

FOR THE PETITIONER, PRO SE  
Tonya M. Moore  
Terre Haute, Indiana

ATTORNEY FOR RESPONDENT  
Justin K. Guedel  
Indiana Department of Homeland Security  
Indianapolis, Indiana

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STATE OF INDIANA  
BEFORE THE EMERGENCY MEDICAL  
SERVICES COMMISSION

FILED

MAR 29 2018

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CAUSE NO.

DHS-1727-EMSC-001

SPECIAL SERVICES  
ALJ

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER**

Petitioner in this matter, Tonya Moore, appeals the revocation of her Primary Instructor Certificate for seven years and the two-year suspension of both her Paramedic License and EMT Certificate by Respondent, the Indiana Department of Homeland Security (“IDHS”). For the reasons set forth below, the Administrative Law Judge **AFFIRMS** the decision of the IDHS.

**PROCEDURAL BACKGROUND**

On August 22, 2017, Respondent issued an order revoking Petitioner’s Primary Instructor Certificate for seven years and placing Petitioner’s Paramedic License and her EMT Certificate on suspension for two years. On August 30, 2017, Petitioner filed a petition for administrative review of this action pursuant to Indiana Code § 4-21.5-3-7. Her petition was granted, and this matter was subsequently assigned to the undersigned ALJ for adjudication.<sup>1</sup>

An initial prehearing conference was held October 4, 2017. Petitioner appeared on her own behalf and Justin Guedel appeared on behalf of the Respondent. During the initial

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<sup>1</sup> The original ALJ assigned to this case is now on leave, and the current ALJ has been substituted, pursuant to the authority of Ind. Code § 4-21.5-3-27(e).

prehearing conference, the parties advised the ALJ that informal resolution would not be possible in this case and requested to submit their evidence and arguments by written briefs and documentary evidence. The ALJ approved of this form of proceeding and set a briefing schedule.

Respondent submitted its brief and supporting exhibits on December 1, 2017. Petitioner submitted her brief and supporting exhibits on December 30, 2017. Respondent submitted its Objections and Motion to Strike on January 2, 2018. Petitioner's Objection to Motions to Strike was filed the same day.

### **BURDEN AND STANDARDS OF PROOF**

Indiana Code § 4-21.5-3-14(c) provides that at each stage of an administrative review, "the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense." That burden rests upon the agency when the agency is, in essence, prosecuting a petitioner for a regulatory violation. *See Peabody Coal Co. v. Ralston*, 578 N.E.2d 751, 754 (Ind. Ct. App. 1991). But when it is the petitioner who has sought an agency action or claimed entitlement to an exemption from regulatory requirements, the burden rests upon that petitioner. *See Ind. Dep't of Natural Res. v. Krantz Bros. Constr. Corp.*, 581 N.E.2d 935, 938 (Ind. Ct. App. 1991).

Proceedings held before an ALJ are de novo pursuant to Ind. Code § 4-21.5-3-14(d), which means the ALJ does not—and may not—defer to an agency's initial determination. *Ind. Dep't of Natural Res. v. United Refuse Co., Inc.*, 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as fact-finder the ALJ must independently weigh the evidence in the record and matters officially noticed, and may base its findings and conclusions only upon that record. *Id.*; *see also* Ind. Code § 4-21.5-3-27(d).

At a minimum, the Indiana Code indicates that the ALJ's findings "must be based upon the kind of evidence that is substantial and reliable." Ind. Code § 4-21.5-3-27(d). The appellate courts have provided more guidance. When a Fourteenth Amendment interest is put at risk by an agency action, a higher standard of proof is required. *Pendleton v. McCarty*, 747 N.E.2d 56, 64-

65 (Ind. Ct. App. 2001), *trans. denied*. “[I]n cases involving the potential deprivation of ... protected property interests, the familiar ‘preponderance of the evidence standard’ [is] used.” *Id.* at 64. But the higher “clear and convincing” standard is required when a protected liberty interest is at stake. *Id.* That is to say, this standard applies when “individual interests at stake in a particular state proceeding are both ‘particularly important’ and ‘more substantial than the mere loss of money’ or necessary to preserve fundamental fairness in a government-initiated proceeding that threaten[s] an individual with ‘a significant deprivation of liberty’ or ‘stigma.’” *Burke v. City of Anderson*, 612 N.E.2d 559, 565 (Ind. Ct. App. 1993) (quoting *In re Moore*, 453 N.E.2d 971, 972 (Ind. 1983)), *trans. denied*; *see also*, *Pendleton*, 747 N.E.2d at 64.

### Findings of Fact

Present in the record of proceedings is Respondent’s August 22, 2017 order revoking Petitioner’s Primary Instructor Certificate for seven (7) years and placing both Petitioner’s Paramedic License and her EMT Certificate on two (2) year suspensions (Resp. Exh. 9).<sup>2</sup> Petitioner’s request for administrative review, Respondent’s letter granting the appeal as timely, the order suspending Petitioner’s licenses on an emergency basis, and the orders and notices issued by the ALJ are also present in the record.

