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

5 In the Matter of the Accusation against: )  
6 JAMES R. PINTUS ) Enforcement Matter No.: 12-0172  
License No. 28590 ) OAH No. 20141070100  
7 Respondent. ) **DECISION AND ORDER**  
8 )  
9 )

10 I. INTRODUCTION

11 This matter was heard on September 2, 2015, by Howard Backer, MD, MPH, FACEP,  
12 Director of the State of California Emergency Medical Services Authority (“Authority”),  
13 pursuant to the provisions of the Administrative Procedure Act (“Act”)<sup>1</sup>, subsequent to the  
14 hearing held on March 4, 2015, by Administrative Law Debra Nye-Perkins of the Office of  
15 Administrative Hearings.

16 II. PARTIES

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

19 2. Respondent holds Emergency Medical Technician-Paramedic (“EMT-P”) license  
20 number P28590 which was first issued on June 21, 2010, and is valid through June 30, 2016.

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24 <sup>1</sup> The Act is codified at California Government Code Section 11370 et. seq.  
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1 III. JURISDICTION

2 The power to adopt, modify or reject a proposed decision is granted to the Authority  
3 directly by the provisions of California Government Code, Section 11517, which provide:  
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5 "11517. (a) A contested case may be originally heard by the agency itself and subdivision  
6 (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge  
7 may originally hear the case alone and subdivision (c) shall apply.

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

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

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

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

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

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

23 (2) Within 100 days of receipt by the agency of the administrative law judge's proposed  
24 decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the  
25 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, a hearing was noticed and held in this matter on  
24 March 4, 2015, before Administrative Law Judge Debra Nye-Perkins with the Office of  
25 Administrative Hearings in Riverside, California. Respondent appeared at this hearing and was  
represented by counsel John H. Bakhit. Senior Staff Counsel Craig Stevenson represented the  
Authority.

On or about April 1, 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. On or about June 12, 2015, the authority set the matter for a written  
hearing. Respondent was informed that he could present written argument to the Director on or  
before September 1, 2015, the date set for the written hearing. Respondent, through counsel,

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

#### 5 V. DISCUSSION

6 Respondent's license was subject to discipline for a criminal conviction by his  
7 plea of "guilty" to misdemeanor battery upon a co-worker. The offense was originally charged  
8 as a sexual battery under Penal Code Section 243.4(e)(1). This offense happened while on duty,  
9 against a fellow EMS professional, and is therefore deemed related to the duties and functions of  
10 a licensee, contrary to Respondent's argument that this offense is of a type not substantially  
11 related. The Administrative Law Judge so found in the Proposed Decision, page 8, paragraph 7.

12  
13 Upon review of the transcript and exhibits in this case, it becomes apparent that  
14 Respondent seeks at nearly every opportunity to minimize his own conduct, and shift  
15 responsibility for the incident to the victim in the case. This incident and such conduct is  
16 substantially related to the duties and functions of a licensee, as paramedics have unsupervised,  
17 intimate, physical and emotional contact with patients at a time of maximum physical and  
18 emotional vulnerability, as well as unsupervised access to a patient's personal property. These  
19 patients may be unable to defend or protect themselves, voice objections to particular actions, or  
20 provide accurate accounts of events at a later time. Paramedics, therefore, are placed in a position  
21 of the highest public trust.

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23 Respondent's conviction and the circumstances of the incident are worthy of  
24 outright license revocation. However, the Administrative Law Judge also determined that there  
25 was evidence of mitigating factors that did not warrant outright revocation of Respondent's

1 license (Proposed Decision, Paragraphs 8-9). While the Director agrees that there are factors in  
2 mitigation, it is the Director's opinion that Respondent's mitigating factors do not meet the level  
3 of imposing the minimal license discipline recommended in this case, and imposing additional  
4 license discipline in this instance is in the best interests of the public's health and safety. The  
5 Director therefore believes the conditions of license discipline as set forth in the Administrative  
6 Law Judge's proposed decision should be modified.

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9 VI. DECISION AND ORDER

10 The Director of the Authority therefore finds the following:

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

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

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

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

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ORDER

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2 A. Emergency Medical Technician-Paramedic License No. P28590 issued to Respondent,  
3 **JAMES R. PINTUS**, is revoked; however, such revocation is stayed and Respondent's  
4 license is placed on two years of probation with the following additional terms and  
5 conditions:

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

8 (2) Additional Course Work: Within 90 days of the effective date of this order,  
9 Respondent must provide proof of completion of an in-person, minimum six hour  
10 course pertaining to sexual harassment. The cost of such course shall be borne by the  
11 Respondent and must be prior approved by the Authority. This course is in addition  
12 to any normal continuing education hours necessary to support license renewal, and  
13 may not count as a course towards license renewal.

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

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

23 (a) Within ten days of the effective date of this Agreement, Respondent will submit the  
24 name, address and telephone number of his current EMS employer(s), and all Local  
25

1 Emergency Medical Services Agencies (LEMSA) where Respondent is accredited, to the  
2 Authority.

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

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

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

18 (e) Notification of Termination: Respondent will notify the Authority in writing within  
19 72 hours of his resignation or termination, for any reason, from any EMS employment.  
20 Respondent will provide in the notification letter a full and detailed explanation of the  
21 reasons for and the circumstances of his resignation or termination.

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

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

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

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

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

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

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

8 C. Violation of Probation:

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

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

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

2 Dated:

3 September 28, 2015



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5 Howard Backer, MD, MPH, FACEP  
6 Director  
7 Emergency Medical Services Authority  
8 State of California  
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