

Note from the Attorney General's Office:

1976 Op. Att'y Gen. No. 76-060 was clarified by
1980 Op. Att'y Gen. No. 80-023.

OPINION NO. 76-060

Syllabus:

1. The provisions of Am. Sub. H.B. 832 (R.C. 4731.82 to R.C. 4731.90, R.C. 4731.90 and R.C. 4731.92) which will become effective on August 31, 1976 do not repeal Ohio's "Good Samaritan" statute, R.C. 2305.23, nor indirectly amend it to require that an individual be the holder of an emergency medical technician certificate in order to take advantage of the immunity from civil damage liability which R.C. 2305.23 may provide in any given case.

2. An individual who provides emergency medical service after August 31, 1976 as an emergency medical technician without benefit of licensure will not avail himself of the statutory immunity from civil damage liability provided for by R.C. 4731.90 and may subject himself to the misdemeanor penalty provisions of R.C. 4731.99, even though such an individual does not visually or audibly identify himself as an emergency medical technician.

3. No provision of Am. Sub. H.B. 832 prohibits the Ohio Superintendent of Public Instruction from issuing emergency medical technician certificates after the effective date of Am. Sub. H.B. 832, to be effective on the effective date of Am. Sub. H.B. 832, where applicants have submitted a proper application and have, in fact, fully qualified for certification prior to the effective date of the Act.

To: Martin W. Essex, Supt. of Public Instruction, Columbus, Ohio
By: William J. Brown, Attorney General, August 26, 1976

Within the past week I have received your request for my opinion concerning several issues arising from the June 1, 1976 enactment of Am. Sub. H.B. 832, which becomes effective August 31, 1976. The stated purpose of this enactment, as described in the analysis prepared by the Legislative Services Commission, is to give political subdivisions express authority to operate emergency medical services and to establish statewide standards for the education of emergency personnel in order to provide good emergency medical care for Ohioans.

In general, Am. Sub. H.B. 832 provides for certification of two classes of emergency medical technicians: EMT-Ambu-

lance (EMT-A) and EMT-Paramedic (Paramedic). The Paramedic classification is one which requires more training and instruction than that of the EMT-A, though the technical training for both classes is substantial. See R.C. 4731.84.

Those individuals who are certified pursuant to the new law will, after its effective date, benefit from the immunity against civil damage liability (absent willful and wanton misconduct) which is provided for in R.C. 4731.90:

"No EMT-A or paramedic shall be liable in civil damages for administering emergency medical care or treatment outside a hospital or doctor's office. . . ."

While Am. Sub. H.B. 832 requires completion of the training and instruction outlined in R.C. 3731.84 prior to the issuance of a certificate, the new law also provides a "grandfather" clause. Under the "grandfather" clause those performing EMT-A or paramedic functions prior to the effective date of the act may, within a year of the effective date (until August 31, 1977) receive the appropriate certificate upon application to the Ohio Superintendent of Public Instruction. Where such an applicant has received training and instruction comparable to that required by R.C. 4731.84 on or before August 31, 1976 (and is later approved by the Ohio Board of Regents or the State Board of Education as the "accrediting bodies" for training of these areas) he shall receive the appropriate certificate.

You have advised that your office is in receipt of approximately 20,000 such applications but that it will not be possible to issue certificates to any applicant until nearly two weeks after the new law has become effective. It is this impossibility which raises the three questions you have posed:

"1. If a person does not present himself as an emergency medical technician by visual or audible identification, may he provide emergency medical services after August 31, 1976 without holding a certificate issued pursuant to Section 4731.86 or 4731.87, Ohio Revised Code?

"2. If a person may provide emergency medical services without a certificate, does he continue to have the same immunity under the 'Good Samaritan' statutes as he had prior to the enactment of Amended Substitute House Bill No. 832?

"3. If a certificate is issued after the effective date of the statute to those who apply within one year and who qualify by having received the appropriate training and instruction prior to the effective date of the statute pursuant to the 'grandfather' provision in Section 4731.97, Ohio Revised Code, may the effective date be indicated as August 31, 1976?"

Initially I believe it appropriate to point out in response to your first two questions, that the new law (Am. Sub. H.B. 832) contains nothing to abrogate or destroy "Good Samaritan" protection from civil liability, to the extent such protection has been available in the past. See R.C. 2305.23 and 2305.24. The language of Am. Sub. H.B. 832, particularly the provisions of R.C. 4731.90, demonstrate

clear legislative intent to protect those who provide emergency treatment from civil liability for negligent acts. Nothing in the new law addresses the long existing "Good Samaritan" Statutes, so that it would be inappropriate to conclude that the new law amends or repeals R.C. 2305.23 or R.C. 2305.24.

