

PA Emergency Management Conference

Emergency Management Law and Ethics – Strategies to Avoid Liability

Presented by
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Disclaimer: These seminar materials are designed to provide an overview of general legal principles and should not be relied on as legal advice. You should seek advice from an attorney if you have particular factual situations related to the materials presented here.

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Steve Wirth is a founding member, along with Doug Wolfberg and the late Jim Page, of the law firm of Page, Wolfberg & Wirth, LLC. The firm represents ambulance services, municipalities, fire departments, hospitals, and other organizations across the country in a wide range of medical transportation, reimbursement, compliance, labor and employment, and corporate law issues. Steve has 30 years of experience as an EMT, paramedic, flight paramedic, EMS instructor, fire officer, and EMS administrator. He is currently one of the three Commissioners for the Commission on Accreditation of Ambulance Services (CAAS), the national ambulance service accrediting body.

Steve is a frequently sought after speaker at regional, state and national conferences on a variety of EMS, fire service and public safety subjects. He has authored numerous articles on a variety of EMS management, risk management, corporate compliance and workplace law topics. He is a contributing writer for *Journal of Emergency Medical Services (JEMS)*, and *EMS Insider*. Steve co-authored the highly acclaimed *Ambulance Service Guide to HIPAA Compliance* (now in its Third Edition); *The Ambulance Service HIPAA Privacy and Security Video*; *Better Billing: The Ambulance Service Model Compliance Plan*; and *The Ambulance Service Model Personnel Handbook* --- all produced by PWW.

Steve graduated *cum laude* from Duquesne University School of Law and was a member of the school's national trial advocacy competition team. In addition to his law degree, Steve has a Masters Degree in Health Services Administration from Gannon University in Erie. He remains in touch with patients and field provider issues as an active EMT and nationally certified firefighter with the Hampden Township Volunteer Fire Company where he serves as the medical officer.

Steve is also a life member of the Nippenose Valley Vol. Fire Co. near Jersey Shore, PA where he started his public safety career as a junior firefighter and later served as Lieutenant and then Deputy Fire Chief. He also serves on the Executive Boards of the Pennsylvania Fire and Emergency Services Institute, and the national AED Instructor Foundation.

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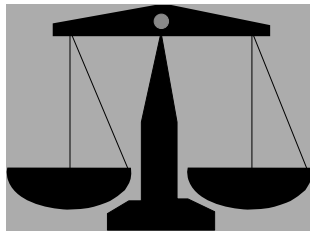
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Please note that we are lawyers and of course we love disclaimers. Here it is: This seminar is for information purposes only. You should not rely on anything in the handouts or what we say as a definitive statement of the law. We are not giving you legal advice in an “attorney-client” relationship. If you need legal advice, consult your own attorney. Our job is to educate and give you general legal and management principles you may be able to use and to generate discussion. Nothing more, nothing less! Thank you!

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Some Liability Avoidance Strategies. . .



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Overview

- “Root Cause” of Liability in Emergency Services
- Legal Principles of Negligence
- Top Areas of Liability in Emergency Services
- Moral and Ethical Considerations

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What Causes a Lawsuit?

It's About “Root Cause” Analysis

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Most of This is About “Common Sense” . . .

But “Sense” Isn't Always That Common!

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Risk Avoidance Is Mostly
Just About
“Common Sense”

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Common Sense . . .

- In *what* you do
- In *how* you *interact* with others

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Most lawsuits are NOT based
on actual negligence, but on
Lack of Common Sense,
Poor Communications, and
Tiny Instances of Disrespect
and Inattention!

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OR.....
From Doing Stupid Stuff!

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“The Tombstones from the
Halloween Parade”



Much of liability
prevention is about
*safely meeting and
exceeding expectations*

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Where Have All The Good People Gone?

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The Role of the “Changing Work Ethic” And the Impact of the “McJob”

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From a liability perspective . . . Are we keeping pace with today’s practices?

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Overview of the Legal System

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The Legal System

- Types of Law
 - Administrative
 - Civil
 - Criminal

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The Legal System

- Tort Law
 - Unintentional torts
 - Malpractice actions
 - Other Negligence actions
 - Intentional torts
 - False imprisonment
 - Assault/Battery, etc.

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NEGLIGENCE

- “The failure to act as a reasonably prudent person would act under similar circumstances”
- Standard applies to all walks of life: citizen, field provider, instructor
- Also called “Ordinary Negligence”

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NEGLIGENCE

- Elements
 - Duty
 - Breach of that Duty
 - Damages
 - Proximate Causation

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Your Duty

- Provide Initial and Continuing Education
- Provide a Safe Training Environment
- Be current on Rules and Regulations
 - State and Federal

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Your Duty

- Seek Feedback from Training Events
- Maintain your personal Education and Training
- Learn from the Mistakes of Others!

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To Whom Do Emergency Service Responders Owe a Legal Duty?

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DUTY TO ACT

- Hypotheticals
 - Dispatch and response
- Legal Duty vs. Moral Duty
 - The accident along the road

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BREACH OF DUTY

- Failure to uphold standard of care
- Standard of care
 - Scope of Practice
 - National standard curriculum
 - Local or regional protocols or standing orders
 - National Guidelines and Standards (NFPA)
 - Expert witnesses

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NATIONAL STANDARDS

- NFPA – The NFPA mission is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating scientifically-based consensus codes and standards, research, training, and education. www.nfpa.org
- National consensus standards developed
 - Fire Truck Standards
 - Protective Clothing Standards
 - Staffing Standards
 - Training Standards

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DAMAGES

- Compensable losses
 - Damage to the patient or others
 - Loss of potential income

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PROXIMATE CAUSATION

- Foreseeable consequences
- Actual vs. Legal causation
- Example – “The Heart Attack Case”

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Who Can Be a Defendant ?

- The public safety agency
- The individual responder
- The hospital
- The instructors
- The training institute

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Immunity Provisions – “Qualified Immunity”

- Some state laws offer a degree of protection from acts of “ordinary negligence” in training activities
- This varies by state law

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Pennsylvania EMS Act

- “No approved EMS training institute nor any entity participating as part of any approved educational program offered ... shall be liable for any civil damages as a result of primary and continuing educational practice by duly enrolled students under *proper supervision, unless guilty of gross or willful negligence*”

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Immunity in Pennsylvania?

- Local government immunity?
- Non-profit and volunteer organizations?
- What about individual responders?

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Pennsylvania “Qualified Immunity”

- 8331. Medical good Samaritan civil immunity.
- 8331.2. Good Samaritan civil immunity for use of automated external defibrillator.
- 8331.3. Criminal victim aid good Samaritan civil immunity.
- 8332. Nonmedical good Samaritan civil immunity
- 8332.2. Officer, director or trustee of nonprofit organization negligence standard.

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Pennsylvania “Qualified Immunity”

- 8332.3. Volunteer firefighter civil immunity.
- 8332.4. Volunteer-in-public-service negligence standard.
- 8334. Civil immunity in mass immunization projects.
- 8336. Civil immunity for assistance upon request in incidents involving the transportation of hazardous substances.
- 8338.1. Liability for damages from donated vehicles or equipment to volunteer fire companies.
- 8340.1. Employer immunity from liability for disclosure of information regarding former or current employees.

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Qualified Immunity

- Pennsylvania Emergency Management Services Code
- Pennsylvania Political Subdivision Tort Claims Act
- Pennsylvania Emergency Medical Services Act
- Pennsylvania Non-Profit Corporations Law

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Tort Claims Act

- “No local agency shall be liable for any damages on account of any injury to a person or property caused by an act of the local agency or any other person”
 - 42 P.S. Sec. 8541
- VFDs are “local agencies” for purposes of the immunity

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Tort Claims Act - Exceptions

- KEY Exception: Operation of any motor vehicle!
- Other exceptions rarely applicable
 - 42 P.S. Sec. 8542(b)

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PA Emergency Management Code

- Generally immune from liability --
"Except in cases of willful misconduct or gross negligence"
 - 35 P.S. § 7704

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35 P.S. § 7704. Immunity from civil liability. (a) General rule.--Neither the Commonwealth nor any political subdivision thereof nor other agencies nor, ***except in cases of willful misconduct***, the agents, employees or representatives of any of them engaged in any emergency services activities, nor, ***except in cases of willful misconduct or gross negligence***, any individual or other person under contract with them to provide equipment or work on a cost basis to be used in disaster relief, nor, ***except in cases of willful misconduct or gross negligence***, any person, firm, corporation or an agent or employee of any of them engaged in disaster services activities, while complying with or attempting to comply with this part or any rule or regulation promulgated pursuant to the provisions of this part, shall be liable for the death of or any injury to persons or loss or damage to property as a result of that activity.

