

**Legal Issues
for the EMS
Physician 2026**

- » Videos have been removed from this file to make it small enough to upload to Basecamp
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Death in Custody: Dangers of Physical Restraint & Chemical Sedation

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TheHardWork.org



The New York Times
Paramedics Found Guilty in Last Trial in Elijah McClain Death Dec. 22, 2023



The NEW ENGLAND
JOURNAL of MEDICINE

PERSPECTIVE



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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Let's talk about

***Medical director and
legal liability.***



The Good News

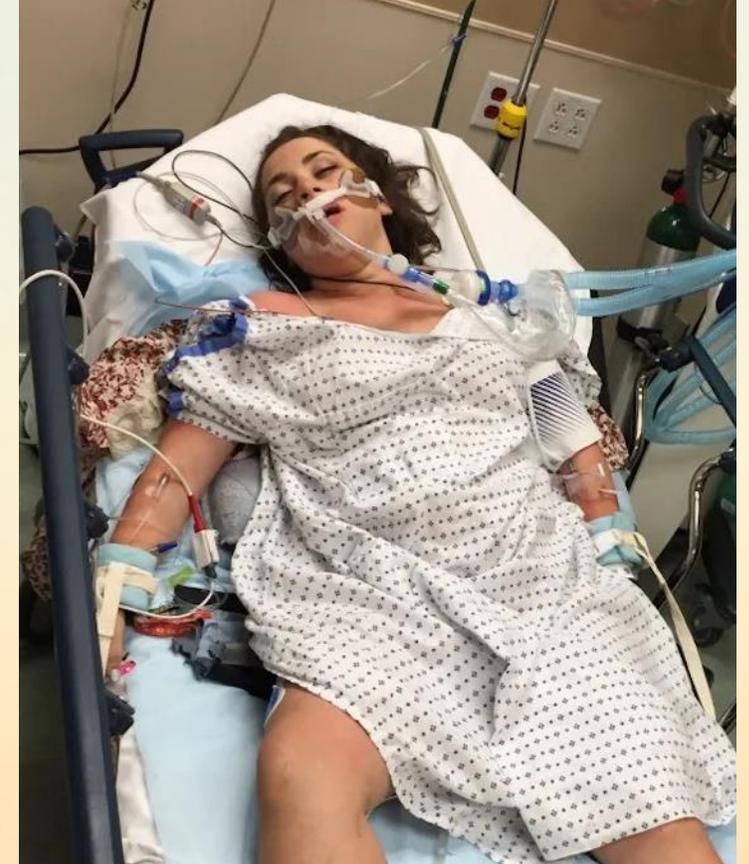
Medical directors **very rarely** have legal liability in connection with performing their duties.

»» That's it. That's the lecture.



Let's start off with a case...

- » A patient, Sara Smith, is brought into the ED in cardiac arrest after being involved in a motor vehicle accident.
- » She's been intubated in the field by Paramedic Tom Johnson.
- » During the resuscitation, the ED physician discovers that the tube is in Ms. Smith's esophagus rather than her trachea.
- » She is re-intubated successfully in the ED and ROSC is obtained, but she later dies due to anoxic brain injury.

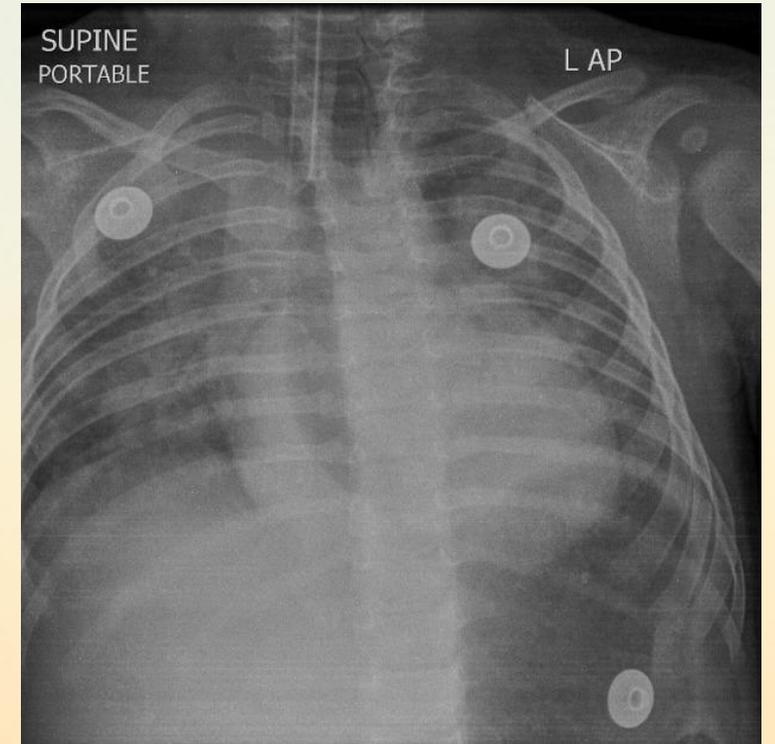


Case Review

The call is referred to you for review.

