

Cause No. 05-8 (Appeal of Order)

Name: Steven D. Doty

Administrative Law Judge: William K. Teegarden

Date: April 28, 2006

Commission Action: Modifications to the Findings of Fact: (paragraphs not referenced below are affirmed with modification)

- 11. The incident took place on or about June 17, 2004 at the residence of the Girl and her parents.**
- 21. DELETE WITHOUT REPLACEMENT**
- 23. After holding a Hearing to Determine Child Witness Competency, the Court determined that the Girl (who was 5 at the time) was not competent to testify.**
- 24. DELETE WITHOUT REPLACEMENT.**
- 32. DELETE WITHOUT REPLACEMENT.**
- 33. The transcripts of the two (2) taped statements that Doty made to the Henry County's Sheriff's Department on June 23, 2004 supplied a substantial part of the Agency's evidence against Doty.**
- 45. Numerous times during his interview with the Henry County's Sheriff's Department, Doty admitted that his tongue came into contact with the Girl's vagina.**
- 45A. Doty said that he licked the Girl's vagina with his tongue.**
- 45B. Doty admitted that licking the Girl's vagina made him feel aroused.**
- 45C. Doty stated that his tongue was in contact with the Girl's vagina for seconds or a second or two.**
- 45D. Doty stated that in retrospect, licking the Girl's vagina made him feel aroused and sexually stimulated, although he said that he did not get an erection.**
- 45E. Doty admitted that he had viewed child pornography on the internet but stated that it was accidental.**
- 45F. Doty stated that he feels sexually simulated when he sees a child without clothes on.**
- 45G. Doty stated that of the children he has given baths to, the Girl is the only one that he had sexual feelings about when he was giving her a bath.**
- 52. DELETE WITHOUT REPLACEMENT.**
- 53. DELETE WITHOUT REPLACEMENT.**
- 56. DELETE WITHOUT REPLACEMENT.**
- 57. DELETE WITHOUT REPLACEMENT.**
- 59. There is sufficient evidence to prohibit Doty's employment as an EMT and paramedic in the future.**
- 60. The certificates should be revoked for a period of seven (7) years.**

The Nonfinal Order of the Administrative Law Judge shall be replaced in its entirety with the following:

- 1. Doty's Emergency Medical Technician and Paramedic Certificate Number 27591 and Driver Certificate Number 2114 are hereby revoked for a period of seven (7) years from the effective date of this Final Order.**
- 2. During the period of revocation Doty shall have no contact whatever with any EMS patient, and shall not enter or ride on an ambulance in any capacity whatever (except as a patient).**
- 3. During this revocation period, Doty shall not apply for, and shall not be eligible to receive, any EMS certifications.**
- 4. If Doty applies for an EMS certification after this revocation period is completed, Doty must comply with all of the requirements in effect at the time that the application is submitted which are applicable to an original EMS certification to be eligible to receive an EMS certification. If Doty complies with these requirements, the Department and/or the EMS Commission may issue a probationary certification pursuant to IC 16-31-3-14.**
- 5. Doty shall submit his original certification cards to the Department within fourteen (14) days of the Effective Date of this Order.**
- 6. All submittals required by this Order, unless notified otherwise in writing, shall be sent to:**

**Sherrie Crain
Indiana Department of Homeland Security
302 West Washington Street, Rm. E241
Indianapolis, IN**

- 7. In the event that any provision of this Order is found to be invalid, the remaining provisions shall remain in full force and effect and shall be construed and enforced as if the Order did not contain the invalid provision.**
- 8. This Order shall remain in effect until Doty has complied with all terms and conditions of this Order.**

FINDINGS OF FACT

1. The Department of Homeland Security is an agency within the meaning of IC 4-21.5.
2. The Agency is the state agency responsible for regulating emergency medical service members in Indiana and as such, is the agency responsible for issuing and suspending Emergency Medical Technician and Paramedic Certifications.
3. IC 4-21.5, IC 16-31, and 836 IAC 4 apply to this proceeding.
4. The Emergency Medical Services Commission (“Commission”) is the ultimate authority within the meaning of IC 4-21.5 over certification decisions of the Agency.
5. At all times relevant to this proceeding, Doty held certificates issued by the Agency and was duly employed as an EMT/Paramedic for Rural Metro.
6. Doty first became an EMT in 1987 or 1988.
7. Doty first received a paramedic certificate in 1994.
8. Doty has not been the subject of disciplinary actions by either an EMS employer or the Agency prior to this incident.
9. At the time of the hearing, Doty was 37 years old.
10. On June 25, 2004, Doty was charged with Child Molesting, a class A felony for deviate sexual conduct with a 4 year old girl (“Girl”).
11. The incident in question took place on or about June 22, 2004, at the residence of the Girl and her parents.
12. The father was a paramedic who worked with Doty.
13. Doty often visited the family over a period of years.
14. The mother has MS and has days where she cannot perform the usual motherhood chores.
15. If Doty was present on those days, he assisted the mother.
16. It was not uncommon for Doty to help bathe the children.
17. On the evening of June 22, 2004, the Girl told her mother that “Doty licked me here” and pointed to her vaginal area.
18. Doty had recently given the Girl a bath; the mother was present in the house at the time but not the father.
19. The parents reported this to the local law enforcement officials who commenced an investigation.
20. Ultimately, Doty was arrested, his computer seized and turned over to the FBI for inspection, and a number of non-pornographic pictures of children were seized from his residence.
21. As his case moved through the court system, the state’s case totally unraveled.
22. Indiana Law allows a young child to testify via video tape in cases such as this instead of appearing in front of a judge and 12 strangers in a jury box for examination and cross examination.
23. During the video taping session, the Girl (then 5) consistently denied making such a statement and denied that Doty licked her.
24. The FBI could find no incriminating evidence on the computer.

