of
25 Section 1798.24 of the Civil Code, of a closed investigation file
26 upon request during the regular business hours of the authority.

27 SEC. 7. If the Commission on State Mandates determines that
28 this act contains costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.