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Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: **HB 918**

Sponsor: **MATTON**

Date referred to committee:

Synopsis completed:

Fiscal note: **200**

Further referrals: **none**

CONTACTS:

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COMMITTEE REPORT
SENATE

FURTHER:

4/25/86

Date 5-6-86

Mr. President

The Committee on HESS considered HB 418
relating to liability for providing emergency medical care.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

~~Joe Stephan~~
Edna Williams
Edna Williams

Joe Stephan - No Rec.

Debbie Fabrikant
Chairman

Chairman recommendation _____

MEMORANDUM

State of Alaska

Honorable John R. Pugh
Commissioner
Department of Health
and Social Services

DATE: March 7, 1986

FILE NO: 66-3-86-0197 C

TELEPHONE NO: 465-3603

FROM: Harold M. Brown
Attorney General

SUBJECT: Review of proposed
regulations
7 AAC 26.410 --
7 AAC 26.490,
7 AAC 26.510 --
7 AAC 26.590

By: George W. Edwards *GWE*
Assistant Attorney General
Human Services-Juneau

You have provided the above referenced proposed regulations pertaining to emergency trauma technicians and defibrillator technicians for our review. These are being returned with recommended changes as an attachment to this memorandum of advice.

With reference to the proposed regulations, you have asked for our advice on three questions. The first of these questions is -- if an emergency trauma technician (ETT) is affiliated with a service which provides or advertises to provide emergency medical care, does he or she have a duty to act?

The answer to your question is no except under circumstances outlined below.

At common law there exists no general duty to rescue. Lee v. State, 490 P.2d 1206 (Alaska 1971). The duty to rescue ordinarily arises out of statute or contract or results from an act that places a second party in danger. In Alaska, a customary duty to rescue has been imputed to police officers even in the absence of a specific statutory duty. Id.

An emergency medical service (EMS) that provides emergency care and transportation under the authority of AS 18.08.080 probably has both a contractual duty to act and a similar duty predicated upon its customary role in the eyes of the public. An emergency medical technician (EMT) employed by an EMS to provide emergency care to the public has a similar duty while on the job. This duty, however, does not result from the technician's status as an EMT.

The duty to provide emergency care derives from designated employment responsibilities rather than from mere certification. Two California cases concerning licensed physicians draw this distinction.

Honorable John R. Pugh, Commissioner
Department of Health and Social Services
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In Colby v. Schwartz, 144 Cal. Rptr. 624 (1978), a physician was not immunized from liability by the California good samaritan statute when the physician's emergency room aid, negligently given, was part of his normal course of practice.

In McKenna v. Cedars of Lebanon Hospital, 155 Cal. Rptr. 631 (1979), the good samaritan statute did immunize a physician who negligently performed emergency room aid where the physician had no legal duty to render aid in the emergency room.

Thus if an ETT, an EMT, or even a physician, were hired by an EMS strictly to drive an ambulance, the driver probably would have no duty to render emergency aid. If the driver chose to do so under appropriate circumstances, he could be considered a volunteer subject to the protection of Alaska's good samaritan statute, AS 09.65.090. Our reservation within this analysis results from the possibility that under the doctrine established in Lee v. State, 490 P.2d 1206 (Alaska 1971), an ambulance driver might be determined to have a duty based upon a customary public perception that ambulance drivers have an emergency care role.

Clearly, if the ETT referred to above accepted the ambulance driver position with the understanding that the job responsibilities would include emergency patient care, the ETT would then assume the same duty to act that a fellow employee hired as an EMT would assume.

Your second question is -- if the person (ETT) has a duty to act, is he or she covered by AS 09.65.090, dealing with civil liability for emergency aid?

The answer to this question is no. Consistent with the general rule, Alaska's good samaritan statute, AS 09.65.090, is intended to induce voluntary rescue by persons without a pre-existing duty to act. Id.

Your third question is -- in order to provide immunity from liability under AS 18.08.086, should we certify ETT's as well as ETT instructors?

The answer to this question is yes. This answer is based upon our understanding that it is your intent to regulate the use of ETT's as emergency care providers within EMS organizations. Without immunity from liability an ETT hired to provide emergency care would be faced with the alternative risks of breaching his own and the EMS's duty to the patient if he failed to perform and of subjecting both himself and the EMS to liability for ordinary negligence if he did perform. Thus the

use of ETT's as EMS technicians will be viable only if they come under the immunity provision of AS 18.08.086.

The establishment of such immunity will require a statutory change. AS 18.08.086 provides immunity to persons certified under AS 18.08.082. The latter statute currently provides for certification of EMT's and EMS's. It would require minimal amending to include ETT's within the certified class.

It has been suggested that AS 18.08.082(a)(3) could be interpreted in its present form to apply to ETT's as persons who provide an emergency medical service. AS 18.08.082(a)(3) states:

(a) The department shall prescribe by regulation a course of training or other requirements prerequisite to the issuance of certificates which provide for the following:

. . . .

