



EMS Liability:

Recent Changes in Illinois Law

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Emergency medical services liability is an ever-evolving issue in Illinois. While courts frequently decide cases affecting EMS providers, the Illinois General Assembly often amends statutes that also affect EMS liability issues. In 2007, both Illinois and federal courts addressed issues involving EMS immunity and liability. In addition, the Illinois General Assembly also enacted new laws this past year which directly impact EMS services. Below is a brief summary of recent changes in the law affecting EMS providers and serves as an example of the evolving issues facing EMS providers.

Failure to provide treatment

In *Abruzzo v. City of Park Ridge*, 374 Ill.App.3d 743 (1st Dist. 2007), the First District determined what type of immunity protects EMS providers in Illinois from civil lawsuits when they fail to provide treatment. At issue were Sections 6-105 and 6-106 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 *et seq.*) and Section 3.150(a) of the Emergency Medical Services Systems Act (210 ILCS 50/1 *et seq.*). The Tort Immunity Act protects local governments and their employees from litigation if they fail to or inadequately examine, diagnose, or treat any person, as long as that failure occurs within the scope of employment. While the EMS Systems Act also grants EMS providers immunity from lawsuits, it contains an exception for willful and wanton misconduct. It was this conflict between the absolute immunity of the Tort Immunity Act and the limited immunity of the EMS Systems Act that the court was asked to resolve.

The case stemmed from a response by City of Park Ridge paramedics to a call for a “nonresponsive” patient. The paramedics allegedly did nothing to assist the patient, who died the next day. After determining the paramedics had failed to evaluate, assess, examine,

diagnose, treat, or document the patient’s condition, the trial court dismissed the case based on the immunity provided by the Tort Immunity Act. The plaintiff appealed.

On appeal, the plaintiff posed a two-prong argument to the court. She first argued the EMS Systems Act — rather than the Tort Immunity Act — was the correct statute for the court to apply because it specifically addresses EMS providers. She then argued the defendants acted willfully and wantonly, and therefore, the EMS System Act’s immunity did not apply. If the EMS Systems Act did apply instead of the Tort Immunity Act — and the responding EMS providers were in fact guilty of willful and wanton conduct — they would not have been granted immunity from litigation.

The court disagreed with the plaintiff and affirmed the trial court’s application of the Tort Immunity Act rather than the EMS Systems Act. The court noted that the defendants had failed to examine, adequately examine, diagnose, or adequately diagnose the patient, and as a result, the Tort Immunity Act applied. The categorization of the patient as “unresponsive” in the 911 call did not rise to the level of a diagnosis, but was merely a symptom.

Failed intubation

In *Fagocki v. Algonquin/Lake-In-The-Hills Fire Protection District*, 469 E3d 623 (7th Cir. 2007), the Seventh Circuit Court of Appeals decided whether the paramedics’ failure to properly intubate a patient constituted willful and wanton conduct. If it did, the immunity provided by the EMS Systems Act would not protect the defendants. Unlike in the *Abruzzo* case, this case only involved determining whether the willful and wanton conduct exception to the EMS Act’s limited immunity should apply to the particular set of facts.

In *Fagocki*, a woman suffered a severe allergic reaction to peanuts after eating Chinese food. Her husband drove her to the nearby immediate care center, but she was comatose upon arrival. The paramedics responded to a 911 call to transport the patient from the care center to a hospital for proper treatment. Because the patient’s jaw was clenched shut, two attempts to intubate were unsuccessful. Intubation was successful on the third attempt after three rounds of medication were administered to relax the patient’s clenched jaw. Upon arrival at the emergency room, however, staff discovered the endotracheal tube had been inserted into the patient’s esophagus rather than her trachea. The patient suffered severe, irreversible brain damage, and died two and a half years later.

After a jury decided in favor of the plaintiff, the defendants appealed to the Seventh Circuit. The court determined that the improper intubation did not constitute willful and wanton conduct, and therefore the EMS Systems Act protected the defendants from liability. The court noted that misplacing the endotracheal tube into the esophagus while traveling in a moving ambulance would not be considered negligence. Furthermore, while “the paramedics’ failure to detect the misplacement of the tube may have been negligent . . . such a failure would not amount to willful and wanton misconduct without circumstances of aggravation.”

Automated External Defibrillators

On October 2, 2007, the Illinois General Assembly approved House Bill 1279, which requires Automated External Defibrillators (AEDs) at all outdoor physical fitness facilities governed by the Physical Fitness Facility Medical Emergency Preparedness Act (210 ILCS 74/1 *et seq.*). The new law defines such outdoor facilities as football fields, soccer fields and baseball

diamonds. Additionally, the Illinois Department of Public Health will be authorized to define by rule other similar outdoor facilities requiring AEDs. Under current law, only indoor facilities are required to have AEDs on site and ready for use if needed.

The new law will require the presence of at least one person trained to use AEDs, as determined by the Automated External Defibrillator Act. AEDs will be housed in a building within 300 feet of an outdoor facility. If there is no building within 300 feet of a particular outdoor facility, the person in charge of the activity occurring at the facility must make sure an AED is available for the event. This new law will serve to compliment the lifesaving efforts of EMS personnel in Illinois, as people already on the scene will be able to render immediate aid to patients before paramedics arrive.

EMS immunity

On August 27, 2007, the Governor approved Senate Bill 404 (Public Act 95-447), which makes changes to both the EMS Systems Act and the Good Samaritan Act (745 ILCS 49/1 *et seq.*). This new law amends the EMS

Systems Act to add immunity from suit for people certified to train others to use AEDs or give first aid. As with the other immunities granted by the EMS Systems Act, no immunity exists for willful and wanton misconduct.

P.A. 95-447 also amends the Good Samaritan Act to provide immunity to EMS personnel who provide medical services as disaster relief volunteers. The law only covers responses to earthquakes, hurricanes, tornados, nuclear attacks, terrorist attacks, epidemics and pandemics. That response must be on a volunteer basis, free of charge, for the immunity to apply. Again, the law does not provide immunity for willful and wanton misconduct.

Practical application

Although the law involving EMS in Illinois is ever-changing, these most recent cases seem to have swung the pendulum towards affording EMS providers more protection from litigation.

Nevertheless, it is important to remember that the best ways to protect EMS providers from liability are through proper documentation and ongoing training.

Do not underestimate the importance of patient care reports. Quite often, they are the only document available to show what the paramedics did on a call, how they did it, and why they did it. Always insure EMS reports are completed fully with no blanks. Also insure that the response times — while approximations — flow in an orderly fashion to the treatment provided. For example, make sure the IV start time is not after the paramedics pushed some medication via the IV. Lastly, it is the obligation of EMS providers to stay abreast of changes in the applicable standing medical orders or guidelines. Through proper and ongoing training, paramedics can focus more on providing excellent emergency medical services than on the fear of liability for their actions. ■

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