What the new law does and what it is designed to do is provide straightforward immunity from civil liability (in the absence of willful and wanton misconduct) by supplying direct legislative language never before available. This more absolute immunity becomes available upon certification.

Without the new certificate, then, the "Good Samaritan" statutes continue to operate, though the straightforward civil immunity granted by the new law (R.C. 4731.90) would not be available. There is also the potential for violation of R.C. 4731.99(F) where EMT-A or paramedic functions are undertaken after the effective date of Am. Sub. H.B. 832 without benefit of certification. R.C. 4731.99(F) provides that it is a minor misdemeanor on a first offense (and a fourth degree misdemeanor on subsequent offenses) to violate R.C. 4731.92 (A), (B) or (C).

R.C. 4731.92 provides in pertinent part:

"(A) No person shall represent himself as an emergency medical technician-Ambulance or an EMT-A until certified under division (A) of section 4731.86 or division (A) of section 4731.87 of the Revised Code.

"(B) No person shall represent himself as an emergency medical technician-paramedic or a paramedic until certified under division (B) of section 4731.86 or division (B) of section 4731.87 of the Revised Code.

"(C) No public or private agency shall advertise or disseminate information leading the public to believe that the agency is an emergency medical service, unless that agency actually provides emergency medical care as described under division (C) of section 4731.82 of the Revised Code."

Your first question raises the issue of when an individual would "represent" himself as an emergency medical technician in violation of the provisions set out above. While this issue does require a factual determination to be made in each case, it does seem that an individual does represent himself as an emergency medical technician when he arrives at the scene of an emergency in contemplation of rendering emergency medical treatment even though the individual does not visually or audibly identify himself as an emergency medical technician.

In response to your first two questions, then, it is proper to state that, absent certification, a person who provides an emergency medical service after the effective date of Am. Sub. H.B. 832 may not benefit from the straightforward civil immunity provided by R.C. 4731.90, and such persons may subject themselves to the misdemeanor penalty provisions of Am. Sub. H.B. 832 as contained in R.C. 4731.99.

Your third question raises the issue of whether an individual applicant may be issued a certificate effective as of August 31, 1976, where he has completed the proper training and instruction prior to that date and has done all else prior to that date which would be required of him by way of application - all in an effort to obtain a proper certificate by August 31, 1976. A review of the provisions of Am. Sub. H.B. 832 reveals nothing to prohibit issuance in such a case of a certificate after August 31, 1976 which nevertheless indicates an effective date of August 31, 1976. In this regard it should again be noted that the non-availability of the certificate on August 31, 1976 to an applicant, who in fact will be determined as having been qualified to receive it as of that earlier date, is a function not of the individual applicant but of the office of the State Superintendent of Public Instruction. To the extent that your office determines it administratively appropriate to indicate an effective date on those certificates actually issued on a later date, it is responsive to your third question to also indicate that Am. Sub. H.B. 832 does not prohibit this approach being taken on applications filed after the effective date of the new law - so long as the certificate date does not pre-date receipt of the application and so long as the training and instruction requirements of R.C. 4731.87 had been satisfied prior to August 31, 1976. The issuance of certificates - effective as of August 31, 1976 - where applications had not been received until later is not prohibited by any specific language in Am. Sub. H.B. 832. However, the logical justification for allowing the effective date to relate back to August 31, 1976 - that everything an applicant can do before August 31, 1976 has been done - does not apply where an application is not received until, for example, November 30, 1976.

In specific answer to your questions, then, it is my opinion and you are so advised that:

1. The provisions of Am. Sub. H.B. 832 (R.C. 4731.82 to R.C. 4731.90, R.C. 4731.90 and R.C. 4731.92) which will become effective on August 31, 1976 do not repeal Ohio's "Good Samaritan" statute, R.C. 2305.23, nor indirectly amend it to require that an individual be the holder of an emergency medical technician certificate in order to take advantage of the immunity from civil damage liability which R.C. 2305.23 may provide in any given case.
2. An individual who provides emergency medical service after August 31, 1976 as an emergency medical technician without benefit of licensure will not avail himself of the statutory immunity from civil damage liability provided for by R.C. 4731.90 and may subject himself to the misdemeanor penalty provisions of R.C. 4731.99, even though such an individual does not visually or audibly identify himself as an emergency medical technician.
3. No provision of Am. Sub. H.B. 832 prohibits the Ohio Superintendent of Public Instruction from issuing emergency medical technician certificates after the effective date of Am. Sub. H.B. 832, to be effective on the effective date of Am. Sub. H.B. 832, where applicants have submitted a proper application and have, in fact, fully qualified for certification prior to the effective date of the Act.