

**CAUSE NO. 10-28M**

**NAME: KELLY G. IRWIN**

**ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS**

**DATE: JANUARY 3, 2011**

**COMMISSION ACTION: AFFIRMED**

**EVIDENCE RECEIVED AND FINDINGS OF FACT**

1. Mr. Irwin satisfied the educational requirements to become an EMT-B on or about June 26, 2010 and applied for certification as an EMT-B.
2. Mr. Irwin has been charged and convicted of crimes other than minor traffic violations.
3. The Indiana Department of Homeland Security requested that Mr. Irwin provide additional information regarding his criminal history and he provided some additional information.
4. Mr. Irwin was charged with Sexual Misconduct with a Minor on or about July 12, 2000 in the Wabash Circuit Court for incidents which occurred on June 8, 2000. He plead guilty and was sentenced on or about November 1, 2000. That sentence was based on the charge being a C Felony and consisted of three (3) years of incarceration with all of that but 212 days suspended and probation for that portion of incarceration which had been suspended.
5. Mr. Irwin's date of birth is May 10, 1981. On June 8, 2000 he was approximately one month past his 19<sup>th</sup> birthday. The victim of the crime with which he was charged was approximately ten days past her 14<sup>th</sup> birthday at the time of the incident.
6. Mr. Jeff Fields testified on Mr. Irwin's behalf. Mr. Fields was a classmate of Mr. Irwin's in their EMT training class. Mr. Fields indicated an awareness of Mr. Irwin's Indiana criminal history. He acknowledged that history might be concerning to a parent of a child who came in contact with Mr. Irwin but believed that Mr. Irwin deserved a chance and was trustworthy.
7. A letter appearing to have been written by Mr. Timothy Grosvenor was offered into evidence and admitted without objection. Mr. Grosvenor's letter indicates that he was one of Mr. Irwin's EMT instructors. His letter indicates that Mr. Irwin was a very good student but makes no mention of any of Mr. Irwin's criminal history.
8. During the course of the November hearing Mr. Irwin testified under oath that he was not required to be listed on the sex offender registry. No evidence was offered to refute that assertion regarding **Indiana**. The material submitted by IDHS subsequent to that hearing indicates that Mr. Irwin is subject to a lifetime

sex offender registration requirement in **Michigan**.

9. The evidence submitted by IDHS subsequent to the November hearing (Michigan Judgment of Sentence/commitment to Jail, Michigan Order of Acquittal/Dismissal or Remand and Michigan Sex Offender Registration document) makes clear that Mr. Irwin was charged with Criminal Sexual Conduct with a person 13-15 years old in the State of Michigan on or about May 13, 2001.
10. The Michigan documents were acquired and submitted by counsel for IDHS. The Finding and Order of IDHS which denies Mr. Irwin's certification makes reference to only the Indiana charge. This leads to the finding that Mr. Irwin did not report the Michigan charge and registration requirement to IDHS when he provided documentation regarding his Indiana criminal history.
11. The Administrative Law Judge finds that Mr. Irwin was neither candid nor forthright when he provided information relative to his history in Indiana but declined to provide information regarding his criminal history in Michigan.
12. 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. Pursuant to I.C. 16-31-3-14(d) the Indiana Department of Homeland Security has discretion to deny certification to a person who would have been subject to discipline had that person been a certificate holder. A certificate holder would be subject to discipline if convicted of a crime that would have a direct bearing on whether that person should be entrusted to provide emergency medical services.
5. I.C. 16-31-3-14(a)(1) and (5) provide:” (a) A person holding a certificate issued under this article must comply with the applicable standards and rules established under this article. A certificate holder is subject to disciplinary sanctions under subsection (b) if the department of homeland security determines that the certificate holder:

(1) engaged in or knowingly cooperated in fraud or material deception in order to obtain a certificate, including cheating on a certification examination;

\* \* \*

(5) is convicted of a crime, if the act that resulted in the conviction has a direct bearing on determining if the certificate holder should be entrusted to provide emergency medical services[.]

6. The administrative law judge concludes that Mr. Irwin's behavior constitutes material deception in order to obtain a certificate. This is demonstrated in three ways. First, is his failure to advise the IDHS of his Michigan criminal history in the course of his application. The second and third occurred at the November hearing. They are his failure to disclose his Michigan criminal history and his assertion that he was not required to register as a sex offender while he was under oath.

7. The administrative law judge concludes that criminal sexual conduct with a minor is a type of crime which has a direct bearing on determining whether Mr. Irwin should be entrusted to provide emergency medical services.

8. 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 ORDER**

The decision and order of the Indiana Department of Homeland Security issued under date of September 14, 2010 denying certification to Mr. Irwin should be, and is, affirmed in all regards.