North Carolina EMS Administrators

The EMS Law “Top Ten”
The Year in Perspective

presented by
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Steve Wirth is a founding member, along with Doug Wolfberg and the late Jim Page, of the law firm of Page, Wolfberg & Wirth, LLC. The firm represents ambulance services, municipalities, fire departments, hospitals, and other organizations across the country in a wide range of medical transportation, reimbursement, compliance, labor and employment, and corporate law issues. Steve has 30 years of experience as an EMT, paramedic, flight paramedic, EMS instructor, fire officer, and EMS administrator. He is currently one of the three Commissioners for the Commission on Accreditation of Ambulance Services (CAAS), the national ambulance service accrediting body.

Steve is a frequently sought after speaker at regional, state and national conferences on a variety of EMS, fire service and public safety subjects. He has authored numerous articles on a variety of EMS management, risk management, corporate compliance and workplace law topics. He is a contributing writer for *Journal of Emergency Medical Services (JEMS)*, and *EMS Insider*. Steve co-authored the highly acclaimed *Ambulance Service Guide to HIPAA Compliance* (now in its Third Edition); *The Ambulance Service HIPAA Privacy and Security Video*; *Better Billing: The Ambulance Service Model Compliance Plan*; and *The Ambulance Service Model Personnel Handbook* --- all produced by PWW.

Steve graduated *cum laude* from Duquesne University School of Law and was a member of the school’s national trial advocacy competition team. In addition to his law degree, Steve has a Masters Degree in Health Services Administration from Gannon University in Erie. He remains in touch with patients and field provider issues as an active EMT and nationally certified firefighter with the Hampden Township Volunteer Fire Company where he serves as the medical officer.

Steve is also a life member of the Nippenose Valley Vol. Fire Co. near Jersey Shore, PA where he started his public safety career as a junior firefighter and later served as Lieutenant and then Deputy Fire Chief. He also serves on the Executive Boards of the Pennsylvania Fire and Emergency Services Institute, and the national AED Instructor Foundation.
**Number 10**

**EMTALA and ER Diversions**

Understanding EMTALA
- The Emergency Medical Treatment and Active Labor Act (EMTALA)
  - Federal law
  - Applies to hospitals
  - Does not directly apply to non-hospital owned ambulances
  - BUT, the interaction between EMTALA and ambulances is significant

EMTALA: The Hospital’s Basic Duties
- In any hospital:
  - Any individual
  - Who comes to
  - The hospital
- Must be given:
  - Medical screening examination
  - By qualified medical personnel, AND
  - If Emergency Medical Condition is present
  - Stabilizing treatment
  - Or appropriate transfer

The Bypass and Divert Problem
- Emergency Department overcrowding can overburden hospital resources
- Hospital may lack the ability to care for incoming emergency patients
- Transporting ambulances notified that hospital is on “bypass,” “divert status,” “ER closure,” “re-route,” etc.

Underlying Reasons
- Understaffed emergency departments
  - Personnel shortages
  - Turnover
  - Inefficiency?
- High Emergency Department demand
  - Flu season
  - Mass casualty incidents
  - Patients seeking primary care
  - Should “unforeseen demand” be an acceptable excuse?

Underlying Reasons
- Reimbursement
- EMTALA
  - Medical screening examination requirement
- Poor ED design
  - Some ED overcrowding problems are as simple as implementing a “discharge unit” where pts can wait for test results, etc. instead of tying up beds
  - “Fast Track” areas for non-critical pts
Bill targets long waits in emergency room

CARSON CITY -- A bill that would require Las Vegas area hospital emergency rooms to start providing care to emergency patients within half an hour after they arrive by ambulance won approval Monday in a key Senate committee.

Senate Bill 458 would impose no penalties or liability for not meeting the deadline, but advocates of the measure said the waits would be tracked and included in a study showing where emergency care is slow, and that no hospital would want to be at the top of that list. Proponents also noted that hospitals, emergency service providers and others worked together on SB458, which was endorsed by the Senate Human Resources and Education Committee.

Bill Welch of the Nevada Hospital Association said the bill's requirements will be difficult to meet, but "from a positive note, for the first time we will have a standard."

Rusty McAllister of the Professional Firefighters of Nevada said the 30-minute time frame is a national standard, adding that it should help in finding ways to improve on emergency room care.

