

Taming the Liability Monster

Hershel L. Kreis, Jr.

Richard Rubino

November 13, 2009



What is so important about understanding Civil Liability for Communications Personnel?

- Every job has the potential of liability
- We are not trying to scare you into doing a good job
- You must be aware of areas of potential civil liability in your chosen profession

Overview of Civil Liability Law

- Most civil liability in the US is based on English common law
- Typical standard used is what a “reasonable & prudent person” would do
- Penalties are called judgments
- Compensatory or punitive damages
- Defendant is found guilty based on a “preponderance of the evidence”



Liability Concepts

- Tort
- Types of Negligence

Constitutional torts

- Federal Statute 42 USC §1983
- Lawsuits are brought in Federal court
- Standards
- Defense

Liability Related Terminology

- Alleged
- Damages
- Discretionary Act
- Liability
- Litigation
- Ministerial Act
- Standard of Care (Duty of Care)
- Vicarious liability
- Simple & Gross negligence

Proof and Duty

- Four elements of proof in a negligence suit

LEGAL DUTY

BREACH OF THAT DUTY

PROXIMATE CAUSE

CIVIL INJURY WITH DAMAGES

Liability Issues in EMD

- Abandonment
- Principle of reasonableness
- Emergency rule
- Foreseeability
- Detrimental reliance
- Damages
- Consent

Liability Related to Performance of duties

- The Virginia Tort Claims Act (§ 8.01-195)
“...damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his employment...”

Liability Related to Performance of duties

- Sovereign immunity – “the King can do no wrong”
 - A defense to negligence lawsuits available to government employees
 - Protects only simple negligence
 - Has been weakened over the years

Liability Related to Performance of duties

- The Virginia Good Samaritan Act
(§ 8.01-225)

“Persons rendering emergency care, obstetrical services exempt from liability”

“In good faith, renders emergency care or assistance, without compensation”

Liability Related to Performance of duties

“Any provider of telecommunication service...shall not be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to emergency calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.”



Duty of Dispatchers

This duty is created upon answering a call. Whether or not liability attaches depends on the type of duty created by the dispatcher.



General Duty to the Public

- What potential liability to the public arises from a general duty?
- How does a dispatcher avoid creating liability?



Special Duty to the Public

- What potential liability to the public arises from a special duty?

Breach of duty

- Results from a misfeasance, malfeasance, or non-feasance of a job once a legal duty exists to perform it.

Liability Related to Performance of duties

- Elements that open the door to liability
 - Failure to respond
 - Requires thought and choice to not respond
 - Injury Occurs
 - Allows punitive as well as compensatory damages

Liability Related to Performance of duties

- Elements that open the door to liability
 - Negligent response (*Four elements needed*)
 - Legal Duty to Respond
 - Breach of the Duty
 - Proximate Cause
 - Injury

Damages

- For damages to be awarded, some harm must be done.
- Types of damages
 - Compensatory
 - Punitive

Four Types of Awards from Civil Litigation

- Compensatory - \$\$ for Actual Damages
- Punitive - \$\$ to Punish Defendant
(Governments do not pay punitive damages)
- Injunction - Court Ordered Action
- ATTORNEY FEES! \$\$\$\$\$

Proximate cause

- Relationship between the damages and the breach of duty



Areas of Supervisory Liability

- Negligent Hiring
- Negligent retention
- Negligent assignment
- Negligent entrustment
- Negligent supervision
- Negligence in failure to train
- Negligence in failure to direct



Vicarious Liability

Or Secondary Liability – “arises from a legal obligation owed to an injured party to pay damages for another's failure to perform or negligent act”

**Most lawsuits against Communications
Personnel are PREDICTABLE and PREVENTABLE**



GENERAL PRINCIPLES OF CIVIL WRONGS

- Where cases may be brought
 - State Courts
 - Federal Courts
- Burden of proof
 - Civil – preponderance of the evidence
 - Criminal – beyond a reasonable doubt

