

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of:

JOSHUA L. ADAMS

Respondent.

OAH No. 2009020639

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Emergency Medical Services Authority as its Decision in the above-entitled matter.

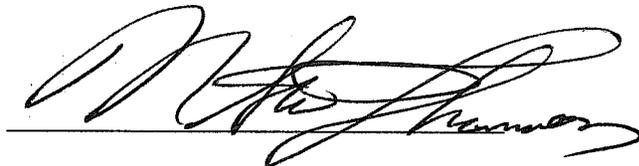
This Decision shall become effective on

4/2/09

IT IS SO ORDERED this

2

day of April 2009



BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation and
Temporary Suspension Order Against:

JOSHUA L. ADAMS

Respondent.

Case No. 09-0007

OAH No. 2009020639

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on March 16, 2009.

Cynthia Curry, Senior Staff Counsel, Steve McGee, Chief Counsel and Ken Bobinsky, Lead Investigator, represented the Emergency Medical Services Authority (EMSA), State of California.

Joshua L. Adams appeared in pro per.

The matter was submitted on March 16, 2009.

FACTUAL FINDINGS

1. Nancy Steiner, Chief, EMS Personnel Division of the EMSA, made the allegations contained in the Accusation in her official capacity. The Accusation was made on February 5, 2009, and filed with the Office of Administrative Hearings on February 19, 2009. The EMSA has jurisdiction to issue, revoke or suspend any license to practice as an Emergency Medical Technician (EMT) or Paramedic (EMT-P) in the State of California.¹

2. The filing of the Accusation followed the issuance on January 5, 2009, of an Order for Temporary Suspension (TSO) by R. Steven Tharratt, M.D., M.P.V.M., Director of the EMSA. The TSO was issued pursuant to the authority of Health and Safety Code section 1798.202. The TSO was served on respondent on February 5, 2009, and was effective that same date.

¹ Health and Safety Code section 1798.200.

3. Joshua L. Adams (respondent) timely filed a Notice of Defense to the Accusation and a Request for Hearing to review the propriety of the issuance of the TSO. The matter was set for an evidentiary hearing before the Administrative Law Judge, pursuant to Health and Safety Code sections 1798.200 and 1798.202.

4. The EMSA issued EMT-P license number P21827 to respondent on December 9, 2004. Respondent has continuously renewed the license and it has been in full force and effect, with the exception of the recently imposed TSO. The license will expire on December 31, 2010, unless renewed. The EMSA's official records of licensure declare there is no previous history of disciplinary action by the Board against respondent.

5. Respondent has been employed as a Paramedic for First Responder Company for the entire tenure of his license (since December 2004). First Responder is one of the two ambulance companies that provide ambulance service in Butte County.

6. At all times relevant to this Decision, respondent worked on a two person crew staffing an ambulance for First Responder in and around Chico. Respondent usually worked the rear of the ambulance, providing direct patient care, while another, less experienced EMT or trainee drove the ambulance. Respondent usually worked a 48 continuous hour (2 days) on shift, followed by a 96 hour (4 days) off shift schedule. In the middle of 2008, respondent was promoted to Field Training Officer (FTO). In addition to his regular patient care duties, he supervised the training of another employee who worked alongside him.

7. When on shift, respondent and others on shift lived at one of two branch station houses owned by First Responder. These branch stations contained individual rooms for each emergency response crew member. The rooms were furnished with a bed, drawers and cabinets for clothing, personal items and toiletries, a desk and a small place to plug in and use a computer. When on duty, respondent and his coworkers lived in and slept at the branch station to remain immediately available for emergency response calls. Meals were prepared in a common kitchen shared with other employees on duty.

8. In-service First Responder ambulances were parked in the front of each branch station house, ready to go for emergency response. Each ambulance carried a full complement of emergency disposable and durable medical supplies, and carefully monitored and audited medications, including controlled and over the counter medications. Medications were stored in drawers in each ambulance when not in use. Although the ambulances were locked when not in use, the drawers inside the ambulances containing the controlled and over the counter medications were unlocked. A clerk monitored the supplies and replenished them when needed.

9. Out-of-service ambulances were parked at First Responder's headquarters. Out-of-service ambulances were also stocked with medications and supplies. All on board medications and supplies were replenished from a central stores supply room First Responder maintained at its headquarters. There did not appear to be any limitation on First Responder employee access to the central supply room or ambulances by EMT or Paramedic employees.

