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2 BEFORE THE
3 EMERGENCY MEDICAL SERVICES AUTHORITY
4 STATE OF CALIFORNIA

5 In the Matter of the Accusation against:) Enforcement Matter No.: 12-0307
6) OAH No. 20141060011
7 **ALEXANDER BAKER**)
License No. P29848)
8 Respondent.) **DECISION AND ORDER**
9)
10)

11 I. INTRODUCTION

12 This matter was heard on August 5, 2015, by Howard Backer, MD, MPH, FACEP,
13 Director of the State of California Emergency Medical Services Authority (“Authority”),
14 pursuant to the provisions of the Administrative Procedure Act (“Act”)¹, subsequent to the
15 hearing held on February 9, 2015, by Administrative Law Judge Karl S. Engeman of the Office
16 of Administrative Hearings.

17 II. PARTIES

18 1. Howard Backer is the Director of the Authority. The Director makes this decision in
19 his official capacity as Director of the Authority, and not otherwise.

20 2. Respondent holds Emergency Medical Technician-Paramedic (“EMT-P”) license
21 number P29848 which was first issued on June 27, 2011, and is valid through June 30, 2017.

22 III. JURISDICTION
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25 ¹ The Act is codified at California Government Code Section 11370 et. seq.

1 The power to adopt, modify or reject a proposed decision is granted to the Authority
2 directly by the provisions of California Government Code, Section 11517, which provide:

3 “11517. (a) A contested case may be originally heard by the agency itself and subdivision
4 (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge
5 may originally hear the case alone and subdivision (c) shall apply.

6 (b) If a contested case is originally heard before an agency itself, all of the following
7 provisions apply:

8 (1) An administrative law judge shall be present during the consideration of the case and,
9 if requested, shall assist and advise the agency in the conduct of the hearing.

10 (2) No member of the agency who did not hear the evidence shall vote on the decision.

11 (3) The agency shall issue its decision within 100 days of submission of the case.

12 (c) (1) If a contested case is originally heard by an administrative law judge alone, he or
13 she shall prepare within 30 days after the case is submitted to him or her a proposed
14 decision in a form that may be adopted by the agency as the final decision in the case.

15 Failure of the administrative law judge to deliver a proposed decision within the time
16 required does not prejudice the rights of the agency in the case. Thirty days after the
17 receipt by the agency of the proposed decision, a copy of the proposed decision shall be
18 filed by the agency as a public record and a copy shall be served by the agency on each
19 party and his or her attorney. The filing and service is not an adoption of a proposed
20 decision by the agency.

21 (2) Within 100 days of receipt by the agency of the administrative law judge's proposed
22 decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the
23 agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days
24 of receipt of the proposed decision, the proposed decision shall be deemed adopted by the
25 agency. The agency may do any of the following:

 (A) Adopt the proposed decision in its entirety.

 (B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the
 proposed decision.

 (C) Make technical or other minor changes in the proposed decision and adopt it as the
 decision. Action by the agency under this paragraph is limited to a clarifying change or a
 change of a similar nature that does not affect the factual or legal basis of the proposed
 decision.

 (D) Reject the proposed decision and refer the case to the same administrative law judge
 if reasonably available, otherwise to another administrative law judge, to take additional
 evidence. If the case is referred to an administrative law judge pursuant to this
 subparagraph, he or she shall prepare a revised proposed decision, as provided in
 paragraph (1), based upon the additional evidence and the transcript and other papers that
 are part of the record of the prior hearing. A copy of the revised proposed decision shall
 be furnished to each party and his or her attorney as prescribed in this subdivision.

 (E) Reject the proposed decision, and decide the case upon the record, including the
 transcript, or upon an agreed statement of the parties, with or without taking additional
 evidence. By stipulation of the parties, the agency may decide the case upon the record

1 without including the transcript. If the agency acts pursuant to this subparagraph, all of
2 the following provisions apply:

3 (i) A copy of the record shall be made available to the parties. The agency may require
4 payment of fees covering direct costs of making the copy.

5 (ii) The agency itself shall not decide any case provided for in this subdivision without
6 affording the parties the opportunity to present either oral or written argument before the
7 agency itself. If additional oral evidence is introduced before the agency itself, no agency
8 member may vote unless the member heard the additional oral evidence.