25. The pictures of children seized at Doty's home were not incriminating in any way; indeed a number of them appear to have been grade school pictures of grade school classmates that Doty has kept for 25 or 30 years.
26. Ultimately, the Henry County Circuit Court dismissed the charges with prejudice on August 31, 2005.
27. Further, prior to the dismissal, the Court ordered the return of the computer and pictures on October 20, 2004, for the reason that they did not constitute evidence of criminal activity.
28. The Agency had issued a number of 90 day suspension orders under its Emergency Order powers so Doty's certificates were suspended from July 8, 2004 through November 12, 2005.
29. At the completion of the last 90 day suspension in November of 2005, the Agency decided to pursue a revocation based on conduct but obviously not based on any criminal conviction.
30. The order of November 15, 2005, was not stayed so it currently acts as a bar to employment as an EMT or paramedic, hence for all practical purposes, Doty has been suspended from working in emergency medical services for almost two years.
31. A criminal conviction is not necessary for action to be taken against a certificate holder by the Agency, nor does an acquittal or dismissal automatically require the Agency to reinstate an accused's certifications.

32. In this case, however, the trier of fact and, ultimately, the Commission are somewhat bound, under the doctrine of collateral estoppel, to give great weight to the Circuit Court's finding as to the incompetency of the Girl to testify and the unreliability of the hearsay statement of the Girl to the mother.
33. The Agency is relying almost exclusively upon a statement taken from Doty by the New Castle Police.
34. IC 16-31-3-14(a)(7) authorizes the Agency to take disciplinary sanctions against a certificate holder if the holder "fails to comply . . . with or violates any applicable provision, standard, or other requirement of this article or rules adopted under this article;"
35. IC 31-3-14(b) lists sanctions available and includes the revocation of certificates for up to 7 years as well as a possible \$500 fine, a letter of censure or reprimand, or placing the certificates on probationary status and imposing conditions.
36. The rules adopted pursuant to IC16-31 are found in 836 IAC.
37. 836 IAC 4-4-1(e)(2) provides that an EMT ". . . shall not act negligently, recklessly, or in such a manner that endangers the health or safety of . . . or members of the general public".
38. 836 IAC 4-9-3(f)(2) imposes the same duty as above on paramedics.
39. The Agency contends the statements of Doty given to the Henry County Sheriff's Department on June 24, 2004, provide a sufficient factual basis to suspend or revoke the certifications.

40. Doty contends the statement does not establish a basis for a violation of the rules of the Commission and further contends the statements are somewhat flawed because the investigators/interrogators cut short and interrupted answers that were not what the investigators wanted to hear.
41. Because of the importance of the interviews, they are attached to these findings as exhibit A.
42. The Girl appears to enjoy bath time and playing in the bath.
43. Doty was blowing “raspberries”, which appear to be soap bubbles on her stomach.
44. At some point during this activity, Doty’s mouth and tongue briefly made contact with the Girl’s vagina.
45. Doty has consistently denied the lack of criminal intent or that he received any sexual pleasure from this incident.
46. It is tough to read someone’s mind or thought process when an incident like this happens.
47. A decision has to be based on reasonable inferences drawn from all the evidence or lack thereof.
48. If this had been the first time Doty had given Girl a bath, it would be easy to infer an improper motive but the evidence clearly shows Doty had bathed the girl on a number of other occasions.
49. There is no evidence that anything like this happened in the past during a bath.
50. If Doty hid the fact that he gave the Girl baths from the parents, this would infer a bad purpose, but both parents were aware that Doty bathed the Girl on occasion.

51. If there was any evidence that Doty maintained physical contact with the Girls genitals or repeated the conduct during the bath an inference could be drawn of improper motive or conduct but there is no evidence of prolonged or repeated contact.
52. If Doty had evidence of child pornography on his computer, this should lead to an inference of an intent to molest or of a prurient fixation with small children.
53. The FBI, who, if the publicity reports are to be believed, have become particularly adept at recovering and tracing child pornography on personal computers apparently found nothing of interest on Doty’s machine.
54. If any of the pictures of children seized from his home had been sexually suggestive, the trier of fact could infer the incident wasn’t an accident and that Doty was attempting to obtain sexual gratification.
55. None of the pictures were suggestive of a sexual fixation in any way and were ordered returned by the Circuit Court long before the final disposition of the case.
56. All in all, there is no way the trier of fact can find any way of contradicting Doty’s statement and conclude that the incident was anything other than an unfortunate accident.
57. Further, a Circuit Court has ruled the hearsay statements of the Girl to be unreliable and of no use.
58. Doty has been out of the EMS profession for almost two years because of this

incident.

59. There is insufficient evidence to prohibit his employment as an EMT or paramedic in the future.
60. The Certificates should be reinstated subject to meeting the requirements for renewal.

NONFINAL ORDER

Emergency Medical Technician and Paramedic Certificate Numbers 27591 and Driver Certificate Number 2114 issued to Steven Doty are hereby ordered eligible for reinstatement subject to Doty meeting all requirements for renewal of any expired certificates.