10. Respondent was on duty as a Paramedic for First Responder the night of December 22-23, 2008. He was in the third night of his shift, having taken on an extra day of overtime. Respondent's co-employees called their supervisor just after midnight, December 23 regarding respondent's bizarre, uncharacteristic behavior. The supervisor arrived at the branch station to find respondent standing in the driveway on a cold night, dressed in his work uniform, but without a coat. Respondent was speaking in a nonsensical, disconnected from reality fashion and appeared to be in an "altered state of consciousness." He was also exhibiting signs of mild physical impairment, as he stumbled when he walked.

11. Respondent was transported to Enloe Medical Center (Enloe) using one of the in-service ambulances and crews that could have and should have been available for other emergencies. Respondent was uncooperative at times and cooperative at others. Efforts were made to raise his blood sugar, as hypoglycemia was initially thought to have been the culprit.

12. Respondent was admitted to the Enloe Emergency Room. Respondent was diagnosed by medical personnel at Enloe to have taken an overdose of Benadryl (diphenhydramine) and Ativan. Respondent's behavior was observed to be bizarre, hallucinatory and "uncharacteristic." Respondent was well known and well respected by emergency room medical personnel at Enloe. His behavior and demeanor was observed to be quite "out of character."

13. Respondent's supervisor, after having transported respondent to the hospital in the ambulance, returned to the First Responder branch station and searched respondent's room. He found an empty bottle of Ativan recently prescribed for respondent, two spoons with soot on their bottom sides, a lighter and a partially used bottle of generic Benadryl. In the ambulance's biohazard disposal bag, hung in the rear portion of the ambulance where respondent usually worked, 22 spent single use injectable Benadryl carpulets were found. These syringes and doses of Benadryl could not be traced to administration to any patient transported in the ambulance. The Ativan was prescribed for respondent the day before and he consumed the entire prescription (20 one milligram tablets) in approximately 24 hours. The prescription called for one or two tablets per day.

14. Respondent told medical personnel at Enloe Memorial upon admission to the emergency room that he was experiencing considerable anxiety, some depression and was having trouble sleeping. Respondent was noted to be angry, slightly disoriented and not forthcoming with information. He did describe some domestic stress difficulty with his girlfriend. He said he was using the Benadryl to help him sleep.

15. Respondent's attending physician in the Enloe ER, who is personally and professionally acquainted with respondent, found respondent's condition "guarded." The physician wrote in his discharge note, "I am not convinced that Mr. Adams has significant insight into what is going on in his life or what happened in last 24 hours (sic)." He commented that he has known respondent professionally for over a year and found his condition and behavior very "out of character." The physician ordered respondent not to work until he was seen by his primary care physician, Dr. Rey, and medically cleared. He

also ordered respondent to have a psychiatric consultation. He was also told to resume taking his hypertension medication, for which he had been noncompliant. He was found to be mildly hypertensive at admission. Respondent remained in the hospital overnight for observation and assessment. He was released after a consultation with Butte County Mental Health Services. Respondent was given a few days off to rest.

16. Respondent's manager at First Responder, Operations Chief Huber, met with respondent on December 31, 2008. Mr. Huber testified respondent was an exemplary performer, knowledgeable beyond the norm, is motivated and self-disciplined, and always provides "appropriate patient care." He noted he gets exemplary reports about respondent's performance from doctors and nurses. He did not want to terminate respondent, but told him theft of company medications from First Responder ambulances and stores and his on-duty behavior the night of December 22-23, including his self-medication, were completely inappropriate and unacceptable. He removed respondent from patient care and assigned him to work as a dispatcher until he satisfactorily met the following conditions:

- a. Obtain medical clearance that he is fit for duty from his primary care physician Dr. Rey, including a referral for psychiatric or psychological evaluation and care, as recommended by the evaluator;
- b. Satisfy any conditions imposed by Nor Cal EMS;
- c. Satisfy any terms and conditions imposed by California EMSA; and
- d. Restart the probationary period for his promotion to FTO.

Chief of Operations Huber wrote a memorandum of the counseling meeting and the imposition of conditions upon respondent's employment. The memorandum was to remain in respondent's personnel record for eighteen months, and would be expunged if respondent's work performance returned to its previous exemplary level.

17. Respondent hand wrote a "rebuttal," as Chief Huber termed it, to the counseling memorandum of the meeting and the imposition of work conditions. Respondent wrote, "Although I regret my actions and don't wish to make excuses I would like to document that due to ongoing stress and clinical depression that I had previously sought help for this was a poor attempt to it (sic) the self-relief of depression & anxiety and in no way was there suicidal ideation or intent, shown by my clearance with EMCE B-1 Crisis and Behavioral Health, which led to discharge."

