

TRUE EMS PROFESSIONALS
GET PAID BECAUSE THEY
CARE; THEY DON'T CARE
BECAUSE THEY GET PAID.

ABOUT THE
PUBLISHER

I became an EMT in 1987 and graduated from Daniel Freeman 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 country working with distressed EMS agencies. I taught organizations 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 and care to anyone who was willing to accept it—and a way out for those who did not.

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 am nearing the end of my third year in 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 in conjunction with a SERIES OF INFORMATIVE AND INTERACTIVE CE LECTURES to help bridge that vital gap.

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

David Givot

THE LEGAL GUARDIAN™

The Newsletter Dedicated to Protecting Those Who Protect Others

MAY 2007

The Basics of Negligence for EMS Pros

“DUTY, BREACH, CAUSATION, AND DAMAGES”

In most EMS training programs, EMT & Paramedic alike, negligence is typically (and quickly) presented as the ominous and fearsome monster that will appear from nowhere and snatch your career like candy from a baby. Well, if you have ever tried to snatch candy from a baby, you know that it is not as easy as it seems; what with all the crying and screaming and such.

Negligence operates much the same way. While a negligent act could certainly carry a devastating cost, understanding negligence can help keep the monster at bay forever. (ergo: behave properly and maybe the baby will share the candy)

Simply stated, negligence arises where there is a **DUTY** to act, a **BREACH** of that duty, a that breach is the direct **CAUSE** of **DAMAGE** to another.

DUTY

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

EMS Professionals, on the other hand, owe a much greater duty to the community as a whole while on the job—and even off; EMS Professionals are held to a higher standard.

In short, EMS 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. You can see, the duty is broad-reaching and subject to a great deal of interpretation, nevertheless it can be easily broken down: 1) Behave in such a way as to protect and defend those around you from harm, 2) Act within your scope of practice at all times, 3) act in accordance with local protocols and procedures at all times, 4) serve to maintain the dignity of each person with whom you come in contact, and 5) continuously repeat steps 1-4.

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. There, that is breach.

CAUSATION

Here is where things get a little sticky. Where 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 the cause of the damage. But, the Law generally requires that you be the proximate (most direct) cause. Thus, it is possible for your breach to cause damage, but if there are superseding or intervening factors, you may not be [technically] 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 Bandini®. However, it turns out that the drug manufacturer mislabeled the vial and it contained a completely different drug. Did you err? 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.*

DAMAGES

Any physical, emotional, or financial injury caused by the breach of a duty can constitute this final element of negligence. Damages could, conceivably, be as little as a fifty cent phone call; if that call had to be made directly because you breached your duty to the person who made the call—the plaintiff would be entitled to recover the two bits. Medical expenses, lost wages, physical damage to property, and manifested emotional distress are all typical forms of damage for which a negligence action can be brought.

Finally, 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, do the following: 1) Behave in such a way as to protect and defend those around you from harm, 2) Act within your scope of practice at all times, 3) act in accordance with local protocols and procedures at all times, 4) serve to maintain the dignity of each person with whom you come in contact, and 5) continuously repeat steps 1-4.

As an EMS Professional, your duty of care extends to
Your Partner • Your Crew • Your Patient
Your Community • Your Agency
and Yourself





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

*Ready to improve your
agency's understanding of
the real legal issues faced by
EMS Professionals daily?
I will visit your operation
and deliver this interesting,
informative and (believe it
or not) fun program to your
frontline providers and field
leadership for much less
than you might expect.*

Call Today (310) 699-0070

The Legal Guardian™
c/o David Givot
4067 Hardwick Street, #321
Lakewood, CA 90712
(310) 699-0070

Subscribe to The Legal Guardian E-Newsletter
send your request to:

TheLegalGuardian@aol.com

Submissions Welcome

This publication and any derivatives thereof, including educational lectures or seminars were not prepared by an attorney and do not claim or intend to offer specific legal advice to any particular person or entity in any form and should not be construed otherwise. This publication and all related products and/or services are intended to offer general information only. It is unlawful to practice Law without a license. For personal or professional legal advice, please consult a licensed attorney.

