

**BEFORE THE MINNESOTA
EMERGENCY MEDICAL SERVICES REGULATORY BOARD**

In the Matter of
David A. Erickson, FR
Registration No. 963682

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

The above-entitled matter came on for hearing at a regularly scheduled meeting of the Minnesota Emergency Medical Services Regulatory Board ("Board") on November 19, 2015, convened at 2829 University Avenue S.E., Fourth Floor, Conference Room A, Minneapolis, Minnesota 55414. The Board conducted a hearing pursuant to the procedure set forth in paragraph 13 of the Stipulation and Order ("2014 Order") issued by the Board to David A. Erickson, First Responder ("FR") ("Respondent"), on April 25, 2014. At the hearing, the Board Complaint Review Panel presented affidavit evidence of Respondent's violations of the 2014 Order. Respondent appeared and presented oral argument on his own behalf. Gregory J. Schaefer, Assistant Attorney General, appeared and presented oral argument on behalf of the Board Complaint Review Panel. Board members Matt Simpson, J. B. Guiton, and Paula Fink Kocken, M.D., did not participate in deliberations and did not vote in the matter. Rose Olson, Licensing Administrator for the Board, and Anthony Spector, Executive Director of the Board, did not participate in the deliberations. Jennifer Coates, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby issues the following Findings of Fact:

1. The Board is authorized pursuant to Minnesota Statutes sections 144E.001 to 144E.52 to register, certify, regulate, and discipline persons who apply for, petition, or hold registrations as first responders and is further authorized pursuant to Minnesota Statutes sections 214.10 and 214.103 to review complaints against first responders, to investigate such complaints, and to initiate appropriate disciplinary action.

2. Respondent agreed to and signed the 2014 Order issued by the Board on April 25, 2014. In paragraph 13 of the 2014 Order, Respondent expressly acknowledged and agreed to several procedures the Board Complaint Review Panel may use to resolve alleged noncompliance with or violation of the 2014 Order. The 2014 Order remained in full force and effect at the time the conduct described in paragraph 4 below occurred.

3. Respondent expressly acknowledged and agreed in paragraph 13 of the 2014 Order that in the event the Board received evidence Respondent violated the terms of the 2014 Order, he would be notified of such allegations in writing and, following the opportunity to contest the allegations, the Board may impose additional disciplinary action against Respondent's registration.

4. The Board received information Respondent violated the terms of the 2014 Order and engaged in acts or omissions which would be a violation of Minnesota Statutes section 144E.27, subdivision 5(a)(1), as follows:

a. Paragraphs 6.a. and 6.b. of the 2014 Order required Respondent to contact the Health Professionals Services Program ("HPSP") to initiate enrollment in the program within 14 days of the date of the Order. Respondent was required to enter into a Participation Agreement with the HPSP for monitoring of Respondent's chemical dependency within 60 days

of the date of the Order and comply with all terms of the Participation Agreement. At a minimum, the Participation Agreement must include the following terms:

1) The Participation Agreement shall be effective for a minimum of 12 months.

2) Respondent shall completely abstain from any and all mood-altering chemicals, including alcohol, unless expressly prescribed in writing by a physician, dentist, or other health care professional who is providing care and treatment to Respondent.

3) Respondent shall attend a chemical dependency support group at least three times per month.

4) Respondent shall submit or cause to be submitted a report every three months from Respondent's supervisor.

5) Respondent shall submit to urine or blood screenings to determine the presence or absence of alcohol or drugs upon the request of the HPSP. Respondent shall be responsible for the cost of the screenings.

b. Paragraph 12. of the 2014 Order stated that if the Complaint Review Panel had probable cause to believe Respondent has failed to comply with or has violated any of the requirements for staying the suspension or has failed to comply with the Participation Agreement, or is subject to a positive chemical screen, the Complaint Review Panel may remove the stayed suspension pursuant to the procedures outlined in paragraph 12.b., with the following additions and exceptions. If the HPSP discharges Respondent from the program for any reason other than Respondent's successful completion of the terms of the Participation Agreement, there will be a presumption of a preponderance of the evidence that Respondent has failed to comply with the requirement(s) for staying the suspension.

c. On or about July 14, 2014, HPSP received Respondent's signed Participation Agreement.

d. On August 11, 2015, Respondent failed to submit a toxicology screen. On or about August 26, 2015, HPSP called Respondent and left a message regarding his missing screen result.

e. On August 28 and September 2, 2015, Respondent failed to submit a toxicology screen. On or about September 8 and September 17, 2015, HPSP called Respondent and left a message regarding his missing screen results on August 11, August 28, and September 2, 2015.

f. On September 22, 2015, HPSP unsatisfactorily discharged Respondent for failing to submit toxicology screens on August 11, August 28, and September 2, 2015.

