

**Cause No.: 05-06M**  
**Name: Robert Bauknecht**  
**Administrative Law Judge: William K. Teegarden**  
**Date: June 23, 2005**  
**Commission Action: Affirmed**

### **FINDINGS OF FACT**

1. Both the Emergency Medical Services Agency and Emergency Medical Services Commission (“Commission”) are agencies within the meaning of IC 4.21.5.
2. IC 4-21.5 and IC 16-31 apply to this proceeding.
3. The Commission is the state Agency responsible for regulating Emergency Medical Technicians in Indiana and is the ultimate authority within the meaning of IC 4-21.5.
4. At all times relevant to this proceeding, Bauknecht held Certificates issued by the Commission.
5. In May of 2001, prior to being a certificate holder, Bauknecht was arrested in New Carlisle, Indiana while in possession of approximately one-half pound of marijuana.
6. On August 31, 2001, Bauknecht tendered a plea of guilty to one court of dealing in marijuana, a Class A misdemeanor and after a presentence report, the St. Joseph County Superior Court accepted the pleas and imposed a one year sentence, all suspended with a number of conditions of probation.
7. Bauknecht completed his one year of probation in October of 2002.
8. Bauknecht then completed the requirements for a basic EMT and received his Certificate in April of 2003.
9. In conjunction with his initial application, he checked “No” when asked if he had been convicted of a crime other than minor traffic violations.
10. The prior criminal conviction came to light when Bauknecht applied for ALS certification in November of 2004.
11. This time, Bauknecht checked “Yes” on the question asking about prior criminal convictions.
12. Bauknecht then proceeded to provide some information about the offense as required by the application.
13. The Agency thus had two issues to resolve:
  - a. What should the Agency do about the Basic EMT Certification in which the application contained misinformation?
  - b. What should the Agency do about the Advance Life Support Certificate which Bauknecht otherwise would receive?
14. The Agency decision was to issue the Order, attached, which placed both certifications on probationary status for four years and imposed a number of requirements during the probation period.
15. Bauknecht objected to several of the conditions most notably to the condition requiring notification of probationary status to his EMS employer and to the condition requiring drug testing upon two hours notice.

16. Pursuant to IC 16-31-3-14(a)(1), the Commission may take action including revoking certification if it has been obtained by fraud or deception.
17. Pursuant to IC 16-31-3-14(a)(5), the Commission may deny certification if the applicant has been convicted of a crime which has a direct bearing on fitness to provide services.
18. Because Banknecht corrected the error (or did not repeat it) in his Advanced EMT application, the administrative law judge concludes no significant penalty should be imposed against his EMT certification for that act.<sup>1</sup>
19. IC 16-31-3-14(b)(6) allows the Commission to place a certificate holder on probationary status in lieu of a suspension or revocation.
20. A common penalty imposed by the Commission on persons convicted of drug use prior to certification is to grant certification and place holder on probationary status for at least three years.
21. If anything, the placement on probationary status for four years for a sale conviction less than two years prior to certification is fairly lenient.
22. Further, it is an absolute necessity that medical directors and employers know the certification status of person over whom they have control responsibility, so the condition of probation requiring proof of notification of probationary status to the medical director and EMS Director is both reasonable and rational.
23. Likewise, random drug testing is appropriate.
24. In general, the trier of fact concurs with Bauknecht's concern about testing on two hours notice because it is certainly possible that he could be on a run, be out of state, or have some other perfectly legitimate reason why he could not test on short notice.
25. The testimony of Sherrie Crain at the hearing clarified this condition.
26. The condition states the certificate may be suspended if a probationary holder fails to take a drug test within two hours of notification.
27. Suspension or revocation is not mandatory; failure to take the test as scheduled only triggers an inquiry into the reason. Production of documentation showing an inability to respond within two hours would excuse nonperformance.
28. With this explanation, the random testing provision is both reasonable and rational.
29. The Order should be affirmed as written.

### **NONFINAL ORDER**

Order Number 08-2005 issued by the Emergency Management Agency (now the Emergency Medical Services section of the Indiana Department of Homeland Security) on February 28, 2005, to Robert J. Bauknecht, holder of EMT and EMT-Advanced Certificates #54933 is affirmed as written.

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<sup>1</sup> It is important to note there are no allegations of patient mistakes or mistreatment and no allegations of wrongful conduct while a certificate holder.

