MEMORANDUM

TO: Michael A. Kleiner, Director
Office of Emergency Medical Services
Department of Public Health and Addiction Services
150 Washington Street

FROM: Jane D. Comerford
Assistant Attorney General
Office of the Attorney General
55 Elm Street, Fourth Floor

RE: **Authority to Act of Emergency Medical Technicians**

DATE: May 13, 1994

This is an informal response to your request for clarification of a formal opinion issued by this office to Commissioner Susan Addiss, DPHAS, on December 30, 1991 regarding emergency medical personnel. A copy is attached. We will address your questions in the order presented.

1. Training

You have indicated that training courses at the EMT and EMT-P (Paramedic) level routinely include clinical phases of hands-on application of learned skills in a hospital setting. Although EMT courses restrict this clinical phase to emergency departments, paramedic training normally includes rounds in other departments of the hospital, including surgery, obstetrics, etc. Such rounds allow for the student to demonstrate the ability to apply techniques which have been learned in the classroom prior to being assigned to an internship in the field setting. The clinical in-hospital training has traditionally been conducted under the control and authority of the physicians responsible for each department. You have asked whether the formal opinion legally precludes such training.

The opinion to which you refer concluded that emergency medical personnel are prohibited from acting in such capacity independently of the emergency medial services system. See attached. Thus, emergency medical services personnel may not render treatment to persons other than in their relationship to an emergency medical services provider or emergency medical services facilities, including emergency room facilities.

As mentioned in the formal opinion, Conn. Gen. Stat. § 20-9 provides who may practice medicine or surgery in this state.

> trained in cardiopulmonary resuscitation in accordance with the standards set forth by the American Red Cross or American Heart Association, who, voluntarily and gratuitously and other than in the ordinary course of his employment or practice, renders emergency medical or professional assistance to a person in need thereof, shall not be liable to such person assisted for civil damages for any personal injuries which result from acts or omissions by such person in rendering the emergency care, which may constitute ordinary negligence. The immunity provided in this subsection does not apply to acts or omissions constituting gross, willful or wanton negligence.
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> (b) ... ambulance personnel, who has completed a course in first aid offered by the American Red Cross, the American Heart Association, the National Ski Patrol, the department of public health and addiction services or any director of health, as certified by the agency or director of health offering the course, and who renders emergency first aid to a person in need thereof, shall not be liable to such person assisted for civil damages for any personal injuries which result from acts or omissions by such person in rendering the emergency first aid, which may constitute ordinary negligence ... The immunity provided in this subsection does not apply to acts or omissions constituting gross, willful or wanton negligence (emphasis added).

Negligence has long been defined as "the failure to use that degree of care for the protection of another that the ordinarily reasonably careful and prudent [person] would use under like circumstances." Brown v. Branford, 12 Conn. App. 106, 108 (1987). "It signifies a 'want of care in the performance of an act, by one having no positive intention to injury the person complaining of it'". Id. (Citation omitted). It is this ordinary negligence which is protected under the Good Samaritan Law. "Willful" or "wanton" negligence, is more than ordinary negligence. Wanton misconduct "'is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences of action.'" Id. (citation omitted). 1/ Gross

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1/ Recklessness, sometimes referred to as wanton or willful misconduct, describes conduct by one who

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Treatment rendered by emergency medical personnel independently of the emergency medical services system renders such personnel subject to a violation of section 20-9 for practicing medicine without a license. We opined that this would apply to emergency medical personnel employed in hospital settings outside emergency room facilities.

We note that section 20-9 provides that the proscriptions contained therein shall not apply "to any student enrolled in an accredited physician assistant program who is performing such work as is incidental to his course of study." No such express statutory exception exists for emergency medical personnel in hospital settings not within emergency room facilities. Likewise, various statutes addressing other practitioners contain similar provisions regarding permitted practices in the respective fields. See, e.g., Conn. Gen. Stat. § 20-101 (nurses); § 20-123 (dentists); § 20-123 (dental hygienists); § 20-74 (physical therapists); § 20-74 (occupational therapists); §20-147a (opticians).

No such provision exists for those engaged in paramedic training programs. Without such specific statutory authority, such training is precluded.

2. Authority to Act/Off-duty Personnel

You have indicated that frequently, persons trained to one of the above levels, i.e. EMT or EMT-P will encounter situations when off-duty (such as traffic accidents) where a patient is in need of medical assistance. You have assumed that, in such cases, rescuers are protected by the principals of the Good Samaritan Act, Conn. Gen. Stat. § 52-557b. You have further assumed that, in the case of paramedics, such treatment would need to be restricted to those interventions which do not routinely require medical direction, such as control of hemorrhage and splinting; the types of interventions which, theoretically, could be provided by any lay person. You have asked whether trained EMS personnel are afforded the same legal protection as a lay person when they intervene while off-duty.

