



EMS INFORMATION BULLETIN 2015-013

DATE: September 14, 2015

SUBJECT: EMS providers performing legal blood draws

TO: EMS agencies
EMS providers

FROM: Richard L. Gibbons, Director
Bureau of Emergency Medical Services
Department of Health
(717) 787-8740

A handwritten signature in black ink, appearing to read "R. Gibbons", written diagonally across the right side of the header information.

The Bureau of Emergency Medical Services (Bureau) has received requests for guidance regarding the use of EMS agencies and EMS providers by law enforcement personnel for the purpose of legal blood draws for persons suspected of driving under the influence. While the Bureau cannot provide guidance to law enforcement personnel as to laws that pertain to them, the Bureau has determined that it is in the best interests of the EMS system to provide guidance to the EMS community so that agencies and providers can remain compliant with the Emergency Medical Services System Act (Act)¹ and the Department of Health's (Department) EMS regulations.² This document is not meant to serve as legal advice or as absolute guidance concerning compliance with the Act and regulations. Rather, it is meant to serve as a starting point for EMS agencies and providers that wish to perform legal blood draws. Each situation will present different issues and EMS agencies and providers are encouraged to discuss this matter further with their own legal counsel.

OVERVIEW

The Act provides the framework for an EMS provider's scope of practice in relation to addressing the needs of a *patient*. This framework is further addressed in the Department's EMS regulations. Consistent with the provisions of the Act, a primary role of an EMS provider is to provide patient care in the form of EMS. The term "EMS"³ is defined in the Act as any of the following:

¹ 35 Pa.C.S. §§ 8101-8157.
² 28 Pa. Code Chapters 1021-1033.
³ 35 Pa.C.S. § 8103.



- (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.

Further, the term “patient”⁴ is defined in the Act 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.

Based upon these definitions, an EMS provider’s scope of practice does not include the performance of legal blood draws, as this function does not meet the definition of EMS as contained in the Act. Therefore, an EMS provider, when on duty and providing patient care on behalf of an EMS agency, may not perform legal blood draws without the risk of being in violation of the Act.

SCOPE OF PRACTICE

Each EMS provider classification works under its own scope of practice. Paramedics, for instance, have a broader scope of practice than emergency medical technicians, who in turn, have a broader scope of practice than emergency medical responders. The framework for each provider’s scope of practice is contained in the Act⁵ and further addressed by skill areas in the regulations.⁶ These skill areas are further delineated by specific skills as published in the *Pennsylvania Bulletin*. Therefore, the Bureau cannot simply revise the skills listed in the *Pennsylvania Bulletin* to authorize EMS providers to perform legal blood draws because, as discussed, the skills published in the

⁴ 35 Pa.C.S. § 8103.

⁵ 35 Pa.C.S. §§ 8114-8120.

⁶ 28 Pa. Code §§ 1023.24-1023.30.



Pennsylvania Bulletin are based on the skill areas listed in the regulations, which in turn are derived from the scope of practice parameters set forth in the Act.

GUIDELINES

Generally, the Bureau's guidance is that at no time can the person(s) who is the subject of the legal blood draw, or others associated with that person, have any reasonable belief the legal blood draw is being done by an EMS agency, or more specifically, an EMS provider who is functioning on behalf of an EMS agency. The Bureau is not stating that an EMS agency or EMS provider can't do legal blood draws; rather, legal blood draws may not be done by an EMS provider who is functioning on behalf of an EMS agency under the Act and regulations.

As stated prior, the guidelines below are meant to serve as a starting point for a discussion among EMS agencies, providers, agency medical directors, and their own legal counsel to determine not only whether agencies and providers are going to perform legal blood draws, but also whether the procedures being employed do not violate the requirements of the Act and regulations. If the Bureau receives a complaint that an EMS provider was acting outside the scope of his or her practice by performing legal blood draws, the Bureau has an obligation to investigate the matter to determine whether a violation has occurred. As each situation will likely be different, the Bureau cannot provide definitive guidelines or answer individual questions that will ensure no violations with the Act and regulations. Further, the Bureau cannot determine whether an agency or provider is immune from liability under the Act's immunity section,⁷ as only a court of competent jurisdiction can determine whether an agency or provider is immune from civil liability or criminal prosecution. However, what the Bureau can determine is whether an agency or provider violated a provision of the Act or regulations, which includes acting outside the scope of one's practice. If that determination is made, the Bureau has the authority to seek disciplinary sanctions against an EMS agency's license⁸ or an EMS provider's certification.⁹

With those issues in mind, a few recommendations include:

1. EMS agencies and providers must ensure that they are in compliance with all laws that may apply regarding legal blood draws, including 911 dispatch laws.¹⁰
2. EMS agencies should check with their insurance providers to ensure compliance with their insurance policies.
3. EMS providers that perform legal blood draws when not functioning as a provider for an EMS agency, or are otherwise not giving the impression that they are serving as an EMS provider, are generally not subject to the Act's scope of practice limitations. Therefore, if an

⁷ 35 Pa.C.S. § 8151.

⁸ 35 Pa.C.S. § 8142.

⁹ 35 Pa.C.S. § 8121.

¹⁰ The Pennsylvania Emergency Management Agency regulates the 911 system in the Commonwealth.



- agency wants to contract with a law enforcement agency to provide off-duty providers to perform legal blood draws, that is the best case scenario to avoid scope of practice violations.
4. If an agency determines that it wants to make available its providers while they are on duty and providing patient care on behalf of the agency, the following should be addressed by each agency:
 - a. **Patient Care.** EMS agencies must ensure that policies are in place so that EMS will not be unavailable or otherwise diverted when an ambulance needs to be dispatched. Agencies and providers must ensure that their core function to provide EMS and patient care is paramount.
 - b. **Scope of practice issues.** While EMS providers are functioning on behalf of an EMS agency and providing EMS, a provider is generally limited to his or her respective scope of practice. A provider cannot give the impression or appearance that he or she is functioning as a provider when performing legal blood draws. As an example, the person who is the subject of the legal blood draw or others that may be associated with that person cannot reasonably believe that the legal blood draw is being done by an EMS agency or by an EMS provider acting on behalf of an EMS agency. EMS agencies may want to consider providing lab coats or other outerwear to the providers that does not display any EMS insignia or agency name.
 - c. **Vehicle operations.** While the Bureau is not going to generally restrict the vehicle that a provider uses to arrive at the location of the legal blood draw, an agency must consider any issues with having a provider arrive in an ambulance to the site of a legal blood draw. This situation is especially at issue if a provider is called to the scene of a DUI checkpoint, as opposed to driving to a police station where the ambulance is likely out of view from the subject of the legal blood draw, to perform the legal blood draw. At a DUI checkpoint, an ambulance is likely to be visible to anyone who is at the scene, including the person subject to the legal blood draw. An important aspect of this scenario is the same as the above issue, i.e. the person that is the subject of the legal blood draw or others that may be associated with that person cannot reasonably believe that the legal blood draw is being done by an EMS agency or by an EMS provider acting on behalf of an EMS agency.

Please forward any questions to your local Pennsylvania Regional EMS Council.