(3) certifies that a person, organization, or government agency which provides an emergency medical service meets the minimum operating standards prescribed by the department

We believe such an interpretation goes beyond legislative intent. The subsection applies on its face to EMS operations rather than to individuals within those operations.

Equally significant is the fact that AS 18.08.082 specifically limits technician certification to EMT's. The legislature was entitled to rely on the department to certify only persons who met the high training standards traditionally associated with EMT's. Since ETT's are required to meet significantly less stringent training standards, they are not necessarily within the class intended to be certified under the statute. Therefore legislative approval of the extension of the certified class is called for.

Following amendment of AS 18.08.082, the modification of your proposed regulations providing for certification of ETT's will complete the steps required to provide the necessary immunity under AS 18.08.086.

GWE:nb
Attachment

edited copy sent to AS

Register , , 1986

HEALTH AND SOCIAL SERVICES

7 AAC 26.410

7 AAC 26.430

7 AAC 26 is amended by adding new sections to read:

ARTICLE 4.
EMERGENCY TRAUMA TECHNICIAN INSTRUCTORS AND
APPROVED EMERGENCY TRAUMA TECHNICIAN TRAINING COURSES

Section

- 410. Purpose
- 420. Application for certification
- 430. Qualifications for certification
- 440. Scope of certified activities
- 450. Approved training courses
- 460. Administration of examinations
- 470. Term of certification
- 475. Recertification
- 480. Lapse of certification
- 485. Persons practicing as emergency trauma technician instructors before December 31, 1986
- 490. Definitions

7 AAC 26.410. PURPOSE. Sections 7 AAC 26.410 — 7 AAC 26.490 establish uniform minimum standards for emergency trauma technician instructors, [and] emergency trauma technician instructor training programs, and emergency trauma technician training courses. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.420. APPLICATION FOR CERTIFICATION. (a) A person applying for a certificate as an emergency trauma technician instructor shall apply in writing to the department on a form approved by the department; and

(b) The Department will issue a certificate when the person has met the requirements of 7 AAC 26.430. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.430. QUALIFICATIONS FOR CERTIFICATION. (a) To apply for a certificate as an emergency trauma technician instructor, a person must:

- (1) be 18 years of age or older;
- (2) be of acceptable moral character;

(3) have current certification in Alaska as an Emergency Medical Technician I, II, III, licensure in Alaska as a Mobile Intensive Care Paramedic, or certification as a paramedic by the National Registry of Emergency Medical Technicians; or, ^{licensure} licensure in Alaska as a registered nurse, midlevel practitioner, or physician ~~(who has)~~ successfully passed the written and practical certification examination for Emergency Medical Technician-I; and

(4) have current certification in Alaska as an Emergency Medical Technician-I Instructor under 7 AAC 26.010 — 7 AAC 26.170; OR

(5) fulfill the requirements outlined in ^{(a)(1-3) of this subsection,} ~~a(1), a(2) and a(3)~~ of ~~this section~~, and provide evidence of successful completion of department approved objectives for the ETT-Instructor Training Program.

(b) ^{a person is} Upon receiving a certificate as an emergency trauma technician instructor, ~~the candidate shall be~~ authorized to teach the department approved 40 hour emergency trauma technician course. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.440. SCOPE OF CERTIFIED ACTIVITIES. A certified emergency trauma technician instructor may teach emergency trauma technicians to perform those basic life support emergency care skills outlined in the goals and objectives of the Emergency Trauma Technician Instructor's Guide ^{which may be obtained from the department} (Eff. __/__/__, Register __)

Authority: AS 18.08.080

Editor's Note: The publications mentioned in 7 AAC 26.440 are available from the EMS Section, Department of Health and Social Services, P.O. Box H-06, Juneau, Alaska 99811-0600.

7 AAC 26.450. APPROVED TRAINING COURSES. (a) An organization applying for approval of a course leading to ETT Instructor certification must:

- (1) 60 days, or more, prior to the first day of the course, notify the department of the course dates and proposed schedule;
- (2) ^{purpose} use a curriculum approved by the department;
- (3) ^{purpose} [plan] a minimum of 40 hours of instruction;
- (4) ^{purpose to} use an instructor approved by the department;

~~(5) use a curriculum~~ which is designed to adequately familiarize students with the instruction of those basic life support emergency care skills outlined in the goals and objectives of the Emergency Trauma Technician Instructor's Guide.

(5) ~~(6)~~ ^{within its purpose} include objective criteria for determining whether or not a student has successfully completed the course and those criteria must be adequate to ensure that students are familiar with both teaching methodology and the course content of the emergency trauma technicians training program; and

(6) ^{purpose} ~~(7)~~ ^{limit} limit enrollment in the instructor training program to persons who obtain a 90 percent or more on the emergency medical technician examination within two attempts and within the 12 months preceding the first day of the class.

