Legal Case Studies for EMS Physicians

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Conflict of Interest Disclosure

NONE

Overview

• EMS physicians infrequently brought into suits
  – BUT:  
    • TREND IS INCREASING
    • YOUR INSURANCE MAY NOT COVER THE TYPES OF SUITS BEING FILED
Objectives

At the end of this presentation, participants will be able to…

• Define the legal relationship between the EMS physician and EMTs
• Identify the elements of a negligence lawsuit
• Discuss causes of action that might be filed against an EMS physician
• Define direct and indirect liability

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Objectives

• Describe the three lines of authority for EMTs
• Discuss how an EMS physician could be involved in employment lawsuits
• Discuss lawsuits involving EMS medical directors
Part One

Background
EMT/MD relationship
What's a lawsuit?

The Legal Relationship

Between the EMS Physician and the EMT
WHAT IS IT?

Agency or Supervisory?

• AGENCY (employee)
  • Principal assigns tasks to agent
  • Controls details of how tasks are carried out
  • Direct "over the shoulder" supervision
  • Hire/fire

• SUPERVISORY
  • General oversight (Black's)
Evolution of the Relationship

• Historical perspective
  – "Practice under my license"
  – Before EMS enabling legislation
• "Delegated practice"
  – Myth perpetuated by DOT objectives
  – Very few states (Texas)

Agency Relationship?

Schultz v. Rural Metro of New Mexico-Texas
956 SW2d 757 (1997)

Texas is Different!

• “Stretcher drop” case
• Court found service NOT an agent of its medical director
  – Defense tried to identify service as an agent of the MD to fit into definition of “health care provider” to establish immunity
• Court said more info needed on level of control MD had over EMTs
Legal Relationship

- Legislative and administrative mandates for physician oversight of EMS agencies, systems and providers
- “Practicing under the MD’s license”
- “Eyes, ears and hands of the MD”

Liability

- DIRECT
  - Failure to perform K responsibilities
  - Negligent supervision
  - Negligent protocol development
  
- INDIRECT (rare)
  - “Respondeat superior” – MD is responsible for EMT’s actions vicariously

Liability

- PROFESSIONAL (insured)
  - Negligence for prehospital procedures
- ADMINISTRATIVE (may not be insured)
  - Negligent supervision
  - Employment civil rights issues
  - False claims/fraud
The doc doesn’t hire..and doesn’t fire
DEFENSE

Question:
Can you be held liable for injury to a patient you haven’t met, haven’t examined, and haven’t treated?

Answer:
Maybe…courts seem to be moving in that direction
EMTs are Responsible to Three Avenues of Authority

3 Avenues of Authority

• MEDICAL DIRECTOR
• LICENSING/CERTIFICATION AGENCY
• EMPLOYMENT
  – PUBLIC
    • PERSONNEL REGS
    • COLLECTIVE BARGAINING AGREEMENTS
  – PRIVATE
    • EMPLOYEE HANDBOOK
    • COLLECTIVE BARGAINING AGREEMENTS

Anatomy of a Lawsuit

NEGLIGENCE
Elements of Negligence

• LEGAL DUTY
• BREACH OF STANDARD OF CARE
• PROXIMATE CAUSE
• HARM

Negligence - Duty

• EMS system has a duty to the public
  – Respond within reasonable time frame
  – Provide reasonable EMS care
  – Transport to appropriate facility
• EMS MD has duty to perform medical oversight functions

Negligence - Breach

• Standard of care
  – What a reasonable EMS physician would do in the same/similar situation
    • Objective standard
Negligence – Causation & Harm

- “No harm – no foul”
- Even if the standard of care was breached, if no harm results, lawsuit will not succeed
  - Fall back position for medical negligence defense

Causes of Action

- Negligent supervision
- Negligent retention
  - MD knows EMT has performance deficiencies and does nothing to correct

Anatomy of a Lawsuit

CIVIL RIGHTS CLAIMS
Civil Rights Claims

- Americans with Disabilities (ADA)
- Discrimination – Title VII
- Due Process/Wrongful Termination

