

Cause #: 97-3M

Name: Mark Allen Hope

Administrative Law Judge: William K. Teeguarden

Date: February 12, 1998

Commission Action: Affirmed

FINDINGS OF FACT

1. The Indiana Emergency Medical Services Commission (“Commission”) and the Emergency Medical Services Agency (“Agency”) are agencies within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 16-31 and 836 IAC 1 and 2 apply to this proceeding.
3. The Commission is the ultimate authority within the meaning of IC 4-21.5 over matters involving the licensing of emergency medical service personnel.
4. At all time relevant to this proceeding, Mark Allen Hope (“Hope”) held EMT Basic and Paramedic Certificate No. 48-27590 (“permit”) issued by The Commission.¹
5. On September 10, 1997, the Agency filed a complaint to revoke the permit(s).
6. The factual basis for the revocation is not in dispute; at issue is the penalty that should be imposed.
7. On or about August 9, 1997 Hope, acting in his official capacity as an EMT and employee of the Anderson City Fire Department, was part of an ambulance team dispatched to the residence of John and Jane Doe on an emergency run.²
8. John and Jane Doe are an elderly couple who are both in poor health.
9. Hope had made several runs to the Doe residence on prior occasions. He knew the Does and the Does knew him.
10. At the Doe residence, the EMT team determined that Jane Doe was having chest

¹ The certificates expire on November 1, 1998 and August 1, 1998, respectively.

² No useful purpose is served by using the true name of the Does and since the record contains medical information about Jane Doe, the trier of fact will attempt to preserve some degree of confidentiality.

pains, leg pains, and breathing problems, placed her in the ambulance and took her to a local hospital.

11. As part of the normal procedure, Hope obtained Jane Doe's medications from John Doe for transportation to the hospital with the patient.
12. While on the way to the hospital, Hope inventoried the medication which is also a standard procedure.
13. While conducting the inventory, Hope noticed a prescription for Lorcet 10 (Hydrocodone) ("Lorcet") a controlled substance used for pain control, and copied down the prescription number.
14. Hope called the pharmacy and requested a refill of Doe's prescription.
15. Hope later went to the pharmacy and obtained 90 Lorcet tablets.
16. Hope consumed the Lorcet in less than a week.
17. On August 14, Officer David Callahan of the Madison County Sheriff's Department, was contacted by the pharmacy.
18. Upon contacting John Doe about payment of \$17 not covered by insurance, the pharmacy learned that neither John nor Jane Doe authorized or requested a refill.
19. Officer Callahan went to the pharmacy and during the course of his investigation, obtained a surveillance camera photo of the person picking up the Lorcet.
20. Callahan knew Hope as a Fire Department employee and recognized the photograph immediately.
21. Callahan contacted Hope and arranged an interview at the Anderson Police Department.
22. During the interview, Hope admitted all the essential facts as presented above.
23. Callahan obtained a warrant for Hope's arrest for obtaining a controlled substance by fraud on August 26, 1997 and Hope turned himself in on or about September 5, 1997, following his release from an inpatient drug

treatment center.

24. Immediately following service of the warrant, the Agency issued an emergency suspension of the permit and filed a complaint for revocation.
25. At the hearing, Hope admitted being addicted to painkillers. His prescribed dosage was 1-2 tablets every 4-6 hours but for 6-12 months, he has desired more.
26. Hope has sought treatment and at the time of the hearing, he was undergoing outpatient treatment following approximately one week of in-patient treatment and intensive group therapy.
27. The complaint alleges violations of the following rules of the Commission:
 - (a) 836 IAC 2-6-1 (f) (4),
 - (b) 836 IAC 2-6-1 (f) (5),
 - © 836 IAC 2-6-1 (f) (6),
 - (d) 836 IAC 2-6-1 (f) (7),
 - (e) 836 IAC 2-6-1 (e) (5),
 - (f) 836 IAC 2-6-1 (e) (2),
 - (g) 836 IAC 2-6-1 (e) (8), and
 - (h) 836 IAC 2-6-1 (g) (4).
28. Penalties for violation of the rules are governed by IC 16-31-3-14.
29. IC 16-31-3-14 provides in part that “. . . after notice and hearing, the commission may suspend or revoke a certificate . . . for violation of any applicable provisions, standards, or other requirements of this chapter or rules adopted under this chapter.”
30. IC 16-31-3-14 (g) states that “the commission may suspend or revoke a certificate under this section for not more than seven (7) years from the date the suspension or revocation is effective.”
31. 836 IAC 2-6-1 (f) deals with ethical conduct standards for paramedics.
32. 836 IAC 2-6-1 (f) (4) deals with understanding the legal responsibility and the limitations imposed upon a paramedic.
33. If the above section means that paramedic must understand the limits to which a paramedic may provide medical treatment, there is no evidence that Hope violated this section.

