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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.: 10-0344
6 ANTHONY RIVERA) OAH No. 2010120730
7 P21451)
8 Respondent.) **DECISION AND ORDER**

9 I. INTRODUCTION

10 This matter was heard on May 5, 2010, by Daniel R. Smiley, Acting Director of the
11 State of California Emergency Medical Services Authority (“Authority”), pursuant to the
12 provisions of the Administrative Procedure Act (“Act”)¹, subsequent to the hearing held on
13 January 7, 2011, by Administrative Law Judge Carla Nasoff of the Office of Administrative
14 Hearings.
15

16 II. PARTIES

17 1. Daniel R. Smiley is the Acting Director of the Authority. The Acting Director makes
18 this decision in his official capacity as Acting Director of the Authority, and not otherwise.

19 2. Respondent held Emergency Medical Technician-Paramedic (“EMT-P”) license
20 number P21451 which was first issued on August 19, 2004, and was valid through August 31,
21 2008, at which time the license lapsed.

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

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III. JURISDICTION

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

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

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

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

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

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

(c) (1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the 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.

1 (E) Reject the proposed decision, and decide the case upon the record, including the
2 transcript, or upon an agreed statement of the parties, with or without taking additional
3 evidence. By stipulation of the parties, the agency may decide the case upon the record
4 without including the transcript. If the agency acts pursuant to this subparagraph, all of
5 the following provisions apply:

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

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

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

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

22 IV. HISTORY

23 Pursuant to an appeal of the Accusation and Temporary Suspension Order, a hearing was
24 noticed and held in this matter on January 7, 2011, before Administrative Law Judge Carla
25 Nasoff with the Office of Administrative Hearings in San Diego, California. Respondent
appeared at this hearing and was represented by counsel. Senior Staff Counsel Cynthia Curry
represented the Authority.

On or about January 24, 2011, the Authority received a copy of the proposed decision.
On or about February 8, 2011, the Authority lifted the Temporary Suspension Order on
Respondent's license. On or about February 16, 2011, the authority served Respondent with a
copy of the Administrative Law Judge's proposed decision and order, and informed him at that
time that it had not adopted the Proposed Decision and Order, and that the Authority would be
ordering a copy of the hearing transcript and setting the matter for a written hearing. Respondent

1 was informed that he could present written argument to the Director on or before May 5, 2011,
2 the date set for the written hearing. Respondent submitted no further argument or documents.
3 The original Accusation, the evidence submitted at the Administrative hearing, the
4 Administrative Law Judge's proposed decision, and a full copy of the hearing transcript were all
5 considered in this Decision and Order.

6 V. DISCUSSION

7 Respondent's license was subject to discipline for practicing while his paramedic
8 license was expired for a lengthy period of time (approximately three years), and for practicing
9 without receiving accreditation from the local EMS Agency. This is not denied by Respondent
10 ("Proposed Decision, Stipulated Facts #5", Page 2). Respondent admitted that he failed to renew
11 his license for two licensure renewal cycles ("Proposed Decision", Paragraph 6, Page 2).

12 Although Respondent submitted evidence that he had kept up his continuing education hours,
13 this is not the baseline test, nor the only requirement, for the practice of Para-medicine in
14 California. The laws and regulations are clear as to the basic requirements of a Paramedic
15 license in California, and the Authority takes most seriously the negligent inattention or
16 disregard of the licensure requirements, which are designed to protect the public's health and
17 safety.
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19 It is the opinion of the Acting Director that such failure to comply with statute
20 and regulation, whether intentionally or through negligence, is worthy of outright license
21 revocation. However, the Administrative Law Judge also determined that there was evidence of
22 some mitigating factors that did not warrant outright revocation of Respondent's license
23 ("Evaluation" Page 10, Proposed Decision). While the Acting Director agrees that there are
24 factors in mitigation, it is the Acting Director's opinion that Respondent's mitigating factors do
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1 not meet the level of imposing the minimum recommended license discipline in this case
2 (Exhibit 3, Page 3-010, #7), and imposing additional license discipline in this instance is not
3 contrary to the public's health and safety. The Acting Director therefore believes the conditions
4 of license discipline as set forth in the Administrative Law Judge's proposed decision should be
5 modified.

6 VI. DECISION AND ORDER

7 The Acting Director of the Authority therefore finds the following:

8 WHEREAS, the PROPOSED DECISION of the Administrative Law Judge and the NOTICE
9 CONCERNING PROPOSED DECISION in this matter were served upon Respondent in
10 accordance with Government Code section 11517; the Authority notified Respondent that the
11 Authority considered, but did not adopt, the PROPOSED DECISION; and
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13 WHEREAS, the Respondent was afforded the opportunity to present written argument,
14 but did not exercise the opportunity; and

15 WHEREAS, the Acting Director of the Emergency Medical Services Authority has
16 considered the record, and now finds that;

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

21 ORDER

22 Emergency Medical Technician-Paramedic License No. P21451 issued to Respondent,
23 Anthony Rivera, is revoked; however, the order of revocation is stayed and Respondent's
24 license is placed on three years' probation with the following additional terms and
25 conditions:

1 A. **Licensing Requirements:** Petitioner must comply with all regular
2 requirements necessary for licensure for an individual with a lapsed license of a similar
3 time period that currently exist in the California Code of Regulations, Title 22, Division
4 9, Chapter 4, Article 6, Section 100166, pertaining to the payment of fees, required
5 course work, submission of fingerprints and background check (if not already
6 completed), continuing education hours, passage of the National Registry Examination,
7 etc.

