

Liability – Who Needs It?

Taming the Liability Monster

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What is so important about understanding Civil and Criminal 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 and criminal liability in your chosen profession
- Legislatures imposing liability on EMS and PSAPS

Resulting Liability

- Arises from
 - Gross Negligence that causes injury or death
 - Failure to take certain actions to protect others from harm
 - reporting of child abuse
 - use of expired medical equipment
 - deliberate acts

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 liable based on a “preponderance of the evidence”

Liability Concepts

- Tort
 - Type of civil action for caused by negligence
- Types of Negligence
- Civil Actions filed in
 - State Court
 - Federal Court if meet jurisdictional requirements
 - Diversity of citizenship
 - Jurisdictional Dollar Amount met
- Criminal – Violation of criminal law
 - Jail or Fine

Constitutional Torts

- Federal Statute 42 USC §1983
 - Protects against discrimination
 - Race, National Origin, Religion
 - Delay in dispatch or failure to provide service based upon race, religion, creed, etc.

Constitutional Torts cont.

- Lawsuits are brought in Federal court by DOJ Civil Rights Division or ACLU/NAACP
- Standards
 - “deliberate indifference” – day to day operations
 - “shocks the conscious” – emergency or “high alert” type of situations (i.e. hostage, pursuits, riots)
- Negligence is **NOT** the standard on which this tort is based
- Good Faith Defense

Liability Related Terminology

- Alleged – Not Proven
- Damages – Compensation for Harm
- Discretionary Act – Acts Gov't is Not Required to Undertake
- Liability – Legal Responsibility
- Litigation - Trial

Liability Related Terminology cont.

- Ministerial Act – Action Public Officer is Required to Perform in a Prescribed Manner
- Standard of Care (Duty of Care)
- Vicarious liability – Employer responsibility for actions of the employee
- Simple Negligence – Failure to exercise ordinary care
- Gross Negligence – Negligence with a severe lack of carelessness; failure to use due and regard

Proof and Duty

- Must Prove Four elements of proof in a negligence suit
 - LEGAL DUTY TO ACT
 - BREACH OF THAT DUTY
 - CIVIL INJURY WITH DAMAGES
 - PROXIMATE CAUSE

If prove all elements – \$\$\$\$\$\$\$\$\$\$\$\$\$\$

Liability Issues in EMS/EMD

- Abandonment
 - Two Forms – EMS and Dispatcher
- Principle of reasonableness
 - Reasonable Prudent Person (RPP)
- Emergency rule
- Foreseeability
- Detrimental reliance
 - Making Un-kept Promises
- Damages
- Consent

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Liability Related to Performance of Duties

- The Virginia Tort Claims Act (§ 8.01-195.3)
 - “...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...”
- Damage Cap is \$100,000
- Protects only against SIMPLE Negligence
- Allows Compensatory and Punitive Damages

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”

- Protects Against Simple Negligence.
- What about paid first responders?

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.”

Can be pierced for Gross Negligence!!

- Utter Disregard of Prudence Amounting Utter Disregard for the Safety of Another.

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?

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Special Duty to the Public

- What potential liability to the public arises from a special duty?
- Don't Make Promises You Can't Keep
 - Guaranteeing arrival time of Responders
 - Guaranteeing that incident will turn out ok
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Breach of duty

- Results from a misfeasance, malfeasance, or non-feasance of a job once a legal duty exists to perform it.
 - Malfeasance – performance of an act that is legally unjustified, harmful or illegal
 - Misfeasance – legal act performed improperly
 - Non-feasance – failure to perform a required duty or obligation

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! \$\$\$\$\$
 - Not typically awarded unless allowed under state or federal law

Proximate cause

- Relationship between the alleged damage and the breach of duty
- But for the negligent act, the damage would not have occurred – “**but for**” test.

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

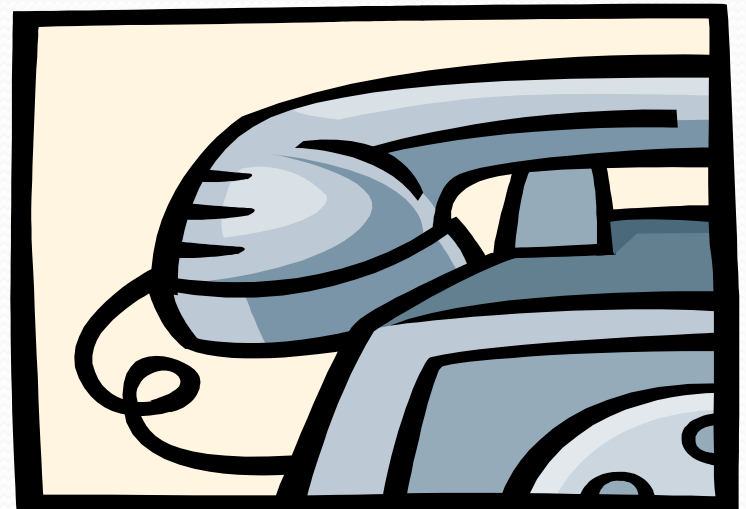
- Call Taking

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



Let's take a break

The Home Stretch!

