# Search and Rescue Legal Aspects

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Anyone with a legal background will laugh at my oversimplification, but I think itmight be useful for everyone as a very, very, simple legal primer.

I am not a lawyer, nor do I play one on TV. However, I am a doctor, and I've even played one on TV. And given the USA's litigous society, especially where medicine is concerned, that means I have to know a lot about negligence and its subset, medical malpractice.

## The Law

Once upon a time, there was a four-way street intersection. Intersection with four vehicles approaching at the same time, perfectly timed to arrive at the same instant. There was a fire truck with lights and siren, a police cruiser with lights and siren, a presidential motorcade with lights and siren, and a post office truck. Which has right of way? The post office truck, because it says right in the constitution that you can't impede a postal carrier. Well, not true, actually, see the article at snopes.com. And indeed, the only thing the Constitution says about the postal service is that

*The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;*

...

*To establish Post Offices and post Roads;*

That's too bad, as it would be a nice demonstration that the Constitution has precedence over all other laws. But I guess it's a good example of why you need to look at the law carefully. So now, on to an overview of law in the USA.

## Laws, Civil Codes and Common Law

There are many different kinds of law and of laws. Not all law is laws. Some is just ***LAW*** without every being written into ***A*** law. This is called "common law." More about that later.

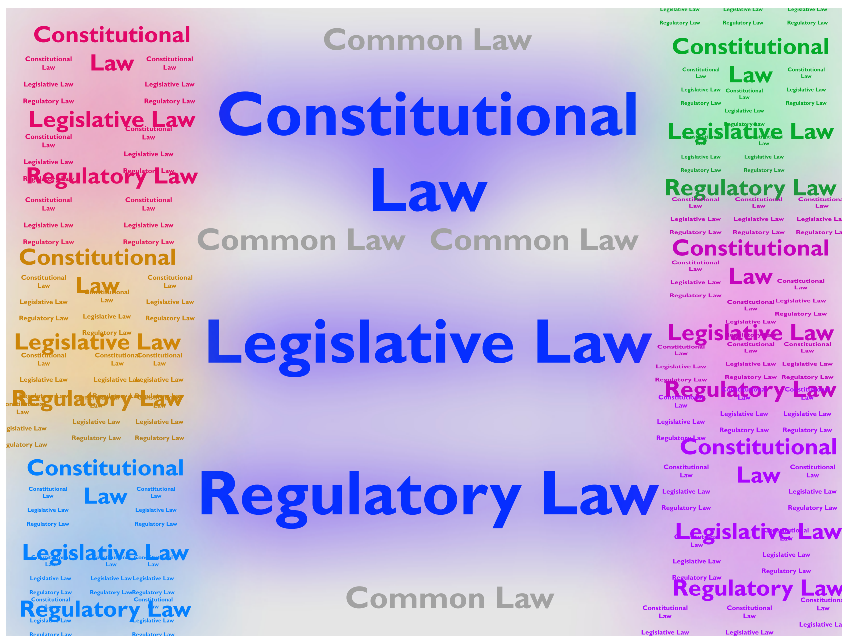
Sometimes laws conflict. In that case, there is a fairly straightforward "pecking order" among laws. We should start at the top of the pecking order and work down.

The highest law of the land is the U.S. Constitution. If something is prohibited in the Constitution, it's "unconstitutional" which is about as illegal (or "unlawful" as those in the know prefer to say) as it can get. If a law, ***any*** law, conflicts with the Constitution, the Constitution wins, hands down.

The next layer down is called "legislative law." Basically, if Congress (one of the three main branches of government) passes a law, it's now the law of the land (Federal law) and everyone has to do what it says or else. (Well, there has to be some enforcement mechanism or there's no "or else" but that's a story for another time and place.) If a legislative law conflicts with the Constitution, though, the Constitution wins. Who decides? The second of the three branches of government: the Federal court system, up to and including the Supreme Court.

The third layer down in this legal cake is called "regulatory law." Congress can make laws that direct that something be done, but leave the details to someone else. The "someone else" is the third branch of government, the executive branch, headed by the President. The various departments and bureaus of the government make up regulations to carry out Congress's intent. These regulations have the force of law, and can be enforced as well. However, if a court finds that a regulation actually conflicts with legislative law, the court can strike down the regulation. And, a court can also find a regulation unconstitutional – regulations have to yield to everything above them, both legislative law and the Constitution.

In France and certain European countries, this is all the law there is. If it's not written down, it's not law. These countries said to have "civil code" or "Code Napoleon"




law (since he's the one who imposed it), and there are remnants of this in Louisiana, which used to be French. A typical civil code deals with the fields of law known to the common lawyer as law of contracts, torts, property law, family law and the law of inheritance. Basically, with a Civil Code, there are detailed laws about how to deal with the issues listed above, including tort claims, which is of interest to us.

