

# Duty to Act and Good Samaritan Laws



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- Also formerly a licensed FFII / EMT.
- A note on the cases: The '*facts*' are not always the facts.

# Duty to Act / Good Samaritan Laws



- When do we have a *duty* to act, to render aid, or to respond to a call?
- Who has liability for actions of firefighters/EMTs?
- What protection do ‘Good Samaritan’ laws offer?
- What policies should be in place to address these issues?
- *We will not be covering tort immunity in any detail.*

## Presentation Goals:



- **Primary Goal:** Avoid being a case study.
- **Secondary Goal:** Putting yourself in the best possible position to defend your actions.
  - You *cannot* prevent someone from filing a lawsuit against your department. You *can* prevent them from winning.
- Smart Planning is about reaching your goals (Protect ourselves, protect others, protect property), while minimizing potential consequences and liability.
- 98% of counseling fire departments is risk avoidance and minimizing liability.

# The Structure Fire...





- **Call Dispatched:**
  - PD on scene in 1 minute.
  - FF/EMT on scene in 2 minutes.
  - Occupant rescued in 4 minutes.
- **Occupant Response:**
  - Sue the Fire Department and Police Department, claiming that they violated a special duty to her by not rescuing her rapidly enough.
    - ✦ *Crowley v. Berwyn*, 306 Ill.App.3d 496 (1999).

## *Fender v. Cicero*



- Private residence, 2 adults and 6 children present.
- Arson fire.
- PD first to respond; 3 officers on scene. Adults escape house and tell PD officers that children are inside.
- PD unable to attempt rescue due to fire conditions.
- Adults sue PD, because PD were “public safety officers” who had received specialized training in responding to fire emergencies, and thus should have undertaken a rescue attempt.
- 347 Ill.App.3d 46 (2004).

# The Bus Accident...





# Bus Accident: The Facts.



- Busload of medical school graduates driven by a nun overturns, severely injuring the occupants.
- EMT comes across accident. Does EMT have a legal duty to stop and render aid?
  - Off duty, out of district.
  - Off duty, in district.
  - On duty, out of district.
  - On duty, in district.

# Bus Accident: The Law



- There is no statute that obligates EMTs to provide care to patients, or to initiate patient care.
- There are special circumstances where care must be provided.

# The 'Special Relationship'



- The baseline obligation of every person is to be reasonable. Typically, affirmative acts are *not required*.
- In special relationships, the law imposes an obligation to take affirmative steps (“an obligation of reasonable conduct for the benefit of the other party”).
- Four types of special relationships:
  - Common carrier / passenger
  - Innkeeper / guest
  - Business invitor / invitee
  - Voluntary Guardian / protectee

# Consequences of Special Relationship



- When one of these special relationships exists between the parties and an unreasonable risk of physical harm arises within the scope of that physical relationship, an obligation may be imposed on the one to:
  - 1) Exercise reasonable care to **protect the other from such risk**, if the risk is reasonably foreseeable; or,
  - 2) To **render first aid** when it is known that such aid is needed.
    - ✦ *Iseberg v. Gross*, 227 Ill.2d 78 (2007).

# The Bus Accident and the Special Relationship:



- **Off duty:**
  - Driving truck with large EMT logo on rear window, stops at scene for several minutes, activates lights, leaves.
  - Gets out at scene and starts providing assistance while wearing “Proud EMT” shirt, leaves.
  - Gets out at scene, evaluates crash, tells bystander, “Don’t worry—I’m an EMT”, leaves.
- **On Duty:**
  - Stops at scene in emergency vehicle / turnout gear / tactical gear.
  - Accepts 911 call/dispatch.
- **Taking any action that makes others believe that you are taking custody of the injured party or the situation.**
  - Why call 911? There’s an EMT on the scene.
- **“One who voluntarily takes custody of another under circumstances such as to deprive the other of his normal opportunities for protection.”**
  - *Burks v. Madyun*, 105 Ill.App.3d 917 (1982).