Respondent also submitted as evidence:<sup>3</sup> a record of Petitioner’s licenses;<sup>4</sup> Respondent’s request for admissions with Petitioner’s responses;<sup>5</sup> Respondent’s First Set of Interrogatories with Petitioner’s answers.<sup>6</sup> Respondent also submitted affidavits from: Jason Orman;<sup>7</sup> Gregory Rusk;<sup>8</sup> Matthew Barts;<sup>9</sup> and Amanda Decker.<sup>10</sup> Respondent also submitted Orman’s statement;<sup>11</sup> Orman’s complaint to the IDHS;<sup>12</sup> IDHS’s order suspending Petitioner’s licenses on an

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<sup>2</sup> Admitted as Resp. Exh. 9.

<sup>3</sup> The ALJ notes the Respondent’s evidence lacked any item marked “Exhibit 21.”

<sup>4</sup> Admitted as Resp. Exh. 1.

<sup>5</sup> Admitted as Resp. Exh. 2.

<sup>6</sup> Admitted as Resp. Exh. 3.

<sup>7</sup> Admitted as Resp. Exh. 4.

<sup>8</sup> Admitted as Resp. Exh. 5.

<sup>9</sup> Admitted as Resp. Exh. 13.

<sup>10</sup> Admitted as Resp. Exh. 22.

<sup>11</sup> Admitted as Resp. Exh. 6.

<sup>12</sup> Admitted as Resp. Exh. 7.

emergency basis;<sup>13</sup> Petitioner's request for review of IDHS's decision;<sup>14</sup> an Incident Report from the Terre Haute Police Department;<sup>15</sup> records of Petitioner's cases in front of the Texas State Board of Nursing;<sup>16</sup> the Missouri State Board of Nursing;<sup>17</sup> and the Indiana State Board of Nursing;<sup>18</sup> and relevant precedential decisions.<sup>19</sup>

Petitioner submitted as evidence: a record of Petitioner's licenses;<sup>20</sup> a Findings of Fact, Ultimate Findings of Facts, Conclusions of Law and Order regarding the Indiana nursing license of Tonya Ane Smith-Moore;<sup>21</sup> Petitioner's Agreed Order from Before the Texas Board of Nursing dated October 23, 2008;<sup>22</sup> a Settlement Agreement Between Missouri State Board of Nursing and Tonya Moore, RN 2006016787 dated April 16, 2011;<sup>23</sup> a Compliant regarding Petitioner's nursing license filed with the Indiana State Board of Nursing on August 24, 2011;<sup>24</sup> an undated screenshot of a texted conversation between two parties and labled "A Lin;"<sup>25</sup> a photo of a mannequin wearing a Trans-Care t-shirt and labeled "Facebook Post—Nov 2017 Brooke

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<sup>13</sup> Admitted as Resp. Exh. 8.

<sup>14</sup> Admitted as Resp. Exh. 10.

<sup>15</sup> Admitted as Resp. Exh. 14.

<sup>16</sup> Admitted as Resp. Exh. 15.

<sup>17</sup> Admitted as Resp. Exh. 16.

<sup>18</sup> Admitted as Resp. Exhs. 11, 12.

<sup>19</sup> Admitted as Resp. Exhs. 17, 18, 19, 20

<sup>20</sup> Admitted as Pet. Exh. 1.

<sup>21</sup> Marked as Pet. Exh. 2, and subject of Respondent's Objection and Motion to Strike as irrelevant because no charges were based on this Order. However, Respondent admitted the complaint IDHS received which includes a allegation that Petitioner's nursing license was revoked due to diversion (Resp. Exh. 7). Further, questions about whether Petitioner had ever been found to divert before are found in Respondent's Request for Admissions (Resp. Exh. 2). While Respondent points out that IDHS action is not based on prior actions of diversion, Petitioner is entitled to attempt to clarify that she does not have a documented history of diversion. The ALJ now ADMITS this item as Pet. Exh. 2 over Respondent's objection. The ALJ considers this evidence only to indicate that Petitioner does NOT have a documented history of diversion of drugs.

<sup>22</sup> Admitted as Pet. Exh. 3.

<sup>23</sup> Admitted as Pet. Exh. 4.

<sup>24</sup> Admitted as Pet. Exh. 5.

<sup>25</sup> Marked as Pet. Exh. 6, and subject of Respondent's Objection and Motion to Strike as hearsay and irrelevant. Hearsay is admissible at an administrative proceeding. Ind. Code § 4-21.5-3-26(a). The ALJ now ADMITS this item as Pet. Exh. 6 over Respondent's objection.

