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## STATE OF MAINE

Inter-Departmental Memorandum Date 80-1 January 2, 1980

To Francis G. McGinty, Deputy Commissioner Dept. Human Services

By Sarah L. Downs, Assistant Attorney General Dept. Attorney General

Subject L.D. 1257

You have raised some questions regarding the effect of P.L. 1979, Chapter 288, on the Department of Human Services' (hereinafter Department) authority to regulate the training and licensure of ambulance personnel.

FACTS:

Chapter 2-A of Title 32, Maine Revised Statutes Annotated (32 M.R.S.A. §71 et seq.) governs the licensing of ambulance services.<sup>1</sup> Section 71 requires all operating ambulance services to be licensed by the Department of Human Services. Section 73(6) gives the Department authority to "adopt such forms, rules, regulations, procedures and records as may be necessary to fulfill the purposes of [Chapter 2-A]." Prior to the amendment of Section 73(6) by P.L. 1979, Chapter 288 (see Attachment A), the Department also had authority to "define and approve the level of emergency medical training required for licensed persons to administer emergency treatment procedures and advanced emergency treatment procedures."

Pursuant to §73(6), on October 1, 1978, the Department promulgated revised rules and regulations entitled "Regulations Relative to Licensing of Ambulance Services, Vehicles and Personnel." (hereinafter Regulations) (See Attachment B). Chapter 2.A. of these regulations establishes seven levels of personnel licensing. Three levels - ambulance attendant apprentice, licensed ambulance attendant, and licensed basic emergency medical technician-pertain to the licensing of persons to administer emergency treatment procedures. In addition to required training, applicants for licensure as licensed ambulance attendants and licensed basic emergency medical technicians are required under the regulations to complete successfully examinations developed and administered by Department personnel. The rationale for the State examination requirement was to assure a uniform, basic level of competency of ambulance personnel.

When these revised regulations went into effect on October 1, 1978, considerable controversy was generated. There were numerous complaints that the rules and regulations were promulgated and implemented without adequate opportunity for all people affected

1. 32 M.R.S.A. §72(4) defines "ambulance services" as "any organization or any person or persons who routinely provide emergency care or transportation for ill or injured persons." "Emergency care" is further defined in §72(8) to include both emergency treatment and advanced emergency treatment.

to have sufficient input.<sup>2</sup> There were also a number of complaints in regard to the inaccessibility of testing centers and the inconvenient times at which State exams were administered.

In response to the above-stated problems, two bills were enacted at the first regular session of the 109th Legislature. One, L.D. 738, enacted as P.L. 1979, Chapter 143, amended 32 M.R.S.A. §73(6) so as to require the holding of public hearings in each county of the State prior to the promulgation of rules and regulations under Chapter 2-A, Title 32, Maine Revised Statutes Annotated. The second, L.D. 1257, was enacted as P.L. 1979, Chapter 288. Section 1 of this bill deleted language in 32 M.R.S.A. §73(6) pertaining to the Department's authority to define and approve the level of emergency medical training required for licensed persons to administer emergency treatment procedures. Section 2 of Chapter 288 repealed and enacted in its place a new 32 M.R.S.A. §73(7) which established a minimum level of training for licensure as licensed ambulance personnel and included a requirement that all tests for satisfactory course completion be prepared and evaluated by qualified instructors who conducted the training and that such tests be administered at the local training area.<sup>3</sup>

QUESTIONS POSED:

1. May the Department require personnel seeking to be licensed to administer emergency treatment procedures to complete training requirements other than those enunciated in P.L. 1979, c. 288?
  2. Under 32 M.R.S.A. §73, as amended by P.L. 1979, Chapter 288, may the Department require applicants for licensure as licensed ambulance personnel to pass State examinations as a condition of licensure?
  3. If the Department cannot require applicants for licensure as licensed ambulance personnel to take State examinations, what criteria may it apply in approving licensure applications?
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2. It should be noted that the rules and regulations promulgated effective October 1, 1978 were promulgated in conformity with the Administrative Procedure Act, 5 M.R.S.A. §8001 et seq.
  3. In its original form, L.D. 1257 did not contain the requirement that the tests be prepared and evaluated by the local instructors. (See Attachment C). This provision was inserted by Committee Amendment "A" (H-327).