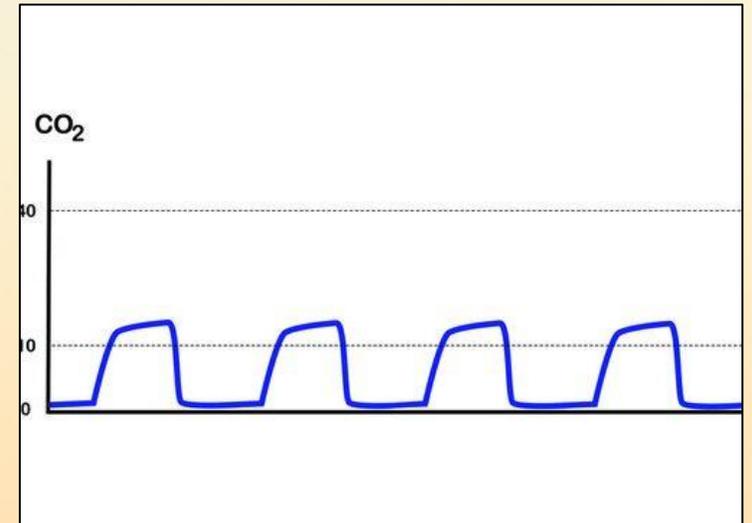
The key question:

Was the tube correctly placed in her trachea and later migrated to her esophagus, perhaps during transfer to the hospital stretcher, or did Paramedic Johnson fail to recognize an esophageal intubation?



Troubling Findings

- » You're unable to say definitively.
- » But you discover that Paramedic Johnson failed to use waveform capnography to confirm placement of the tube.
- » While reviewing the case, you come across records showing Paramedic Johnson had two prior instances of unrecognized esophageal intubation. You recall reviewing those cases and asking the training officer for his agency to review with him the importance of using waveform capnography.



Lawsuit

- » Two weeks later, Ms. Smith's family brings a lawsuit alleging negligence in her death.
- » The lawsuit names Paramedic Johnson, his EMS agency, the hospital and you as medical director.
- » The claim against you is one of negligent supervision.
- » More later.....



Responsibilities of Medical Directors



Position Statements: ACEP & NAEMSP



»» *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

Medical directors shall

» **Actively direct and oversee credentialing** of 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

Medical directors shall:

- » Actively direct and oversee **continuous quality improvement** programs based on evidence-supported practices and outcomes



State Law

Responsibilities that may be imposed by state law :

- » 24x7 availability of online med control
 - » Auditing EMS provider performance
 - » Ensure compliance with controlled substances procedures
 - » Training on EMS medical procedures
 - » Spending time on ride-alongs
- » It's important that you have reviewed your specific state law.**

Let's look at a few examples...

Florida: Quality Assurance

“The EMS Med Director shall:

- Develop and implement a **patient care quality assurance system** to assess the performance.
- **Audit the performance of system personnel**, [including] a prompt review of patient care records, direct observation, and comparison of performance standards for drugs, equipment, system protocols and procedures.”



Florida: Medication Compliance

- “Ensure and certify that security procedures of the EMS provider for medications, fluids and controlled substances are in compliance.
- Create, authorize and ensure adherence to detailed written operating procedures regarding all aspects of the handling of medications, fluids and controlled substances by the provider.”



Wisconsin

- » “Develop, review and approve all patient care protocols
- » Ensure that physicians providing on-line medical control do so in a manner consistent with the patient care protocols.
- » Establish, participate in, and ensure the continuing implementation of a quality assurance program
- » Approve, limit, suspend, or revoke credentials as provided under law.
- » Approve, direct, and assist in providing training activities that assure EMS professionals are competent to provide safe and efficient patient care.”



