

## Legal Concepts for EMS Medical Directors

W. Ann Maggiore, JD, NRP  
Volunteer Faculty  
UNMSOM/Dept. of Emergency Medicine  
NAEMSP 2024 Austin, Texas

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### Two Concepts

- Lawsuit - Tort
  - Elements of negligence
    - Duty
    - Breach
    - Causation
    - Harm
  - Other

- Contracts
  - Legal definition
  - Components
    - Scope of work
    - Authority
    - Responsibility
    - Identification
  - Source of authority

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### Legal Concepts



- Legal causes of action
- Legal framework of EMS practice
- Supervisory and oversight relationship
- Contracts

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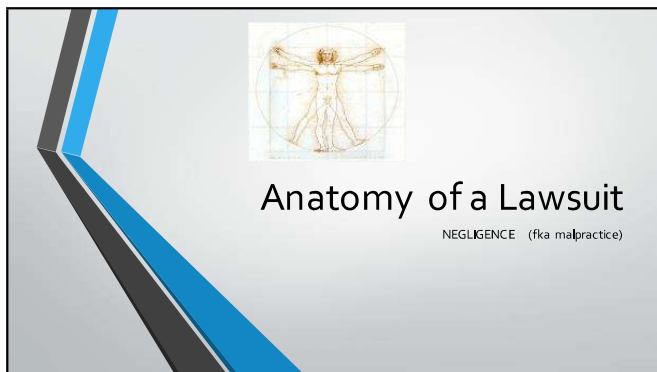
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Anatomy of a Lawsuit  
NEGLIGENCE (fka malpractice)

The slide features a decorative blue and black geometric shape on the left side. In the upper center, there is a small image of Leonardo da Vinci's Vitruvian Man. The title 'Anatomy of a Lawsuit' is prominently displayed, with 'NEGLIGENCE (fka malpractice)' written in smaller text below it.

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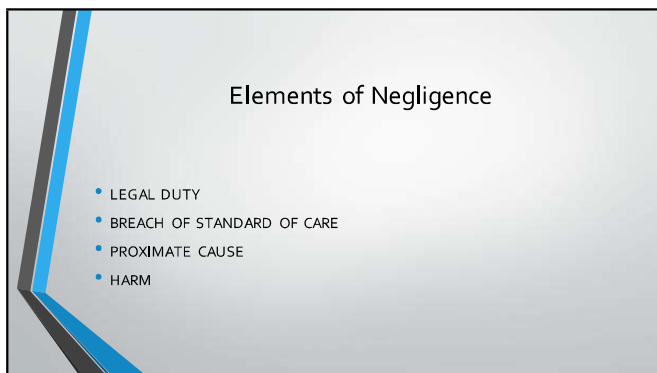
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Elements of Negligence

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

The slide has a decorative blue and black geometric shape on the left. The title 'Elements of Negligence' is centered. Below it is a bulleted list of four items: LEGAL DUTY, BREACH OF STANDARD OF CARE, PROXIMATE CAUSE, and HARM.

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Negligence - Duty

- EMS MD has duty to perform medical oversight functions
- EMS system has a duty to the public
  - Quality care; reasonable response time
  - Quality EMS care
  - Transport to appropriate facility
- EMTs duty to standard of care



The slide features a decorative blue and black geometric shape on the left. The title 'Negligence - Duty' is centered. Below it is a bulleted list of three items. The second item, 'EMS system has a duty to the public', has three sub-bullets: 'Quality care; reasonable response time', 'Quality EMS care', and 'Transport to appropriate facility'. The third item is 'EMTs duty to standard of care'. In the top right corner, there is a small image of a Dalmatian dog.

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### Negligence - Breach

- Standard of care
  - What a reasonable EMS physician would do in the same or similar situation
    - Objective standard
- Shown through expert witness



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### 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

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### Causes of Action for EMS MD

- Negligent supervision
- Negligent retention
- Negligence in treatment guidelines



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## Treatment Guidelines, not Protocols

- Treatment guidelines
  - EMS care requires exercise of judgment
  - Guidelines are flexible
  - Not to be used as "standard of care"
- Protocols
  - Inflexible
  - Algorithmic
  - Mandatory
  - Plaintiff's attorneys love them

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## Evidentiary Standards

- Many states require that "willful, wanton, reckless" conduct be shown to reach a "gross negligence" standard
  - Those states provide immunity for EMS for ordinary negligence (mistakes)
  - High evidentiary standard for plaintiff
  - Requires "conscious wrongdoing"

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## Anatomy of a Lawsuit

CIVIL RIGHTS CLAIMS



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### Civil Rights Claims

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



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### Elements of Civil Rights Claims

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

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### Civil Rights Claims

- Federal court
- No "cap" on damages
- Possibility of punitive damages
- Attorney's fees
- Insurance MAY NOT cover



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## The Big Danger...

PUNITIVE DAMAGES

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## Juries are Unpredictable

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## Conclusions

- Negligence – 4 elements
- Be aware of standard of care nationally
- Consult with counsel when you have concerns

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## EMS Medical Director Contracts



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### Why do you Need a Contract?

- EMS medical direction is a marketable skill
- It can expose you to liability
- Your contract may help defend a lawsuit by defining the parameters of your roles and responsibilities

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### Why a Contract?

- Many EMS systems want to give you responsibility but not authority!
- Agencies need to understand their responsibility to YOU



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### What is a Contract?

