

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of a request that Emergency Medicine Physician be designated as an eligible profession for the purchase, sale, and use of body armor.

Date of designation: August 2, 2024

Legal framework

To purchase or take possession of body armor in New York State, an individual or entity must be engaged or employed in an eligible profession.¹ Pursuant to Executive Law section 144-a, the Department of State (Department) has created a process whereby individuals and entities may request that the profession in which they engage be added to the Department’s list of eligible professions.² The Department has received requests that “emergency medicine physician” be designated as an eligible profession. Prior to adding a profession to the list of eligible professions, the Department must first determine whether the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor, or whether the duties of the profession are necessary to facilitate the lawful purchase, sale, or use of body armor.

Requests

After receiving the request that “emergency medicine physician” be designated as an eligible profession, notice of this eligible profession request was published on the Department’s website on September 29, 2023, whereby the public was invited to submit additional requests relating to this profession. During the 30-day period for additional requests, fourteen such requests were received; such requests are deemed consolidated pursuant to 19 NYCRR 905.5(c) insofar as they relate to the same professions for the purpose of reviewing and determining the eligibility of such professions.

The requestor establishes two different settings in which the emergency medicine physician may be exposed to gunfire: (1) the prehospital setting and (2) the hospital emergency department setting. The requestor describes the duties of their profession in the prehospital environment as responding to SWAT calls to provide medical oversight in the field that may include entering an active situation, responding to multi-casualty incidents that may involve an active shooter, and riding along with emergency medical service agencies. The requestor states that emergency medicine physicians respond along with EMS and fire agencies, including in the same vehicle, in a separate response vehicle, or in a personally owned vehicle. The requestor additionally describes

¹ New York Penal Law §270.21.

² See 19 NYCRR Chapter XIX, Part 905, generally.

scenarios in which they state an emergency medicine physician may be exposed to gunfire, including serving on standby during the execution of a high-risk warrant, and entering an active shooter scene with police escort as part of a rescue task force to provide patient care while the shooter is still at large. The requestor states that prior to the change in body armor law in 2022, individuals engaged in the profession did utilize body armor, and that examples of body armor include level II-III soft concealable body armor in a hospital emergency department, and rifle plates and helmets in the prehospital setting.

In the hospital emergency department setting, the requestor states that emergency medicine physicians provide medical care and oversight of emergency departments. This involves treating all arriving patients, where patients and visitors are not screened by security and may be in possession of a gun. The requestor emphasizes the emotional volatility within the emergency department (“high patient visitor anxiety”), where patients and visitors may react under distress. The requestor states that most hospitals do not employ metal detectors. The requestor also provided several news and research articles to document occurrences of gun violence in the emergency department and in some generalized hospital settings. The news articles provided by the requestor include the following:

1. Gunfire in front of a hospital emergency room entrance that appeared targeted to patients arriving from a previous gunfire incident. AL.Com, 2 Dead, 3 Wounded in Birmingham Shooting; Victims Fired On Again As They Arrive at UAB Hospital’s ER (Sept. 4, 2023), at <https://www.al.com/news/2023/09/gunfire-erupts-outside-uab-hospitals-emergency-room-wounding-several.html>.
2. “A man was shot and killed by police inside the emergency room of a hospital [after] an altercation allegedly took place between two of the injured people;” police assistance had been requested and one of the police officers shot one such patient. CTV News Vancouver, Man Shot and Killed by Police inside B.C. Emergency Room, 110 Investigating (June 29, 2023), at <https://bc.ctvnews.ca/man-shot-and-killed-by-police-inside-b-c-emergency-room-110-investigating-1.6460906>.
3. A man targets and shoots a patient inside a NYC emergency room waiting area. New York Post, Chaotic Video Captures Shooting at NYC Hospital That Life Victim Injured, ER in Lockdown (Jan. 25, 2022), at <https://nypost.com/2022/01/25/nyc-hospital-shooting-leaves-one-injured/>.
4. A hospital employee shoots two other employees in a California hospital, then shoots himself. Los Angeles Times, Three Dead in Hospital Shooting (no date), at <https://www.latimes.com/news/la-me-hospital-shooting17-pg-photogallery.html>.
5. A patient who was under arrest and at an emergency department in North Carolina was able to obtain a police officer’s gun during an altercation; another police officer fired two shots at the patient and killed him. After an investigation, the District Attorney recommended that police officers lock away their guns prior to entering the hospital’s emergency department. WRAL News, After Investigation into Shooting at Duke Hospital, Durham DA Recommends New Policy for Guns in ER (June 13, 2022), at <https://www.wral.com/story/after-investigation-into-shooting-at-duke-hospital-durham-da-recommends-new-policy-for-guns-in-er/20328219/>.