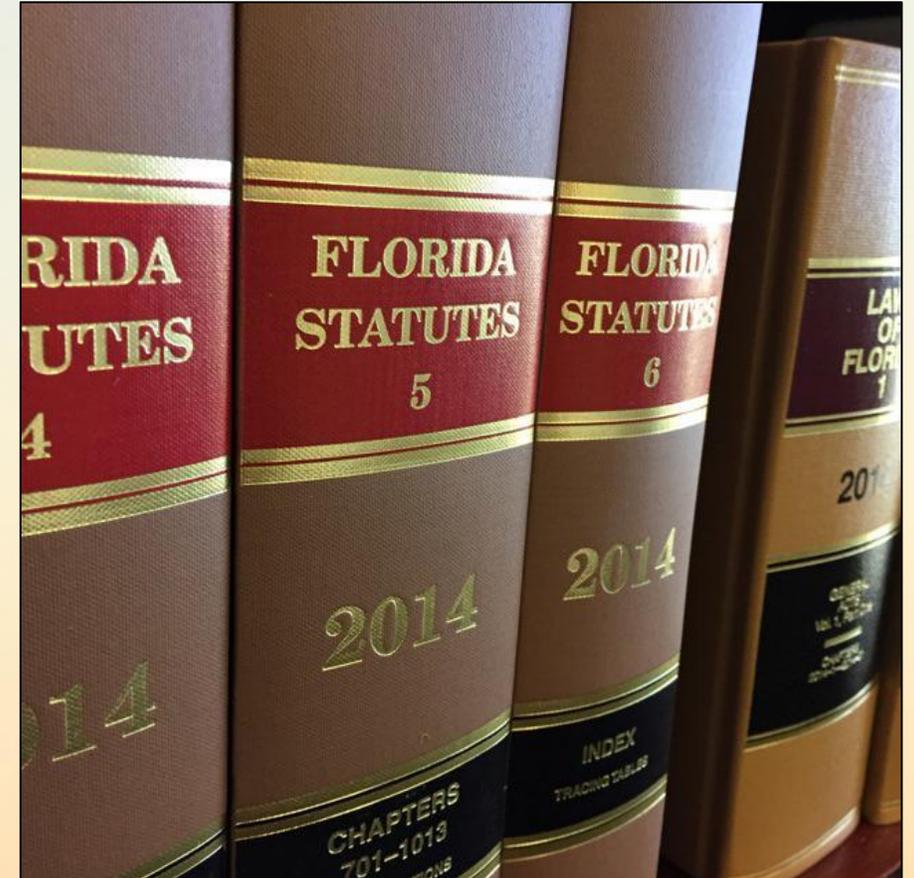
A group of white wooden pawns and one red wooden pawn are arranged on a dark wooden surface. The white pawns are clustered on the left side, while the red pawn stands alone on the right. The text "Sources of Authority" is overlaid in the center in a white, hand-drawn style font.

Sources of Authority

Laws (Statutory Authority)

State EMS laws and rules

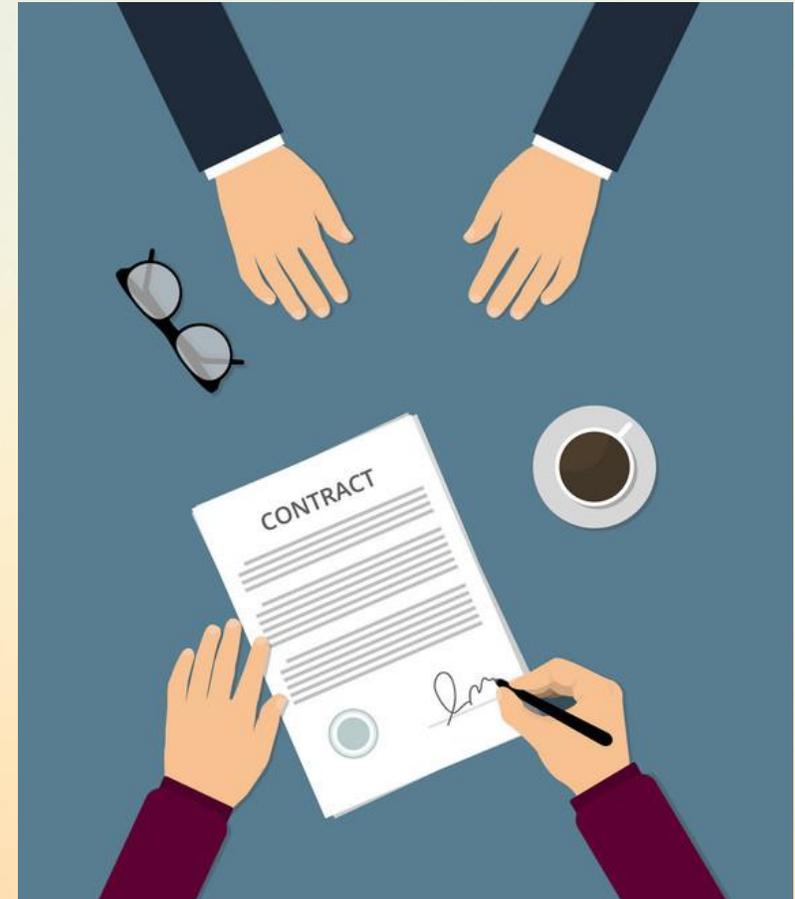
- » They vary from state-to-state
- » Review them carefully



Contractual Authority

Contractual authority arises from a written medical director contract:

- **Hired by EMS Agency**
 - ➔ The medical director is usually hired directly by the EMS agency
 - ➔ The contract is thus with the EMS service
- **Hospital-based Medical Director**
 - ➔ The contract is between the hospital and the EMS service



Contractual Agreements

Contracts governing medical direction shall:

- » Identify the roles, responsibilities, authority, and reporting hierarchies of the medical director.



