

Legal Issues for the EMS Physician 2025

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PBS Frontline
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AP News
Lethal Restraint



Death in Custody:

Avoiding the Major Pitfalls of Physical Restraint & Chemical Sedation



The NEW ENGLAND JOURNAL of MEDICINE

PERSPECTIVE f X in e

Handcuffs and Unexpected Deaths — “I Can’t Breathe” as a Medical Emergency

Authors: Matt Bivens, M.D., Eric Jaeger, J.D., N.R.P., and Victor Weedn, M.D., J.D. [Author Info & Affiliations](#)

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TheHardWork.org

The Good News

***Medical directors **very rarely**
have legal liability in
connection with performing
their duties.***

»» That's it. That's the lecture.

Of course, it's a little more complicated

Let's talk about:

- Responsibilities of Medical Directors That Can Lead to Liability
- Sources of Authority
- Liability Protection
- Sources of Liability
- Increasing Criminal and Civil Liability for EMS Providers
- Know What is Done in Your Name
- What to Do if You Get Sued



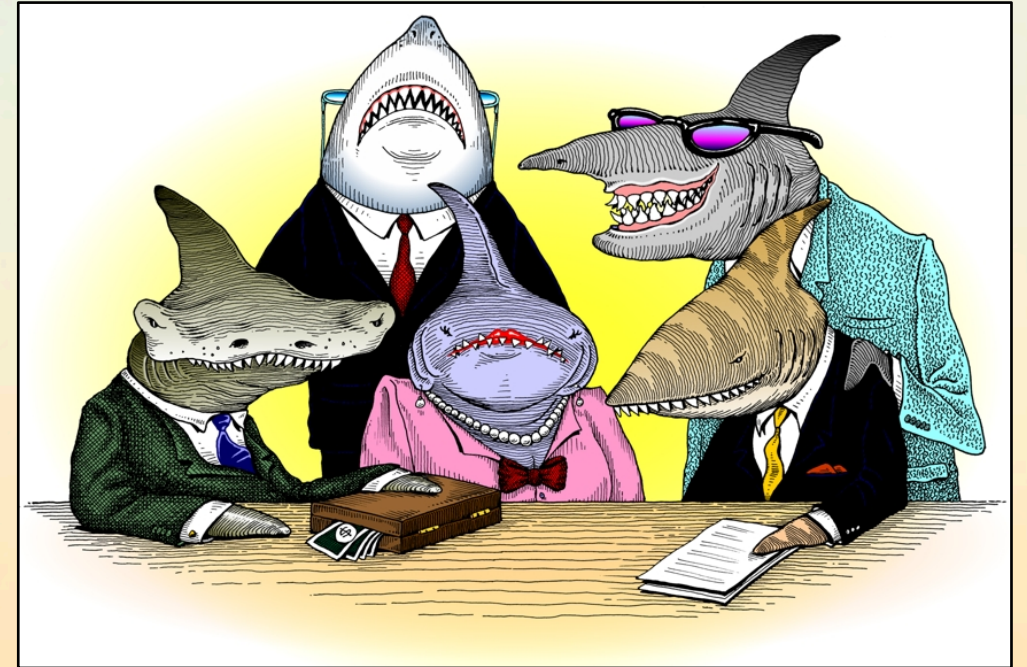
Background



Lawsuits are Rampant

75% of emergency physicians will be named in malpractice lawsuits during their careers

- » The only correlation with being sued?
 - number of years practiced
 - number of patients seen over time.



Risk of Liability is Low

Retrospective Review of Malpractice Cases

In a review of ~7,000 cases:

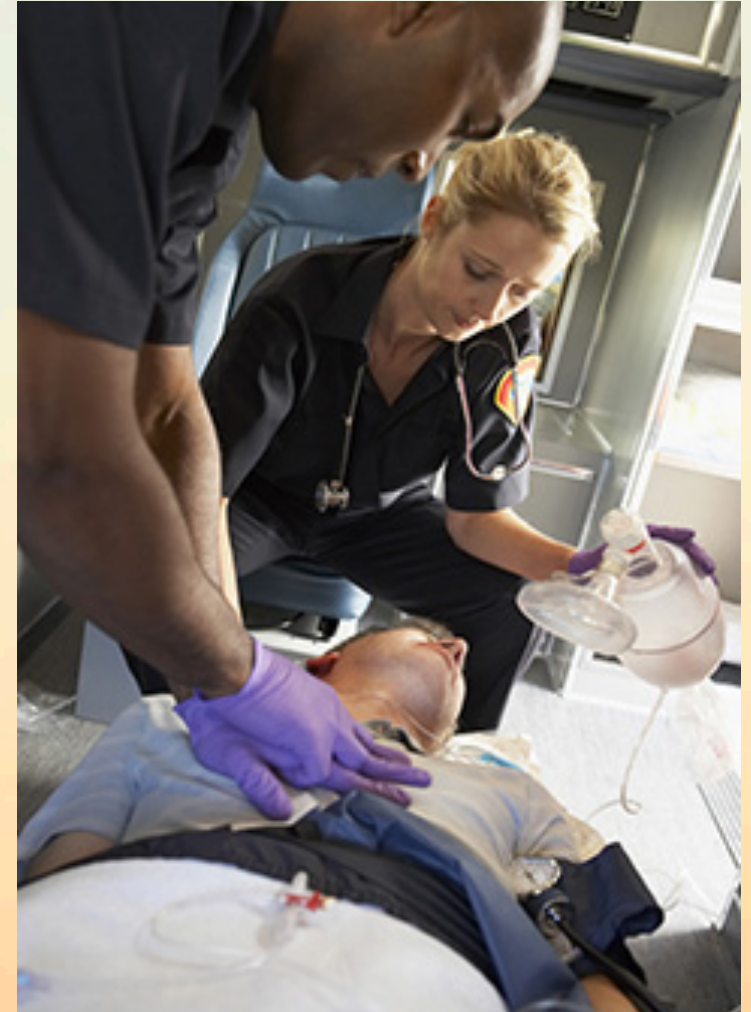
- 66% were dropped or dismissed
- 23% settled
- 8% went to trial
- Of those that went to trial:
 - 93% resulted in victory for defendants



EMTs “Work Under Your License”

Its often said that EMTs and Paramedics “work under the medical director’s license.”

