



FISH & NEAVE IP GROUP

ROPES & GRAY LLP

1251 AVENUE OF THE AMERICAS NEW YORK, NY 10020-1104 212-596-9000 F 212-596-9090
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC www.ropesgray.com

RICHARD A. INZ

DIRECT DIAL 212.596.9130

DIRECT FAX 646.728.2639

E-MAIL RICHARD.INZ@ROPESGRAY.COM

February 24, 2006

VIA FEDEX

Mr. Edward Wronski
Director, Bureau of Emergency Medical Services
New York State Department of Health
Central Office
Hedley Park Place
433 River Street
Suite 303
Troy, NY 12180

Dear Mr. Wronski:

Our client, the Central Park Medical Unit, Inc. ("CPMU"), has asked us to seek an advisory opinion from the New York State Department of Health ("DOH") regarding Emergency Medical Technician ("EMT") shields. The recent arrest of one of CPMU's volunteer EMTs for merely possessing an EMT shield -- which the law allows -- has raised a need for clarity from the DOH.

On Friday, February 3, 2006, the New York Police Department ("NYPD") arrested one of CPMU's volunteer EMTs for simply possessing an EMT shield bearing the New York State emblem and the volunteer's DOH EMT certification number. The EMT was entering a Federal Courthouse when -- in accordance with standard security procedures at the Courthouse -- Federal Agents screened his briefcase and person. During the screening, Federal Agents noticed a shield in the volunteer's briefcase and inquired about it. The volunteer was not on duty at the time of the arrest, nor was he displaying his shield. When asked, the volunteer explained that he was a New York State EMT. The Federal Agents contacted the NYPD, and the volunteer was placed under arrest.

The volunteer was charged with several criminal offenses under the NYS Penal Law and the NYC Administrative Code.¹ These charges are baseless, because the volunteer EMT was only doing what the law allows -- carrying a shield indicating his level of certification by the NYS

¹ NYS Penal Law §§ 170.25 and 170.10(3); NYC Administrative Code § 14-107.

ROPES & GRAY LLP

Mr. Edward Wronski
February 24, 2006
Page 2

DOH. There was no fraud or intent to deceive as required by some of these statutes, because the volunteer EMT actually *is* a NYS DOH certified EMT. DOH Policy Statement 03-08, a copy of which is enclosed herewith, states:

The NYS Department of Health does not issue any type of patch, shield or other worn insignia. In accordance with PHL § 3004(4), a Regional Emergency Medical Services Council (REMSCO) may issue, "uniform emergency technician insignia and certificates".

A person who chooses to wear a patch, shield or other insignia may *only indicate on such, the level of care that they are certified by the Department to practice at*. To do otherwise would be indicating certification not held by the provider which might also constitute a criminal offense (emphasis added).

The volunteer's shield contains three pieces of information: (i) the words "Emergency Medical Technician"; (ii) the volunteer's DOH EMT certification number; and (iii) the New York State emblem. This shield does no more than indicate the level of care at which the volunteer was certified to practice by the DOH, i.e., *it identifies the volunteer as a New York State certified EMT*.

Similarly, CPMU's uniforms, as well as other EMS uniforms, bear patches containing the words "New York State Emergency Medical Technician" (see photograph of NYS EMT patch enclosed herewith). These patches also *indicate the level of service at which the wearer has been certified by the DOH*. If there were an actual basis for arresting a certified NYS EMT for carrying his shield, the police would have to arrest all uniformed EMS personnel for wearing patches bearing the same information. The patches and shields worn by CPMU volunteers comport with the letter of DOH Policy Statement 03-08.

Unfortunately, even though his actions -- or lack thereof since the shield was in his briefcase -- are in accord with DOH policy and NYS law, the NYPD nevertheless chose to arrest him. Thus, we believe the DOH should issue an advisory opinion that such arrests are erroneous and against public policy. There are numerous reasons for the DOH to do so.

