LAVINE, J., concurring. I agree that the decision of the workers' compensation review board (board) should be reversed but write separately because I conclude that injuries that are a direct of result of suicide rescue are a special hazard inherent in a judicial marshal's duties.

In this appeal, the plaintiff, Robert W. Nelson, is seeking workers' compensation benefits pursuant to General Statutes § 5-142 (a), which provides in relevant part: "If . . . any Judicial Department employee *sustains any injury* (1) . . . in the *actual performance* of such . . . *guard duties* . . . or while *attending* or restraining *an inmate* . . . or as a result of being assaulted in the performance of such person's duty, or while *responding to an emergency* . . . at a correctional institution, and (2) that is a direct result of the *special hazards inherent in such duties*, the state shall pay all necessary medical and hospital expenses . . . . If total incapacity results from such injury . . . [s]uch person shall continue to receive the full salary that such person was receiving at the time of injury . . . ." (Emphasis added.)

The findings of the workers' compensation commissioner (commissioner) are for the most part consistent with the plaintiff's testimony and his written incident report that was placed into evidence.[1] I quote the report that was written the day after the incident. "At [approximately] 1058 hours [I] was told by Officer [Todd] Bennison to get prisoner [Larry] Ferrante and [another prisoner] ready to [go] up to courtroom 2. When I approached the cell that prisoner Ferrante was in, as always, I look through the cell door window for my safety. This is when I noticed a big puddle of blood on the cell floor. Prisoner Ferrante was standing up near the prison door when he suddenly fell to the floor. I immediately told Officer Bennison to call 911 for help. I tried to open up the cell door, but prisoner Ferrante's body was blocking the door. I was able to open the door slightly so I could fit my body in the cell and [was] able to move Ferrante so the cell door could open. After the cell door was open, I assessed Ferrante to find out where the blood was actually coming from. I then came to realize that he had sliced his wrists somehow. I promptly told the other officers to get gauze and any kind of bandages. There were no bandages to be found, so I had to improvise and use paper towels to wrap around both his arms. I then applied pressure to the worst arm and asked Officer [John] Pavia to assist me and apply pressure to the other arm. I waited for the [emergency medical technicians] to arrive at the courthouse. I then went to the hospital by ambulance with Officer [Doug] Smith to guard prisoner Ferrante up to

his release from the hospital. End of report nothing follows."

I agree with the majority that the resolution of the plaintiff's appeal involves statutory construction, which is a question of law. "The principles that govern our standard of review in workers' compensation appeals are well established. The conclusion drawn by [the commissioner] from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them." (Internal quotation marks omitted.) *Tracy* v. *Scherwitzky Gutter Co.*, 279 Conn. 265, 272, 901 A.2d 1176 (2006). I do not agree, however, that any deference is owed to prior decisions of the board under the facts of this case. "[T]he traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation . . . ." (Internal quotation marks omitted.) *Ricigliano* v. *Ideal Forging Corp.*, 280 Conn. 723, 729, 912 A.2d 462 (2006). "A state agency is not entitled . . . to special deference when its determination of a question of law has not previously been subject to judicial scrutiny." (Internal quotation marks omitted.) *Tracy* v. *Scherwitzky Gutter Co.*, supra, 272.

The factual circumstances of this case, in which a judicial marshal came upon a passive prisoner in need of immediate medical attention, have not been addressed by the board. The board, in fact, conceded that *Johnson* v. *State*, 67 Conn. App. 330, 786 A.2d 1260 (2001), cert. granted, 259 Conn. 924, 792 A.2d 854 (2002) (appeal withdrawn March 28, 2002),[2] and *Hudson* v. *Dept. of Correction*, 4582 CRB-3-02-11 (October 31, 2003),[3] are distinguishable from the facts here, but nonetheless deferred to the commissioner's findings.

In this case, the parties agree that the plaintiff sustained a compensable injury, and the defendant has paid all of the plaintiff's medical expenses, *including* those for blood tests necessitated by the plaintiff's exposure to the prisoner's blood. The plaintiff, however, was totally incapacitated for three weeks due to an injury to his back that he sustained when he moved the prisoner. The issue, as stated by the commissioner, is "whether [the plaintiff] is entitled to a compensation rate of roughly two-thirds of his pay [under chapter 568 of the General Statutes] or 100 percent of his pay [pursuant to § 5-142 (a)]." To resolve the issue, this court must answer the question whether an injury sustained by a judicial marshal while he attends a prisoner who has attempted suicide is a direct result of the special hazards of such duty. I answer this question in the affirmative, concluding that because attempted suicide is an emergency that occurs in jails more frequently than it does in the general population, injuries

that are a direct result of suicide rescue are a special hazard inherent in the duties of a judicial marshal.