6. “A gunman entered a Florida hospital through the emergency room early Sunday, went to the third floor and fatally shot a patient and an employee apparently at random” Jacksonville.com/The Florida Times-Union, 2 Dead in Florida Hospital Shooting; Suspect Captured (July 17, 2016), at <https://www.jacksonville.com/story/news/2016/07/17/2-dead-florida-hospital-shooting-suspect-captured/15717256007/>.
7. A visitor opened fire in a hospital in Portland, killing a security guard and injuring a nurse. This article underscores the heightened emotional environment in emergency rooms—for example, by patients in pain who are experiencing a delay in care—as well as predictors for violence (in this instance, against nurses, in the hospital environment) such as cognitive impairment and substance abuse. Fierce Healthcare, Another Shooting Stokes Fears over Hospital Safety: Will New Tech Like AI or Old Solutions Make a Difference (July 28, 2023), at <https://www.fiercehealthcare.com/providers/ai-nurses-protesting-another-hospital-shooting-stakeholders-debate-how-make-hospitals>.

The research articles provided by the requestor include the following:

1. A research article reporting that between 2000 and 2011, there were 154 hospital-related shootings and that the trend appears to be increasing annually. The article reports that the highest incident location is the emergency department. Daniel L. Schwerin, Jeff Thurman, Scott Goldstein, *Active Shooter Response*, National Library of Medicine/National Center for Biotechnology Information (Feb. 13, 2023), available at <https://www.ncbi.nlm.nih.gov/books/NBK519067/>.
2. An abstract summary of a research article analyzing characterization of hospital shootings. This article reports 121 firearms related casualties in hospital settings nationwide from 2012-16, the majority of which occurred in the emergency department. Abstract, Joseph R. Wax et al., US Acute Care Hospital Shootings, 2012-2016: A Content Analysis Study, National Library of Medicine/National Center for Biotechnology Information (Sept. 20, 2019), available at <https://pubmed.ncbi.nlm.nih.gov/31561404/>.

Other requests received in response to the initial request were submitted by individuals identifying themselves as physicians, including emergency medicine physicians, and all support the eligibility of this profession. Illustrative statements supporting the request included (the below list consists of direct quotes):

- Please consider adding body armor for physicians. This is rarely (although occasionally) needed during daily practice, but is nearly always needed when physicians deploy into the field. Many modern emergency physicians deploy with police SRT/SWAT teams.
- There are many EMS physicians in New York State who are tasked with overseeing emergency response of EMRs, EMTs, and Paramedics. Part of that role includes responding to emergencies for on scene medical control. This is especially important in complex events such as mass shooting incidents.

- Being that many EM physicians serve with local SWAT units/tactical units where body armor is required, but not supplied, the ability to purchase and use our own armor is obvious.
- Emergency Medicine Physicians are the initial point of contact in a medical/hospital setting for potential violent and dangerous patients or suspects and engage in close physical contact immediately upon arrival to the hospital setting from the community prior to an opportunity to assure that such patients are not in possession of firearms or are not an acute danger to others. Such patients are presenting to the hospital Emergency Department with, or in the custody of; Police Officers, Federal Law Enforcement Officers, EMTs, Paramedics, Ambulance Drivers and Security Guards, which are all already considered Eligible Professions.
- EMS Physicians are doctors that respond in the field with EMS, Fire Departments, and many are members of Tactical Police Teams.
- Many professional EMS physicians are integrated and collaborate with law enforcement during operations that may require use of body armor. These physicians provide operational medical support to law enforcement. Doing so may place them at risk of injury, and body armor helps to mitigate that risk. While some EMS physicians are also paramedics, not all are, and so it would be important to include EMS physicians in the list.
- We work with police tactical teams in trainings and in missions. I am frequently in body armor for my own protection.

The requestor states that there is no license requirement specific to emergency medicine physician beyond the physician license required by the New York State Board of Education to practice as a physician in the State. Board certifications in emergency medicine do exist, but New York State does not require a specific certification to be an emergency medical director. Further, the requestor states that a physician employed by a hospital may be assigned to the emergency department as needed, including physicians with other specialties.

Findings of fact and analysis

“Emergency medicine physicians” are listed as belonging to a detailed occupation in the SOC Manual under code 29-1214, and includes the following duties:

Make immediate medical decisions and act to prevent death or further disability. Provide immediate recognition, evaluation, care, stabilization, and disposition of patients. May direct emergency medical staff in an emergency department.