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

- » This is an arcane area of the law; most lawyers, even healthcare lawyers, will not be aware of the key issues
- » Make sure you get advice from someone who is familiar with this area of law



Hospital-based Contracts

In systems where the contract for medical direction is between the hospital and the EMS agency:

- » These contracts are often old and inadequate
- » They often have not been reviewed and updated in decades

The time to discover the flaws in these contracts is NOT when a crisis strikes



Key Contractual Provisions



Key Contractual Provisions

CQI Program

- “County EMS shall maintain a CQI program for reviewing the quality of care provided by its EMS providers.
- “The CQI program shall be subject to the approval of the Medical Director.
- “County EMS shall share all findings of the CQI program with the Medical Director.



Key Contractual Provisions

Reporting

“County EMS shall report to the Medical Director any EMS calls where:

- (i) a protocol violation,
- (ii) a medication error,
- (iii) patient harm due to the actions of an EMS provider has occurred or
- (iv) an EMS provider has been suspended or terminated due to issues related to patient care.



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 is often vague
- Typically does not include detailed, operational language
- Laws are often open to interpretation



California Health and Safety Code

1799.112 (a) Agencies shall report in writing to the EMS medical director and provide all supporting documentation within 30 days of any of the following:

» An EMT-P is:

- terminated or suspended for disciplinary cause or reason.
- resigns following notice of an impending investigation based upon evidence indicating disciplinary cause or reason.
- is removed from paramedic duties for disciplinary cause or reason following the completion of an internal investigation.



Key Contractual Provisions

Investigation / Review of Calls

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

Remedial Training

- “The Medical Director may direct that County EMS or individual providers shall receive remedial training.
- “Any remedial training provided shall be subject to the approval of the Medical Director.



Key Contractual Provisions

Authority to Temporarily or Permanently Suspend EMS Privileges

- “If 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, 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

Approval of Protocols & Policies

- “All EMS protocols and policies that related to the provision of patient care shall be subject to the approval of the Medical Director.
- The Medical Director shall have the right to suspend any treatment protocols at their discretion.”



Key Contractual Provisions

Approval of Education

- “The Medical Director shall approve all EMS initial or continuing education provided by EMS agency.”



Key Contractual Provisions

Agency Responsibilities

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



Key Contractual Provisions

Insurance

- “County EMS shall maintain commercial general indemnity, workers compensation and [fill in the blank] insurance to cover its own activities.
- “Medical Director shall maintain insurance against claims that may arise from or relate to the performance of their duties, including General Liability and Professional Liability insurance each in the amount of \$1 Million per occurrence / \$3 million aggregate. Medical Director shall not maintain any other insurance.”

It is common for government agencies to request all kinds of additional insurance that is inapplicable and that you cannot obtain.

- Talk to an insurance professional.

Key Contractual Provisions

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.





Liability Protection

Liability Protection

- » **Medical directors must have liability protection** that covers the spectrum of their responsibilities and authorities.
- » Medical malpractice insurance is often insufficient
 - Insurance must cover the oversight responsibilities or medical directors



Medical Director Contractual

Insurance

- “County EMS shall maintain insurance that provides coverage for the Medical Director in the performance of the Medical Director’s duties.



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.