Tussey;<sup>26</sup> the first page of sixteen-page article on Ketorlac (Toradol) from the Mayo Clinic website;<sup>27</sup> and the first page of a twelve (12) page article on diphenhydramine (Benadryl) from Wikipedia.<sup>28</sup>

Both parties submitted documentary evidence. Based solely on the evidentiary record presented by those exhibits, and those matters officially noticed, the ALJ hereby makes the following Ultimate Findings of Fact:

1. Petitioner holds an Emergency Medical Technician Certificate and a Paramedic License, both issued in June 2011, and a Primary Instructor Certificate, issued in September 2014 (Pet. Exh. 1; R's Exh. 1). Until recently, Petitioner worked for Trans-Care Ambulance Company ("Trans-Care") (R.'s Exh. 2, 4, 5, 13, 22).
2. In June 2016, the Trans-Care EMS Division Manager for the West Central Indiana Division, Jason Orman ("Orman"), had it brought to his attention that the company could not account for approximately 9-10 vials of Toradol, a non-steroidal anti-inflammatory drug used in the treatment of pain, by either expiration or use on a patient (Pet. Exh. 8; Resp. Exh. 4). Orman had the administrative assistant Cheryl Miller ("Miller") check the purchase orders for Toradol for the past twelve months (Resp. Exh. 4).
3. On July 1, 2016, Orman and Miller noticed there seemed to be discrepancies in the amount of Toradol used and the amounts needed to refill supply levels (Resp. Exh. 4). Around this time, a Trans-Care employee showed Orman a photo that purportedly showed utilized Toradol and Benadryl vials in the women's restroom (Resp. Exh. 4). Orman also noticed that after Trans-Care began tracking the disappearances and shortages of Toradol, it was noticed that the disappearances and shortages matched the shifts worked and the trucks utilized by Petitioner (Resp. Exh. 4).

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<sup>26</sup> Marked as Pet. Exh. 7, and subject of Respondent's Objection and Motion to Strike as irrelevant and lacking in sufficient indicia of authenticity. As this evidence purportedly supports Petitioner's claim that she was targeted by Trans-Care for termination and she claims Trans-Care is sufficiently poorly run so as to cast doubt on the credibility of Respondent's witnesses, the Petitioner's Exhibit 7 has sufficient relevancy to allow admission over Respondent's objection. The weight of Petitioner's Exhibit 7 will be determined in context. The ALJ now ADMITS this item as Pet. Exh. 7 over Respondent's objection.

<sup>27</sup> Admitted as Pet. Exh. 8.

<sup>28</sup> Admitted as Pet. Exh. 9.

4. On August 28, 2016, Trans-Care initiated a policy change wherein a “Sign-off” memo was sent to all medics that Toradol would move to the truck narcotic boxes after the arrival of the newest order. Shift leaders were instructed that in order to re-supply Toradol on the request of a Medic, they would need either a run number or documentation of expiration (Resp. Exh. 4). As of September 9, 2016, Trans-Care was able to track Toradol as a narcotic and account for its usage (Resp. Exh. 4).
5. On February 15, 2017, Trans-Care issued a formal new procedure regarding tracking of narcotic drugs (Resp. Exh. 4, Attachment 1).
6. On the night of May 14-15, 2017, Petitioner was on duty at the Terre Haute station for Trans-Care along with coworkers Matthew Barts (“Barts”) and Amanda Decker (“Decker”) (R’s Exhs. 2, 3, 5, 7, 13, 22). While Barts was in the dayroom, he heard “weird sounds” coming from the supply area and saw Petitioner trying to break into the locked supply closet (Resp. Exh. 13). Barts stopped Petitioner (Resp. Exh. 13). Petitioner told Barts she was trying to get special glucometer strips, and Barts told Petitioner to not break into the closet, but get strips from another truck not in use, or to otherwise follow procedure (Resp. Exh. 13).
7. Later that night, around midnight, Barts and Decker were in the bunk room and heard strange noises in the station (Resp. Exhs. 13, 14). Barts went to check, and discovered Petitioner had broken into the supply closet and was “filling her pockets” (Resp. Exh. 13). Petitioner told Barts she was grabbing a “flush”<sup>29</sup> for her truck, did so, showed it to him, and then went to her truck (Resp. Exh. 13). Barts returned to the bunk room and told Decker about the incident (Resp. Exhs. 13, 22). Later, when Decker went to use the restroom, she saw Petitioner by the supply closet (Resp. Exh. 22).
8. After learning of the incident with Petitioner entering the locked supply cabinet on May 15, 2017, Orman personally reviewed the prior thirty days of video recordings of all entrances into the locked supply closet (Resp. Exh. 6). Petitioner was the only unauthorized person to enter the locked supply closet (Resp. Exh. 6).
9. Trans-Care Paramedic and Supply Officer Gregory Rusk (“Rusk”) performed an audit of the inventory in the locked supply room on May 16, 2017. Rusk determined that Toradol was last inventoried on May 5, 2017, and none was signed out since then and, similarly, Benadryl

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<sup>29</sup> The evidence does not explain what a “flush” is.

was last inventoried on May 15, 2017, and none was signed out since (Resp. Exh. 5). However, five (5) vials of Toradol and four (4) vials of liquid Benadryl were missing (Resp. Exh. 5).

