

MEMORANDUM OF LAW

DATE: October 5, 1994

TO: H. John Liberatore, Battalion Chief - Fire Department

FROM: City Attorney

SUBJECT: Fire Department's Proposed Amendment to their Infection Control Policies and Procedures Plan

In a memorandum dated August 17, 1994, you asked the question whether the language, "at no time shall a rescuer provide unprotected respiratory support to a patient" should be included in the San Diego Fire Department's Infection Control Policies and Procedures Plan ("ICPPP"). Our office has concluded that the above quoted statement should not be included in the ICPPP because it is inconsistent with the California Occupational Health and Safety Administration ("Cal/OSHA") guidelines. Cal/OSHA guidelines do not preclude unprotected respiratory or other emergency care under "extraordinary circumstances." The proposed amendment to the ICPPP is inconsistent with the Cal/OSHA guidelines because it completely bars unprotected emergency care being rendered by Fire personnel.

The proposed amendment to the ICPPP also increases the City's liability unnecessarily. A firefighter may not provide emergency care in a situation that it should have been rendered because of the proposed language in the ICPPP. The firefighter's conduct may be deemed to be "grossly negligent," thus exposing the City to liability.

Attached is a legal analysis that substantiates the above stated position of this office. The research was done by Senior Legal Intern Paul Mussenden. Our office concurs with the legal analysis and conclusions contained in Mr. Mussenden's memorandum.

Finally, this memorandum of law addresses Fire Marshal Jerry Cannon's concern regarding whether it's mandatory to provide equipment and training to Fire personnel required to provide emergency care. Our office has concluded that it is mandatory for the Fire Department to provide protective equipment and training to Fire personnel providing emergency care.

JOHN W. WITT, City Attorney

By

Elmer L. Heap, Jr.

Deputy City Attorney

ELH:smm:800:(x043.2)

Attachment

cc Chett Chew, Director of Administration

Gerald Cannon, Fire Marshal

ML-94-81