

Note from the Attorney General's Office:

1979 Op. Att'y Gen. No. 79-042 was clarified by
1980 Op. Att'y Gen. No. 80-023.

OPINION NO. 79-042**Syllabus:**

1. Where a private corporation provides emergency medical services on its property for the benefit of its employees or the visiting public, persons performing those services must be certified emergency medical technicians, or must be otherwise licensed to perform such acts beginning August 31, 1979.
2. Any person, including a physician or nurse, must complete the required training course in order to become certified as an emergency medical technician.
3. The liability of a physician or nurse, who renders emergency medical care but who is not a certified emergency medical technician, is governed by R.C. 2305.23, if the physician or nurse is acting as a volunteer. However, if the physician or nurse is remunerated, or expects remuneration for such care, the physician or nurse is not granted civil immunity from liability under either R.C. 4731.90 or R.C. 2305.23.
4. A county, township or municipality is not required to provide emergency medical service, since R.C. 505.71, 505.443 and 307.051 are permissive, not mandatory.
5. The accrediting body is not precluded under Ohio law from granting a certificate of accreditation to a program of instruction in emergency medical care merely because there are persons enrolled in that program who are under the age of 18 years.
6. No person who is a certified emergency medical technician is liable in civil damages for injury, death, or loss to persons or property resulting from his administration of emergency medical care or treatment unless the care or treatment is administered in a manner constituting willful or wanton misconduct.

**To: John A. Shonkwiler, Executive Director, Adjutant General's Department,
Worthington, Ohio**
By: William J. Brown, Attorney General, July 27, 1979

I have been asked to render an opinion on the following questions:

1. Where a private corporation provides emergency medical services acts on its property for the benefit of its employees or for the benefit of the visiting public is it necessary that the persons performing such acts be certified under R.C. 4731.84?
2. Is it mandatory for doctors and/or nurses to take the required training to become certified as emergency medical technicians (EMT-As, ADV EMT-As, paramedics)?
3. What is the liability status of physicians and nurses while working in an ambulance?
4. Is a county, township or municipal corporation required by statute to provide emergency medical services in Ohio?
5. Is a program of instruction in emergency medical services precluded from being certified by the appropriate accrediting body where among its participants are persons under the age of eighteen years?
6. Is it mandatory for an injured victim on private property who is in need of medical aid to be transported to a medical facility?
7. May an injured victim refuse medical aid at the scene of the injury?
8. If an injured victim is transported to a hospital against his will what is the liability of those who transported him enroute to the hospital?

I will discuss these questions in the order in which they are presented.

As to your first question, I will assume that "emergency medical services" as used in your request refers to those services which certified emergency medical technicians are authorized to perform under R.C. 4731.82. These include such acts as opening and maintaining an airway, cardiac monitoring and resuscitation, immobilizing fractures, defibrillation, and the administering of appropriate drugs and intravenous fluids.

Prior to 1976 there was no provision in the Revised Code for regulation of those persons administering emergency medical services. In that year the General Assembly enacted Am. Sub. H.B. 832. The stated purpose of the enactment, as described in the analysis prepared by the Legislative Services Commission, was 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. (See 1976 Op. Att'y Gen. No. 76-060).

Pursuant to the latter purpose, R.C. 4731.82 *et seq.* contains minimum statutory requirements, both for accreditation of programs of instruction in emergency medical services (R.C. 4731.84), and for certification of those persons who complete the requisite training (R.C. 4731.84) or otherwise qualify for certification (R.C. 4731.86, 4731.87, 4731.871). In addition, R.C. 4731.90 creates an immunity from civil liability in favor of those persons administering emergency medical care who are certified as emergency medical technicians. Finally, R.C. 4731.92 prohibits any person from representing himself as an emergency medical technician after August 31, 1979, unless such person has been certified under R.C. 4731.86 or 4731.87. Part (D) of R.C. 4731.92 prohibits any public or private agency from advertising or disseminating information leading the public to believe that such agency is an emergency medical service unless that agency actually has certified persons performing those services. A person violating R.C. 4731.92 is guilty of a misdemeanor under R.C. 4731.99.

