

**LETTER OPINION**  
**96-L-27**

March 1, 1996

Mr. Rolf P. Sletten  
Executive Secretary  
North Dakota State Board  
of Medical Examiners  
418 E Broadway Ave, Suite 12  
Bismarck, ND 58501

Dear Mr. Sletten:

Thank you for your letter requesting my opinion regarding whether a physician can assign tasks embraced within the definition of "nursing" to an EMT in a hospital setting on a routine, non-emergency basis without subjecting the EMT to regulation by the Board of Nursing.

N.D. Admin. Code § 50-03-01-12 provides that a physician may delegate "to a qualified person any acts, tasks, or functions which are otherwise permitted by law or established by custom." Thus, the question posed by your letter is whether an EMT is permitted by law to perform tasks embraced within the definition of "nursing" in a hospital setting.

Regulation and certification of emergency medical services personnel, including EMTs, is provided for in N.D.C.C. ch. 23-27. N.D.C.C. § 23-27-04.2 provides that the health services branch of the North Dakota Department of Health "shall assist in the training of personnel of certain prehospital emergency medical services as determined by the branch. . . ." N.D.C.C. § 23-27-04.3 further states that the State Health Council "shall adopt rules prescribing minimum training, testing, and certification standards for prehospital emergency medical services personnel." These rules must include "a definition of prehospital emergency medical services personnel." N.D.C.C. § 23-27-04.3. Pursuant to this authority, the Health Department has promulgated N.D. Admin.

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Code art. 33-36, Emergency Medical Services Personnel Training, Testing, and Certification.

Included in this article is N.D. Admin. Code § 33-36-01-01(5) which defines "prehospital emergency medical services personnel" as "those persons certified under the programs defined in this chapter." Persons certified under N.D. Admin. Code § 33-36-01-01 include first responder, emergency care technician, emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, and advance first aid ambulance attendant. Thus, EMTs are prehospital emergency medical services personnel.

The term "prehospital emergency medical services personnel" is not defined in the North Dakota Century Code. The term, therefore, must be understood in its ordinary sense. N.D.C.C. § 1-02-02. As generally understood, the term "prehospital" would mean before or prior to the hospital. See The American Heritage Dictionary 974 (2d coll. ed. 1991) (defining "pre-" as "[e]arlier; before; prior to" and "[p]reparatory; preliminary"). "Emergency", in this context, means a sudden occurrence of a serious and urgent nature that demands immediate attention. Id. at 448. Thus, as generally understood, "prehospital emergency medical services" would mean medical services provided in an ongoing emergency prior to or in preparation for an individual's receiving care from a hospital. Nothing in N.D.C.C. ch. 23-27, N.D. Admin. Code art. 33-36, or the legislative history of N.D.C.C. § 23-27-04.3 indicates that an EMT or any other prehospital emergency medical services personnel are authorized to provide medical services in a nonemergency hospital setting.

Based upon the plain meaning of the term "prehospital," it is my opinion that EMTs and other prehospital emergency medical services personnel are not permitted by law to provide medical services to a person already receiving hospital care and may not substitute for hospital personnel by receiving patients for routine or emergency care. For an EMT or other prehospital emergency medical services personnel to provide medical services in hospitals, the EMT or other prehospital emergency medical services personnel must have a separate license granting the personnel the authority to perform such services. Under such circumstances, the EMT or prehospital emergency

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medical services personnel would be subject to the regulation of the licensing board issuing the license under which the services were being performed. However, in an emergency or disaster situation, an EMT could perform nursing tasks within the EMT's training without a nursing license under an exception to the Nurse Practices Act. N.D.C.C. § 43-12.1-04(1). An EMT may continue to provide care until hospital personnel take over the patient's care.

By way of clarification, your letter is incorrect to the extent that it states prehospital emergency medical services personnel are regulated by the Board of Medical Examiners and the Health Department. Authority to certify and regulate prehospital emergency medical services personnel is provided to the State Health Council in N.D.C.C. § 23-27-04.3. Although N.D.C.C. ch. 43-17 grants the Board of Medical Examiners authority to license and regulate physicians and physicians' assistants, that chapter does not authorize the Board of Medical Examiners to regulate the practice of prehospital emergency medical services personnel. See N.D.C.C. § 43-17-02(10) (physician's trained assistants may not be authorized to perform services otherwise regulated by licensing laws). Such authority is legislatively granted to the State Health Council.

In conclusion, it is my opinion a physician cannot assign medical tasks embraced within the definition of any profession to an EMT in a hospital setting on a routine, non-emergency basis unless the EMT is licensed by the appropriate professional board to perform the services.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

DAB/tmb