Areas of Potential Liability

- Radio Operations

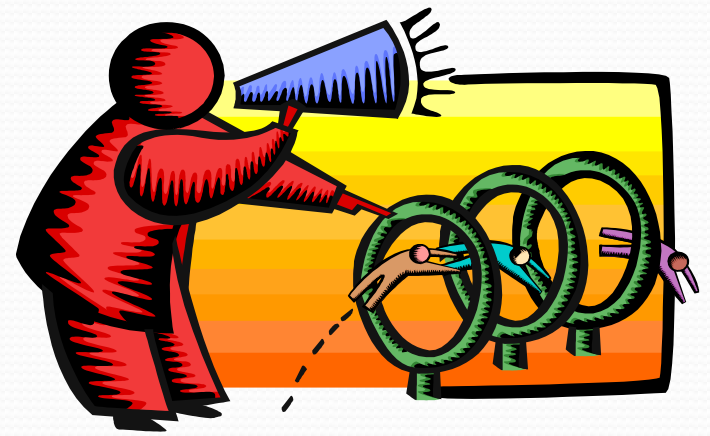
Don't sit on a dispatch

Radio skills-accurate and complete

Updating field units

Repeating accurate info from field units

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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
- Also Applies to Social Networking and Agency Web sites.

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



Let's Go to the Video Tape

Amazing

Grace

Northern Virginia

EMS

























TOWER 6 LADDER

HD-100

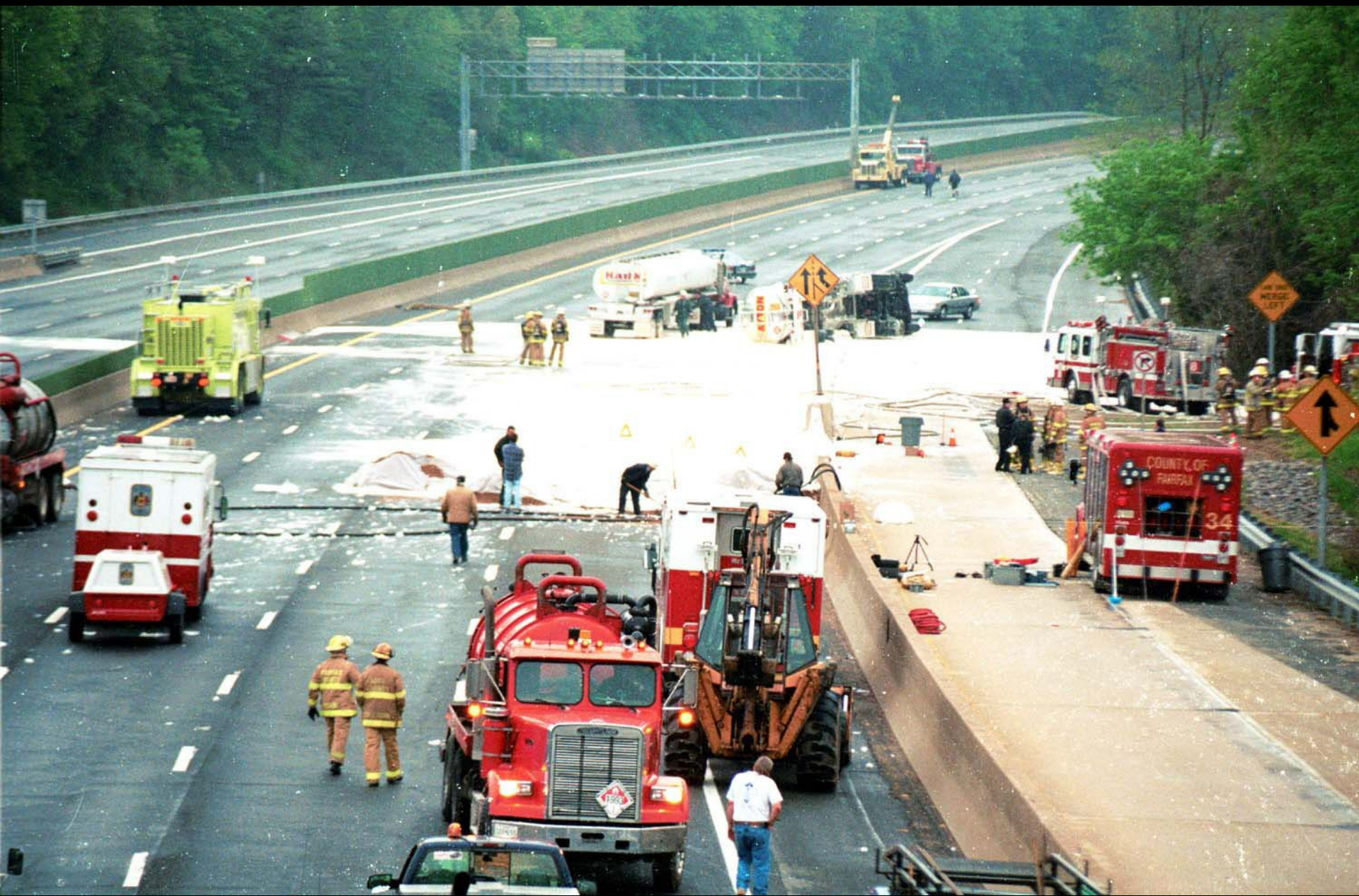
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ASHBURN FIRE & RESCUE
EMERGENCY DIAL 9-1-1

