MEDICO-LEGAL ISSUES IN EMS
MEDICAL DIRECTION

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Disclosures

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Agenda

- Part 1 — The basics
  - Relationship with the EMTs / paramedics and the ambulance
    service
  - Liability issues (e.g., malpractice, civil rights, controlled
    substances, OSHA, reimbursement, unprofessional conduct,
    consent, capacity / competence, patient status, reporting /
    disclosure)
  - Impact of health & tort reform
Agenda (cont’d)

- Part 2 – Practical ways to manage risk
  - Risk management
  - Contracts & risk allocation
  - Compliance
  - Liability insurance
  - Claims management
  - Tail coverage
  - Advocacy

Part 1 – The Basics

Relationship

- Patient
- Agency
- Supervisory
- "Respondeat superior"
- Ownership
- Regulatory requirements – state by state
- Contractual requirements
- Professional society standards
- Actual vs. perceived
- Control / involvement?
Relationship (cont’d)

Liability Issues

- Negligence
  - Duty
  - Breach
  - Causation
  - Damages

Liability Issues (cont’d)

- Civil rights
  - ADA – disability
  - Discrimination
  - Diversity and inclusion
  - Immigration
  - Others?
Liability Issues (cont’d)

- Controlled substances
  - Whose controlled substances registration do the providers / ambulance service operate under?
  - What processes and policies are in place to protect against diversion?
  - Are audits being conducted?
  - Who is responsible?
  - Both Federal and State oversight

Liability Issues (cont’d)

- Reimbursement issues
  - Coding
  - Coverage
  - Documentation
  - Payment
  - Audits
  - Education

Liability Issues (cont’d)

- OSHA issues

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Liability Issues (cont’d)

- Unprofessional conduct
  - Medical board actions?
  - Secondary or primary to underlying issues?

- Informed consent / refusal
  - Basic concept - a person’s agreement to allow something to happen (or not happen), made with full knowledge of the risks involved and alternatives.

- Capacity
  - The mental ability to understand the nature and effects of one’s acts.
  - Can the patient reason and deliberate, appreciate one’s circumstances, understand information, communicate etc.?

- Legal competence
  - Legal entitlement to have wishes respected regarding treatment.

Liability Issues (cont’d)

- Reporting / disclosure issues
  - Some federal requirements, e.g., DEA requirements related to theft or significant loss
  - Concept of mandatory vs. voluntary
  - Immunity / legal protection
  - Common topics - physical abuse (physical, & emotional), neglect, exploitation and driving impairment

- Patient status – DNR, determination of death, etc.

- Other issues / considerations – every state is different!
Impact of Health & Tort Reform

- Patient Protection and Affordable Care Act (PPACA) did not directly address medical liability.
- PPACA, quality, comparative effectiveness and “defensive medicine”.
- Will expanded coverage reduce (i) the propensity to sue, and (ii) scope of damages?
- Will subsequent legislation focus on cost containment through tort reform?
- State damage caps & constitutional challenges.

Case Studies / Discussion Questions

Part 2 – Practical Ways to Manage Risk
Quality Assurance / Risk Management

- Is there a quality and risk management committee? Are you on the quality and/or risk management committee?
- Above and beyond CME, what is done to ensure quality?
- Does the ambulance provider have a designated risk manager? A risk management process?
- Have employees been disciplined in the past for quality issues?

Quality Assurance / Risk Management (cont’d)

- Is there a quality review process available for the EMS providers? What best practices can you migrate from your own peer review process?
- Is the EMS provider appropriately identifying and responding to incidents, i.e., reducing legal liability? What is your role in these processes?
- What is the organization’s culture around medical errors?
- Are there CLEAR lines of responsibility when addressing routine and non-routine patient encounters?
- Are you periodically meeting with all of the EMS providers?

Contracts & Risk Allocation

- What due diligence have you done on the EMS provider?
- Have you reviewed your EMS Medical Director contract?
- Has it undergone legal review by appropriate counsel?
- What are your duties? (“Supervise” – “direct” – “control” – “manage”)
- What are the duties of the ambulance provider? (What are they committing to in terms of processes to manage risk and ensure quality?)
- What are the duties of others? (Who handles online medical control?)
Contracts & Risk Allocation (cont’d)

- Does your contract address the key points of this presentation?
- Who is responsible for your Medical Director insurance?
- Will the ambulance provider indemnify you for acts and omissions not covered by your insurance? Do they have assets to cover such responsibility?
- Who has authority to settle a matter?
- Is the EMS provider self-insured?
- Is the EMS provider a government entity?

Compliance

- Does the ambulance provider have a compliance program and compliance officer?
- Are there policies and procedures to address key risk areas?
- Are associated activities monitored / audited?
- Example – Are there policies pertaining to how morphine should be stored, dispensed and wasted? Are morphine stocks audited on a periodic basis? Who does the auditing?

Liability Insurance

- Broker
- Disclosure
- Operations / business model
- General liability
- Professional liability
- Other coverage (D & O)
- What is the market in your area? How do you cover any difference?
- Who has the authority to settle?
Claim Management

- Notice to carrier (What is the triggering event?)
- Coverage (coverage counsel)
- Limitations
- Counsel
  - Selection
  - Who is being represented
- Policy limits

Claim Management (cont’d)

- Alternative Dispute Resolution
  - Mediation
  - Arbitration
    - Binding
    - Non-Binding
- Lawsuit
- Jurisdiction
- Timing

Claim Management (cont’d)

- State specific
- Damages
- Caps
- Settlement
Tail Coverage

- What is tail coverage?
- When is it necessary?
- What are some of the coverage issues?
- Who will cover the cost?

Advocacy

- Continue to engage with NAEMSP
- Partner with other EMS and health care organizations

Questions?