9 (iii) The authority of the agency itself to decide the case under this subdivision includes
10 authority to decide some but not all issues in the case.

11 (iv) If the agency elects to proceed under this subparagraph, the agency shall issue its
12 final decision not later than 100 days after rejection of the proposed decision. If the
13 agency elects to proceed under this subparagraph, and has ordered a transcript of the
14 proceedings before the administrative law judge, the agency shall issue its final decision
15 not later than 100 days after receipt of the transcript. If the agency finds that a further
16 delay is required by special circumstance, it shall issue an order delaying the decision for
17 no more than 30 days and specifying the reasons therefor. The order shall be subject to
18 judicial review pursuant to Section 11523.”

19 IV. HISTORY

20 Pursuant to an appeal of the Accusation, a hearing was noticed and held in this matter on
21 November 20, 2014, and February 9, 2015, before Administrative Law Judge Karl S. Engeman
22 with the Office of Administrative Hearings in Sacramento, California. Respondent appeared at
23 this hearing and was represented by counsel Joseph W. Rose. Senior Staff Counsel Craig
24 Stevenson represented the Authority.

25 On or about March 11, 2015, the Authority received a copy of the proposed decision. On
or about April 17, 2015, the Authority served Respondent with a copy of the Administrative Law
Judge’s proposed decision and order and informed him that it had not adopted the Proposed
Decision and Order. The Authority ordered a copy of the transcript, and on or about June 12,
2015, set the matter for a written hearing. Respondent was informed that he could present
written argument to the Director on or before July 20, 2015, the date set for the written hearing.
Respondent, through counsel, requested a continuance which was granted to August 3, 2015. On

1 that date, counsel submitted further argument. The original Accusation, the evidence submitted
2 at the Administrative hearing, the Administrative Law Judge's proposed decision, a full copy of
3 the hearing transcript, and the additional argument submitted by Respondent were all considered
4 in this Decision and Order.

5 V. DISCUSSION

6 Respondent's license was subject to discipline for negligently performing a skill
7 (intubation) and for falsifying that he performed a verification of the intubation on the Patient
8 Care Report (PCR).

9 Addressing the first cause for license discipline, the Administrative Law Judge (ALJ)
10 found that there was potentially conflicting evidence regarding the placement of the endotracheal
11 tube in the patient (proposed decision, Paragraph 7). After reviewing the transcript of the
12 hearing and the ALJ's proposed decision, it is the decision of the Director to decide this cause in
13 a light most favorable to the accused, and therefore finds that negligent placement of the
14 endotracheal tube is not a cause for license discipline.
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16 The second cause of action is more weighty. Evidence was presented regarding his
17 failure to use a CO2 monitor to verify placement of the endotracheal tube. The use of a CO2
18 monitor to verify correct tube placement was required by local protocol. Respondent failed to
19 follow local protocol in this matter. This was a finding of the ALJ (Proposed decision, paragraph
20 10). Respondent's argument in support of adoption of the ALJ decision puts forth the reasoning
21 that since 15-22% of paramedics in Merced County don't use a CO2 monitor as is required by
22 the medical director of the local EMS agency, that he shouldn't be held liable for violating local
23 protocol in this instance. The Director finds this reasoning to be seriously flawed, and finds that
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1 Respondent did violate local protocol by failing to use a CO2 monitor as required, and agrees
2 with the ALJ in this finding (Proposed Decision, Paragraph 13).

3 The most serious allegation is that of falsifying the PCR to indicate that Respondent did
4 place the CO2 monitor. Respondent's argument is that he completed the report hours after the
5 call, and that he "inadvertently inserted a faulty value" in the PCR for this procedure. This
6 explanation was found to be not credible and self-serving, and was given no weight by the
7 Director. Filling out the PCR with specific values for a procedure that was never performed is
8 not mere inadvertence, but indicates thought and planning by Respondent to cover up his
9 violation of local protocol and admitted failure to verify the endotracheal tube placement with a
10 CO2 monitor. The Director agrees with the ALJ that Respondent committed dishonest acts by
11 falsifying the PCR, and has subject his license to discipline for a violation of Health and Safety
12 Code Section 1798.200(c)(5) and (10).

