EMS Legal Trends and Implications for Leaders

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Introduction

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History & Experience

Ripped from the Headlines!

Hospitals and Ambulance Services Settle Fraud / Anti-Kickback Case for $6.25 and $1.25 million
EMT Charged with Forgery & Abandonment
$172 Million verdict in Negligence Case for Failure to Bring O2 / Defib into Call
13 1/2 Year Prison Sentence for Fraud

Objectives

Evidence-Based Analysis of EMS legal trends
Take-Home areas for thought and improvement
NOT Designed to make you an expert!

Disclaimer

Nothing in this lecture should be considered “legal advice”
General legal principles - NOT specific to this state!
Consult with your legal counsel before making any changes to your practice, policies or organization

Evidence-Based Law

From 1 Jan 2013 to 30 June 2014 there were 327 published cases involving the word “ambulance”

ALL 50 states
Equally distributed between federal and state cases
56 of them actually involve the provision of EMS in some way
Number One Way to Get into a Legal Case?

USE OF FORCE BY LAW ENFORCEMENT

128 of 327 cases = 39%

Compared to 56 of 327 involving EMS

Where do Cases Occur?

New York = 12 cases
Louisiana = 6 cases
Missouri = 4 cases
District of Columbia = 3 cases
All other states zero, one or two cases

Bell Curve

- Back of the Curve = lower-frequency, lower-impact events
- Top of the Curve = most-likely events where EMS providers and agencies end up in litigation
- Front of the Curve = lower-frequency but higher-impact events

Back of the Curve

- Insurance Coverage = 1
- Contract cases = 2
- Workers’ Compensation / Disability / Unemployment = 3
- Local Regulations = 5

Top of the Curve

- Employment Issues = 11 cases
  Discrimination, Wrongful Discharge, Whistleblower, 1983, Civil Rights
- Negligence = 26 CASES
  Driving = 10 cases
  Malpractice = 5 cases
  Immunity / Civil Procedure = 11 cases

Front of the Curve

- Fraud = 2 cases
- Fair Labor Standards Act = 2 cases
- Privileges = 2 cases
- First Amendment = 1 case
- Intentional Torts = 3 cases
Fraud

- U.S. v. Louthian, 4th Cir. (VA)
Eddie Wayne Louthian, Sr., President and Business Manager of Saltville (VA) Rescue Squad
Convicted of multiple counts of health care fraud, sentenced to 48 months in prison, forfeiture of $1 million
AFFIRMED
Must focus on understanding and preventing fraud

FLSA

- Caraballo vs. Chicago, N.D. Illinois
  Paramedics not engaged in fire suppression
- Haro v. Los Angeles, 9th Circuit
  Dispatchers and aeromedical technicians
  STILL litigating issues of Fire vs. EMS overtime under FLSA!

Privileges

  EMT cannot draw blood for BAC
- Matza v. NCL (Bahamas), S.D. Fl.
  Email from ship’s doctor to multiple recipients about logistics of evacuation NOT privileged

First Amendment

  Paramedic sued fire district for wrongful discharge - related to emails sent to medical director and media
  Balancing interests of matters of public concern v. promoting efficiency of public services
  DISMISSAL AFFIRMED

Intentional Torts

- Humble v. Pafford EMS, 2nd Cir. LA
  Physical fight between paramedics over “dirty and unmaintained” ambulance
- Whalen v. AMR Northwest, C.A. Or.
  Sexual battery during ambulance transport
- Herring v. AMR Northwest, C.A. Or.
  Patient sexually abused by paramedic in ambulance

Conclusions

Continue to focus on employment issues
Focus more on negligence prevention - the little things matter!
Need to understand healthcare fraud - EMS is a target
Use counsel early and often to understand issues
Boundary issues are evolving concern
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