18. Respondent's written "rebuttal" and his conversation with Chief Huber during the counseling meeting were more revealing for what respondent did not say than for what he did. Respondent expressed no remorse for his actions and their impact upon his coworkers or his company. He expressed no acknowledgement of the wrongfulness of his conduct, particularly regarding his theft of medications stored on company ambulances that were earmarked for emergency patient use. He gave no real insight into his conduct and failed to discuss his self-medication to the extent of the substantial impairment he exhibited on duty

the night of December 22-23, 2008. There was evidence that he had participated in emergency responses earlier that evening, before he was observed so impaired. He failed to discuss any recognition of the potential impact his on duty self-medication could have had on his ability to deliver safe, competent emergency care if called upon to do so. He failed to recognize the impact his behavior had on his peers and employer, who had to care for him, transport him to the emergency room and provide him prehospital care. First Responder had to take a crew and an ambulance out of service to do so, at considerable expense to First Responder and potentially jeopardizing First Responder's ability to respond to any other emergencies while that unit and crew were engaged with respondent.

19. Between January 30, 2009 and February 3, 2009, audits of the current on-board stores of injectable Benadryl for ambulances at the headquarters building were conducted. On each of three days, an injectable one dose syringe carpujet was found missing from company ambulances. Respondent had access to these ambulances. After questioning by Captain Huber and Chief McJunkin, respondent admitted the additional thefts and self-medicating with the Benadryl after the warning meeting with Chief Huber and in violation of his agreement with First Responder. Respondent was terminated effective February 3, 2009.

20. The contract between respondent's work performance before November 2008 and his self-medication and theft of First Responder medications off ambulances and from company supplies was striking. Respondent's presentation at the evidentiary hearing did little to resolve the enigma. As Chief McJunkin commented, "I still do not think I know the whole story."

21. In certain portions of his presentation, respondent was strikingly frank and candid. He admitted theft of drugs from his employer over an approximately six week period following a medical examination on November 12, 2008. He admitted being impaired on duty. He admitted abusing Benadryl and Ativan. He admitted he made emergency calls earlier in the evening he was admitted to the hospital in an "altered state," and that he was supervising a trainee on the ambulance that evening. He testified he regrets his actions, that he made a poor decision and put his livelihood in jeopardy. He asked that the TSO remain in effect, but to not revoke his license, so he can get medical insurance so he can go to rehabilitation to gain insight into his drug abuse. He pointed out the evidence is that he is a caring, compassionate, competent care provider and he asked that his excellent track record be relied upon in giving him a chance to save his license.

22. Respondent furnished a few more details in his testimony than he provided his employers, but not significantly so. He stated he had a history and physical medical examination at Enloe Prompt Care Clinic on November 12, 2008, in which he reported that he was suffering from anxiety attacks, depression and was not sleeping. He introduced a chart note of the visit in evidence. The examining physician told respondent that they will not embark on a long term course of treatment through the Prompt Care clinic where he was seen, so they declined to start him on anti-depressants. He was referred to his primary care physician for such treatment.

23. Respondent testified that he was unable to see Dr. Rey, his personal physician, because there were no appointments available. He started to self-medicate with Benadryl to help him sleep. It provided a little relief, so he continued. He said he started taking the carpujets from First Responder from out-of-service ambulances and from his employer's supply room.

24. Respondent testified he did see Dr. Rey and that Dr. Rey started him on Lexapro, a selective serotonin reuptake inhibitor anti-depressant. He did not say when this visit with Dr. Rey occurred, and unlike the November 12 visit to the Prompt Care clinic, respondent produced no written evidence of the visit or of the prescription being written. Respondent claimed he was told not to stop taking the Lexapro suddenly, but did not explain what he thought would happen if he did. He testified he left his Lexapro home when he started the three day shift that culminated in his hospital admission. He failed to explain why he could not swing by his home to pick up the medication, or have a family member or friend pick it up for him and deliver it to him on duty, if it was so important. He failed to explain why he continued to inject himself with Benadryl during periods when he claimed to have been taking the Lexapro, or why he took the risk of drug interactions. There is much that simply does not make sense of respondent's explanations, and it appears respondent's explanations are a mixture of fact, fiction and material omissions.

