STATE OF RHODE ISLAND

DEPARTMENT OF HEALTH
DIVISION OF PREPAREDNESS, RESPONSE,
INFECTIOUS DISEASE & EMERGENCY MEDICAL SERVICES

CENTER FOR EMERGENCY MEDICAL SERVICES

In the Matter of:
BRIAN JOSEPH MCKAY
LICENSE NUMBERS EMT10867 AND ERS10867

CONSENT ORDER

Brian Joseph McKay ("Respondent") is licensed as an Emergency Medical Technician-Cardiac pursuant to R. I. Gen. Laws §§ 23-4.1-1 et seq. (the "EMS Practice Act"). The Rhode Island Department of Health, Division of Preparedness, Response, Infectious Disease and Emergency Medical Services, Center for Emergency Medical Services ("RIDOH") makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That Respondent holds license numbers EMT10867 and ERS10867 (the "Licenses"). Respondent has held the Licenses since February 20, 2001.

2. That on March 9, 2019, under the auspices of mentoring and training a young, female, novice employee (the "Employee"), Respondent is alleged to have taken the following actions:

   a. Respondent asked the Employee to accompany him into the back of an ambulance by herself, ostensibly to simulate emergency conditions. Once there, Respondent told the Employee that they were going to undertake an EKG simulation.

   b. During the simulation, Respondent instructed the Employee to lift up her shirt, then used his hands to unfasten her bra. Respondent became frustrated while performing this step because he could not seem to remove the bra as quickly as he wanted. Once her bra was removed, Respondent pinched the Employee's left nipple forcefully and moved it in several directions; then, continuing to squeeze the left nipple and pull it toward her face, he used his other hand to place the EKG electrodes below her left breast. None of the actions described in this paragraph would be necessary for an EMT to

perform EKG electrode placement in a respectful way that met the acceptable standards of the profession.

c. Throughout the incident described above, Respondent exhibited an aggressive demeanor intended to further intimidate the Employee.

3. That the Employee reported the events described in Paragraph 2 above to the Chief of the West Glocester Fire Department on the evening of the day that the events happened, March 9, 2019. Unsatisfied with the response she received from the Chief, she then reported the events to the Rhode Island State Police ("RISP") on March 17, 2019. On June 21, 2019, RISP filed a charge of Simple Assault and/or Battery (R.I. Gen. Laws § 11-5-3(a)) against Respondent and arrested him.

4. That, on September 27, 2019, Respondent entered a plea of Nolo Contendere to the charge of Simple Assault and/or Battery in Rhode Island Superior Court, receiving a sentence of a one-year filing.

5. That RIDOH first learned on July 20, 2019 that an incident involving sexually inappropriate behavior had taken place at a rescue or fire department, because RISP had deposed Chief Rhodes that day and the questions addressed to the Chief involved discerning the line between acceptable emergency medical practice and transgressive conduct. After the deposition, RIDOH reached out to RISP on August 1, 2019 to glean whatever additional details about this incident were available; in advance of making its request, a RISP staff member indicated to RIDOH that any information could only come from a public records request. RIDOH received a response from RISP on August 6, 2019, which included no identifying information and therefore could not be used to open a complaint. Unable to investigate further, RIDOH waited for the matter to work its way through the criminal process.

6. That RIDOH received one of the Complaints on September 28, 2019; that complaint was filed anonymously and included details of the criminal case that were available to the public and the identity of the perpetrator. When RIDOH finally received reliable evidence that it was capable of

investigating, it quickly did so. This investigation has included, among other actions, interviewing the Employee herself on October 15, 2019.

7. That having heard about the criminal investigation of, and plea by, Respondent from an anonymous complaint, RIDOH reached out to Respondent on October 1, 2019 and asked him to provide an explanation of the incident itself as well as his failure to notify RIDOH about the travel of the case. RIDOH requested a reply no later than October 15, 2019 and sent its inquiry via regular and certified mail; Respondent never supplied, nor claimed to supply, any response to this request, nor did Respondent ever claim to not have received RIDOH's October 1, 2019 correspondence.

8. That the Director of Health issued a Summary Suspension against Respondent on October 18, 2020 regarding the facts recounted in Paragraph 2 above because they demonstrated intentional, willful, and inappropriate misconduct on Respondent's part; that they had no basis in legitimate emergency medical practice; that they failed to conform to the current standards of EMS practice; and that a plea of Nolo Contendere is akin to a conviction and conclusive evidence that state law has been breached. These acts of unprofessional conduct constitute violations of § 23-4.1-9 of the EMS Practice Act and §§ 2.5(G)(1)(e) and 2.5(G)(1)(f) of the EMS Rules.

