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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.: 15-0216
6) OAH No. 2016080897
7 **PETER M. TAGLIERE**)
8 License No. P20123)
9 Respondent.)
10) **DECISION AND ORDER**

11 I. INTRODUCTION

12 This matter was heard on June 2, 2017, by Howard Backer MD, MPH, FACEP, Director
13 of the State of California Emergency Medical Services Authority (“Authority”), pursuant to the
14 provisions of the Administrative Procedure Act (“Act”)¹, subsequent to the hearing held by
15 Administrative Law Judge Irina Tentser of the Office of Administrative Hearings.

16 II. PARTIES

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

19 2. Respondent holds Emergency Medical Technician-Paramedic (“EMT-P”) license
20 number P20123, first issued to Respondent by the EMS Authority on July 23, 2003. The
21 license was placed on probation for a three year period subsequent to a hearing by an
22 administrative law judge on October 22, 2014. The license is currently under probation.

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

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 provides:
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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 issued against Respondent’s license, a hearing
24 was noticed and held in this matter before an Administrative Law Judge with the Office of
25 Administrative Hearings in Los Angeles, California. Respondent appeared at this hearing and
was represented by counsel.

The Authority received a copy of the Proposed Decision and Order which was dated
February 8, 2017. The Authority served a copy of the proposed decision on Respondent via
registered mail, and informed him at that time that it had not adopted the Proposed Decision and
Order, and sent notice to the Respondent that Respondent could present written argument to the
Director on or before June 1, 2017. Respondent, through counsel, timely submitted additional
argument.

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1 V. EVIDENCE SUBMITTED AT WRITTEN HEARING

2 Pursuant to the notice of hearing, Respondent was allowed to submit any evidence in writing
3 to support his argument for adoption or modification of the Proposed Decision up to one
4 business day prior to the hearing, or June 1, 2017. The Authority considered all evidence,
5 which included Respondent's Written Argument After Hearing, the original Accusation, the
6 official transcript from the hearing, the evidence submitted at the hearing, the Administrative
7 Law Judge's proposed decision, and the original recording of the 911 call in this matter in this
8 Decision and Order.
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10 VI. DISCUSSION

11 Respondent's license was on probation at the time of this second incident, and the
12 accusation alleged a violation of that probation. The prior hearing (OAH #2014070427) was the
13 result of an allegation of physical abuse of a patient in Respondent's care. At that hearing, the
14 Respondent admitted to physically abusing the patient by punching his face and kicking his foot.
15 The Administrative Law Judge found that license discipline was warranted and ordered that
16 Respondent's license be placed on three years of probation.
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18 The current case involved allegations that Respondent was grossly negligent and
19 incompetent for not providing care to a patient in labor who presented at the fire station.

20 The Administrative Law Judge (ALJ) found that Respondent was informed when the
21 patient presented that she was pregnant, that she was in labor, and that her water had broken.
22 The ALJ also found that Respondent did not assess the patient, provided no care to the patient,
23 and told the patient's husband that he himself could drive the patient to the hospital (ALJ
24 decision, page 3, Paragraph 8). The 911 call made by the Patient's husband, which was recorded
25 and captured part of the interaction with Respondent, agrees with the findings of the ALJ:

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1 01:36 911 Operator: "Are they there?"
2 01:38 Patient's Husband: "Yeah, he [Respondent] is out here with me right now."
3 01:40 Patient's Husband: [to Respondent] "She's pregnant, her water broke."
4 01:42 Respondent: [Faintly:] "Take her to the hospital."
5 01:43 Patient's Husband: "They told me to go here."
6 01:45 Respondent: [Indistinct response.]
7 01:47 Patient's Husband: "There's a fire truck here, can they just take her?"
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9 Continuing with the arrival of the ambulance, the 911 call proceeded as follows:

10 01:58 Patient's Husband: "I have a pregnant woman; her water broke."
11 02:00 Male Voice: "Can you guys take her?"
12 02:01 Patient's Husband: "Yeah."
13 02:04 Patient's Husband (to 911): "Okay, they're here with me."
14 02:05 Dispatcher: "Okay."
15 [Inaudible.]
16 02:08 Patient's Husband: "Yeah" [then laughs].
17 02:14 [Unintelligible.]
18 02:23 Male Voice: [Unintelligible.]
19 02:26 Patient's Husband: "No, I can follow you guys."
20 [Vehicle Backup alarm begins.]
21 02:29 Male Voice: "It's faster if you take her."
22 02:30 Patient's Husband: "No, it's not. I've had to run like three lights."
23 [About this time a still alarm is created.]
24 02:37 [Unintelligible talking.]
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1 02:40 [Back up alarm ends; talking continues.]

2 02:50 [Call ends.]

3 03:00 [Recording ends.]

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It is clear from the findings of the ALJ, the testimony at the hearing, and the 911 call recording,

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that Respondent was aware of the following: 1. That there was a patient presenting to him; 2.

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That the patient was pregnant; 3. That the patient's water had broken; That the patient's husband

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was requesting ambulance transport to the hospital.