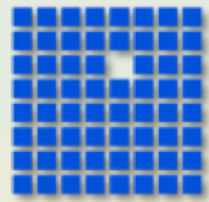
- » This is NOT true (except in rare circumstances)
- » In virtually every state, EMTs carry their own licenses
- » Delegated Practice in Texas is an exception.



Responsibilities of Medical Directors That Can Lead to Liability



Position Statements: ACEP & NAEMSP



American College of
Emergency Physicians®

» *The Role of the Physician Medical Director in
Emergency Medical Services Leadership*



National Association
of EMS Physicians

» *NAEMSP Position Statements*

Credentialing & Withdrawal of EMS Credentials

- » **Actively direct and oversee credentialing** for EMS providers
- » Medical directors must have:
 - **final authority and accountability** for credentialing of EMS provider
 - authority to **immediately withdraw clinical privileges** as part of a **due process structure** if an EMS professional poses potential **imminent threat to patient safety and welfare.**

CQI Continuous Quality Improvement

- » Actively direct and oversee **continuous quality improvement** programs based on evidence-supported practices and outcomes
- » **Promote continuous quality improvement** and patient centered delivery of medical care

A group of wooden figures on a blue surface. On the left, there is a cluster of approximately 15 light-colored wooden figures. On the right, a single red wooden figure stands out. The background is a dark blue, textured surface.

Sources of Authority

Two Sources of Authority

EMS Medical Directors have two sources of authority:

Laws:

- Statutory Authority

Written Agreement:

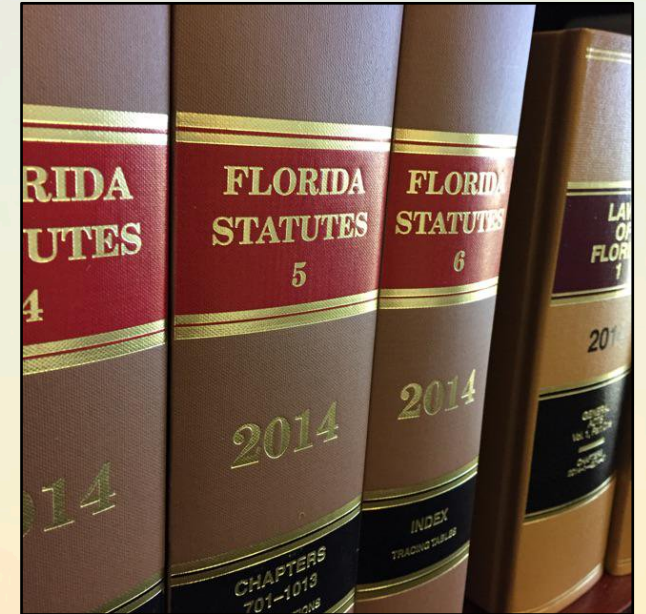
- Contractual Authority



Laws (Statutory Authority)

State EMS laws and rules where you practice

- “Laws” are passed by a legislature
 - ➔ Statutes, Legislation
- “Rules” are created by executive agencies, for example the Bureau of EMS
 - ➔ They have the same force as laws



Title 32, Chapter 2-B: MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

- 32 §81. Title
- 32 §81-A. Statement of purpose
- 32 §82. Requirement for license
- 32 §83. Definitions



Written Agreement (Contractual Authority)

Contracts governing medical direction vary by region:

- Medical Director hired by EMS Service
 - ➔ Direct contract between medical director and EMS service
- Medical Director is Hospital-based
 - ➔ Agreement between the hospital and the EMS service



Contractual Agreements

- » Roles fulfilled by EMS physician medical directors, including responsibilities, authority, and reporting hierarchies, are to be formally established in writing in contractual agreements between EMS physician medical directors and EMS systems and/or applicable legal parties.
- » An EMS medical director's qualifications, responsibilities, authority, and liabilities must be delineated in writing within each EMS service.

Contract For Medical Direction

- » The contract for medical direction is a key source of your protection and your authority as Medical Director.
- » There is no STANDARD contract
- » Most lawyers, including hospital lawyers, will have limited familiarity with the key issues
- » If you work in a system where the contract is between the hospital and the EMS agency, I CANNOT STRESS STRONGLY ENOUGH THE IMPORTANCE OF REVIEWING THOSE CONTRACTS
 - In my experience, they have often not been reviewed in decades

Key Contractual Provisions

QA/CQI Program

- “The EMS Agency shall maintain a QA/CQI program for reviewing the quality of care provided by its EMS providers and for recommending additional training or remediation.
- “The QA/CQI program shall be subject to the approval of the Medical Director.
- “The EMS Agency shall share all findings of the QA/CQI program with the Medical Director.

