BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation against: ) Enforcement Matter No.: 12-0307
 ) OAH No. 20141060011

ALEXANDER BAKER ) ) DECISION AND ORDER
License No. P29848 )
Respondent. )

I. INTRODUCTION

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

II. PARTIES

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

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

III. JURISDICTION

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\(^1\) The Act is codified at California Government Code Section 11370 et. seq.
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.
(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
without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:
(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.
(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.
(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.
(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.”

IV. HISTORY

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

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

V. DISCUSSION

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

Addressing the first cause for license discipline, the Administrative Law Judge (ALJ) found that there was potentially conflicting evidence regarding the placement of the endotracheal tube in the patient (proposed decision, Paragraph 7). After reviewing the transcript of the hearing and the ALJ’s proposed decision, it is the decision of the Director to decide this cause in a light most favorable to the accused, and therefore finds that negligent placement of the endotracheal tube is not a cause for license discipline.

The second cause of action is more weighty. Evidence was presented regarding his failure to use a CO2 monitor to verify placement of the endotracheal tube. The use of a CO2 monitor to verify correct tube placement was required by local protocol. Respondent failed to follow local protocol in this matter. This was a finding of the ALJ (Proposed decision, paragraph 10). Respondent’s argument in support of adoption of the ALJ decision puts forth the reasoning that since 15-22% of paramedics in Merced County don’t use a CO2 monitor as is required by the medical director of the local EMS agency, that he shouldn’t be held liable for violating local protocol in this instance. The Director finds this reasoning to be seriously flawed, and finds that
Respondent did violate local protocol by failing to use a CO2 monitor as required, and agrees with the ALJ in this finding (Proposed Decision, Paragraph 13).

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

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

The Director of the Authority therefore finds the following:

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

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

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

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

ORDER

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

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

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

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

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

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

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

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

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

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

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

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

(7) Quarterly Report Requirements: Respondent will submit quarterly reports, due on or before January 15, April 15, July 15, and October 15, for each preceding quarter, to the Authority wherein Respondent certifies under penalty of perjury that he has met the terms and conditions of his probation. Respondent will provide whatever documentation is
necessary to document compliance with the terms and conditions of probation. If
Respondent fails to meet any of the terms or conditions, Respondent will provide the
Authority with a written explanation for such failure.

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

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

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

(10) Notifications/Submissions: Any and all notifications and submissions to the
Authority shall be sent by certified mail or e-mail. When emailing notifications and
submissions, Respondent must receive a return e-mail from the Authority to assure the
notification or submission was timely received.
B. Completion of Probation: Respondent’s license shall have unrestricted status upon successful completion of probation. Successful completion entails complying with all terms and conditions listed in paragraph A., above.

C. Violation of Probation:

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

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

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

Dated:

[Signature]

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