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It is also clear from the evidence that Respondent did not assess the patient at all.

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Indeed, it appears that Respondent never even addressed the patient, never performed even a

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cursory visual assessment of the patient or told the patient's husband to wait so that he could

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perform an assessment. There was also no evidence offered that Respondent told either the

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patient or her husband that he would in fact transport the patient, or arrange for transport to be

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made, despite a request for transport being made. The ALJ found that the patient and her

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husband had a reasonable belief that Respondent was not going to provide any care for them.

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(ALJ decision, page 4, Paragraph 14).

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Despite finding that Respondent did not assess the patient at all, did not attempt to

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provide any care to the patient at all, and that the patient had a reasonable belief that Respondent

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was not going to provide any care to them, the ALJ determined that these actions did not rise to

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the level of gross negligence or incompetence. (ALJ decision, page 5, Paragraphs 19 and 20).

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Quite frankly, if refusing to assess or provide care to a patient that presents with an

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emergent medical condition, refusing to offer transportation or actually transport once it has

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been requested, and causing a patient to believe that you are not going to provide any medical

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1 care to them is itself not prima facie evidence of gross negligence and incompetence, then no act
2 by a licensee ever rises to the level of gross negligence or incompetence.

3 Licensees, at their most basic level, have a duty to adequately assess a patient with an
4 emergent medical condition that requests help, offer to provide appropriate and competent pre-
5 hospital medical care based on that assessment, and at the very least, provide medical
6 transportation to a patient with an emergent medical condition (such as childbirth) when that
7 patient specifically requests it.

8 Respondent did none of these things. He did not even visually assess the patient, despite
9 being told that she was pregnant and her water had broken. Upon being told this fact
10 Respondent, an experienced licensee of 12 years at the time of this incident, knew or should
11 have known that he had an emergent patient with a serious medical condition that required his
12 immediate attention.

13 Respondent's proffered explanations that he did not have the necessary equipment to
14 treat the patient or a means of transportation do not ring true. An ambulance with the necessary
15 equipment arrived on scene while the patient was still there. Respondent did not tell the patient
16 he was going to provide medical care. Respondent did not tell the patient to wait while he
17 obtained equipment. Respondent did not tell the patient that they were going to transport her to
18 the hospital. Indeed from the evidence, it appears that Respondent never addressed the patient
19 at all, nor asked her about her condition, nor performed even the most cursory of assessments.
20 Additionally, from the testimony at the hearing, it appears that Respondent's sole response was
21 to tell the patient and her husband that they should self- transport to the hospital on their own,
22 despite his knowledge that the patient had a serious, emergent medical condition at the time. In
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1 fact, on arrival at the hospital, the patient was rushed to the operating room and required blood
2 transfusions for bleeding associated with a still birth.

3 Based upon the evidence presented at the hearing, the 911 call recording, the testimony
4 at the hearing, and the factual findings of the ALJ, there is ample evidence to support a finding
5 that Respondent was grossly negligent and incompetent in the most basic duties of a licensee
6 under California Health and Safety Code Section 1798.200 (c)(2) and (4).

7 License discipline is not a punishment on the individual Paramedic; it is to ensure that
8 the public's health and safety is safeguarded to the utmost that it can be. Here, Respondent
9 failed to perform even the most basic duties of a licensee to provide patient care. As a factor in
10 aggravation, this violation occurred while Respondent was on probation for another incident
11 related to patient care. That incident happened almost exactly two years prior to the actions in
12 question here. The Respondent was on probation for the physical abuse of a patient, which is of
13 the utmost seriousness.

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15 Based on the above, it is the decision of the Director of the Emergency
16 Medical Services Authority to revoke Respondent's license, as the evidence in this case reveals
17 that Respondent's continuing actions put the public's health and safety at an unreasonable risk if
18 the Respondent is allowed to continue to perform the duties and functions of a licensee.

19 According to Government Code Section 11522, Respondent is entitled to reapply for an
20 EMT-P license again in one year from the effective date of this decision. If Respondent chooses
21 to reapply again at such time, favorable evidence sufficient to support a successful petition for
22 reinstatement would include sufficient continuing education course work to support license
23 reinstatement, significant volunteer work in the community, current and specific
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1 recommendations from professionals in the EMS community, and other factors as outlined in
2 California Code of Regulations Title 22, Division 9, Chapter 4, Article 9, Section 100176.

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4 VII. DECISION AND ORDER

5 The Director of the Authority therefore finds the following:

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

13 WHEREAS, the Director of the Emergency Medical Services Authority has considered
14 the entire record, including the transcript of the hearing, and now finds that;

15 GOOD CAUSE APPEARING THEREFORE, the PROPOSED DECISION and the
16 ORDER of the Administrative Law Judge are hereby not adopted by the Director of the
17 Emergency Medical Services Authority as its Decision in this matter, the following ORDER
18 being substituted therefore: Respondent's Paramedic license is revoked.

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

20 Dated:

21 June 29, 2017

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23 HOWARD BACKER MD, MPH, FACEP
24 Director
25 Emergency Medical Services Authority
State of California