10. Petitioner does not deny the fact that she broke into the locked supply closet in the early hours of May 15, 2017, and that it is she in the recording (Resp. Exhs. 2, 3, 10). Rather, in the initial response, Petitioner claims that she was breaking into the locked supply cabinet in the middle of the night to obtain “special” glucometer strips as her unit had a “one of kind” glucometer that only took strips that were available in the locked supply closet, and she needed strips or she would be out of strips and out of compliance with state requirements for stocking her truck, but no one was available to let her into the locked supply closet (Resp. Exh. 10). Petitioner claims that the open vial of glucometer strips found on her truck was an open vial she found in the locked supply closet and the one she used to re-stock her truck on the night of May 15, 2017 (Resp. Exh. 10).
11. Petitioner claimed in her statement that while only Orman, Rusk, and Miller are supposed to be in the supply room, she has personally observed myriad people in the supply room when the door is unlocked, including during narcotic counts (Resp. Exh. 10).
12. In her Brief, Petitioner claims that she spent a total of five (5) months off work between “October of 2016 and March/April of 2017” due to two separate surgeries, on leave approved by Orman, and had subsequent health problems (Pet. Br. at 4). She claimed that she was then targeted for termination as a consequence (Pet. Br. at 4). As further evidence of her claim of targeting, Petitioner placed into evidence Exhibit 6, a purported screenshot of a texted conversation between herself and “Ashlee Lin” (Pet. Exh. 6).
13. In her Brief, Petitioner challenges the credibility of the thoroughness of Trans-Care’s medication controls (Pet. Br. at 3). In furtherance of this challenge, Petitioner put into evidence Exhibit 7, which she claims is a photo of the office of Ben Purdy, which she claims was in a Facebook post of “Brooke Tussey” from November 2017 (Pet. Exh. 7). She claims that this shows the unsecured medication Etomidate, “a medication used to induce unawareness” (Pet. Br. at 3; Pet. Exh. 7).
14. Petitioner’s nursing licenses in Texas, Missouri, and Indiana have been revoked (Resp. Exhs. 11, 12, 15, 16). On October 23, 2008, the Texas State Board of Nursing placed Petitioner’s Texas nursing license on probation after an error in procedure and documentation (Resp.

Exh. 15). As of April 16, 2011, Petitioner's Missouri nursing license was on probation due to the Texas discipline (Resp. Exh. 16). The Indiana State Board of Nursing placed Petitioner's license on probation on February 29, 2012, due to the fact that Petitioner did not disclose discipline on her Texas nursing license on her 2009 Indiana renewal application (R's Exh. 11). On March 28, 2012, the Missouri State Board of Nursing revoked Petitioner's Missouri Nursing license when Petitioner failed to provide employment evaluations to the Missouri State Board of Nursing, which she was required to produce as a condition of her probation (Resp. Exh. 16). On September 30, 2014, the Indiana State Board of Nursing revoked Petitioner's nursing license, when it determined that in her 2013 Indiana renewal application Petitioner failed to disclose that the Missouri State Board of Nursing had revoked her license in March 2012 (R's Exh. 12). On December 9, 2014, the Texas State Board of Nursing revoked Petitioner's Texas nursing license based in part on the facts that led to the Indiana State Board of Nursing to revoke her Indiana nursing license (R's Exh. 15).

15. On June 12, 2017, the Indiana Department of Homeland Security received a complaint based on Petitioner's alleged actions (R's Exh. 7).
16. On July 25, 2017, the IDHS suspended Petitioner's Primary Instructor Certificate, Paramedic License, and EMT Certificate for ninety (90) days (Resp. Exhs. 8, 9).
17. On August 22, 2017, the IDHS revoked Petitioner's Primary Instructor Certificate for seven (7) years, and ordered that following the revocation period, Petitioner may reapply for certification by completing all requirements necessary for a new applicant for Primary Instructor Certificate (Resp. Exh. 9). The IDHS placed both Petitioner's Paramedic License and her EMT Certificate on two (2) year suspensions (Resp. Exh. 9). During the period of suspension, Petitioner may not exercise any of the rights or privileges afforded to a Paramedic License holder or an EMT Certificate holder (Resp. Exh. 9). Following completion of the two (2) year suspension, Petitioner must: (1) retake the EMT Course and state certifications exam to regain her EMT Certificate; and (2) retake the Paramedic course and NREMT certifications exam to regain her Paramedic license (Resp. Exh. 9).



## CONCLUSIONS OF LAW

Applying the law set forth in this decision to the factual findings supported by the evidence, the ALJ hereby reaches the following Conclusions of Law with respect to the issues presented:

