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Office of The Attorney General
State of Connecticut

December 30, 1991

Susan S. Addiss, MPH, MCrS
Commissioner
Department of Health Services
150 Washington Street
Hartford, Connecticut 06106

Dear Commissioner Addiss:

This is in response to your request for advice regarding treatment rendered by emergency medical personnel.

As we understand it, there have been a number of instances recently where it has come to the attention of the Office of Emergency Medical Services within the Department of Health Services that emergency medical personnel[1/] have rendered treatment in circumstances not limited to their employment by a licensed ambulance company or as volunteers of a certified ambulance company. Some of the situations involve emergency medical personnel being retained for compensation by employers to render treatment in the nature of first aid. Others involve emergency medical personnel employed in hospitals.

You have requested our advice as to the scope of authority that emergency medical personnel have to render care and treatment to persons other than in their relationship to an ambulance company. Your examination of this issue has also caused you to question the scope of practice of non-licensed health care workers, such as technicians, who provide direct patient care services within hospitals and other health care institutions.

Conn. Agencies Reg. § 19a-179-9(i) regarding Emergency Medical Services, provides:

> No person, regardless of certification, shall independently perform treatment methods

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1/ "Emergency Medical Personnel" refers to a medical response technician (MRT), an emergency medical technician (EMT), a mobile intensive care level EMT, an EMT-intermediate or an EMT-paramedic, certified as such by the Office of Emergency Medical Services. See Conn. Agency Reg. § 19a-179-9(e).

> identified in § 19a-179-12(b) unless acting as part of the emergency medical services system in accordance with § 19a-179-12.

Those treatment methods consist of the following:

(i) administer intravenous solutions;

(ii) apply pneumatic antishock garment;

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

(iv) administer parenteral medication included in approved protocols;

(v) perform cardiac defibrillation; and

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

Conn. Agency Reg. § 19a-179-12(b)(1). Further, "[n]o person, acting as part of the emergency medical services system, shall perform treatment methods beyond that for which the responding service is certified." Conn. Agency Reg. § 19a-179-1(h). Thus, item (vi) above, in conjunction with the proscriptions contained in sections 19a-179-9(b) and (i), prohibits emergency medical personnel from acting in such capacity independently of the emergency medical services system.

An emergency medical services system is defined to mean "a system which provides for the arrangement of personnel, facilities, and equipment for the efficient, effective, and coordinated delivery of health care services under emergency conditions." Conn. Gen. Stat. § 19a-175(a). The components of an emergency medical service system include emergency medical services facilities, including emergency room facilities, and transportation services. See Conn. Gen. Stat. § 19a-177(e)(2) and (e)(4) and § 19a-178(a)(1) and (a)(2). Also, an "emergency medical services provider" is defined as "a person, association, or organization who provides immediate and/or life saving transportation and medical care away from a hospital to a victim of sudden illness or injury and who may also provide

invalid coach services." Conn. Agency Reg. § 19a-179-1(g).[2/] See also Conn. Agency Reg. § 19a-179-21(a)(4) (provider means an ambulance service issued a certificate of operation or license by the office of emergency medical services). Cf. Conn. Gen. Stat. § 19a-175(j) (emergency medical services organization means any organization which offers transportation or treatment services to patients under emergency conditions). Thus, emergency medical 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.

It should also be noted that Conn. Gen. Stat. § 20-9, regarding who may practice medicine or surgery, provides in pertinent part:

> 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, or another person, nor 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).[3/] Section 20-10 sets forth the licensure requirements to practice medicine and surgery. "Treat" has been defined as "to attack a disease by medicinal, surgical, dietary, or other measures; to care for a patient medically or surgically."

2/ This includes a first responder, an ambulance service, a mobile intensive care service, and a rescue service. See Conn. Gen. Stat. § 19a-175(d),(l), Conn. Agency Reg. § 19a-179-1(l),(t),(u), § 19a-179-10. "Invalid Coach Transportation" means "transportation to or from a private home, health care facility, or hospital for examination, diagnosis, treatment, therapy, or consultation. Invalid Coach transportation is only to include the transportation of non-stretcher patients for whom the need for resuscitation, suctioning, or other emergency medical care or continuous observation is not evident." Conn. Agency Reg. § 19a-179-1(m). See also Conn. Gen. Stat. § 19a-175(k). An invalid coach service is not required to provide an EMT or MRT for a request for service to which it responds.

