

Cause No.: 04-04M
Name: James Rosenau
Administrative Law Judge: William K. Teegarden
Date: October 22, 2004
Commission Action: Affirmed

FINDINGS OF FACT

1. Both the Agency and the Emergency Medical Services Commission (“EMSC”) are agencies within the meaning of IC 4-21.5.
2. The EMSC is the State Agency responsible for regulating Emergency Medical Technicians (“EMT”), Paramedics, and Instructors of classes for EMTs and Paramedics.
3. The EMSC is the ultimate authority within the meaning of IC 4-21.5 over EMT, Paramedic and Primary Instructor certificates.
4. IC 4-21.5 and IC 16-31 apply to this proceeding.
5. At all times relevant to this proceeding, Rosenau held Certificates issued by the EMSC.
6. Rosenau’s first EMT certification was in 1982. He has been a Paramedic since 1991.
7. Until October 20, 2003, Rosenau held the position of EMS Chief in the Warren Township Fire Department.
8. Rosenau’s responsibilities as EMS Chief included ordering and reordering controlled substances for the Fire Department Ambulance service and maintaining appropriate records.
9. On or about October 1, 2003, the Warren Township Trustee received notice from the Fire Department insurer that irregularities were present dealing with pain killing controlled substances.
10. Rosenau underwent a drug test which showed recent Valium usage.
11. Further investigation showed a shortage of 400 syringes of morphine and 65 syringes of valium.
12. Rosenau at that time was addicted to Vicodin and used his position as EMS Chief to misappropriate the controlled substances for personal use.
13. Also discovered during the investigation was the fact that the pharmacy supplying the substances had sent a letter questioning the increased usage by the FD to Rosenau who replied that the increased usage was due to a change in protocols.
14. Neither the pharmacy letter or the response was disclosed by Rosenau to the Fire Chief or Trustee.
15. Rosenau’s initial response to Department inquiries was that the substances had been destroyed without a witness present.

16. Rosenau has voluntarily participated in an addiction counseling program for employees and began his participation prior to the shortages becoming public knowledge.
17. Rosenau has continued the outpatient program even after resigning from the FD on October 20, 2003.
18. In a letter to the FD Chief and Medical Directors, Rosenau admitted diverting morphine sulfate and diazepam, but stated that he only used 2-5 mg. per syringe; not the entire 10 mg.
19. Rosenau has accepted responsibility for his actions and sought treatment prior to the investigation by the FD.
20. Rosenau's Certificates have been suspended continuously since December 8, 2003.
21. Rosenau also stated at the hearing his primary reason for taking the medication was because of depression, not pain.
22. To date, no criminal charges have been filed against Rosenau.
23. IC 16-31-3-14 allows the EMSC to suspend or revoke certificates for seven years if the holder engages in fraud or material deception in the course of professional activities.
24. There is no question that Rosenau used his position in the EMS community to fraudulently obtain substantial quantities of controlled substances at the expense of the Warren Township tax payers.
25. While the record does not reflect the exact commencement of wrongful usage, the audit was performed for September 1, 2002, through September 30, 2003, and the quantity involved shows a lengthy period of usage.
26. There are a number of mitigating circumstances in this matter including Rosenau's lengthy career and interest in professional development of the profession, however in the seven years that the EMSC has authorized the indexing of decisions pursuant to IC 4-21.5-3-32 which allows prior decisions to be used as precedent, the EMSC has consistently found that drug abuse which is extensive and continuing over a lengthy period and committed as a result of being a certificate holder negates any mitigating circumstances.
27. The only times the EMSC has imposed lesser penalties for drug abuse matters were in cases where the certificate holder was not using his position in the EMS community and there was no evidence of continuing conduct.
28. As per prior precedent, the paramedic certificate should be revoked for seven years.
29. Likewise, the Instructor certification should be revoked for a period of seven years.
30. The opportunity to obtain narcotics arose out of Rosenau's position as the paramedic who was chief of medical services.
31. Since patient care is not an issue and Rosenau has indicated a sincere interest in remaining active in EMS, the EMT certificate should be suspended for seven years rather than revoked.
32. If Rosenau has no further drug abuse history, and maintains his required continuing education, his EMT certificate should be restored in December of 2010.

NONFINAL ORDER

Paramedic and Primary Instructor Certificate Number 17785 issued to James Rosenau are hereby revoked until December 8, 2010, a period of seven years. Emergency Medical Technician Certificate Number 17785 is hereby suspended until December 8, 2010, a period of seven years.