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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.: 07-0403
6) OAH No. L-2009010716
7 **JENNIFER HENDERSON**)
License No.: P23419)
8 Respondent.) **DECISION AND ORDER**

9
10 I. INTRODUCTION

11 This matter was heard on February 10, 2010, by R. Steven Tharratt MD, MPVM,
12 Director of the State of California Emergency Medical Services Authority (“Authority”),
13 pursuant to the provisions of the Administrative Procedure Act (“Act”)¹, subsequent to the
14 hearing held on September 8 and 9, 2009, by Administrative Law Judge James Ahler of the
15 Office of Administrative Hearings.

16 II. PARTIES

17 1. R. Steven Tharratt MD, MPVM, is the Director of the Authority. The Director makes
18 this decision in his official capacity as Director of the Authority.

19 2. On or about February 24, 2006, the Emergency Medical Services Authority, State of
20 California, issued Emergency Medical Technician-Paramedic (EMT-P) License No. P23419 to
21 **JENNIFER HENDERSON** (Respondent). The license was in full force and effect at all times
22 relevant to the charges brought herein, and expired by natural operation on February 28, 2010,
23 Respondent may renew this license unless suspended or revoked according to law.

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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 a notice of defense tendered by Respondent, a hearing was noticed and held
24 in this matter on September 8 and 9, 2009, before an Administrative Law Judge (ALJ) with the
25 Office of Administrative Hearings in San Diego, California. Respondent appeared at this
hearing and was represented by David J. Givot, Esq.

On or about September 30, 2009, the Authority received a copy of the Proposed Decision
and Order which was dated September 23, 2009. The Authority served a copy of the proposed
decision on Respondent via registered mail on October 23, 2009, and informed her at that time
that it had not adopted the Proposed Decision and Order. The Authority then ordered a copy of
the transcript of the hearing. The Authority sent notice to the Respondent on January 5, 2010,
that it was not adopting the proposed decision of the ALJ, and that Respondent could present
written argument to the Director on or before February 9, 2010. Respondent's counsel timely

1 submitted a written argument in support of the ALJ's proposed decision. The original
2 Accusation, the transcripts from the hearing, the evidence submitted at the hearing, the ALJ's
3 proposed decision, and Respondent's written argument were considered in this Decision and
4 Order.

5 V. DISCUSSION

6 Respondent's license was subject to discipline for violations of Health and Safety Code
7 section 1798.200, subdivision (c)(5); The commission of any fraudulent, dishonest, or corrupt act
8 which is substantially related to the qualifications, functions, and duties of prehospital personnel,
9 (c)(7); Violating or attempting to violate directly or indirectly, or assisting in or abetting the
10 violation of, or conspiring to violate, any provision of this division or the regulations adopted by
11 the authority pertaining to prehospital personnel, and (c)(10); Functioning outside the
12 supervision of medical control in the field care system operating at the local level, except as
13 authorized by any other license or certification.

14 The ALJ determined that in the legal conclusions at page 21, Paragraph 8, of the
15 proposed decision that cause does not exist for disciplinary action related to the allegation of a
16 violation of Health and Safety Code Section 1798.200(c)(5). The Director so agrees and
17 therefore this finding of the ALJ is adopted by the Authority. The ALJ did find that cause exists
18 to impose license discipline on Respondent for violations of Health and Safety Code Section
19 1798.200(c)(7) and (10) (Page 21, Paragraph 9, proposed decision), and so the discussion of this
20 decision and order relates to those allegations and findings.
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1 The Director cannot agree with the Administrative Law Judge's proposed decision
2 relating to the proposed discipline of an administrative fine of \$500.00 for the violations of
3 1798.200(c)(7) and (10). An administrative fine is appropriate "For a minor offense that did not
4 result in actual harm to a patient" (Recommended Guidelines for Disciplinary Orders And
5 Conditions of Probation, Page 3). The type of offense committed in this instance is significantly
6 intertwined with issues relating to patient care, and the medical issues involved are not minor.
7 Although no patient harm was involved in this particular instance, the potential for great patient
8 harm, even death, existed. For this reason, an administrative fine is not an appropriate level of
9 discipline, and that recommendation is not adopted by the Director.

11 The ALJ found on Page 12, Paragraph 30 and 31, of the proposed decision that the drugs
12 administered pursuant to the procedure of Rapid Sequence Intubation were not allowed under
13 the local protocol, that Respondent knew this, and that she also knew that it exceeded her scope
14 of practice. The AJJ additionally found at Page 15, Paragraph 40, of the proposed decision that
15 Respondent admitted if presented the same set of circumstances she would again perform the
16 same action; that is, she would knowingly administer drugs and perform a procedure not
17 allowed in a pre-hospital setting in the State of California. The ALJ dismissed this as of being
18 of little consequence, due to his unsupported opinion that the chance of the same situation
19 occurring again was statistically improbable.

21 The standards and scope of practice for EMT-P pre-hospital providers have been
22 developed and continually revised over many years. The local scopes of practice under the
23 purview of Local EMS Agency medical directors cannot be set aside by an individual's own
24 personal opinion, or looked upon as a light thing or something that is optional to follow. To
25 allow this attitude is to encourage the substitution of a pre-hospital provider's medical opinion

1 for that of a physician Medical Director who has the actual authority and responsibility to
2 develop the scope of practice and protocols. To act in such a manner clearly is acting outside the
3 scope of medical control in violation of Health and Safety Code 1798.200(c)(10).

4 Contrary to the ALJ's reasoning that is not a significant matter, Respondent's admission
5 that she would do the same thing again if presented with the same circumstances reveals that
6 Respondent has little regard for the medical controls in place for pre-hospital providers. The
7 chance exists that she would do the same procedure, or other procedures not allowed under a
8 Paramedic scope of practice, if in her opinion the situation warranted it.

