

**Cause No.: 05-02M**

**Name: Mark Wallace**

**Administrative Law Judge: William K. Teeguarden**

**Date: October 27, 2005**

**Commission Action: Affirmed**

### **FINDINGS OF FACT**

1. The Agency is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, and IC 16-31 apply to this proceeding.
3. The Emergency Medical Services Commission ("Commission") is the ultimate authority with respect to orders issued by the Agency.
4. The Commission is the state agency charged with the responsibility of regulating EMS and Paramedic Certificate holders.
5. At all times relevant to this proceeding, Wallace held Certificates issued by the Agency.
6. Wallace has been a full time employee of the Wabash Fire Department for over 10 years.
7. Wallace became certified as an EMT (and advanced EMT) in conjunction with his employment as a firefighter and in 1999, he received his paramedic certification.
8. On February 28, 2005, the Agency issued the Order which placed Wallace's certificates on probationary status for two years and included a number of special reporting requirements during the period of probation. A copy of the Order is attached.
9. By the terms of the Order, the period of probation would begin on March 18, 2005, unless a stay was entered or agreed to. No stay has been entered and no agreement has been filed.
10. The basis of the Order was a criminal conviction.
11. The parties agree that on April 12, 2004, Wallace was charged with Battery, a Class D felony and other related charges mostly misdemeanors, arising out of a dispute with an ex-girl friend.
12. The parties also agree that on May 25, 2004, Wallace pled guilty to Battery, a Class A misdemeanor, and the other charges were dismissed.
13. Wallace was given a one year sentence suspended after 10 days, placed on probation for 11 months, required to complete a substance abuse (alcohol) course he had already started, complete an anger management course, and subject to other conditions not relevant to this proceeding.
14. The incident in question took place at Wallace's residence at a time he was off duty.
15. Wallace tested over .20BAC after his arrest shortly after the incident.
16. Wallace was immediately suspended from his position on the Wabash Fire Department and remained suspended without pay until he was reinstated by the City Board of Public Works on or about June 16, 2004.
17. The record reflects that the conduct of the ex-girl friend when she arrived at Wallace's house (uninvited) was abusive and highly provocative, but the police

records show Wallace's reaction to be somewhat excessive and the trial court judge could certainly find from those documents that a factual basis existed for a misdemeanor battery conviction. Exhibits C and 2.

18. Working against Wallace was another prior incident involving alcohol and assaultive behavior, also off duty and totally unrelated to his job as a firefighter or as a paramedic.
19. The medical director for the area is aware of the conviction and took no further action against his ability to practice as a paramedic after his reinstatement.
20. Wallace has completed all conditions of probation including the anger management program and the substance abuse program.
21. Wallace completed his period of probation approximately May 1, 2005 without further incident.
22. The trier of fact concludes that Wallace's performance on the job as both a firefighter and a paramedic has been capable for the following reasons:
  - (a) the Wabash Board of Public Works, which had a good excuse to terminate him, reinstated him to duty after 2 months, and
  - (b) the medical director for the Wabash FD paramedics took no action against Wallace's ability to serve as paramedic as a result of the charges and conviction.
23. In addition to the conviction and the acts leading to the conviction, the Agency also relies on the fact that during his recertification in December 2004, Wallace answered "no" to the question of whether he had been charged or convicted of an offense for conduct having a direct bearing on his ability to be entrusted to serve the public.
24. Since the incident did not involve on duty conduct or arise in any way from his position as a paramedic, it is not obvious his answer was erroneous. Certainly, reasonable men can differ as to what kind of conduct does or doesn't interfere with the public trust.<sup>1</sup>
25. The trier of fact finds that no disciplinary action should be imposed for answering "no" to the question the way it was worded at that time. This conclusion would be considerably different if Wallace had been in uniform or if the incident had taken place at the fire station.
26. IC 16-31-3-14(b)(6) allows the Agency to impose a number of sanctions on a certificate holder for conviction of a crime if the acts leading to conviction has a direct bearing on whether the certificate holder should be entrusted to provide emergency medical services.
27. In this particular case, the trier of facts agrees with the Agency that the acts involved raise questions about whether Wallace should be so entrusted for three reasons.
28. First, a significant amount of alcohol was involved.
29. Second, this was not Wallace's first experience with the law in an alcohol related matter.

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<sup>1</sup> The Agency has since fixed this problem by requiring any renewal to list any charges or convictions.

30. Third, Wallace did somewhat over-react to a difficult situation and one of the most important qualities of a paramedic is remaining calm in crisis situations.
31. The trier of fact also agrees with the Agency that there is no reason to suspend or revoke the Certificates for this incident.
32. The Agency's imposition of a two year probation period in order to monitor Wallace's future conduct is not unreasonable.
33. The Order, however, does not take into account the fact that Wallace spent 11 months on probation with significant conditions of probation and more supervision than the Agency would provide.
34. The trier of fact concludes the 11 months Wallace spent on court ordered probation should count towards his two years.
35. The Order of the Agency should be modified to place the Certificates on probationary status for 13 months commencing May 1, 2005, and ending June 1, 2006.
36. The Order contains a number of conditions of probation.
37. The following conditions should be affirmed more or less as written:
  - (1) Wallace shall turn in his Certificates to the Agency so they can be reissued showing probationary status.
  - (2) Wallace shall submit his current home address, home telephone number, cell number (if any), and work number to the Agency. Any change must be reported to the Agency within 7 days.
  - (3) Wallace shall provide a list of current EMS providers for which he is affiliated, either as a paid provider or volunteer and update changes to the Agency within 15 days of the change.<sup>2</sup>
  - (4) Wallace must submit an Affirmation signed by each provider and medical director with whom he is affiliated showing the provider and medical director are aware he is on probation within 15 days of his affiliation.
  - (5) Wallace must notify the Agency of any arrest or summons for a criminal charge received during his probation within 72 hours after the occurrence.
  - (6) The Certificates will be revoked for a period of 2 years for failing to comply with the terms of his probation.
38. There are other conditions which should be modified significantly or eliminated.
39. Two conditions deal with Wallace's relationship with the Wabash County Probation Department.
40. Since Wallace has successfully completed his court ordered probation, these sections do not really apply anymore and are unnecessary.
41. The one remaining section of the Order deals with criminal history reports.
42. The Order requires a criminal history report be submitted by Wallace every year or part there of that the Certificates are on probation .

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<sup>2</sup> This is a modification from the Order which required quarterly reports whether there were changes or not.

43. In light of the prior discussion, the trier of fact concludes this section should be modified to require submission of Wallace's criminal history report during May of 2006, just before the probationary period ends.
44. As modified, the Order should stand.

### **NONFINAL ORDER**

The Order dated February 28, 2005, placing EMT and Paramedic Certificates 37681 on probation is modified as follows:

- (1) modified to provide the term of probation to run from May 1, 2005, to June 1, 2006.
- (2) affirmed as written.
- (3) affirmed as written.
- (3)(A) affirmed as written.
- (3)(B) modified as per finding 37 abolishing quarterly reporting but requiring notice of any change.
- (3)(C) affirmed as written.
- (3)(D) affirmed as written.
- (3)(E) modified to require submission of a criminal history report in May of 2006.
- (3)(F) stricken from the Order.
- (3)(G) stricken from the Order
- (3)(H) affirmed as written.