Two Studies Document Ambulance Diversion Problem

Increased Diversion Hours Indicates Declining Emergency Department Capacity; Elderly Disproportionately Affected

2/26/06 - Washington, DC — Two new studies published online by the Annals of Emergency Medicine document the extent of ambulance diversions signaling a lack of capacity in the emergency medical care system. One study is national in scope, while the other looks at the problem on the local level, but both uncover clues about the causes and characteristics of ambulance diversion that could help policymakers address the problem. Centers for Disease Control and Prevention (CDC) researchers, in the first national study of ambulance diversions, found about one ambulance in the United States is diverted every minute from its originally intended emergency department because it was overcrowded and could not safely care for another sick or injured patient. The research is based on the 2003 National Hospital Ambulatory Medical Care Survey, an annual probability sample survey of U.S. departments.

Adding New Hospital Beds Speeds Ambulance Times

07.12.06, 12:00 AM ET

WEDNESDAY, July 12 (HealthDay News) -- By increasing their ICU bed capacity, hospitals can reduce patient risk brought on by ambulance diversions, while increasing hospital revenues, a new U.S. study finds. Ambulance diversion occurs when ambulance crews call ahead to a hospital, announcing that they have a patient on the way -- only to be told by the hospital that all beds are full. The ambulance crew must then find, and drive to, another hospital that has a free bed. In a study published in the July 12 online issue of the Annals of Emergency Medicine, researchers at Oregon Health and Science University in Portland conducted a two-year study of an urban, 400-bed, acute care teaching hospital with a level one trauma center treating about 43,000 emergency patients each year. The study concluded that every hour of ambulance diversion costs the hospital about $1,100 in revenues. "It's important that hospitals understand that decreasing ambulance diversion can translate into higher revenues," study author K. John McConnell, of the university's Center for Policy & Research in Emergency Medicine, said in a prepared statement.

Diversions Create EMS System Inefficiency

- When diverted from an intended ED, ambulances may be forced to transport to more distant destinations
- Decreases efficiency (less unit hour utilization, which pays the bills)

Diversions Leave Communities Without EMS Resources

- While driving around looking for an open emergency department, communities may incur delayed responses
Conflicts with Patient Choice

• Patients denied transport to hospital of choice
• May lead to the public declaring a “911 bypass”
• What if patient insists on being transported to a hospital on bypass or divert status?

Conflicts with System Protocols

• Example: protocol requires transport to “closest facility” or “nearest trauma center” but that facility declares a diversionary status

Does Diverting Ambulances Away from the Hospital Even Help the Hospital?:

Recent study says NO

“Parking” Ambulance Stretchers with Patients in the hallway may be an EMTALA violation!

7/13/06 – Memo From CMS

• “The Centers for Medicare and Medicaid Services (CMS) has learned that several hospitals routinely prevent Emergency Medical Service (EMS) staff from transferring patients from their ambulance stretchers to a hospital bed or gurney.”

7/13/06 – Memo From CMS

• “Reports include patients being left on an EMS stretcher (with EMS staff in attendance) for extended periods of time. Many of the hospital staff engaged in such practice believe that unless the hospital “takes responsibility” for the patient, the hospital is not obligated to provide care or accommodate the patient. Therefore, they will refuse EMS requests to transfer the patient to hospital units.”
12/14/05 – Memo From CMS

• “This practice may result in a violation of the Emergency Medical Treatment and Labor Act (EMTALA) and raises serious concerns for patient care and the provision of emergency services in a community. Additionally, this practice may also result in violation of the Conditions of Participation for Hospitals.”

12/14/05 – Memo From CMS

• “CMS does not recognize the distinction some hospital staff are trying to make in identifying EMS versus Hospital responsibility for a patient already in the facility.”

12/14/05 and 7/13/06
Memos From CMS

• “CMS recognizes the enormous strain and crowding many hospital emergency departments face every day. However, this practice is not a solution. “Parking” patients in hospitals and refusing to release EMS equipment or personnel jeopardizes patient health and impacts the ability of the EMS personnel to provide emergency services to the rest of the community.”

THANK YOU FOR YOUR ASSISTANCE

Please be advised that this advanced life support team is operating under authority of protocols that were developed and approved by the Medical Director and Medical Control Board of their local hospital.

This card has been given to you in order to create a distraction so the ALS team can load the patient onto their stretcher and leave your office without interruption.

While we certainly value your advise and assistance, we could certainly do without the NRB at 6 lpm your nurse put on our patient.

While this card will give you no additional useful information it did provide us with just enough time to leave your parking lot.

How to Solve the “Doc on Scene” Dilemma

Number 9

Vehicle Accidents
Increasing Number of Accidents

- More firefighters and EMS personnel killed in motor vehicle accidents than from any other source of injury!

300 Fatal Ambulance Crashes in the 1990s

- 816 ambulance occupants
- 82 died
- 275 occupants of other vehicles
- EMS personnel fatality rate TWICE national average
- Lack of restraints a key issue
- [www.cdc.gov/mmwr/DPF/wk/mm5208.pdf](http://www.cdc.gov/mmwr/DPF/wk/mm5208.pdf)

Vehicle Accident Prevention

- EVOC and simulation training
- “Over the road” practice and testing
- Use of Vehicle Monitoring Systems
  - DriveCam
  - Road Safety

Number 8

Response Issues and “Turf Wars”

Man Sues After Wife Dies Waiting for Ambulance

WALTERBORO (AP) - A man is suing Colleton County after dispatchers sent emergency crews to the wrong address and his wife died.

John Creel called 911 last June to get help for his wife who was choking.

Dispatchers left two digits out of his address and the first ambulance dispatched wound up 20 miles away. A second ambulance was sent when the mistake was discovered. But by then 30 minutes had passed and Elaine Creel was dead.

Barry McRoy is director of the Colleton County Fire and Rescue. He says Creel's death was the first he knew of because of a bad address getting passed on to emergency crews.

But in a letter to Sheriff George Malone, McRoy says he sees a disturbing trend in such calls at the sheriff's communications center.

John Creel sued the county last month, saying its negligence caused his wife's death.

Little Girl Dead: 911 Dispatchers Never Sent Ambulance

Family members say they called from inside their apartment on a landline and on a cell phone. But an ambulance was never sent, and little Destiny died. Family members are now suing the City of Memphis for $3 million.

"That was one of the most painful nights I ever had in my life," said Bennie Wilson.

Wilson remembers his daughter and remembers what happened on November 5th, 2004.

"I had just pulled up and they say 'Daddy come inside the house.' They said 'she can’t breathe.' I said ‘You called 911?’ [they said] ‘we already called,’” said Wilson.

Family members say they called from two phones, a house phone and a cell phone.
Turf Wars

• Be prepared to demonstrate your service’s efficiency and performance
• “Six Minutes to Live” --- The true measure of response time a big focus of the USA Today series
• Does not matter whether you are private, public, non-profit, hospital based, not hospital based!

Response Issues

• Vehicle Accidents
  – Civil and criminal
• Getting Lost
  – Bad dispatch information
  – Crew unfamiliarity with service area
  – Use of GPS systems
• Bad Refusals (Abandonment)
• Litter Drops

Response Issues

• Inadequate Equipment or Failures of Equipment
  – “Dead” defibrillators
  – “Empty” oxygen cylinders
  – No pediatric airway equipment
• Patient Care Issues
  – Airway management issues
  – Spinal immobilization issues
• Virtually 80-90 % of all EMS lawsuits are not directly related to patient care!

Number 7

“Staff and Patient Relations” Issues

The Role of the “Changing Work Ethic” And the Impact of the “McJob”

Or….

Where Have All The Good Loyal People Gone?
WHY DO WE HEAR THIS?. . .

“I’m in EMS as a Stepping Stone to Bigger Things!”

Employment Lawsuits

Sexual and Other Harassment:

We Still Don’t Get It!

Regulating Staff Conduct

- Cell phones
- Digital cameras and video recorders
- Web access
- Reporting to work “rested”

Essential Management Responsibilities

- Create a “no harassment” atmosphere
- Establish a No Harassment Policy
- Communicate the Policy!
- Open door for reporting alleged violations
- Prompt and proper investigation
- Action to prevent or stop the harassment

Our First Rule of Prevention

Never, Never, Never . . .
“Electronic Harassment”

- Personal vs. company computers
- E-mail messages
- Cell phones with digital cameras
  - The “new wave” of harassment and invasion of privacy
- Need a good electronic communication policy!