Let's Return to Our Case

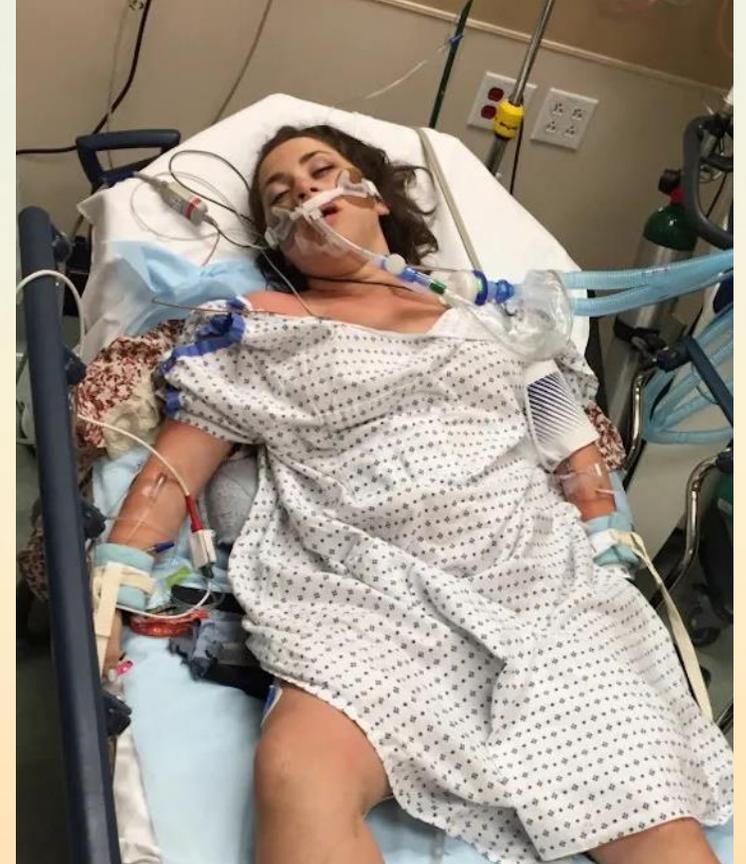


The allegations...

You obtain a copy of the complaint.

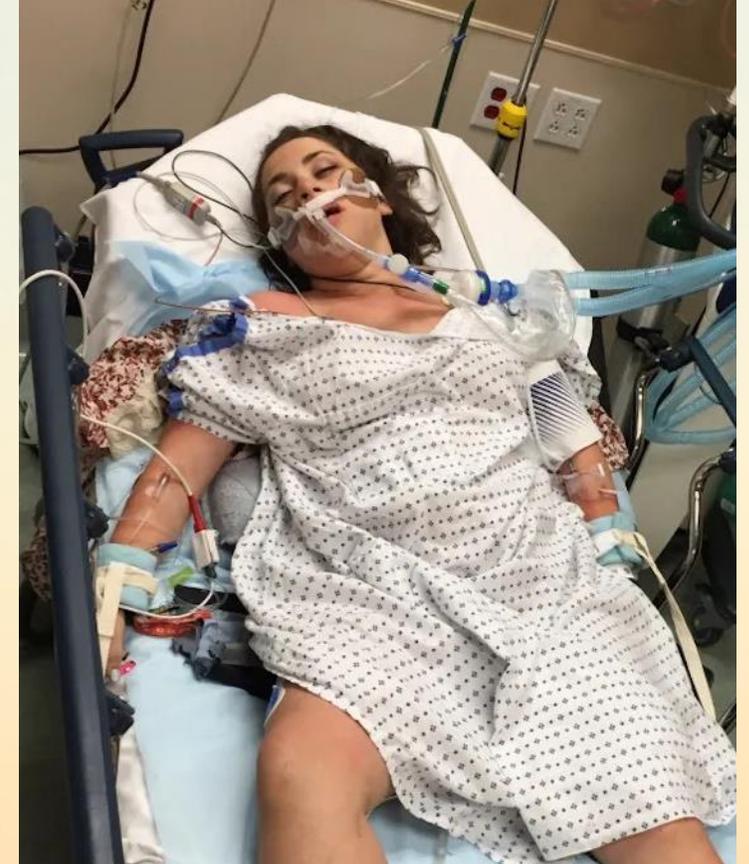
It contains several allegations related to your role as medical director:

- »» “That you knew or should have known that Paramedic Johnson was not competent to perform rapid sequence intubation, based in part on the two prior cases where he had failed to recognize esophageal intubations.
- »» “That after the two prior failed intubations, you failed to take corrective action, including directing that Paramedic Johnson obtain remedial training.



The allegations...

- » “That the rapid sequence intubation training provided by County EMS in your name fails to meet the standard of care with regard to the use of waveform capnography for confirming tube placement.
- » “That the protocols approved by you also fail to meet the standard of care. While they mention waveform capnography, they continue to also endorse the use of clinical signs such as chest rise and breath sounds for excluding esophageal intubation.”



Next steps...

- » You're a little shaken by the lawsuit.
- » But you take your responsibility as medical director seriously.
- » Recognizing that Paramedic Johnson has acted negligently, you call him into a meeting where you explain that his failure to use waveform capnography both in Ms. Smith's case and in the prior cases is a serious violation of protocols and reflects poor quality care.
- » You tell him he is suspended as a paramedic until further notice.



The case progresses...

- » You meet with your lawyer.
- » You explain that you did in fact review the prior failed intubations by Paramedic Johnson and had directed that he receive remedial care.
- » You're sure that this will reduce the risks you face.



The case progresses...

But...when the lawyer asks you for documentation, you admit:

- you didn't keep any record of the reviews
 - You have no record of having spoken with County EMS' training officer
- » Your lawyer reports that Paramedic Johnson never received any remedial training.



The settlement

Two weeks after the meeting, you learn that the hospital and insurance company plan to settle with Ms. Smith's family for \$12.7 million.

How could you have reduced or avoided liability here?



Wait, there's more...?

Two weeks later...