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Counterterrorism, Planning, Preparedness and Response Act of 2002

- Section 302. Immunity from liability. The provisions of 42 Pa.C.S. § 8331 (relating to medical good Samaritan civil immunity), 8332 (relating to nonmedical Good Samaritan civil immunity) or 8332.4 (relating to volunteer-in-public-service negligence standard) shall apply to any person who provides assistance in carrying out the provisions of this chapter.

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Are Immunity Statutes "Swiss Cheese?"

- Do they protect everyone involved in the education process?
- Do they draw the line between "ordinary negligence" and "gross negligence?"
- Do they define "willful misconduct" Or "willful negligence?"
- Are immunity statutes narrowly construed by courts to prevent evasion of responsibility by negligent parties?

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Who ultimately decides if
you were negligent?

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Juries Tend to Favor the
“Harmed” and Look Carefully at
Your Sincerity and Credibility!

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How Prevalent are the
Legal Risks in
Emergency Services?

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Top Areas of Liability

- Vehicle Accidents
- Getting Lost/Delayed Response

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Five die in fiery ambulance crash

July 21, 2007

ANTWERP An accident Friday evening which killed five area residents three of whom were Antwerp EMS workers and injured two others when an Antwerp ambulance, operating with lights and sirens, hit a tractor-trailer rig in Paulding County remains under investigation.

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**In 2005, fire department
emergency vehicles were
involved in an estimated 15,885
collisions while responding to or
returning from incidents. These
collisions resulted in 1,120
firefighter injuries!**

Source: firefighterclosecalls.com

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300 Fatal Ambulance Crashes in the 1990s

- 816 ambulance occupants
- 82 died
- 275 occupants of other vehicles
- EMS personnel fatality rate TWICE national average
- Lack of restraints a key issue
- www.cdc.gov/mmwr/DPF/wk/mm5208.pdf

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Vehicle Accident Prevention

- Refocus “attitudes” about driving!
- EVOC and simulation training
- “Over the road” practice and testing
- Use of Vehicle Monitoring Systems
 - DriveCam
 - Road Safety

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“If You Arrive 30 Seconds Late No One Will Notice, BUT If You Arrive 30 Seconds Early and Kill Someone in the Process, No One Will Ever Forget!”

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Top Areas of Liability

- Improper rescue procedures followed
- Improper Refusals/Abandonment

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Top Areas of Liability

- Dropping things – patients, tools and equipment
- Equipment and Vehicle Failures

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Top Areas of Liability

- Business Operations (billing fraud, theft, “bad” employees/volunteers)
- Negligent Patient Care
 - Airway management
 - Improper dosages/medications
 - Spinal immobilization

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How Many of These Are Within YOUR Control?

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The
"Expectations
Problem"
in Public Safety

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Do We Establish the
RIGHT
EXPECTATIONS when
we TRAIN Our Students
and Personnel?

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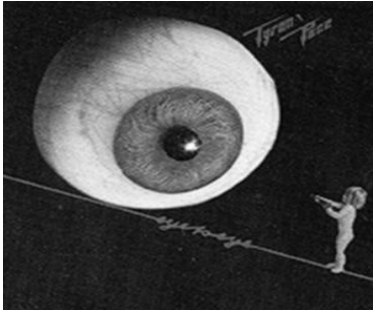


Wanted: EMTs and Paramedics
Must be able to work long hours with little or no pay. Few holidays and weekends off. Must be able to keep massive amounts of paperwork up to date while making split-second, life or death decisions. Must be immune to verbal abuse and able to neutralize the occasional physical assault. Must display patience, kindness, understanding and caring, even when personal life is coming apart at the seams. Must show no aversion to blood, vomit, oozing infections, or human body wastes. Salary is in no way commensurate with knowledge or ability. Only those interested in dealing with depressing situations on a daily basis need apply.