Reporting

- The EMS Agency shall report to the Medical Director any EMS calls where there is reason to believe that one or more of the following has occurred: (i) a protocol violation, (ii) a medication error or (iii) patient harm due to the actions of an EMS provider.



Key Contractual Provisions

Investigation / Review of Calls

- “The Medical Director shall have the right to review any EMS calls.
- “The EMS Agency agrees to cooperate fully in any EMS call review, including:
 - ➔ Making all records related to the call available
 - ➔ Making available the EMS providers for interviews

Remedial Training

- “In the event that the Medical Director determines it is appropriate, they may direct that the EMS Agency or individual providers shall receive remedial training.
- The remedial training provided shall be subject to the approval of the Medical Director.



Key Contractual Provisions

Medical Director Authority to Temporarily or Permanently Suspend EMS Privileges

- “If after review the Medical Director determines that an EMS provider:
 - ➔ **Is not competent** to continue providing EMS care, or
 - ➔ **Has violated applicable state or federal laws** or rules, or
 - ➔ **Has violated any rules related to the management of medications** promulgated by the hospital or pharmacy, or
 - ➔ **Has committed a serious violation of EMS protocols,**the Medical Director may suspend a provider’s ability to practice EMS care.
- “The suspension may be subject to the satisfactory completion of remedial training or may be a permanent suspension.

Key Contractual Provisions

Agency Responsibilities

- “The EMS Agency shall be responsible for ensuring that its EMS providers are all competent to provide EMS care at their level of licensure.
- “The EMS Agency shall be responsible for providing any training required to ensure that EMS providers can perform the skills specified in their EMS protocols.

Termination

- “This contract can be terminated without cause by either party upon three months notice.
- “This contract may be terminated for cause by either party upon ten days notice.
- “Cause” shall include any breach of the provisions of this agreement that is not remedied within five days of notice of the breach.

Key Contractual Provisions

Insurance

- “The EMS Agency shall maintain commercial general indemnity, workers compensation and [fill in the blank] insurance to cover its own activities.
- “The insurance shall provide coverage for the Medical Director in the performance of the Medical Director’s duties as specified herein.

Indemnity

- “Each party shall indemnify... the other party from and against any and all claims, actions, or suits, and any and all losses, liabilities, or damages, ...arising out of the operations, acts, or omissions of the indemnifying party or its employees.



Contractual Provisions vs. State Law

Some of these topics may also be covered in state law or rules

- » Include them in the contract anyway!
- » State law often speaks in very general terms and does not include detailed, operational language
- » Laws are often open to interpretation





Liability Protection

Liability Protection

- » **Medical directors must have liability protection** that covers the spectrum of their responsibilities and authorities.
- » EMS systems have ethical, and in some jurisdictions, legal responsibilities to provide this liability protection to medical directors.

Immunity Laws

Immunity Laws

- » Immunity laws exist in many states that protect EMS medical directors, provided acts are performed in "good faith" or at least not recklessly.

Sovereign Immunity

- » Governmental EMS agencies, and their medical directors, may have sovereign immunity.



Verify Insurance Coverage Extends to Medical Director Roles

Are administrative responsibilities covered?

- » Essential administrative actions of EMS physician medical directors can be subject to claims *outside of medical malpractice policies*
- » Medical malpractice policies will typically cover traditional clinical aspects of EMS medicine

Sources of Liability



Negligent Supervision

Typical case:

- A paramedic screwed up and caused the death of a patient
- You knew, or should have known, he was poorly skilled and potentially a danger to others
- As medical director, you failed to pull his credentials



Negligence Defined

Negligence requires multiple factors, including:

- **A duty to do something**
 - ➔ E.g. provide competent medical care
- **You breached your duty**
 - ➔ E.g. You provided poor medical care or the wrong medical care

Reasonable Person Standard

- ➔ “What would a reasonable person do under the same or similar circumstances.”
- ➔ “What would a reasonable EMS medical director have done in the same or similar circumstances.”

Negligent Supervision

Duty

» As medical director, you had a duty to oversee the credentialing of paramedics

AND

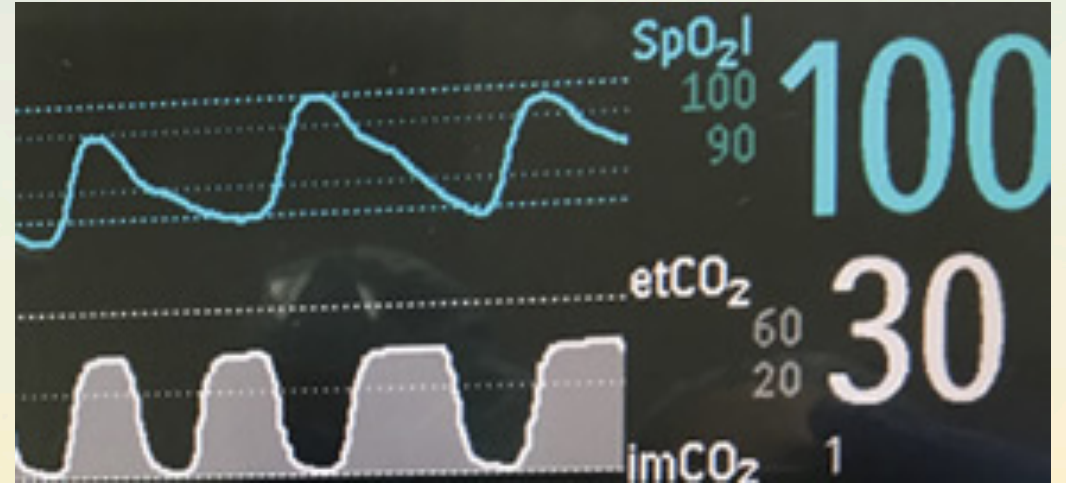
» You had a duty to pull the credentials of any paramedic whose skills placed patients at risk



Negligent Supervision

Breach of Duty

- » Paramedic Johnson placed an endotracheal tube in Ms. Smith's esophagus and she died
- » You had previously reviewed two prior calls where Paramedic Johnson had failed to deploy waveform EtCO₂ to confirm placement
- » You took no action to either suspend Paramedic Johnson's credentials or ensure that he had been adequately retrained



Paramedic Johnson:

"I'm old school!

