BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against: ) Enforcement Matter No.: 07-0403
JENNIFER HENDERSON ) OAH No. L-2009010716
License No.: P23419 ) ) DECISION AND ORDER
Respondent. )

I. INTRODUCTION

This matter was heard on February 10, 2010, by R. Steven Tharratt MD, MPVM, 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 September 8 and 9, 2009, by Administrative Law Judge James Ahler of the Office of Administrative Hearings.

II. PARTIES

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

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

¹ The Act is codified at California Government Code Section 11370 et. seq.
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.
(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 a notice of defense tendered by Respondent, a hearing was noticed and held
in this matter on September 8 and 9, 2009, before an Administrative Law Judge (ALJ) with the
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
submitted a written argument in support of the ALJ’s proposed decision. The original
Accusation, the transcripts from the hearing, the evidence submitted at the hearing, the ALJ’s
proposed decision, and Respondent’s written argument were considered in this Decision and
Order.

V. DISCUSSION

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

The ALJ determined that in the legal conclusions at page 21, Paragraph 8, of the
proposed decision that cause does not exist for disciplinary action related to the allegation of a
violation of Health and Safety Code Section 1798.200(c)(5). The Director so agrees and
therefore this finding of the ALJ is adopted by the Authority. The ALJ did find that cause exists
to impose license discipline on Respondent for violations of Health and Safety Code Section
1798.200(c)(7) and (10) (Page 21, Paragraph 9, proposed decision), and so the discussion of this
decision and order relates to those allegations and findings.

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The Director cannot agree with the Administrative Law Judge’s proposed decision relating to the proposed discipline of an administrative fine of $500.00 for the violations of 1798.200(c)(7) and (10). An administrative fine is appropriate "For a minor offense that did not result in actual harm to a patient" (Recommended Guidelines for Disciplinary Orders And Conditions of Probation, Page 3). The type of offense committed in this instance is significantly intertwined with issues relating to patient care, and the medical issues involved are not minor. Although no patient harm was involved in this particular instance, the potential for great patient harm, even death, existed. For this reason, an administrative fine is not an appropriate level of discipline, and that recommendation is not adopted by the Director.

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

The standards and scope of practice for EMT-P pre-hospital providers have been developed and continually revised over many years. The local scopes of practice under the purview of Local EMS Agency medical directors cannot be set aside by an individual’s own personal opinion, or looked upon as a light thing or something that is optional to follow. To allow this attitude is to encourage the substitution of a pre-hospital provider’s medical opinion.
for that of a physician Medical Director who has the actual authority and responsibility to
develop the scope of practice and protocols. To act in such a manner clearly is acting outside the

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

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

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, including the transcript, and now finds that;

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

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

A.  **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.

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

C.  **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 she 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 has not met any of the terms or conditions,
Respondent will provide a written explanation thereof.

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

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

2. 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 accrediting
LEMSA.

3. Respondent will notify her current EMS employer(s), and all LEMSA’s where
Respondent is accredited, of these 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 she has made these notifications.

4. 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 she 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 her 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 her resignation or termination.

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

G. **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 is grounds for disciplinary action pursuant to 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 the applicability of the offense(s) as to whether Respondent has violated any federal, state or local laws, statutes and regulations, written policies, protocols and 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 her fingerprints by Live Scan and pay the appropriate fees within forty-five (45) days of the effective date of this Agreement.

H. 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.

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

B. Violation of Probation:

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

If such an action ensues, the issues to be resolved at the hearing shall be limited to whether Respondent has violated any term of her probation sufficient to warrant termination of the probation and implementation of actual suspension/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.

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

Dated: 4/12/10

R. STEVEN THARRATT, MD, MPVM
Director
Emergency Medical Services Authority
State of California