5. On October 23, 2015, Respondent was served with a Notice of Removal of Stay of Suspension, Imposition of Suspension, and Hearing ("Notice") and Order of Removal of Stay of Suspension by first-class mail at his last known address on file with the Board. The Notice informed Respondent of the alleged violations and of the date, time, and place of the hearing. The Notice also informed Respondent he was required to submit a response to the allegations in the Notice within ten days after the Notice was mailed. The Notice also scheduled a conference with the Board Complaint Review Panel on November 16, 2015. Respondent failed to submit a response or attend the conference.

6. The Board Complaint Review Panel had probable cause to remove the stay of suspension.

CONCLUSIONS

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.27, 214.10, and 214.103.
2. The Board Complaint Review Panel gave proper notice of the alleged violations to Respondent, pursuant to paragraph 13 of the 2014 Order.
3. Under paragraph 13 of the 2014 Order, the allegations contained in the Notice are deemed admitted because of Respondent's failure to submit a written response.
4. As a result of Respondent's failure to respond to the Notice, the Board Complaint Review Panel has met its burden of proof.
5. The Board Complaint Review Panel has proved by a preponderance of the evidence that Respondent has violated Minnesota Statutes section 144E.27, subdivision 5, and the 2014 Order.
6. As a result of the violations set forth above and pursuant to the terms of the 2014 Order, the Board has the authority to impose additional disciplinary action against Respondent's registration to practice emergency medical services.

ORDER

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

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the 2014 Order issued to Respondent on April 25, 2014, is hereby **RESCINDED** and shall have no future force or effect.
2. IT IS FURTHER ORDERED that the registration of Respondent as a first responder in the State of Minnesota is **REVOKED** immediately for an indefinite period of time.

3. IT IS FURTHER ORDERED that within ten days after the terms of this Order are adopted and implemented by the Board, Respondent shall return his registration certificate and the most recent evidence of renewal to the Board.

4. IT IS FURTHER ORDERED that during the period of revocation Respondent shall not engage in any conduct that constitutes the practice of emergency medical services as defined in Minnesota Statutes section 144E.001, subdivision 6, and shall not imply to any person by words or conduct that Respondent is authorized to practice emergency medical services in the State of Minnesota.

5. IT IS FURTHER ORDERED that Respondent may apply for reregistration following 72 months from the date of this Order and upon demonstration satisfactory to the Board of rehabilitation and fitness to practice. At the time of Respondent's application, Respondent shall meet with the Complaint Review Panel and comply with, at a minimum, evidence of compliance with the provisions of this Order. As part of the proof of compliance, Respondent shall submit the following in support of his application:

a. *Self-Report.* Respondent shall submit to the Board a report from Respondent himself. The report shall be submitted at the time Respondent applies for registration. The report shall provide and address:

1) Respondent's sobriety, including the date Respondent last used mood-altering chemicals, including alcohol, and the circumstances surrounding any use while this Order is in effect;

2) Respondent's treatment and participation in a chemical dependency rehabilitation program, including weekly attendance at a chemical dependency support group such as Alcoholics Anonymous during the 24 months preceding the application;

evidence of participation shall include, but need not be limited to, attendance sheets on a form provided by the Board that have been legibly signed or initialed and dated by a participant who attended the weekly meeting;

3) Respondent's physical and mental health status, treatment plan, medications, and compliance with treatment;

4) Respondent's work schedule;

5) Respondent's future plans in emergency medical services and the steps he has taken to prepare himself to return to emergency medical services practice; and

6) Any other information Respondent believes would assist the Board in its ultimate review of this matter.

b. **Reports Verifying Sobriety.** Respondent shall cause to be submitted to the Board reports from two adult persons, at least one of whom is not related to Respondent by blood or marriage, who can attest to Respondent's sobriety. These reports shall be submitted at the time Respondent applies for reregistration. Each report shall provide and address:

1) Respondent's regular participation in a chemical dependency support group such as AA or other structured chemical dependency rehabilitation program;

2) Respondent's sobriety, including the date he last used mood-altering chemicals, including alcohol; and

3) Any other information the reporter believes would assist the Board in its ultimate review of this matter.

