March 28, 1995

OPINION NO. 95-008

Roger E. Glick
Executive Administrator
State Board of Emergency Medical Services
Ohio Department of Public Safety
240 Parsons Avenue
P.O. Box 7167
Columbus, Ohio 43206-0167

Dear Executive Administrator Glick:

You have requested a formal opinion on the question whether the State Board of Emergency Medical Services "has authority to promulgate rules concerning the minimum training requirements of emergency telecommunicators and the accreditation of schools teaching such courses." In a telephone conversation, you stated that an emergency telecommunicator is an individual who dispatches ambulances and who might also dispatch fire and police vehicles. The telecommunicator does not travel to the scene of an emergency, does not provide medical services, and is not required to be certified as an emergency medical technician-ambulance (EMT-A), advanced emergency medical technician-ambulance (ADV EMT-A), or emergency medical technician-paramedic (paramedic). Your question is whether the authority of the State Board of Emergency Medical Services extends to the establishment of training requirements for individuals who serve as emergency telecommunicators and the accreditation of schools that provide such training.

Authority of the State Board of Emergency Medical Services

The State Board of Emergency Medical Services exists within the Division of Emergency Medical Services of the Department of Public Safety. It consists of one employee of the Department of Public Safety designated by the Director of Public Safety and seventeen other members, appointed by the Governor, who have background or experience in emergency medical services or trauma care. R.C. 4765.02. As a creature of statute, the State Board of Emergency Medical Services has only the powers that it is expressly given by statute and those powers that are necessarily implied in order to exercise the express powers. *See generally, e.g., Dreger v. Public Employees Retirement System*, 34 Ohio St. 3d 17, 20-21, 516 N.E.2d 214, 217 (1987) (a creature of statute "has no authority beyond that which is expressly or impliedly conferred by statute"); *Athens Home*

Telephone Co. v. Peck, 158 Ohio St. 557, 562, 110 N.E.2d 571, 574 (1953) ("administrative agencies are creatures of statute and possess only such rule-making power as is delegated to them").

The Board is given express statutory authority to examine and certify an applicant to serve as an EMT-A, ADV EMT-A, or paramedic. *See* R.C. 4765.28-.31. Further, the Board is expressly required by statute to accredit or approve schools that provide emergency medical services training programs or continuing education programs and to certify persons who teach in such programs. *See* R.C. 4765.15-.23. The term "[e]mergency medical service," however, is defined by statute for purposes of R.C. Chapter 4765 to mean any of the services described in R.C. 4765.37-.39 that are performed by EMT-As, ADV EMT-As, or paramedics, including such services when they are performed during transport of a patient. R.C. 4765.01(F). This definition does not include services performed by emergency telecommunicators. For this reason, the duties of accreditation, approval, and certification imposed upon the Board by R.C. 4765.15-.23 do not apply to training in emergency telecommunications. Thus, the Board does not have express statutory authority to establish requirements for the training of emergency telecommunicators or the accreditation of schools providing such training. It is necessary, therefore, to examine the statutes governing the Board to determine whether the Board has any powers from which such authority may be implied.

R.C. 4765.04 requires the Board to establish certain advisory groups and permits it to establish other advisory groups. The advisory groups report to the Board, and the Board is authorized to implement any of their recommendations by rule. *See* R.C. 4765.04(A); R.C. 4765.11(B)(2). One of the groups that is required to be formed is the "access, delivery, and quality care advisory group," which is directed to "review and make recommendations to the board on the accessibility, delivery, and quality of emergency medical services performed by EMT-As, ADV EMT-As, and paramedics." R.C. 4765.04(B)(4). The group "shall also review and make recommendations on other issues specified by the board." R.C. 4765.04(B)(4).

It is clear that the dispatching of ambulances is an integral part of the delivery of emergency medical services. It does not follow, however, that the authority of the Board to consider and implement recommendations relating to the accessibility, delivery, and quality of emergency medical services permits the Board to adopt rules that require an emergency telecommunicator to obtain specified training from a school accredited by the Board. The recommendations submitted by an advisory group pursuant to R.C. 4765.04 cannot expand the Board's authority beyond that which it is granted by statute. *See generally, e.g., Carroll v. Department of Administrative Services*, 10 Ohio App. 3d 108, 110, 460 N.E.2d 704, 707 (Franklin County 1983) ("the director may not promulgate rules which add to his delegated powers, no matter how laudable or sensible the ends sought to be accomplished").