I had misting in the tube

I saw it pass the vocal cords

I had good bilateral lung sounds."

How to Avoid Claims of Negligent Supervision

- 1. Carefully review allegations of poor care and errors**
 - E.g. esophageal intubation
- 2. Follow the specified process for reviews/investigations**
 - This is often where problems arise
- 3. Take appropriate remedial action**
 - Paramedic required to participate in remedial training
- 4. Document your findings and remedial action in writing**
 - “I reviewed the care provided by Paramedic Jones to Sara Johnson...”
 - “We reviewed the findings with Paramedic Jones.
 - “We assigned Paramedic Jones to participate in remedial training.

Delegation

You can delegate elements of your responsibility.

» EMS Coordinator might conduct:

- The initial review of the case
- Recommendations for appropriate action

BUT...you must:

1. Participate where required to do so

- E.g. Meeting with the paramedic

2. Approve the findings & recommendations

Body Cam Footage?

- » Police body cameras are increasingly common (more on this later)
- » For investigations that involve serious bodily harm or death, you should attempt to view the body camera footage.
- » It often tells a **VERY DIFFERENT** story than the one reflected in the patient care report.



Documentation

Thoroughly document your findings

- » Be objective in your documentation
 - “I reviewed the care provided by Paramedic Jones to Sara Johnson, including her endotracheal intubation.
 - “Upon arrival at the hospital, it was determined by the ED physician that the endotracheal tube was in her esophagus.
 - “We could not determine conclusively whether the tube migrated when she was moved from the EMS stretcher to the ED bed or whether the tube was initially placed in her esophagus and Paramedic Jones failed to identify that this had occurred.
 - “Upon review, we determined that Paramedic Jones had not used waveform EtCO₂ to exclude endotracheal intubation.”

Document Oral Conversations

- » Its common for medical directors to review their findings in a meeting with the paramedic or a one-on-one conversation.
- » As a result, there is often no written record of what was told to the paramedic or what their response was.
- » This is a common pitfall!!
- » Its crucial that after the meeting, you produce a written summary of what was said.

Common Pitfall

Suspension of Paramedic Privileges

In egregious cases, you might decide to suspend a paramedic's credentials to practice

» This is obviously a serious step, as it can:

- Damage the paramedic's ability to earn an income
- Exacerbate staffing shortages
- Cause reputational harm

» You may face push back from the paramedic or agency

Fatal Incidents

2 medics' credentials suspended after Texas patient dies in transport

Suspension of Paramedic Privileges

Recommendations:

- **Egregious lapse?** Suspension is appropriate.
- **Unsure if suspension is warranted?**
 - ➔ “I was troubled by your actions here.
 - ➔ “I’m requiring you participate in an intubation refresher class before your next shift.
 - ➔ “If this occurs again, it will likely result in suspension of your paramedic privileges.
- **Lack authority?**
 - ➔ “I have recommended to EMS Chief Smith that Paramedic Jones be suspended until such time as he demonstrates competence.

Suspension of Paramedic Privileges

This is the most common source of litigation involving medical directors!

Avoid liability by:

- Following the specified process, esp. any due process rights
- Document your findings thoroughly
- Make sure early warnings are also well documented
 - ➔ “I am recommending that Paramedic Thomas attend remedial training. Should this or a similar problem occur in the future, it may warrant suspension of Paramedic Thomas’ privileges.”
- Apply this remedy consistently

Suspension of Paramedic Privileges

County of Hennepin v. Hennepin County Association of Paramedics and Emergency Medical Technicians

- » EMS medical director concluded that the paramedic in question was not competent in his role as a paramedic.
- » Paramedic sued
- » ***The court ruled in favor of the physician***
 - EMS medical director could not be compelled to credential a paramedic that the medical director believed was incapable of safely and effectively practicing prehospital medicine

Suspension of Paramedic Privileges

Baxter v. Fulton-DeKalb Hosp. Authority, 764 F. Supp. 1510 (N.D. Ga. 1991)

- » Paramedic Baxter allegedly falsified a report regarding whether he had abandoned CPR without the appropriate physician approval.
- » In the disciplinary hearing, his partner testified against him.
- » However, the disciplinary board found that his partner was NOT credible and ordered Paramedic Baxter reinstated.
- » The EMS medical director, convinced that Baxter had acted improperly, withdrew his approval of Baxter, which prevented Baxter from working.
- » Baxter sued and won. The court found that **the medical director's withdrawal of privileges had NOT complied with the specified grievance procedures.**

Confidentiality of Investigations

IMPORTANT: Maintain the confidentiality of investigations!

The ED is buzzing....