1. Respondent in this matter seeks to impose a sanction upon the Petitioner by permanently revoking Petitioner's Primary Instructor Certificate for seven (7) years and placing both Petitioner's Paramedic License and her EMT Certificate on two (2) year suspension (Resp. Exh. 9).<sup>30</sup> The Respondent, therefore, bears the initial burdens of proof and production. Ind. Code § 4-21.5-3-14(c); *Peabody Coal*, 578 N.E.2d at 754.
2. Petitioner has a protected property interest in her Primary Instructor Certificate, her Paramedic License, and her EMT Certificate, as she must possess these licenses and certifications in order to continue her current employment as a paramedic and EMT and as an instructor. *Melton v. Indiana Athletic Trainers Bd.*, 53 N.E.3d 1210, 1215-16 (Ind. Ct. App. 2016). Therefore, the Respondent must demonstrate by a preponderance of the evidence that the discipline imposed upon Petitioner is appropriate. *Pendleton*, 747 N.E.2d at 64-65.
3. The Indiana Emergency Medical Services Commission is created by statute, Ind. Code § 16-31-2-1, and is empowered to “[d]evelop training and certification standards for emergency medical responders” and “[r]equire emergency medical responders to be certified” under those standards, Ind. Code § 16-31-2-8(1), -8(2); *see also* Ind. Code § 16-31-2-7(2) (Commission charged to “[r]egulate, inspect, and certify or license services, facilities, and personnel engaged in providing emergency medical services”).
4. The Commission is also charged with establishing the standards for certification and licensing for emergency medical responders and instructors, Ind. Code § 16-31-3-2, and set forth those standards for education and training in rules, Ind. Code § 16-31-3-2(1)(A). It is also charged with establishing the application process for certification and licensure as an emergency medical responder and instructors. Ind. Code § 16-31-3-8.
5. Ind. Code § 16-31-3-14(a) permits the Respondent to impose sanctions on a certificate or license holder if the Respondent can show that, among other things, the certificate or license holder “engaged in fraud or material deception in the course of professional services or

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<sup>30</sup> Admitted as Resp. Exh. 9.

activities” or “fails to comply and maintain compliance with or violates any applicable provision, standard, or other requirement of this article or rules adopted under this article.” Ind. Code § 16-31-3-14(a)(2), (7).

6. Ind. Code § 16-31-3-14(b) permits the Respondent to impose the following sanctions with respect to holders of certificates it has issued:
  - (1) Revocation of a certificate holder’s certificate or license holder’s license for a period not to exceed seven (7) years.
  - (2) Suspension of a certificate holder’s certificate or license holder’s license for a period not to exceed seven (7) years.
  - (3) Censure of a certificate holder or license holder.
  - (4) Issuance of a letter of reprimand.
  - (5) Assessment of a civil penalty against the certificate holder or license holder in accordance with the following:
    - (A) The civil penalty may not exceed five hundred dollars (\$500) per day per violation.
    - (B) If the certificate holder or license holder fails to pay the civil penalty within the time specified by the department of homeland security, the department of homeland security may suspend the certificate holder’s certificate or license holder’s license without additional proceedings.
7. 836 IAC 4-4-1(e)(2) states that an “emergency medical technician shall not act negligently, recklessly, or in such a manner that endangers the health or safety of emergency patients or the members of the general public.”
8. 836 IAC 4-5-2(e)(3) states that a primary instructor shall not negligently, recklessly, or willfully endanger the health or safety of emergency patients or students.
9. 836 IAC 4-9-3(e)(2) states that “[P]aramedics shall...not act negligently, recklessly, or in such a manner that endangers the health or safety of emergency patients or the members of the general public.”
10. Additionally, 836 IAC 4-4-1(e) and 836 IAC 4-9-3(e)(2) both require compliance with the protocols established by the commission, the provider organization, and the provider organization’s medical director.

Respondent alleges that Petitioner engaged in fraud or material deception in the course of her professional services or duties. The evidence indicates that in the summer of 2016, Petitioner’s employer, Trans-Care, noticed that an amount of Toradal was missing. Trans-

Care personnel conducted an audit and over the next months instituted tighter controls on its inventory, including keeping its supply of Toradal in a locked supply closet, telling its employees that it would treat Toradal as a narcotic, and instituting new procedures regarding narcotics (Resp. Exh. 4).

Respondent does not deny that she broke into the locked supply closet on the night of May 15, 2017 (Resp. Exhs. 2, 3, 10). Following that break-in, Trans-Care personnel conducted an audit and discovered that since the last inventory, on May 5, 2017, they had five (5) vials of Toradol and four (4) vials of liquid Benadryl unaccounted for (Resp. Exh. 5). Petitioner was the only unauthorized person in the supply closet between May 5, 2017, and May 15, 2017 (Resp. Exh. 6).

Respondent claims that she broke into the locked supply closet to obtain special glucometer strips, as she had a one-of-a-kind glucometer that presumably took different strips (Pet. Br. at 2; Resp. Exh. 10). However, that was not what she told her colleague on the night she was discovered in the closet (Resp. Exh. 13). Further, during the course of its monitoring that commenced in the summer of 2016 and continued through May 2017, Trans-Care discovered a correlation between missing Toradol and Petitioner's shifts (Resp. Exh. 4). Further, another Trans-Care employee showed Orman a photo that purportedly showed utilized Toradol and Benadryl vials in the women's restroom (Resp. Exh. 4), an indicator that if diversion was taking place, it was likely by a female.

Cumulatively, this substantial and reliable evidence indicates that it is more likely than not that Petitioner committed fraud or material deception in the course of professional services or activities in that she deliberately broke into a locked supply cabinet to take supplies, namely five (5) vials of Toradol and four (4) vials of liquid Benadryl.

