

The Newsletter Dedicated to Protecting You Who Protect Others

THE LEGAL GUARDIAN

For Emergency Medical Services Professionals

THELEGALGUARDIAN.COM

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EVERY HOUR OF EVERY DAY, EMS PROFESSIONALS BRAVELY PLACE THEMSELVES IN HARM'S WAY TO PROTECT STRANGERS... TO PROTECT LIVES.

WHO THEN IS WATCHING OUT FOR EMS PROVIDERS? IN A SOCIETY SO EAGER TO SUE, SO QUICK TO JUDGE, WHO IS HERE PROTECTING THE PROTECTORS? THE LEGAL GUARDIAN!

THE GREATEST PROTECTIONS FOR PROVIDERS AND AGENCIES AGAINST A LITIGIOUS SOCIETY ARE:

- INCREASED INFORMATION
- QUALITY CARE
- ALTERED BEHAVIOR.

THAT'S WHAT WE DO.

THE WEBSITE, THE NEWSLETTER, AND OUR SERIES OF INFORMATIVE, INTERESTING, AND ENGAGING ON-SITE EDUCATIONAL PROGRAMS ARE ALL GEARED TO BRIDGING THE GAPS BETWEEN THE MYRIAD LEGAL & ETHICAL EXPOSURES YOU FACE EVERY DAY AND THE PEOPLE WHO DEPEND ON YOU.

CONFIDENTIALITY IN EMS: PRIVACY AND THE PROVIDER

OVER THE YEARS, you may have noticed that an increasing emphasis has been placed on the importance of patient privacy.

Constitutionally, privacy is considered a fundamental right; one to be vigilantly protected. Ethically, privacy is something to be respected and judiciously guarded.

When it comes to privacy rights, the law has been somewhat dynamic; the courts have exercised considerable skill in matching circumstances and law in order to reach a correct decision. On the other hand, law tends to be somewhat static, at least as to one element: *the expectation of privacy must be reasonable*. That is, a reasonable person, in the same situation, would believe that [he] could expect privacy.

How about in an ambulance with only the patient and the provider? Does the patient have a reasonable expectation of privacy there? What about sharing such information outside the sphere of providing immediate medical care; does that violate specific rules of confidentiality? Is it a violation of law? Can an EMS provider be subject to civil (read: financial) liability for telling war stories?

As you might imagine, those questions, while important, raise legal issues about which volumes have been written. **Here, I hope to simply clear the air, so you can make good decisions.**

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The existence of HIPAA regulations and the numerous other local, state, and federal laws seem to make it clear that **patient confidentiality is of the utmost importance.**

Historically, privacy and confidence have been assiduously safeguarded. The Doctor/Patient privilege, the Attorney/Client privilege, the Clergy/Penitent privilege have allowed [our] deepest, darkest secrets to remain...secret.

As a society, we must be able to trust those who will protect us, whether it is medically, legally, or spiritually. We must be able to comfortably provide all of the information necessary to aid in our own recovery, defense, or absolution without fear that we will be judged, humiliated, or ridiculed.

Unlike the aforementioned privileges, which the law views as [essentially] absolute, the question of whether EMS is an extension of the Doctor/Patient relationship, for the purpose of invoking the associated rights, has yet to be concretely decided.

Nevertheless, laws have been written to protect patient's information and privacy because it is important. Before an EMS provider can be effective; that is, before patients, in their darkest hour, confess the truth about the circumstances which led to the 911 call that brought you together (and there have been some crazy reasons), they must have absolute confidence that the information will be used for professional purposes and nothing else.

What is a professional use? Unfortunately, it depends on the individual circumstances. The patient with the "lost" vegetable, requires a "complete" report to the doctor. The physically abuse elderly or pediatric patient may also require a report to law enforcement. The patient with TB may require a report to your agency—at least the contact.

The Bottom Line

Where you are acting in an official capacity as an EMS provider, where the patient has reason to share sensitive information with you or by virtue of your role you become privy to such information, then you have a legal and ethical duty to maintain that information in the strictest of professional confidence.