(b) An instructor applying for approval of an Emergency Trauma Technician Training Course must:

(1) 14 days or more prior to the first day of the course, notify the department or its designee of the course dates and proposed schedule;

(2) ~~use~~^{plan} a curriculum approved by the department;

(3) be approved by the department as an emergency trauma technician instructor;

(4) ~~plan~~^{use} a minimum of 40 hours of instruction; and

(5) within 14 days following ~~completion~~ of the emergency trauma technician examinations ~~for certification~~, submit, to the department or its designee, a class roster which includes student grades for both the written and practical examinations.

Do you want to certify ETT's just instructors?

(c) Approved emergency trauma technician instructors are encouraged to use physicians, mid-level practitioners, nurses, and other subject matter experts as instructors in a department approved emergency trauma technician training course. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.460. ADMINISTRATION OF EXAMINATIONS. The department is the official testing agency for emergency trauma technician instructor training programs and will develop a security system for administering the necessary examinations. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.470. TERM OF CERTIFICATION. (a) An initial certification for an ETT instructor issued before July 1 expires on December 31 of the following year; and

(b) An initial certification for an ETT instructor issued after June 30 expires on December 31 of the second year following the year of issuance. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.475. RECERTIFICATION. An emergency trauma technician instructor ~~for not more than~~ 12 months following expiration of his or her current certification ~~must~~:

applying for recertification must not more than 30 days before

(1) apply for recertification on a form provided by the department;

(2) provide evidence of current state certification as an emergency medical technician I, II, or III, current state licensure as a Mobile Intensive Care Paramedic, current certification as a paramedic by the National Registry of Emergency Medical Technicians, or licensure in Alaska as a registered nurse, midlevel practitioner, or physician;

(3) provide evidence that he or she has been the primary instructor for ~~one or more~~ emergency trauma technician courses, or department approved EMT-I courses, within the preceding two years;

(4) submit a letter of recommendation from the applicant's supervisor. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.480. LAPSE OF CERTIFICATION. ~~An individual~~ ^{Applicant} who fails to recertify within the twelve months following expiration of his or her certification must retake the emergency trauma technician instructor training program. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.485. PERSONS PRACTICING AS EMERGENCY TRAUMA TECHNICIAN INSTRUCTORS BEFORE DECEMBER 31, 1986. (a) The department will issue an emergency trauma technician instructor certificate to a person who applies for certification before December 31, 1986 and who has taught at least one emergency trauma technician course approved by the Alaska Public Safety Academy or by a state approved EMS training agency or who has passed a department approved emergency trauma technician instructor course or EMT Instructor course within the past two years.

(b) The initial term of certification for ~~grandfathered~~ emergency trauma technician instructors will expire December 31, 1987. (Eff. __/__/__, Register __)

certified under (a) of the section

Authority: AS 18.08.080

7 AAC 26.490. DEFINITIONS. (a) In 7 AAC 26.410 — 7 AAC 26.490, the following definitions are used:

(1) "acceptable moral character" means that the individual has not been convicted of a ~~violent or morally reprehensible~~ felony crime ^{involving violence} during the five years immediately preceding application;

in dishonesty

(2) "department" means the Alaska Department of Health and Social Services;

(3) "EMT" means emergency medical technician;

(4) "ETI" means emergency trauma technician;

better yet, "... has not been convicted of a felony crime during the five years..." - it will eliminate arguments later

Math, I really don't understand how to type this. Jan

(5) "emergency medical technician" means a person trained in emergency medical care and certified in accordance with 7 AAC 26.010 — 7 AAC 26.170.;

(6) "emergency trauma technician" means a person who has successfully completed a department approved 40-hour emergency trauma technician course in accordance with this chapter.

(7) "mid-level practitioner" means a person certified or licensed by the state as a nurse practitioner or as a physician assistant.

(8) "state approved EMS training agency" means an agency, approved by the department, which provides emergency medical services training courses in accordance with applicable state laws, regulations and policies. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

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Register , , 1986 HEALTH AND SOCIAL SERVICES 7 AAC 26.510
7 AAC 26.520

7 AAC 26 is amended by adding new sections to read:

ARTICLE 5.
DEFIBRILLATOR TECHNICIANS AND
APPROVED TRAINING COURSES

Section

- 510. Purpose
- 520. Application for certification
- 530. Qualifications for certification
- 540. Scope of certified activities
- 550. Approved training courses
- 555. Sponsoring physician responsibilities
- 560. Examinations for initial certification
- 565. Term of certification
- 570. Recertification
- 575. Examinations for recertification
- 580. Recertification examination failure; Lapse of certification
- 590. Definitions

7 AAC 26.510 PURPOSE. The purpose of 7 AAC 26.510 -- 7 AAC 26.590 is to promote the health and safety of the people of Alaska by establishing uniform minimum standards for Emergency Trauma Technician-Defibrillator Technicians, Emergency Medical Technician-Defibrillator Technicians, and Defibrillator Technician-Instructors. (Eff. __/__/__, Register __)

Jan. last
disputing
ET-C
EM-D
from Instructor?