Further, in breaking into the locked supply closet, Petitioner deliberately failed to follow Trans-Care's protocols for gaining entry into the supply closet (Resp. Exhs. 3, 4). This is a violation of 836 IAC 4-4-1(e)(5) and 836 4-9-3(e)(5). 836 IAC 4-4-1(e)(5) provides that an EMT Certificate holder "shall comply with the protocols established by... the provider organization and the provider organization's medical director." 836 4-9-3(e)(5) provides that

a Paramedic Certificate holder must “comply with the protocols established by the:... (B) provider organization; and (C) the provider organization’s medical director.”

Respondent has shown that Trans-Care had highly developed protocols regarding Toradol and the treatment of narcotic drugs and access to the locked supply closet (Resp. Exh. 4). Petitioner’s flouting of the protocol to access the locked supply closet in the middle of the night, and her taking five (5) vials of Toradol and four (4) vials of liquid Benadryl (Resp. Exh. 5) is evidence that proves that it is more likely than not that Petitioner failed to follow the protocols of the provider organization, Trans-Care.

In addition, by taking medications out of the supply closet without informing management, Petitioner acted negligently with regard to emergency patients; that is, she acted in such a manner that endangered the health or safety of emergency patients. Emergency patients need certain drugs, and the lack of proper supplies can mean that a unit is taken out of service, thus leaving fewer units to respond to emergency calls or resulting in a unit responding without the required medications. While Petitioner’s actions may seem small, her actions could have serious and sizeable repercussions on the care of emergency patients.

Petitioner’s arguments and evidence are insufficient to overcome the substantial and reliable evidence presented by Respondent that show by a preponderance of the evidence that Petitioner has committed the improper acts alleged by Respondent. Petitioner argues that she was targeted by Trans-Care management due to the fact she had missed a great deal of work in past months, claiming that she spent a total of five (5) months off work between “October of 2016 and March/April of 2017” due to two separate surgeries, on leave approved by Orman (Pet. Br. at 4). Petitioner also claims that she was out of glucometer strips and no one was available to let her into the closet to refill her supply (Pet. Br. at 2; Resp. Exh. 10). This claim is dubious as there is no evidence other than Petitioner’s statement to support it. There is no substantial and reliable evidence to substantiate Petitioner’s claims of innocent action and targeting. Moreover, even if Trans-Care did target Petitioner for employment termination for any reason prior to her May 15, 2017 break-in to the locked supply closet, that action coupled with the discovery of missing medications render any termination of Petitioner’s employment by Trans-Care reasonable.

Initially, Petitioner makes these claims in her brief, not in any type of document that indicates she is averring to the facts contained within. Argument is not evidence. “[A] pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.” *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). However, even if Petitioner’s statements are taken as evidence, they are not substantially supported.

Petitioner placed into evidence Petitioner’s Exhibit 6, over Respondent’s objection, a purported screenshot of a texted conversation between herself and one Ashlee Lin, whom she claims was her former partner at Trans-Care (Pet. Brief at 3; Pet. Exh. 6). Petitioner claimed that she was not able to obtain an interview with Lin due to targeting by Trans-Care that reached Ashlee Lin at her new job with the “city” (Pet. Brief at 3). However, Petitioner presents only her own version of the story. Her Petitioner’s Exhibit 6 bears no indication as to who the two parties to the conversation were or on what date the conversation took place other than Petitioner’s handwritten notes. Even if the evidence was exactly what Petitioner claims it to be, it reflects action by the “city,” not Trans-Care. This evidence does not reach the level of being substantial and reliable as to support Petitioner’s assertion that she was targeted by Trans-Care such so as to undermine the credibility of Respondent’s evidentiary presentation.

Petitioner also placed into evidence Petitioner’s Exhibit 7, a purported photo of the office of a “Mr. Ben Purdy,” who is otherwise unidentified. Petitioner claims the photo was in a Facebook post of “Brooke Tussey” from November 2017 (Pet. Exh. 7). She claims that this shows the unsecured medication Etomidate, “a medication used to induce unawareness,” and indicates that the photo demonstrates Trans-Care was careless about storage of medications (Petitioner’s Br. At 3; Pet. Exh. 7).

This evidence does not reach the level of being substantial and reliable so as to support Petitioner’s assertion that Trans-Care’s tracking of its medications was so sloppy as to undermine the credibility of the Respondent’s evidence of Trans-Care’s medication tracking procedures. There is no indicia of when the photo was taken, or where it was taken other than it was apparently posted to Facebook in November of 2017 (Pet. Exh. 7). Nor are the

items in the photo identifiable other than by the argument in Petitioner's brief. Even if the evidence was exactly what Petitioner claims it to be, at best it can be understood to reflect a situation significantly *after* the time period under discussion. How Trans-Care handled Toradol and liquid Benadryl in the time leading up to Petitioner's May 15, 2017, break-in to the supply closet is at issue. What happened in November 2017 is not.

Petitioner argues that Trans-Care's suspicion of her is illogical, due to the fact that she spent a total of five (5) months off work between "October of 2016 and March/April of 2017" and she could not be a suspect because she was not working. As Petitioner does not deny that she worked at some point, if not for a great deal of time, during this period, her claim that she could not be responsible for the disappearances is without basis.