3/ Section 20-9 also enumerates certain exceptions to this prohibition which are inapplicable to the question presented.

Stedman's Medical Dictionary 1562 (20th ed. 1961).[4/] See e.g., Red v. Group Medical and Surgical Service, 298 S.W.2d 623, 626 (Tex. Civ. App. 19) (Word "treat" means to care for a patient medically or surgically, as to treat one with x-rays and also to seek cure or relief of a disease, as to treat a bruise with hot applications). Continuous or habitual acts or treatment are not essential; a single isolated act may constitute the unlicensed practice of medicine. 61 Am. Jur. 2d Physicians, Surgeons § 36; 70 C.J.S. Physicians and Surgeons, § 14a. The practice of medicine has often been defined to consist of three things: (1) judging the nature, character, and symptoms of the disease; (2) determining the proper remedy for the disease; and (3) giving or prescribing the application of the remedy to the disease. 70 C.J.S. Physicians and Surgeons § 3.

Thus, the specific licensure provisions for emergency medical personnel allow for the functioning of such personnel in that capacity within the emergency medical services system without there being a violation of section 20-9. See Conn. Gen. Stat. § 19a-178(a). See also Conn. Gen. Stat. § 19a-177(e) and Conn. Agency Reg. § 19a-179-5. However, treatment rendered by emergency medical personnel independently of the emergency medical services system (or an emergency medical services provider) renders such personnel subject to a violation of section 20-9 for practicing medicine without a license.

The plain language of section 20-9 indicates that the foregoing holds true even if such personnel are employed in hospitals, other than in hospital emergency room facilities, under physician supervision. This is consistent with the general rule that where a person without a license performs acts constituting the practice of medicine or surgery, he is not relieved from liability thereafter by the fact that he performs the acts as an assistant to, or under the direction of, a duly authorized practitioner or principal, unless he is within an express statutory exemption. 70 C.J.S. Physicians and Surgeons § 14a; 61 Am. Jur. 2d Physicians, Surgeons § 36.

Connecticut has not adopted an express statutory exception which allows emergency medical personnel to be employed in

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4/ Likewise, "treatment" is defined as "[a] broad term covering all the steps taken to effect a cure of an injury or disease; including examination and diagnosis as well as application of remedies." Black's Law Dictionary 1346 (5th ed. 1979). It should be noted that section 20-9 distinguishes diagnosis and treatment.

hospitals generally and without restriction as to the scope of their practice. See Conn. Gen. Stat. § 20-9. Therefore, such personnel are prohibited from acting within a hospital setting unless services are rendered as emergency services within emergency room facilities.5/

As to non-licensed health care workers who provide direct patient care services within hospitals, whether such workers are in violation of section 20-9 would depend upon the actions performed by them. For instance, section 20-9 exempts from its prohibition any person rendering service as a registered or licensed practical nurse if such service is rendered under the supervision, control and responsibility of a licensed physician. Conn. Gen. Stat. § 20-101, included within the Nurse Practice Act, provides, inter alia, that while the Act does not confer any authority to practice medicine or surgery, neither shall it be construed as prohibiting persons employed in state hospitals and state sanatoriums and subsidiary workers in general hospitals from assisting in the nursing care of patients if adequate medical and nursing supervision is provided. There is no available legislative history regarding this section and the definition of "subsidiary worker". A review of minutes of the Board of Examiners for Nursing for February 3, 1941, and March 31, 1941, however, indicates that this provision was meant to refer to nursing assistants or aides. "Such a longstanding administrative construction of the statute by the agency charged with its enforcement is 'high evidence of what the law is' ... and is to be given 'great deference' ...." Bridgeport Metal Goods Mfg. Co. v. Administrator, 2 Conn. App. 1, 3, 475 A.2d 329 (1984).

