



Johnson County Ambulance District Of Missouri



AMBULANCE DISTRICT ORDINANCE # 4

Blood Draw for Blood Alcohol Test Ordinance

AN ORDINANCE OF THE JOHNSON COUNTY AMBULANCE DISTRICT OF MISSOURI ESTABLISHING THE POLICY THAT EMS PERSONNEL EMPLOYED BY THE JOHNSON COUNTY AMBULANCE DISTRICT WILL NOT DO BLOOD ALCOHOL DRAWS FOR SUSPECTED DRIVING UNDER THE INFLUENCE (DUI) CASES.

PURPOSE: Not to have EMS diverted from its primary mission of patient care; to limit court room and or deposition testimony time by the District’s personnel; to minimize the risks that administrative action or prosecutions on DUI’s will not be overturned for challenges to training roles of EMS personnel per the dicta enunciated in *Smith v. Department of Revenue Director*, 77 S.W.3d 120 (Mo. App. W.D. 2002).

I. RECITALS

WHEREAS, involving EMS personnel in the revocation of driving privileges can create public relations problems for the District and thereby also may make citizens less likely to call for emergency medical SERVICES (EMS) to respond even when truly needed, and

WHEREAS, only *hospital* personnel are specifically mentioned in the immunity statute of 577.031 RSMo and therefore emergency medical service personnel are specifically excluded under the axiom of statutory construction known as *unius est alterio exclusion* (expression of the specific excludes the general or the unstated (see 37B *Missouri Digest2d* “**Statutes**” # 195), and

WHEREAS, Fourth Amendment prohibitions against unreasonable searches and seizures and Fifth Amendment prohibitions against self incrimination can generate claims that can be filed against units of government under 42 USC 1983 due to the requisite “state action” present for jurisdiction under 42 USC 1983 which in turn is a significant exception to sovereign immunity, official immunity, and the Missouri Public Duty Doctrine, and further also is an uninsurable interest, and

WHEREAS, the legislative history of 577.029 RSMo as well as the Missouri Department of Health and Senior Services’ regulations on blood alcohol draw protocols indicate that the reference to “technician” in section 577.029 is a reference to in-hospital laboratory technicians and never was intended to include pre-hospital emergency medical technicians (EMT’s) or emergency medical technician paramedics (EMT-P’s), and

WHEREAS, the General Assembly could have provided further amplification or clarification to add EMT’s and or EMT-P’s to the section 577.029 when in 2001 the



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General Assembly added the power of arrest in 577.020.1(6) RSMo but the General assembly chose not to do so, and

WHEREAS, National DOT Training Standards for EMT's involve no invasive procedures whatsoever and blood alcohol draws for DUI's are not included in the National DOT Standards for EMT-P's training and the related scope of practice, and

WHEREAS, although EMS Medical Directors have considerable authority to expand on the national scope of practice for EMT's and EMT-P's , even the service's and regional medical directors would not have the authority under 190.103.3 RSMo to add blood alcohol draws to the scope of practice for EMT's and EMT-P's, and

WHEREAS, this lack of EMS authority to do blood alcohol draws was ruled in *Smith v. Department of Revenue*, 77 S.W.3d 120 (Mo. Ap. W.D. 2002) to be relevant to reversing a driver's DUI revocation if it had been brought up below in the prior administrative hearing, and

WHEREAS, Both the law enforcement community and the EMS community would find it tragic if DUI based driver license suspensions or revocations were summarily reverse due to this technicality of this lack of authority of EMS personnel to do blood alcohol draws, and

WHEREAS, Ambulance District ordinances not in conflict with State Law have been ruled to be valid and enforceable in *Abbott Ambulance v.. St. Charles County Ambulance District*, 193 S.W.3d 354 (Mo. App. W.D. 2006);

WHEREFORE, the District through its Board of Directors has adopted the following Ordinance.

II. ENACTMENT

The District's EMS personnel are hereby authorized to refuse law enforcement requests to do blood alcohol draws for purposes of DUI investigations.

It shall be an infraction with a fine of up to two hundred (200) dollars (see 560.016 RSMo) for any person to knowingly, willingly, or recklessly to insist that EMS personnel make a blood alcohol draw in DUI cases after said EMS personnel have exercised their right of refusal under this Ordinance.

The District reserves all its equitable as well as legal remedies to enforce the provisions of this Ordinance.



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III. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the date of its passage and approval and shall remain in effect until amended or repealed by the Board of Directors.

ADOPTED ON THIS 8TH DAY OF SEPTEMBER IN THE YEAR OF 2011.

/s/ Ray Patrick

Ray Patrick, Board President

ATTEST:

/s/ Mary Kidd

Mary Kidd, Board Secretary