Areas of Potential Liability

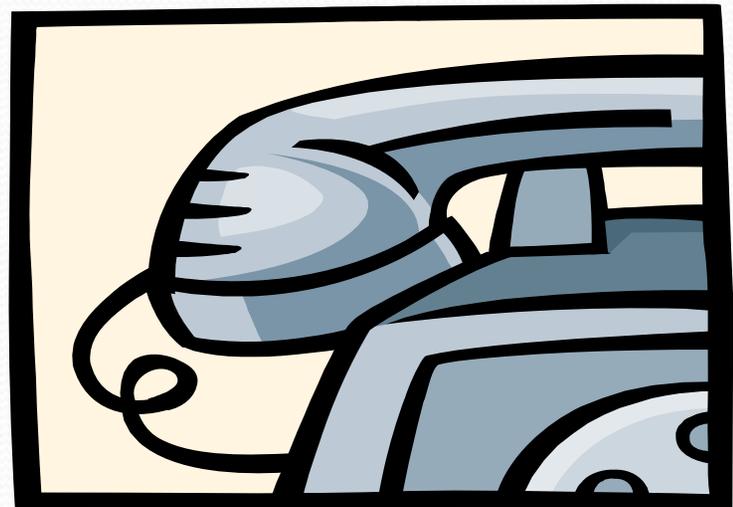
- Call Taking

Call taking skills

Correctly typing in the call

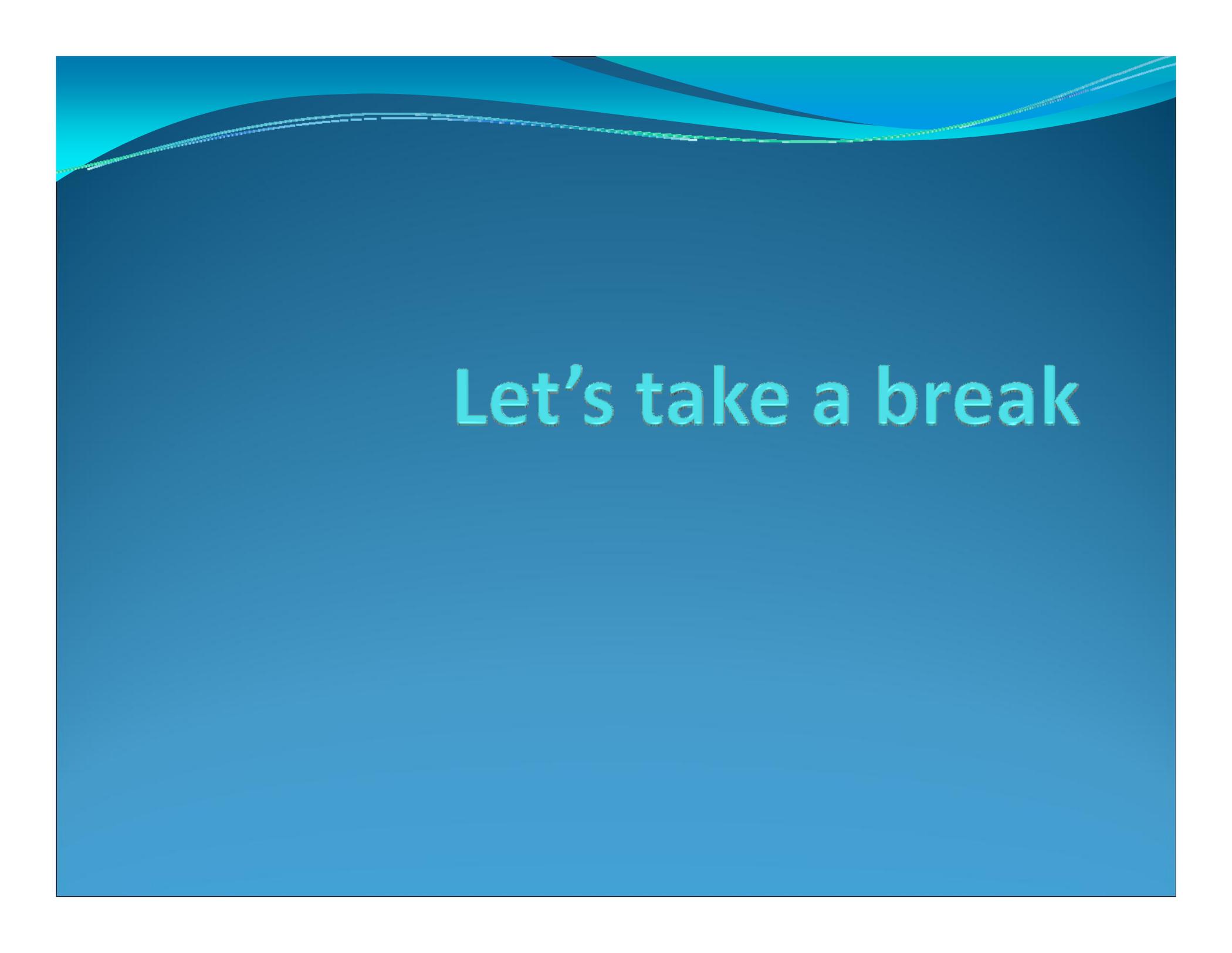
Setting proper priority

Send all info to radio dispatcher & units



Call Taking Phase

- Telecommunicator has duty to obtain correct information as to incident location
- Telecommunicator has duty to obtain enough information to correctly classify the incident
- Telecommunicator has the responsibility to obtain information on potential weapons, environmental hazards & other risk factors & relay that information to response units

The background is a solid blue gradient, transitioning from a lighter blue at the top to a darker blue at the bottom. A decorative wavy line runs across the top, composed of several parallel lines in various shades of blue and cyan, creating a sense of movement and depth.