14 It is the opinion of the Director that such intentional dishonesty alone, which
15 relates directly to the practice of prehospital medicine, is worthy of outright license revocation.
16 However, the Administrative Law Judge also determined that there was evidence of mitigating
17 factors that did not warrant outright revocation of Respondent's license (Proposed Decision,
18 Paragraphs 15-19). While the Director agrees that there are factors in mitigation, it is the
19 Director's opinion that Respondent's mitigating factors do not meet the level of imposing the
20 recommended license discipline in this case, and imposing additional license discipline in this
21 instance is in the best interests of the public's health and safety. The Director therefore believes
22 the conditions of license discipline as set forth in the Administrative Law Judge's proposed
23 decision should be modified.

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1 VI. DECISION AND ORDER

2 The Director of the Authority therefore finds the following:

3 WHEREAS, the PROPOSED DECISION of the Administrative Law Judge and the NOTICE
4 CONCERNING PROPOSED DECISION in this matter were served upon Respondent in
5 accordance with Government Code section 11517; the Authority notified Respondent that the
6 Authority considered, but did not adopt, the PROPOSED DECISION; and

7 WHEREAS, the Respondent was afforded the opportunity to present written argument,
8 and presented written argument through counsel; and

9 WHEREAS, the Director of the Emergency Medical Services Authority has considered
10 the record, and now finds that;

11 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION of the
12 Administrative Law Judge is hereby adopted by the Acting Director of the Emergency Medical
13 Services Authority as its Decision in this matter, EXCEPT FOR: "ORDER", which is not
14 adopted and is replaced with the following:

15 ORDER

16 A. Emergency Medical Technician-Paramedic License No. P29848 issued to Respondent,
17 ALEANDER BAKER, is revoked; however, such revocation is stayed and Respondent's
18 license is placed on two years of probation with the following additional terms and
19 conditions:

20 (1) License Suspension: Respondent's license is suspended for thirty contiguous
21 calendar days from the effective date of this order.

22 (2) Additional Course Work: Within 90 days of the effective date of this order,
23 Respondent must provide proof of completion of an in-person course pertaining to
24 airway management that includes the use of CO2 monitors. The cost of such course
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1 shall be borne by the Respondent and must be prior approved by the Authority. This
2 course is in addition to any normal continuing education hours necessary to support
3 license renewal, and may not count as a course towards license renewal.

4 (3) Additional Course Work: Within 90 days of the effective date of this order,
5 Respondent must provide proof of completion of an in-person course pertaining to the
6 ethical practice of EMS. The cost of such course shall be borne by the Respondent
7 and must be prior approved by the Authority. This course is in addition to any
8 normal continuing education hours necessary to support license renewal, and may not
9 count as a course towards license renewal.

10 (4) Probation Compliance: Respondent will fully comply with all terms and conditions
11 of this Agreement. Respondent will fully cooperate with the Authority in its
12 monitoring, investigation, and evaluation of Respondent's compliance with the terms
13 and conditions of this Agreement. Respondent will immediately execute and submit
14 to the Authority all Release of Information forms that the Authority may require of
15 Respondent.

16 (5) Employment/LEMSA Notification: During the probationary period, Respondent
17 shall continuously update the Authority as to his EMS employment/LEMSA
18 accreditation with the following measures:

19 (a) Within ten days of the effective date of this Agreement, Respondent will submit the
20 name, address and telephone number of his current EMS employer(s), and all Local
21 Emergency Medical Services Agencies (LEMSA) where Respondent is accredited, to the
22 Authority.

23 (b) Within ten days of any change in EMS employment or accrediting LEMSA,
24 Respondent will notify the Authority of such change and will provide the Authority with
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1 the employer's name, address, and telephone number, and the name of the new
2 accrediting LEMSA.

3 (c) Respondent will notify his EMS employer and all LEMSAs where Respondent is
4 accredited, of the terms and conditions of this Agreement by providing to them a copy of
5 this Agreement. Within ten days of the effective date of this Agreement, Respondent will
6 submit proof to the Authority that he has made these notifications.

