

MOCK DEPOSITION

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MPH, EMT-B

Introductions

- Matthew R. Streger, Esq.
- Law Offices of David S. Barmak, LLC
- Princeton, New Jersey
- Raphael M. Barishansky
- State EMS Director
- State of Connecticut

Objectives

- Understanding of the civil trial **discovery** process
- Understanding of the **deposition** process
- **Strategy and tactics** for being deposed
- Develop pre-lawsuit **prevention** techniques

Disclaimer

- Nothing in this lecture should be considered as “legal advice”
- General legal principles – not specific to your state!
- Consult with your legal counsel before making any changes to your practice, policies or your organization

Cause of Action

- Something **BAD** happens
- You want to **SUE** – must be a violation of some law
 - Statute, regulation, constitution
 - Common law = “court-made” law



Negligence

- **Duty & Breach**
 - Standard of care – ordinary or greater
 - Generally accepted = reasonable person
- **Causation**
 - Actual & proximate (foreseeability)
- **Damages**
 - Economic, non-economic, punitive

Litigation Process

- Complaint and Answer
- Early Dispositive Motions
 - Immunity, AOM, SOL
- Discovery



Discovery

- Most time-consuming part of litigation
- **Scope** = “reasonably calculated to lead to admissible evidence”
- **Admissible evidence** = relevance
 - “Makes fact of consequence more or less likely”
- Not Discoverable = Privilege
 - Attorney/client, patient/physician, marital
 - Self-Critical Analysis Privilege

Discovery Parties

- **Parties**
 - Plaintiff(s) & defendant(s)
 - Non-Party **Witnesses**
- **Expert** Witnesses
- How do EMS providers end up getting involved in discovery?



Discovery Tools

- **Interrogatories** – written questions
- **Notices to produce** – documents & items
- **Requests to admit** – undisputed facts
- **Subpoenas** – non-party witnesses
- **Depositions**

Depositions

- **Q&A session** – same effect as if in court
- Get witnesses on the record with facts
- NOT typically a place to confront witnesses
- BUT good place to eyeball them...
- Recorded / transcribed for later use
- Deponent, attorneys, court recorder present

Typical Objections

- **Form of the question**
 - Compound, leading, assumes facts not in evidence, etc.
 - CANNOT lead the witness!
- **Privilege** – as before
- Right to confidentiality or court order

Scenario



March 1, 2011

- Springfield Unit 101 shift begins 19:00
- Crew Chief Ray Barishansky
- EMT Otto Mann
- Crew is checking ambulance 2501
- BLS ambulance



Call 2011-0947

- **19:10 hours** – call received
 - Unit 101, Medic 201
 - 740 Evergreen Terrace, Springfield
 - Unconscious woman
- **19:13 hours** – responding
 - Rig check incomplete
- **19:17 hours** – on the scene
 - First unit – no police or fire

On the Scene

- 40 year old yellow female – 70 kg
- Supine on living room floor
- CPR in progress by husband



History of Present Illness

- Witnessed arrest while watching reality TV on FOX
- No downtime – muscular husband immediately began bystander CPR
- No medical history, medications, allergies

THE EVENT

- Crew takes over ventilations – husband continues compressions
- BVM with oral airway and 100% O₂ – ventilated at 20 bpm
- AED applied – button pressed to turn power on and **NOTHING HAPPENS**
- Swapped with spare battery and **NOTHING HAPPENS**

Care Continues

- Request ETA of medic 201 – 5 minutes
 - No other backup unit with AED closer
- CPR continued & patient moved to cot



Help Arrives!

- Medics arrive & apply ECG
 - Fine V-FIB – shock once at 200J to asystole
- Normal resuscitation – ET, IV, meds
- Transport to Springfield General Hospital



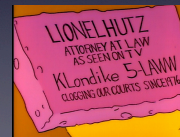
At the Hospital

- Patient still in asystole
- Pronounced immediately upon arrival
- No resuscitation attempted



DOA

- Family very upset and angry
- Ned, Rod and Todd all present
- Overheard talking about finding a lawyer
- Shortly after consulted with well-known plaintiff's lawyer



Flanders v. Springfield Ambulance Service, et. al

Dewey, C. Smith & Howe A Professional Corporation One Main Street Springfield, Maytown 12345 (123) 456-7890 Attorneys for Plaintiffs	
NED FLANDERS, as Administrator of the Estate of MAUDE FLANDERS, and NED FLANDERS Individually, Plaintiff, vs. SPRINGFIELD AMBULANCE SERVICE, RAFAEL M. BARISHANSKY, OTTO MANN, SPRINGFIELD GENERAL HOSPITAL, DR. JULIUS HIBBERT, DR. NICK RIVIERA, and AED DEFIBRILLATOR, INC., Defendants.	SUPERIOR COURT OF NO STATE LAW DIVISION: IMAGINARY COUNTY DOCKET NO.: IMA-L-1234-05 Civil Action COMPLAINT, JURY DEMAND, DESIGNATION OF TRIAL COUNSEL, AND CERTIFICATION

Complaint

- Springfield Ambulance Service, Ray Barishansky, Otto Mann
 - Negligence, Wrongful Death
- Springfield General Hospital, Dr. Julius Hibbert, Dr. Nick Riviera
 - Negligence, Wrongful Death
- AED Defibrillator Inc.
 - Products Liability, Wrongful Death

The Twist

- The defibrillator was misplaced prior to being examined by either AED Defibrillator, Inc. or any expert
- Therefore, the precise nature of the product defect, if any, cannot be determined.
- No spoilation of evidence - inadvertent