Let's take a break

The background is a solid blue gradient, darker at the bottom and lighter at the top. At the top, there are several decorative, wavy lines in various shades of blue and cyan, some with a dotted or dashed texture.

The Home Stretch!

Areas of Potential Liability

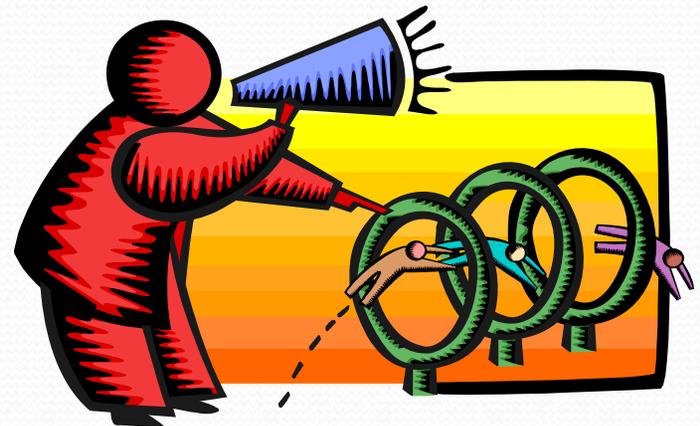
- Radio Operations

Don't sit on a dispatch

Radio skills-accurate and complete

Updating field units

Repeating accurate info from field units



Dispatching Phase

- Telecommunicator must decide what resources are to be sent & how to send them
- Must ensure responder safety
- Requires that telecommunicator correctly prioritize multiple calls

Post-Dispatch Phase

- Telecommunicator has the responsibility to ensure additional information received from the caller is relayed to response units
- Ensure information received from response units is acted upon

Areas of Potential Liability

- EMD

Follow instructions, do not add or delete



Areas of Potential Liability

- Records Management

NCIC/VCIN confidential police info

Release of info only to authorized parties

Keep data in systems up to date



Confidentiality

- HIPPA
- You may not relay names
- You may not talk about what patient said
- You may not talk about behaviors
- You may not talk about patient's lifestyle

Confidentiality

- Breaches in confidentiality could result in criminal/civil charges against PSAP & telecommunicator
- Specific information must not be relayed to people outside public safety arena
- Federal/State/local laws may prohibit removal of records from PSAPs
- Callers for medical assistance have a right to privacy
- US Dept of Justice recommends against relaying information on communicable diseases

Standard of Care

What is the Standard of Care?

Behavior & conduct judged in comparison to:

- Others with similar training/experience
- Locally approved guidecards, guidelines, policies
- Local/state statutes, ordinances, case law or admin orders that address Standard of Care
- Professional standards

Standards for EMD

- National Highway Traffic Safety Administration
- American Society for Testing and Materials
- State Standards
- Accreditation by OEMS

Liability Exposure

- Liability exposure revolves around issues where service/standard of care did not meet expectations
- Callers make several assumptions:
 - Have reached proper agency
 - Person answering is trained
 - Person answering will immediately dispatch proper agencies
 - Proper agencies will arrive quickly & provide needed service
 - Situation will be resolved in an acceptable manner



Risk Management

- Agency risk management
- Personal risk management

Risk Management

- Preventing, eliminating or mitigating exposure to adverse circumstances
- Circumstances can include personal injury, damage/destruction of property, financial losses, interruption of operations & liability exposure
- 2 basic methods
 - Transfer the risk
 - Prevent/avoid the risk



Media Inquiries

- Each state has specific laws governing the release of public safety related information
- These laws protect certain crime victims & juveniles
- Remember the information you have may be confidential
- Refer to your agency policy on media inquiries

SOPs

- Define ministerial duties
- Limits discretion on an operational level
- Must be
 - Well researched
 - Well designed
 - Well written
 - Well trained
 - Current/accurate

Training

- PSAP has a responsibility to train employees
- Telecommunicator has a responsibility to actively participate in provided training
- Telecommunicator also has a responsibility to continuously review policies & procedures to ensure they are current with any changes/updates