It is true that there is contained within R.C. 4731.82 et seq. no express prohibition against the administration of emergency medical services by a non-certified technician. Within those sections, however, and within the subsequent amendments to the original Am. Sub. H.B. 832, there is ample evidence of the intent on the part of the Legislature to require that those persons performing emergency medical service acts on a regular basis in the State of Ohio be certified emergency medical technicians as defined in R.C. 4731.82(A), (B), and (C).

In 1976 Op. Att'y Gen. No. 76-060, I concluded that under R.C. 4731.92 a person represents himself as an emergency medical technician, and thus may violate that section, 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. I pointed out in that opinion that there existed the potential for violation of R.C. 4731.99(F) where a person undertakes emergency medical technician functions without benefit of certification. In response to this opinion the General Assembly enacted, in a rare second special session, Am. H.B. 1. That bill amended R.C. 4731.87 to allow persons performing emergency medical services prior to August 30, 1976, until August 31, 1978, to become certified and in uncodified Section 3 allowed such persons to continue performing such services until August 31, 1978. The uncodified emergency measure provides, in pertinent part, as follows:

Section 3. Persons performing functions of emergency medical technicians on August 30, 1976, who do not meet the requirements of section 4731.86 or 4731.87 of the Revised Code, or have not been certified as qualified, may continue to function in that capacity until August 31, 1978. Each such person, and the employing or contracting organization or agency, its officers or supervising employees, shall be entitled to the exemption from civil liability of section 4731.90 of the Revised Code. (Emphasis added.)

From the adoption of this amendment and its extension in 1978 (Am. Sub. H.B. No. 1092), which gives such persons until August 31, 1979 to acquire proper certification, it seems clear the the Legislature was of the opinion that, without such a special extension, R.C. 4731.92 prohibited those who had been providing emergency medical services from doing so without proper certification. It follows then, that if the Legislature felt the necessity to convene a special session in order to enact emergency legislation to protect those persons from violating the provisions of R.C. 4731.82 et seq., it must surely intend those sections to apply to all persons providing emergency medical services. In addition, it is significant that the General Assembly has not felt compelled to amend those sections other than to extend the date beyond which "no person shall represent himself as" an emergency medical technician.

Am. Sub. H.B. 1092, also provided for the addition of R.C. 4731.841 which provides, in part, as follows:

(B) During each emergency run made by an ambulance that is equipped for emergency medical care, the ambulance shall be staffed by at least two individuals who are EMT-As, ADV EMT-As, or paramedics. When an ambulance is so staffed, it may be driven by a person who is not certified as an EMT-A, ADV EMT-A, or paramedic. (Emphasis added.)

Although the provision is also not an express prohibition against administration of emergency medical care by non-certified technicians, it is additional evidence of an intent by the General Assembly, in order to insure that all residents of the state are afforded quality emergency medical services, to require that such services be administered by persons who have completed the various educational requirements for certification as an emergency medical technician.

It should be noted at this point, as I did in my 1976 opinion, supra, that nothing in R.C. 4731.82 et seq. was intended to abrogate or destroy "Good Samaritan"

protection from civil liability as provided in R.C. 2305.23. There is a strong public policy to encourage private citizens to provide emergency assistance where they are able and this is, of course, the reason for such immunity under R.C. 2305.23. This policy of encouraging assistance may help to explain the reluctance of the General Assembly to provide an express prohibition against the rendering of emergency medical assistance by non-certified technicians. Although it appears that the General Assembly could have made such a provision while clearly excepting "Good Samaritan" situations, it did not. Nevertheless, it seems clear from the overall content of R.C. 4731.82 et seq., and the amendments thereto, that the Legislature did intend to require certification for all those persons who are rendering emergency medical services outside of the "Good Samaritan" situation.