"Relevant legislation and precedent guide the process of statutory interpretation. [General Statutes § 1-2z] provides that, [t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the statute shall not be considered. . . . [P]ursuant to § 1-2z, [the court is] to go through the following initial steps: first, consider the language of the statute at issue, including its relationship to other statutes, as applied to the facts of the case; second, if after the completion of step one, [the court] conclude[s] that, as so applied, there is but one likely or plausible meaning of the statutory language, [the court] stop[s] there; but third, if after the completion of step one, [the court] conclude[s] that, as applied to the facts of the case, there is more than one likely or plausible meaning of the statute, [the court] may consult other sources, beyond the statutory language to ascertain the meaning of the statute." (Internal quotation marks omitted.) *State* v. *Prazeres*, 97 Conn. App. 591, 594–95, 905 A.2d 719 (2006). I conclude that the language "special hazards inherent in such duties" is ambiguous in view of the cases previously distinguished in this concurrence. I therefore look to other sources to ascertain the meaning of special hazards.

In a 1958 opinion issued by the attorney general, the stated purpose of the predecessor to § 5-142 (a) was "to give extra compensation than that provided by the provisions of the [Workers'] Compensation Act to those employees whose duties relating to the attending or restraining of inmates, and the danger of being assaulted, are more hazardous than other State employees." Opinions, Conn. Atty. Gen. No. 30-115 (January 28, 1958). The attorney general's opinion helps to make clear that an assault or physical aggression toward a state employee is not a necessary component of a compensable injury under the statute. The question then becomes whether any type of resistance on the part of the prisoner who attempts suicide is necessary to constitute an inherent special hazard, as suggested in *Hudson* v. *Dept. of Correction*, supra, 4582 CRB-3-02-11. I think it is not.

Although decisions of this court and our Supreme Court recognize that the duties of certain state employees subject them to assault; see, e.g., *Jones* v. *Mansfield Training School*, 220 Conn. 721, 724, 601 A.2d 507 (1992) (employee injured when attacked by resident of training school); under the statute, physical violence or aggression is not the only danger for which compensation is available. The present form of the statute also

contemplates that a judicial marshal may be required to respond to an emergency. The statute now provides that certain state employees who interact with prisoners may be subject to injury by means other than physical violence. By the clear language of the statute, therefore, benefits are available under § 5-142 (a) not only for an injury sustained by a marshal who was restraining a prisoner or who was assaulted by one, but also for injury sustained while the judicial marshal was "responding to an emergency . . . ." General Statutes § 5-142 (a). In this case, a judicial marshal was exposed not only to the prisoner's blood and the possible risk of contracting a deadly disease, but also to an injury to his back caused by having to move the prisoner in order for emergency medical treatment to be provided.

Suicide, or attempted suicide, is not uncommon in prisons and jails. Trial courts routinely place prisoners who are accused of crimes on suicide watch. Counsel for the parties here debated prisoner suicides before the commissioner, who acknowledged at the hearing that suicide could be considered a special hazard,[4] but made no such finding. Moreover, the literature indicates that suicide in jails is disproportionately higher than in the general population. "While suicide is recognized as a critical problem within the jail environment, the issue of prison suicide has not received comparable attention. Until recently, it has been assumed that suicide, although a problem for jail inmates as they face the initial crisis of incarceration, is not a significant problem for inmates who advance to prison to serve out their sentences. The assumption, however, has not been supported in the literature. Although the rate of suicide in prisons is far lower than in jails, it remains disproportionately higher than in the general population." M. Thigpen, Foreword, Prison Suicide: An Overview and Guide to Prevention (United States Department of Justice, National Institute of Corrections 1995) p. ii. The board itself, in fact, has recognized the higher frequency of attempted suicide among prisoners. See *Hudson* v. *Dept. of Correction*, supra, 4582 CRB-3-02-11.

