



## LEGAL CONSULT

INCISIVE ANALYSIS OF EMS LEGAL TOPICS

# DO EMS MEDICAL DIRECTORS REQUIRE ADDITIONAL INSURANCE?

The question of whether EMS medical directors need insurance for their EMS duties can be answered in one, unequivocal word: Yes. In today's world, physicians incur a high level of risk if they provide EMS medical direction without appropriate insurance coverage. The better questions are: What kind of insurance do they need, and is it available at a reasonable cost?

For the past 10 years, EMS medical directors have struggled to obtain appropriate insurance coverage to no avail. Consequently, many physicians have "gone bare" in the employment-law department, providing medical supervision that may subject them to liability not covered by their insurance.

This is about to change, however, because a group of EMS medical directors has taken the initiative to work with an insurance expert to create an insurance package that covers all functions of modern EMS medical directors. (See "Now Available—EMS Medical Director Insurance," p. 7.)

Most policies available to EMS medical directors have not provided the level of coverage they need. As EMS grows more sophisticated, we have started to appear on the radar screens of plaintiffs' lawyers, who may view EMS medical directors as a "deep pocket" worthy of a position as a defendant in a lawsuit against an EMS agency or EMS provider.

But aren't EMS medical directors fully covered by their medical malpractice policies? Wisconsin State EMS Medical Director Keith Wesley, MD, chair of the National Council of State EMS Medical Directors and an active EMS medical director, asked malpractice insurers that question. "Several said that if the doctor works in emergency medicine, then [his or her] EMS activities are an expected function of that practice and are covered," he reported, adding, "I could not get any med-mal insurer to put [its] opinion in writing, which makes me wary that [it] actually would defend me."

First of all, many—if not most—EMS medical directors are not emergency physicians. If your medical director does not practice emergency medicine, then it is highly unlikely that his or her med-mal carrier will provide any coverage at all for his or her EMS activities.

Besides, Wesley noted, the key question for insurers is: Covered for what? The answer is that these insurers limit their exposure to

claims of medical negligence, which might be brought against the physician from a patient cared for by the EMS agency. They don't cover issues related to the medical director's administrative activities.

Although errors and omissions coverage is important in case a lawsuit alleges that a physician has been negligent in providing direct patient care in the prehospital setting, coverage for all the administrative functions a medical director performs is most essential.

The claims a plaintiff makes against EMS medical directors may well fall into the employment civil rights arena. Even if those claims are ultimately dismissed due to the fact that the medical director is not an employer, the costs of defense can be quite expensive. If the claims are allowed to stand, and the physician has no coverage, he or she will be responsible not only for attorneys' fees, but for the payment of a judgment, should one be awarded.

Some states provide immunity from prosecution if the EMS medical director provides the services for free, but it's highly unlikely that a state will cover the cost of defending a medical director. In addition, the concept of a state offering immunity to the medical director for employee practice issues has never been tested in court.

EMS medical directors have a broad range of responsibilities for the EMTs and paramedics they supervise, including direct and indirect medical control, protocol development, insuring field-provider skill maintenance, field-performance evaluation, liaison activities with other agencies in the medical community, dispatch-protocol development and supervision, EMS education and a host of other areas in which their input is needed. Although physicians traditionally do not hire or fire the EMTs and paramedics they supervise, their authority lies in their ability to suspend, modify or withdraw medical supervision of an individual paramedic or EMT.

This authority has resulted in EMS medical directors being named in employment lawsuits when EMS providers were subjected to employment actions based on medical director decisions. Although medical directors who neither hire nor fire should not be subjected to this type of claim, the history of litigation against EMS medical

directors over the past 10 years shows that this type of lawsuit poses the highest risk.

Recent court cases underscore the need for EMS medical directors to have this comprehensive insurance coverage. In one case, a medical director was sued under the Americans with Disabilities Act by an impaired paramedic who ultimately lost his job.<sup>1</sup> The medical director's issues with that paramedic—which resulted in the physician's withdrawing his medical control of that individual—had nothing to do with the paramedic's illness. Fortunately for the physician, the court found that the paramedic was not a "qualified person with a disability" for application of the ADA. Interestingly, the court noted that the county had no authority to require the physician to give medical control to any particular paramedic and "no power to override the doctor's decision to withdraw medical control."

In another case, a medical director withdrew medical supervision from a paramedic because of her serious protocol deviations.<sup>2</sup> Because the paramedic no longer had medical control and could not function as a paramedic, the fire chief demoted her to a firefighter position. She sued the fire department, the fire chief and the medical director for gender discrimination, First Amendment retaliation, equal protection and violation of due process. Again, the court ruled in favor of the medical director and dismissed the claims against him. These two physicians were fortunate that the claims were found to be meritless. Another situation with a different set of facts might not turn out so favorably for a medical director.

So while EMS medical directors must have E and O insurance coverage, they also absolutely must be covered for all the administrative tasks they perform, including claims of negligent supervision, negligent hiring and retention of personnel, and for any employment civil rights claims. In short, they need coverage for any litigation that might result from the responsibilities outlined in their contracts or job descriptions. ■

### References

1. *Hagan v. Anderson County*, 105 F. Supp. 2d 612 (E.D. Kentucky, 2000).
2. *Weigand v. Spadt*, 317 F. Supp. 2d 1129 (D. Nebraska 2004).

# IDAHO LAUNCHES AMBITIOUS PROGRAM TO FILL RURAL HEALTH GAPS

Idaho EMS has undertaken a two-year project it's calling "Bigger Than Idaho" to develop a rural health-care model for EMS integration.

"It's 'Bigger Than Idaho' because we hope it will serve as a model for other states and other countries," said Nikiah Nudell, NREMT-P, regional operations manager for the Idaho EMS Bureau. "The purpose is to assess the needs of Idaho for EMS services in traditional and non-traditional roles. We have 26 critical access hospitals and many communities that rely on federally designated clinics, and EMS in those areas is provided by volunteer EMTs."

Nudell explained that the project "will drill down to the community level to see what services we need and what someone with EMS training and an unknown component of additional EMS training could do" to provide those services. For example, a paramedic might respond to 9-1-1 calls, provide refresher training for EMTs, help at a clinic and serve as a PALS and ACLS educator for clinic staff. "Sometimes very sick or injured patients arrive at those clinics, which have limited resources, and a paramedic who has a lot of experience with [such] patients could be very helpful to the clinic physician or nurse," he said.

## Bigger Than Idaho project plans include development of a model curriculum for the anticipated new or revised scope of practice.

"We will determine the appropriate deployment for this person, who the employer would be, how [the program] would be organized and how they would be deployed. For example, if paramedics were stationed an hour apart from each other, they should be within 30 minutes of a patient."

Bigger Than Idaho project plans also include development of a model curriculum "for this anticipated new or revised scope of practice" and a continuing education network to support it; development of a deployment model that could serve Idaho and other states; and development of a draft memorandum of understanding, administrative policies and legislation necessary to implement the model.

The Idaho EMS Bureau is using a federal Rural Hospital Flexibility Program grant to help fund the project through fiscal 2008. ■

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