7 (d) Respondent shall, within ten days of applying for any new EMS employment or
8 applying for accreditation with a new LEMSA, submit proof to the Authority that he has
9 notified the prospective EMS employer or LEMSA of these terms and conditions by
10 providing a copy of this Agreement to the prospective employer or LEMSA. Respondent
11 shall inform the Authority in writing of the name and address of any prospective EMS
12 employer prior to accepting new employment or any new LEMSA where Respondent
13 receives accreditation.

14 (e) Notification of Termination: Respondent will notify the Authority in writing within
15 72 hours of his resignation or termination, for any reason, from any EMS employment.
16 Respondent will provide in the notification letter a full and detailed explanation of the
17 reasons for and the circumstances of his resignation or termination.

18 (6) Personal Appearances: As directed by the Authority, Respondent will appear in
19 person for interviews, meetings, and evaluations of Respondent's compliance with the
20 terms and conditions of this Agreement. Respondent is responsible for all of his costs
21 associated with this requirement.

22 (7) Quarterly Report Requirements: Respondent will submit quarterly reports, due on or
23 before January 15, April 15, July 15, and October 15, for each preceding quarter, to the
24 Authority wherein Respondent certifies under penalty of perjury that he has met the terms
25 and conditions of his probation. Respondent will provide whatever documentation is

1 necessary to document compliance with the terms and conditions of probation. If
2 Respondent fails to meet any of the terms or conditions, Respondent will provide the
3 Authority with a written explanation for such failure.

4 (8) Maintain Active License: Respondent will maintain an active license with the
5 Authority in order for the probationary period to run. Should Respondent's license lapse
6 or expire by operation of law or otherwise during the probationary period, upon renewal
7 or reinstatement, the license will be subject to any and all terms and conditions of this
8 probation that remain unsatisfied.

9 (9) Obey All Related Laws: Respondent shall obey all federal, state and local laws,
10 statutes and regulations, written policies, protocols and rules governing the practice of
11 medical care as a paramedic. Respondent shall not engage in any conduct that constitutes
12 grounds for disciplinary action pursuant to EMS Act section 1798.200. Within 72 hours
13 of being arrested, cited or charged for any offense, Respondent shall submit to the
14 Authority a full and detailed account of the circumstances thereof.

15 The Authority shall determine whether the offense constitutes a violation of any federal,
16 state or local laws, written policies, protocols or rules governing the practice of medical
17 care as a paramedic. To permit monitoring of compliance with this term, if Respondent
18 has not submitted fingerprints to the Authority in the past as a condition of licensure,
19 Respondent shall submit his fingerprints by Live Scan and pay the appropriate fees
20 within forty-five days of the effective date of this Agreement.

21 (10) Notifications/Submissions: Any and all notifications and submissions to the
22 Authority shall be sent by certified mail or e-mail. When emailing notifications and
23 submissions, Respondent must receive a return e-mail from the Authority to assure the
24 notification or submission was timely received.

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1 B. Completion of Probation: Respondent's license shall have unrestricted status upon
2 successful completion of probation. Successful completion entails complying with all
3 terms and conditions listed in paragraph A., above.

4 C. Violation of Probation:

5 (1) Respondent understands and agrees that if during the period of probation
6 he fails to comply with any term or condition of probation, the Authority will initiate
7 action to terminate probation and proceed with actual license suspension or revocation.
8 Upon initiation of such an action, or upon giving notice to Respondent of the Authority's
9 intent to initiate such an action, the probationary period shall remain in effect until the
10 Authority has adopted a decision on the matter. An action to terminate probation and
11 implement actual license suspension or revocation shall be initiated and conducted
12 pursuant to the hearing provisions of the California Administrative Procedure Act.

13 (2) If such an action ensues, the issues to be resolved at the hearing shall be limited to
14 whether Respondent has violated any term of his probation sufficient to warrant
15 termination of the probation and implementation of license suspension or revocation. At
16 the hearing, Respondent and the Authority shall be bound to the admissions contained in
17 the terms of probation and neither party shall have a right to litigate the validity or
18 invalidity of such admissions.

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20 This DECISION shall become effective 30 days upon the date of signature below.

21 Dated:

22 September 21, 2015

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24 Howard Backer, MD, MPH, FACEP
25 Director
Emergency Medical Services Authority
State of California