25. Certain parts of respondent's presentation were angry and cynical, and at times rather contradictory. A portion of his cross-examination of Operations Chief Huber was noteworthy for its cynicism and calculating nature. After asking several thoughtful and well posed questions that clearly established his "exemplary" past performance with First Responder and highlighting his skills and competence, including being the First Responder 2008 "Employee of the Year," the tone turned angry, as he attempted to elicit information from Chief Huber that "this Board" fails to have a diversion program in place and that his working the voluntary extra shift the night of December 22-23 may have violated NorCal EMS workplace conditions policy. Respondent candidly admitted the theft of the 21 injectable carpujets of Benadryl from First Responder, but almost in the same breath testified that his theft "was not for personal gain." He described his position as "desperate," but failed to explain why he failed to seek additional medical and psychiatric help while he still had medical insurance. He did not explain why he did not seek a leave of absence so he could work out his issues without jeopardizing the health and safety of his patients and coworkers and not continuing to steal from his employer. If his problem was sleep, as he repeatedly said, it is curious that he did not request during his Prompt Care visit or his visit to Dr. Rey a prescription for Ambien, Lunesta or some other more potent sleep remedy that would obviate the need to steal from his employer. Respondent failed to explain that if his thefts from his employer over an at least six week period was not for his personal gain, who received the benefit. His employer quite clearly disagreed that the thefts were for anyone's benefit other than respondent's. Respondent also pressed Chief Huber to agree with his position that he should be able to keep his license with conditions imposed. Chief Huber failed to "take the bait" on the last question and replied that First Responder already gave him that chance and respondent again violated their trust.

26. Respondent's closing statement was more of the same. Although not evidence, the bipolar nature of the arguments was striking. Weak efforts at contrition and some factual honesty stood in counterpoint to an angry denunciation of the EMSA for its failure to have a diversion program available for him and that "this Board is not interested in rehabilitation." He claimed to not be able to obtain medical or psychiatric care because he has no funds and has lost his insurance. He admitted he is not in any mental health program, rehabilitation or treatment program and is not receiving medical, psychiatric or psychological care since his termination. He did not explain why he has not attended Alcoholic's Anonymous, Narcotics Anonymous, found a health care professionals group, sought help through Butte County's Mental Health Services, or availed himself of any of the other community resource options available to low and no income persons struggling with a substance abuse and mental health problem. In sum, respondent's approach to his current problems and the rather striking absence of self-generated efforts to gain insight, as he said, into his drug use, anxiety, depression and psycho-social issues, had a heavy overtone of codependency and a striking lack of the self-motivation that characterized his patient care earlier in his career.

LEGAL CONCLUSIONS

1. In that this proceeding is accusatory and seeks to revoke, suspend or otherwise discipline respondent's license as a Paramedic, in which he has a property right, the burden of proof is clear and convincing evidence and that burden is borne by the agency.² Since it is apparent that the underlying purpose of disciplining both attorneys and physicians [and Paramedics] is protection of the public, it would be anomalous to require a higher degree of proof in disciplinary hearings involving attorneys or real estate agents than in hearings involving physicians [or Paramedics].³

2. Health and Safety Code section 1798.200 provides, in pertinent part:

[¶] ... [¶]

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P license holder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c). Proceedings against any EMT-P license or license holder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

² *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 835, 856, *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784, *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.

³ *Ettinger, supra.*

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate or license holder under this division:

- (1) Fraud in the procurement of any certificate or license under this division.
- (2) Gross negligence.
- (3) Repeated negligent acts.
- (4) Incompetence.
- (5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.
- (6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.
- (7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.
- (8) Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.
- (9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.
- (10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.
- (11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.
- (12) Unprofessional conduct exhibited by any of the following:

[¶] ... [¶]

(e) For purposes of this section “disciplinary cause” means an act that is substantially related to the qualifications, functions, and duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat to the public health and safety described in subdivision (c).