Elements of Civil Rights Claims

- STATUTORY ELEMENTS
  - DISCRIMINATION
- DUE PROCESS (procedural)
  - NOTICE
  - OPPORTUNITY TO BE HEARD
- DUE PROCESS (substantive)
  - Patient sues for substandard care

Civil Rights Claims

- Federal court
- No “cap” on damages
- Possibility of punitive damages
- Attorney’s fees
- Your insurance MAY NOT cover defense!
The Big Danger…

PUNITIVE DAMAGES

Juries are Unpredictable

Gray Areas

If you pull medical control and an employment action results, are you liable?
Gray Areas

If an EMT gives you incorrect info over the radio and you give orders accordingly, are you negligent?

Gray Areas

If an EMT harms a patient through negligence, are you directly or indirectly liable for the EMTs actions?

The Big Question:

DOES MY INSURANCE COVER THIS???
Case Studies

Legal Case Study No. 1


- Paramedic repeatedly violated protocol
- Verbal/written warnings, counseling sessions over 2 year period
- "Needs Improvement" evaluation
- MD disciplined paramedic
- MD suspended paramedic / intended to withdraw medical control
Legal Case Study No. 1

- Paramedic files grievance under collective bargaining agreement
- Arbitration
- Arbitrator returns paramedic to work

Legal Case Study No. 1

- Medical Director appeals to Dist. Ct. and then to Ct. App.
- Ct. App. rules for EMS MD:
  - Arbitrator exceeded authority
  - Reinstatement forced Dr. Long to supervise a paramedic he believes should not be working
  - Arbitrator’s remedy dictates medical decisions legally belonging to medical director

Court Decision

- Unanimous 5 judge panel - Manhattan Court of Appeals rules that the FDNY Union cannot override FDNY drug testing policy
- Union argued that policy allowing immediate termination if drug test failed or refused

In Re Lillian Roberts et al. v. NYC Office of Collective Bargaining et al. # 106268
Risk Management

- Address how your medical control interfaces with the collective bargaining agreement
  - In the collective bargaining contract
  - In your MD contract

Legal Case Study No. 2


- MD is medical director of EMS service and Emergency Clinic
- Paramedic hired by Hospital Authority
- Authority has detailed grievance procedure
- Partner reported protocol violation
- MD investigates
- Paramedic fired
Legal Case Study No. 2

- Grievance committee overturns firing
- MD withdrew medical control
- State EMS licensing board later determined no violation occurred
- Suit for due process – but Dr. Slovis is a private physician working under a contract!!

Legal Case Study No. 2

- COURT FINDINGS
  - MD is a “state actor”
  - EMS Director could order MD to provide medical control
  - Slander and tortious interference w/contract claims dismissed

Risk Management

- Address employment issues in MD contract
  - Request indemnification on employment issues
  - Prevent multiple medical director options
- Identify your position
  - Chain of command
  - Organizational Chart
Legal Case Study No. 3

Christina Krueger v. St. Mary’s EMS, Inc. 2001 WL 1149436

Legal Case Study No. 3

• Krueger sues for sexual harassment after complaints substantiated
• Male employees retaliated
• MD wrote letter to employees notifying them he was aware of the suit

Legal Case Study No. 3

• “If I, as a medical director, find it necessary to commend, instruct, discipline or terminate any employee as a result of his or her performance as an extender of my medical license, I will continue to do so, and I am grateful that such decisions have been repeatedly upheld in court decisions”
Legal Case Study No. 3

• MD letter used as evidence of further
  – Harassment
  – Intimidation
  – Retaliation

Risk Management

• Be sure EMS service has policies for properly handling Title VII complaints
  – These were substantiated!!
• Be involved enough to distinguish which issues are clinical and which are political!
• Paramedics are NOT “physician extenders” and DO NOT practice UNDER MD license!!

Legal Case Study No. 4

EMTALA
Arrington v. Wong
237 F.3d 1066 (9th Cir. 2001)
Legal Case Study No. 4

• Paramedics transporting cardiac patient to closest hospital made radio contact
• Patient in severe respiratory distress
  – Rate 50
  – Speaking 1-2 words at a time
• Dr. Wong diverted paramedics to hospital five miles away, where patient’s physician practiced

Legal Case Study No. 4

• Court ruled that this divert violated EMTALA because the patient had “come to the hospital” via radio contact from paramedics
• Scary precedent that fortunately has not been followed!

Risk Management

• Be familiar with the law in your part of the country & insure paramedics are too
• Amend EMS protocols and hospital divert policies accordingly (9th Cir.)
• Divert carefully!!
Legal Case Study No. 5


Legal Case Study No. 5

- Paramedics transported GSW patient to nearest hospital
- ER doc decided to transfer patient
- EMS service denied request to transfer
- Patient died as a result of delay in treatment

Risk Management

- If your EMS service is 911 only DEFINE:
  - “Emergency” exceptions
- Converse is true for “non-emergency” EMS services
Legal Case Study No. 6

- Paramedics failed to transport 5 y.o. girl
- Child later died of CHF
- Suit for malpractice and negligent supervision

EMS MD testified:
- “…No protocols for how to take a history or how to distinguish between an emergency and non emergency”
- “…No protocols for pediatric vital signs…depend upon paramedics' training and experience…”
Legal Case Study No. 6

• Plaintiff argued “...they deviated from the standard of care by not having established such written procedures...”
• Hospital found liable for negligent supervision due to MD actions

Risk Management

• Review/update protocols annually
• Be aware of what the standard of care is nationwide
• Protocols should address all levels of EMS providers
• Do you have protocols for:
  – Vital signs? Refusal of transport?
  – Violent patients/restraints?

Legal Case Study No. 7

Atwater v. Caruana, U.S. District Court/New Mexico CIV 96-1218
JP
Legal Case Study No. 7

- MD in rural town, two “hats”
  - EMS medical director
  - Local family practitioner
- Sued by EMT for medical negligence
- MD withdrew medical control
- Sued by EMT for civil rights violation

Risk Management

- Written contract
- Insure for civil rights claims?

Legal Case Study No. 8

Hagan v. Anderson Co.
105 F. Supp. 2d 612 (E.D. Kentucky) 2000
Legal Case Study No. 8

- Americans with Disabilities suit
- Impaired practitioner – took time off work for treatment
- MD had prior problems with paramedic unrelated to his illness

Legal Case Study No. 8

- MD placed letter in file withdrawing medical control
- MD named in ADA action
  - Civil rights violation for withholding medical control
- Court found paramedic was not "qualified"

Legal Case Study No. 8

- Court noted that County did not have authority to require MD to give medical control to an individual paramedic
  - "no power to override Dr. Rice’s decision"
Risk Management

- Be on the alert for employees who “set up” civil rights claims!
- Deal with impaired practitioners swiftly

Legal Case Study No. 9

The Chicago Dispatch Cases

- Series of cases in 2001-2002
- 911 system faults
  - Delayed call answering
  - Delayed response
- No EMD
- “No send” policies
Risk Management

• Medical oversight of EMS dispatch
• Pre-arrival instructions/protocols
• Be proactive with 911 system problems
  – System problems are YOUR problem!

Legal Case Study No. 10

Solomons v. Palo Alto Community Hospital
2000 WL 34032822 (N.D. Iowa)

Legal Case Study No. 10

• Wrongful death suit/MD named defendant
• Child lost consciousness while being pulled on inner tube behind boat
  – Hx seizures and heart problems
• Responding EMS unit had no defibrillator and “insufficient oxygen”
Legal Case Study No. 10

P claimed “negligent failure to equip, inventory and maintain the ambulance”
- Defibrillator listed as mandatory equipment

MD’s defense
- Unpaid advisor for ambulance service
- Responsible only for ensuring staff was trained and certified