Illustrative examples: Critical Care Physician, Disaster Medicine Physician

The profession of “emergency medicine physician” requires a physician’s license from the State, which is regulated by the New York State Education Department, pursuant to Education Law § 6524. To qualify for licensure, an applicant must be of good moral character, be at least 21 years

of age, and meet education, examination, and experience requirements. To become licensed, an applicant must file an application with the Department and pay the appropriate fee, as well as make a showing that the applicant: has obtained a degree of Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.); has the required postgraduate hospital training in an accredited residency program; has passed a medical licensing exam approved by the New York State Board of Medicine;³ and meets the required age and citizenship or immigration status. Board-eligible physicians are qualified to enroll in the medical licensing exam when they have completed a minimum amount of time in postgraduate training (residency) and may have a time limit for completing the required exams, which is also determined by the New York State Board of Medicine.⁴

Emergency medicine physicians in the prehospital setting may hold the title of emergency medical services medical director (who oversees emergency medical technician and paramedics), field physician, trauma surgeon, or tactical emergency medical service physician. Some emergency medicine physicians—in the prehospital or emergency department setting—may hold a board certification in an emergency medical service specialty. Such certification, however, is typically not required by employers and is not required by New York State to practice in the field of emergency medicine. Several national organizations provide for board certification in emergency medicine specialties; specialty board certifications evolve over time. Current authorities providing board certification in emergency medicine include:

- American Board of Physician Specialties (ABPS), Board of Certification in Emergency Medicine (BCEM)
- American Board of Emergency Medicine (ABEM)
- American Osteopathic Board of Emergency Medicine (AOBEM)

For a profession to be deemed eligible, the duties of the profession must sometimes require individuals engaged or employed in that profession to be exposed to serious physical injury that may be prevented or mitigated by the wearing of body armor, or if the duties of the profession are necessary to facilitate the lawful purchase, sale, or use of body armor. Because the profession of emergency medicine physician does not involve facilitation of the lawful purchase, sale, or use of body armor, the relevant inquiry for this request is the question of whether the duties of the profession of emergency medicine physician must sometimes require individuals engaged or employed in that profession to be exposed to serious physical injury that may be prevented or mitigated by the wearing of body armor.

Previous, approved requests to add a profession to the List of Eligible Professions have discussed duties specific to that profession that may expose an individual to gunfire, such as the

³ The current examinations approved by the New York State Board of Medicine are the United States Medical Licensing Examination (USMLE) and the National Board of Osteopathic Medical Examiners (NBOME). N.Y.S. Education Department, Office of the Professions, License Requirements for Physicians, Examination Requirements, at <https://www.op.nysed.gov/professions/physicians/license-requirements>.

⁴ Currently, a minimum of one year of post-graduate training is required and there is no time limit for completing the examinations. N.Y.S. Education Department, Office of the Professions, License Requirements for Physicians, Experience Requirements, at <https://www.op.nysed.gov/professions/physicians/license-requirements>; Federation of State Medical Boards, State Specific Requirements for Initial medical Licensure, New York State, at <https://www.fsmb.org/step-3/state-licensure/#NY>.

handling of live firearms, guarding valuable items or sensitive locations, or in-person enforcement activities. These are duties that, in their inherent nature, involve a likelihood of exposure to gunfire. In addition to such duties inherently exposing an individual to gunfire, some approved requests also offered verifiable, documented evidence such as past instances of injury that may have been prevented or mitigated by the wearing of body armor. Taken altogether, the evidence provided by a requestor is vital to the Department's understanding of the profession and its informed determination about whether a profession is eligible pursuant to Executive Law § 144-a.

The duties of the profession of emergency medicine physician in the prehospital setting include the duties of a profession tasked with providing initial response to emergency situations, which expose members of this profession to gunfire in a manner similar to the following professions that were designated as eligible on July 6, 2022:⁵ firefighter, emergency medical technician, paramedic, ambulance driver and attendant, police officer, peace officer, and federal law enforcement officer. The requestor and several of the supporting requests indicate that emergency medicine physicians may arrive on-scene concurrently with members of these eligible professions, at a time when the scene is not secured and active gunfire may be anticipated (ex., execution of a search warrant) or ongoing (ex., active shooter or mass casualty incident). These duties directly expose emergency medicine physicians to serious physical injury that may be mitigated or prevented by the wearing of body armor.

The duties of the profession of emergency medicine physician in the hospital emergency department setting direct intake and care of patients arriving from outside of the hospital and who are experiencing a medical emergency. Such patients can include individuals who have been or continue to be targeted in violent activity, patients who are individuals under arrest, as well as patients who are experiencing heightened emotion or pain due to the trauma of a recent event. The several news and research articles provided by the requestor supports the assertion that the hospital emergency department is an environment with a specific and heightened risk of exposure to gunfire. The two research articles provided by the requestor both noted that, of all the locations within a hospital, gun violence is most prevalent in the emergency department. The requestor's further assertion that most hospitals do not employ metal detectors is relevant given the prevalence of incidences and risk of exposure to gunfire.