Authority 18.08.080

7 AAC 26.520 APPLICATION FOR CERTIFICATION. (a) A person applying for certification as an Emergency Trauma Technician-Defibrillator Technician or Emergency Medical Technician-Defibrillator Technician shall apply in writing to the department.

(ETT-D)

(ETT-D)

(b) The application ~~will be provided by~~ ^{which may be obtained from} the department ^{or parent} and will contain the person's name, age, and mailing and geographical addresses (if different), evidence that the person meets the requirements of 7 AAC 26.530, and any other information the department considers necessary.

(c) A certificate for the ^{applicant} appropriate level will be issued by the department when the ~~person~~ has met the requirements of the level applied for in 7 AAC 26.030. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.530 QUALIFICATIONS FOR CERTIFICATION. A person applying for certification as an ETT ~~Defibrillator Technician~~ or EMT-D ~~Defibrillator Technician~~ must

(1) provide evidence of current certification as an EMT ~~I or EMT-II,~~ or evidence of successful completion of a department approved ETT training program;

(2) provide evidence of current ^{by resuscitation} (CPR) certification from the American Heart Association or American Red Cross;

(3) have six months experience as a state certified EMT ~~I or state certified EMT-II,~~ or as an ETT following completion of a department approved ETT training program; ^{who has completed}

(4) be a member of an organized ambulance or rescue service which is capable of transporting ^{the} patient to, or obtaining backup from, persons able to administer advanced life support, including lidocaine, within 20 minutes following the arrival of the initial rescuer;

(5) successfully complete a department approved defibrillator technician training program;

(6) pass within twelve months after completing the training program, a written and practical examination for defibrillator technician ^{approved} by the department; and

(7) have written approval from a sponsoring physician, as outlined in section ~~.555~~ of this chapter, 7 AAC 26.555. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.540. SCOPE OF CERTIFIED ACTIVITIES. ^{ETC} (a) A ^{person} ~~certified EMT-Defibrillator,~~ who is currently ^{certified} ~~[at the] as an EMT-D~~ EMT ~~I or EMT II level~~ may, under the direct or indirect supervision of a physician, use a manual or automatic defibrillator to defibrillate a patient in ventricular fibrillation.

(b) ^{state} ~~[A certified] Emergency Trauma Technician-Defibrillator,~~ ^{as an ETT-D} A person who is currently ^{certified} ~~at the ETT level~~ may, under the direct or indirect supervision of a physician, use an automatic defibrillator to defibrillate a patient in ventricular fibrillation. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.550. APPROVED TRAINING COURSES. (a) An organization applying for course approval for training persons certified at the ETT, ~~EMT-I~~ or EMT-~~II~~ level, to use a manual or automatic defibrillator, must show that it has

- (1) appropriate training equipment; ~~and~~
- (2) ^{an} ~~department certified~~ EMT-III instructor, certified under 7 AAC 26.010 - 7 AAC 26.170, as the primary instructor of the course; and
- (3) ^a ~~have the~~ physician medical sponsor available throughout the program to evaluate the performance of the students, except that the department will, in its discretion, grant a waiver for a training program at which assistance from the physician medical sponsor can be provided only by radio or telephone.

(b) An organization applying for course approval for training persons certified at the ETT, ~~EMT-I~~ or EMT-~~II~~ level to use an automatic defibrillator must:

(1) ^{use} ~~use~~ a curriculum which incorporates behavioral objectives related to the safe and proper use of the defibrillator, including placement of electrodes/defibrillator pads, use of the voice recorder, principles of defibrillation, and include ^S

(A) an overview of cardiac anatomy and physiology;

(B) teaching the student to properly attach self adhesive monitor/defibrillator pads and monitor cables to the patient;

(C) an overview of the principles of defibrillation;

(D) information related to defibrillator safety precautions to enable the student to administer a countershock without jeopardizing the safety of the patient and rescuers;

(E) teaching the student to perform basic maintenance such as battery care and replacement of ERG paper and audio tapes;

(F) teaching the student to recognize that an electrical countershock has been delivered to the patient;

(G) teaching the student to quickly and effectively assess the patient's post countershock status;

(H) an overview of system medical control requirements;

(I) an overview relevant to state and local statutes, regulations, and/or administrative codes;

(J) teaching the student the importance of adequate airway care, advanced life support, and rapid transport as they relate to defibrillation; and

(K) teaching the student how to react appropriately should the defibrillator become inoperable.

(2) ~~plan for~~^{purpose} a minimum of eight hours of instruction.

