

CAUSE NO. 09-02M

NAME: BERNIE MICKLER

ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS

DATE: December 17, 2009

COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

1. Mr. Mickler requested administrative review of the order placing his EMT certificate on probation. An evidentiary hearing was conducted on December 10, 2009.
2. Mr. Mickler is an Indianapolis Fire Department Firefighter and holds an Emergency Medical Technician Certificate.
3. In the course of applying for recertification he reported that he had been charged with the misdemeanor crimes of Battery and Interference With Reporting a Crime in the Hancock Superior Court.
4. Mr. Mickler plead guilty to both crimes and was sentenced to concurrent sentences which included Three Hundred Sixty-Five (365) days in the Hancock County Jail, with all but the time served suspended, one year of formal and also informal probation, an alcohol assessment, completion of an anger management program, having no contact with the crime victim, fines, fees and court costs.
5. Mr. Mickler alluded to and implied that he was being treated differently than other certificate holders who faced similar or even identical fact situations but there was no proof of any type of different treatment offered other than his implications and allusions.
6. Any item which is denominated a Finding of Fact which should be considered a Conclusion of Law is hereby incorporated by reference into the Conclusions of Law.

CONCLUSIONS OF LAW

1. The Department of Homeland Security is an agency within the meaning of I.C. 4-21.5.
2. The Agency is the state entity charged with the responsibility of certifying Emergency Medical Technicians within the State of Indiana.
3. I.C. 4-21.5, I.C. 16-31-3 and 836 IAC apply to this proceeding.
4. The Emergency Medical Services Commission (EMSC) is the ultimate authority within the meaning of IC 4-21.5 with respect to Agency actions taken against certificates and certificate holders.
5. Pursuant to I.C. 16-31-3-14(f), if an applicant has been convicted of a crime, the agency may consider the acts from which the applicant's or certificate holder's conviction arose when considering whether the applicant or certificate holder should be entrusted to serve the public as an EMT.
6. Mr. Mickler plead guilty to Battery as an A misdemeanor and pursuant to

- I.C. 35-42-2-1 (a)(1)(A) that is an admission that he touched another person in a rude, insolent or angry manner in such a way as to cause that person bodily injury.
7. This is the type of crime for which it is appropriate for IDHS to consider when considering an EMT application.
 8. Pursuant to I.C. 16-31-3-14(a)(5) the acts supporting Mr. Mickler's guilty plea are an appropriate basis for assessing discipline against Mr. Mickler.
 9. Pursuant to I.C. 16-31-3-14(b), the agency could revoke or suspend Mr. Mickler's EMT certificate for up to seven years, censure Mr. Mickler, issue him a letter of reprimand, fine him or place him on probation with conditions. The agency assessed the last sanction against Mr. Mickler and that punishment is not excessive.
 10. There was no evidence that Mr. Mickler lost any earnings or was demoted in position with his employer because of his probation.
 11. There was no evidence offered that Mr. Mickler was treated any differently by the agency than any other certificate holder is being treated, or has been treated in the past, for identical circumstances.
 12. The punishment for the conviction of criminal behavior by the Hancock Superior Court is not determinative of the decision by the Indiana Department of Homeland Security to place his EMT certification status on probation.
 13. Any item which is denominated a Conclusion of Law which should be considered a Finding of Fact is hereby incorporated by reference into the Findings of Fact.

DECISION AND NONFINAL ORDER

Mr. Mickler plead guilty to the crime of battery which caused bodily injury to the crime victim and to the crime of interfering with crime reporting. These clearly are crimes bearing on his trustworthiness as an EMT to be presented to the public. The decision by the Indiana Department of Homeland Security to place his certification as an EMT on probation is appropriate and is AFFIRMED. Mr. Mickler's EMT certification shall remain on probation for the duration of the time ordered by the order under date of April 9, 2009. This is a nonfinal order and the Emergency Medial Services Commission will consider it at their next regularly scheduled meeting which will take place at 10:00 a.m.on January 22, 2010 at the Columbus Regional Hospital in Columbus, Indiana.