» *“Can you believe that he intubated the esophagus and didn’t recognize it?! She would be alive if he hadn’t screwed up.”*

People keep asking you about it:

- *“What’s happening with that case? Is the medic getting suspended?”*
- *“He brought in a patient the other day; I can’t believe he’s still working.”*



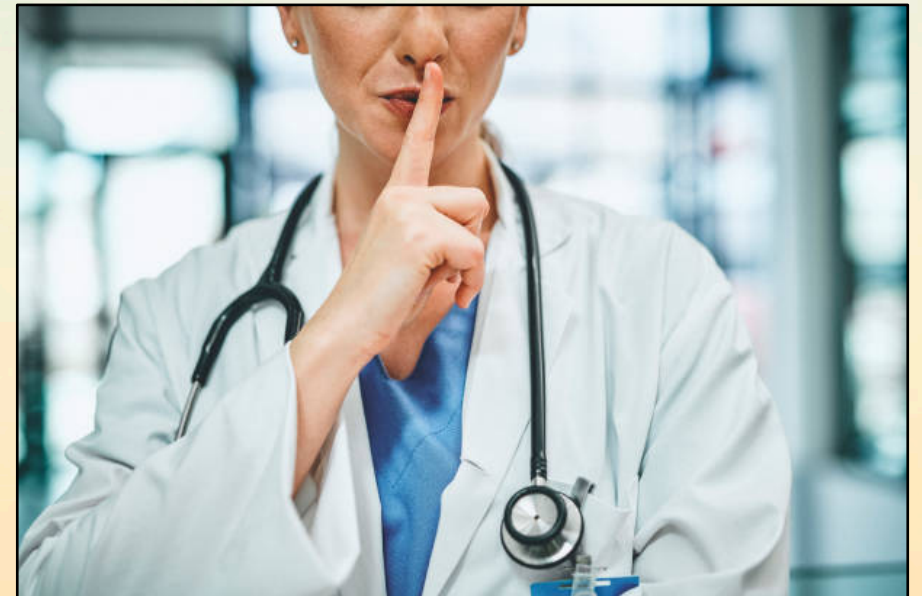
Confidentiality of Investigations

IMPORTANT: Maintain the confidentiality of investigations!

It's natural to want to chat with colleagues, family and others about the case.

But... ***you must resist that urge!***

- » Disclosing information about a case that is (or might be) under investigation may be:
 - A **violation of hospital policy**
 - A **HIPAA violation**
 - And may result in **defamation or slander claims** from the paramedic involved!



Medication Errors as System Failures

Medication errors occur frequently in EMS

- EMS lacks some of the system controls such as scanning that help reduce errors in the ED
- » Most medication errors are due to **system failures rather than individual transgressions**
- » Its important to employ a “**just culture**” approach in conducting reviews



Medication Errors & Just Cause Culture

A “Just Culture” approach:

- Examines the systems that were intended to prevent the employee’s error and determine whether they were inadequate or failed for some reason.
- Doesn’t excuse reckless behavior, but rather recognizes that errors occur even when employees are striving to perform correctly



A Just Cause Culture is Crucial to Reduce Med Errors



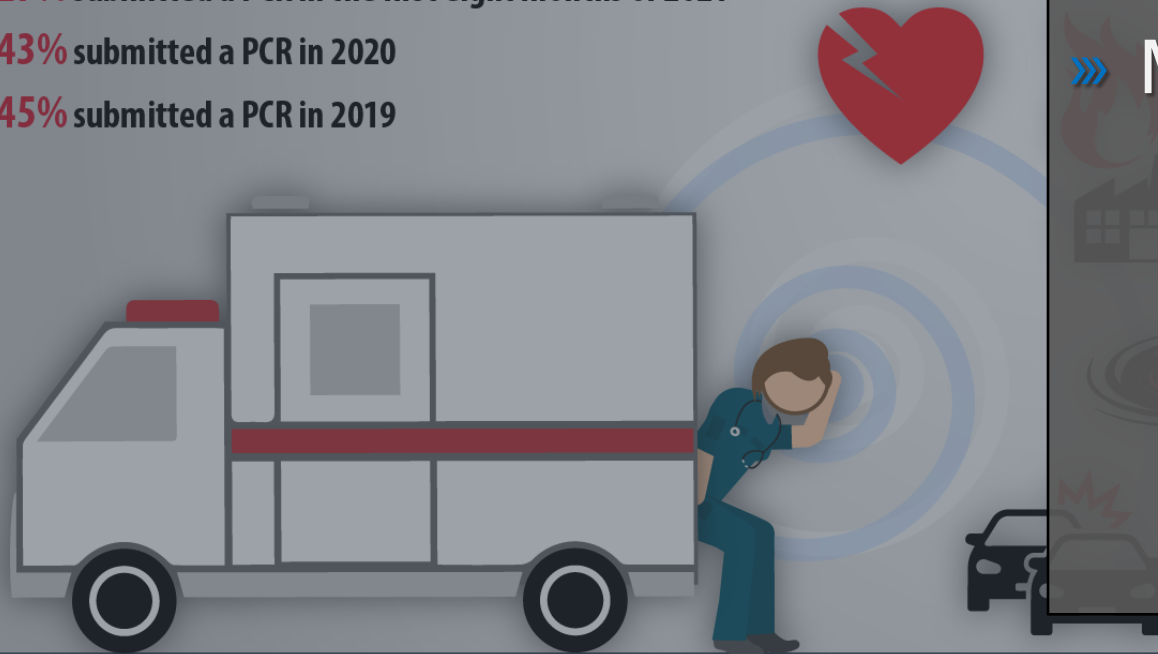


TEXAS IS FACING A DRAMATIC SHORTAGE OF EMS PROFESSIONALS

EMS PROFESSIONALS ARE LEAVING AMBULANCES

Licensed EMS professionals in Texas are submitting fewer patient care records each year. This means that fewer EMS professionals are working on ambulances each year. They are leaving Texas EMS agencies.

- 27% submitted a PCR in the first eight months of 2021
- 43% submitted a PCR in 2020
- 45% submitted a PCR in 2019



- » EMS organizations across the country are facing crippling staffing shortages
- » Multiple consequences:
 - Agencies hiring staff with multiple prior issues that might not have been hired in the past
 - Pressure to retain staff

Bailey: EMS 'putting the public at risk,' medical director said in resigning

BY STEVE BAILEY
MAR 19, 2023

Bailey concluded that the EMS system had systemic problems that were putting the public at risk.

- » He elected to resign his position
 - This protected him from liability
 - Brought attention to the problem



A close-up photograph of a person's hands in metal handcuffs. The hands are positioned in front of the person, palms facing each other. The person is wearing blue denim jeans. The background is a dark, solid color.

Increasing Criminal & Civil Liability for EMS

A Long, Long Time Ago...

*It was rare to see **civil lawsuits** against EMS providers
» And unheard of to see **criminal charges** brought
against EMS providers*



Times Have Changed

We now see...

- » Frequent civil lawsuits against EMS providers
- » Significant increase in criminal charges

Increasing lawsuits against EMS providers likely mean **increased exposure for EMS Medical Directors**



Criminal Charges Against EMS Providers

Former paramedic ordered to stand trial on burglary, theft charges

Peninsula paramedic faces 2nd sexual assault suit

By [Sam Whiting](#)

Updated June 22, 2023 10:16 p.m.



The former
Conniry, 43,
prison if cor

Paramedic Accused of Stealing Fentanyl and Betraying Public Trust

BY CITY NEWS SERV
AUG. 10, 2023 6:50 P

Once a trusted member of the Muncie Fire Department, former paramedic Campbell Holinger now stands accused of official misconduct. Holinger allegedly stole fentanyl and other narcotics, tampered with evidence, and betrayed the public trust. The consequences of his actions are far-reaching, affecting both the reputation of the department and the faith of the community.



BNN Correspondents

13 Feb 2024 16:28 EST



Recent Criminal Charges

A Police Officer and Two Paramedics Charged In Jail Deaths

The New York Times
Paramedics Charged In Jail Deaths
Last Trial
Death

Illinois paramedics charged with first-degree murder in death of patient strapped facedown on stretcher

[Michelle Mark](#) Jan 14, 2023, 9:41 PM EST

[Share](#) | [Save](#)

Dec. 22, 2023

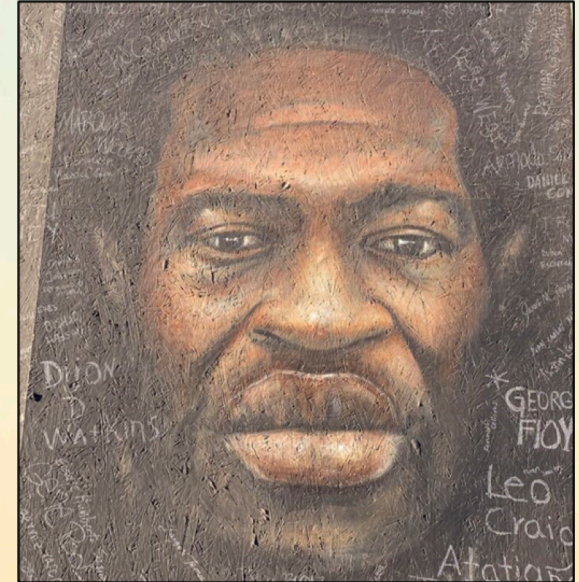
Peter Ci...
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Two Hamilton paramedics charged in 2017 death of Good Samaritan

Why increasing criminal charges?

Two factors at play:

- » **George Floyd changed the landscape** regarding the willingness of prosecutors to bring criminal charges against first responders



Body cameras, cell phones and Ring doorbells are now EVERYWHERE



Elijah McClain

Aurora, Colorado | Aug 201

The New York Times

Paramedics Found Guilty in Last Trial in Elijah McClain Death Dec. 22, 2023

Peter Cichuniec and Jeremy Cooper were convicted of criminally negligent homicide, but the jury split on the assault charges, in an unusual prosecution of medical personnel.

© Eric Jaeger 2024



LOCAL NEWS

Aurora city councilmember calls for medical director to step down following Elijah McClain verdict

 CBS NEWS
COLORADO

By Olivia Young
December 25, 2023 / 1:37 AM MST / CBS Colorado

Civil Liability

Areas of focus:

- Esophageal intubation
- Declaring patients dead



Civil Liability

Esophageal Intubation



Confirmation of Endotracheal Intubation

- » Esophageal intubation
- » Standards of care

Legal complaint filed in death of an Emerald Isle teen

**Family of intubated dead man
sues for more**

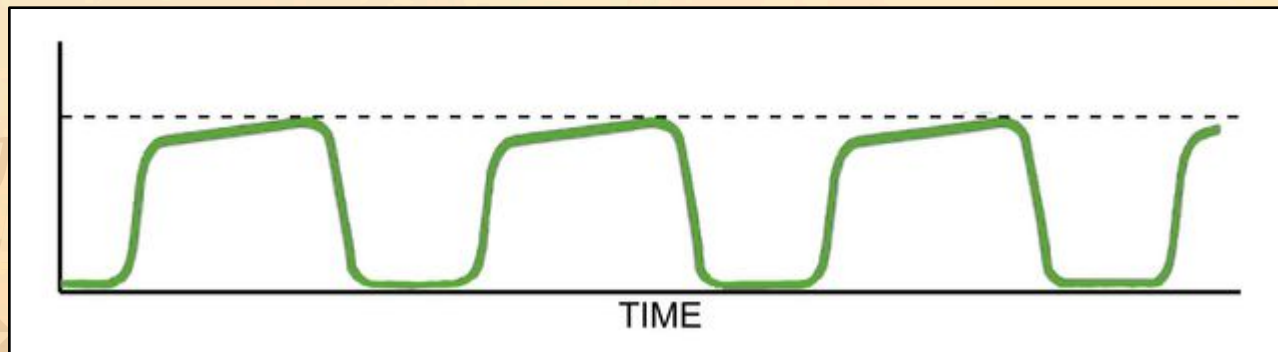
Jury Awards \$6M Against Paramedic Who Improperly Placed Breathing Tube Causing Death of 20 Year Old Mom

By [Ronald C. Burke, Esq](#) on Sep 29, 2017 | 0 Comments



Multiple Ways to Confirm a Tube...

...but **waveform**
ETCO₂ is the **Gold**
Standard

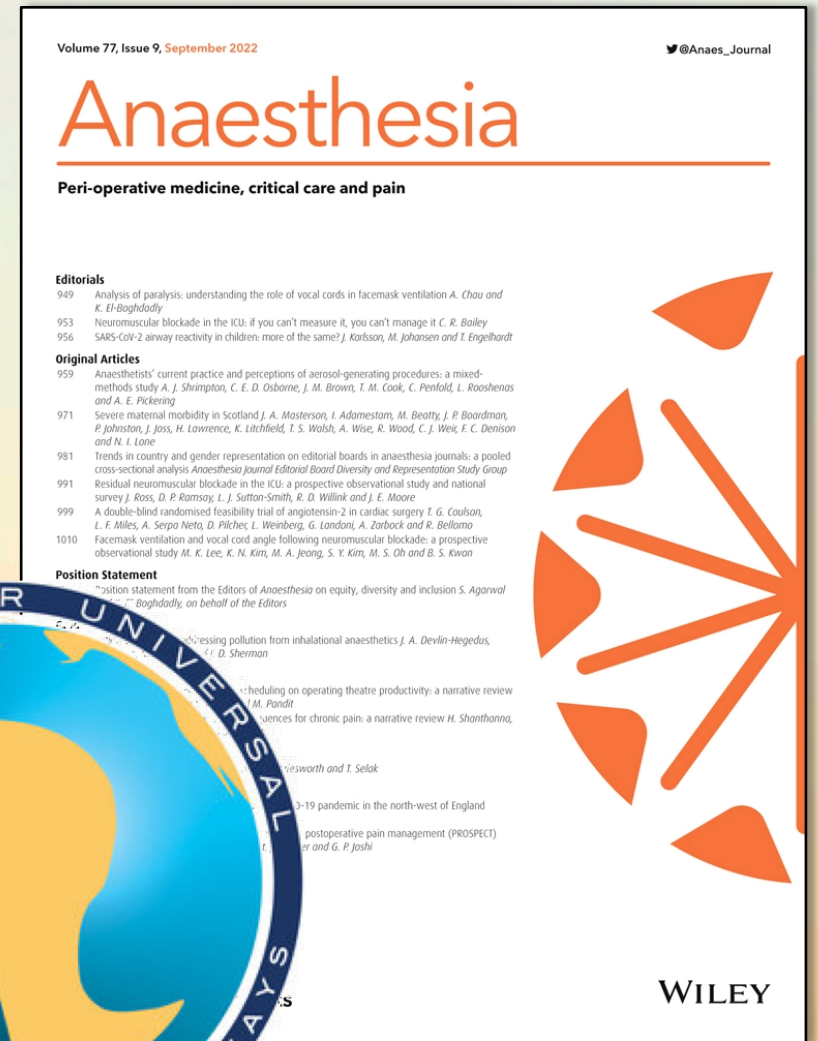


New Universal Airway Guidelines Published

Published Aug. 2022

» #MustHaveCO2

» #VLforEveryIntubation

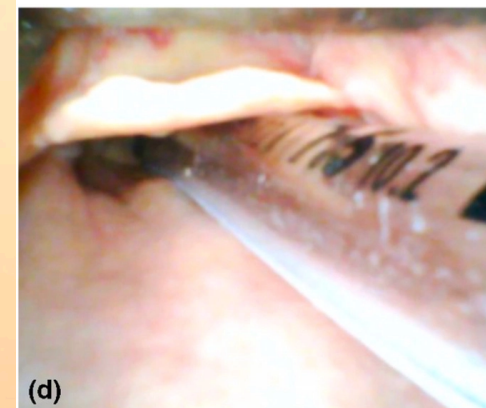
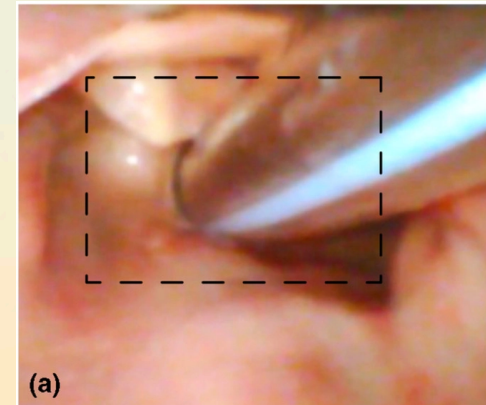


Clinical Examination Should NOT be Used

Clinical examination should not be used to exclude esophageal intubation

Do NOT Use:

- » Tube misting
- » Chest rise/fall
- » Lung/epigastric auscultation
- » Bougie 'hold up'



Fatal Unrecognized Esophageal Intubation

Misplaced reliance on clinical examination is common in cases of fatal unrecognized esophageal intubation.