CONCLUSIONS:

1. The Department may not license personnel to administer emergency treatment procedures if the personnel have not completed at least the training requirements mandated by chapter 288, but may license personnel at a higher level if the more stringent training requirements are related to purposes other than qualifying solely to administer basic treatment.
2. The Department may no longer require applicants for licensure as Licensed Ambulance Attendants to pass State examinations as a condition of licensure, but may so require applicants for licensure as Basic Licensed Emergency Technicians.
3. The Department generally must assure that the statutory level of training has been achieved. A fuller explication is found below.

REASONING:

The Statement of Fact accompanying L.D. 1257 indicates an intent to "establish a minimum standard of training for licensure of ambulance attendants at the level that has been in effect by regulation and [to] provide stability in licensure requirements, thereby eliminating an annual problem that has caused difficulties in recruiting and retaining membership in rural volunteer units." (See Attachment C). It is clear, then, that L.D. 1257 was meant to be read in conjunction with the Department's regulations then in effect. It is further evident that the Legislature's primary concern was to address problems pertaining to one level of ambulance personnel recognized and licensed by the Department - the Licensed Ambulance Attendant. Chapter 288 will be construed accordingly. (See Waddell v. Briggs, 381 A.2d 1132 (Me. 1978); Davis v. State, 306 A.2d 127 (Me. 1973).

1. As noted above, the Department has established seven levels of ambulance personnel licensing under its regulations. (Regulations, Section 2.A.). The first three levels define levels of training for persons administering emergency treatment procedures; the latter four pertain to licensure for administration of advanced emergency treatment procedures. The minimum level of training established by the Legislature under Chapter 288 essentially adopts the Department's Level 2, that is, Licensed Ambulance Attendant. Since the Legislature also repealed language pertaining to the Department's authority to define and approve the level of training required for licensure to administer emergency treatment procedures, the question arises as to whether the Department may continue to license at Levels 1 and 3, Ambulance Attendant Apprentice and Licensed Basic Emergency Medical Technician, respectively.

Section 2.A.1 of the Department's regulations provides that a person who is in the process of completing minimum training requirements may be licensed as an "Ambulance Attendant Apprentice". While the training requirements that the apprentice would be in the process of completing are those established under Chapter 288, Ambulance Attendant Apprentices would nevertheless fail to meet the statutory standards

for licensure as ambulance personnel. Accordingly, licensure of personnel at this level would be beyond the scope of the Department's authority.<sup>4</sup> This conclusion does not bar the Department from extending recognition of an apprentice status by some process other than licensure; registration of apprentices would be one such means.

In contrast to Ambulance Attendant Apprentices, Level 3 under the Regulations, Licensed Basic Emergency Medical Technician (hereinafter Basic EMT), imposes more stringent requirements for training than those specified in Chapter 288. If the licensing of a person at the Basic EMT Level were merely to authorize that person to administer emergency treatment procedures, such additional requirements would be impermissible because in conflict with Chapter 288. Chapter 288 not only defines the minimum requirements a person needs to meet to be licensed to administer emergency treatment procedures, but also repeals statutory language which expressly recognized the Department's authority to set those standards.

Upon thorough review of the Regulations, one must conclude that licensure at the Basic EMT level is not solely for the purpose of authorizing the licensee to administer emergency treatment procedures. Although the Basic EMT may not administer advanced emergency treatment procedures, his/her licensure at this level is clearly an integral step in the process of qualifying for advanced EMT licensing. Accordingly, Chapter 288 does not prohibit the Department from recognizing the enhanced education and expertise of such personnel and establishing licensure levels appropriate thereto.

