

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

In the Matter of
Wanda R. Smith, EMT
Certificate No. 945823

**STIPULATION AND
CONSENT ORDER**

STIPULATION

Wanda R. Smith, EMT ("Respondent"), and the Minnesota Emergency Medical Services Regulatory Board Complaint Review Panel ("Review Panel") agree the above-referenced matter may be resolved without trial of any issue or fact as follows:

I.

JURISDICTION

1. The Minnesota Emergency Medical Services Regulatory Board ("Board") is authorized pursuant to Minnesota Statutes sections 144E.001 to 144E.52 to certify and regulate emergency medical services providers and to take disciplinary action as appropriate.

2. Respondent holds a certificate from the Board to practice as an emergency medical technician ("EMT") in the State of Minnesota and is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Consent Order.

II.

CONFERENCE

3. On August 20, 2015, Respondent appeared before the Review Panel to discuss allegations contained in a Notice of Conference dated July 21, 2015. Philip G. Villaume, Esq., Villaume & Schiek, P.A., Bloomington, Minnesota, represented Respondent at the conference.

Gregory J. Schaefer, Assistant Attorney General, represented the Review Panel at the conference.

III.

FACTS

4. The parties agree this Stipulation and Consent Order is based upon the following facts:

a. Respondent was certified as an EMT in Minnesota on June 22, 2008.

b. While Respondent was employed as a certified medical assistant at a clinic in Waconia, Minnesota, the following occurred:

1) On or about October 14, 2014, a coworker noted that Respondent's pupils were dilated while she was on duty. Respondent agreed to provide a urine specimen for a drug screen at the request of her supervisor.

2) On or about October 20, 2014, the results of Respondent's toxicology screen were received. The screen was positive for methamphetamine. Respondent resigned her employment in lieu of termination.

c. Respondent was also employed as an EMT with two licensed ambulance services in Minnesota. Respondent has either resigned her employment, or her employment has been terminated or suspended pending the investigative results from each of the ambulance services.

d. As a result of the above conduct, the Board issued an Order for Temporary Suspension on April 24, 2015, suspending Respondent's EMT certificate pursuant to Minnesota Statutes section 144E.28, subdivision 6.

e. During the conference with the Review Panel on August 20, 2015, Respondent admitted ingesting methamphetamines.

IV.

LAWS

5. Respondent acknowledges the conduct described in section III. above constitutes a violation of Minnesota Statutes section 144E.28, subdivision 5(a)(4) (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 other mental or physical condition); (5) (engaged in unethical conduct, including but not limited to conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of the public); (7) (violated a state or federal controlled substance law); and (8) (engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established); and justifies the disciplinary action described in section V. below.

V.

DISCIPLINARY ACTION

The parties agree the Board may take the following disciplinary action and require compliance with the following terms:

6. The Board hereby **RESCINDS** the April 24, 2015, Order for Temporary Suspension, which shall have no future force or effect.

A. Stayed Suspension

7. The Board **SUSPENDS** Respondent's certification to practice emergency medical services. The suspension is **STAYED** so long as Respondent complies with the following requirements and upon the condition that Respondent participates in the Health Professionals Services Program ("HPSP") as follows:

a. **Contact With the HPSP.** Respondent shall contact the HPSP at (651) 643-2120 to initiate enrollment in the program within 14 days of the date of this Order.

b. **Participation Agreement.** Respondent shall enter into a Participation Agreement with the HPSP for monitoring of Respondent's chemical dependency/mental health within 60 days of the date of this Order. Respondent must comply with all terms of the Participation Agreement.

c. **Abstention From Mood-Altering Chemicals.** At all times while this Stipulation and Consent Order is in effect, Respondent shall completely abstain from all mood-altering chemicals, including alcohol, unless expressly prescribed in writing by a physician, dentist, or other authorized health care professional who is providing care and treatment to Respondent. Within three days of when a physician, dentist, or other authorized health care professional prescribes controlled substances for Respondent, Respondent must inform the HPSP in writing of the prescription and the condition being treated.

8. Respondent shall notify each present emergency medical services supervisor of this Stipulation and Consent Order within ten days of the date of the order or commencing employment. Respondent shall notify each future emergency medical services supervisor of this Stipulation and Consent Order within ten days of commencing employment. Respondent shall

provide all current and future emergency medical supervisors with a copy of the entire signed Stipulation and Consent Order.

