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The Legal Guardian

Negligence explained for the EMS professional

Understand the 4 components of a negligent act and how to protect yourself from a negligence claim

Aug 25, 2020

EMS training programs typically cover legal issues, like negligence, in passing. It tends to be easier to lightly touch on the material just enough to cover exam questions. In my own experience, far too little is done to instill a real, usable understanding of just how legal issues affect EMS professionals — information that can protect providers from unknowingly facing potential entanglements.

Having worked in the field for decades and survived three years of law school, I am both horrified and amazed when I see what still goes on in EMS. Beginning with this first column, I plan to share the kind of information that will not only keep providers safe, but will help to improve the quality of EMS and raise the bar for providers as professionals.

I confess that my dry sense of humor may take some getting used to, but I hope to make the task of expanding your own understanding of the law as fun and interesting as possible (a tall order considering most people don't find the topic of law to be very exciting).

NEGLIGENCE AND THE EMS PROFESSIONAL



While a negligent act can certainly carry a devastating cost, understanding negligence and how it fits into a provider's daily life can help keep the monster at bay. (Photo/Getty Images)

One legal issue that affects every emergency responder is negligence. To be honest, I don't recall learning much about negligence in EMT school. But then again, that was nearly 30 years ago.

When I became a paramedic in 1989, I was told vaguely that negligence was a foul but generally hidden monster that could kill my career. As far as I knew, good patient care and following procedures would keep me insulated from the threat of any legal action. I found out I was very wrong. I was WMDs-in-Iraq wrong.

While a negligent act can certainly carry a devastating cost, understanding negligence and how it fits into a provider's daily life can help keep the monster at bay. In a simple summary of what I will cover, negligence arises when:

- There is a **duty** to act
- There is a **breach** of that duty
- The breach **causes** an affect
- **Damage** has been inflicted to another

DUTY

Each of us owes a general duty of care to everyone — the duty not to intentionally harm anybody and to try not to do anything too stupid.

Legally speaking, there is a general duty "not to behave in such a way as to endanger the well-being of others." I like my description better.

EMS professionals, on the other hand, owe a much greater duty to the community while on or off the job. Providers have the duty to act as would a "prudent, reasonable EMS provider with the same level of training, in the same community, and under similar circumstances." That's the legal description.

As you can see, that duty is broad-reaching and subject to a great deal of interpretation. It is not limited to just patient care, but also extends to the patients' families, to coworkers and guests, and to the community in general. Your patient care may be second to none,

but how do you behave at the station or while driving around town in the ambulance or rescue squad? How clean is the ambulance? How well stocked is the medical box? The list is virtually endless, and all of it is your responsibility.

One of the toughest questions about duty involves other providers. What is your individual duty when a fellow provider is utterly incompetent or worse, a criminal? But we will have to tuck that question away for another column.

BREACH

The concept of breach is simple: You did something that you had a duty not to do, or you failed to do something that you had an absolute duty to do.

Example: Let's say that the law in your jurisdiction has established an affirmative duty for ALL emergency vehicle operators — even while operating with lights and sirens — to come to a complete stop at red traffic signals.

At 3:00 a.m. you find yourself responding to the report of a cardiac arrest. There is not another vehicle as far as the eye can see and you are flying down the road. Ahead there is an intersection. It is wide open and you can see for a quarter mile in both directions that there's not a car in sight. You can see with 100 percent certainty that the roadway is clear, so you go through the red light.

Have you breached your duty?

It's a simple answer: Yes. The concept of breach does not consider whether anyone was hurt or even affected by your act (or non-act). It only considers your behavior relative to your duty. In the example, there was a duty to stop, and you decided not to. Would a negligence claim be filed against you? No. A successful negligence claim requires that all four elements be present.

CAUSATION

Here is where things get a little sticky.

When you breach a duty (as defined above) **AND** your breach is the direct cause of damage (I'll get to that in a minute), then you will be considered a cause of the damage.

But the law generally requires that you also be the proximate (most direct) cause. Thus, it is possible for your breach to cause damage, but if there are unforeseeable, superseding or intervening factors, you may not be completely liable or even negligent.