- An agreement memorialized in a legal document
- Both parties must read fully and understand
- Legally binds both parties for the term of the agreement

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### What is a Contract

- "Meeting of the minds"
  - Requires negotiation and compromise
- Each party gives something and gets something (consideration)



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### Elements of an EMS MD Contract



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**Components**

- Contract should cite the EMS law in your state under which you function
  - Include regulations and any applicable law



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**Components**

- What each party gives
  - specifics: when, where, how often, how much
- What each party gets
  - specifics: when, where, how often, how much
- What law applies
  - Limitations and exceptions
- What to do if someone breaches
  - arbitration? lawsuit?

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**Components**

- **WHAT DO YOU GIVE**
  - List your services to include:
    - Quality assurance activities - in field evaluation, retrospective chart review, in house evaluation
    - Dispatch supervision and pre arrival instructions
    - Training
    - Physical assessments
    - Liaison activities

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### Components

- WHAT DO YOU GIVE (continued)
  - REMEDIATION
  - MEETINGS
  - GRANT WRITING
  - DISPATCH
  - COMPLIANCE
  - HOW MANY DAYS/MONTH



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### Components

- WHAT DO YOU GET?
  - COMPENSATION
  - BENEFITS- CME?
  - TRAVEL REIMBURSEMENT
  - VEHICLE
  - PAGER, CELLPHONE, RADIO
  - SUPPORT? OFFICE, SECRETARY, COPYING

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### Components

- WHAT DO YOU GET?
  - AUTHORITY sufficient to carry out responsibility
    - Agreement that you're the ONLY medical director
    - Agreement to abide by your decisions
    - Where you are in the organizational chart
  - If they want ADVICE, hire a consultant!

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Components

- Select how and where your contract disputes will be resolved
- Should be convenient to both parties



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Components

- How will supervision be handled if you are unavailable?
  - Assistant Medical Director?
  - Someone else taking call?
- Address standards and processes for withholding or withdrawing medical control
  - Just cause?
  - What, if any, process is due?

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Components

- WITHDRAWING MEDICAL CONTROL: HOW WILL THIS BE HANDLED?
  - You need immediate, full authority to limit or withdraw medical control
  - Avoid requirements to "consult" before taking action
  - Is due process required?
  - This is NOT the EMS service's disciplinary proceeding!!!

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### Authority?

- Where does your authority to suspend, limit or revoke medical supervision come from?
  - Statute?
  - Regulation?
  - Your contract?

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### Due Process?

- Addendum to MD contract - due process?
  - Any appeal right?
- County ordinance to prevent paramedic from getting medical control elsewhere
- Address whether you can protect paramedic's discipline, QA & training records from discovery
  - Peer review immunity
  - NAEMSP position paper in progress

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### Components

- Arbitration clause
  - Requires arbitration before a lawsuit can be filed
  - Keeps costs down of litigating contract disputes



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### Termination and Renewal

- How can you get out?
- What if they want you out?
- Can contract be "automatically renewed" from year to year?



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### Indemnification Clauses

- USE EXTREME CAUTION when faced with these "hold harmless" clauses
- You may be asked to give up your statutory and constitutional rights and receive nothing in return
- Refuse to indemnify for employment issues
  - "I don't hire/I don't fire" defense

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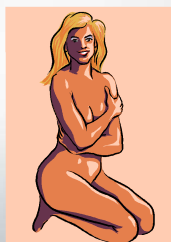
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### Insurance

- **THE INSURANCE ISSUE**
  - Who insures you?
  - For what?
  - Field procedures?
  - Admin/employment issues?
  - Who pays for it?
  - "GOING BARE"



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### What We Are Seeing

- Employment claims – were 70% now 50% of claims
- Overall rise in claims against EMS MDs
- Very few claims involve clinical competency issues
- EMS MDs being added into "blanket" claims
  - "Sue everyone and let defense lawyers sort it out"

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### Beware of EMS Stepping Out of Role

- EMS or primary care?
- Concierge medics
- High end protection EMS – political, celebrities
- "Set medics"
- Event coverage

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[www.emsmdinsurance.com](http://www.emsmdinsurance.com)

- Contract based
- Covers administrative/supervisory
- Sole source/endorsed by NAEMSP
- Can cover D&O for sitting on ambulance boards

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[www.emsminsurance.com](http://www.emsminsurance.com)

- Tactical MDs – coverage for discharge of firearm
- Treat & Release guidelines
- Community paramedicine
  - May need 2<sup>nd</sup> policy for coverage

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### Employee or Contractor?

- As an independent contractor:
  - No statutory tort immunity even if contracted to government agency
  - Obtain own insurance (big \$\$\$\$\$)
- As an employee:
  - Be sure their insurance covers physicians for patient care in the field and for employment civil rights claims

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### Your Contract

- DON'T JUST SIGN WHAT THEY GIVE YOU!! READ IT!!
  - Consult an attorney knowledgeable in contract law
  - The contracts you get are often written by administrators or paramedics
  - They may contain illegal clauses
- DON'T DO THIS IN A HURRY!

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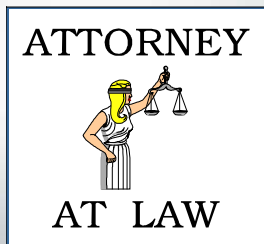
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### Your Contract

- Don't be too hasty, too busy or too cheap to have an attorney review a proposed contract for you!!
- Hard for MD to say they didn't read or understand provisions



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### Your Contract

- Negotiation is part of the process
- May require multiple drafts
- Does not happen overnight!



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### Conclusions - Contracts

- Read before you sign
- Consult an attorney
- Negotiate
- Authority should match responsibility
  - Don't allow limitations on your authority!
- Spell out compensation issues
- Caution re: indemnification clauses

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