



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

April 13, 1970

Dr. J. E. Peavy
Commissioner of Health
Texas State Department of Health
Austin, Texas 78756

Opinion No. M-609

Re: Validity of certain
rules and regulations
of the State Health
Department.

Dear Dr. Peavy:

Pursuant to the provisions of Article 4590b, Vernon's Civil Statutes, certain rules and regulations have been proposed for adoption by the State Board of Health. These rules and regulations read as follows:

"In addition to items specifically set forth in S.B. 230 the following shall also be required prior to the issuing of any permit to operate an ambulance within the State of Texas.

"A. Required Equipment - There will be on board at all times the following items of equipment:

"1. Hinged half-ring lower extremity splint with web straps for ankle hitch

"2. Two or more padded boards 4-1/2 feet in length and 3 inches wide and two or more similar padded boards 3 feet in length and 3 inches wide, of material comparable to four-ply wood, for coaptation splinting of fracture of leg or thigh

"3. Two or more padded 15 inch by 3 inch wood or cardboard splints for fractures of the forearm

"4. Short and long back boards with 2 inch webbing straps for extrication of victims with spine injuries

"5. Oxygen tanks and masks of assorted sizes for administration of oxygen

"6. Hand operated bag-mask resuscitation unit with adult, child and infant size masks (unit capable of being attached to oxygen supply preferred)

"7. Simple suction apparatus with catheter

"8. Mouth-to-mouth, two-way resuscitation airways for adults (1) and children (1)

"9. Oropharyngeal airways (3)

"10. Mouth gags made of three tongue blades taped together and padded

"11. Universal dressing, approximately 10 inches by 36 inches packaged folded to 10 inches by 9 inches

"12. Sterile gauze pads

"13. One, 2 and 3 inch adhesive tape on cylinder

"14. Six-inch by 5 yard soft roller type bandages

"15. Triangular bandages

"16. Safety pins, large size

"17. Bandage shears

"18. Several pillows

"This represents the minimal equipment list as prescribed by the American College of Surgeons Committee on Trauma.

"B. Ambulance Attendants - There shall at all times be two ambulance attendants on each ambulance while it is in operation. All attendants will

satisfactorily complete the Emergency Care Training Course for ambulance attendants which is offered free of charge throughout the state by the Texas State Department of Health at such times as it is offered within their area. Ambulance attendant means an individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as a driver.

"C. Non-Compliance - Following notification by a representative of the Texas State Department of Health, Disaster Health and Medical Services, of non-compliance with this act or the rules and regulations set forth to enforce it, the licensee shall within 14 days:

"1. Notify the Texas State Department of Health, Disaster Health and Medical Services, in writing that remedial measures have been taken to secure compliance;

"2. Forward to the Texas State Department of Health, DHMS written notice of cause for not complying with this act and the rules and regulations prescribed for enforcing it, and request a hearing;

"or

"3. Cease operations and forward his ambulance permit(s) to the Texas State Department of Health, DHMS by registered mail.

"D. Hearing - When a hearing is requested it shall be held within 21 days from the date of request and will be held at the Texas State Department of Health in Austin, Texas. Within 10 days after conclusion of such hearing, a written decision as to the status of said ambulance permit shall be submitted to the licensee."

With regard to the above proposed rules, you ask the following questions:

"(1) Since the above quoted Section 2 prescribes minimum equipment to be carried on these vehicles, may the Board of Health, by rules and regulations, expand the amount of equipment to be carried by the permittee's vehicle?

"(2) In the event that your answer to Question No. 1 is in the negative, then may the Board of Health, through the rule-making authority granted in 4590b, set the minimum contents of the first aid kit prescribed by Section 2a of the Act?

"(3) In the event that your answer to Question No. 1 is in the affirmative, are permittees in violation of rules and regulations promulgated by the State Board of Health for the purpose of carrying out this Act subject to the penalty provided in Section 5 of the Act?

"(4) Are the existing regulations set out in Attachment No. 1 valid as being within the regulatory powers granted the Board of Health by the Act?