34. If the above section is interpreted to include the legal responsibility of not using information obtained from or about a patient to commit a crime, then Hope violated this section.
35. 836 IAC 2-6-1 (f) (5) provides that paramedics should understand the practice of medicine, and the practice of the paramedics.
36. There is no evidence in the record that Hope mistreated or improperly treated Jane Doe or any other patient. His technical competency in treating patients is not the reason for this proceeding.
37. 836 IAC 2-6-1 (f) (6) deals with the understanding of medical and mechanical emergencies and measures to be applied to solve problems
38. Again, Hope's technical competency and skills are not at issue here.
39. 836 IAC 2-6-1 (f) (7) deals with the ability of a paramedic to act instead of react in times of emergency or stress.
40. If this section deals only with patient care, there is no evidence that Hope failed to satisfy this section with respect to his paramedic activity towards Jane Doe.
41. If this section is to be interpreted more broadly, Hope, while under the stress of physical addition to pain pills, reacted to an opportunity to obtain more while treating Jane Doe.
42. 836 IAC 2-6-1 deals with general certification provisions for paramedics and provides a better basis for sanctions than the ethical section.
43. 836 IAC 2-6-1 specifically deals with revocations or suspensions of Paramedic certificates.
44. 836 IAC 2-6-1 (2) provides that sanctions may be imposed if a paramedic “is unfit or incompetent by reason of negligence, habit, or other causes;”
45. The fact that Hope 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 shows unfitness by reason of habit or other causes.

46. 836 IAC 2-6-1 (e) (5) allows sanctions to be imposed if a paramedic “is guilty of unprofessional conduct;”.
47. Using information obtained from a patient during a run to obtain a controlled substance by fraud is clearly unprofessional conduct.
48. 836 IAC 2-6-1 (e) (8) provides for sanctions against a paramedic who “has willfully or repeatedly violated any of the provisions of 836 IAC 2.
49. The deliberate copying of Jane Doe’s prescription information and using same to fraudulently obtain a refill are willful acts prohibited by this section.
50. To summarize, the evidence shows violations of 836 IAC 2-6-1 (e) (2), (5) and (8) and therefore a suspension or revocation of Hope’s paramedic certificate is authorized.
51. EMT certificates are governed by 836 IAC 1-5 and 836 IAC 1-5-1 (g) specifically provides for suspensions or revocations for 5 different reasons.
52. 836 IAC 1-5-1 (g) (4) provides for suspension or revocation of a certificate for “negligent, reckless, or dangerous conduct which endangers the health or safety of emergency patients or members of the general public while functioning as an emergency medical technician. . .”.
53. Obtaining pain medicine by fraud and deceit using information obtained while on duty as an EMT qualifies as “reckless or dangerous conduct” and endangers the public.
54. A suspension or revocation of Hopes emergency medical technician certificate is authorized.
55. The maximum suspension or revocation that can be imposed is 7 years.
56. To arrive at an appropriate sanction, the trier of fact must consider and weigh both aggravating and mitigating circumstances.
57. In considering aggravating circumstances, it is important to note what Hope did not do.

58. Hope did not physically abuse, molest or sexually assault a patient under his care nor did he use information gathered in the course of his employment to burglarize a home or steal personal property.
59. The aggravating circumstances listed in paragraph 58 virtually mandate the maximum suspension or revocation allowed by law.
60. Hope thus deserves consideration for a less than maximum revocation.
61. The fact that Hope used his position as an EMT and paramedic to obtain the prescription number and name of the pharmacy is an important aggravating circumstance.
62. In his testimony in this case, Hope clearly accepted responsibility for his actions and was in the process of undergoing treatment for his problem. This is a mitigating circumstance.
63. Another mitigating circumstance is the fact that while Hope's conduct was illegal and unethical, it did not place Jane Doe in any danger or diminish the care received in anyway.
64. Perhaps the biggest mitigating circumstance is the fact that during the course of the police investigation, after being told by detectives that they were investigating this incident involving Mr. Hope, John and Jane Doe, both of whom knew Hope from prior emergency runs to their residence, both described Hope as a caring and conscientious medical service provider.
65. The evidence in the record shows that even while taking too many pain pills, Hope functioned as a capable EMT and paramedic.³
66. In short, the record reflects that if Hope completes treatment and remains off of pain medication outside of prescribed dosages, he will be a capable, competent EMT and paramedic.
67. The appropriate penalty to be imposed is a 4 year revocation of Hope's certifications with leave to apply to the Commission as a whole for reinstatement following 2 years.

³ There were attempts at the hearing to show Hope's actions were sometimes affected by his substance abuse problem. Most telling in this line of inquiry is the absolute absence in the record of any problem relating to attendance which is a primary indicator of a substance abuse problem. Hope did not miss work nor was he habitually tardy.

68. Since the resolution of this case will involve a significant impact on Hope's ability to continue earning his living as an EMT, no useful purpose would be served by assessing a fine.
69. At the minimum, for reinstatement, Hope must show completion of an approved treatment program with no substance abuse or criminal conduct during that time.

IV. NONFINAL ORDER

Emergency Medical Basic and Paramedic Certificate #48-27590 issued to Mark Allen Hope is hereby revoked for a period of four (4) years. Upon a showing that he has completed an approved drug treatment program and that he has not committed any criminal act or abused alcohol or a controlled substance, and that two (2) years has passed since the revocation, Mark Allen Hope is granted leave to petition the Emergency Medical Services Commission for reinstatement of basic and paramedic certificate number 48-27590.