*Clinical examination findings are frequently reassuring even when the tube is in the esophagus. **In every case of unrecognized esophageal intubation reviewed for this guideline in which lung auscultation was undertaken, breath sounds were reported to be heard.** Misting of the tube on exhalation, chest rise, absence of abdominal distension, lung/epigastric auscultation, bougie 'hold up' and chest x-ray should therefore not be used to exclude esophageal intubation.*

This is How We Do It!

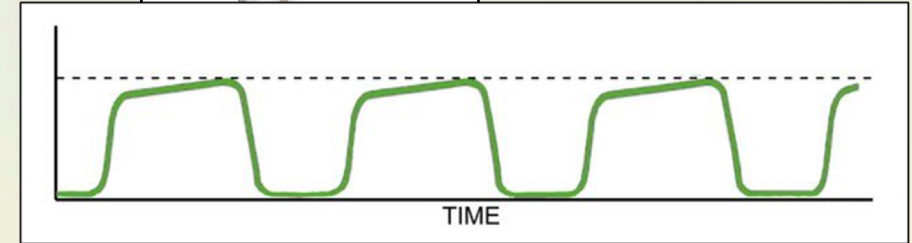
“Please connect the EtCO₂ sensor”

“I have a good EtCO₂ waveform.”

“Please continuously monitor the EtCO₂ waveform.”

“I also have:

- Good bilateral lung sounds
- Good chest rise and fall
- Absence of toilet flush”



Civil Liability

Declaring Patients Dead



Caution! Man with Gunshot to the Head Still Alive



Worst Case Scenario

June 19, 2019, Sedgwick County EMS, Kansas

- » 31-year-old man put a gun to his head and pulled the trigger.
- » Sedgwick County EMS responded; they found the patient had no pulse and was not breathing.
- » After one round of CPR, they obtained ROSC
- » Paramedic Timothy Popp contacted the Sedgwick County Medical Director, Dr. John Gallagher.
- » Gallagher directed paramedics to discontinue resuscitation efforts. He said that the patient's injury was "incompatible with survival."
- » 10 minutes later, Popp called Gallagher again to report that the patient had a "strong pulse." Gallagher said although the patient would not survive his injuries, he could "theoretically find himself on a ventilator and going for organ donation "

- ## Worst Case Scenario
- » Approximately five hours after EMS initially arrived the first time – having left the dying man with fire department EMTs – paramedics returned to the scene to administer another 500 mg of ketamine to ease the moaning that had resumed – bystanders outside could hear it. The patient was next covered with a white sheet (yes, he was still breathing and had a pulse) and moved to a waiting ambulance that transported him to a hospice facility where he died 10 and a half hours after the shooting.
 - » Kansas State EMS Board cited all seven city and county employees were cited for unprofessional conduct, failing to provide adequate care and failing to follow protocol. The board said they “demonstrated a lack of ability, knowledge, or fitness to perform patient care according to applicable medical protocols.”
 - » Gallagher was eventually forced to resign



Know What is Done in Your Name

Review All Uses of Your Name

Your name will be used in a variety of contexts. Make sure you regularly (annually?) review all uses of your name and authority:

- » Approval of Training
- » Authorization of Medication Purchases



Escambia County's medical director Suspends Training Program Using Her Name

Escambia County medical director emails reveal details about EMS training problems



Jim Little

Pensacola News Journal

Published 5:29 p.m. CT April 16, 2019 | Updated 4:11 p.m. CT Feb. 20, 2020

- » Dr. Rayme Edler, Escambia County's medical director, suspended a program that trained EMTs to start patient IVs after discovering her name was being used on the training certificates without her knowledge.
- » The fallout led to Escambia County EMS Chief Steve White resigning on June 30, 2018, and the launch of an internal investigation that was handed over to the Florida Department of

Take Home Points



Take Home #1

Medical directors
very rarely have legal
liability in connection
with performing their
duties.



Take Home #2

Ensure that you have liability protection in place:

- » Review the laws in your state regarding medical director liability
- » Review the insurance covering you specifically as medical director
- » Have in place contractual provisions that provide protection



Take Home #3

Thoroughly review the laws and contracts that govern your authority as Medical Director.

- » Make sure your review of the contract gives thought to key provisions.



Take Home #4

Avoid claims of negligent supervision.

Carefully review calls where there are questions about the quality of the care and take appropriate action.

» Just Cause

» Does an error reflect individual carelessness or a failure of the system

» Follow the specified process

» Document thoroughly and carefully



Take Home #5

Avoid lawsuits by EMS providers who you've taken action against

- » Follow the specified process for investigations
- » Maintain confidentiality
- » Apply remedial action consistently



Take Home #5

Civil and criminal charges against EMS providers are increasing; be aware of emerging risks

- » EMS provider liability can create “knock-on” liability for EMS medical directors
- » Focus on areas that frequently generate liability



Thank You!



Want to keep learning?

Follow me    @EricJaegerTNG

Questions & slide requests: *Contact me @*
EJaeger@TrueNorthGroup.org