Other HOT Topics

- Age discrimination
- National origin discrimination
- Race discrimination
- Discrimination based on religion
- Family and Medical Leave Act issues

Other Hot Topics

- Retaliation claims
- “Whistleblower” claims: Qui Tam “relator” cases
- Retaliation claims can survive dismissal of the underlying claim!
- Big growth area of successful lawsuits for employees!

Number 6

Pay Issues

- Double damages if willful violation
- Two or three year statute of limitations
- Interest on unpaid wages
- Automatic attorneys fees
- USUALLY affects an entire class of jobs:
  - “Screw up with one, you screw up with them all!”
- Employees cannot privately waive FLSA rights

Why So Important?

- Incorrect overtime calculation
  - No 8 or 80 rule in EMS!
  - Calculation of “regular rate”
- Incorrect “final paychecks”
  - What does the handbook say?
- Improper Volunteer “Incentive” Programs
  - Employees “In Disguise”

Top FLSA Compliance Issues
Wage and Hour Issues

- Improper classification for overtime exemption purposes
  - Administrative, Professional, Executive
- Improper sleep time, meal time and rest period deductions
- Improper payment of “on-call” time

Department of Labor
New Overtime Exemption Rules

- “Exceptions” to the “Exemptions” for front line responders
- Crew Chiefs, Senior Medic, Field Coordinator, Billing Coordinator?
- Have you reviewed your job descriptions lately?

Number 5
Reimbursement and EMS System Finance

EMS Financial Issues

- Government Belt-Tightening
  - Medicare (fee schedule implementation)
  - Medicaid
  - Local government subsidies – may shrink as local tax base shrinks
- Declining Commercial Reimbursement
  - Commercial carriers adopting Medicare fee schedule
  - Medicare HMOs – only required to pay Medicare fee-for-service amount to non-contracted providers

Medicare Modernization Act

- Huge growth in managed care for Medicare and Medicaid
- Some helpful “due process” protections

NORA SPRINGS - New reimbursement rules for Medicaid and Medicare patients are threatening the survival of northern Iowa's volunteer ambulances, industry workers said. "This budgeting year will tell," said Brice Ausenhus, president of the Nora Springs Ambulance Service. "If we don’t get help, this service will cease to exist." Ambulance providers are paid a set fee for services they provide. Payments are based on values assigned to each service and other factors, such as mileage and location.
Cultivating Alternative Revenue

- Alternative medical transportation solutions
  - Getting the patient into the least-costly vehicle that is appropriate for their medical needs
  - Expansion of air service into ground service alternatives

Maximizing Your Billing

- Reduction in the trip-to-bill time
  - Getting documentation right the first time
  - Increasing expertise in billing
  - Outsourced vs. in-house
- Consider contractual relationships with payors
  - Bring certainty to collection and payment process

Number 4
Increased Government Scrutiny

OIG Reports A Record $38 Million in Savings and Recoveries for FY 2006

- Exclusion of 3,425 individuals and organizations
- 472 criminal actions
- 272 civil actions (FCA, CMP settlements, administrative recoveries from self disclosure)

New Focus

- Part A vs. Part B trips
- Medicaid trips: Big, new audit area!
- ALS-1 Emergency
- Air Medical
OIG Report

- January 2006 “Medicare Payments for Ambulance Transports”
- 25% of all ambulance claims paid did NOT meet Medicare’s coverage criteria
- $402 million in improper payments

OIG Report Statistics

- 27% of dialysis trips were bad
- 20% of other non-emergency trips were bad
- 7% of emergency trips were bad

Why So High an “Error Rate?”

- Contractor safeguards insufficient to identify and prevent improper payments
- Few ambulance-specific prepayment edits
- Less than 50% conduct post-payment audits

Problems

- No uniform requirement as to what documentation should be submitted for review
- Facilities receive little education on coverage requirements

OIG Points

- PCS: Signed PCS forms NOT DETERMINATIVE of medical necessity: Responsibility of ambulance service to make sure submitted claims are medically necessary

OIG Points

- Dialysis: Encourage prepayment edits for all origin or destinations as dialysis as well as destinations to and from H, and where E, N, or P are used
Dialysis

- “The ongoing and repetitive nature of dialysis treatment makes transports to and from such treatment vulnerable to abuse.”
- Palmetto GBA “Parent Claim” Process initiated 1/1/06

OIG Points

- “Our medical reviewers expressed concern that ambulance vehicles are being misused as taxis or to facilitate transfers into and out of vehicles.”

