

Cause No. 98-52M
Name: Robert Nowaczyk
Administrative Law Judge: William K. Teeguarden
Date: June 30, 2004
Commission Action: Affirmed

HISTORY

Nowaczyk held an EMT certificate issued by the EMS Commission which expired February 1, 1997. It has not been renewed. The Agency received a confidential complaint about the time of expiration alleging that Nowaczyk was receiving in-service credit for courses he did not attend. Following an investigation, the Agency filed a complaint in July of 1998 alleging that between 1992 and 1997, Nowaczyk improperly received continuing education credits. The complaint was amended in October of 1998 to add an allegation that Nowaczyk ordered an EMT not to include run times on the run forms.

After lengthy (and contentious) discovery, summary judgment motions and briefs were filed. In April of 2001, the administrative law judge granted partial summary judgment to Nowaczyk on some issues and found a conflict in the evidence as to other issues. Specifically, the administrative law judge held Nowaczyk's certificate could not be suspended because it had expired, not been renewed, and over 4 years had passed since he held the certificate. In retrospect, this was an incorrect holding as the Commission could declare him ineligible for a period of up to 7 years, however any error which might have occurred is harmless since Nowaczyk has made no effort to recertify and more than 7 years has expired. The administrative law judge also found that if the ambulance service failed to keep or transmit proper records, the legal course of action was against the ambulance service and not against an individual.

The administrative law judge found that the Commission did still have the power to impose fines for any false or fraudulent entries of continuing education documents that occurred within the appropriate statute of limitation period preceding the filing of the complaint.

No further action was taken by any party following this ruling. Believing there was no interest in litigating the matter further, the administrative law judge issued a notice of proposed dismissal in January of 2002. This filing produced a flurry of activity beginning when the Agency filed a motion in opposition to dismissal and a request for a hearing on possible fines. In order to narrow the scope of the hearing, the administrative law judge issued an order telling the Agency to provide a chronological list of violations for which a fine would be sought.

Shortly after this time, the administrative law judge went on an unexpected lengthy medical leave and nothing further occurred until November of 2002 when the Agency filed a list of 20 violations ranging in dates from February 9, 1993 to September 27, 1995.

In December of 2002, Nowaczyk filed another motion for summary judgment solely based on the statute of limitations. Approximately 6 weeks later, Nowaczyk requested a ruling in his favor because no response had been filed by the Agency. The Agency filed its own motion for partial summary judgment in February of 2003. Upon receiving the Agency's motion, the administrative law judge, who had just returned to a full work week, set a complete briefing schedule on all pending motions.

The final date for submission was in April, 2003. Nowaczyk filed a reply and motion to strike the state's January filing for noncompliance with the time limits of the trial rules. No further filings have been received.

Hopes that after a cooling off period, the parties would find some way to settle this matter in which no wrongful act is alleged to have occurred after September 27, 1995, were apparently misplaced.

DISCUSSION

Because physical difficulties prevented the administrative law judge from sending out a full briefing schedule in December of 2003, the motion to strike is denied. The only issue involved at this point is whether or not any alleged wrongful acts took place within the appropriate statute of limitations and if so, which ones.

The starting point for any discussion of statute of limitations is the wording of the code section violated. The list of violations filed November 26, 2002, cites IC 16-31-3-2 and 836 IAC 1-5-1(g)(1) {This code section has since been renumbered 836 IAC 4-4-1 (e)(1)}. IC 16-31-3-2 merely says that to be certified, a person must meet the criteria set forth in rules adopted by the Commission. 836 IAC 1-5-1 (g)(1) allows action to be taken against a person who procures certification by fraud or misrepresentation. Of more interest is IC 16-31-3-17 (the version in effect in 1998) which sets forth the ability to "penalize . . . a person certified under this chapter not more than five hundred dollars (\$500) per occurrence for a violation of . . . a rule that is established by the Commission" This wording is extremely important.

The next step in a statute of limitations case is IC 34-11 which lists the wide variety of limitations and cases.

The Agency argues that the appropriate statute of limitations is either 5 or 6 years. IC 34-11-2-6 sets a 5-year statute of limitations for acts by a public official for liability of acts done in an official capacity. While Nowaczyk was (and is) the Fire Chief, it was not a requirement of his office to be an EMT. If he committed any wrongful acts, they were not done in an official capacity or in connection with his official duties. Therefore, the 5-year statute of limitations does not apply.

IC 34-11-2-7(4) sets forth a 6-year statute of limitations for fraud. On its face, the Agency's contention appears to have some merit. However, as the Agency points out in its brief, a more specific statute of limitations takes precedent over a general statute.¹ IC 16-31-3-17 uses the magic word "penalize" in conjunction with the imposition of fines for EMS rules violations. IC 34-11-2-4 also uses the magic words "penalty given by statute" in setting forth the 2-year statute. The conclusion that is drawn, therefore, is the appropriate statute of limitations for acts that can result in a fine is 2 years. An action for a monetary penalty not commenced within two years of the incident giving rise to the cause of action may not be maintained over the objection of the party being penalized.

The Agency cites some interesting cases from the late 1800's discussing the applicability or inapplicability of the statute of limitations to public entities. These cases were decided long before the advent of the "agency" system of government and the extensive government regulation which has spawned modern administrative law. The changeover took place around WWII and since that time, the Indiana Legislature has enacted numerous statutes limiting actions. Nothing in IC 34-11 (which contains 13 different statutes of limitations) exempts the state. In fact, if a party brings an action against another for a "forfeiture of penalty given by statute", it is a pretty good bet that the party seeking the penalty is a unit of government.

The last alleged rules violation took place in September of 1995. The complaint was filed in July of 1998. Nowaczyk has correctly asserted that an action to impose a financial penalty is barred by the statute of limitations.

NONFINAL ORDER

The Commission's motion for partial summary judgment is denied. Nowaczyk's motion for summary judgment on the basis that the statute of limitations bars the prosecution of this matter is granted and a nonfinal order of dismissal is entered.

¹ The Agency's asserted during the first round of summary judgment motions that the appropriate statute of limitations was IC 34-11-1-2 which is a general statute providing a 10 year limitation when no other statute applies. The Agency has correctly abandoned this position.

