

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

In the Matter of  
Austin Smith, EMT  
Certificate No. 961948

**STIPULATION AND  
CONSENT ORDER**

**STIPULATION**

Austin Smith, EMT ("Respondent"), and the Minnesota Emergency Medical Services Regulatory Board's 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 chapter 144E to regulate individuals certified as an Emergency Medical Technician ("EMT") and to take disciplinary action as appropriate.
2. Respondent holds a certificate from the Board to provide emergency medical services as an 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**

1. On March 5, 2012, Respondent appeared before the Review Panel, composed of Board members Matt Simpson, Dr. Paula Fink Kochen, and Kevin Miller, to discuss allegations contained in a Notice of Conference dated March 2, 2012. Karen B. Andrews, Assistant Attorney General, represented the Review Panel at the conference.

2. Respondent was advised by the Board's representatives that he may choose to be represented by legal counsel in this matter. Respondent knowingly waived legal representation.

### III.

#### FACTS

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

1. Respondent's EMT certification expires on March 31, 2013. He has also been enrolled in a paramedic training program.

2. On July 28, 2011, Respondent self-reported to the Health Professionals Services Program ("HPSP"). At the time of his intake interview, Respondent disclosed his history of chronic headaches, opioid dependence, and anxiety disorder. Respondent discussed his current prescription medications and treatment plan, but also acknowledged recently borrowing several tablets of Percocet from a friend to self-manage his headache pain.

3. On August 4, 2011, Respondent completed a chemical dependency assessment, which recommended outpatient chemical dependency treatment.

4. On August 23, 2011, Respondent returned his signed Participation Agreement to the HPSP for 24 months of monitoring, which included completion of outpatient chemical dependency treatment, regular appointments with a therapist and pain management physician, a workplace monitor, and random toxicology screens.

5. In mid-November 2011, Respondent was seen in the emergency room on three occasions for ongoing headache pain. In late-November, Respondent presented to the emergency room with pancreatitis, and was administered Fentanyl by paramedics and prescribed Percocet in the emergency room. When this prescription ran out, Respondent was then prescribed Percocet by his primary care physician for ongoing pancreatitis pain.

6. In late December 2011, Respondent diverted Vicodin from a Walgreens pharmacy using his father's prescription.

7. On January 1, 2012, Respondent was hospitalized following a suicide attempt.

8. On January 9, 2012, Respondent was admitted to an inpatient mental health/chemical dependency ("MH/CD") program.

9. At the conference with the Review Panel, Respondent stated he had been diagnosed with "hyper-pain syndrome" related to his addiction, and that the MH/CD program had helped him detoxify and taper off from several of his medications. Respondent indicated he was currently prescribed the buprenorphine patch, clonazepam (Klonopin), gabapentin (Neurontin), and Ketamine, and was currently experiencing 95% pain relief. He also indicated he was enrolled in outpatient chemical dependency treatment and would be starting a Dialectical Behavior Therapy program ("DBT") in the near future.

**IV.**

**LAWS**

Respondent acknowledges the conduct described in section III. above constitutes a violation of Minnesota Statutes section 144E.28, subdivision 5(a)(4), 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:

*Suspension of Certification*

1. The Board **SUSPENDS** Respondent's EMT certification for an indefinite period of time. Respondent shall not provide emergency medical services in the State of Minnesota and shall not imply by words or conduct that Respondent is authorized to provide services as an EMT.

2. Respondent shall surrender to the Board his EMT certificate card. Respondent shall personally deliver or mail the certificate to the Minnesota Emergency Medical Services Regulatory Board, c/o Pamela Biladeau, Executive Director, 2829 University Avenue S.E., Suite 310, Minneapolis, Minnesota 55414, within ten days of the date of this Order.

*Reinstatement of Certification*

3. Respondent may petition for reinstatement of his EMT certificate following nine months from the date of this Order. The burden of proof shall be upon Respondent to demonstrate by a preponderance of the evidence that he is capable of providing emergency medical services in a fit and competent manner, is complying with his pain management treatment plan, and has had stable mental health for the nine months immediately preceding his petition. At the time of Respondent's petition, Respondent may be asked to meet with a Review Panel and to comply with, at a minimum, the following:

a. Self-Report. Respondent shall submit to the Board a report from Respondent himself. The report shall provide and address:

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

2) A description of Respondent's use of mood-altering chemicals, including alcohol, while this Stipulation and Consent Order is in effect;

3) Respondent's treatment and participation in a chemical dependency rehabilitation program, including regular attendance at a chemical dependency support group such as Narcotics Anonymous ("NA"), during at least the nine months immediately preceding the petition;

4) The type of employment in which Respondent has been involved, if any;

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

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

b. Reports Verifying Recovery Efforts. 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 chemical dependency recovery. The reports shall provide and address:

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

2) The date Respondent 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 Mental Health Treatment Professional. Respondent shall cause to be submitted to the Board a report from any mental health treatment professional whom

Respondent consults while this Stipulation and Consent Order is in effect. The report(s) shall provide and address:

- 1) Verification the mental health professional has reviewed this Stipulation and Consent Order;
- 2) Identification of a plan of treatment, including any medications, devised for Respondent;
- 3) A statement of the involvement between Respondent and the mental health professional, including the number and frequency of meetings;
- 4) Respondent's progress with therapy and compliance with the treatment plan;
- 5) Respondent's awareness of his personal problems;
- 6) The mental health professional's conclusion as to the need for continuing therapy and Respondent's discontinuance of therapy; and
- 7) Any other information the mental health professional believes would assist the Board in its ultimate review of this matter.

d. Report of Prescribed Mood-Altering Chemicals. Respondent shall cause to be submitted to the Board a report from any and all physicians, dentists, and other authorized health care professionals who have prescribed mood-altering chemicals for Respondent during the period this Stipulation and Consent Order is in effect. The report(s) shall provide and address:

- 1) The name, dosage, frequency, and purpose of the mood-altering chemicals for Respondent;

2) Confirmation the physician, dentist, or other health care professional has been informed of Respondent's chemical dependency history; and

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

c. Report From Pain Management Specialist. Respondent shall cause to be submitted to the Board a report from any pain management specialist whom Respondent consults while this Stipulation and Consent Order is in effect. The report(s) shall provide and address:

1) Verification the pain management specialist has reviewed this Stipulation and Consent Order;

2) Identification of diagnoses and any plans of treatment, including medications, devised for Respondent;

3) A statement of the involvement between Respondent and the pain management specialist, including the number and frequency of meetings;

4) Respondent's progress with therapy and compliance with the treatment plan;

5) A statement regarding Respondent's mental health status;

6) A statement regarding Respondent's chemical dependency recovery;

7) Recommendations for additional treatment, therapy, or monitoring; and

8) Any other information the pain management specialist believes would assist the Board in its ultimate review of this matter.

f. Chemical Dependency Evaluation. Within 60 days of petitioning for reinstatement, if requested by the Review Panel, Respondent shall undergo a chemical dependency evaluation performed by a chemical dependency treatment professional. 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 Stipulation and Consent Order and any evaluation and/or treatment records deemed pertinent by the Board or the evaluator prior to the evaluation.

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

h. Mental Health Evaluation. Within 60 days prior to petitioning for reinstatement, if requested by the Review Panel, Respondent must undergo a mental health evaluation performed by a psychiatrist or a licensed psychologist. Respondent shall submit, or cause to be submitted, the credentials of the evaluator for review and pre-approval by Board staff for purposes of this evaluation. The evaluation shall include the Minnesota Multiphasic Personality Inventory ("MMPI"). Respondent is responsible for the cost of the evaluation. The results shall be sent directly to the Board and shall provide and address:

1) Verification the evaluator has reviewed a copy of this Stipulation and Consent Order and any evaluation and/or treatment records deemed pertinent by the Board or the evaluator prior to the evaluation;

2) Diagnosis and any recommended treatment plan;

- 3) Interpretation of Respondent's MMPI test;
- 4) Respondent's ability to handle stress;
- 5) Recommendations for additional evaluation or treatment; and
- 6) Any other information the evaluator believes would assist the

Board in its ultimate review of this matter.

i. Compliance With Evaluator's Recommendations. Respondent shall comply promptly with any recommendations for additional evaluation and treatment made by the mental health evaluator.

j. Random Alcohol and Drug Screens. At any time during the petition process, the Board or the Review Panel 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. Respondent shall arrange with his employer, if any, for release from work for purposes of fulfilling the requirements of the laboratory screening. The Board may contact Respondent by telephone, letter, or through personal contact by an agent to direct him to submit to the tests within two hours after he is contacted by Board staff. The hair, blood, and urine screens shall be: (1) observed in their drawing; (2) handled through legal chain-of-custody methods; and (3) paid for by Respondent. The results of the screens shall be reported directly to the Board. The biological fluid testing shall take place at Hennepin County Medical Center, 701 Park Avenue South, Minneapolis, Minnesota 55415. If Respondent is farther than 30 miles from Hennepin County Medical Center and the blood and urine testing is to be completed through the mail, the drug screening tests used must be those obtained from Hennepin County Medical Center. All blood and urine tests processed through the mail must be directed to the attention of the toxicology supervisor at Hennepin County Medical Center.

k. Waivers. If requested by the Board at any time during the petition 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 professional/therapist, chemical dependency counselor, or others from whom Respondent has sought or obtained treatment, support, or assistance.

l. Additional Information. Respondent shall provide any additional information relevant to his petition reasonably requested by the Review Panel.

4. Recertification Requirements. Respondent shall meet all recertification requirements in effect at the time of his petition for reinstatement, including but not limited to completing the appropriate application, paying requisite fees, and completing any necessary continuing education requirements.

5. The Board may, at any regularly scheduled meeting following Respondent's petition for reinstatement pursuant to paragraph 3. above, take any of the following actions:

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

**VI.****CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS**

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 30 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. 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 before 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 shall 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 license is in a conditional status.

e. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board shall dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including additional conditions or limitations on Respondent's practice, a period of suspension, additional conditions of reinstatement, 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 license 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 INFORMATION

1. 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.

2. Respondent waives any claims against the Board, the Minnesota Attorney General, 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.

3. 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.

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

5. 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.

6. 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.

7. 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 means

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.

VIII.

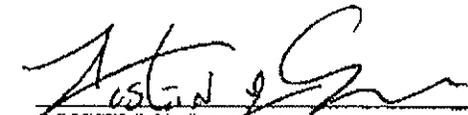
DATA PRACTICES NOTICES

1. 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. Data regarding this action will be provided to data banks as required by Federal law or 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.

2. 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:

MINNESOTA EMERGENCY MEDICAL SERVICES REGULATORY BOARD COMPLAINT REVIEW PANEL

  
AUSTIN SMITH, EMT  
Respondent

  
BOARD MEMBER

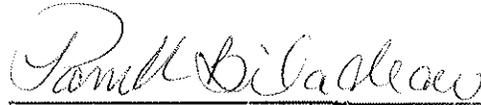
Dated: 14 March, 2012

Dated: 3-15, 2012

**ORDER**

Upon consideration of the Stipulation, the Board places Respondent's EMT certification in a **SUSPENDED** status and adopts all of the terms described above on this 15 day of March, 2012.

MINNESOTA EMERGENCY MEDICAL  
SERVICES REGULATORY BOARD



PAMELA BILADEAU  
Executive Director

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