B. Reinstatement of Unconditional Certification

9. Respondent may submit a written petition for reinstatement of an unconditional certification at any regularly scheduled Board meeting following discharge from the HPSP after successful completion of the Participation Agreement. An unconditional certification may be issued to Respondent, if at all, as the evidence dictates and based upon the need to protect the public. The burden of proof shall be upon Respondent to demonstrate by a preponderance of the evidence that Respondent is capable of conducting herself in a fit and competent manner in the practice of emergency medical services, is successfully participating in a program of chemical dependency rehabilitation, and has been sober and free from mood-altering chemicals, including alcohol, during the time Respondent was subject to the Participation Agreement. Before requesting reinstatement of an unconditional certification, Respondent shall meet with a Review Panel to review her petition and any evidence in support of the request. The Board may, at any regularly scheduled meeting following Respondent's petition for reinstatement of an unconditional certification, take any of the following actions:

- a. Issue an unconditional EMT certification to Respondent;
- b. Issue an EMT certification with limitations upon the scope of Respondent's practice and/or conditions upon Respondent's practice; or
- c. Continue the stayed suspension of Respondent's certification based upon Respondent's failure to meet the burden of proof.

10. Respondent shall provide any additional information relevant to her petition reasonably requested by the Review Panel.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

11. It is Respondent's responsibility to ensure all payments, reports, evaluations, and documentation required to be filed with the HPSP pursuant to Respondent's Participation Agreement are timely filed by those preparing the report, evaluation, or documentation. Failure to file payments, reports, evaluations, and documentation on or before their due date is a violation of this Stipulation and Consent Order.

A. Noncompliance With Requirements for Stayed Suspension

12. If the Review Panel has probable cause to believe Respondent has failed to comply with or has violated any of the requirements for staying the suspension as outlined in paragraphs 7 and 8 above or has failed to comply with the Participation Agreement, or is subject to a positive chemical screen, the Review Panel may remove the stayed suspension pursuant to the procedures outlined in paragraph 13 below, with the following additions and exceptions:

a. 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.

b. The removal of the stayed suspension shall take effect upon service of an Order of Removal of Stayed Suspension ("Order of Removal"). Respondent agrees that the Review Panel is authorized to issue an Order of Removal, which shall remain in effect and shall have the full force and effect of an order of the Board until the Board makes a final determination pursuant to the procedures outlined in paragraph 13 below. The Order of Removal shall confirm the Review Panel has probable cause to believe Respondent has failed to comply

with or has violated one or more of the requirements for staying the suspension of Respondent's certification. Respondent further agrees an Order of Removal issued pursuant to this paragraph shall be deemed a public document under the Minnesota Government Data Practices Act. Respondent waives any right to a conference or hearing before removal of the stayed suspension.

c. The Review Panel shall schedule the hearing pursuant to paragraph 13.a. below to be held within 60 days of the notice.

B. Noncompliance With Stipulation and Consent Order

13. If Respondent fails to comply with or violates this Stipulation and Consent Order the Review Panel may, in its discretion, seek additional discipline either by initiating a contested case proceeding pursuant to Minnesota Statutes chapter 14 or by bringing the matter directly to the Board pursuant to the following procedure:

a. The Review Panel shall schedule a hearing before the Board. At least 20 days before the hearing, the Review Panel shall mail Respondent a notice of the violation(s) alleged by the Review Panel. In addition, the notice shall designate the time and place of the hearing. Within ten days after the notice is mailed, Respondent shall submit a written response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

b. The Review Panel, in its discretion, may schedule a conference with Respondent prior to the hearing before the Board to discuss the allegations and to attempt to resolve the allegations through agreement.

c. Prior to the hearing before the Board, the Review Panel and Respondent may submit affidavits and written argument in support of their positions. At the hearing, the Review Panel and Respondent may present oral argument. Argument shall not refer to matters

outside the record. The evidentiary record shall be limited to the affidavits submitted prior to the hearing and this Stipulation and Consent Order. Unless stated otherwise in this Stipulation and Consent Order, the Review Panel shall have the burden of proving by a preponderance of the evidence that a violation has occurred. If Respondent has failed to submit a timely response to the allegations, Respondent may not contest the allegations, but may present argument concerning the appropriateness of additional discipline. Respondent waives a hearing before an administrative law judge, discovery, cross-examination of adverse witnesses, and other procedures governing hearings pursuant to Minnesota Statutes chapter 14.

d. Respondent's correction of a violation prior to the conference, hearing, or meeting of the Board may be taken into account by the Board but shall not limit the Board's authority to impose discipline for the violation. A decision by the Review Panel not to seek discipline when it first learns of a violation will not waive the Review Panel's right to later seek discipline for that violation, either alone or in combination with other violations, at any time while Respondent's certification is suspended or the suspension is stayed.

e. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board will dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including additional requirements for the stayed suspension, removal of the stayed suspension, an additional period of suspension, or revocation of Respondent's certification.

f. Nothing herein shall limit the Review Panel's or the Board's right to temporarily suspend Respondent's certification pursuant to Minnesota Statutes section 144E.28, subdivision 6, based on a violation of this Stipulation and Consent Order or based on conduct of Respondent not specifically referred to herein.