For example, in regard to dialysis technicians, specifically, Conn. Agency Reg. § 19-13-D55a(i)(1)(A) allows for the employment of non-licensed dialysis technicians in a licensed in-hospital dialysis unit who may participate in technical care provided it is under the supervision of a licensed physician and the direct supervision of a registered nurse. Direct supervision is defined as continuous supervision of the dialysis treatment in the same room in which the treatment is being performed. Technical care is defined as the initiation, monitoring and termination of the dialysis procedure on a

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5/ Several other states have enacted laws which address the issue of employment of emergency medical personnel in hospitals. See, e.g., Ga. Code Ann. § 31-11-59 (1991); Iowa Code Ann. § 147A.8 (1991); La. Rev. Stat. Ann § 1233 (West 1977); Miss. Code Ann. § 190.140(5)(1991); 35 Pa. Cons. Stat. Ann. § 6931(e)(1991).

chronically ill patient, upon the written authorization of the physician who has designated the patient's condition as stable. Id.

Thus, in light of sections 20-9 and 20-101, where a nonlicensed health care worker is adequately supervised by a nurse, such person may assist in the nursing care of patients. Where such supervision is lacking, the rendering of direct patient care services would be a violation of section 20-9.

In regard to other workers, in other states[6/] it has been held that the use of an ultrasonic machine on a patient constitutes the practice of medicine and surgery. Correll v. Goodfellow, 255 Iowa 1237, 125 N.W. 2d 745 (1964). Likewise, x-ray treatment has also been held to constitute practicing medicine. Beesting v. Medical Appeals Unit of Industrial Council, 73 N.Y.S. 2d 465 (1947); Leitch v. Murphy, 177 Misc. 1077, 31 N.Y.S. 2d (1941). It has also been opined that a clinical lab technologist or lab technician is not authorized to perform blood transfusions. Cooper v. State Board of Public Health, 102 Cal. App. 2d 926, 229 P.2d 27 (1951). On the other hand, one who takes blood pressure tests only, announces the result without giving advice or prescribing treatment, is not considered practicing medicine or surgery. Lambert v. State, 77 So. 2d 869 (Fla. 1955) (blood pressure is not a disease but one of the symptoms or factors which aids the physician in diagnosing the physical condition of the patient). And, the drawing of blood has been deemed not to constitute the practice of medicine. 66 Ga. Op. Atty. Gen. 156 (1965-66). Cf. Cooper v. State Board of Public Health, 102 Cal. App. 2d 256, 229 P.2d 27 (1951) (lab technologist who gives blood tests of premarital syphilis determination type and diagnoses to diverse persons practices medicine in violation of Cal. Gen. Laws Ann. § 2052 (Deering 1986)). New Mexico has also opined that the mere performance of mechanical or chemical tests or procedures does not constitute the practice of medicine. 58 N. Mex. Op. Atty. Gen. 167 (1957-58). Likewise, Wisconsin has opined that a medical technician is not prohibited from making lab tests of a physician's patients at the physician's direction where the technician neither diagnoses, treats, advises, nor consults with the patient as to the patient's ailments but merely transmits laboratory data to the physician for the

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6/ As licensure schemes in other states may differ from those in Connecticut, the following is presented as an illustrative guideline and should not be construed as established law in Connecticut.

physician's use. 39 Wis. Op. Atty. Gen. 10 (1958) (regarding Wis. Stat. Ann. § 448.03 (1988)).7/

Therefore, in specific response to your questions, emergency medical personnel may not render treatment independent of the emergency medical services system and other than in the emergency medical context. Further, unless there is a specific statutory provision authorizing the actions of nonlicensed health care workers, workers performing any of the conduct outlined in Conn. Gen. Stat. § 20-9 are in violation of the section for practicing medicine without a license.

Very truly yours,

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7/ Some statutes also allow a physician to delegate to a technician the performance of a medical service if the delegation is consistent with the standards of acceptable medical practice and is not prohibited by regulations or statutes, see, e.g., 63 Pa. Cons. Stat. Ann. § 422.14 (Purdon 1991), or if the medical act is within the scope of sound medical judgment to delegate, is performed in its customary manner, not in violation of any other statute, and the person does not hold himself out to the public as being authorized to practice medicine, see, e.g., Tex. Rev. Civ. Stat. Ann. art. 4495b (Vernon 1991).