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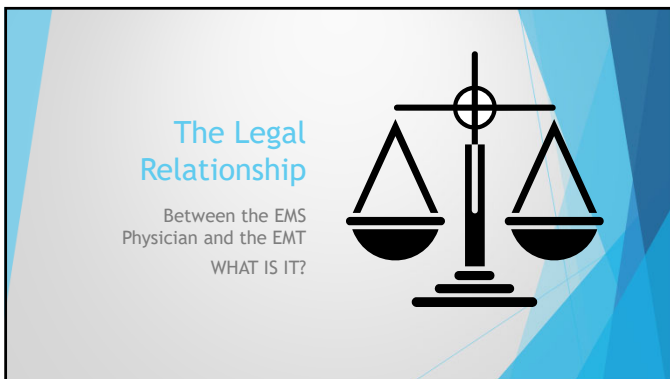
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## EMS ANSWERS TO 3 AVENUES OF AUTHORITY



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## MEDICAL DIRECTOR



- ▶ TREATMENT  
GUIDELINES
- ▶ f/k/a  
“protocols”

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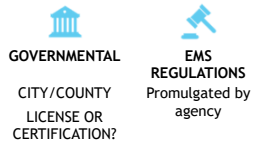
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## LICENSING OR CERTIFICATION AGENCY



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## EMPLOYER

### PUBLIC SECTOR

- ▶ PERSONNEL REGULATIONS
- ▶ COLLECTIVE BARGAINING

### PRIVATE SECTOR

- ▶ EMPLOYEE HANDBOOK
- ▶ ?COLLECTIVE BARGAINING

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## The Relationship: Agency or Supervisory?

- ▶ AGENCY (employee)
  - ▶ Principal assigns tasks to agent
  - ▶ Controls details of how tasks are carried out (shifts, uniforms, station assignments)
  - ▶ Direct "over the shoulder" supervision
  - ▶ Authority to hire/fire
- ▶ SUPERVISORY
  - ▶ General oversight (Black's Law Dictionary)
  - ▶ Lacks hire/fire authority
  - ▶ Medical supervision of EMS practice

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## Evolution of the Relationship



- ▶ Historical perspective - Before EMS enabling legislation
- ▶ "Delegated practice" - Tx

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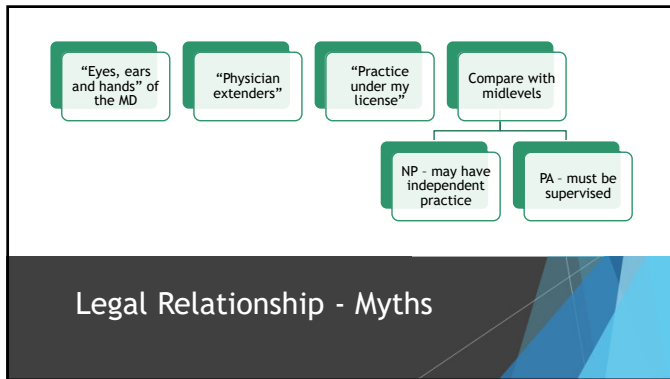
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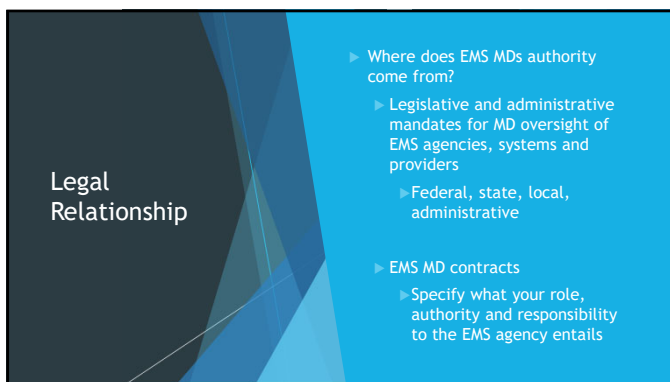
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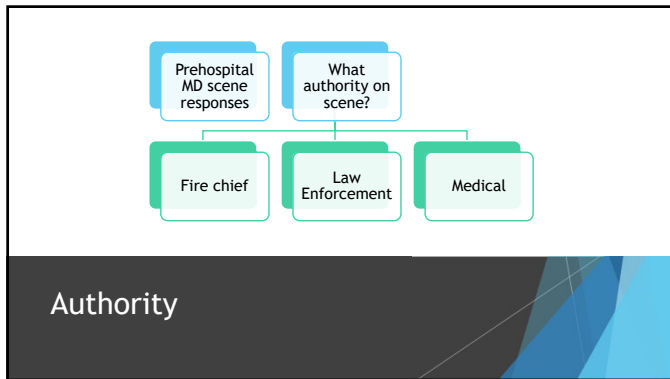
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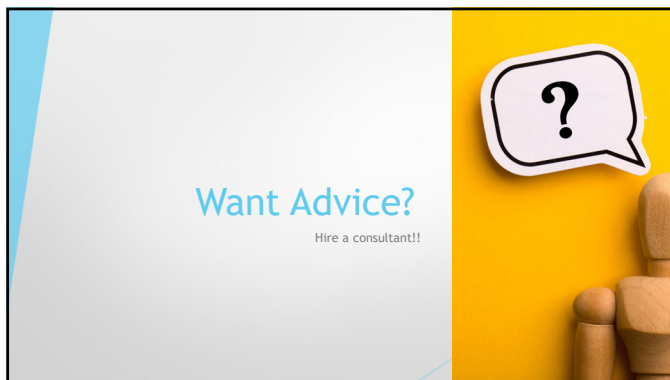
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### Liability

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

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## Liability Exposure

- ▶ PROFESSIONAL (insured)
- ▶ Negligence for own prehospital procedures
- ▶ ADMINISTRATIVE (may not be insured)
- ▶ Negligent supervision
- ▶ Employment civil rights issues
- ▶ False claims/fraud

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## OUTLIERS

- ▶ The 2016 Florida Statutes
- ▶ Title XXIX Chapter 401 View Entire Chapter
- ▶ PUBLIC HEALTH MEDICAL TELECOMMUNICATIONS AND TRANSPORTATION
- ▶ 401.265 Medical directors:
- ▶ (1) Each basic life support transportation service or advanced life support service must employ or contract with a medical director. The medical director must be a licensed physician, a corporation, association, or partnership.
- ▶ composed of physicians or physicians employed by any hospital that delivers in-hospital emergency medical services
- ▶ and employs or contracts with physicians specifically for that purpose. Such a hospital, physician, corporation, association, or partnership must designate one physician from that organization to be medical director at any given time. **The medical director must supervise and assume direct responsibility for the medical performance of the**
- ▶ **emergency medical technicians and paramedics operating for that emergency medical services system. The medical**
- ▶ **director must perform duties including advising, consulting, training, counseling, and overseeing of services,**
- ▶ **including appropriate quality assurance but not including administrative and managerial functions.**

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## Gray Areas

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

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**Question:**

Can you be held liable for employment consequences resulting from withdrawal of medical supervision?

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**Answer:**

Maybe!

The doc doesn't hire/the doc doesn't fire defense

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**Question:**

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

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Answer:

Maybe...courts seem to be moving in that direction

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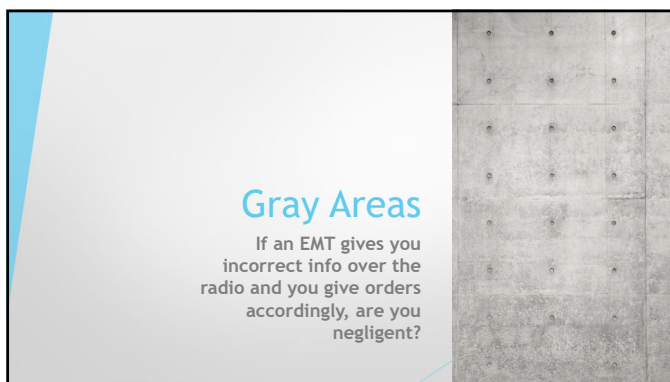
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Gray Areas

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

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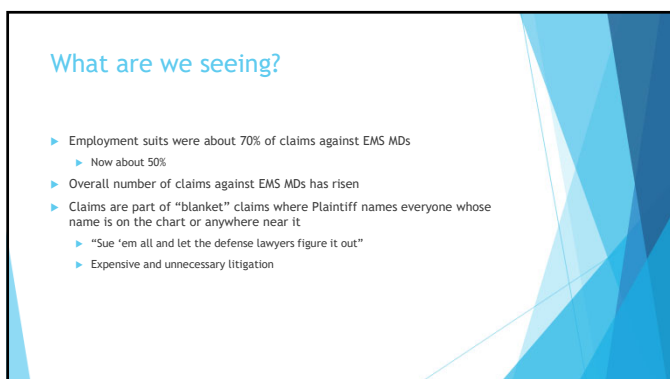
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What are we seeing?

- ▶ Employment suits were about 70% of claims against EMS MDs
  - ▶ Now about 50%
- ▶ Overall number of claims against EMS MDs has risen
- ▶ Claims are part of "blanket" claims where Plaintiff names everyone whose name is on the chart or anywhere near it
  - ▶ "Sue 'em all and let the defense lawyers figure it out"
  - ▶ Expensive and unnecessary litigation

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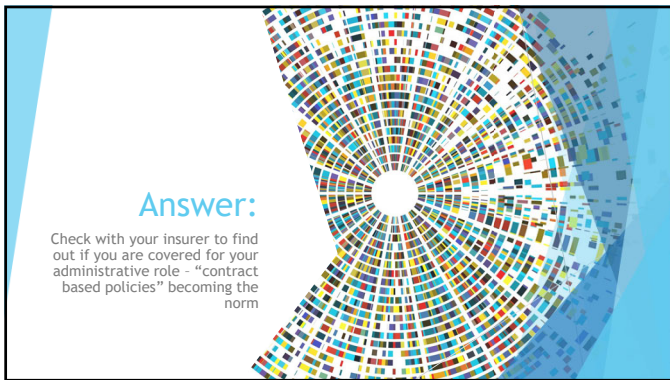
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Then...