The ramifications of penalizing EMTs who carry badges are profound. If EMTs can be arrested for carrying badges, new EMTs will be deterred from volunteering and current EMTs may not seek re-certification. More so, this practice may lead to further abuse by the NYPD and embarrassment of NYS EMTs when they are unjustly forced to spend a night in jail and face unfounded felony charges.

ROPES & GRAY LLP

Mr. Edward Wronski
February 24, 2006
Page 3

CPMU's volunteer EMTs, and NYS EMTs in general, serve a vital public function. EMTs are an integral component in responding effectively to potential life-threatening situations. Accordingly, the importance of resolving this issue cannot be over-emphasized.

REMSCO of New York City is currently conducting a poll on its website. At the mailing of this letter, 71% of respondents stated that they "carry a Badge as part of [their] identification as a NYS DOH certified EMT or AEMT." 80% of respondents stated that their shield contains the "NYS logo," and 82% responded that their shield does not bear their agency's name (i.e., it only bears their level of certification by the DOH).

The NYPD's arrest was improper, and it should not dissuade the DOH from issuing a strong and clear opinion in support of NYS EMTs carrying shields. The NYC Administrative Code relied upon by the NYPD in charging the CPMU EMT requires that a person falsely represent himself, which is not the case here. Further, the NYC Administrative Code was declared "unconstitutionally vague" by a New York Court.² Moreover, the NYS Penal Law cited by the NYPD, §§ 170.25 and 170.10(3), is also inapplicable, as it requires forgery and intent to deceive. These facts do not exist here. Nothing relied upon by the NYPD would conflict with an advisory opinion from the DOH supporting NYS EMTs carrying their shields.

A determination of an EMT's right to carry a shield is wholly within the scope of the DOH's authority, and comports with Section 3003(4) under Title 30 of the NYS Public Health Code. Section 3003(4) provides that REMSCO offices have the authority to issue "uniform emergency medical technical insignia and certificates." Furthermore, DOH Policy Statement 03-08 expressly authorizes the carrying of a shield indicating an EMT's level of certification by the DOH. These policies and regulations encourage EMT personnel to carry badges and insignia properly and prominently identifying them as NYS certified EMTs to the police -- with whom they work closely -- and the public -- whom they are dedicated to protecting. The NYPD's actions are dramatically at odds with that result.

Nothing in the law was ever meant to prohibit a DOH certified EMT from carrying a shield identifying him as such. However, the NYPD chose to act inconsistently with this. An advisory opinion from the DOH concurring with our understanding of the Department's policies and intentions would be extremely useful in clarifying this misunderstanding and injustice with the NYPD.

² *People v. Iftikhar*, 185 Misc.2d 565, 713 N.Y.S.2d 671 (N.Y. City Crim. Ct. 2000).

ROPES & GRAY LLP

Mr. Edward Wronski
February 24, 2006
Page 4

Please feel free to contact me by telephone if you would like to discuss this matter or if I may be of any further assistance.

With best regards.

Sincerely yours,



Richard A. Inz

RAI:sj
Enclosures

cc: Walter Pizzi, MD, Chairman of the Board, NYC REMSCO
Rafael Castellanos, President & Chairman of the Board, CPMU
The Honorable Senator Liz Krueger, New York State Senate
The Honorable Daniel J. O'Donnell, Esq., New York State Assembly
The Honorable Speaker Sheldon Silver, New York State Assembly
The Honorable Jonathan L. Bing, New York State Assembly
The Honorable Senator Thomas K. Duane, New York State Senate
The Honorable Senator David A. Paterson, New York State Senate



DOH
New York State
Department of Health
Bureau of Emergency Medical Services

POLICY STATEMENT

Supercedes/Updates: 96-02 & 88-15

No. 03 - 08

Date: 09/03/03

**Re: EMS Provider
Certification and
Identification.**

Pages: 3

BACKGROUND:

This policy statement is intended to provide clear direction to EMS providers, EMS agencies and the Emergency service community regarding the requirements for the possession and production of NYS issued EMS certification. This policy statement also addresses the certification period, security and alteration of DOH issued certificates.