Legal Case Study No. 10

MD’s defense
- No responsibility for supervising daily operations or overseeing equipment
- Immune for ordinary negligence
- Plaintiff’s expert MD testified “It is MD’s duty to set forth requirements for ambulance inventory”

Legal Case Study No. 10

Court found Iowa law supported MD’s position – dismissed all but “gross negligence”
- Later found no “gross negligence”
Risk Management

- Unlikely many courts will go this way
- Iowa law specifically exempts unpaid employees for ordinary negligence
- P could not meet standard for

Legal Case Study No. 11

Schultz v. Rural/Metro Corp. of New Mexico/Texas
956 SW 2d 757 (1997)

- Patient sued after falling from stretcher
- Ambulance company attempted to invoke immunity provisions
  - Immunity for “physicians” and “health care providers”
- Ambulance company said IT was an “agent” of Dr. Smith, its Medical Director
Legal Case Study No. 11

• Court found that Dr. Smith had no right to assign tasks of company employees, or to control the details of their work
• MD was appointed, had no evidence of the nature of the relationship
• Court denied immunity

Legal Case Study No. 12

Weigand v. Spadt
317 F.Supp.2d 1129
D. Nebraska 2004

Legal Case Study No. 12

• MD pulled medical control from female firefighter/paramedic
• Suit for
  – gender discrimination
  – retaliation for exercise of 1st Amendment rights
  – Equal protection
  – Due process
Legal Case Study No. 12

• Alleged MD conspired with fire chief to discriminate
• MD pulled medical control due to deviations from protocol
  – Appeal process upheld action
• Fire chief responded by demoting her to FF position because of lack of medical control

Legal Case Study No. 12

• Defense: gender not a factor
  – No male employees had medical control pulled and remained in same position
  – No violation of due process rights
  – No free speech violation

Risk Management

• Spell out duties of EMS MD in job description or contract!
  – Not an employer
  – Supervisory/not agency relationship
  – EMS MD can withdraw or limit medical control without due process
Legal Case Study No. 13

**Washington v. City of Evanston**
782 NE 2d 847 (2002)

- Wrongful death action
- ER physician allowed OB resident to instruct and supervise paramedics to attempt to deliver footling breech baby in prehospital setting
- Usual EMS SOP for footling breech is to transport immediately
- Child died following delivery

- OB resident did not order immediate transport because baby was delivering
- Paramedics called a second time and resident “walked” them thru delivery
- Suit challenged whether resident authorized to give orders to EMS
Legal Case Study No. 13

- Court found defendant doctors immune under Illinois EMS Act
  - Immunity for EMS medical directors unless actions are “willful and wanton misconduct”

Risk Management

- Having the most qualified person do the job usually comes out OK under legal scrutiny
- Residents are qualified to give EMS orders and may do so under attending’s supervision

Legal Case Study No. 14

Rinehart v. City of Greenfield, et al.
2007 WL 1100756 (S.D. Indiana)
Legal Case Study No. 14

• MD revoked paramedic’s privileges to work under his supervision
• Paramedic unable to do her job
  – Job requires working as a paramedic
• Fire chief terminated paramedic
• Paramedic sued City, fire chief and medical director

Footnote: “It is not clear as a legal matter whether Dr. R actually had the authority to take this action, but the chief and other parties have assumed that he had that authority.”

Risk Management

• Where does your authority to suspend, limit or revoke medical supervision come from?
  – Statute?
  – Regulation?
  – Your contract?
Legal Case Study No. 15

San Diego Firefighters Local 145 v. City of San Diego
2009 WL1423568 Cal App 4th Dist.

