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Friday, November 25, 2011

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2011 DEC -1 A 10:18

Bureau of EMS
PA Department of Health, Rm 606
625 Forster Street
Harrisburg, PA 17120-0701

Attention: Mr. Joseph W. Schmider, Director

On Saturday, November 19, 2011 I attended a fall EMS conference offered by Lehigh Valley Hospital Health Network. Of particular interest, the Deputy Director of the Eastern PA EMS Council, Mr. John Kloss presented information concerning the implementation of Act 37. EMS providers were encouraged to review the "Act" and submit any concerns to the Department of Health prior to November 29, 2011.

I would like to take this opportunity to introduce myself and offer you a brief character background. I have been a Paramedic within the Eastern PA Region for approximately 14 years and previously served in the administrative capacity as Director of Operations for a local EMS agency. On April 12, 2011 I successfully completed 20 years of service with the PA Army National Guard. I have chosen to continue my enlistment within the 56th Brigade and currently serve as the HHC 228th BSB (Brigade Support Battalion's) Medical Logistics NCO. In 2005, I graduated from Lehigh Carbon Community College with a Paralegal degree.

I am deeply concerned that "Act 37" currently removes the due process opportunity for EMS providers who are sanctioned by the individual EMS services medical director(s). Throughout the EMS field, many systems have imposed requirements for QA programs, to ensure that the quality of emergency medical care meets minimum standards. While there have been elaborate designs for QA programs, almost all of them (that I have previously encountered) avoid a critical issue -- how to correct the behavior and performance of an individual when the QA process reveals deficits.

Whenever the punitive approach is selected, it sets the stage for a collision between the authority of the employer or regulatory agency and the constitutional rights of the individual who is to be disciplined. EMS agencies and medical directors tend to apply these regulations inconsistently and, in some cases, without apparent regard for the certificate holder's right to due process.

I implore you, as an EMS constituent, to review this matter in detail. The Fourteenth Amendment to the U.S. Constitution prohibits any state or local government from depriving any person of life, liberty or property without due process. Because an individual's employment or certification is considered his "property" in many cases, state or local government (or individuals or entities operating under the authority of a state or local government) may not deprive an individual of the "property" without due process.

The courts have held that due process protection applies if contract or administrative regulation standards for retention are specified under state or local law. This means that if any statutory, administrative or contractual standards for retaining employment (or certification) exist, the individual has a "property" interest in his employment or certification and these cannot be taken away from the individual without due process.

I will admit that prior to 1980, employers and their employees were deemed to be outside of the requirements and protections of due process with regard to employment. Employees were considered to be employed "at will" and had no constitutionally protected employment rights. Since 1980, the courts have held in several cases that an implied contract exists between employer and employees and is case specific. It has been argued, if the Fourteenth Amendment specifically applies to state and local governments, how can it not apply to all private sectors regardless of which state you are employed?

The EMS providers of today constantly have an invisible noose that must be severed when it comes to working under the "umbrella" of a service medical director. To the extent that suspension or revocation of an individual's certification adversely affects his "property" interest in being employed, this infringement may be subject to due process protection. The U.S. Supreme Court addressed this issue in a Connecticut case as follows: "Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of hearing [Emphasis Added]". In other words, if the medical

director has the power to take away an individual's certificate (or necessary service specific medical command / authorization), this deprives him/her of the opportunity to continue working at the same level of compensation and that individual's "property" interest in his employment is adversely affected.

To date, there are no reported appellate court decisions involving due process violations by a medical director. Until recently, these providers were afforded due process under Act 45 and any "withdraw / denial or restriction" may be appealed to the Co-Regional Medical Directors. Your current "Act" removes this critical step in the appeals process. Generally speaking, people don't appreciate the importance of due process until their rights to property, their employment or their professional reputations are at risk.

Respectfully yours,



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