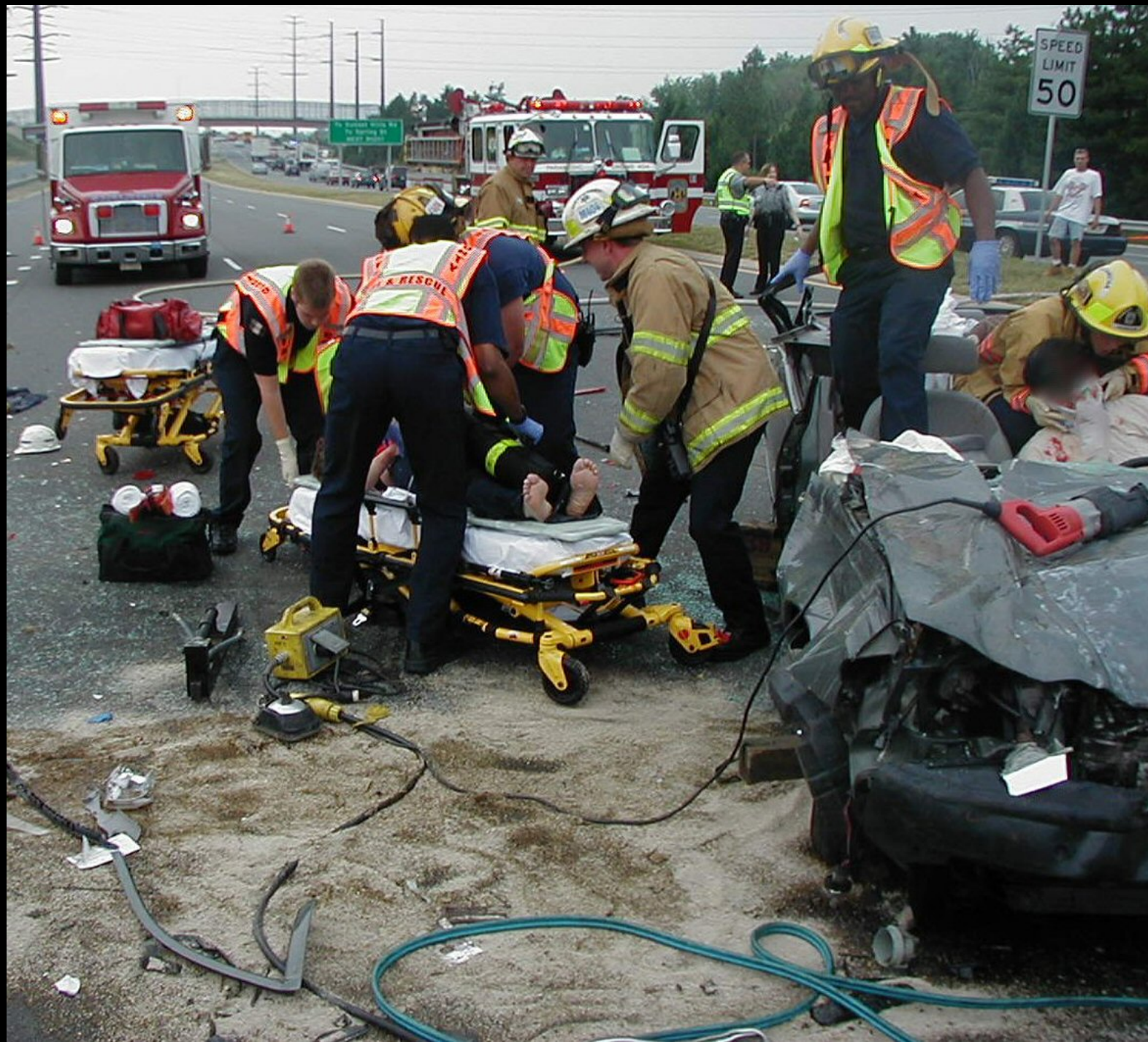
ASHBURN
VFD

D. KIDWELL



































Yes or No?



Yes or No?



Yes or No?



Yes or No?



Yes or No?



Yes or No?



Yes or No?



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
- Criminal Liability if specific violation of law and/or depending upon result from actions taken or failures to act.

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/procedures 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
 - **Constantly revised and updated (living documents)**

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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



Questions????