And, yes, of course you can be sued for intentionally or unintentionally violating that confidence.

It happens all the time.

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Submissions Welcome



DAVID GIVOT

I graduated from Daniel Freeman (now UCLA) Paramedic School in June, 1989.

For most of the next decade I worked in the City of Glendale, CA, responding to 911 calls with the, then BLS only, fire department.

By the end of 1998, I was traveling around the United States working with distressed EMS agencies to improve field provider performance through better communications & leadership practices. I provided tools that bridged common gaps and offered real ownership in the agency's reputation for quality of service.

At the turn of the century I took over as the Director of Operations for the largest ambulance provider in the State of Maryland.

Now, back in Los Angeles, I have completed three years of Law School.

Through intensive study of the Law, I have discovered a significant disparity that exists between the technical law EMS Providers learn in school and the issues & exposures they face in real life.

I created **THE LEGAL GUARDIAN** newsletter and website in conjunction with a **SERIES OF INFORMATIVE AND INTERACTIVE CE LECTURES** to help bridge that vital gap.

My goal: **PROTECT YOU WHO PROTECT OTHERS**

Legal Issues in EMS

On Site Training, Education, and Information

Like everything else about EMS, the legal issues facing providers are ubiquitous, ever changing, and can vary from situation to situation.

Moreover, like in EMS, failure to recognize [legal] warning signs can lead to devastating consequences.

Historically, agencies have attempted to stave off the specter of litigation and liability through policies, posters, memos, and the like. With mixed—and less than favorable—results.

With thousands of 911 calls as a Paramedic, hundreds of teaching hours, and three years of Law School behind me, I have concluded that the best defense to the perils of legal action for

EMS providers is never having to be a defendant.

My series of interesting, informative, relevant, and—if I do say so myself—entertaining educational programs offer EMS Professionals the tools to understand, recognize, and prevent the kinds of legal entanglements that can end careers and ruin lives.

EMS providers have always been hands-on type people. Memos and tacit reminders are not enough. Providers learn what I teach them, because I have been there; I speak their language. And [hopefully] they practice what they learn.

I will come to you. Let me teach them before it's too late.

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Visit the
PARAMEDIC & EMT OUTLET
at **eBay.com**

Get Your Case Off MySpace!

In February of this year, a Paramedic responded to a 911 call for a rape victim. The victim had, indeed, been brutally attacked and the Paramedic treated and transported her to a local hospital.

Two weeks later the victim's story, including the approximate location of the attack, the attacker's method & weapon, and the victim's response to the attack, appeared on the Paramedic's mySpace page.

The posting detailed how the attacker had followed the victim home before committing the battery. The posting offered advice to potential victims: "...It's only a knife, and any rapist is a coward who will probably turn tail at any resistance..." He suggested that, when confronted with a knife, victims should make an effort to fight off their attacker... or carry a gun.

Although it does not appear that the Paramedic meant any harm, rather, he was quite apologetic in stating that he was only trying to "get the word out" so other women would have an opportunity to protect themselves, but you guessed it: **The woman has filed suit against the Paramedic personally** and has also named the provider agency as a defendant.

The victim has alleged that the paramedic **invaded her privacy** by posting the [not vague enough] details about her attack on his mySpace page. On that basis, she is suing for actual damages because, as a direct result of the posting, she has been confronted by the media at her home, lost time at work, and had to move. She is also claiming damages for emotional distress, physical illness, and loss of sleep.

The victim indicated that she believes she **had an**

expectation of privacy while she was riding in the ambulance.

When police detectives interviewed the paramedic, he told police that, because he did not use the victim's name, he did not think what he posted violated any confidentiality laws. The police determined he did not break a law, but as one officer put it, "...it's just morally reprehensible."

Protect Yourself & Others

Your best protection: do your duty, provide excellent care, and hold patient confidentiality inviolate.

Reverse the Roles

Would you, under the same circumstances, want a trusted caregiver sharing the same story or information about you—or your Mom?

I didn't think so.