

**CAUSE NO. 09-01**

**NAME: Edward Owen**

**ADMINISTRATIVE LAW JUDGE: WILLIAM K. TEEGUARDEN**

**DATE: April 9, 2009**

**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 Agency is responsible for regulating EMT certification in the State of Indiana.
4. The Emergency Medical Services Commission ("Commission") is the ultimate authority within the meaning of IC 4-21.5 with respect to certification decisions made by the Agency.
5. At all times relevant to this proceeding, Owen was a resident of Mooresville, Indiana and passed both the written and practical skills for EMT certification during the summer of 2008.
6. Owen filed an application for EMT Certification with the Agency in which he properly disclosed a criminal conviction.
7. The documents submitted by Owen with his application show he was charged on August 8, 2006, with criminal recklessness with a motor vehicle and reckless driving.
8. On March 5, 2007, Owen pled guilty to reckless driving, a class B misdemeanor and the class A misdemeanor criminal reckless charge was dismissed.
9. Owen paid a fine of \$1, costs of \$159.50, and sentenced to 2 days in jail with credit for time served which did not require any additional jail time.
10. In other words, he received almost the absolute minimum sentence he could receive.
11. The evidence most favorable to Owen at the EMT certificate hearing was that this incident happened as part of a neighborhood dispute in which both parties shared some blame.
12. Given the light sentence imposed by the Hon. Thomas Gray, Morgan Superior Court, a very experienced and well respected jurist in Central Indiana, the administrative law judge is inclined to give strong credibility to Owen's version.
13. That does not change the fact, however, that Owen did engage in an act of reckless driving almost exactly 2 years prior to receiving his certification.
14. Under IC 16-31-3-14(f), the Agency may deny certification to an applicant if the applicant was convicted of a crime where the acts that led to the conviction has a direct bearing on whether the applicant should be entrusted to provide Emergency Medical Services.
15. Further, under IC 16-31-3-14(b)(6) the Agency may place a certificate holder on probation as an alternative to denial, suspension, or revocation.
16. For some reason not placed on record, the Agency first issued an unrestricted certification on August 28, 2008.
17. Upon further review, the Agency realized this issuance was made in error and in

opposition to prior practices and, in effect, rescinded its earlier action and issued a probationary certification on October 9, 2008. The Order is attached to this decision.

18. The Agency also raised an issue about the failure of Owen to advise an employer or potential employer about his probationary licenses as required by the Agency.
19. In September, Owen applied for and was offered a job at TransCare Ambulance-Terre Haute.
20. This was prior to the Agency rescinding the unrestricted certificate and replacing it with the probationary certificate.
21. Owen at that time had a knee problem and was unable to function as an EMT.
22. TransCare placed him on inactive status on October 24, 2008. It appears as though Owen never actually worked a day for TransCare.
23. As stated in the order of October 9, 2008, the order became effective 18 days after issuance on October 27, 2008.
24. By that time, Owen had been placed on inactive status and never returned to TransCare.
25. Owen's testimony at the hearing indicated he was still medically unable to function as an EMT because of knee problems and had not been working as an EMT.
26. Under those circumstances, Owen did not breach any duty to either TransCare or the Agency and his failure to notify TransCare of his probationary status was not a violation.
27. The Agency included three other similar orders in support of its 2 year probationary period.
28. The administrative law judge now finds that one (exhibit 3A) does not apply as it involved a conviction of DUI and failure to return to the scene of a property damage accident.
29. The individual involved received a suspended 1 year jail sentence, was required to complete an alcohol program, and required to perform 40 hours of community service.
30. Both the charges and the sentence were considerably greater than those lodged against Owen.
31. Further, 2 years later, the same individual was arrested for DUI again and convicted a second time.
32. There is no comparison between the two cases.
33. Exhibit 3B, also involves a recent DUI in which the certificate holder received a suspended 11 month jail sentence and a 6 month suspension of driving privileges.
34. Again, this has little applicability to Owen's case.
35. Finally, exhibit 3C also is a triple DUI offender having convictions in 2003, 2004, and 2006.
36. Exhibit 3C has no bearing on Owen's case.
37. All the EMTs in Exhibits 3A, B, and C received 2 year probationary certificates.

38. The only thing Owen has in common with these cases is a fairly recent misdemeanor conviction.
39. While the Agency is justified in taking some action in this matter, there is no way one time class B misdemeanor conviction for reckless driving which resulted in a minimum sentence can be compared with multiple DUIs, or even the case in exhibit 3B in which the conviction was a class A misdemeanor and a lengthy jail sentence, suspended, was imposed and a longer than required Drivers License suspension was imposed.
40. The judgment shown by Owen in this incident is less than ideal.
41. It does raise an issue of how he will respond under pressure, and responding under pressure is clearly a requirement for EMTs.
42. The acts involved therefore have a direct bearing on whether the certificate holder should be completely entrusted to provide emergency medical services.<sup>1</sup>
43. Having concluded that the offense and acts involved are not nearly as serious as the precedents cited by the Agency, the trier of fact now concludes the probation order of October 9, 2008, should be modified to provide a probation period of one year.

### **NONFINAL ORDER**

The Order issued by the Agency to Edward Owen, holder of EMT certification PSID #9490-8419, is hereby modified by changing paragraph 1 to read as follows:

1. Respondent is hereby placed on probation for a period of one (1) year from the effective date of this Order, as defined below in Section II. In all other respects, the Order is affirmed.

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<sup>1</sup> It should be noted that nothing in this case shows Owen cannot perform the skills necessary to be an EMT. This is more of a driving and possible judgment issue than concern about care at the site or in the ambulance.