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Bill Analysis
Legislative Service Commission

H.B. 375
126th General Assembly
(As Introduced)

Reps. Flowers, J. McGregor, D. Evans, Brown, Willamowski, Allen, Setzer

BILL SUMMARY

- Permits any person to submit to the State Board of Emergency Medical Services (EMS Board) a written complaint regarding an alleged violation of the Emergency Medical Services Law, and requires the EMS Board to investigate such allegations.
- Prescribes the EMS Board's powers in investigating allegations.
- Provides, with an exception, that all information the EMS Board receives pursuant to an investigation is confidential and not subject to discovery in any civil action.
- Requires the EMS Board to conduct disciplinary proceedings regarding the holder of any certificate it issues in accordance with its rules.
- Specifies that the EMS Board and a certificate holder are the parties to a hearing conducted under the Emergency Medical Services Law and that either party may submit a written request to the other party for a list of witnesses and copies of documents intended to be introduced at the hearing.
- Provides for summary and automatic suspensions of certificates to practice as a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic.
- Authorizes the EMS Board to adopt rules specifying circumstances under which an emergency medical services training or continuing education program, or portion of such a program, may be taught by a person who does not hold a certificate to teach.

- Eliminates the requirement that the prehospital emergency medical services regions consist of the same geographic regions as the state's health services areas.

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CONTENT AND OPERATION

Background

The State Board of Emergency Medical Services (EMS Board) regulates the training and practice of emergency medical service personnel. It issues certificates to practice to first responders, emergency medical technicians-basic (EMTs-basic), emergency medical technicians-intermediate (EMTs-I), and emergency medical technicians-paramedic (paramedics). The EMS Board also issues certificates of accreditation or approval to EMS training and continuing education programs and certificates to teach to training and continuing education program teachers.

Investigations of alleged violations of the Emergency Medical Services Law

The EMS Board is authorized by current law to investigate complaints concerning emergency medical services and EMS organizations as it determines necessary.¹

¹ R.C. 4765.10(B)(1)--not in the bill.

Submitting complaints

(R.C. 4765.101(A))

The bill permits any person to submit to the EMS Board a written complaint regarding an alleged violation of state law governing emergency medical services (R.C. Chapter 4765. and rules adopted under that chapter). In the absence of fraud or bad faith, no person submitting a complaint or testifying in an adjudication hearing with regard to such an alleged violation is liable to any person for damages in a civil action as a result of submitting the complaint or providing the testimony. The EMS Board is *required to investigate* any alleged violation of the Emergency Medical Services Law.

EMS Board's investigative powers

(R.C. 4765.101(B), (C), and (D))

In investigating an allegation, the EMS Board is permitted to administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony. However, a *subpoena for patient record information* cannot be issued without consultation with the Attorney General's office and the approval of the EMS Board's executive director. Before such a subpoena is issued, the executive director must determine whether there is probable cause to believe that the complaint alleges a violation of the Emergency Medical Services Law and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation.

The bill provides that if a person fails to comply with a subpoena the EMS Board issues, the Board is permitted to move for an order compelling the production of persons or records under the Civil Rules. First, however, the EMS Board must provide the person subpoenaed a reasonable notice.

Serving subpoenas

(R.C. 4765.101(E))

Sheriffs, sheriffs' deputies, and investigators for the Division of Emergency Medical Services of the Department of Public Safety are authorized by the bill to serve subpoenas the EMS Board issues. Service may be made by delivering a copy of a subpoena to the person named in it, reading it to that person, or leaving it at that person's usual place of residence. If the person being served is an individual authorized by the Emergency Medical Services Law to practice emergency medical services, service may be made by certified mail, restricted

delivery, return receipt requested. In such a case, the subpoena is deemed served on the date delivery is made or on the date that the individual refuses to accept delivery.

Confidentiality of investigative information

(R.C. 4765.102 and 4765.11(A)(23))

The bill provides, with an exception, that all information the EMS Board receives pursuant to an investigation, including information regarding an alleged violation of the Emergency Medical Services Law or a complaint alleging such a violation, is confidential and not subject to discovery in any civil action. The exception is that the EMS Board may release the information to law enforcement officers or licensing agencies of this or another state that are prosecuting, adjudicating, or investigating the holder of a certificate issued by the EMS Board or a person who allegedly engaged in the unauthorized provision of emergency medical services.² A law enforcement officer or licensing agency that receives such information is prohibited from divulging it other than for the purpose of an adjudication by a court or licensing agency to which the subject of the adjudication is a party.

If an EMS Board investigation requires a review of *patient records*, the investigation and proceedings related to it must be conducted in a manner that protects patient confidentiality. The EMS Board is prohibited from making public the name or any other identifying information about a patient unless proper consent is given in accordance with rules the bill requires the EMS Board to adopt. If the patient is less than age 18, the EMS Board must obtain consent from the patient's parent, guardian, or custodian.