• Battalion Chief sends memo to EMS MD describing incidents in which EMT-P performed unsatisfactorily
  – Recommended that he not function as P
• MD responded with memo agreeing with recommendation
• City notified P that his P shift differential would be stopped

• Local 145 disputed that “certified” meant supervised by EMS MD
• MD met with P and attorney to discuss performance, decision stood
• Union argued that salary reduction triggered procedural protections/property interest – court disagreed
Legal Case Study No. 16

Dempsey v. Halford and Vanfrank
183 NC App.637, 645 SE 2d 201 (2007)

Legal Case Study No. 16

• Former P brought action for libel and slander against EMS director and EMS MD
• P accused of falsifying reports to increase overtime pay
• MD concerned with performance, presented findings to Medical Review Committee

Legal Case Study No. 16

• Committee not told about falsification of time records but concluded P was endangering patients
• Dismissed on summary judgment due to P’s inability to meet elements of claim
Legal Case Study No. 17

Miracle v. Bell County EMS et al.
237 SW 3d 555 (2007)

• EMS providers sued EMS MD for wrongful termination & emotional distress after EMS MD advised EMS director that he withdrew medical supervision
• Kentucky law requires MD supervision for EMT-P to practice
• P terminated/court held not "wrongful"

Legal Case Study No. 18

Entrican v. Ming
962 So.2d 28 (Mississippi 2007)
Legal Case Study No. 18

- Destination decision case
- Child with trauma score below that required by protocol for transport to trauma center was taken to community hospital
- EMS MD testified that transport requirement to Level I/II center didn’t apply

Legal Case Study No. 18

- Service did have destination protocol
- Case sent back to trial court for further fact finding

Legal Case Study No. 19

Miracle v. Bell County EMS, et al.
237 SW 3d 555 (Kentucky 2007)
Legal Case Study No. 19

- County EMS employees sued medical director, EMS director and others for wrongful termination
- MD withdrew medical supervision; plaintiffs alleged interference with employment
- Ct App found medical supervision was required and once paramedic lacked it, she could be terminated

Legal Case Study No. 20

Estate of Stephanie Stephens v. Geoffrey Mountvarner, MD
DC 2010

- 2 y.o. trouble breathing
- Suit alleges paramedics misdiagnosed "congestion", advised running the shower to create steam and refused transport
- Suit further alleges no information given about risks of not transporting
- Child died of severe pneumonia/septic shock
Legal Case Study No. 20

- Under D.C. code 5-404.01, paramedics operate under the medical license of the medical director
- Under D.C. code 5-404.1, the medical director is personally liable for death or injury resulting from EMS care if it results from “willful misconduct or gross negligence” of the medical director

Legal Case Study No. 20

- Suit alleges large numbers of paramedics failed written test and practical skills assessment, including paramedics who responded
- Suit alleges MD failed to take action

Legal Case Study No. 21

Rubin v. Fox
60 A3d 179
Commonwealth Court of Pennsylvania (2012)
Legal Case Study No. 21
• Dr. Rubin withdrew medical control from paramedic Jeremy Fox
• In Pa. process for withdrawal of medical control is outlined in DOH regulation
  – It requires documentation of MCA decision and how it was made and annual review
  – It provides an appeal process

Legal Case Study No. 21
• Fox was being precepted by two paramedics
  – Gave Versed x2 to facilitate intubation of trauma pt without online medical control for 2nd dose – 2nd dose authorized
  – All 3 filed incident reports
  – Dr. Rubin interviewed preceptors but not Fox and withdrew Fox’s medical control

Legal Case Study No. 21
• Fox never received paperwork but appealed to county medical director
• Dr. Rubin changed withdrawal of MCA to restriction pending 100 hr airway course
  – But Fox had been terminated
• Fox appealed to DOH, who assigned State EMS medical director as hearing officer
Legal Case Study No. 21

• Hearing officer found:
  – Dr. Rubin never interviewed Fox
  – Fox had no chance to rebut
  – Dr. Rubin failed to document reasons for withdrawal
  – Fox was not provided notice
  – Insufficient evidence showing Fox incompetent

Conclusions

• MD has a BIG JOB!!
• Define relationship in contract
• Liability lurks in all corners but statistics still favor MDs
• Be aware of what your insurance covers
  – CAUTION re: employment issues!
• Stay abreast of changing EMS law
• Be proactive: not reactive!