




EMS Information Bulletin 2022-10

DATE: October 3, 2022

SUBJECT: EMS Agencies Conducting Medical Evaluations for Employment

TO: PA EMS Agencies
PA EMS Providers
PA Regional EMS Councils

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The Bureau of Emergency Medical Services (EMS) has received recent inquiries as to whether EMS providers may perform “medical evaluations” of employees for employment purposes for an employer under standards established by the United States Department of Labor Office of Safety and Health Administration (OSHA) “to determine the employee’s ability to use a respirator...”ⁱ In short, providing medical evaluations, such as those required under OSHA, is outside the scope of practice of EMS providers under the EMS System Act.

Specifically, the EMS System Act defines the scope of practice for each type of EMS provider,ⁱⁱ which ranges from Basic Life Support through Advance Life Support. The common thread regarding the scope of practice for EMS providers is that they are authorized to provide **EMS**ⁱⁱⁱ to a **patient**^{iv} in response to an **emergency**.^v

Thus, it is not within the scope of practice of EMS providers to perform “medical evaluations” of employees for employer’s “to determine the employee’s ability to use a respiratory...”^{vi} because (1) no emergency, as defined in the EMS System Act, exists in those situations, and (2) a medical evaluation is not EMS as defined in the EMS System Act. To be clear, it is also outside the scope of practice of EMS providers to perform other evaluations, such as pre-employment physicals, post-accident medical evaluations and the like, because, again, these types of situations are not emergencies, nor do they involve providing EMS to patients.

Importantly, the EMS System Act provides protection to EMS providers from liability “who in good faith attempts to render or facilitate emergency medical care authorized by this chapter...absent a showing of gross negligence or willful misconduct...”^{vii} EMS providers who perform medical evaluations to determine one’s fitness to use a respiratory, pre-employment physicals, or the like, are **not** protected from liability under the EMS System Act because such

evaluations are not “emergency medical care” or EMS and are not being done in response to an emergency.

Note: Nothing in this memorandum, should be construed as preventing a person who holds a license or certification under **another** statute or law from performing medical evaluations for employers.^{viii} For example, while PHRNs and Pre-hospital Emergency Medical Services Physicians scope of practice as EMS providers does not include performing medical evaluations for employers or employees, that does preclude those providers from performing such evaluations under the provider’s license to practice nursing or license to practice medic

ⁱ 29 C.F.R. § 1910.134.

ⁱⁱ Pursuant to Section 8103 of the EMS System Act, an “Emergency Medical Services (EMS) provider” is:

- (1) An emergency medical responder.
- (2) An emergency medical technician.
- (3) An advanced emergency medical technician.
- (4) A paramedic.
- (5) A prehospital registered nurse.
- (6) A prehospital physician extender.
- (7) A prehospital emergency medical services physician.
- (8) An individual prescribed by regulation of the Department of Health to provide specialized emergency medical services.

ⁱⁱⁱ "Emergency medical services" (EMS) are defined as any of the following:

(1) The medical care, including medical assessment, monitoring, treatment, transportation and observation, which may be provided to a person **in responding to an actual or reported emergency** to:

- (i) prevent or protect against loss of life or a deterioration in physiological or psychological condition; or
- (ii) address pain or morbidity associated with the person's condition.

(2) The transportation of an individual with medical assessment, monitoring, treatment or observation of the individual who, due to the individual's condition, requires medical assessment, monitoring, treatment or observation during the transport.

35 Pa. C.S. § 8103 (emphasis added).

^{iv} The EMS System Act defines a "Patient" as

An individual for whom an emergency medical services provider is:

- (1) providing emergency medical services on behalf of an EMS agency; or
- (2) required to provide emergency medical services on behalf of an EMS agency because the individual's condition requires or may require medical observation,

monitoring, assessment or treatment for an illness, disease, injury or other disability.

35 Pa. C.S. § 8103.

^v An “emergency” is defined as

A physiological or psychological illness or injury of an individual, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate emergency medical services to result in:

- (1) placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;
- (2) serious impairment of bodily functions; or
- (3) serious dysfunction of a bodily organ or part.

35 Pa. C.S. § 8103.

^{vi} 29 C.F.R. § 1910.134.

^{vii} 35 Pa. C.S. § 8151(2).

^{viii} As used in 29 C.F.R. § 1910.134, “Physician or other licensed health care professional (PLHCP) means an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently provide, or be delegated the responsibility to provide, some or all of the health care services required by paragraph (e) of this section.”