Finally, Petitioner's assertions are suspect. Respondent placed into evidence an Order of the Indiana State Board of Nursing that indicated that on two instances, after being afforded the due process of a hearing, the Indiana State Board of Nursing found Petitioner to have failed to report out-of-state discipline on her license (Resp. Exh. 12). That is, she committed "fraud or material deception" in the course of renewing her license (Resp. Exh. 12). See I.C. § 25-1-9-4(a)(4)(D). Further, Petitioner's arguments in her brief about the procedural posture of the Indiana State Board of Nursing's revocation of her license does not affect the weight of the Indiana State Board of Nursing's findings. Petitioner's Indiana nursing license was revoked after a default hearing, which means that Petitioner was found in default. There is no indication in the record that Petitioner was not afforded her due process rights in the procedure used by the Indiana State Board of Nursing when revoking her license. The factual basis found by the Indiana State Board of Nursing to support the revocation of her nursing license, that she was not truthful and accurate in her reporting of out-of-state discipline to the Board, diminishes petitioner's credibility, if her arguments in her brief and statement are taken as factual assertions. Petitioner has not presented substantial and reliable evidence that successfully rebuts Respondent's evidence, which proves by a preponderance of the evidence that Petitioner committed the violations alleged.

The ALJ holds that Respondent has shown by a preponderance of the evidence that Petitioner committed the alleged violations.

11. Petitioner holds an Emergency Medical Technician Certificate, a Paramedic License, and a Primary Instructor Certificate (Pet. Exh. 1; R's Exh. 1). If Petitioner has violated the requirements of Ind. Code § 16-31-3-14(a), she is subject to an appropriate disciplinary sanction as found in Ind. Code § 16-31-3-14(b).
12. "The department of homeland security must be consistent in the application of sanctions authorized in this chapter. Significant departures from prior decisions involving similar conduct must be explained in the department of homeland security's findings or orders." Ind. Code § 16-31-3-14(n).
13. In order to satisfy its burden of proof and production in this matter, the Respondent must show by a preponderance of the evidence that permanent revocation of petitioner's Primary Instructor Certification is the appropriate sanction for Petitioner's violation of Ind. Code § 16-31-3-14(a).<sup>31</sup>

Respondent points to the fact that "Primary Instructors are charged with teaching and testing emergency medical students... Primary Instructors are the individuals that must provide instruction and example to the future certificate and license holders" (Pet. Br. at 5). Respondent argues that "[t]herefore, Primary Instructors [are] held to a higher standard than paramedics and EMTs" (Pet. Br. at 5).

It is true that Primary Instructors have completed additional training in order to obtain their certification, and are required to do additional continuing education above that of EMT Certificate holders in order to maintain their Certificates as Primary Instructors. They are presumably more skilled in their area of expertise because of this. But Respondent points to no evidence or precedent supporting the claim that the Primary Instructor Certificate are held to a higher standard in terms of other expectations and discipline. Further, the allegations proved here have no direct relationship with Petitioner's status as a Primary Instructor.

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<sup>31</sup> The ALJ notes that the fact that the IDHS may not reinstate a certificate or license that has been revoked pursuant to Ind. Code § 16-31-3 *et seq.* Therefore, after the period of revocation is over, a former licensee or certificate holder may reapply for certification by completing all requirements necessary for a new applicant for a Primary Instructor Certificate.

Nevertheless, Respondent's argument that Primary Instructors are held to a higher standard than paramedics and EMTs bears some weight, for an instructor found to have committed a violation in the course of her professional duties would necessarily have diminished credibility in the eyes of any students. Here, the allegations proved included negligently endangering the health of emergency patients and failure to follow the protocols established by her provider organization, both violations directly stemming from Petitioner's position as a working Paramedic and an EMT—and she is required to be an EMT in order to be a Primary Instructor. *See* 836 IAC 4-5-1(1); 836 IAC 4-5-2(a)(1)(C); 836 IAC 4-5-2(a)(6). A Primary Instructor who has had such violations proved against her is necessarily less credible as a Primary Instructor. However, lacking any evidence or precedent supporting this argument, this argument is not persuasive.

Respondent has submitted a representative case in Respondent's Exhibit 17, Cause Number 04-04M, regarding James Rosenau (Resp. Exh. 17). There, Rosenau, the EMS chief in a township fire department, held the same certification and licensure as Petitioner (Resp. Exh. 17). After irregularities were noticed regarding pain killing controlled substances, specifically morphine and Valium, Rosenau underwent a drug test which showed recent Valium use (Resp. Exh. 17). An investigation revealed that 400 syringes of morphine and 65 syringes of Valium were unaccounted for over approximately one year's time (Resp. Exh. 17). During the course of the investigation, it was revealed that Rosenau used his position to conceal his diversion by responding to a pharmacy inquiry as to the increased usage of these drugs himself and blaming a change in protocols, without disclosing the pharmacy's inquiry to his fire chief of the township trustee (Resp. Exh. 17). Rosenau was initially deceptive in his dealing with the department's investigation, but later admitted an addiction and his diversion, and sought treatment for his addiction (Resp. Exh. 17). The ALJ in that decision held that 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 conduct. 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" (Resp. Exh. 17). The Respondent revoked Rosenau's Paramedic Certificate and Primary Instructor Certificate, and suspended Rosenau's EMT Certificate for seven years (Resp. Exh. 17).



