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# Texas Department of Health

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Opinions

David R. Smith, M.D.  
Commissioner

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July 16, 1993

Dan Morales  
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FILE # ~~W-123456~~  
I.D.# 21325  
RQ-CC580-DM

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MAIL DELIVER

Dear General Morales:

The 73rd Legislature passed House Bill 241 during its recent regular session. This law was signed by the Governor on May 23, 1993, and became effective immediately. This law amends provisions of the Emergency Medical Services Act (Chapter 773, Health and Safety Code).

The Texas Department of Health has been advised that its interpretation of House Bill 241 is not consistent with the author's intent. The Texas Department of Health has reviewed the legislative history of House Bill 241, and finds the following:

1. House Bill 241, as filed. The bill stripped the Texas Board of Health of any rule making authority to adopt standards for recertification of EMS personnel. (See Section 1, House Bill 241, as filed 1/4/93, amending §773.050, attached as Exhibit "A"). It also deleted all references to recertification, including a repeal of §773.059 concerning payment of late fees for recertification. (See Section 3, Exhibit "A").
2. House Bill 241, House Committee Substitute. The bill was substituted in the Public Health Committee and was reported as a House Committee Substitute on 3/24/93. The bill was substantially amended by reinstating the Board of Health's authority to regulate recertification of personnel omitting any amendment to §773.050. (See House Bill 241, 3/24/93, attached as Exhibit "B"). The committee substitute also reinstated the previously repealed §773.059, concerning payment of late fees for recertification with amendments. (See Section 2, Exhibit "B").
3. House Bill 241, Senate Committee Substitute. The bill was substituted in the Senate Health and Human Services Committee and was reported as a committee substitute on 5/5/93. Language was added to §773.050 to expressly state the board's authority to adopt requirements for continuing education programs and examinations of emergency medical services personnel. (See Section 1, House Bill 241, 5/5/93, amending §773.050,

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attached as Exhibit "C"). This committee substitute made no additional changes to the House version of the bill.

The Senate Committee Substitute was not amended further. (See Exhibit "D").

The Senate version of the bill was a compromise bill. The original intent of the bill as filed was to remove the Board of Health's authority from setting any requirement for recertification (including reexamination). As the bill worked its way through the legislative process, the original intent was weakened as the board's authority to adopt standards for recertification was reinstated in the House committee substitute, but it was still not clearly expressed in the bill what the fate of the "examination" requirement would be. The board has the authority to adopt examination requirements under §773.050, and such requirements are not linked to the renewal application procedure that occurs once every four years under §773.055. See Transcript, Senate Health and Human Services Committee, May 4, 1993, "Excerpt: House Bill 241", attached as Exhibit "E".

The Texas Department of Health has interpreted the bill to make two changes to current law. Section 1 of House Bill 241 amends §773.050, Health and Safety Code, concerning the authority of the Texas Board of Health to adopt minimum standards for regulation of the emergency medical services program. The amendment added a new subparagraph (b)(4) to clarify the authority of the Board to adopt rules for "continuing education programs and examinations of emergency medical services personnel...." The Department interprets this added language as a "clarification" of its current authority to require continuing education and examination requirements. The Board has previously adopted such rules in §773.050(b)(2) which authorizes the Board to adopt minimum standards for:

emergency medical services personnel certification and performance, including certification, decertification, recertification, suspension, emergency suspension, and probation... (Emphasis added.)

See 25 T.A.C. §157.45 for Texas Board of Health rules on recertification of emergency medical services personnel.

The second change made in House Bill 241 was to clean up statutory language that linked the certification application fee to an examination fee. In the history of the emergency medical services program, there has always been a retest required to recertify every four years. This is the reason that the term "examination" appears in §§773.055 and 773.059 of the law. These two sections were amended in Sections 2 and 3 of House Bill 241 to clarify that the fee paid is not linked to an examination but is merely an application fee.

We ask that you rule on the following questions:

- (1) Does House Bill 241 prohibit the Texas Department of Health from enforcing its rules for recertification in 25 T.A.C. §157.45 that were enacted under the authority of §773.050(b)(2), Health and Safety Code?
- (2) If the answer to Question Number 1 is in the affirmative, does House Bill 241 prohibit the Texas Department of Health from adopting new rules to require examination requirements for recertification?

Because House Bill 241 became effective May 23, 1993, we request that you advise us at your earliest convenience.

Sincerely,



David R. Smith, M.D.  
Commissioner of Health

DRS:mdm

xc: Representative Dan Kubiak  
Senator Judith Zaffirini