



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.
COMMISSIONER

P.O. Box 149347
Austin, Texas 78714-9347
1-888-963-7111
TTY: 1-800-735-2989
www.dshs.state.tx.us

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CLARIFICATION LETTER

*[*Clarifies and replaces OGC's February 19, 2010 letter on this issue]*

Re: House Bill 2845, 81st Legislature, Regular Session, 2009 - Criminal history background for EMS

Several questions have arisen as to recent proposed changes to the Texas Department of State Health Services emergency medical services (EMS) rules made pursuant to recently passed House Bill 2845, 81st Legislature, Regular Session, 2009, related to criminal history review of EMS certificants and licensees.

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 crimes 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 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 [emphasis added]. For these particularly serious offenses discretion is eliminated along with any requirement to utilize the noted determining factors, considering the bill's use of the language "shall be revoked". And such would be applicable to those specifically listed serious convictions, deferred adjudications community supervision or deferred dispositions occurring on or after September 1, 2009, since 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.

Other amending language creates another category of offenses where discretion is eliminated. It states that a "certificate shall be revoked if the certificate holder is convicted of or placed on deferred adjudication community supervision or deferred disposition for an offense [not in the previous category], committed on or after September 1, 2009, for which the person is subject to registration under Chapter 62, Code of Criminal Procedure [sex offender registry]."


Donald Jansky
Assistant General Counsel