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"The Case of the
Avulsed Eye"



The SEVEN Expectations
We REALLY
Have to Meet . . .


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The Public **Expects** . . .

- We will respond promptly
- We won't get lost

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The Public **Expects . . .**

- We will arrive with trained, professional, “communicative” skillful and caring people
- We will have vehicles and equipment that actually work

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The Public **Expects . . .**

- We won't harm the citizen or patient
- We won't have an accident and hurt someone with our vehicles or equipment
- We won't “rip them off” or rip off those who pay us

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We Won't Make the Patient
or Citizen Worse Off
Because of our Contact!

“DO NO HARM!”

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Key Message:
Align the Expectations of
Your Responders with
the Expectations of the
Public!

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Said Another Way....

- Teach them the RIGHT STUFF and the things they NEED TO KNOW!

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Key Areas WE MISS!

- Interpersonal skills – We Don't Communicate Effectively!
- Basic skills – The Fundamentals!

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Discrimination

- Discrimination based on age, race, sex, national origin, religion, disability, veteran status, etc.
- Sexual harassment
- "Hazing" and other horseplay

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New Areas

- "Textual Harassment"
- Misuse of visual imaging devices
 - Cell phone cameras
 - Helmet cameras

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Criminal Violations?

Yes, It *Could* Happen!

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Reckless Endangering Another Person

- "A person commits a misdemeanor of the second degree if he *recklessly engages in conduct which places or may place another in danger of death or risk of serious bodily injury*"
 - 18 PS Sec. 2705

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Involuntary Manslaughter

- "A person is guilty of involuntary manslaughter when as a direct result of the doing of an individual act *in a reckless or grossly negligent manner*, he causes the death of another person"
 - 18 PS Sec. 2504

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Examples?

- Refusing water to a trainee at a live burn?
- Failing to let a trainee down off a ladder and he then falls?
- Putting a trainee in a dangerous position without adequate safety provisions?

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Corruption of Minors

- “Whoever . . . *By any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices, or encourages any such minor in the commission of a crime . . . Commits a misdemeanor of the first degree*”
 - 18 PS Sec. 6301

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Examples

- Improper conduct with minors
- Sexual harassment
- Serving or drinking alcohol
- Viewing pornography with minors

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Ethical-Legal Considerations in Emergency Services Management

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Ethics vs. Morals

- Ethics and morals are closely related concepts but distinctly separate

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Ethics vs. Morals

- Morals are the social, religious, or personal standards of right and wrong
- Ethics are the rules or standards that govern the conduct of members of a particular group or profession

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Code of Ethics

- Many organizations have developed a “Code of Ethics”
- Most codes of ethics address broad humanitarian concerns and professional etiquette
- Very few provide solid guidance on the kind of ethical problems commonly faced

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“To gain and maintain the respect of their colleagues and their patients, it is vital that individual firefighter/paramedics exemplify the principles and values of their profession”

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Our Mission....

- To serve our communities by providing exceptional patient care and extraordinary customer service through compassion, knowledge, clinical sophistication and total integrity of our organization

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The single most important question an EMS/Fire Responder has to answer when faced with an ethical challenge is:

WHAT IS IN THE PATIENT'S OR THE CITIZEN'S BEST INTEREST?

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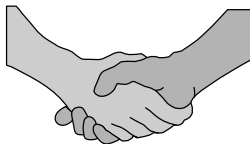
“The Mirror Test”

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Remember the First rule of Risk Management:

BE NICE!!



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It Really IS All About TEAMWORK AND BEING NICE and RESPECTFUL To Our Patients, Our Fellow Citizens, and To Each Other!

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Where Else Can You
Find A Job Where You
Can Have Such an
Immediate and **Positive**
Impact on Human Life?

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“We make a living by what
we get, we make a life by
what we give.”

Winston Churchill

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