The inquiry, however, is whether members of the profession may be exposed to serious physical injury that may be prevented or mitigated by the wearing of body armor as a result of the *specific duties* of the profession. One supporting request stated:

Emergency Medicine Physicians are the initial point of contact in a medical/hospital setting for potential violent and dangerous patients or suspects and engage in close physical contact immediately upon arrival to the hospital setting from the community prior to an opportunity to assure that such patients are not in possession of firearms or are not an acute danger to others. Such patients are presenting to the hospital Emergency

⁵ Notice has been taken also that medical personnel arriving on-scene may wear uniforms that, at first glance, may resemble police officer uniforms, such as a blue shirt and navy pants. In an enforcement situation—or a perceived enforcement situation—such individual could be mistaken for a law enforcement officer and retaliated against with the use of force, including gunfire.

Department with, or in the custody of; Police Officers, Federal Law Enforcement Officers, EMTs, Paramedics, Ambulance Drivers and Security Guards who are all already considered Eligible Professions.

The above supporting request explains that the emergency medicine physician is “the initial point of contact in a medical/hospital setting” for the patient, which requires the individual to “engage in close physical contact immediately” to provide emergency medical care, where the patient may be violent or dangerous, and prior to an opportunity to determine whether the patient may be armed. This duty specifically ties the profession to the risk of exposure to gunfire, because the emergency medicine physician is required to engage immediately and in close physical proximity to a patient who may be armed. The requestor, similarly, stated that emergency medicine physicians treat arriving patients who are not screened by security and may be in possession of a gun, where the hospital department can be an emotionally charged environment. Thus, given the emergency medicine physician’s specific duties to engage in immediate and direct patient care upon the patient’s arrival, the duties of the profession of emergency medicine physician in the hospital emergency department sometimes require individuals engaged or employed in that profession to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

Determination

The information set forth above supports a determination by the Department that the duties of the profession of emergency medicine physician sometimes require individuals engaged or employed in that profession to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

For the purposes of this determination, an emergency medicine physician is defined as a physician licensed in the State of New York, a physician holding a limited permit, a physician exempt from state licensing, or a board-eligible physician, who is (1) affiliated with: a local, state, or federal law enforcement agency; a fire department; or an emergency medical service agency certified under Article 30 of the Public Health Law; (2) exempt from licensing pursuant to Education Law § 6526(6),⁶ or a civilian equivalent hired by a military service for the United States, who provides emergency medical treatment; or (3) assigned to a hospital-based emergency department providing services pursuant to 10 NYCRR 405.19.

For the purposes of this determination, the following definitions shall also apply:

1. A physician licensed in the State of New York is a physician holding a license pursuant to Education Law § 6524.

⁶ “Any commissioned medical officer who is serving in the United States armed forces or public health service or any physician who is employed in the United States Veterans Administration, provided such practice is limited to such service or employment.”

2. A board-eligible physician is a physician who is eligible to take a medical licensing exam approved for licensure by the New York State Board of Medicine pursuant to Education Law § 6524(4).⁷
3. A local or state law enforcement agency is a “law enforcement agency” as defined under Executive Law § 846-h(9)(a).⁸
4. A federal law enforcement agency is an agency employing a federal law enforcement officer as defined under Criminal Procedure Law § 2.15.
5. A fire department is defined as a fire service pursuant to 15 USC § 2203(5),⁹ a city fire department established by city charter, a village fire department established under Article 10 of the Village Law, a fire district or fire protection district established under Article 11 of the Town Law, a joint fire district established under Article 11-A of the Town Law and Article 22-A of the Village Law, or a fire company established under Section 1402 of the Not-for-Profit Corporation Law.

Based on the foregoing facts and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department has designated the profession of emergency medicine physician as an eligible profession for the purchase, sale, and use of body armor and adds such profession to the Department’s list of eligible professions.

⁷ As of the date of this determination, the New York State Education Department has approved the following medical licensing exams: Step 1, Step 2, and Step 3 of the United States Medical Licensing Examination (USMLE) or Part I, Part II, and Part III of the examinations of the National Board of Osteopathic Medical Examiners (NBOME). See footnote 4.

⁸ “The term ‘law enforcement agency’ shall mean any agency or department of any municipality, any police district, or any agency, department, commission, authority or public benefit corporation of the state of New York employing a police officer or police officers as that term is defined in paragraphs (a), (b), (c), (d), (e), (f), (j), (k), (l), (o), (p), (s), and (u) of subdivision thirty-four of section 1.20 of the criminal procedure law.”

⁹ “[F]ire service’ means any organization in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private firefighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a Federal installation, a State, city, town, borough, parish, county, Indian tribe, fire district, fire protection district, rural fire district, or other special district. The terms ‘fire prevention’, ‘firefighting’, and ‘fire control’ relate to activities conducted by a fire service[.]”