Here, Petitioner was found to have taken five (5) vials of Toradol and four (4) vials of liquid Benadryl on the night of May 15, 2017. However, there is substantial evidence in the record that indicates that pilferage of Toradol had been noticed since the summer of 2016, and when more controls were instituted, the discovery of missing items correlated with Petitioner's shifts (Resp. Exh. 4). This indicates that the problem is more extensive than one instance, but was an ongoing abuse of Petitioner's employer's trust in her and negligent endangerment of her emergency patients.

Petitioner has admitted breaking into a locked supply room, which she is hard-pressed to deny as the incident was recorded on video and witnessed by a colleague (Resp. Exhs. 6, 13). However, as noted above, her explanation for her action lacks support for Petitioner's assertions are not supported by reliable and substantial evidence and Petitioner's own credibility is suspect.

In light of the precedence that a notable period of diversion that directly stems from the abuse of the position as a member of the emergency medical services community should result in the revocation of a Primary Instructor Certificate, and that here, Petitioner's actions negligently endangered patients, the Respondent has met its burden of showing by a preponderance of the evidence that Petitioner's Primary Instructor certification should be revoked.

The ALJ concludes that Respondent has met its burden to show the appropriateness of the revocation of Petitioner's Primary Instructor Certificate.

14. In order to satisfy its burden of proof and production in this matter, the Respondent must show by a preponderance of the evidence that the two-year suspensions of Petitioner's Paramedic License and EMT Certificate,<sup>32</sup> is the appropriate sanction for Petitioner's violation of Ind. Code § 16-31-3-14(a).

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<sup>32</sup> 836 IAC 4-4-2(h) provides that:

An individual wanting to reacquire a certification [as an EMT] shall:

- (1) complete an emergency medical technician recertification training course as approved by the commission; and

Here, the Respondent has submitted precedent indicating that the decision appears appropriate, if not lenient. Respondent's Exhibit 18 indicates that in the case of a paramedic who used a drug inventory of a patient to obtain prescription information and then used this information to illegally obtain controlled substances to which he was addicted qualified as reckless or dangerous conduct that endangered the public and merited the sanction of a four-year revocation of all certifications, with leave to apply for reinstatement after two years. Respondent's Exhibit 19 indicates that in an instance where the EMT stole prescription slips from a doctor's office and used them to obtain a controlled substance, the appropriate punishment was a six-year suspension. Respondent's Exhibit 20 indicates that when the EMT/Paramedic was criminally convicted, pursuant to a guilty plea, of selling items that belonged to an EMS service, a revocation for seven years was appropriate.

Respondent has submitted evidence that proved that it was more likely than not that Petitioner took five (5) vials of Toradol and four (4) vials of liquid Benadryl on the night of May 15, 2017. This was after pilferage of Toradol had been noticed since the summer of 2016. When more controls were instituted, the discovery of missing items correlated with Petitioner's shifts (Resp. Exh. 4). Petitioner has admitted breaking into a locked supply room (Resp. Exhs. 6, 13). However, as noted above, her explanation for her action is not supported by reliable and substantial evidence and Petitioner's own credibility is suspect. The ALJ concludes that Respondent has shown that the sanctions on Petitioner's Paramedic License and EMT Certificate of two-year suspensions are appropriate.

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(2) successfully complete the state written and practical skills examinations as set forth and approved by the commission.

If the individual fails either certification examination, the person must retake an Indiana basic emergency medical technician training course.

Similarly, 836 IAC 4-9-4(f) provides that:

An individual wanting to reacquire a certification [as a Paramedic] shall complete a paramedic recertification training course and successful completion of state written and practical skills examinations as set forth and approved by the commission. If the individual fails the certification examinations, the person shall retake an entire paramedic training course.

These conditions are not further punishment, but requirements of 836 Indiana Administrative Code.


## DECISION AND NON-FINAL ORDER

Respondent has demonstrated by a preponderance of the evidence that Petitioner has engaged in fraud or material deception the course of professional service or activities, acted negligently so that she endangered the health of emergency patients, and failed to comply and maintain compliance with the protocols established by her provider organization. Ind. Code § 16-31-3-14(a); 836 IAC 4-4-1(e); 836 IAC 4-5-2(e); 836 IAC 4-9-3(e). Petitioner is therefore subject to disciplinary sanctions found in Ind. Code § 16-31-3-14.

Respondent has demonstrated by a preponderance of the evidence and reference to precedent that its action in revoking Petitioner's Primary Instructor Certificate for seven (7) years, and suspending both Petitioner's Paramedic License and her EMT Certificate for years is the appropriate sanction.

The Indiana Emergency Medical Services Commission is the ultimate authority in this matter. It will consider this non-final order in accordance with the provisions of Indiana Code §§ 4-21.5-3-7 thru -29 and the Notice of Non-Final Order also issued today.

Date: March 29, 2018



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A copy of the foregoing **Findings Of Fact, Conclusions Of Law, And Non-Final Order** was served upon the following parties and attorneys of record on March 29, 2018:

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