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ATTORNEY GENERAL OPINION NO. 90- 45

Bob Orth
Chairman
Board of Emergency Medical Services
109 S.W. 6th Street
Topeka, Kansas 66603-3805

Re: Public Health--Emergency Medical Services--Powers
and Duties of Emergency Medical Services Board

Synopsis: The emergency medical services (EMS) board has statutory authority to endorse the Kansas Model EMS Protocols and the EMT Basic Life Support Skills Task Analyses as teaching aids by the adoption of a regulation to that effect. The adoption or endorsement of these documents does not affect a municipality's statutory authority to impose additional licensing requirements on ambulance services within the municipality's jurisdiction. Cited herein: K.S.A. 1989 Supp. 65-6105; 65-6110; 65-6117; 65-6131.

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Dear Mr. Orth:

As chairman of the emergency medical services board you inquire whether the board's adoption of the Kansas Model EMS Protocols and the EMT Basic Life Support Skills Task Analyses establish the "standard of care" for pre-hospital emergency medical services and whether the Board's adoption or endorsement of these documents affects a municipality's power to impose licensing requirements.

You indicate that the Kansas Model EMS Protocols provides suggested pre-hospital treatments for a number of emergencies, and that the EMT Basic Life Support Skills Task Analyses provides a comprehensive breakdown of the necessary skills used to provide authorized activities. Both documents (former versions) were used in the University of Kansas school of medicine training programs as teaching aids.

Initially, we must rephrase your question because the term "standard of care" is a legal term of art used in a determination of negligence, usually established by expert testimony, and ultimately a jury question of fact. See 57A Am.Jur.2d Negligence §§ 190-192 (1989); see generally 61 Am.Jur.2d Physicians, Surgeons, Ect. §§ 205-227 (1981). Your questions concern not negligence but administrative power and authority to approve certain training over other training. Thus the issue is whether the board can endorse the documents as the approved curriculum that emergency medical services training programs must teach.

As a creature of statute, the emergency medical services (EMS) board has only that authority conferred by legislation. K.S.A. 1989 Supp. 65-6105 states:

"(a) Except as provided by this act, the emergency medical services board established by K.S.A. 1988 Supp. 65-6102 shall be successor to the powers, duties and functions of the University of Kansas school of medicine relating to (1) approval of emergency medical services training and (2) emergency medical training program approvals in which the same were vested prior to the effective date of this act. (Emphasis added).

Additionally, K.S.A. 1989 Supp. 65-6110 states in part:

"(a) The board shall adopt any rules and regulations necessary for the regulation of ambulance services. Such rules and regulations shall include: (1) A classification of the different types of ambulance services; (2) requirements as to equipment necessary for ambulances and rescue vehicles; (3) qualifications and training of attendants, instructor-

coordinators and first responders; (4) requirements for the licensure and renewal of licensure for ambulances and rescue vehicles, (5) records and equipment to be maintained by operators and attendants and (6) such other matters as the board deems necessary to implement and administer the provisions of this act." (Emphasis added).

These statutes clearly provide the authority to determine what training and qualifications attendants will have and to approve training programs that teach the requisite skills. Thus in our opinion the EMS board has the authority to endorse the documents in question by adopting regulations to that effect.

Your second question regarding a municipality's power to impose licensing requirements is addressed by K.S.A. 1989 Supp. 65-6117 and 65-6131 that state respectively:

"If the governing body of a municipality establishes an emergency medical service or ambulance service as provided in this act, it shall establish a minimum set of standards for the operation of such service, for its facilities and equipment, and for the qualifications and training of personnel." (Emphasis added).

and

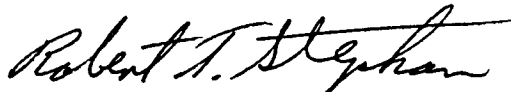
"Nothing in this act shall be construed to preclude any municipality from licensing and regulating ambulance services located within its jurisdiction, but any licensing requirements or regulations imposed by a municipality shall be in addition to and not in lieu of the provisions of this act and the rules and regulations promulgated thereunder."

In accordance with K.S.A. 1989 Supp. 65-6131, a municipality may impose licensing requirements or regulations that are in addition to but not in lieu of licensing requirements or regulations imposed by statute or regulations promulgated by the board under the statutes. The board's adoption of a regulation endorsing the documents in question as training aids in attendant training programs establishes statewide what will be taught. The municipality may establish a minimum set

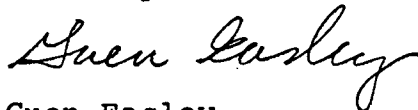
of standards (K.S.A. 1989 Supp. 65-6117) but these standards must be in addition to those set by the board. Thus in our opinion the board's endorsement of the documents in question does not affect a municipality's power to impose additional regulations or licensing requirements that concern training .

In conclusion, the EMS board has statutory authority to endorse the Kansas Model EMS Protocols and the EMT Basic Life Support Skills Task Analyses as teaching aids by the adoption of a regulation to that effect. Additionally, the adoption or endorsement of these documents does not affect a municipality's statutory authority to impose additional licensing requirements on ambulance services within the municipality's jurisdiction.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

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