(c) An organization applying for course approval for training persons certified at the EMT ~~I or EMT II~~ level to use a manual defibrillator must

(1) ~~use~~^{purpose} a curriculum which incorporates objectives outlined in 7 AAC 26.550 (b) and behavioral objectives related to:

(A) dysrhythmia recognition, ~~while~~^{with} recognition of nonarrest dysrhythmias ~~is~~ optional, ~~this section should include~~ the basics of rhythm analysis; and

~~and including~~ (B) recognition and appropriate response to electrical artifact.

(2) ~~plan for~~^{purpose} a minimum of ten hours of instruction. (Eff. __/__/__, Register __)

Authority 18.02.080

7 AAC 26.555. SPONSORING PHYSICIAN RESPONSIBILITIES. The sponsoring physician for an emergency medical service using ~~ETT-D~~ ~~Emergency Trauma Technician-Defibrillator~~ Technicians or ~~EMT-D~~ ~~Emergency Medical Technician-Defibrillator~~ Technicians must:

(1) submit written plans for training and evaluation of the EMT's or ETT's under his, or her, supervision;

(2) provide supervision of medical care provided by the ETT-D or EMT-D;

(3) approve medical standing orders which clearly delineate the emergency care procedures which may be performed by the ETT-D or EMT-D and the circumstances under which these activities may occur. These standing orders must address, at a minimum, the following:

*August 1986
Division of
Uniform
E.M.T.-D
E.M.T.-D*

(A) the sequence of interventions to be performed during a resuscitation attempt;

(B) guidelines for speed of shock delivery and total time spent at the scene;

(C) the method of cardiac monitoring and defibrillation to be used, ^{or} ~~over~~ chest leads paddles, or self-adhesive monitor/defibrillator pads;

(D) the appropriate management of all potential cardiac arrest rhythms: ventricular fibrillation, asystole, ventricular tachycardia, and other pulseless organized rhythms;

(E) the selection of energy levels for initial and subsequent defibrillation attempts;

(F) defibrillation safety, both at the scene and during transport;

(G) the maximum number of defibrillations which ETT-D's or EMT-D's may deliver on each patient outside of the hospital;

(H) the assessment and management of the post-arrest patient;

(I) the management of patients who rebrillate prior to arrival at the hospital;

(J) patient age and/or weight criteria for performance of defibrillation;

(K) the minimum information which must be communicated into the voice recorder during the course of a resuscitation attempt; and

(L) the need to maintain adequate cardiopulmonary resuscitation throughout the cardiac arrest episode.

(4) review ^{of} each run in which a countershock was delivered to the patient to determine whether

(A) the voice recorder was activated appropriately;

(B) the personnel quickly and effectively set up the necessary equipment;

(C) the patient's pulse was checked appropriately throughout the emergency response;

(D) defibrillation was performed as rapidly as possible for the patient in ventricular fibrillation;

(E) the amount of time spent at the scene was appropriate;

(F) adequate Basic Life Support was maintained;

(G) the personnel obtained a clear tracing of the electrocardiographic rhythm immediately prior to each defibrillation attempt;

(H) the assessment of the need to deliver a countershock was correct;

(I) the portable defibrillator was operated safely and correctly; and

(J) the care provided was in compliance with applicable protocols and standing orders.

(5) ^{provide} instruction in periodic training sessions, at least quarterly, which include practice sessions and assessment of each individual's ability to perform in compliance with local protocol. (Eff. __/__/__, Register __)

Authority 18.08.080

^{ET-D} 7 AAC 26.560 EXAMINATIONS FOR INITIAL CERTIFICATION. (a)

^{EMT-D} The examination administered to ~~ETT Defibrillator~~ and ~~EMT-Defibrillator~~ Technicians who will be using an automatic defibrillator ~~will~~ be a department approved examination that tests the knowledge and skills necessary to apply defibrillator pads/electrodes, safely and properly deliver an electric shock, and document pertinent events during a cardiac arrest situation.

^D (b) The examination administered to ~~EMT-Defibrillator~~ Technicians who will be using a manual defibrillator ~~will~~ be a department approved examination that tests the knowledge and skills necessary to apply defibrillator pads/electrodes, identify artifact, identify ventricular fibrillation, safely and properly defibrillate ventricular fibrillation and document pertinent events during a cardiac arrest situation.

(c) Administration of the examination can be performed by the course instructor. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.565 TERM OF CERTIFICATION. A certification is valid for two years except

issued under 7A.C. 26.520(c)

(1) an initial certification issued before July 1 expires on December 31 of the following year;

(2) an initial certification issued after June 30 expires on December 31 of the second year following issuance; and

(3) all recertifications expire on the second December 31 following the expiration of the most recent certification regardless of the date of issuance of the recertification. (Eff. __/__/__, Register __)

of the second year

should it this need "certification"?