2. 32 M.R.S.A. §73(7), as enacted by Chapter 288, provides that "[a]ll tests for satisfactory course completion shall be prepared and evaluated by qualified instructors who conducted the training and shall be administered at the local training area." This provision refers back to those courses and tests stated to constitute the minimum training requirements for licensure as licensed ambulance personnel and clearly meant to establish the exclusive testing procedures and requirements for Licensed Ambulance Attendants. In its original form, the sentence did not include the language that the tests were to be prepared and evaluated by instructors who conducted the training.<sup>5</sup>

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4. It is apparent that the Department did not itself fully recognize Ambulance Attendant Apprentices as licensed personnel. 32 M.R.S.A. §72(3) requires all ambulances to carry at least one "licensed personnel" (or other medical professional such as a nurse or physician). Section 2.A.1 of the Department's Regulations makes it clear that apprentices were not considered the "licensed ambulance personnel" contemplated by 32 M.R.S.A. §72(3) since apprentices must be accompanied by personnel licensed at a higher level.

5. See footnote 3 above.

Rather the bill sought only to require that all tests for course completion be administered at the local training areas thus rectifying one of the major complaints surrounding the State examination. By the subsequent amendment, then, it was intended to substitute tests prepared by local instructors for the uniform State examinations.

In view of the foregoing, it is evident that the Department may no longer require an applicant for licensure as a Licensed Ambulance Attendant to complete a state examination. The enforcement of such a requirement would exceed the Department's authority.

The Department may continue to require that applicants for licensure as Basic or Advanced EMT complete State examinations. As explained above, a person need not be licensed at these higher levels in order to be licensed to administer emergency treatment procedures.

3. In addressing the question of what criteria the Department is now to apply in reviewing applications for licensure as Licensed Ambulance Attendants, it is important to keep the following points in mind. While the Legislature, pursuant to Chapter 288, retracted the Department's authority to define and approve the level of training required for licensure to administer emergency treatment procedures and instead established that level by statute, it did not modify either the Department's licensing authority or its general authority to adopt rules and procedures necessary to implement Chapter 2-A of Title 32, Maine Revised Statutes Annotated. Thus it remains the Department's responsibility to assure that the training requirements of Chapter 288 are indeed met and to fill in details where necessary.

One requirement is that tests for satisfactory course completion accompany each of the required courses. The Department may not dictate the content of the tests to be given or re-score tests given. Such regulation would be clearly inconsistent with the statutory requirement that all tests be prepared and evaluated by the course instructors. On the other hand, the Department must verify that the requisite courses and tests have been completed. To this end, it may require the submission of whatever documentation it reasonably determines to be necessary.<sup>6</sup>

A further requirement embodied in Chapter 288 is that the courses and tests are to be given by "qualified" instructors. The Legislature did not define "qualified". Thus, under the Department's authority to adopt such rules and regulations as may be necessary to fulfill the purposes of Chapter 2-A, 32 Maine Revised Statutes Annotated, the Department may promulgate regulations setting forth the minimum criteria it will apply in determining whether an applicant has been trained and tested by a "qualified" instructor.

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6. While the evaluation of course performance is largely the instructor's function, departmental scrutiny may be appropriate when the testing is clearly inadequate to demonstrate whether or not there has been satisfactory course completion.

Another area which requires further explication is the requirement of supplemental training in extrication, oxygen and suction, patient evaluation and taking of vital signs for those applicants who have taken the American Red Cross Course. 32 M.R.S.A. §73(7)(A) enacted by P.L. 1979, c. 288. Again, the Department must verify that an applicant has indeed completed such training. However, to establish enforceable standards as to the content of the training exceeds the Department's statutory authority, as amended by Section 1 of Chapter 288, since the Department would be defining the level of training required in these areas. There is, of course, nothing to prohibit the Department from recommending or developing a training program to aid the Red Cross personnel in meeting this course requirement.

The final area to be addressed is the Department's role in establishing requirements for licensure renewal for Licensed Ambulance Attendants. Under 2.I.4 of the Regulations, annual recertification in cardiopulmonary resuscitation (CPR) is required as it is under Chapter 288. However, under the Department's regulations, after the initial three-year validity period for courses other than CPR, the licensee was not required to take a full course for license renewal purposes but could instead take a refresher program approved by the Department. By depriving the Department of authority to define and approve the level of emergency medical training required for licensed persons to administer emergency treatment procedures, Chapter 288 also precludes acceptance by the Department of a refresher program as a substitute for the statutory requirements. Thus, in order to obtain renewal as a Licensed Ambulance Attendant, an applicant must meet the training requirements set out in Chapter 288.

SLD:bjw