# Need to call 911?



# The Special Relationship:



- 2:00am: Police department responds to 911 call for shooting; find two shooting victims outside. Immediately call for ambulances; victims transported within minutes.
- Bystanders approach police and advise that there is a third victim who had been shot. Police tell bystanders to leave, and start documenting scene.
- Bystanders approach police again and advise that there is a victim in a nearby apartment, with multiple GSW. Police tell bystander “Don’t worry about it. Get out of the area.”
- Police photograph blood trails, and expand investigation. They ultimately find the victim, lying on bathroom floor. Initially, police believe victim is drunk, so they leave him.
- Another bystander takes a police officer to the victim, raises victim’s shirt and shows officer the GSW. Officer immediately calls for ambulance at 3:33am.
  - *Torres v. City of Chicago*, 352 Ill.App.3d 533 (2004).

## Torres, Part 2:



- Subnote on *Torres*: Court determined that officers *did not have tort immunity*, as “the responsibility for obtaining medical aid for injured persons involves no service characteristics of police functions.” If the act being performed does not relate to the municipal function expected of a municipal employee, no tort immunity.
- **Potential Officer Version of Facts:**
  - Called to scene for multiple reports of gunshots; arrive and find multiple victims, gang involvement, crowd of angry residents.
  - Undermanned, attempting to secure crime scene, immediately call ambulances for injured parties.
  - Bystanders keep coming over and telling officers that “someone’s been shot” and threatening to riot. Officers maintain control and integrity of crime scene.
  - Investigation expands to surrounding apartments; one officer sees an unconscious person in a bathroom; no signs of trauma. Believes person is drunk. Outside, scuffle going on. Officer leaves drunk to assist fellow officers with crowd control.
  - When officers have an opportunity to return to suspected drunk, discover GSW. Immediately call for ambulance.



# Duty: When does it stop?



- Duty to provide care does not terminate until care is reasonably passed off to another care provider with equal or greater capability (or superior order).
  - First responder at scene turns over control to responding Paramedics.
  - Paramedic at scene turns over control to responding EMT-Bs.
  - Doctor at scene turns over control to paramedics.
  - Paramedic at scene turns over control to doctor at scene.
  - Paramedic at scene follows MD orders issued via radio.

## *Fagocki v. LITH FPD*



- Patient is 55 year old, 300# female suffering from severe allergic reaction to peanuts. Husband drives patient to urgent care center.
- Patient unable to exit car, so MD goes to car. MD calls 911, administers epinephrine, and directs staff to get his airway bag.
- Within 3 minutes of call, paramedics arrive on scene and find MD unsuccessfully attempting to ventilate patient with BVM.
- Who has a duty to act?

## *Fagocki, Outcome:*



- MD claims that he wanted to intubate patient and Paramedics said, “No, we’ll take it from here.” Medics deny.
- After arrival, Paramedics took 2 minutes to get patient into ambulance.
- Thereafter, paramedics spent 24 minutes on scene, attempting to intubate patient (failed to follow SOGs for drug administration).
- Third attempt at intubation (en route) appeared successful, but at hospital, was determined to be in esophagus rather than in trachea.
- Patient suffered hypoxia and irreversible brain damage; lived in vegetative state for 2.5 years and then died.

# Where there's Duty, there's Liability...



- Duty is defined predominantly by common law (court decisions).
- Liability is also defined predominantly by common law.
- Immunity from liability is defined predominantly by statute (legislative acts).
- Even where there is immunity from *liability*, one can still be sued. Immunity is a defense from judgment, not protection against ever being sued.

# The Racetrack...



# The Racetrack...



- EMT provides first responder medical care to injured patrons at dirt bike track, when she witnesses a crash. Is there immunity?
  - Out of District, Off duty.
  - In District, Off duty.
  - In/Out of District, Paid to provide EMS by track.

# Primary Sources of Immunity for Fire Service



- Tort Immunity Act.
- Emergency Medical Systems Services Act (EMS Act).
  - 210 ILCS 50
- Good Samaritan Act.
  - 745 ILCS 49

# General Immunity Principles:



- **EMS providers are generally:**
  - Immune from failure to examine, unless we have a duty to examine.
  - Immune from failure to diagnose, provide treatment or from making an incorrect diagnosis.
  - Not immune from utilizing incorrect treatment (e.g. as a result of an incorrect diagnosis).
  - Possibly not immune if the proper treatment, based on the proper diagnosis, is administered negligently, resulting in harm to the patient.
  - Not immune if acting in a willfully or wantonly negligent fashion.



