EMD LEGAL/LIABILITY ISSUES

Objectives:
- Identify concerns and dangerous practices/behaviors
- Define “Simple” and “Gross” negligence
- Will be able to explain litigation and how to avoid it.

Legal/liability issues are not something to think about after a call. We are going to discuss several different types of situations that can put you and your agency in a situation that is avoidable. In order to understand a little better we will define some terms you need to be familiar with along with the best ways to avoid litigation.

**Liability**
Liability is a term you should know and it is simply defined as ‘you are ultimately responsible for your actions’. Liability for damages can be a result of actions, practices or conduct.

**Good Samaritan Law**
The state of Illinois does have a Good Samaritan Law which protects a person that is acting in an emergency, action in good faith, acting without regard to compensation or reward and is not guilty of gross negligence or malicious misconduct toward the victim.

**Negligence**
Negligence is difficult to make a case with. The courts will be looking for several items before allowing a case of negligence to be filed. The courts will be looking for:
- Duty
- Breach of Duty
- Injury/Damage occurred
- Proximate cause/Causation
When dealing with the ‘duty’ issue, it should be understood that in a telecommunicator role your duty starts when you answer a 911 call. This applies to any time a phone call is answered whether or not you are on the clock.

Breach of duty will occur if you answer a call and then do not follow through. Examples of this would be if you put the call on hold, simply took the information and passed it on without completing the dispatch of units, transferring a call without waiting to be sure another telecommunicator is on the line. You will always need to respond within the standard of care.

Injury/damage occurred can be from one of two different sources. Injury or damage can occur from a tele-communicator giving improper instructions or not giving any instructions. In other words, by something you did or did not do.

Proximate cause is a legal term where you can substitute a ‘but for’ phrase into the situation. If a subject would not have had additional injuries occur ‘but for’ the actions or inaction of the tele-communicator, there would be a proximate cause situation.

With the complexity of negligence the term has been further subdivided into two categories, Simple negligence and Gross negligence. Separating the two different types will have an impact on the settlement phase a law suit. Simple negligence is simply an error in judgment. You did not intend to cause damage to the subject/property and thought you were helping the situation. Gross negligence is acting in a manor in which you wanted the subject/property to have further damage. This would be acting in disregard for the safety of persons and/or property.

**Standard of Care**

The standard of care is created by information from several sources. The standard of care is often changed with new information and further evaluation of current practices. These standards come from organizations that are involved in the development of emergency medical services and are then published. The standard of care for a specific area will vary on what others in the area with similar training and experience are doing. If one agency gives instructions, then other agencies that do not, will be working below the standard of care. Local or state statutes, laws, ordinances or administrative orders are all
considered within the standard of care. Locally we work under the Powerphone protocols which are changed and updated to meet the new standards.

**Abandonment**
Abandonment is a situation in which someone is in a life-threatening position and you leave that patient. In the tele-communicator role abandonment can occur when a call is turned over to someone with less training than you and the patients condition declines or further injury results.

**Principle of Reasonableness**
The principle of reasonableness refers to what a ‘reasonable person’ would do when faced with the same or similar situation. There is no clear definition of this but does define that the reasonable person should have the same levels of training and/or disabilities as the defendant in a situation.

**Emergency Rule**
This rule states that ‘one who is faced with an emergency cannot be held to the same standard of conduct that he/she would otherwise be held to when not faced with such a situation’. This rule works with the principles of a ‘reasonable person’ act.

**Foreseeability**
‘Foreseeability’ is a fact that offers the tele-communicator the ability to function and offer help on the situation that is reported to them even if they differ from the actual situation. The tele-communicator should be using the EMDPRS for the provided complaint type and should the complaint type be different would not be held liable for giving the wrong instructions. This also would work on the principles of a ‘reasonable person’ act.

**Damages**
Damages refer to anything that is awarded to the plaintiff. There are two classifications for damages 1) Compensatory and 2) Punitive. Compensatory damages are
reimbursement for actual lost monies due to an incident. This would include lost wages, medical bills or lost properties. Punitive damages are those damages awarded to the plaintiff for no other reason than to punish the defendant.

**Consent**

Consent is the permission to treat the sick or injured subject. Everyone out there has the right to accept or refuse help offered. In situations where the sick or injured are unconscious or not able to communicate with the tele-communicator the patient can be treated under ‘Implied Consent’. This refers to the assumption that they would want to have help. ‘Actual Consent’ refers to the direct verbal or non-verbal communication to someone giving aid.

**Governmental Immunity**

The state of Illinois does have ‘Governmental Immunity’ acts, to protect governmental employees from civil liability. The act does specify that it only applies in cases of ‘simple negligence’ where there was no ‘malicious intent’. These laws only apply to public employees, not those working as EMDs in private agencies.

After looking at the different laws and terminology, each telecommunicator should keep in mind certain behaviors or actions that can get you into trouble. The first thing to remember is that if EMS is requested that an EMS unit is sent. Subjective judgment of the caller’s credibility or the caller’s chief complaint may bring on an argumentative or combative attitude that may get you into a troublesome area. Allowing any personal prejudices to affect your objective decision making will also tend to send the call into a spiral of events that will be harmful to all involved. When giving medical instruction, always use the EMDPRS and read it accurately. Not giving instructions when needed or when a protocol exists is the largest area for law suits involving tele-communicators. Keeping your certification current is your responsibility and is mandatory for the state of Illinois.
Looking at the different laws and the terms above the tele-communicator can follow some simple practices and behaviors to avoid being a defendant in a court case. Failing to send emergency medical services when requested is always a wrong decision. We realize that what you are told, on occasion, will be different from what is happening. Sending help to someone who is requesting it will verify what is happening on the scene. Remember that subjective ideas about the caller credibility or the caller’s chief complaint can cause you to make critical misjudgments in a situation. Argumentative and combative attitudes on the part of the EMD or allowing prejudices to affect objective decision making will also be a high risk behavior that is easily avoided. The tele-communicator needs to remember that even if the caller is provoking you with phrases such as ‘I pay your wages’ that you are in the public service area and to be above those petty comments. Offering help in the form of medical instructions, using the approved EMDPRS, when they are needed and you have a protocol for it needs to be done on each call for service. If your agency has a QI/QA program, the tele-communicator should get involved with it. By listening to calls and picking out good and bad points throughout the call will help you to avoid similar situations. These simple steps will help you avoid liability. Should a problem or situation arise, it should be reported as soon as possible.

Certification with the Illinois Department of Public Health is required in the state of Illinois. The certification you have received through the state of Illinois is valid for 4 years. When you are due to re-certify the state will notify each dispatcher by mail. It is the responsibility of each dispatcher to make sure that their address is kept up to date in order to get these notifications. When the reminder letter arrives it will give you instructions as to how to go on line and re-certify. Please do not misplace this letter as it will have a sign in password within it. The EMS office and the ETSB do not get a copy of the letter or password.
Evaluation Tool for Medical/Legal

1. _______ means that you are ultimately responsible for your actions.

2. When does the “duty to act” relationship begin?

3. Define “simple negligence.”

4. List eight behaviors or actions that EMD’s should be concerned about.

5. List and describe the 2 types of damages that can be awarded.

6. What is meant by “governmental immunity?”
7. Name 4 methods used to establish a “standard of care.”

8. When can immunity be granted under the “Good Samaritan” laws?

9. List 3 strategies used by individuals to avoid litigation.

10. Name 4 criteria that courts use in establishing negligence.

11. Define “simple negligence.”
12. Define “gross negligence.”