Example: You have a duty to check every drug prior to administration, but in one particular instance, you forget and administer a drug six months beyond the expiration date.

The patient has a violent reaction and is hospitalized for a month. At the moment, you are in deep trouble.

However, it turns out that the drug manufacturer mislabeled the vial and it contained a completely different drug.

Did you err?

The answer is yes. But a court would likely find that the manufacturer was the **most direct cause** of the patient's injury, thus relieving you of full responsibility, though not necessarily of all responsibility.

That was fairly basic, but it gets harder.

Anytime a duty exists and you fail to comply with it, you become part of a potentially long chain of causation and your portion of the damage may be actionable.

Example: The negligent act of someone else causes harm to a victim. You respond to the victim and render care. During the course of rendering that care, you also act negligently and the patient's harm or injury is worsened.

The law does not hold medical personnel in very high regard, inasmuch as malpractice is presumed. Read:

Foreseeable — whenever someone seeks medical attention in response to the [negligence] of another.

In the example above, the original negligent act caused the original harm, but you made it worse. The law expects that and does not relieve the original negligent actor of his liability, but your own negligent act may still be lobbed against you.

It gets even more confusing, but I will leave it at this: For a negligence act to hold, the act must cause some harm or result in some damage to another. When you run a stop sign without incident or negligently hang D5W instead of normal saline, but no harm is done, then no action for negligence will hold. However, if the same actions result in the minutest of damage, then not even the best excuse in the world will likely help you.

DAMAGES

Any physical, financial, and sometimes emotional injury caused by the breach of a duty can constitute this final element of negligence.

Damages could conceivably be as little as a 50 cent phone call; if that call had to be made directly because you breached your duty to caller, the plaintiff would be entitled to recover the four bits. Damages commonly are medical expenses, lost wages, physical damage to property, and manifested emotional distress.

The important thing to know about damage is this: the idea is to make the damaged person whole and to place him back in the position he would be in prior to the negligent act. Civil law seeks to do that through cold, hard cash — your cold, hard cash.

If you are driving recklessly with your lights and sirens and you smash up someone's brand new car, you just bought that car. If your failure to properly treat a spinal injury results in damage that would otherwise not have been sustained, it's coming out of your pocket. If you negligently tell a family member that a loved one is dead...and they're not, you could be made to pay dearly.

SUMMARY

To truly understand negligence, one must study volumes of text, review decades of case law, and comprehend complex legal theory. You don't need to do any of that.

To protect yourself against a negligence claim, simply do the following:

- Behave in such a way as to protect and defend those around you from harm
- Act within your scope of practice at all times
- Act in accordance with local protocols and procedures at all times
- Serve to maintain the dignity of each person with whom you come in contact
- Continuously repeat the above steps

This article, originally published on Sept. 19, 2007, has been updated.

About the author

David Givot, Esq., graduated from the UCLA Center for Prehospital Care (formerly DFH) in June 1989 and spent most of the next decade working as a paramedic responding to 911 in Glendale, California, with the (then BLS only) fire department. By the end of 1998, he was traveling around the country working with distressed EMS agencies teaching improved field provider performance through better communication and leadership practices, until he moved into the position of director of operations for the largest ambulance provider in the Maryland.

In 2008, he graduated Law School in Southern California, passed the California Bar on his first attempt and has spent more than a decade building a Criminal & EMS Defense Law Practice. In addition to defending California providers who have found themselves in trouble for [alleged] missteps on the job and off, as an EMS Lawyer, he has continued working toward his goal of improving EMS through education and training across America and as trusted counsel for providers throughout California.

In 2006, David created TheLegalGuardian.com as a resource for EMS providers. He is a nationally sought-after lecturer and proudly teaches the EMS/legal curriculum for his Alma Mater, UCLA Paramedic School. David is a member of the [EMS1 Editorial Advisory Board](#). He can be contacted via e-mail at David@thelegalguardian.com. [@EMSLawyer](#) on Twitter, [@EMSLawyer11](#) on Instagram, and www.facebook.com/EMSLawyer.

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