CERTIFICATION PERIOD:

Under most conditions, EMS certificates issued by the Department are valid for 37 months from the date of issue and expire at 11:59 p.m. on the date indicated on the document, this will normally be the last day of the month. The following are the only exceptions to this certification period:

1. The certified provider has completed a NYS written examination and all other requirements for recertification prior to the expiration of their current certification. Under the provisions of the State Administrative Procedure Act (SAPA) § 401 the provider shall remain certified until such time as the results of the examination are released.
2. The provider is a participant in an approved pilot recertification program that allows for certification for a period different than three years and such provider has received a certification from the Department with an expiration date more than 37 months in the future.
3. The provider has been approved for extended certification as allowed for by law.

CERTIFICATION DOCUMENTS:

Pursuant to provisions of 10 NYCRR Part 800 the Department issues an original certificate to persons whom:

- Successfully complete the requirements set forth for obtaining an original certification as a Certified First Responder (CFR), Emergency Medical Technician (EMT) or Advanced Emergency Medical Technician (AEMT).
- Successfully completes the requirements set forth for obtaining recertification as a CFR, EMT or AEMT.
- Obtains certification as an EMT or AEMT through the reciprocity process by having such certification issued by another state or approved military program.
- Have no legal barrier to the issuance of such certificates.

ALTERATION OR FORGERY OF DOH ISSUED CERTIFICATES:

Department certificates are printed in a unique font on security paper that will show the word “VOID” when the card is photocopied.

Upon receipt of the certificate from the Department the holder should sign it immediately and laminate it for protection.

Any adulteration of a certificate issued by the Department or any production of a document that is offered to be a certificate issued by the Department shall be prosecuted to the fullest extent the law allows and may bar the individual from any future certification by the department.

SERVICE REQUIREMENTS:

EMS services are required by 10 NYCRR Part 800.21(k)(1) to maintain a personnel file for all members/employees. This must include a copy of the member's/employee's state issued EMS certificate.

The certified provider should be required to provide the original certification to the agency for the agency to inspect and copy. If there are any questions regarding the validity of the certification, notify the Bureau of EMS immediately.

An agency shall be held responsible for the outcomes and actions of any provider whom they allow to practice without positive proof that the certification offered by that individual is valid.

PROVIDER IDENTIFICATION:

Agencies/systems are encouraged to have a policy that governs the proper identification of members/employees while providing care or while responding. Such identification is particularly useful when members of an agency respond beyond their local area when participating in mutual aid responses.

While there is no statutory or regulatory requirement to do so, all EMS agencies or systems should consider the issuance of identification to members/employees. Such identification may include, but not be limited to:

- Agency name
- Provider's name
- Provider photograph
- Provider's level of certification
- DOH certification number
- Level of care authorized by agency and/or REMAC
- Agency and/or REMAC identification number
- Date of Birth
- Blood Type
- Expiration date of identification card.

Certified providers are discouraged from using their laminated, Department issued certification card as a worn form of identification.

Although it is not a requirement that Department issued certificates be carried by individuals while providing care it is strongly encouraged.

LOST OR DESTROYED CERTIFICATES:

Should the certificate issued by the Department be lost, destroyed or if it becomes unreadable you may request a replacement certificate. Requests must be submitted in writing to the Bureau of EMS, Certification Unit, 433 River St. Suite 303, Troy, NY 12180-2299 or by fax to 518-402-0985. The EMT must sign the request. **No verbal requests will be processed.**

INSIGNIA & PATCHES:

The NYS Department of Health does not issue any type of patch, shield or other worn insignia. In accordance with PHL §3003(4) a Regional Emergency Medical Services Council (REMSCO) may issue, "uniform emergency medical technician insignia and certificates".

A person who chooses to wear a patch, shield or other insignia may only indicate on such, the level of care that they are certified by the Department to practice at. To do otherwise would be indicating certification not held by the provider which might also constitute a criminal offense.

Issued and Authorized by;
Edward Wronski, Director



NEW YORK STATE



EXCELSIOR



EMERGENCY MEDICAL
TECHNICIAN

13.50