OIG Findings

- There was WAY TOO MUCH focus on “bed confinement” and looking at facility documentation
  - Should look at condition of patient “at the time of transport”
- What about sitting in a wheelchair bolted to the floor of a moving vehicle?

OIG Recommendations . . .

- Implement pre-payment edits that target dialysis and non-emergency trips
- Obtain more documentation from ambulance service and facilities to determine if requirements are met

Recommendations . . .

- Educate third party providers responsible for initiating ambulance service

For a copy:

What This Means . . .

- BAD: New wave of both prepayment and postpayment audits
- GOOD: Increased educational efforts directed to facilities
Deficit Reduction Act of 2005

- Expands federal government role in combating Medicaid fraud and abuse

DRA of 2005

- New business opportunities for anti-fraud contractors and systems vendors
- New financial incentives for states to beef up their own systems and staff
- New opportunities for whistleblowers in qui tam lawsuits

Federal Medicaid Integrity Program

- CMS gets 100 additional staff and 50-75 million a year for outside contractors
- If states enact their own FCA, it will retain a larger share of any payment recoveries
- Required staff training for organizations that do over $5 million in Medicaid business

Number 3 Overall Risk Management Issues

You Don’t Get In Legal Trouble if They Like You!

Most lawsuits are NOT based on negligence, but on communications issues and tiny instances of disrespect and inattention
SAN FRANCISCO
Crew discouraged hospital trip, wife says Man waited 16 hours before 2nd call to 911 -- died the next day

The wife of a man whose death came under investigation after a San Francisco Fire Department ambulance crew failed to take him to the hospital said Tuesday that rather than helping her husband, the crew had talked him out of getting treatment. "He was complaining about his heart," Sheila Narcisse Potter said of her husband, Elissa Potter Jr., 59. "They kept saying, 'Well, it's pretty busy right now. If we were to take you, you would have to wait three to four hours to see a doctor.' They said it was really busy, and most of the hospitals were full."

Solution:
You Need More **CRAP** in Your Organization!

Put CRAP Back IN!

• Be **Courteous**
• Show **Respect**
• Pay **Attention** to the other person
• Be **Pleasant** in all interactions

BAD 911 Tapes vs. BAD Billing Office Tapes

Needed:
An Overall Philosophy of Risk Prevention that Permeates the Service at ALL LEVELS!

BOTTOM LINE:
DON’T FORGET The Golden Rule!
Number 2
Doing Stupid Stuff!

Number 1
Compliance!
Compliance!
Compliance!

“Compliance” . . .
What is IT??

Compliance is making certain we conduct ourselves and our operations in accordance with the law!

Compliance is meeting the expectations and following the procedures of those who pay us!

Compliance is meeting the expectations of the public and those we serve!
Former Ambulance Association Leaders Charged
Allegedly Took Over $2-Million From Volunteer Association

March 4, 2006

(CBS) PLYMOUTH Officials said they have launched the largest theft investigation of a non-profit organization in Montgomery county history. Authorities said the suspects ripped off a local ambulance association of almost two-million dollars.

Officials said that three men were arrested and charged with conspiracy to commit theft, theft by unlawful taking, and other related charges after allegedly siphoning over two-million dollars from the Plymouth Community Ambulance Association.

“People were given a responsibility and didn’t do it, the fox guarding the hound,” said District Attorney Bruce Castor.

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“Corporate Accountability”

- New IRS recommendations for Non-Profit Organizations: “Good Governance Practices”
- Sarbanes-Oxley Act (SOX)

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Major Compliance Areas:
The “BOP” Triad

- **Billing** and Reimbursement Compliance Issues

- **Operational** Compliance Issues

- **“People”** or **“Workplace”** Compliance Issues

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Encourage INTERNAL reporting of “Compliance Concerns”

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Bottom Line:

- Effective Compliance Programs reduce the likelihood of having a “bad event” that will result in a lawsuit
- Keeps you out of the criminal side of the law (don’t forget the False Claims Act!)
- Makes the government LESS SUSPICIOUS of you in an investigation

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Sign up for our free EMS Law Bulletins at www.pwwemslaw.com

All New ABC3!
*The Ambulance Billing Coding and Compliance Clinic*

- March 27-28, 2007: Temecula, CA
- April 26-27, 2007: Orlando, FL
- May 23-24, 2007: St. Louis, MO

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