Your request specifically inquires as to whether a private corporation, providing emergency medical services on its property for the benefit of its employees or the visiting public, is required to use certified technicians. I commend to you the language of R.C. 4731.82(E) which defines "emergency medical service" as follows:

. . . a public or private organization using EMT-As, ADV EMT-As, and paramedics, to provide emergency medical care to victims of serious illness or injury prior to the victims receiving professional medical care or hospitalization, (Emphasis added.)

The section would appear to include a private corporation. In addition, R.C. 4731.92(D) provides prohibition against any "public or private agency" (emphasis added) advertising or disseminating information leading the public to believe that the agency is an emergency medical service, unless it actually uses certified technicians. This section would seem to apply at least to those situations where a private corporation provides emergency services for the benefit of the visiting public.

Furthermore, since the purpose of R.C. 4731.82 et seq. is to ensure that Ohioans will have good emergency medical care by establishing minimum training requirements for person performing such services, it would not make sense to carve out an exception from the certification requirements for those persons performing such services on private property. Such an exception would subject persons who happened to be injured on private property to potentially inferior emergency medical care, since the minimum training requirements associated with certification would not apply. It is my conclusion, therefore, that the requirements of R.C. 4731.82 et seq. were intended to apply to all persons and organizations providing emergency medical services whether they be on public or private property.

In answer to your first question, then, it is my opinion that a private corporation which employs persons to provide emergency medical services to its employees or the visiting public on its own property violates R.C. 4731.92(D), and may violate R.C. 4731.84, unless the persons so employed are emergency medical technicians who are certified under R.C. 4731.86, 4731.87, or 4731.871.

Your second question asks whether it is mandatory for doctors and nurses to take the required training in order to become certified as emergency medical technicians. Section 4731.86 and 4731.87 of the Ohio Revised Code provide for the issuance of a certificate to those persons who have completed the required course or its equivalent. This is the only mechanism for certification provided by the statute. It is clear, therefore, that any person, doctors and nurses included, who desires to be certified as an ETA, must complete the required courses.

This result may seem anomalous in light of the extensive education and training which both doctors and nurses receive in comparison with the 90-120 hour course requirement for EMTs. It must be recognized, however, that the training for certification as an EMT is very specialized, and contains instruction in areas which are not necessarily covered in an equivalent manner in the typical medical school or nursing school program. R.C. 4731.84 provides that a program of

instruction for certification of emergency medical technicians-ambulance or emergency medical technicians-paramedics shall include, as a minimum, training in each of the following subjects:

- (1) Emergency victim care, taught by a qualified person;
- (2) Reading and interpreting a trauma victim's vital signs, taught by a medical doctor, doctor of osteopathic medicine and surgery, registered nurse, or other qualified person;
- (3) In-hospital training;
- (4) Clinical experience, either in a hospital or on an emergency vehicle;
- (5) Training as an ambulance driver.

While the course of instruction in a medical school or nursing school would obviously include much more extensive training than is required in certain of these areas, it would not necessarily include the required training in all areas. For example, while medical school or nursing school training would include extensive instruction in reading and interpreting a victim's vital signs, it probably would not include training as an ambulance driver nor would it necessarily include the requisite amount of training in administering emergency care to victims under field conditions.

R.C. 4731.84 also requires that a program for certification of emergency medical technicians meet the standards adopted by the United States Department of Transportation. Pursuant to departmental standards, an emergency victim care course must include the following lessons as described in National Highway Traffic Safety Administration, Dept. of Transportation, Basic Training Course/Emergency Medical Technician, Course Guide (1977):

Lesson 19. Field Exercise: Extrication from Automobiles (3 hrs.). Principles and considerations involved in gaining access to and extricating persons from automobiles, packaging and removing patients with suspected spine and other injuries from automobiles; removing patients from beneath automobiles.

Lesson 21. Operations—Driving and Maintaining an Emergency Vehicle, Records and Reports, Communications, and Procedures at Emergency Departments (3 hrs.). Overview of EMT procedures and responsibilities in the listed operational areas.

Lesson 22. Responding to an Ambulance Call—A Review of Factors Affecting Ambulance Run Efficiency and Patient Assessment (2 hrs.). Integration of knowledge learned during the course by discussion of considerations involved in phases of an ambulance run; patient examination and assessment; review of vital signs and their implications; triage.

