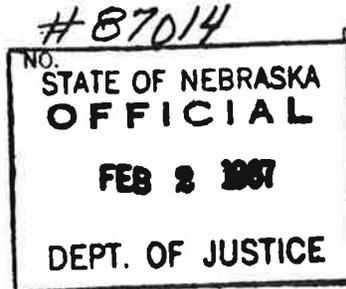


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General



DATE: January 30, 1987

SUBJECT: The Emergency Medical Technician-Paramedic Act,  
Neb.Rev.Stat. §§71-5501 to 71-5523 (Reissue 1986)

REQUESTED BY: Gregg F. Wright, M.D., M.Ed.  
Director of Health, Department of Health

WRITTEN BY: Robert M. Spire, Attorney General  
Marilyn B. Hutchinson, Assistant Attorney General

The Department of Health is in the process of preparing rules and regulations to implement the above act. You have asked several questions that have arisen in that process.

1. What is the relationship between the Department and the Board of Advanced Emergency Medical Care?

The basic relationship of the Department and Board is set out in Neb.Rev.Stat. §71-5503. That is, the Department is to administer the program and the Board is to advise and assist it in doing so. The Department is to adopt all rules and regulations required or authorized by the act, but the Board must approve them first. See also, Neb.Rev.Stat. §§71-5509, 71-5514, 71-5515 and 71-5521.

That basic relationship is reflected in the procedure for applying for certifications or approvals or renewals of them under the act. See, Neb.Rev.Stat. §§71-5508, 71-5514 and 71-5515. That is, application is to be made to the Department on the form required by the Department and the Board by rules and regulations. Then the Department, with the concurrence of the Board, shall approve any application which meets certain standards, and the Department shall issue the certification or approval or renewal of either one. Appropriately, the Board, as well as the Department, must be assured of the facts by which it can determine that the applicable standards are met. See, Neb.Rev.Stat. §§71-5508(3) and 71-5515(6). Under Neb.Rev.Stat.

L. Jay Bartel  
Martel J. Bundy  
Janie C. Castaneda  
Dale A. Comer  
Laura L. Freppel

Lynne R. Fritz  
Yvonne E. Gates  
Jill Gradwohl  
Royce N. Harper  
William L. Howland

Marilyn B. Hutchinson  
Mel Kammerlohr  
Sharon M. Lindgren  
Charles E. Lowe  
Steven J. Moeller

Harold I. Mosher  
Fredrick F. Neld  
Bernard L. Packett  
Lisa D. Martin-Price  
LaRoy W. Sievers

James H. Spears  
Mark D. Starr  
John R. Thompson  
Susan M. Ugal  
Linda L. Willard

Gregg F. Wright, M.D., M.Ed.  
January 30, 1987  
Page -2-

§71-5517, the Director of Health has additional grounds on which he or she may deny, refuse renewal, suspend or revoke a certification or approval. Concurrence by the Board is not expressly required. We may infer from Neb.Rev.Stat. §71-5515(6) that some input by the Board is necessary. That would be consistent with the basic relationship between the Department and the Board.

The basic relationship between the Department and the Board is reflected in Neb.Rev.Stat. §71-5509 which requires the approval of both the Department and the Board for certifications.

Consistent with the role of the Board to advise and assist the Department in administering the act, the Board is to determine which examinations are appropriate under Neb.Rev.Stat. §71-5522(6) and the Board is to administer or have a representative administer the examination required under Neb.Rev.Stat. §71-5515(5) if a certification has lapsed. To be consistent with the basic relationship in the act between the Department and the Board, such examinations should also be acceptable to the Department.

Consistent with the role of the Board to advise and assist the Department in administering the act, the Board is given the responsibility in Neb.Rev.Stat. §71-5515 to develop ongoing educational programs. The basic relationship between the Department and the Board is preserved because such programs are to be by regulation which requires concurrence between the Department and the Board. Neb.Rev.Stat. §71-5503. See also, Neb.Rev.Stat. §71-5521(4).

In conclusion, the Department is to administer this act and the Board is to advise and help the Department in doing so, sometimes by performing specific tasks. The Department is to issue certifications and approvals and is to adopt rules and regulations to implement the act, but only after it has received the approval of the Board.

2. Does the renewal process in Neb.Rev.Stat. §71-5515(5) apply to approvals of training and service programs as well as to certifications of persons under the act?

Yes, except for the examination requirement. Certificates are issued under the act not only to certain emergency medical practitioners, but also to approved training programs and approved service programs. See, Neb.Rev.Stat. §§71-5502(2) and (15), 71-5508, 71-5509.

Gregg F. Wright, M.D., M.Ed.  
January 30, 1987  
Page -3-

Neb.Rev.Stat. §71-5515(5) begins with a general statement: "A certificate that is not renewed shall lose its validity." (Emphasis added.) It closes with a general statement: "The procedures for renewal and reinstatement of all certificates shall in all other respects be as identified in section 71-110, except that no fees shall be charged." (Emphasis added.) The one other respect that is different is the requirement for examination of persons holding specified certificates which have lapsed as stated in §71-5515(5).

Neb.Rev.Stat. §71-5515(6) provides a source of information to be used in making "determinations regarding the certification, renewal, denial, or decertification of any certificate holder or applicant." (Emphasis added.) That source, inspections by the Department or its authorized representatives, "may be made a condition of renewal for certification to operate an approved training program or certification to operate an approved service program." (Emphasis added.)

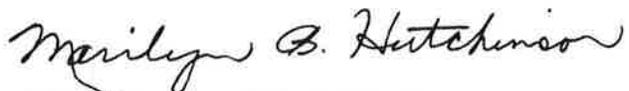
In conclusion, certificates to operate an approved training program and certificates to operate an approved service program must be renewed as provided in Neb.Rev.Stat. §71-110 except that no fees shall be charged.

3. What is the scope of practice of a physician's surrogate designated under Neb.Rev.Stat. §§71-5502(8)?

We have repeatedly said that "water cannot rise higher than its source." That is, a registered nurse or physician's assistant cannot stand in the place of a licensed physician to supervise functions which are not within their own scope of practice. A physician cannot authorize them to do so by a written designation and the Board would have no authority to approve such a designation if it were made.

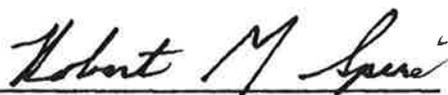
Sincerely yours,

ROBERT M. SPIRE  
Attorney General



Marilyn B. Hutchinson  
Assistant Attorney General

MBH/bae  
APPROVED:

  
Robert M. Spire  
Attorney General