3. As set forth in the Factual Findings, respondent violated section 1798.200, subdivisions (c) (5), (c) (7) and (c) (9). It was not proved respondent violated subdivision (c) (8) as alleged. Respondent committed a dishonest act within the meaning of subdivision (c) (5), in that he stole medications from his employer. In aggravation, the manner in which he stole the medications bore the potential to compromise patient care, as the medications were stolen from the ambulance in which he was working and other ambulances, compromising the ability to respond if that medication was needed for a patient. He violated subdivision (c) (7) in that he violated subdivisions (c) (5) and (c) (9). It was not proved that he violated subdivision (c) (8), in that it was not proved that his theft and use of over-the counter medications was of a substance “which in large amounts can be a dangerous drug,” as was alleged. There was no evidence that respondent’s excessive use of an easily obtained perfectly legal over-the-counter medication violated any “federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.” Respondent violated subdivision (c) (9), in that he misused and excessively used an over-the-counter medication that rendered him unable to function coherently and discharge his duties safely and effectively. Each of the violations proved evidenced present unfitness to practice as a Paramedic, within the meaning of subdivision (e) above. This unfitness was best expressed by First Responder, respondent’s employer, who, despite a strong expressed desire to retain him, ultimately had to terminate him because his theft and misuse of drugs rendered him a clear and present danger to patient safety.

4. California Code of Regulations, title 22, section 100180 (renumbered effective January 1, 2005, from 100175) provides:

(a) At the discretion of the EMS Authority, the EMS Authority may issue a license subject to specific provisional terms, conditions, and review. When considering the denial, placement on probation, suspension, or revocation of a license pursuant to Section 1798.200 of the Health and Safety Code, or a petition for reinstatement or reduction of penalty under Section 11522 of the Government Code, the EMS Authority in evaluating the rehabilitation of the applicant and present eligibility for a license, shall consider the following criteria:

(1) The nature and severity of the act(s) or crime(s).

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation,

suspension, or revocation under Section 1798.200 of the Health and Safety Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (1) or (2) of this section.

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the person.

4. The foregoing factors were carefully considered in the making of the Order below. The education, training and experience necessary to become and successfully perform as a Paramedic is not to be taken lightly, nor is respondent's "exemplary" record of patient care and successful performance, noted by employer, physicians and nurses with whom he works most closely. But the factors in aggravation are troubling and reveal, as Captain McJunkins put it, that "we still do not have the whole story." Respondent is rather closed regarding the psychological and social forces at work in his life that induced him to engage in self-destructive behavior almost guaranteed to get him fired and his certification and license revoked. His theft and misuse of the Benadryl off the ambulances and out of his employer's stores was rather unsophisticated and may be a cry for help. Only respondent can know that as a certainty.

5. Respondent angrily denounced the EMSA for not having a diversion program available for him and asked repeatedly for some conditional or probationary method that would retain his license. These pleas are rather hollow, considering the circumstances. Respondent's employers at First Responder took a huge risk and exercised extraordinary good will in retaining respondent on a conditional employment agreement after he was caught stealing from them, was impaired on duty and required considerable company resources to deal with his impairment, which he was not required to repay. He could easily have been fired on the spot, and a termination based on the facts proved here would have been unassailable. Instead, First Responder decided to trust respondent to observe a few rather benign conditions, most of which were actually for his own benefit. He failed to abide by the conditions and violated the agreement within a month, violating their trust as he continued to steal from them and self-medicate. It did not appear to respondent that trying to dispatch emergency care when impaired also engenders a patient care risk. The long and short of it is that respondent already received the conditional, probationary opportunity he seeks here and he violated the agreement within a month. There is no reason in the evidence that a "do over" of such an arrangement, based on respondent's presentation in these proceedings, is warranted.

6. Respondent's complaining about lack of a diversion program seeks to shift responsibility for his rehabilitation away from himself and on to the EMSA. Respondent has shown a glaring lack of initiative and motivation to seek out and avail himself of community resources to help him with his drug use and underlying psychological and social issues driving his behavior. This lack of initiative and motivation is a striking contrast to his work performance reports, which regularly praise him for his self-motivation and initiative. Under these circumstances, respondent's denunciation of the lack of a diversion program is itself a diversion. Respondent's situation is unlikely to improve any time soon, unless he takes personal responsibility for his behavior and circumstances and some initiative to do something about it.

7. There is no other possible outcome on these facts but revocation. Respondent is encouraged to take the steps necessary to seek mental health and drug treatment and pursue a realistic and comprehensive rehabilitation, and then seek reinstatement. Under the circumstances, the burden now shifts to him to prove he is willing to do those things necessary to get himself "back on the truck," as Chief Huber put it.

ORDER

Emergency Medical Technician-Paramedic License number P 21827, issued by the California Emergency Medical Services Authority to Joshua L. Adams, is REVOKED. The issuance of the Temporary Suspension Order is SUSTAINED, and is merged into the revocation.

DATED: March 26, 2009



STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings