



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

October 23, 2020

Lucky Abernathy

**Re: Notice of Proposed Revocation – EMT Audit
EMT # 511818
Investigation Control # 2018-0260R**

Dear Mr. Abernathy:

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 Basic Life Support (BLS) personnel. 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 December 18, 2017, you accessed the Department's Office of Emergency Medical Services (OEMS) Certification Platform through the internet at www.njems.us, for the purpose of recertifying your EMT certification. On your EMT recertification application, you were presented with the following affirmation statement:

I affirm that all of the above information is true and correct. I understand that any misrepresentation of fact may be grounds to deny or revoke my NJ EMS certification/endorsement/license. In addition, I hereby certify that I have successfully completed the recertification requirements as stated in the current New Jersey EMS Regulations. I understand that my recertification/re-endorsement documentation may be subject to a random audit by the Office of Emergency Medical Services, and if it is determined that I have falsely reported my legal status, the existence of a criminal background, information concerning any certification, endorsement or licensure status granted by any and/or all jurisdictions at any time, and/or recertification/re-endorsement documentation as outlined in NJ regulation, my EMS certification/endorsement may be revoked. NOTE: ONLY NJ-OEMS APPROVED COURSES MAY BE USED FOR EMT RECERTIFICATION.

You checked "I agree" next to that statement, creating a time and date stamp in the electronic record. By checking "I agree", you were permitted to submit your recertification application to OEMS.

After receiving your recertification application, OEMS recertified your EMT credential for three (3) years. Specifically, OEMS issued you an EMT certification on December 19, 2017, with a new expiration date of December 31, 2020.

On February 27, 2018, you were sent an email notification informing you that your EMT recertification was randomly selected for an audit to confirm that you met the criteria for recertification set forth at N.J.A.C. 8:40A-7.5. The email address utilized for this notification was verified by you on December 18, 2017 as part of the recertification process through your www.njems.us profile. In this email, you were informed that you were selected to participate in a randomized audit, and you were provided detailed instructions on how to complete the audit process. The email gave you fifteen (15) business days to submit the required documentation to OEMS verifying that you met the requirements for EMT recertification.

After fifteen (15) business days, the Department did not receive any correspondence or verbal acknowledgement from you of your attempted compliance with the audit process. As a result, a second notification was sent to you on April 11, 2018 which provided you with an additional five (5) business days to provide OEMS with documentation that you met all requirements to recertify your EMT credential. The correspondence was sent to you via email, United States Postal Service (USPS) First Class Mail and USPS Certified Mail. The USPS reported a notice of certified mail was received at your residence on April 27, 2018. Additionally, the parcel sent USPS First Class mail was not returned to OEMS as undeliverable.

By January 14, 2019 you did not comply with OEMS's audit request. As a result, an OEMS investigator telephoned you on January 14, 2019 at 8:48 a.m. and left a voicemail requesting a return phone call and compliance with the audit by January 18, 2019.

To date, you have not responded to the Department's audit request and failed to submit the required documentation, which is viewed as a refusal to cooperate with its audit.

Because you failed to respond to OEMS's repeated audit requests, OEMS opened an investigation to determine whether you qualified for EMT recertification. Pursuant to N.J.A.C. 8:40A-7.5(a), in order for an EMT to gain recertification, he or she must:

1. Possess EMT and CPR certifications; and
2. Successfully complete approved continuing education units, consisting of 24 core credit hours and 24 elective credit hours.

From its investigation, OEMS was unable to establish that you possessed a valid CPR certification and successfully completed 24 elective credit hours at the time of your recertification. As such, OEMS finds you failed to meet the requirements for EMT recertification, even though you affirmed that you had "successfully completed the recertification requirements" set forth in OEMS's rules at the time you applied for recertification.

OEMS also finds that you made efforts to avoid having OEMS detect your lack of a valid CPR certification and 24 elective continuing education credit hours by refusing to respond to or work with OEMS, despite attempts by the investigators to gain your cooperation. Accordingly,

the Department finds that you fraudulently procured your EMT certification by attesting that you were in compliance with OEMS's EMT recertification requirements when, in fact, you were not.

N.J.A.C. 8:40A-10.2(b) states, "[t]he Commissioner, or his or her designee, may issue a formal written warning, impose a monetary penalty, place on probation, suspend, revoke, and/or refuse to issue or renew the certification of any EMT-Basic or EMT-Instructor for violation of any of the rules set forth in this chapter. This includes, but is not limited to...

2. Deceptive or fraudulent procurement of certification or recertification credentials and/or documentation;
17. Willful obstruction of any investigation and/or representative of the Department or other agency empowered to enforce the provisions of this chapter or any applicable law, rule and/or regulation;
21. Making material misrepresentation or providing false information on the NREMT certification examination and/or an application for EMT, EMT-Instructor or EMT-Paramedic certification or recertification;
22. Failure to complete continuing education and performance standards as required by this chapter;
24. Any other action deemed by the Department to pose a threat to the public health, safety or welfare."

Based on the foregoing, the Department has determined that your EMT certification must be **revoked**. You not only failed to have the necessary prerequisites for EMT recertification, but you also submitted a false attestation to OEMS regarding your recertification qualifications and intentionally ignored OEMS's demands for an audit of your qualifications to avoid having your lack of recertification qualifications detected. An EMT who lacks a valid CPR certification and continuing education poses a significant threat to emergency medical patients in need of care. Moreover, to be effective, EMTs must exercise good judgement, trust each other and be trusted by police officers, fire fighters, doctors and other professionals. Your actions here demonstrate poor judgment and lack of trustworthiness, which renders you a risk to patients as you lack characteristics that are necessary for the provision of effective emergency medical care. **Therefore, as a result of your failure to cooperate with the Department's investigation, it is the intention of this Department to revoke your EMT certification.**

In accordance with N.J.A.C. 8:40A-7.1(f), cards are the property of the Department, and shall be immediately surrendered to Department staff upon demand. As such, you are hereby directed to immediately surrender your EMT card to OEMS, either by U.S. mail to the address in the first page of this Notice, or by physical delivery to New Jersey Department of Health, Office of Emergency Medical Services, John Fitch Plaza Market & Warren Streets, Trenton, NJ 08625.

Pursuant to N.J.S.A. 52:14B-11 and N.J.A.C. 8:40A-10.3(b), you are entitled to a hearing before the Office of Administrative Law to contest this Department's proposed revocation of your EMT certification. In the event that you request a hearing, this proposed revocation shall be held in abeyance until such time as the hearing has been concluded and a final decision has been rendered. 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 **2018-0260R** on your correspondence, and forward your request to:

New Jersey Department of Health
Office of Legal & Regulatory Compliance
P.O. Box 360 8th Floor
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 the Department's decision to revoke your EMT certification, negating any further appeal rights and converting this action into a final agency decision.

If you have any questions concerning this matter, please contact Mr. Daniel Kazar at (609) 633-7777.

Sincerely,

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

c: Candace Gardner, Chief, Clinical Education & Licensure

SENT VIA REGULAR U.S. MAIL AND CERTIFIED MAIL #
RETURN RECEIPT REQUESTED