Disciplinary proceedings

Current law

Current law requires the EMS Board to *adopt rules* establishing (1) procedures for suspending or revoking certificates of accreditation or approval issued to EMS training and continuing education programs, certificates to teach in EMS training and continuing education programs, and certificates to practice as a

² *The bill defines a "licensing agency" as an entity that has authority under Ohio law governing occupational licensure to issue a license, and any other agency of this or another state, other than the Ohio Supreme Court, that has authority to issue a license authorizing an individual to engage in an occupation or profession. "Licensing agency" includes an administrative officer authorized to issue a license authorizing an individual to engage in an occupation or profession.*

first responder, EMT-basic, EMT-I, or paramedic, (2) grounds for suspending or revoking certificates to practice and taking other disciplinary action against first responders, EMTs-basic, EMTs-I, and paramedics, and (3) procedures for taking disciplinary action against first responders, EMTs-basic, EMTs-I, and paramedics.³ The grounds for suspending or revoking a certificate of accreditation or approval issued to an EMS training or continuing education program are specified in current law. For example, the EMS Board may suspend or revoke such a certificate if the certificate holder violates the Emergency Medical Services Law or fails to maintain its premises and equipment used in conducting a course of study in a safe and sanitary condition.⁴ Current law authorizes the EMS Board to suspend or revoke certificates to teach and certificates to practice, and to take other disciplinary action against first responders, EMTs-basic, EMTs-I, and paramedics, pursuant to the Board's rules.⁵

Changes proposed by the bill

Hearings (R.C. 4765.111). The bill generally requires the EMS Board to conduct disciplinary proceedings regarding the holder of *any certificate* it issues under the Emergency Medical Services Law in accordance with its rules. The bill specifies that the EMS Board and the certificate holder are the parties to a hearing conducted under the Emergency Medical Services Law, and that either party may submit a written request to the other party for a list of witnesses and copies of documents intended to be introduced at the hearing. The request must be in writing and be served not less than 14 days before the hearing begins, unless the hearing officer or presiding member of the EMS Board grants an extension of time to make the request. The responding party is required, not later than seven days before the hearing, to provide the requested list of witnesses or copies of documents to the requesting party unless an extension of time for making the request is granted.⁶ If the responding party fails to timely provide the requested list or copies, the witnesses or documents must be excluded from the hearing.

Summary suspension (R.C. 4765.112, 4765.113, and 4765.115(C)). The EMS Board is authorized by the bill to suspend a *certificate to practice* as a first responder, EMT-basic, EMT-I, or paramedic without a prior hearing (i.e., issue a

³ R.C. 4765.11(A)(6), (7), and (8).

⁴ R.C. 4765.18--not in the bill.

⁵ R.C. 4765.23 and 4765.33--not in the bill.

⁶ The bill does not specify how much time the responding party has to provide a list of witnesses or copies of documents if an extension of time for requesting the information is granted.

summary suspension) if it determines by a majority vote that there is clear and convincing evidence that the certificate holder's continued practice presents a danger of immediate and serious harm to the public and that the certificate holder has done any of the following:

(1) Furnished false, fraudulent, or misleading information to the EMS Board;

(2) Engaged in activities that exceed those permitted by the individual's certificate;

(3) Been convicted of, plead guilty to, or been the subject of a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or judicial finding of eligibility for intervention in lieu of conviction for a felony or for a misdemeanor committed in the course of practice or involving gross immorality or moral turpitude.⁷

Immediately following a summary suspension, the EMS Board must issue a written order of suspension and cause it to be delivered to the certificate holder and notify the certificate holder of the opportunity for a post-suspension hearing. The EMS Board is required to take these actions in accordance with the Administrative Procedure Act (R.C. Chapter 119.). If the certificate holder makes a timely request for a hearing, a hearing must be conducted in accordance with the Act.⁸

If a certificate to practice is summarily suspended due to a felony or a misdemeanor committed in the course of practice or involving gross immorality or moral turpitude and the conviction, plea, or judicial finding is *overturned* on appeal, the certificate holder is permitted, on exhaustion of the criminal appeal process, to file with the EMS Board a *petition for reconsideration* of the suspension. Appropriate court documents must accompany the petition. On receipt of the petition and documents, the EMS Board is required to reinstate the certificate to practice.

Automatic suspension (R.C. 4765.114 and 4765.115(C)). The bill provides that a *certificate to practice* as a first responder, EMT-basic, EMT-I, or paramedic is automatically suspended on the certificate holder's conviction of, plea of guilty

⁷ *The conviction, plea, or judicial finding may be in any state or federal court.*

⁸ *The bill does not specify the time frame for requesting a hearing on a summary suspension. The Administrative Procedure Act provides for a 30-day time frame starting from the date that the notice of a right to a hearing is mailed (R.C. 119.07--not in the bill).*

to, or judicial finding of guilt of aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated burglary, aggravated robbery, or a substantially equivalent offense committed in this or another jurisdiction. Continued practice after automatic suspension is considered practicing without a certificate to practice.