c. **Report From Employer.** If requested by Board staff, Respondent must cause to be submitted to the Board a report from any employer who has employed Respondent

while this Order is in effect. The report(s) are due within two months of any such request from the Board. The report(s) must provide and address:

- 1) Respondent's ability to perform assigned tasks, and if any performance deficiencies are identified, the actions taken to address them;
- 2) Respondent's attendance and reliability;
- 3) Respondent's typical work schedule;
- 4) Any other information reasonably requested by the Board; and
- 5) Any other information the employer believes would assist the Board in its ultimate review of this matter.

d. ***Chemical Dependency Evaluation.*** During the application process, the Board may direct Respondent to obtain a chemical dependency evaluation. Respondent shall undergo a chemical dependency evaluation performed by a chemical dependency treatment professional within 60 days if directed to do so by Board staff. Respondent shall submit, or cause to be submitted, the credentials of the chemical dependency evaluator for review and preapproval by Board staff for purposes of this evaluation. Respondent is responsible for the costs of the evaluation. The results of the evaluation shall be sent directly to the Board and must include a statement verifying the evaluator has reviewed this Order and the 2014 Order and any evaluation and/or treatment records deemed pertinent by the Board or the evaluator prior to the evaluation.

e. ***Compliance With Evaluator's Recommendations.*** Respondent shall comply promptly with any recommendations for additional evaluation and treatment made by the chemical dependency evaluator.

f. *Random Alcohol and Drug Screens.* During the application process, the Board may direct Respondent, without prior notice, to submit to laboratory hair, blood, and urine screenings to determine the presence or absence of alcohol or drugs. The Board may contact Respondent by telephone, letter, or through personal contact by an agent to direct him to submit to the tests. Respondent shall provide the directed specimen, using a collection site and process approved by the Board not later than 6:00 p.m. on the day he is contacted by the Board. Respondent shall abstain from substances known to interfere with the toxicology screening process, including but not limited to certain foods, beverages, over-the-counter medications, and other products that contain poppy seeds, hemp seeds, and ethyl alcohol. Examples include but are not limited to nonalcoholic beer or wine; some desserts, salad dressings, soups, and herbal remedies; and hand-sanitizing and mouthwash products. Respondent shall arrange with his employer for release from work for purposes of fulfilling the requirements of the laboratory screening. The specimens shall be handled through legal chain-of-custody methods and tested at a facility approved by the Board. The results of the screens shall be reported directly to the Board. Respondent is responsible for the cost of the screens.

g. *Waivers.* If requested by the Board at any time during the application process, Respondent shall complete and sign health records waivers and chemical dependency treatment records waivers supplied by the Board to allow representatives of the Board to discuss Respondent's case with and to obtain written evaluations and reports and copies of all of Respondent's health, mental health, or chemical dependency records from his physician, mental health treatment professional/therapist, chemical dependency counselor, or others from whom Respondent has sought or obtained treatment, support, or assistance.

h. *Additional Information.* Any additional information relevant to Respondent's application reasonably requested by the Board Complaint Review Panel.

i. *Fitness to Practice.* Respondent must prove by a preponderance of the evidence that he is fit and competent to practice emergency medical services. Respondent's mere completion of the requirements set forth in paragraphs 5.a.-h. above does not in any way require the Board to find that Respondent is currently fit and competent to practice emergency medical services or that he has been sufficiently rehabilitated. The Board shall be the sole determiner of whether Respondent is rehabilitated and fit and competent to practice emergency medical services.

6. IT IS FURTHER ORDERED that Respondent shall meet all reregistration requirements in effect at the time of his application, including but not limited to completing the appropriate application, paying the requisite fees, and completing any necessary continuing education requirements.

7. IT IS FURTHER ORDERED that Respondent's violation of this Order shall constitute violation of a Board order for purposes of Minnesota Statutes section 144E.27, subdivision 5, and provide grounds for further disciplinary action.

8. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's application for reregistration pursuant to paragraph 5 above, take any of the following actions:

- a. Grant first responder registration to Respondent;
- b. Grant first responder registration to Respondent with limitations upon the scope of Respondent's practice and/or with conditions for Respondent's practice; or

c. Continue the revocation of Respondent's registration upon his failure to meet the burden of proof.

Dated: 12/8/2015

MINNESOTA EMERGENCY MEDICAL
SERVICES REGULATORY BOARD

A handwritten signature in cursive script, appearing to read "Kevin Miller", written over a horizontal line.

KEVIN MILLER
Vice Chair