Authority 08.08.080

applying for recertification must, not

30 days before or 7 AAC 26.570. RECERTIFICATION. An ETT-D or EMT-D ~~more than~~ six months after expiration of his or her current certification,

(1) provide evidence of current certification as an ETT, ~~EMT I,~~ or EMT ~~II~~;

(2) provide evidence of current CPR certification from the American Heart Association or American Red Cross;

(3) be a member of an organized ambulance or rescue service which is capable of transporting the patient to, or obtaining backup from, persons able to administer advanced life support, including lidocaine, within 20 minutes following the arrival of the initial rescuer;

(4) have written approval from a sponsoring physician, as outlined in ~~section 555 of this chapter~~; and

7 AAC 26.555

(5) pass the appropriate recertification written and practical examination administered by the department. (Eff. __/__/__, Register __)

Authority 18.08.080

7AAC 26.575. EXAMINATIONS FOR RECERTIFICATION. The defibrillator technician recertification examination consists of the defibrillator examination used for initial certification in use at the time of recertification testing. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.580. RECERTIFICATION EXAMINATION FAILURE; LAPSE OF CERTIFICATION. If a person fails to pass the ETT-D or EMT-D recertification examination on the first attempt, or fails to take the examination within six months after the expiration of his or her certification, he or she, must apply as for initial certification. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.590. DEFINITIONS. In 7 AAC 26.510 -- 7 AAC 26.590

(1) "advanced life support" means emergency care techniques provided under the written or oral orders of a physician which include, but are not limited to, electric cardiac defibrillation, administration of anti-arrhythmic agents, intravenous therapy, intramuscular therapy, or use of endotracheal intubation devices.

(2) "automatic defibrillator" means a defibrillator capable of automatic rhythm analysis which will charge and deliver a countershock after electronically detecting the presence of ventricular fibrillation or rapid ventricular tachycardia;

(3) "basic life support" means those emergency care skills outlined in the goals and objectives of the U.S. Department of Transportation, Basic Training Course/Emergency Medical Technician, third edition, 1983, including administration of over-the-counter medicines, such as syrup of ipecac, which are necessary to carry out the objectives outlined in the course;

(4) "defibrillator/monitor with dual-channel tape recording capabilities" means a defibrillator/monitor capable of continuous recording of the electrocardiogram and simultaneous recording of the voice communications at the scene;

(5) "manual defibrillator" means a defibrillator which has no capability for rhythm analysis and will charge and deliver a countershock only at the command of the operator;

(6) "protocol" means general standards for Emergency Medical Service practice in a variety of situations within the EMS System;

(7) "semi-automatic defibrillator" means a defibrillator which is capable of electronically detecting ventricular fibrillation and rapid ventricular tachycardia, but requires user interaction in order to deliver a countershock; and

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(8) "standing orders" means rigidly defined written orders for actions and techniques when verbal communication has not been made with the on-line medical director;
(Eff. __/__/__, Register__)

Authority 18.08.080

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game



Andre Marrou
Representative

District 5

Kenai	Sterling
Seldotna	Anchor Point
Homer	Port Graham
Seldovia	English Bay
Kachemak	Nikolaevsk
Kasilof	Halibut Cove
Ninilehik	Clam Gulch

April 25, 1986

To: Bettye Fahrenkamp, Chairman Senate Hess Committee
From: Andre Marrou, Representative 

Subject: HB 418, No Liability for EMTs

HB 418 would exempt emergency medical technicians from liability while performing emergency services. This liability exemption is currently available only in lifesaving situations. The current "Good Samaritan" law does not apply in non-lifesaving situations according to two different A.G. opinions.

EMTs are trained to help and should not be hindered by the threat of being sued. As you can readily surmise, quickly and accurately determining if a given emergency situation is a matter of life and death is a judgement call. It is an unnecessary burden upon those who help us in emergency situations.

The Department of Health and Social Services supports this bill. In fact, just about everyone we've contacted supports this bill, including the Health Association of Alaska, the Alaska Firefighters Association, the Southern Region Emergency Medical Services Council, and various fire departments.

Your favorable consideration would be appreciated.

Attachments:

Opinion of Harold Brown, A.G. March 7, 1986
Opinion of Wilson Condon, A.G. April 20, 1981
Health & Social Services Position Paper
Fiscal Note

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

P O BOX V
STATE OF ALASKA
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3762

Senate Committee on Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, May 6, 1986

DATE: May 2, 1986

On Tuesday, May 6, 1986 from 1:30-3:30 p.m. in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

HB 418 An Act relating to liability for providing emergency medical care.

Current statute shields an Emergency Medical Technician (EMT) and a paramedic from liability for ordinary negligence in life saving situations only. HB 418 would expand this protection to include rendering emergency care to any person "who is in need of immediate aid in order to avoid serious harm." EMTs and paramedics would still be liable in cases of gross negligence or intentional misconduct. The State of Alaska currently licenses both EMTs and paramedics.

