



State of New Jersey

DEPARTMENT OF HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES
PO BOX 360
TRENTON, N.J. 08625-0360

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

www.nj.gov/health

JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

January 31, 2022

Avia Jackson

**Re: Notice of Proposed Denial of EMT Certification
Investigation Control # 21-0568
EMS ID # 649382**

Dear Mr. Jackson:

The New Jersey Department of Health (the Department) is vested with the responsibility of carrying out the provisions of the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., which was enacted, in part, to ensure that all hospital and related health care services rendered in the State of New Jersey are of the highest quality. As defined at N.J.S.A. 26:2H-2b, health care services include any mobile healthcare rendered by ambulance services. In addition, the Emergency Medical Services Act, N.J.S.A. 26:2K-7 et seq., authorizes the Department to certify Emergency Medical Technicians (EMTs). In furtherance of the objectives set forth in the statutes, the Department has adopted regulations that govern the training, certification, and professional conduct of EMTs and EMT candidates. (See N.J.A.C. 8:40A-1.1 et seq.)

On May 3, 2021, you applied for an initial EMT certification. On your application, you indicated that you had a criminal history. You further explained that you were convicted of a Class D Felony in the State of New York. Because you indicated that you have a criminal history, OEMS sent you an email notification on May 5, 2021, informing you that you needed to complete the OEMS criminal investigation process, which included completing a fingerprint supported criminal history check and supplying OEMS with documentation regarding your rehabilitation from your conviction.

You completed the background check, which confirmed that on or about December 19, 2017, you were convicted of the crime of Forgery in the First Degree, a class C Felony, in violation of New York Penal Law section 170.15(1). The background check also revealed that you are excluded from participating in federally funded health care programs, such as Medicare and Medicaid. You also provided a personal statement and personal reference letters in support of your rehabilitation.

Pursuant to N.J.A.C. 8:40A-10.2(b)(12), OEMS may refuse to issue an EMT certification if the EMT applicant was convicted of a crime. To determine whether the

EMT candidate should be denied certification, N.J.A.C. 8:40A-7.1(b) and (c) requires OEMS to review the individual's criminal background against the requirements of the Rehabilitation of Convicted Offenders Act (Act), N.J.S.A. 2A:168A-1 et seq. Under the Act, the OEMS may deny an individual an EMT certification if the individual was convicted of a crime or disorderly person offense that "relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought." N.J.S.A. 2A:168A-2. To determine whether an EMT candidate's criminal background relates adversely to the duties and responsibilities of an EMT, the Act requires the OEMS to explore several factors, namely:

- a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
- b. Nature and seriousness of the crime;
- c. Circumstances under which the crime occurred;
- d. Date of the crime;
- e. Age of the person when the crime was committed;
- f. Whether the crime was an isolated or repeated incident;
- g. Social conditions which may have contributed to the crime; and
- h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

[Id.]

Reviewing the facts of this matter against these criteria, OEMS has determined that your criminal conviction relates adversary to the duties of an EMT.

As background, you were practicing as a licensed podiatrist in New York in 2015 when you wrote prescriptions for medical equipment and tests that your patients did not need. As a result of your actions, you were convicted of a single count of forgery. In 2017, you were sentenced to two years probation. In 2020, the U.S. Department of Health and Human Services, Office of Inspector General (OIG), also excluded you from participating in federally funded health care programs, including Medicaid and Medicare, as a result of your conviction.

Regarding the nature and seriousness of your crime, your conviction was for a serious crime that directly impacts the provision of emergency medical care. Specifically, EMTs must be trusted to accurately document all patient care and

assessments on patient care reports. Patient care reports provide an accurate record of the patient complaint, presentation, assessment, treatment, and outcome in the pre-hospital setting. If the patient is transported to the hospital, then the record becomes part of the patient's hospital medical record and contains valuable information to assist other practitioners within the healthcare continuum to determine the most appropriate management of the patient's illness or injury. An EMT's failure to truthfully and accurately complete a patient care report hinders other practitioners' ability to properly manage the patient's care and treatment and places the patient's health at risk. Because your crime involves forging medical documentation, it negatively impacts on your ability to provide emergency medical services.

Additionally, you remain on the OIG's exclusion list. EMTs cannot pick or choose their patients when responding to a call; care must be rendered regardless of the patient's insurance type or ability to pay. Thus, you could not refuse to provide care to patients receiving federal health benefits while serving as an EMT. Even more, an EMS agency who is a provider under a federal health care program cannot hire an individual who is excluded from the programs. See <https://oig.hhs.gov/exclusions/index.asp> (stating that a healthcare provider "who hires an individual or entity on the [list of excluded individuals/entities] may be subject to civil monetary penalties"). Thus, your OIG exclusion negatively impacts your ability to serve as an EMT.

Regarding whether age contributed to your crime, you were approximately 43 years old when you committed the offense. As an adult, you were clearly old enough to understand and appreciate the nature and consequences of your actions. Thus, youthful indiscretion was not a factor to the crime.

Similarly, social conditions did not factor into your criminal behavior. In your personal statement, you state that you needed to maintain your employment with the podiatric clinic involved in the fraudulent prescription scheme that resulted in your conviction to support your family as you had a difficult time finding other employment. However, maintaining employment does not outweigh the fact that you were an educated individual with a professional license at the time you committed the crime and, as a result, you knew or should have known that what you were doing was not only wrong, but illegal. Thus, there were no significant social conditions contributing to the crime.

While you submitted a personal statement as well as professional references in support of your rehabilitation, the remaining factors, as outlined above, weigh heavily against a finding that you should be certified as an EMT at the present time.

For the same reasons outlined above, the Department also finds, under N.J.S.A. 45:1-21.5, that your conviction has a substantial relationship to the duties of an EMT and, due to the nature of your conviction, your certification as an EMT would be inconsistent with the public's health, safety, and welfare. **Therefore, the Department proposes to deny your application for certification as an EMT.**

Notwithstanding the above, you may reapply for certification as an EMT after you have been removed from the OIG exclusion list and submit proof that you successfully completed probation, provided you remain arrest and conviction free.

Pursuant to N.J.S.A. 45:1-21.5 and N.J.A.C. 8:40A-10.3(b), you are entitled to a hearing before the Office of Administrative Law to contest the Department's decision to deny your application for initial EMT certification. Your request for a hearing on this matter must be submitted in writing and must be accompanied by a response to the charges contained herein. Please include the control number **21-0568** on your correspondence and forward your request to:

New Jersey Department of Health
Office of Legal & Regulatory Compliance
P.O. Box 360
Trenton, NJ 08625-0360

Failure to submit a written request for a hearing within 30 days from the date of this notice shall be interpreted as an acceptance of this Department's decision to deny your application for initial EMT certification, thereby negating any further appeal rights and converting this action into a final agency decision. If you have any questions concerning this matter, please contact Daniel Kazar at (609) 633-7777 or via email at Daniel.Kazar@doh.nj.gov.

Sincerely,

Terry Clancy, PhD, RN, NRP
Director
Office of Emergency Medical Services

c: Candace Gardner, Program Manager, OEMS
Daniel Kazar, Acting Chief, Education, Licensing, & Enforcement, OEMS
Zachary Raab, Investigator, OEMS
NREMT
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