

EMS Legal Trends and Implications for Leaders

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Introduction

Member / Partner

Keavney & Streger, LLC
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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

- Andrews v. State of Oklahoma, Okla. Civ. App. 2d.

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

- Anzaldua v. Northeast Ambulance, E.D. Mo.

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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