9 Particularly telling in this instance is that Respondent did not actually have to violate any
10 provisions at all to accomplish the same result for this patient. The Washington State
11 Paramedics who were at the scene could have easily performed the actions allowed within their
12 scope of practice (administering specific medications), and Respondent could have easily helped
13 in the portions of the procedure that did not violate hers (performing an intubation). Although it
14 is easy perhaps to try to minimize the instant conduct by writing it off as something that
15 happened in the "heat of the moment", Respondent's statement that she would do the same thing
16 again months later after having time to reflect on the actions that occurred is illuminating as to
17 the potential for possible recurring harm to the public.

18 VI. DECISION AND ORDER

19 The Director of the Authority therefore finds the following:

20 WHEREAS, the PROPOSED DECISION of the Administrative Law Judge and the NOTICE
21 CONCERNING PROPOSED DECISION in this matter were served upon Respondent in
22 accordance with Government Code section 11517; the Authority notified Respondent that the
23 Authority considered, but did not adopt, the PROPOSED DECISION; and
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1 WHEREAS, the Respondent was afforded the opportunity to present written argument,
2 and presented written argument through counsel; and

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

5 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION of the
6 Administrative Law Judge is hereby adopted by the Director of the Emergency Medical Services
7 Authority as its Decision in this matter, EXCEPT FOR the ORDER, the following being
8 substituted therefore:

9 Respondent **JENNIFER HENDERSON**'s EMT-P license shall be placed on probation
10 for a period of one (1) year from the effective date of this order, subject to the following terms
11 and conditions:

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

17 B. **Personal Appearances:** As directed by the Authority, Respondent will
18 appear in person for interviews, meetings, and/or evaluations of Respondent's
19 compliance with the terms and conditions of this Agreement. Respondent is responsible
20 for all of her costs associated with this requirement.

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

1 conditions of probation. If Respondent has not met any of the terms or conditions,
2 Respondent will provide a written explanation thereof.

3 **D. Employment/LEMSA Notification:** During the probationary period,
4 Respondent shall continuously update the Authority as to her EMS employment/LEMSA
5 accreditation with the following measures:

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

10 2. Within ten days of any change in EMS employment or accrediting LEMSA,
11 Respondent will notify the Authority of such change and will provide the Authority with the
12 employer's name, address, and telephone number, and the name of the new accrediting
13 LEMSA.

14 3. Respondent will notify her current EMS employer(s), and all LEMSA's where
15 Respondent is accredited, of these terms and conditions of this Agreement by providing to
16 them a copy of this Agreement. Within ten days of the effective date of this Agreement,
17 Respondent will submit proof to the Authority that she has made these notifications.

18 4. Respondent shall, within ten days of applying for any new EMS employment
19 or applying for accreditation with a new LEMSA, submit proof to the Authority that she has
20 notified the prospective EMS employer or LEMSA of these terms and conditions by
21 providing a copy of this Agreement to the prospective employer or LEMSA. Respondent
22 shall inform the Authority in writing of the name and address of any prospective EMS
23 employer prior to accepting new employment or any new LEMSA where Respondent
24 receives accreditation.

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1 E. **Notification of Termination:** Respondent will notify the Authority in
2 writing within 72 hours of her resignation or termination, for any reason, from any EMS
3 employment. Respondent will provide in the notification letter a full and detailed
4 explanation of the reasons for and the circumstances of her resignation or termination.

5 F. **Functioning as a Paramedic:** The period of probation shall not run
6 anytime that Respondent is not practicing as a paramedic within the jurisdiction of
7 California. If Respondent leaves the jurisdiction of California to practice as a paramedic,
8 she must immediately notify the Authority, in writing, of the date of her departure and the
9 date of return to California. If she returns to California, Respondent's license will be
10 subject to any remaining period of suspension and/or any and all terms and conditions of
11 this probation that remain unsatisfied. Respondent will maintain an active license with
12 the Authority. Should Respondent's license lapse or expire by operation of law or
13 otherwise, upon renewal or reinstatement, the license will be subject to any and all terms
14 and conditions of this probation that remain unsatisfied.

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

3 H. **Notifications/Submissions:** Any and all notifications and submissions to
4 the Authority shall be sent by certified mail or e-mail. When emailing notifications and
5 submissions, Respondent must receive a return e-mail from the Authority to assure the
6 notification or submission was timely received.

7 A. **Completion of Probation:** Respondent's license shall be returned to
8 unrestricted status upon successful completion of probation. Successful completion entails
9 complying with all terms and conditions listed above.

10 B. **Violation of Probation:**

11 (1) If during the period of probation Respondent fails to comply with any term
12 or condition of probation, the Authority will initiate action to terminate probation and
13 proceed with actual license suspension/revocation. Upon initiation of such an action, or
14 the giving of notice to Respondent of the Authority's intent to initiate such an action, the
15 probationary period shall remain in effect until such time as a decision on the matter has
16 been adopted by the Authority. An action to terminate probation and implement actual
17 license suspension/revocation shall be initiated and conducted pursuant to the hearing
18 provisions of the California Administrative Procedure Act.

19 If such an action ensues, the issues to be resolved at the hearing shall be limited to
20 whether Respondent has violated any term of her probation sufficient to warrant termination of
21 the probation and implementation of actual suspension/revocation. At the hearing, Respondent
22 and the Authority shall be bound to the admissions contained in the terms of probation and
23 neither party shall have a right to litigate the validity or invalidity of such admissions.

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1 This DECISION shall become effective thirty (30) days from the date of signature below.

2 Dated:

3 4/12/10

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5 R. STEVEN THARRATT, MD, MPVM
6 Director
7 Emergency Medical Services Authority
8 State of California
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