VII.

ADDITIONAL REQUIREMENTS

14. In the event Respondent should leave Minnesota to reside or to practice outside of the state, Respondent shall give the Board written notification of the new location, as well as dates of departure and return. Periods of residency and practice outside of Minnesota will not apply to the reduction of any period of Respondent's suspension or stayed suspension in Minnesota unless Respondent demonstrates that the practice in another state conforms completely with this Stipulation and Consent Order. If Respondent leaves the state, the terms of this order continue to apply unless waived in writing.

15. Within ten days of execution of this Stipulation and Consent Order, Respondent shall provide the Board with the addresses and telephone numbers of Respondent's residence and all ambulance services or facilities and locations at which Respondent has become employed or performs volunteer emergency medical services. Respondent shall inform the Board within ten days if Respondent becomes employed at any additional ambulance services or facilities or moves and shall provide the new or additional address and telephone number.

16. Within ten days of execution of this Stipulation and Consent Order, Respondent shall provide the Board with the names of all states in which Respondent is certified to practice emergency medical services or has applied for certification as an emergency medical services provider.

VIII.

OTHER INFORMATION

17. Respondent waives the contested case hearing and all other procedures before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or rules.

18. Respondent waives any claims against the Board, the Minnesota Attorney General's Office, the State of Minnesota, and their agents, employees, and representatives related to the investigation of the conduct herein, or the negotiation or execution of this Stipulation and Consent Order, which may otherwise be available to Respondent.

19. This Stipulation and Consent Order, the files, records, and proceedings associated with this matter shall constitute the entire record and may be reviewed by the Board in its consideration of this matter.

20. Either party may seek enforcement of this Stipulation and Consent Order in any appropriate civil court.

21. Respondent has read, understands, and agrees to this Stipulation and Consent Order and has voluntarily signed the Stipulation and Consent Order. Respondent is aware this Stipulation and Consent Order must be approved by the Board before it goes into effect. The Board may either approve the Stipulation and Consent Order as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Respondent, the Stipulation and Consent Order will take effect and the order as modified will be issued. If the changes are unacceptable to Respondent or the Board rejects the Stipulation and Consent Order, it will be of no effect except as specified in the following paragraph.

22. Respondent agrees that if the Board rejects this Stipulation and Consent Order or a lesser remedy than indicated in this settlement, and this case comes again before the Board, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation and Consent Order or of any records relating to it.

23. This Stipulation and Consent Order shall not limit the Board's authority to proceed against Respondent by initiating a contested case hearing or by other appropriate action on the basis of any act, conduct, or admission of Respondent which constitutes grounds for disciplinary action and which is not directly related to the specific facts and circumstances set forth in this document.

IX.

DATA PRACTICES NOTICES

24. This Stipulation and Consent Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minnesota Statutes section 13.41, subdivision 5. Therefore, employers and other individuals will be able to see this entire Stipulation and Consent Order by searching Respondent's name on the Board's website, or by requesting a copy of this Stipulation and Consent Order from the Board. Data regarding this action will be provided to data banks as required by Federal law and consistent with Board policy. While this Stipulation and Consent Order is in effect, information obtained by the Board pursuant to this Order is considered active investigative data on a licensed health professional, and as such, is classified as confidential data pursuant to Minnesota Statutes section 13.41, subdivision 4.

25. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

CONSENT:

EMERGENCY MEDICAL SERVICES
REGULATORY BOARD
COMPLAINT REVIEW PANEL


WANDA R. SMITH, EMT
Respondent

Dated: 10/30/15


MATTHEW SIMPSON
Board Member

Dated: 11.19.2015

ORDER

Upon consideration of the Stipulation, the Board **RESCINDS** the April 24, 2015, Order for Temporary Suspension and **SUSPENDS** Respondent's certification. The Board **STAYS** the suspension upon Respondent's compliance with the requirements outlined in the Stipulation and the condition that Respondent participates in the Health Professionals Services Program and adopts all other terms of the Stipulation on this 19th day of November, 2015.

MINNESOTA EMERGENCY MEDICAL
SERVICES REGULATORY BOARD


~~ANTHONY SPECTOR~~ Robert M. Norken
~~Executive Director~~ Field Services Supervisor