Deposition

- Present in the Room
- Plaintiff's Attorney
- Defendant – **Ray Barishansky**
- Defense Counsel
 - Springfield Ambulance Service
 - Springfield General Hospital
 - AED Defibrillator, Inc.
- Court Reporter



Deposition Instructions

- Ever been deposed before?
- Under oath to tell the truth - everything you say taken down - can be used later in court
- If you do not understand a question, say so
- If you do not know the answer, say so
- Approximations are acceptable
- Keep all responses out loud – no non-verbal responses or gestures

Education and Background

- Educational background
- EMS education
- EMS employment history
- EMS experience

Do's and Don'ts

- "How many cardiac arrests do you respond to each year?"
- Do make reasonable estimates
 - Don't guess – but don't struggle either
 - But think about what the estimate really means – what is the purpose of a deposition?

Typical Shift

- Hours normally work
- What do you do when you report to work?
- Tell me about your partner

Do's and Don'ts

- "Tell me about your partner"
 - Try not to answer open-ended questions – get them to phrase a yes/no if you can, or a specific focus
- Don't volunteer information

That Night

- Specific recollection of that night?
—**IMPORTANT ANSWER HERE**
- Who checked what equipment?
- Did you check the defibrillator?

Do's and Don'ts

- "Did you check the defibrillator?"
- Do answer all questions verbally
 - Don't gesture or grunt

Do's and Don'ts

- "Tell me what you did when you checked the defibrillator"
- Do ask for clarification on ambiguous questions
 - Don't answer them – don't volunteer!
 - Try and get specific questions
- Whenever you volunteer information you get in trouble!

Rig Check Sheet

P-1

SPRINGFIELD AMBULANCE SERVICE
RIG CHECK SHEET

Date: 3/1/05 Time: 19:00 Shift: Night Unit: A101

Crew: Barishansky & Mann Vehicle: 2501

Fuel:	3/4	Main O2:	1500
Lights:	X	Port O2:	1000
Tires:	X	Spare O2:	2
Siren:	X	AED:	X
Cot:	X	Spare Batt:	X
Stair Chair:	X	Jump Kit:	X
Reeves:	X	Trauma Kit:	X
Backboard:	2	OB Kit:	X
Collars:	4	Peds Kit:	X

CC: Barishansky /s/
C2: Mann /s/

Check Sheet

- You fill out rig check sheets on your electronic chart system?
- What does it mean to have something checked off on the sheet?
- Have you ever checked something on the sheet when it was not actually present?
- Have you ever filled out a sheet when you did not fully check the rig?

Do's and Don'ts

- "Have you ever filled out a sheet when you did not fully check the rig?"
- Be honest!
- What would be a better answer?

Run Sheet

- You fill out run sheets electronically?
- Have exhibit P-2
- Is this a true and accurate printout of your electronic report from this call?

SPRINGFIELD AMBULANCE SERVICE
RUN REPORT

P-2

Patient Name: Maude Flanders
Address: 740 Evergreen Terr., Springfield, Anytown 12345
Phone: (622) 555-1234 DOB: 12/25/65 SS: 123-45-6789
Age: 40 Sex: F Wt: 70 kg

NARRATIVE
Responded from station 1 to address, found 40 yo W/F approx. 70 kg supine on ground apneic and pulseless. CPR in progress by bystander family member. Bystander reports arrest witnessed when patient suddenly grabbed her chest and collapsed immediately. PTA. Bystander reports no history, meds, allergies.

Assessment - Airway patent with head tilt chin lift. RR 0, good LS bilat with ventilation. PR 0. CPR in progress. AVPU unresponsive. No visible trauma. Pupils WNL. Skin W/DN.

Treatment - OPA inserted. BVM vent rate 20 100% O2. CPR in progress. AED applied but did not work. Battery replaced with no change. Medic unit 5 min ETA, no closer unit. Patient placed on cot, medic unit arrived, ALS provided. Transfer to ambulance, transport to SMH with Medic 201 onboard, no changes enroute. Pt DOA at SMH, transferred to Room 2, report given to Dr. Hibbert.

Unit: A101	Date: 3/1/05
CC: Barishansky	Rec: 19:09
CZ: Mann	Disp: 19:10
BU: MZD1	Enr: 19:13
	Arr: 19:17
	Dep: 19:34
	Hosp: 19:39
	Avail: 20:15

Run Sheet

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Do's and Don'ts

- "What did you mean that the AED did not work?"
- Do think about what you are going to say
 - Don't blurt out answers

Do's and Don'ts

- “Why did you wait for the medic unit rather than beginning transport?”
- Do be professional and polite
 - Don't argue or get upset

Do's and Don'ts

- “Pupils WNL”
- Don't use ambiguous abbreviations
- Don't document things you didn't really check!
- Remember what the deposition is for – get your story down on paper...
- Impeach your credibility later on!

Pre-Deposition

- Do talk to your attorney before
 - Don't talk about the substance of those talks during the deposition
- Do review your documents and testimony before the deposition
 - Don't go in cold
- HAVE A PLAN!

Pre-Lawsuit Prevention

- Do your job right
 - Don't deviate from the standard of care
- Do be nice to people
 - Don't piss them off!
- Do document thoroughly
 - Don't mess this up
- Do provide appropriate SOP's
 - Don't forget to provide good guidelines

Conclusions

- Be nice to people
- Do your job correctly
- Document appropriately
- Go into your deposition with a plan
 - Especially if you're a party
- Be honest and stick with your plan
 - Don't ramble and don't get distracted

Thanks for coming!

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