The EMS Board is required, if it has knowledge that an automatic suspension has occurred, to notify the certificate holder of the suspension and of the opportunity for a hearing. If the certificate holder makes a timely request for a hearing, the hearing is to be conducted in accordance with the Administrative Procedure Act.⁹

Duration of summary and automatic suspensions (R.C. 4765.115(A) and (B)). A summary or automatic suspension remains in effect until the EMS Board reverses the suspension or a final adjudication order issued by the EMS Board goes into effect. Neither a summary suspension nor an automatic suspension is subject to suspension by a court before the EMS Board conducts a hearing on the matter. A court also may not suspend either type of suspension during the pendency of an appeal under the Administrative Procedure Act.

Hearing and adjudication order (R.C. 4765.115(D), (E), (F), and (G)). The bill generally requires a *hearing* on a summary or automatic suspension to be held not later than 15 days or earlier than 7 days after being requested by the certificate holder. However, the certificate holder and EMS Board may agree to another date for the hearing. The EMS Board is required to issue its *final adjudication order* not later than 45 days after completing the hearing. If the order is not issued by that time, a suspension order is void. Failure to issue the order within that required time does not affect any final adjudication order, however.

The EMS Board is permitted to issue a final adjudication order that suspends or revokes a certificate to practice, issues a written reprimand, or refuses to renew or places a limitation on a certificate to practice. An affirmative vote of a majority of the EMS Board is necessary for the issuance of such a final adjudication order. An order suspending an individual's ability to practice must be accompanied by a written statement of the conditions under which the certificate to practice may be reinstated, and that reinstatement requires an affirmative vote by a majority of the EMS Board.

⁹ *As is the case for summary suspensions, the bill does not specify the time frame for requesting a hearing on an automatic suspension. The Administrative Procedure Act provides for a 30-day time frame starting from the date that the notice of a right to a hearing is mailed (R.C. 119.07--not in the bill).*

If the EMS Board revokes or refuses to reinstate a certificate to practice in a final adjudication order, it may specify that its action is permanent. A permanent revocation or reinstatement refusal means that the individual is forever barred (ineligible) from holding the type of certificate to practice previously held. And, the EMS Board is prohibited from accepting an application for reinstatement or a new certificate from that individual.

Failure to request a hearing (R.C. 4765.116). If a certificate holder fails to make a timely request for a hearing on a *summary suspension*, the EMS Board is permitted to adopt a final adjudication order without holding a hearing. The order may suspend or revoke the certificate to practice, issue a written reprimand, or refuse to renew or place a limitation on the certificate to practice. If a certificate holder fails to make a timely request for a hearing on an *automatic suspension*, the EMS Board is permitted to adopt a final order permanently revoking the certificate to practice.¹⁰

An affirmative vote by a majority of the EMS Board's members is required for either action.

Teachers of EMS training and continuing education programs

(R.C. 4765.11(A)(24) and 4765.16(A))

A person who seeks a certificate to practice as a first responder, EMT-basic, EMT-I, or paramedic must complete an emergency medical services training program. With certain exceptions, a first responder, EMT-basic, EMT-I, and paramedic must satisfy continuing education requirements to have his or her certificate to practice renewed.¹¹

Current law requires that each course offered through an emergency medical services training or continuing education program be taught by a person who holds the appropriate certificate to teach. The bill generally continues that requirement, but authorizes the EMS Board to adopt rules specifying circumstances under which a training or continuing education program, or portion

¹⁰ *Unlike the case of a summary suspension, the bill does not specify that the EMS Board may adopt a final adjudication order regarding an automatic suspension without holding a hearing.*

¹¹ *The EMS Board may grant an exemption from all or part of the continuing education requirements for the following reasons: active military service, unusual circumstances, emergencies, special hardships, and other causes the Board considers reasonable (R.C. 4765.31(B)(2)--not in the bill).*

of such a program, may be taught by a person who does not hold a certificate to teach.

Prehospital emergency medical services regions

(R.C. 4765.05)

The EMS Board is required to divide the state into prehospital emergency medical services regions for the purpose of overseeing the delivery of adult and pediatric prehospital emergency medical services.¹² Current law requires that the regions consist of the same geographic regions as the health services areas designated by the Director of Health for health services planning. The bill eliminates the requirement that the prehospital emergency medical services regions consist of the same geographic regions as the health services areas.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-11-05	p. 1716

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¹² Current law defines "prehospital emergency medical services" as an emergency medical services system that provides medical services to patients who require immediate assistance, because of illness or injury, prior to their arrival at an emergency medical facility (R.C. 4765.05).