By statute, the Board certifies individuals who provide emergency medical services and individuals who teach such providers. It approves and accredits schools and programs that provide training in emergency medical services. The Board, however, has no authority to impose requirements upon persons who perform other functions, even though their actions may in some way affect the capacity of an EMT-A, ADV EMT-A, or paramedic to provide emergency medical services. *See generally, e.g.*, R.C. 4765.43 (providing that a person who simply drives an ambulance

is not required to be certified as an EMT-A, ADV EMT-A, or paramedic). The Board's certification authority is focused directly upon individuals who either provide emergency medical services or provide training in emergency medical services. The General Assembly has not granted the Board express authority to certify persons who perform other functions or who provide training in such functions, and such authority cannot be based by implication upon the recommendation of an advisory board pursuant to R.C. 4765.04.

The Board's power to adopt rules regarding school certification and individual training and performance is statutorily restricted to those involved in "emergency medical services." *See* R.C. 4765.15-.23, .28-.31. While it might logically be suggested that emergency telecommunicators are engaged in "emergency medical services," such an extension of the term is statutorily precluded by R.C. 4765.01(F), which defines emergency medical services as only those services performed by EMT-As, ADV EMT-As, or paramedics. This definition restricts the Board's authority to regulate performance and training to these specific types of personnel. It must be concluded, accordingly, that R.C. 4765.04 does not provide authority for the Board to promulgate rules establishing minimum training requirements for emergency telecommunicators or standards for persons or schools that provide training in emergency telecommunications.

Another possible source of authority over emergency telecommunicators and their training is R.C. 4765.09, which authorizes the Board to "prepare recommendations for the operation of ambulance service organizations and emergency medical service organizations" on topics including the "communication systems necessary for the operation of ambulances." R.C. 4765.09. The recommendations are to be shared with boards of county commissioners, township trustees, or trustees of a joint ambulance district, and there may be reports to ascertain compliance with such recommendations. R.C. 4765.09. It does not appear that such recommendations are to be adopted as rules and given the force and effect of law. *See* R.C. 4765.09, .11.

R.C. 4765.09 permits the Board to recommend to ambulance service organizations and emergency medical service organizations the types of communications systems ambulances should have and to suggest general qualifications or training that would be helpful for persons who operate such systems. R.C. 4765.09, however, does not authorize the Board to adopt enforceable standards of minimum training for emergency telecommunicators. Rather, statutory use of the word "recommendation" necessarily implies that some other entity or individual has the power to accept and act upon the recommendation. *See, e.g.*, *People of Virgin Islands v. Price*, 181 F.2d 394, 396 (3d Cir. 1950) ("[t]o recommend is to present as one's advice or choice or as having one's approval. It ordinarily involves the idea that another has the final decision" (footnote omitted)). Having been granted only the power to recommend, the Board necessarily lacks the power to adopt and enforce a system of certification and accreditation governing emergency telecommunications.

No other provision of R.C. Chapter 4765, either expressly or by necessary implication, authorizes the Board to promulgate rules governing the training of emergency telecommunicators or the accrediting of their instructional programs. It must be concluded, accordingly, that no such authority exists.

Your letter states that the Board "recognizes the need to establish a state-wide standard for the training of emergency telecommunicators and for the accreditation of schools teaching those courses." This opinion concludes that the Board lacks statutory authority to adopt rules establishing such a standard. The Board is empowered, however, to "[m]ake recommendations to the general assembly on legislation to improve the delivery of emergency medical services." R.C. 4765.10(A)(5). The Board might choose to include in its recommendations to the General Assembly suggestions as to how this perceived need could be met.

Conclusion

For the reasons discussed above, it is my opinion and you are advised that, under existing statutes, the State Board of Emergency Medical Services does not have authority to promulgate rules concerning the minimum training requirements of emergency telecommunicators or the accreditation of schools providing such training.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

March 28, 1995

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SYLLABUS: 95-008

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