CSHB 497 (Jud) am Relating to custody, support, visitation, and birth certificates of children

HB 497 amends Alaska's divorce and dissolution statutes to:
1) require the court to examine child custody agreements between parents, whether the case is disputed or undisputed, to ensure the agreement is in the best interest of the child and that

FEB 7 1986

Position Paper

House Bill No. 418

For An Act entitled: "An Act relating to liability for providing emergency medical care."

This act amends AS 08.64.366. (Liability for Services Rendered by a Physician Trained Mobile Intensive Care Paramedic), and AS 18.08.086 (a) (immunity from liability for state certified emergency medical technicians) to expand the immunity from liability provisions, from covering only care given to persons in life threatening situations, to include rendering emergency care to any person "who is in need of immediate aid in order to avoid serious harm or loss of life."

The Department of Health and Social Services supports passage of this bill because currently state licensed Mobile Intensive Care Paramedics and State certified Emergency Medical Technicians (EMT's) are only immune from liability (except in cases of gross negligence or intentional misconduct) when rendering care to persons in serious, life threatening situations. In actual fact, these cases constitute only a small percentage of the total cases treated by emergency medical responders. By broadening this immunity from liability, the paramedics and EMT's will have some immunity from liability when rendering care to nearly all cases, whether or not they are judged to be life threatening.

POSITION

The Department of Health and Social Services supports passage of this bill.

Recommended by: Elizabeth A. Ward
Elizabeth Ward, M.N.
Director
Division of Public Health

Date: 2/5/86

Approved by: John R. Pugh
John R. Pugh, Commissioner
Department of Health and
Social Services

Date: 2/7/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: Jan. 31, 1986

REQUEST

Bill/Resolution No.: House Bill No. 418
 Title: "An act relating to liability for providing emergency medical care."
 Sponsor: Representative Marrou
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Health & Social Services
 BRU: Public Health
 Components: Public Health,
Health Services Administration BRU

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Elizabeth Ward, M.N., Director *E. Ward* Phone: 465-3090
 Division: Division of Public Health Date: Jan. 31, 1986 *JCC*
 Approved by Commissioner: *J.R. P.* Date: 2/7/86
 Agency: Health & Social Services

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Southern Region
EMERGENCY
Medical Services Council, Inc.

April 29, 1986

Senator Bettye Fahrenkamp, Chairman
Health, Education, & Social
Services Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

This letter is to request that the HESS Committee pass out HB 418, "An Act relating to liability for providing emergency medical care." This bill slightly broadens the immunity from liability currently conferred upon certified emergency medical technicians and licensed mobile intensive care paramedics. This legislation is essentially a housekeeping bill which more clearly reflects the intent of the original language.

The language contained AS 08.64.366 was passed by the Legislature in 1974 when the paramedic licensing law was passed. I drafted the language contained in AS 18.08.086 in 1978 when the Legislature established the emergency medical technician certification requirements. The intent of these sections is to try to remove the fear of litigation from the shoulders of these providers at the times when they need to be most aggressive in the manner in which they do their jobs. This is the period when they are dealing with the very seriously injured or ill person. I'm sure Representative Koponen, EMT-I, would be able to verify this.

The reason why these changes are needed is that several attorneys have reviewed the present language and interpreted it to be very restrictive. If the plaintiff could show that they were not in immediate danger of the loss of their life (the fact that they lived might be prima facie evidence of that fact), then the defendant emergency medical technician, most of whom in this state are volunteers, would not be able to use this as a defense. The intent of the legislature was that the EMTs should be covered in any serious case, not just imminently life threatening cases.

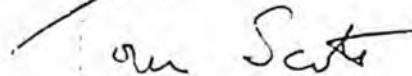
April 29, 1986

I recognize that it is getting late in the session. I am also aware of other factors that influence a bill's progress through the system. However, the fact that the House passed this bill in spite of the fact that the prime sponsor is who he is indicates that it does have some merit.

In these times of the malpractice crisis our volunteer EMTs and the cities and nonprofit organizations which operate emergency medical services are becoming more and more fearful. This legislation will help ease that concern somewhat. At the same time the State's EMT certification and paramedic licensing programs do a good job of assuring that the consumer will receive quality emergency care when they are in need. These are the reasons that the House of Representatives passed this bill out.

If you have any questions, please give me a call.

Sincerely,



Thomas D. Scott II
President/Executive Director

cc: Senator Sturgelewski
Senator Fischer
Senator DeVries
Senator Josephson
Senator Kelly

MEMORANDUM

State of Alaska

TO: Helen D. Beirne
Commissioner
Department of Health and
Social Services

DATE: April 20, 1981


FILE NO: J-66-642-81

JUL 2 1981

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Immunity/Liability -
Emergency Medical
Technicians and Para-
medics

By: Elizabeth Shaw 
Assistant Attorney General

You have asked this office to review statutes dealing with the liability to be imposed on emergency medical technicians (EMT's) and paramedics when they perform their services in a negligent manner. Although the statutes do provide a shield to liability in certain circumstances, there is no total immunity from liability.