The prohibitions regarding who may practice medicine and surgery do not apply "to any person who furnishes medical or surgical assistance in cases of sudden emergency." Conn. Gen. Stat. § 20-9. The Good Samaritan Law, Conn. Gen. Stat. § 52-557b, also provides, in pertinent part:

> (a) ... a medical technician or any person operating a cardiopulmonary resuscitator or a person

negligence "is found in the failure to exercise a slight degree of care as opposed to the ordinary duty of reasonable care by which ordinary negligence is measured." Stanulonis v. Marzec, 649 F. Supp. 1536, 1543 (D. Conn. 1986).

That care which is due is always predicated on the existing circumstances of a particular case. Roy v. Friedman Equipment Co., 147 Conn. 121, 124 (1960). These above concepts apply to lay persons and trained EMS personnel alike. Due to the variety of circumstances which constantly arise, it is impossible to formulate a rule that will prescribe what particular conduct of the person involved shall be consistent with what a person of ordinary prudence would do under like circumstances. 57A Am. Jur. 2d Negligence § 214. According to the Restatement of Torts 2d, § 323, Comment b, one who gratuitously renders assistance to another is not subject to liability for his failure to have the competence or to exercise the skill normally required of persons doing such acts, if the other who accepts the services is aware, where possible, through information given by the person rendering assistance or otherwise, of his incompetence. However, a gratuitous offer to render services may carry with it a representation of some skill and competence; and if the actor realizes or should realize that his competence and skill are subnormal, he must exercise reasonable care to inform the other, where possible. Generally, in order for liability to occur under a Good Samaritan Act, the actor must have undertaken to render a service to the injured party and this service must have either increased the risk of injury to the person or caused that person to rely on proper performance of the service. 57A Am. Jur. 2d

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> does an act or intentionally fails to do an act which it is his duty to [another] ... to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.

Stanulonis v. Marzec, 649 F. Supp. 1536, 1543 (D. Conn. 1986) (quoting Restatement (Second) on Torts, Section 500 (1965 & App. 1975)).

Negligence § 113 (citing United Scottish Insurance v. United States, 692 F.2d 1209, 1210 (9th Air. 1982), rev'd on other grounds, 467 U.S. 797 (1984)).

Therefore, in light of the foregoing and the language contained within section 52-557b we conclude as follows. Under section 52-557b(b), where, as you have assumed, treatment rendered encompasses interventions which do not routinely require medical direction and are the type of interventions which, theoretically, could be provided by any lay person, i.e. first aid, ambulance personnel who have completed a course in first aid would be afforded the same legal protections noted above as a lay person when they intervene off-duty. Under section 52-557b(a), medical technicians or persons trained in cardiopulmonary resuscitation who render emergency medical or professional assistance to a person in need would also be afforded the same legal protections as a lay person when they intervene off-duty provided they act in accordance with their level of training and utilize the standard of care appropriate to that level.

3. Authority to Act/On-duty Ancillary Personnel

You have indicated that many employees of local police and fire departments which are not licensed or certified by OEMS as EMS provider organizations have personnel trained as MRTs or EMTs. During the course of their activities, such personnel often find themselves at a scene where a patient is in need of medical assistance and the certified or licensed EMS provider has not yet arrived. Some examples of this situation include fire scenes where a person has been burned or is suffering from smoke inhalation and traffic accidents to which police have responded. The types of treatments that would be provided are those which could be provided by any bystander who chose to intervene.

You have asked whether on-duty ancillary personnel who routinely respond to scenes which may involve patients are legally able to provide first aid levels of care pending the arrival of the certified or licensed EMS provider. If so, are such personnel also afforded the same levels of legal protection as off-duty personnel acting as "Good Samaritans."

Again, it is our opinion that Conn. Gen. Stat. § 20-9 and the prohibition against practicing medicine without a license would not apply to instances where assistance is provided in cases of sudden emergency. See Conn. Gen. Stat. § 20-9.