8 B. **Additional Continuing Education Hours:** In addition to the
9 requirements above, Respondent shall complete prior to license renewal issuance,
10 seventy-two (72) hours of “in person” (live classroom attendance) continuing education
11 courses to include courses in ACLS, PALS, and PHTLS/ITLS.

12 C. **License Suspension:** Upon completion of all renewal requirements and
13 Respondent’s license being placed on active status, such license shall be suspended for a
14 period of six (6) calendar months from the day that the license is eligible to be restored to
15 active status.

16 D. **Personal Appearances:** As directed by the Authority, Petitioner will
17 appear in person for interviews, meetings, and/or evaluations of Petitioner’s compliance
18 with the terms and conditions of this decision. Petitioner is responsible for all of his costs
19 associated with this requirement.

20 E. **Quarterly Report Requirements:** Petitioner will submit quarterly
21 reports, due on or before January 15, April 15, July 15, and October 15, for each
22 preceding quarter, to the Authority wherein Petitioner certifies under penalty of perjury
23 that he has met the terms and conditions of his probation. Petitioner will provide
24 whatever documentation is necessary to document compliance with the terms and
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1 conditions of probation. If Petitioner has not met any of the terms or conditions,
2 Petitioner will provide a written explanation thereof.

3 F. **Employment Notification:** During the probationary period, Petitioner
4 shall continuously update the Authority as to his EMS employment with the following
5 measures:

6 1. Within ten days of the date of this decision, Petitioner will submit the
7 name, address and telephone number of his current EMS employer(s) to the Authority.

8 2. Within ten days of any change in EMS employment, Petitioner will notify
9 the Authority of such change and will provide the Authority with the employer's name,
10 address, and telephone number.

11 3. Petitioner will notify his current EMS employer(s) of these terms and
12 conditions of this decision by providing to them a copy of this decision. Within ten days
13 of the effective date of this decision, Petitioner will submit proof to the Authority that he
14 has made this notification.

15 4. Petitioner shall, within ten days of applying for any new EMS
16 employment, submit proof to the Authority that he has notified the prospective EMS
17 employer of these terms and conditions by providing a copy of this decision to the
18 prospective employer. Petitioner shall inform the Authority in writing of the name and
19 address of any prospective EMS employer prior to accepting new employment.

20 G. **Notification of Termination:** Petitioner will notify the Authority in
21 writing within 72 hours of his resignation or termination, for any reason, from any EMS
22 employment. Petitioner will provide in the notification letter a full and detailed
23 explanation of the reasons for and the circumstances of his resignation or termination.

24 H. **Functioning as a Paramedic:** The period of probation shall not run
25 anytime that Petitioner is not practicing as a paramedic within the jurisdiction of

1 California. If Petitioner leaves the jurisdiction of California to practice as a paramedic,
2 he must immediately notify the Authority, in writing, of the date of his departure and the
3 date of return to California. If he returns to California, Petitioner's license will be subject
4 to any remaining period of suspension and/or any and all terms and conditions of this
5 probation which remain unsatisfied. Petitioner will maintain an active license with the
6 Authority. Should Petitioner's license lapse or expire by operation of law or otherwise,
7 upon renewal or reinstatement, the license will be subject to any and all terms and
8 conditions of this probation which remain unsatisfied.

9 I. **Obey All Related Laws:** Petitioner shall obey all federal, state and local
10 laws, statutes and regulations, written policies, protocols and rules governing the practice
11 of medical care as a paramedic. Petitioner shall not engage in any conduct that is
12 grounds for disciplinary action pursuant to section 1798.200. Within 72 hours of being
13 arrested, cited or charged for any offense, Petitioner shall submit to the Authority a full
14 and detailed account of the circumstances thereof. The Authority shall determine the
15 applicability of the offense(s) as to whether Petitioner has violated any federal, state or
16 local laws, statutes and regulations, written policies, protocols and rules governing the
17 practice of medical care as a paramedic. To permit monitoring of compliance with this
18 term, if Petitioner has not submitted fingerprints to the Authority in the past as a
19 condition of licensure, Petitioner shall submit his fingerprints by Live Scan and pay the
20 appropriate fees within forty-five (45) days of the date of this decision.

21 J. **Notifications/Submissions:** Any and all notifications and submissions to
22 the Authority shall be sent by certified mail or e-mail. When emailing notifications and
23 submissions, Petitioner must receive a return e-mail from the Authority to assure the
24 notification or submission was timely received.
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1 A. **Completion of Probation:** Petitioner's license shall be placed on
2 unrestricted status upon successful completion of probation. Successful completion entails
3 complying with all terms and conditions listed above.

4 B. **Violation of Probation:**

5 Petitioner understands and agrees that if during the period of probation he fails to comply
6 with any term or condition of probation, the Authority will initiate action to terminate probation
7 and proceed with actual license suspension/revocation. Upon initiation of such an action, or the
8 giving of notice to Petitioner of the Authority's intent to initiate such an action, the probationary
9 period shall remain in effect until such time as a decision on the matter has been adopted by the
10 Authority. An action to terminate probation and implement actual license suspension/revocation
11 shall be initiated and conducted pursuant to the hearing provisions of the California
12 Administrative Procedure Act. If such an action ensues, the issues to be resolved at the hearing
13 shall be limited to whether Petitioner has violated any term of his probationary license sufficient
14 to warrant termination of the probation and implementation of actual suspension/revocation.

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16 This DECISION shall become effective 15 days upon the date of signature below.

17 Dated:

18 20 June 2010



19 DANIEL R. SMILEY
20 Acting Director
21 Emergency Medical Services Authority
22 State of California
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