In the News: Paramedic Uploads Gruesome Photos to Internet

MARCH 3, 2007 ASSOCIATED PRESS

Authorities are investigating a Western Kentucky paramedic who took photos of injured or dead people with his cell phone camera and posted them on the Internet.

John Snow, who has worked 10 years for the Clinton-Hickman County Ambulance Service, told the Paducah Sun that he posted photos of at least three accident victims, including a close-up of a head injury from a person who died after being struck by a falling tree. Other photos showed victims of a motorcycle accident and a gunshot wound, he said.

Snow said he deleted his Web postings last month.

Letch Day, director of field

operations for the Kentucky Board of Emergency Management Services, said someone who viewed Snow's postings contacted the board last month, raising questions about privacy rights.

"We were made aware of the site, we viewed the site and found enough evidence that a formal complaint was filed by our office," Day said.

He said he could not discuss details of preliminary findings until the investigation is completed.

If an investigator determines that Snow was unethical, Day said, a hearing would be held by the attorney general's office to **revoke Snow's EMS certification.**

PARAMEDIC NEGLIGENCE?

While the modern law is generally predicated on numerous black-letter rules, the shades of gray are ubiquitous, which can lead to more questions than answers. Consider for yourself, based on this month's cover article...

1. Did this paramedic have a duty not to photograph images from the scene of an emergency?
2. Are scene photos captured by providers arguably common?
3. Does revocation of this paramedic's certification violate any of his Constitutional rights?
4. Was there any actual damage suffered?
5. Have you ever photographed an emergency scene?

Practical Jokes Have Become Impractical

Cellophane on the toilet seat, the emesis basin of water on the visor, Armorall® on the bench seat... those were the days. But those days are gone.

Recent news stories about Lawsuits stemming from simple practical jokes seem to have deflated much of the fun providers have been enjoying for generations. It seems that in the age of aggressive litigation and political over-correctness, [we] just cannot take a joke anymore.

I don't think that a bucket of water is any more [physically] dangerous

today than it was when cavemen (no offense to cavemen intended) were using similar devices ten millennia ago. But the potential for legal action in modern times has created an environment where we must respond to all of the possibilities—and even some of the impossibilities, lest we find ourselves seated at the defendant's table in a civil suit; shortly before paying an exorbitant sum for a short chuckle and a funny story.

Likewise, I don't know if the world has become too sensitive or if a competitive and turbulent economy has encouraged folks to

pick the deep pockets for a quick and [seemingly] easy buck.

Whatever the case and like it or not, the time has come for everyone to be very, very careful about determining what is and what is not funny, and where there is even a shred of doubt, do yourself this favor: **DON'T DO IT!**

Like me, you may abhor the way things have become so sterilized, but they have and we have to live here.

At the end of the day, your best bet will always be to simply play it smart... and safe.

Case Briefs in Brief: Wilson v. Dickson County

Not Reported in S.W.3d, 2001WL 1285814 ~ Tenn.Ct.App.,2001.

This is an action for damages for wrongful death caused by the admitted **negligence** of a **paramedic**, (who enjoyed no immunity) employed by the county, which enjoyed immunity — Responding to a 911 call, Donald Tinsley, an EMT, and David Cline, a paramedic...arrived at the residence... Clayton Wilson was breathing, and oxygen was administered. He was carried by stretcher to the ambulance and transported to a hospital.

The ambulance was equipped with a cardiac defibrillator which admittedly was not used. The failure of the paramedic to use the defibrillator is the basis of this litigation. The complaint alleged that the defendant [paramedic] was negligent and deviated from the recognized standard of care...in that he failed to use the defibrillator, failed to intubate, failed to call the emergency room and in other particulars. The case was tried without a jury. The trial

judge found that the admitted negligence of David Cline, contrary to the insistence of the defendants, was the proximate cause of the death. Judgment for pecuniary damages of \$385,000 for the value of the decedent's life were awarded, together with a separate award of \$500,000 for "consortium-type damages." As against the paramedic the award is limited only by the standard of reasonableness. The total award is reduced to \$500,000.