



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

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Re: Criminal history background for EMS certification applicants and EMS certificate holders, and House Bill 2845, 81st Legislature, Regular Session, 2009

Several questions have arisen as to recent proposed changes to the Texas Department of State Health Services (DSHS) emergency medical services (EMS) rules made pursuant to recently passed House Bill 2845, 81st Legislature, Regular Session, 2009, as it regards review of the criminal history background of EMS certification applicants and certificate holders.

The bill, which took effect September 1, 2009, amends the EMS Act at Chapter 773 of the Texas Health and Safety Code (HSC). The amending language states that DSHS "may suspend or revoke a certificate, disqualify a person from receiving a certificate, or deny a person the opportunity to take a certification examination on the grounds that the person has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of emergency medical services personnel" [emphasis added]. It goes further to list and place within HSC, Chapter 773 those factors that "shall be considered" in making a determination as to whether a crime "directly relates" to EMS. These numerous factors are similar, if not identical, to those in Chapter 53 of the Texas Occupations Code, that DSHS previously applied to all offenses in reviewing criminal history backgrounds of EMS certification applicants and holders. Determining factors include, but are not limited to: 1) age at time of offense, 2) extent of past criminal activity, 3) amount of time lapsed since past criminal activity, 4) rehabilitative effort, and others.

Other amending language, appearing to be of most interest to stakeholders, states that a "certificate holder's certificate shall be revoked if the certificate holder is convicted of or placed on deferred adjudication community supervision or deferred disposition" for any one of several specifically listed serious criminal offenses and/or sexual registry offenses [emphasis added]. It appears that for these particular offenses, discretion is eliminated along with any requirement to utilize the noted determining factors. However, this amending language prospectively speaks in the present tense ("is convicted" etc.) instead of the past tense ("has been convicted" etc.), and first does so on the bill's effective date of September 1, 2009. Therefore, since the criminal history review of any EMS certification applicant or holder whose offense (from the particular list of offenses) that has occurred prior to September 1, 2009, would fall into the "has been convicted (etc)" category, DSHS would be obligated to utilize discretion and the various noted determining factors, before proposing denial, suspension or revocation of an EMS certification.

A handwritten signature in black ink, appearing to read "Donald Jansky".

Donald Jansky
Assistant General Counsel