

December 16, 2003

Honorable Common Council
City Hall, Room 205

Re: File No. 030902, Substitute 1 relating to ambulance certification regulations

Dear Council Members:

Currently, certification for ambulance service providers is made in the following manner:

An application for a certificate is filed with the Health Department on forms approved by the Public Safety Committee of the Milwaukee Common Council. (Section 75-15-4-a, Milwaukee Code of Ordinances (“MCO”). Fingerprinting is required to determine if the applicant (new or renewal) has been convicted of any crime, misdemeanor or violation of any municipal ordinance subject to the requirements of the Wisconsin Fair Employment Act dealing with non-discrimination because of arrest and conviction records. (Section 75-15-4-b, MCO). An investigation by the police department is required. (Section 75-15-4-6, MCO).

If there is a possibility of denial of the certificate, a hearing is provided which allows the applicant to receive not less than ten days notice of the hearing, and allows the applicant to be represented by counsel, present witnesses and cross-examine any adverse witnesses under oath, plus receive a transcript of the proceedings. (Section 75-15-7-a-b, MCO). At the conclusion of such a hearing, a recommendation is made by the Public Safety Committee to the Milwaukee Common Council. (Section 75-15-7-c, MCO). Naturally, certain reasons are specified that form the basis for a denial of such certificates. (Section 75-15-1, MCO). Although not currently set forth in § 75-15-9, MCO, the appropriate findings of fact of the Public Safety Committee and the Milwaukee Common Council would be made. (Section 75-15-9, MCO). There is currently no procedure to allow an applicant recommended for denial to have any error correcting mechanism (exceptions) to be heard by the Common Council prior to a final decision.

The proposal as drafted creates a definition of “certificate.” Currently, no definition of the term “certificate” appears in the ordinance.

The proposal changes the phrase “committee designated by the common council as responsible for ambulance service regulations” to the “Public Safety Committee.”

Under the proposal a completed application is forwarded to the Ambulance Service Board for its review and recommendation to the Common Council. Currently, the application in proper form is presented to the Common Council for referral to the Public Safety Committee. (Section 75-15-4-a, MCO).

Currently, § 75-15-4-c, MCO, does not specify a time period for the validity of the certificate granted under this section. Under the proposal, § 75-15-4-c is repealed and recreated to provide that the certificate is issued for one calendar year though no time is set forth as to when the one-year starts. The proposal further requires that prior to August 31st of each year a renewal application shall be mailed to each certified provider.

Currently, under the provisions of § 75-15-6, MCO, the police chief conducts an investigation upon the applicant’s moral character for all applications. Under the proposal, § 75-15-6-a, MCO, is repealed and recreated to read that only an application for a new certificate shall be investigated. It further provides that the chief of police will provide a written report of the findings to the Public Safety Committee prior to any committee hearing. There does not appear to be a mechanism for the license applicant to obtain a copy of the police report before the Ambulance Service Board or Public Safety Committee considers the matter.

Finally, under the proposal § 75-15-6-a, MCO, requires the City Attorney to verify that the applicant has submitted documentation sufficient to indicate the applicant’s compliance with surety bond and certificate requirements of § 75-15-11, MCO.

There are areas that we believe to be troublesome. First, no police investigation is apparently going to be required under § 75-15-6 for a renewal applicant, but one is required for a new applicant.

We are familiar with numerous instances where matters may arise regarding the conviction record of an applicant after a license has been granted which could affect the applicant’s suitability for a renewal of the certificate. If no police investigation is required on the background of a renewal applicant, we question how this information would come to the attention of the Public Safety Committee such that the Public Safety Committee would be knowledgeable of such matters?

This could lead to the following anomalous results:

Assume that a new applicant for a certificate has, as a result of a police investigation, been convicted of some degree of sexual assault. Presumably, such an individual would have to have

a hearing before the Public Safety Committee regarding that conviction. A determination, consistent with the Wisconsin Fair Employment Act and specifically Wis. Stats., § 111.335, would have to be made as to whether or not the circumstances of that conviction were substantially related to the circumstances of the certificated activity. If they did, a certificate could be denied.

Assume further that a renewal applicant for a certificate under this provision, during the time of the operation of the certificate, received a conviction for some degree of sexual assault. That individual would never have that information formally presented to the Public Safety Committee, and, as a result, and notwithstanding the same identical conviction, be recertificated without any hearing before the Public Safety Committee to determine if the circumstances of the conviction were substantially related to the circumstances of the certificated activity.

We believe, therefore, as a result of these changes, that two applicants for a certificate under this chapter with identical criminal records, would be treated completely differently. One would be at risk for never being able to receive a certificate. The other would have no fears of ever having the certificate not renewed, since the information regarding the prior criminal conduct, while exactly similar, would never have a mechanism to come to the attention of the Public Safety Committee and the Milwaukee Common Council. This, we believe, is not in the interest of the public safety. Indeed, it may even violate the requirements of equal protection because two similarly situated persons are treated differently. *State ex rel. Grand Bazaar Liquors v. City of Milwaukee*, 105 Wis. 2d 203, 313 N.W.2d 805 (1982); *Omernik v. State*, 64 Wis. 2d 6, 19, 218 N.W.2d 734 (1974).

Additionally, we would suggest that since § 75-15-7, MCO sets forth a hearing procedure, which is rather detailed and complete, that the following additions be made to the procedure:

1. That an applicant (new or renewal) when the Ambulance Service Board or Public Safety Committee is reviewing an application for a certificate (whether renewal or original), be notified of the police investigation and have an opportunity to present evidence to the board prior to the time that the board makes a recommendation. We believe that findings of fact may be necessary from the Ambulance Service Board to the Public Safety Committee particularly if denial is recommended;
2. That the Public Safety Committee prepare findings of fact, conclusions of law and a recommendation, not unlike those created by the Utilities and Licenses Committee, be made prior to the time that the file is transmitted to the Common Council for consideration;

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3. That the certificate applicant have an opportunity to appear before the Common Council to make arguments and provide written objections that may be necessary to the Common Council prior to the time that the Common Council considers the recommendation of the Public Safety Committee; and
4. That the proposal clearly fix a time for the one-year certificate to commence.

Very truly yours,

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