The emergency victim care course offered in Ohio contains the following lessons which have been judged to be in compliance with the Federal regulations:

SESSION #1 — CHAPTERS 1 to 7
Vehicles-Equipment-Personnel Operations-Records and Reports-Safe Driving Practices-Controlling the Situation

SESSION #22 — CHAPTER 28
Extrication from Automobiles

Since such instruction is included in the minimum program requirements, I conclude that a physician or nurse must have such training in order to be certified as an emergency medical technician.

It must be noted, however, that the fact that a physician or nurse is not certified as an emergency medical technician pursuant to either R.C. 4731.86 or

R.C. 4731.87 does not mean that such individual is prohibited from, or limited in, performing any act which his professional license otherwise permits him to perform. A licensed physician or nurse may perform any act which is authorized under the appropriate licensing statutes or regulations even though such act would constitute an emergency medical service for the purpose of R.C. 4731.82 et seq.

Your third question concerns the liability status of physicians and nurses working in an ambulance. Assuming that these individuals are certified, they would receive the immunity conferred upon certified EMTs by R.C. 4731.90, which provides as follows:

(A) No EMT-A [,ADV EMT-A,] or paramedic is liable in civil damages for injury, death, or loss to persons or property resulting from his administration of emergency medical care or treatment, unless the care or treatment is administered in a manner constituting willful or wanton misconduct.

If such physician or nurse is not a certified EMT, the circumstances under which the care is rendered will be determinative. R.C. 2305.23, the "Good Samaritan" statute, may be applicable under certain circumstances. That statute provides as follows:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration, or with the expectation of remuneration, from the recipient of such care or treatment or someone on his behalf. The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration.

As I noted in 1976 Op. Att'y Gen. No. 76-060, the provisions of R.C. 4731.82 to R.C. 4731.90, R.C. 4731.90 and R.C. 4731.92 do not repeal nor indirectly amend R.C. 2305.23. R.C. 4731.82 et seq., which establish and provide for supervision of emergency medical services were enacted to provide a straightforward immunity to civil liability. Therefore, this section should not affect the liability of a doctor or nurse who would otherwise be covered under the "Good Samaritan" statute. It is accepted as sound public policy that citizens should be encouraged to render what assistance they can in an emergency situation. The "Good Samaritan" statute does so and its availability should not be diminished by the addition of a similar immunity under R.C. 4731.90.

Thus, if a physician or nurse administers emergency medical care on a volunteer basis, they will be protected by the shield of R.C. 2305.23. If, however, they are receiving remuneration for their services, they would not be protected under that section and, not being certified EMTs, would not be protected by the immunity granted in R.C. 4731.90. In such a situation they would be held to the same standard of care that normally applies to physicians and nurses in the general practice of their profession.

In response to your fourth question, which asks about the duty of certain governmental entities to provide emergency medical care, R.C. 307.051 provides as follows:

A board of county commissioners may provide ambulance service or emergency medical service, or may enter into a contract with one or more counties, townships, municipal corporations, nonprofit corporations, or private ambulance owners, regardless of whether

such counties, townships, municipal corporations, nonprofit corporations, or private ambulance owners are located within or without the state, in order to obtain additional ambulance service in times of emergency, or to obtain emergency medical services. (Emphasis added.)

R.C. 505.71 provides, similarly:

The boards of township trustees of one or more townships and the legislative authorities of any one or more municipal corporations within or adjoining such townships, or the boards of township trustees of two or more townships, or the legislative authority of two or more municipal corporations, may, by adoption of a joint resolution by a majority of the members of each board of township trustees and by a majority of the members of the legislative authority of each municipal corporation, create a joint ambulance district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon. (Emphasis added.)