I disagree with the commissioner's reasoning that, when the plaintiff discovered the bleeding prisoner, he responded as any member of the general public would have responded. In doing so, the commissioner relied on *Johnson* v. *State*, supra, 67 Conn. App. 330, in which the plaintiff prison guard sustained an injury while supporting an inmate who had slipped on the floor while exiting a shower. In *Johnson*, this court agreed that when one sees a person trip or fall, the natural reaction is to come to the person's aid. In today's world, when deadly diseases can be transmitted by means of blood products, a member of the general public is not likely to render physical aid to a person who is bleeding because he slit his wrists. Indeed, when explaining to the commissioner that the state would pay for the plaintiff's blood tests, counsel for the defendant, the state

of Connecticut, conceded the danger when he stated: "Your Honor, the state will concede . . . given the circumstances regarding the injury . . . that bill should be paid for . . . ."

I also disagree with the manner in which the board distinguished the facts here from *Hudson*, to wit: the plaintiff in this case "was moving the inmate after the suicide attempt. The [plaintiff] was not preventing or stopping the suicide, nor was he restraining the prisoner." In *Hudson*, the prison guard came upon the inmate as he was dangling in a noose and sustained a back injury by lifting the inmate to prevent strangulation. In this case, the plaintiff came upon the prisoner immediately after he had collapsed on the floor and was bleeding profusely. Although the plaintiff did not prevent the suicide attempt in the sense that he kept the prisoner from slitting his wrists, he may have prevented the prisoner's death by moving the prisoner so that he and others could administer first aid. I believe that a suicide attempt is not over until the victim either dies or is rescued, regardless of the means of suicide employed.

Because I conclude that injuries directly related to suicide rescue are a special hazard inherent in a judicial marshal's duties, I concur.

[1] The commissioner found that the plaintiff discovered the pool of blood on the floor after opening the cell door. The evidence presented at the hearing indicated that the plaintiff saw the blood on the floor while looking through the window of the cell.

[2] In *Johnson* v. *State*, supra, 67 Conn. App. 330, this court upheld the decision of the board, concluding that reaching for an inmate who slips as he exits a shower is not a special hazard inherent in a prison guard's duties. Id., 337. The board observed that "almost any employee in any business might be placed in the unexpected situation of having to break someone's fall . . . ." (Internal quotation marks omitted.) Id. As I conclude herein, rescuing a person from attempted suicide is not a position in which almost any employee in any business might be found. In coming to this conclusion, I do not imply that any person coming upon an individual who has attempted suicide, whether in the workplace or not, would not call for medical assistance.

[3] The commissioner awarded compensation under § 5-142 (a) for an injury that resulted from an attempted suicide in *Hudson* v. *Dept. of Correction*, supra, 4582 CRB-3-02-11. The board affirmed the commissioner's finding because it concluded that the correction officer was injured while restraining a resistant inmate who was attempting to hang himself. In affirming the award, the board acknowledged the increased risk of suicide in a prison setting. "[T]he act of restraining an inmate so as to prevent his suicide falls within the ambit of special hazards of employment as a correction officer. Also, the prison setting is much more likely to produce a situation such as the one in the instant matter than other employment situations as contemplated by [*Johnson* v. *State*, supra, 67 Conn. App. 330]." *Hudson* v. *Dept. of Correction*, supra, 4582 CRB-3-02-11.

[4] The following colloquy occurred during the hearing.

"[The Plaintiff's Counsel]: . . . *Johnson*, the earlier case, is where an inmate trips and falls and they say, hey, that can happen anywhere. They indicate, we think, [that] there is a difference between these two activities, that is the *Johnson* [plaintiff] falling accidentally and that of restraining an inmate to prevent a suicide . . . . Prevent the suicide falls in the special hazards of employment as a correction officer.

"The Commissioner: Well, we just want to illuminate a bit about these cases, and a suicide situation is probably not unique because people do that more than just in jails, but what it would seem to me, it could be considered a special hazard and, therefore, things would befall a particular inmate or

one of the employees. I could see how that in effect is a special hazard. I don't think it is unique, but it is special.

* * *

"[The Plaintiff's Counsel]: And that—not that, I think not that it could only happen there, but that it is more—the chances are more likely that it is going to happen there.

"The Commissioner: That is what I think we understand when we talk about a special hazard in this context; that it is something that will happen here far more readily than anywhere else."