Neither the EMT nor the paramedic may be held liable for negligently performing life-saving emergency service to a person who is in immediate danger of loss of life. The standard is objective . . . the person actually must be in a life threatening emergency. 1/

1/

Sec. 08.64.366. LIABILITY FOR SERVICES RENDERED BY A PHYSICIAN-TRAINED MOBILE INTENSIVE CARE PARAMEDIC. No act or omission of a physician-trained mobile intensive care paramedic done or omitted in good faith while rendering emergency life-saving service to a person who is in immediate danger of loss of life shall impose any liability upon the physician-trained mobile intensive care paramedic, the supervising physician, a hospital, the officers, members of the staff, nurses, or other employees of a hospital or upon a federal, state, borough, city or other local government unit or upon other employees of a governmental unit; however, this section does not relieve a physician or a hospital of a duty otherwise imposed by law upon the physician or hospital for the designation or training of a physician-trained mobile intensive care paramedic or for the provision or maintenance of equipment to be used by the physician-trained mobile intensive care paramedic.

There may, however, be liability for negligent training or negligently maintained equipment.

Footnote continued on page 2.

[The Good Samaritan statute 2/ does not require that
the person receiving emergency care be in danger of losing his
NEXT PAGE

1/ Continued

SEC. 18.08.086. IMMUNITY FROM LIABILITY.

(a) No person certified under AS 18.08.082, or person or public agency which employs, sponsors, or controls the activities of persons certified under AS 18.08.082, who administers emergency medical services to an injured or sick person, may be liable for civil damages as a result of an act or omission in administering those services, if done in good faith and if the life of the injured or sick person is in danger. This subsection does not preclude liability for civil damages which is the proximate result of gross negligence or intentional misconduct, nor preclude imposition of liability on a person or public agency which employs, sponsors, or controls the activities of persons certified under AS 18.08.082 if the act or omission is a proximate result of a breach of duty to act created under this chapter. For the purposes of this subsection, "gross negligence" means reckless, wilful, or wanton misconduct.

Sec. 18.08.090(9) "emergency medical care" means the services utilized in responding to the perceived individual needs for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury;

The definition of "emergency medical care" includes non-life saving services. The immunity from liability provision limits the definition by adding the 'life-saving' condition.

2/ Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

or her life. 'The standard is subjective . . . the person offering service must reasonably believe that the person is in need of emergency aid. The intent of such statutes is to encourage passersby to assist at scenes of accidents. 3/

It appears that the statutory scheme addresses three situations. The Good Samaritan statute shields those persons who have no duty to come to the aid of the injured or ill person in need of emergency medical care. The paramedic and the EMT, however, does not fall within the category of persons who have no duty to aid. 4/ They are shielded from liability for ordinary negligence in life threatening situations but even in life saving situations the EMT will be held liable for gross negligence or intentional misconduct.

2/ Continued

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

3/ Interestingly our statute provides that a Good Samaritan may be located at a hospital - presumably not the scene of an accident. It is unlikely, however, that a helping person located at a hospital will not have a pre-existing duty to perform emergency service.

4/ In *Lee v. State*, 490 P.2d 1206 (Alaska 1971) the court held that a State Trooper defendant who had shot the plaintiff while trying to extricate the plaintiff's arm from the jaws of a lioness, was not shielded from liability for ordinary negligence. The court stated that "A rescuer under a pre-existing duty to rescue would not need the added inducement of immunity from civil liability for his ordinary negligence." *Id.* at 1209, footnote 7. The court held that the Trooper had a pre-existing duty to come to the aid of the endangered plaintiff therefore the Good Samaritan shield did not apply. Although AS 09.65.-090 was amended in 1976, it does not appear to change general tort principles regarding duty.

Rather than attempting to include EMT and paramedics under a Good Samaritan statute which would distort the purpose of that statute, legislative amendment of the statutes which specifically deal with EMT's and paramedics would be the more appropriate action. It would be for the legislature to decide whether there is a need to shield EMT's and paramedics more extensively than is now provided. 5/

5/ AS 08.64.366 shields an EMT or paramedic from liability for ordinary negligence in a life saving situation. In non-life saving situations they may be held liable for ordinary negligence.

ES/jf

Southern Region
EMERGENCY
Medical Services Council, Inc.

April 29, 1986

Senator Bettye Fahrenkamp, Chairman
Health, Education & Social
Services Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

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If you have any questions, please give me a call.

Sincerely,



Thomas D. Scott II
President/Executive Director

cc: Senator Sturgelewski
Senator Fischer
Senator DeVries
Senator Josephson
Senator Kelly

called 5/6 after committee approval.

STATE OF ALASKA
THE LEGISLATURE

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JUNEAU, ALASKA 99811
907.465.3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HESS 5-6-86 2:56 PM