

BEFORE THE MINNESOTA
EMERGENCY MEDICAL SERVICES REGULATORY BOARD

In the Matter of
Roger Gutierrez, EMT-P
Certificate Number: 516608

**FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER**

On October 17, 2008, the Complaint Review Panel ("Panel") of the Minnesota Emergency Medical Services Regulatory Board ("Board") initiated the above-entitled proceeding against Roger Gutierrez, EMT-P ("Respondent"), by service of a Notice of Petition and Petition to Suspend Certification.

The matter came on for consideration by the Board pursuant to Minnesota Statutes section 144E.28, subdivision 5(b) (2008), at a regularly scheduled meeting on November 20, 2008, convened in Conference Room A (fourth floor), University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota 55414.

Karen B. Andrews, Assistant Attorney General, appeared and presented oral argument on behalf of the Panel. Respondent was not present or otherwise represented at the meeting. Nathan W. Hart, Assistant Attorney General, was present as legal advisor to the Board. As members of the Panel, Dawn Bidwell, Brenda Brown, Paula Fink Kochen, Paul Stelter, and Kevin Miller did not participate in deliberations or vote in the matter.

Based on the record and the proceedings herein, the Board makes the following:

FINDINGS OF FACT

1. In October 2004, Respondent resigned in lieu of termination from an ambulance service in southern Minnesota.
2. On or about May 15, 2007, Respondent acknowledged to a coworker at another ambulance service that he may have a chemical use problem.

3. On September 12, 2007, the Board referred Respondent to the Health Professionals Services Program (“HPSP”).

4. On November 26, 2007, Respondent contacted HPSP and completed an intake interview. Respondent reported being treated for chemical dependency on three occasions and recently testing positive for cocaine and marijuana at his paramedic job in Minnesota. Respondent stated he also worked as a paramedic in Arizona and admitted presenting to work in Arizona “hung over” on more than one occasion. Respondent acknowledged a diagnosis of depression and stated his current symptoms included loss of energy and loss of feeling important. Respondent stated his drug of choice is cocaine, and Respondent’s substance history includes abuse of heroin/cocaine (IV use), crack cocaine, marijuana, benzodiazepines, and alcohol.

5. Respondent has been treated for chemical dependency and depression on several occasions between March 2007 and May 2008. However, Respondent relapsed in a short amount of time following release from each treatment program.

6. HPSP determined Respondent was eligible to participate in the program and on January 9, 2008, HPSP received Respondent’s signed Participation Agreement. Respondent began monitoring in accordance with the terms of his Monitoring Plan, which was based on Respondent’s cocaine dependence and depressive disorder.

7. On July 22, 2008, Respondent was discharged from HPSP for non-compliance based on the following conduct:

a. On April 10, 2008, Respondent reported to HPSP that he had discharged himself from a sober house prior to “graduating” because he had been experiencing relapse urges and could not “keep it together.” Respondent then admitted he had actually relapsed three weeks earlier, on March 16, 17, and 18, 2008, with cocaine and THC he obtained from an acquaintance. Respondent also admitted taking his mother’s prescription Elavil and Flexeril on multiple

occasions, most recently on April 9, 2008. Additionally, Respondent admitted he had been terminated from his paramedic employment.

b. On July 22, 2008, Respondent's HPSP case manager contacted Respondent's counselor at another sober house. The counselor informed HPSP that Respondent had been discharged for relapsing. The counselor stated Respondent failed to demonstrate any commitment to sobriety.

c. On June 30 and July 9, 2008, Respondent failed to provide a urine specimen for toxicology screening, as requested.

8. On August 18, 2008, the Panel attempted to serve Respondent by mail with a Notice of Conference at his last known address on file with the Board, which scheduled a conference with the Panel for September 15, 2008. On August 21, 2008, the Notice of Conference was returned to the Panel's attorney, marked "ATTEMPTED NOT KNOWN." An attempt to contact Respondent by telephone was unsuccessful, since Respondent's phone number was disconnected. On August 26, 2008, the Panel re-served the Notice of Conference by mail at the sober house where Respondent was last known to reside according to his HPSP file. The Notice of Conference was not returned by the post office. Respondent failed to appear before the Panel on September 15, 2008, and provided no prior notice that he would not be present. Further, Respondent failed to provide any written response to the allegations in the Notice.

Based upon the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS

1. The Board has jurisdiction in this matter pursuant to Minnesota Statutes sections 144E.28 and 144E.30 (2008).

2. Respondent was given timely and proper notice of the November 20, 2008, hearing before the Board and of his right under Minnesota Statutes section 144E.28,

subdivision 5(b), to request a contested case hearing to be conducted in accordance with Minnesota Statutes chapter 14.

3. The Panel has complied with all relevant substantive and procedural requirements of statute and rule.

4. The Panel has proven by a preponderance of the evidence that Respondent has violated Minnesota Statutes section 144E.28, subdivision 5(a)(4), because he “is actually or potentially unable to provide emergency medical services with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition.”

5. The Panel has proven by a preponderance of the evidence that Respondent has violated Minnesota Statutes section 144E.30, subdivision 3, by failing to cooperate with the Board’s investigation.

6. As a result of the violations set forth above and Respondent’s failure to request a contested case hearing within 30 days of receipt of notice of his right to do so or at any time, the Board has the authority without further proceedings to take disciplinary action against Respondent’s EMT-P certification. Minn. Stat. §§ 144E.28, subds. 4 and 5, 144E.30 (2008).

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following:

ORDER

1. Respondent’s EMT-P certificate is **SUSPENDED**, effective immediately. At no time subsequent to the date of this Order shall Respondent engage in any act in Minnesota which constitutes practice as an emergency medical technician-paramedic as defined in Minnesota Statutes sections 144E.001 and 144E.28, nor shall he in any manner represent or hold himself out as being authorized to so practice.

2. Not later than 10 (ten) days from the date of this Order, Respondent shall surrender and cause the Board to receive his current EMT-P certificate card.

3. Respondent may apply to the Board for reinstatement of his certification as an EMT-P not earlier than 12 (twelve) months from the date of this Order. Any such application shall be accompanied by evidence of 12 months of uninterrupted sobriety and evidence of compliance with all applicable continuing education or training requirements under Minnesota Statutes section 144E.28, subdivisions 7 and 8 (2008).

4. Respondent shall appear before the Panel to review any application for reinstatement submitted pursuant to paragraph 3. The burden of proof shall be on Respondent to demonstrate that he is able to provide emergency medical services in a fit and competent manner without risk of harm to the public. The Board reserves the right to approve an application for reinstatement only upon the imposition of conditions and limitations which the Board deems necessary to ensure public protection.

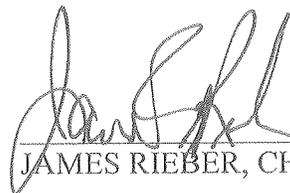
5. This Order is a public document.

The foregoing Findings of Fact, Conclusions, and Order constitute the Decision of the Board in this matter.

Dated: 12/22, 2008

MINNESOTA EMERGENCY MEDICAL
SERVICES REGULATORY BOARD

By:



JAMES RIEBER, CHAIR

AG: #2324288-v1