- » another lawsuit arrives in the mail.
- » This one is from Paramedic Johnson, alleging wrongful suspension of his right to practice as a paramedic.



Wait, there's more...?

The complaint alleges that:

- » You lacked authority under the contract between County EMS and the hospital to suspend his paramedic privileges.
- » You failed to give Paramedic Johnson the opportunity to respond to your allegations of negligence, as required by the due process provisions of his union contract.
- » Your suspension of his privileges was really retaliation for being sued as medical director.



Wait, there's more...?

How could you have avoided or reduced the risk of liability here?



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.**

Alternatives Approaches

» 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.



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.”*



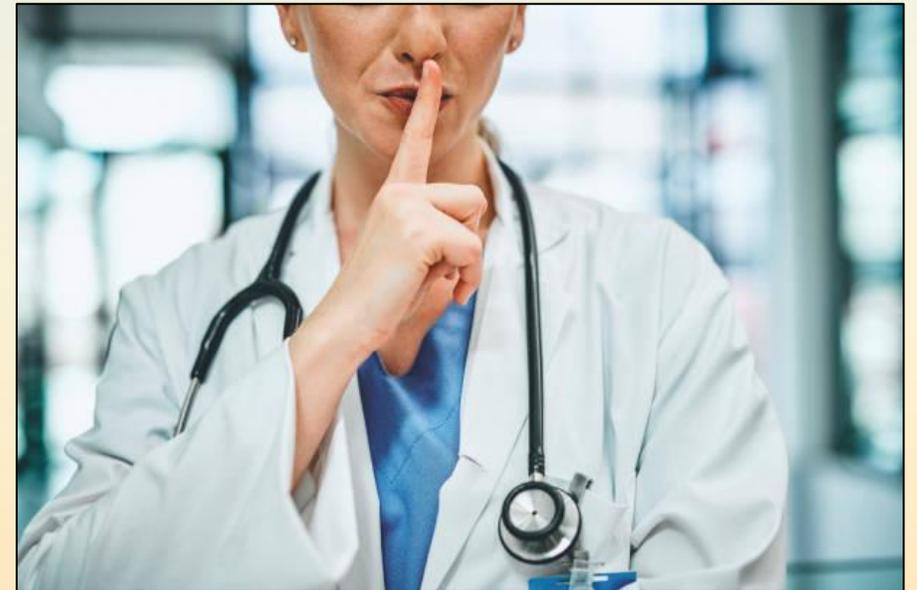
Confidentiality of Investigations

IMPORTANT: Maintain the confidentiality of investigations!

It's natural to want to talk 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!



A Just Culture Approach to Errors



Not All Errors are Negligence

- » Not all errors are due to individual failures or negligence
- » In some cases, the systems that are intended to prevent errors fail or are faulty
- » For example, medication errors in an overworked, busy emergency department may be due to the failure of systems designed to prevent those errors