"(5) If approved by the Board of Health, will the proposed regulations as set out in Attachment No. 2 be valid as being within the regulatory powers granted the Board of Health by the Act?"

Sections 1 and 2 of Article 4590b, Vernon's Civil Statutes, provide:

"Section 1. No person, firm or corporation shall operate or cause to be operated in the State of Texas, any emergency ambulance, public or private, or any other vehicle commonly used for the transportation or conveyance of the sick or injured, without first securing a permit therefor from the State Board of Health as hereinafter provided.

"Sec. 2. Every ambulance, patrol automobile or vehicle hereinafter described, before permit is issued therefor, shall be

equipped with and, when in service, carry as minimum equipment the following:

"(a) A first aid kit;

"(b) Traction splints for the proper transportation of fractures of the extremities."

Section 4 authorizes the State Board of Health to adopt rules and regulations "for the purpose of carrying out this Act" and states that it shall be the duty of the State Board of Health to issue a permit to applicants, and further provides:

"Any such permit may be subject to revocation by the State Board of Health upon the finding by a public health officer of any political sub-division of this state that said permittee has failed to comply with the provisions of this Act or the rules and regulations of the State Board of Health; provided, however, that said permittee is given notice and an opportunity to be heard."

Section 5 provides:

"Sec. 5. Any person violating any provision of this Act shall, upon conviction thereof, be punished by a fine of not to exceed One Hundred (\$100.00) Dollars."

If the rules and regulations adopted by the State Board of Health pursuant to the provisions of Article 4590b, Vernon's Civil Statutes, are consistent with, related to, and an implementation of any of the provisions of Article 4590b, such rules and regulations are valid. Kee v. Baber, 157 Tex. 387, 303 S.W.2d 376 (1957); Texas State Board of Examiners in Optometry v. Carp, 412 S.W.2d 307 (Tex.Sup. 1967).

Applying the above test to the rules and regulations submitted by you, we note that the Legislature did not specify the minimum requirements for first aid kits, nor for traction splints "for the proper transportation of fractures of the extremities," rather it left such details to be implemented by reasonable rules and regulations of the State Board of Health. It is further noted that the required

equipment prescribed in the proposed rules constitutes the minimal equipment list as prescribed by the American College of Surgeons Committee on Trauma and therefore in our opinion properly implements Section 2 of Article 4590b.

Your questions are therefore summarily answered. With reference to question Nos. 1, 4 and 5, you are advised that the State Board of Health, by rules and regulations, may define what constitutes minimal equipment for a proper first aid kit and traction splints for the proper transportation of fractures of the extremities. It is our opinion that the included rules and regulations are reasonable and constitute a proper exercise of the rule-making power of the Board since such rules are an implementation of the provisions of Article 4590b.

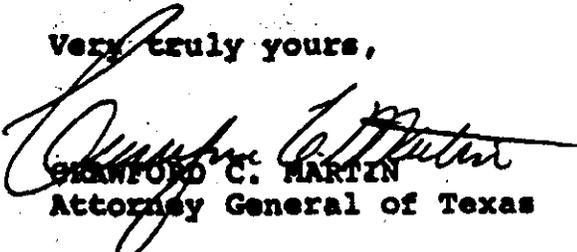
In view of our answer to question No. 1, it is unnecessary to answer question No. 2.

In answer to question No. 3, you are advised that if any person holding a permit to operate an ambulance violates such rules and regulations, the permit issued by the State Board of Health may be revoked by the State Board of Health upon a determination by the Board that said permittee has failed to comply with the rules and regulations of the Board. Thereafter, if such person operates an ambulance without a valid permit, such person is subject to the penalties provided in Section 5 of Article 4590b.

S U M M A R Y

The State Board of Health may adopt such reasonable rules and regulations relating to minimal equipment for ambulances as are consistent with, related to, and an implementation of Section 2 of Article 4590b, Vernon's Civil Statutes.

Very truly yours,


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