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ATTORNEY GENERAL OPINION NO. 90- 12

Bob Orth, Chairman
Kansas Board of Emergency Medical Services
109 S.W. 6th Street
Topeka, Kansas 66603-3805

Re: Public Health--Emergency Medical
Services--Attendants' Certificate; Application;
Forms; Categories of Certificates; Requirements;
Temporary Certificate; Disposition of Fees; Renewal
of Certificate

Synopsis: The Board of Emergency Medical Services, as a
regulatory agency, can exercise powers incidental
to the granting and denying of licenses. It thus
has the discretion to renew an otherwise void
license under circumstances that warrant renewal.
Cited herein: K.S.A. 1989 Supp. 65-6129; 65-6133;
K.S.A. 77-501 et seq.; 77-509; 77-523; 77-524.

* * *

Dear Mr. Orth:

As Chairman of the Emergency Medical Services Board (Board) you inquire whether subsection (c) of K.S.A. 1989 Supp. 65-6129 (attendants' certificate renewal) provides any recourse when an applicant makes a timely renewal but the application is not received in the board office and the 30 day renewal period has expired. You also inquire what evidence, if any, the attendant may provide to demonstrate his application for renewal was timely.

Subsection (c) of K.S.A. 1989 Supp. 65-6129 states:

"An attendant's certificate shall be valid through December 31 of the year following the date of its initial issuance and may be renewed thereafter for a period of one year for each renewal for a fee as prescribed by rule and regulation of the board upon satisfactory proof that the attendant has successfully completed continuing education in emergency medical care as provided in this subsection. Attendants shall complete not less than eight hours of continuing education as prescribed and approved by the emergency medical services board for each full calendar year that has elapsed since the certification or the last renewal thereof. If a certificate is not renewed within 30 days of its expiration such certificate shall be void."

The statute makes a certificate void if not renewed within 30 days of its expiration. Thus, central to your questions is the issue of whether the application was timely (i.e. made within the 30 day grace period provided by the statute). For this reason we will address your second question first; i.e. what evidence must the applicant provide to prove his application for renewal was timely.

The Kansas Administrative Procedure Act (KAPA) K.S.A. 77-501 et seq. applies anytime the Board takes action pertaining to a license. K.S.A. 1989 Supp. 65-6133. Generally KAPA is triggered upon written application (K.S.A. 77-509); however in this instance it is triggered by some indication, such as a letter, from the applicant stating he has not received his renewed certificate. Accordingly, the Board must provide the applicant a hearing to determine the timeliness of his application.

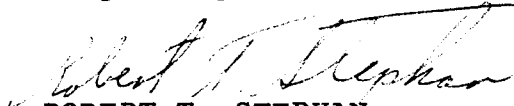
At the hearing the applicant is not required to present any specific evidence, other than what common sense may dictate. The applicant must however be given a full and fair opportunity to present any evidence that may prove his case, such as a return receipt from a certified mailing of his application and/or witnesses that will testify to his application's timeliness. (K.S.A. 77-523, 77-524).

Your second question is whether the Board has the discretion to renew the certificate. The Board has powers that are


incidental to the power to grant and refuse licenses. 2 Am.Jur.2d Administrative Law § 208 (1962). Additionally, the board has the discretion to provide the details for enforcing licensing legislation. 2 Am.Jur.2d Administrative Law § 53. However, this discretion is exercised on a case by case basis. Thus in our opinion the Board has the discretion to renew an otherwise void license under circumstances where renewal is warranted.

We note that the Board may determine there is not sufficient evidence to warrant renewing the certificate. The statute K.S.A. 1989 Supp. 65-6129 in subsection (f) contemplates the renewal of a certificate after failing to renew within 30 days of expiration. If renewal is sought within two years of the date of expiration, the applicant may renew his certificate by passing an exam and paying the specified fee. The applicant does not have to apply for an initial certificate, if he applies for renewal within two years.

Very truly yours,



ROBERT T. STEPHAN
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