Further, Conn. Gen. Stat. § 52-557b(b), noted above, also provides protection to "[a] paid or volunteer fireman or

policeman ... who has completed a course in first aid ... and who renders emergency first aid to a person in need thereof...." 2/ There is no provision, as contained in section 52-557b(a), which requires that such activity be done "voluntarily and gratuitously and other than in the ordinary course of his employment or practice." Thus, it is our informal advice that the protections of subsection (b) would apply to employees of local police and fire departments who have completed a first aid course which comports with the requirements of subsection (b) and who render emergency first aid while on duty. However, as this question concerns employees of local police and fire departments which are not licensed or certified by OEMS as EMS provider organizations, it should be addressed by town counsel for the localities in which these ancillary personnel are situated.

4. Related Employment

You have indicated that the formal opinion referenced above concludes that off-duty employment for trained emergency medical personnel in such capacities as first aid officers standing by at public events, etc. is in violation of Conn. Agencies Reg. § 19a-179-12(b). You have also indicated that this section specifies the types of advanced, invasive procedures which are authorized when performed under medical control, but does not address procedures which do not require medical control, such as simple first aid interventions.

You have asked whether, if medically trained emergency care personnel such as MRTs and EMTs cannot seek related employment as "first aid" providers who are responsible only for providing basic treatments which do not require medical control (i.e., bleeding control, bandaging), the organizers of such events must employ only licensed practitioners such as physicians for this function.

First, we must point out that, as written, Conn. Agencies Regs. § 19a-179-12(b) addresses the types of medical care

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2/ Subsection (b) also provides that

> [n]o paid or volunteer fireman, policeman or ambulance personnel who forcibly enters the residence of any person in order to render emergency first aid to a person whom he reasonably believes to be in need thereof shall be liable to such person for civil damages incurred as a result of such entry.

treatments that may be performed under medical control by certified MIC personnel functioning with an approved MICs or persons other than certified MIC personnel who function with an approved MICs. Thus, you are correct when you state that this section specifies the types of advanced, invasive procedures which are authorized when performed under medical control.

However, Conn. Agencies Reg. § 19a-179-9 entitled "Specifically prohibited acts," provides in subsection (i) that

> [n]o person, regardless of certification shall independently perform treatment methods identified in § 19a-179-12(b) unless acting as part of the emergency medical services system in accordance with § 19a-179-12 (emphasis added).

Those treatment methods identified in section 19a-179-12(b) are the following:

(i) administer intravenous solutions;

(ii) apply pneumatic antishock garment;

(iii) perform pulmonary ventilation by esophageal obturator airway or esophageal-gastric tube airway or by intubation;

(iv) administer parenteral medication included in approved protocols;

(v) perform cardiac defibrillation;

(vi) perform other procedures and treatments as indicated by patient need when consistent with training and ability and protocols.

Section 19a-179-9(i) does not contain any provision regarding medical control. Therefore, this section prohibits the independent performance of the above-identified treatment methods whether or not performed under medical control.

As to whether the organizers of such events employ only licensed practitioners such as physicians to act as "first aid" providers at public events, we again look to Conn. Gen. Stat. § 20-9 which provides as follows:

> No person shall, for compensation, gain or reward, received or expected, diagnose, treat, operate for or

> prescribe for any injury, deformity, ailment or disease, actual or imaginary, of another person, or practice surgery, until he has obtained such a license as provided in section 20-10 and then only in the kind or branch of practice stated in such license; ... (emphasis added).

While section 20-9 exempts persons who furnish medical or surgical assistance in cases of sudden emergency, given the circumstances wherein personnel are specifically enlisted to be present at public events in anticipation of rendering first aid assistance, it is our opinion that this exception would not be applicable to the circumstances you have presented. It is generally understood that an emergency is something which reasonably may not be anticipated. See Black's Law Dictionary at p. 522 (6th ed.). Thus, a mere necessity for quick action does not constitute an emergency where the situation calling for such action is one which reasonably should have been anticipated and which the person rendering assistance should have been prepared to meet. See, e.g., Kuist v. Curran, 116 C.A.2d 404, 253 P.2d 681, 685; State v. Graves, 119 Vt. 205, 122 A.2d 840, 846 (1956). [3] Therefore, under the circumstances you have presented, only those individuals who possess a license as provided in Section 20-10 or otherwise come within the parameters of section 20-9 may be so employed.

We trust the foregoing answers your concerns. Please be advised that this is an informal advice of the undersigned and should not be construed as a formal opinion of the Attorney General.

Jane D. Comerford
Assistant Attorney General

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[3]/For instance, a bank is not entitled to claim an emergency existed where an employee was injured by a shot fired by an off-duty police officer during a robbery since the possibility of a bank robbery cannot be said to be an emergency that is not anticipated. See 57A Am. Jur. 2d Negligence § 227.