County of Hennepin v. Hennepin Co. Assn of Paramedics, 464 N.W. 2d 578 (1990)

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Paramedic files grievance under collective bargaining after Dr. Long withdrew medical supervision

Arbitration decision puts him back to work



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Hennepin Co.

- ▶ Dr. Long appeals to Dist. Ct. and loses, and then to Ct. App.
- ▶ Ct. App. rules for EMS MD:
  - ▶ Arbitrator exceeded his 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

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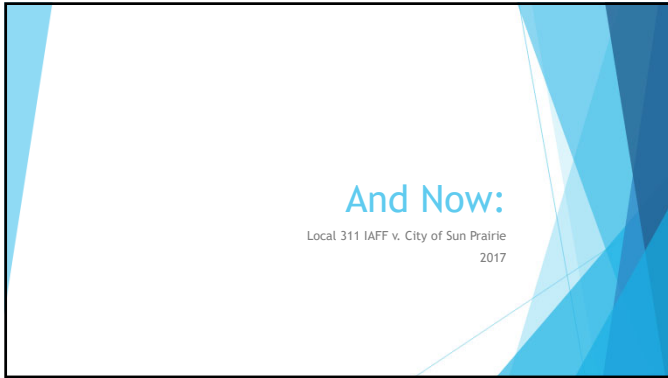
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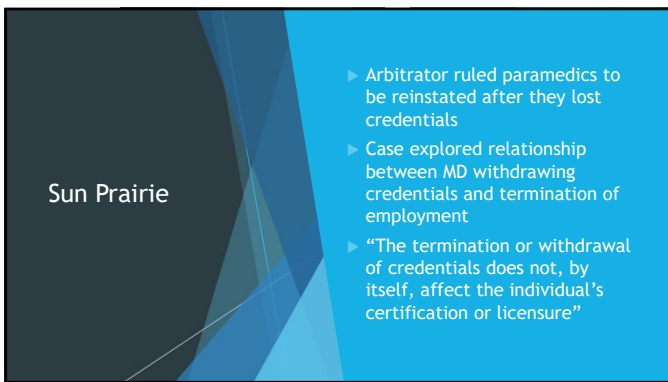
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Legal Case Study

- ▶ 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 for aggrieved EMT

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Legal Case Study

- ▶ Fox was being precepted by two paramedics
  - ▶ Gave Versed x2 to facilitate intubation of trauma pt without online medical control for 2<sup>nd</sup> dose
  - ▶ All 3 filed incident reports
  - ▶ Dr. Rubin interviewed preceptors but not Fox
  - ▶ Dr. Rubin withdrew Fox's medical control based on the reports and interviews

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Legal Case Study

- ▶ Fox never received paperwork for appeal rights - appealed to county medical director
- ▶ Dr. Rubin changed withdrawal of MCA to restriction pending 100 hr airway course
  - ▶ But Fox already terminated as a result of being unable to work as a paramedic
- ▶ Fox appealed to DOH, who assigned State EMS MD Doug Kupas as hearing officer

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## Legal Case Study

- ▶ Hearing officer found:
  - ▶ Dr. Rubin never interviewed Fox
  - ▶ Fox had no chance to rebut allegations
  - ▶ Dr. Rubin failed to document reasons for withdrawal of medical supervision
  - ▶ Fox was not provided notice
  - ▶ Insufficient evidence showing Fox incompetent

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## Legal Case Study

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

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## Legal Case Study

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

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## Legal Case Study

- ▶ 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

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## Legal Case Study

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

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## The Legal System Holds EMS Providers Accountable

PARAMEDICS, LIKE LAW ENFORCEMENT OFFICERS, ARE NOW BEING CHARGED WITH CRIMINAL ACTS INCLUDING HOMICIDE

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Elijah McClain case - Aurora, Co.

- ▶ Law enforcement officers and paramedics charged with homicide
  - ▶ As of December 2023, 2 of 3 law enforcement officers acquitted and one convicted
  - ▶ Paramedics on trial December 2023

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## Conclusions

- ▶ Know what authority is provided to you by state law and administrative regulations in your state
- ▶ Address how your authority interfaces with collective bargaining agreements
- ▶ Avoid hiring/firing decisions to reduce liability for wrongful termination claims
- ▶ Know the culture of your organization

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