Lastly, R.C. 505.443 provides as follows:

In order to obtain ambulance service, to obtain additional ambulance service in times of emergency, or to obtain emergency medical service, any township may enter into a contract, for a period not to exceed three years, with one or more townships, municipal corporations, or private ambulance owners, regardless of whether such townships, municipal corporations, nonprofit corporations, or private ambulance owners are located within or without the state, upon such terms as are agreed to by them, to furnish or receive ambulance services or emergency medical services or the interchange of ambulance services or emergency medical services within the several territories of the contracting subdivisions, if such contract is first authorized by respective boards of township trustees or other legislative bodies. (Emphasis added.)

Nothing in the language of these sections requires that such governmental bodies establish ambulance or emergency medical services. These provisions consistently use the language "may provide" or "may enter into contracts". Such language is merely discretionary and permissive, not mandatory. A governmental body is not, therefore, required to provide emergency medical services.

Your fifth question asks whether a program of instruction in emergency medical services is precluded from being certified by the appropriate accrediting body where persons under the age of eighteen years are among its participants.

The applicable accreditation standards are set forth in R.C. 4731.84. No specific age requirement is included therein. R.C. 4731.84(B) provides, however, that "[a] program for certification of emergency medical technicians—ambulance shall meet the program standards adopted by the United States department of transportation so as to qualify for federal funds under the Highway Safety Act of 1966"

The U.S. Department of Transportation, National Highway Traffic Safety Administration, has published several program manuals pursuant to this act. See, e.g., National Highway Traffic Safety Administration, Dept. of Transportation, Highway Safety Program Manual No. 11, Emergency Medical Services (1974); National Highway Traffic Safety Administration, Dept. of Transportation, National Training Course, Emergency Medical Technician-Paramedic. While these publications recommend 18 as the minimum age for participation in a training program, I am unaware of any regulation that makes such minimum age for participants a mandatory prerequisite for program accreditation.

Absent any mandatory prerequisite in the federal standards, an accrediting

body is not precluded by R.C. 4731.84 from issuing a certificate of accreditation to a program which includes persons under the age of 18 years among its participants.

Your final questions are closely related and are all dependent on the particular circumstances of a given situation. Since they depend for their resolution on the precise factual setting, I am unable to provide any conclusive opinion on these last questions. In each instance, however, it is clear that the EMT shall not be liable under the statute unless his misconduct is willful or wanton.

As to question six there is no requirement that technicians transport a victim to a medical facility. It is possible, however, that failure to transport where necessary could be willful or wanton misconduct and as such would raise some question as to liability under R.C. 4731.90.

Question seven asks if a victim may refuse aid at the scene. It is fundamental that a patient may refuse medical assistance; however, it is conceivable that failure to supply assistance, even where a victim refuses, could constitute willful or wanton misconduct. Again, the factual circumstances would be controlling.

The final question asks what is the liability of attendants who provide services against the will of a patient. Again the facts are controlling, but it is conceivable that providing such service against the will of the patient could constitute willful or wanton misconduct.

In specific response to your question, it is, therefore, my opinion and you are advised:

1. Where a private corporation provides emergency medical services on its property for the benefit of its employees or the visiting public, persons performing those services must be certified emergency medical technicians, or must be otherwise licensed to perform such acts beginning August 31, 1979.
2. Any person, including a physician or nurse, must complete the required training course in order to become certified as an emergency medical technician.
3. The liability of a physician or nurse, who renders emergency medical care but who is not a certified emergency medical technician, is governed by R.C. 2305.23, if the physician or nurse is acting as a volunteer. However, if the physician or nurse is remunerated, or expects remuneration for such care, the physician or nurse is not granted civil immunity from liability under either R.C. 4731.90 or R.C. 2305.23.
4. A county, township or municipality is not required to provide emergency medical service, since R.C. 505.71, 505.443 and 307.051 are permissive, not mandatory.
5. The accrediting body is not precluded under Ohio law from granting a certificate of accreditation to a program of instruction in emergency medical care merely because there are persons enrolled in that program who are under the age of 18 years.
6. No person who is a certified emergency medical technician is liable in civil damages for injury, death, or loss to persons or property resulting from his administration of emergency medical care or treatment unless the care or treatment is administered in a manner constituting willful or wanton misconduct.