## EMS Act:



- Any person...licensed under the EMS Act, who in good faith provides emergency or non-emergency medical services...in the normal course of conducting their duties, or in an emergency, shall not be civilly liable as a result of their acts or omissions in providing such services unless such acts or omissions... constitute willful and wanton misconduct.
  - **“In the normal course of duty...or in an emergency”**
    - ✦ Covers off duty as well?

# Good Samaritan Act



- **First Aid Providers / EMTs / First Responders:**
  - Who in good faith provides emergency care without a fee or compensation to any person shall not, as a result of his or her acts or omissions, except willful and wanton misconduct on the part of the person, in providing the care, be liable to a person to whom such care is provided for civil damages.
    - ✦ 1. In Good Faith
    - ✦ 2. Provides Emergency Care
    - ✦ 3. Without a Fee.
      - Cannot decide to waive fee to avoid liability.
      - Indirect payment also counts as payment (i.e. not paid to see this particular patient, but paid to be present).

# The Racetrack...



- EMT provides first responder medical care to injured patrons at dirt bike track, when she witnesses a crash. Is there immunity?
  - Out of District, Off duty.
  - In District, Off duty.
  - In/Out of District, Paid to provide EMS by track.
- Does the act of providing an EMT to address medical issues create a special duty to patrons? Does it increase or decrease potential liability?

## The Racetrack, Part III...



- What if the off-duty EMT at the race track is wearing their department issued gear?
- What if the person coming upon an accident puts on their department issued turnouts?
- What if the person rendering emergency aide uses department-issued supplies?



## Once You Receive A Call:



- Once a call is received and acknowledged, you have a duty to respond.

# Call Received...



- Driver observes other car veer off road and into ditch on rural highway; driver immediately calls 911 to report incident, and continues driving.
- 911 operator in Alpha County takes call, determines that location is likely on county line. Alpha 911 operator advises local city of accident ( as a D.I.D. call) and then calls Bravo County and advises Bravo County. Alpha County never dispatches Alpha PD or EMS.
- Bravo County never dispatches Bravo PD or EMS.
- 3 days later, car accident victim is found dead in car.
  - ✦ *Estate of Hays v. County of Rock Island*, 219 Ill.2d 497 (2006).



## Once You Respond, Document.



- As the adage goes: if it is not documented, it wasn't done.
- Document to demonstrate compliance with your duties, to demonstrate eligibility for immunity (in the course of duty, no willful and wanton misconduct), and to minimize liability.

## *Abruzzo v. City of Park Ridge*



- 1:06am; 911 call received for 15yo patient, non-responsive, undergoing CPR.
- EMTs arrive on scene. No documentation/refusal utilized.
- 9:00am; Second 911 call received for same patient. EMTs respond, find patient in cardiac arrest; patient pronounced dead at hospital.
- Patient's attorney contends that no evaluation was done on first call; how do you refute?
- Call happened in October, 2004. Litigation took over five years. Some aspects of case are still proceeding.



# Understanding Duty and Immunity: Individuals



- **Duty:**
  - When off-duty, no obligation to render aid unless special circumstances.
  - If you have a special relationship to the victim or create the appearance that you are rendering aid, you have a duty.
- **Immunity:**
  - When off duty, and not charging a fee, Good Samaritan Immunity unless you act with willful/wanton negligence.
    - ✦ **DO NOT** exceed your personal scope of practice.

# Understanding Duty and Immunity: Departments



- **Duty:**
  - When a call is received and accepted, duty to respond.
  - When employees/volunteers are off-duty, consider policies to address situations where they create the *appearance* of FD response:
    - ✦ Use of POV lights, turnout gear, department issued equipment.
    - ✦ Private employment in EMS.
  - Ensure that employees/volunteers are familiar with the scope of their duties.
- **Immunity:**
  - Acting in traditional EMS roles, without willful/wanton misconduct, within scope of practice; should have immunity.

## A Special Note on Immunity:



- In planning responses, policies and training, *never assume immunity*. Always plan, act and respond as if there is full liability for any conduct, and document accordingly.

# *A Routine Call.*



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# Questions?



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