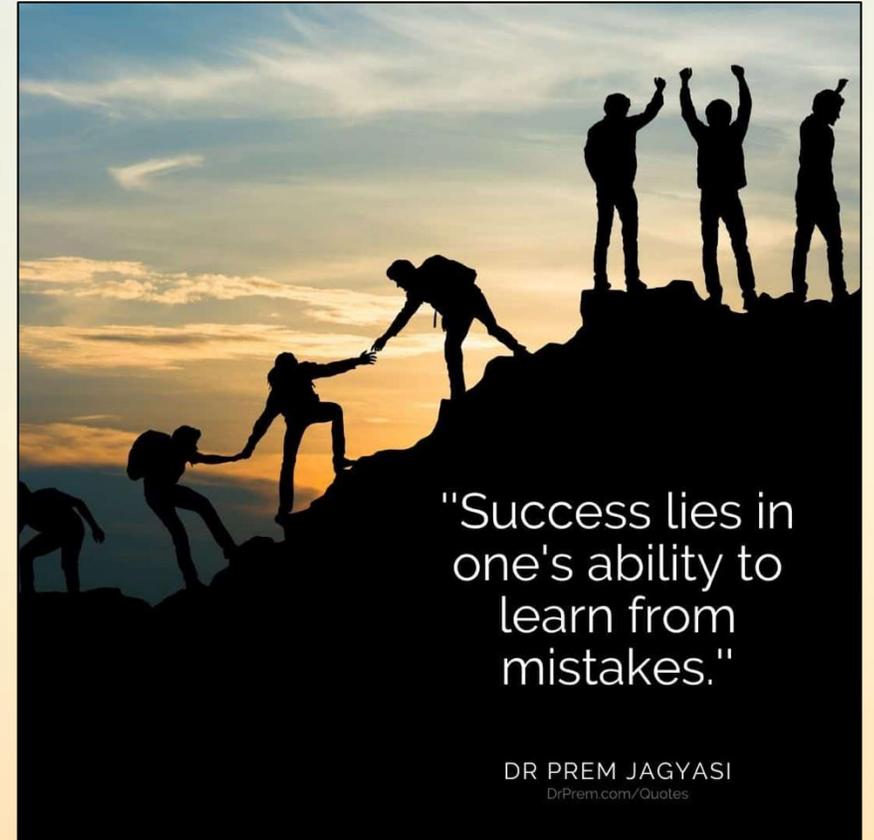
Just Culture Approach

- » The concept of **Just Culture** recognizes that most mistakes are a product of faulty systems or culture, rather than individual failure.
- » In a just culture, the question is “How did the system intended to prevent this error fail” rather than “Who is to blame?”
- » A just culture approach is designed to identify the **root causes of a problem** and help prevent it from occurring in the future, rather than affixing blame for a bad outcome.



Just Culture Approach

- » A key goal is to make individuals feel comfortable reporting errors and helping the organization to learn from mistakes.
- » This is in contrast to a "blame culture" where individual persons are fired, fined, or otherwise punished for making mistakes.



Consequences Remain

- » Just culture does NOT eliminate discipline for careless or negligent behavior.
- » Honest mistakes are seen as a learning opportunities for the organization and its employees. The individual may be offered additional training and coaching.
- » On the other hand, **willful misconduct** may result in disciplinary action such as termination of employment—even if no harm was caused.



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
- » High stress, fatigue, limited opportunity for cross check, look-alike medications



A Just Cause Culture is Crucial to Reduce Med Errors

» Video



Rapidly Changing Legal Landscape

***Increasing the Legal Risk for EMS
and Medical Directors***



Across the country EMS is facing **crippling staffing shortages**

*It will continue to
get worse before
it gets better*

**After two deaths linked to
ambulance shortages,
lawmakers call on Justice to
fund EMS**

In some rural parts of the state, people can wait a minimum of 50 minutes for an ambulance to arrive

BY: AMELIA FERRELL KNISELY - TUESDAY APRIL 9, 2024 6:00 AM



Crippling staffing shortages

Multiple consequences:

- » Massive amounts of overtime
 - “I worked 72 hours last week.”
- » Fatigue and dramatically increased risk of errors
- » Increasingly, no ambulances for critical calls
- » Decreased continuing education due to funding and staffing issues
- » More insidiously...
 - agencies hiring staff with troubling histories
 - pressure to retain staff even when problems occur



Increasing Civil and Criminal Charges Against EMS Providers

In the past:

- **civil lawsuits** against EMS were unusual
- **criminal charges** against EMS providers were exceedingly rare

We now see:

- **Frequent civil lawsuits** against EMS providers
- **Significant jump in criminal charges**



Criminal Charges Against EMS Providers

Former paramedic ordered to stand trial on burglary and theft charges

Peninsula paramedic faces 2nd sexual assault suit

Paramedic Accused of Stealing Fentanyl and Betraying Public Trust

The former Conniry, 43, faces 18 months in prison if convicted.