9. That the parties, being unable to negotiate a satisfactory resolution among themselves, submitted this matter to the Administrative Hearing Officer Catherine A. Warren, Esq., as designee for the Director of Health, for hearing pursuant to R.I. Gen. Laws §§ 42-35-1 et seq. Hearings in this matter were held on November 19, 2019, January 8, 2020, January 30, 2020, and February 14, 2020. The Director of Health issued her decision in this matter on May 6, 2020, and the period during which any party could file an appeal with the Superior Court closed on June 5, 2020. The sanctions imposed under this Consent Order are derived from the Director of Health's decision dated May 6, 2020.

ACCORDINGLY, AND BASED ON THE FOREGOING,

RIDOH and Respondent hereby agree:

10. Respondent admits to, and hereby agrees to remain under, the jurisdiction of RIDOH.

11. Respondent has read this Consent Order and understands this Consent Order shall become binding once signed by Respondent and RIDOH.

12. Respondent understands the purpose of this Consent Order is solely to resolve the Complaints.

13. Respondent hereby acknowledges and waives:

    a. The right to further procedural steps except for specifically contained herein;

    b. Any and all rights of appeal of this Consent Order;

    c. Any objection to the fact that this Consent Order may be presented to RIDOH for consideration and review;

    d. Any objection to the fact that it may be necessary for RIDOH to become acquainted with all evidence pertaining to this matter in order to review this Consent Order;

    e. Any objection to the fact that potential bias against Respondent may occur as a result of any presentation of this Consent Order; and

    f. Any objection that this Consent Order will be reported to the National Practitioner Data Bank as well as posted on RIDOH's public web site.

14. Respondent hereby agrees that the Licenses shall remain subject to the outstanding suspension order executed by the Director of Health on October 18, 2019 unless and until all the conditions in the Subparagraphs below are met (the "Consent Suspension"). Respondent shall bear his own costs and expenses for complying with the mandates of this Paragraph.

    a. Respondent shall undergo a mental health evaluation performed by a psychiatrist who is (i) pre-approved by RIDOH or (ii) subject to RIDOH's approval, in RIDOH's discretion, before Respondent finalizes engagement.

    b. Respondent shall secure a report from the psychiatrist performing the aforementioned mental health evaluation indicating Respondent is fit to return to the practice of emergency medical services. Such

Commented [AK(1]: Catherine's opinion states "psychiatrist" but the literature suggests that any licensed mental health worker (including many who cost much less than a psych and would be much more willing to engage the subject in therapy).

report shall: (i) be of customary form, length, and substance; (ii) contain whatever conditions, restrictions, caveats, consideration points, recommendations, and best practices the psychiatrist feels are germane for properly contextualizing and treating Respondent's issues; and (iii) be made available from the psychiatrist to RIDOH via DOH.PRCompliance@health.ri.gov.

c. Respondent shall fully cooperate with the psychiatrist's recommendations, directions, and comments throughout this rehabilitative process. Note that cooperation is an ongoing obligation, and it continues for as long as the psychiatrist deems compliance to be necessary.

15. Respondent shall be subject to Probation starting the day after the Consent Suspension has concluded (the "Probation Date"), and the Probation shall last for two years from the Probation Date. Respondent shall report to RIDOH if he is charged with any crime, regardless of classification or jurisdiction; such report shall be made within five business days after the charging date via DOH.PRCompliance@health.ri.gov.

16. Respondent acknowledges that:

a. this Consent Order is an agreement between RIDOH and Respondent; and

b. any violation or failure to adhere to the terms and conditions of this Consent Order shall constitute unprofessional conduct and subject Respondent to further disciplinary action at the discretion of RIDOH, including but not limited to Suspension or Revocation.

17. This Consent Order shall become a permanent part of Respondent's record maintained by RIDOH and a part of a public record of this proceeding.

Signed this 10 day of July, 2020

BRIAN JOSEPH MCKAY
EMT10867 and ERS10867

Approved this 10th day of July, 2020

JASON M. RHODES, MPA, AEMT-C
Chief, Center for Emergency Medical Services
Division of Preparedness, Response, Infectious Disease
and Emergency Medical Services
Rhode Island Department of Health