BY CITY NEWS SERVICE
AUG. 10, 2023 6:50 AM

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

Ch **The New York Times**

Paramedics Found Guilty in Last Trial in Elijah McClain Death

Peter Cichuniec
of criminally ne
on the assault o
medical person

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

Samaritan

A Police Officer and Two Paramedics Charged In Jail Deaths

CBS NEWS
DETROIT

October 1, 2018 / 2:39 PM EDT / CBS Detroit

» Video



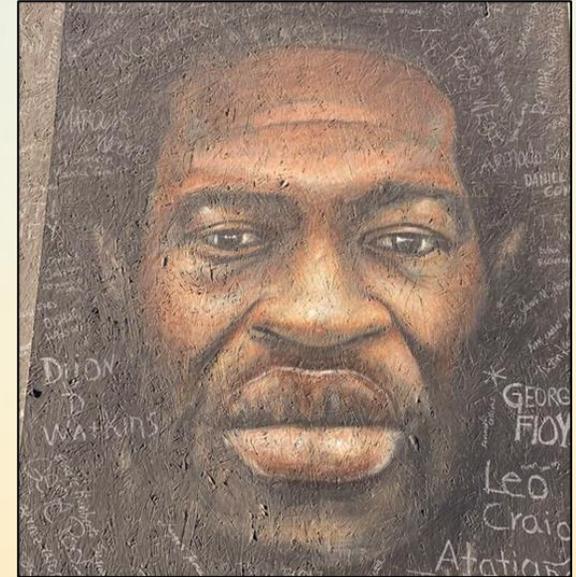
William Marshall



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



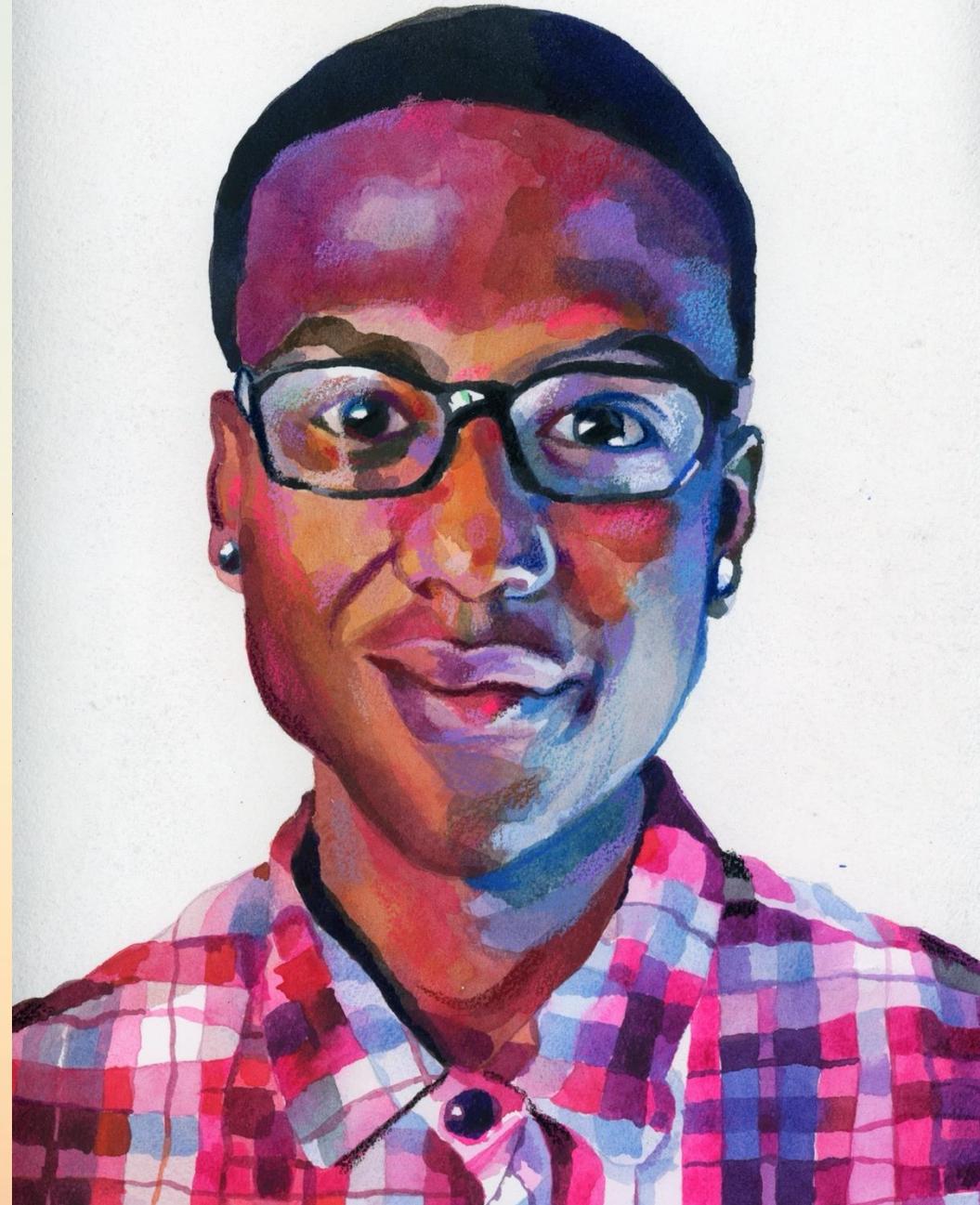
Elijah McClain

Aurora, Colorado | Aug 2019

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.



Did You Assess Him?

» Video



Protocols & Training Are a Key Factor

» Video

Prosecutor to Cuicinic: “You Gave the Wrong Dose, Didn’t You?”



Civil Liability

Declaring Patients Dead



Caution! Man with Gunshot to the Head Still Alive

» Video



Know What is Done in Your Name

physician Signature

Florida

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 Health in March.

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.
- » Take appropriate action
- » Document your findings thoroughly



Take Home #5

Avoid lawsuits by EMS providers who you've disciplined

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



Take Home #6

Be aware of the impact of the crippling staffing shortages faced by EMS across the country

- » A challenging issue to address
- » Definitely causing an increase in legal liability
- » Be cautious about allowing standards to slip as a consequence



Take Home #7

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



Take Home #8

Body cameras and cell phones are changing the legal landscape

- » Ensure your EMS providers understand the consequences of omnipresent video recording



Thank You!



Want to keep learning?

Questions & slide requests:

Follow me    @EricJaegerTNG

Contact me @ EJaeger@TrueNorthGroup.org