But, for England and Wales and Scotland, and countries whose legal tradition derives from them, there's a ***lot*** more: common law. "Common law" is nearly synonymous with "case law" or "precedent." Basically, there are a lot of things that people should or shouldn't do that aren't specifically found in legislative or regulatory law. And, over the centuries (almost a thousand years of tradition), courts have handed down decisions about what is right and what is wrong. Sometimes a court hands down a decision that is biased, confused, or just plain wrong. But over the centuries, a kind of Darwinian selection process has eliminated those bad decisions and replaced them with better decisions. So, after a long process, we've got a whole bunch of really good, well-refined ideas about what is good and bad. This is *the common law*.

Three parenthetical notes about common law.

- First, courts can only decide on cases that are brought before them. So if no cases involving a particular situation are ever brought before them, they can't really create much common law. A good example is "medical restraint." In the Emergency Department, it's common for drunk patients to say [slur the speech a little as you read this, and add a strong odor of alcohol and unwashed body] "You can't keep me! It's kidnapping! I'll sue your ass for kidnapping, the whole lot of you!" Turns out there is good case law on cases such as when the ED actually let someone go and that person walked in front of a bus and got killed. The people in the ED were found negligent for not keeping the patient in the ED until sober. When someone's ability to make decisions is impaired, for example by alcohol or hypothermia, and you are caring for the patient, you have a responsibility to make decisions for that person. But as far as "kidnapping" cases? Not much case law. Think about it. If you are a lawyer, and someone says "I was really, really drunk last night, and they wouldn't let me out of the ED until either I was sober or someone sober came to get me. I want to sue for kidnapping!" what will you say? Especially since you're only likely to get paid if you win the case? (Actually, you can't sue for kidnapping, that's a criminal offense, but you could sue for damages claiming a tort of assault. Whatever.)
- Another note. Not all court decisions set precedent. In general, only appellate cases (ones that are appealed) get into the casebooks and become part of the common law.
- A final note about the common law. Over the years and centuries, lawyers and judges have tried to make some sort of sense out of all of these decisions, and to organize them into legal principles. These are the principles that are taught in law schools, usually through analysis of specific classic cases.

Now that this is all making a lot of sense (I hope) it's time to throw in a monkey wrench.It turns out that every single U.S. state and territory has it's own constitutional law, legislative law, and regulatory law; and individual jurisdictions within states can have their own, as well. In general,

Federal law preempts state law, state law preempts local ordinances, in fairly strict pecking order. And, the common law is not something that is written down in official legislative law form anywhere.

Please see the picture at the top left which illustrates this "fractal" nature of law in the U.S. Federal law is in the center (the "three-layer cake"). The state and local law-cakes are clustered around the Federal law. To keep things simpler, I only show six states/territories instead of 60+.

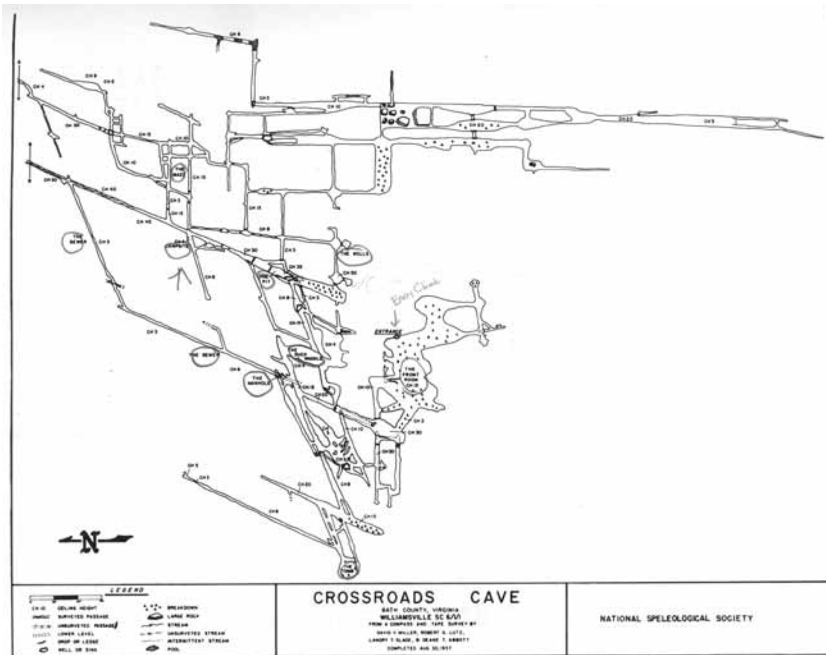
The common law permeates all the cracks between the letters, at all levels. Note also that some states have law that is very similar to Federal law, others such as Louisiana are much different.

Say you're interested in a particular topic, say, negligence for search and rescue in West Virginia. You find an appellate decision in Virginia that pretty sort of applies to your SAR (negligence for fire-rescue rescues). But you also find an appellate decision in Colorado that does apply directly to SAR negligence. Which one is more applicable? Well, you can get lots of legal advice from lawyers, but until the court actually decides, you really, really don't know. So court decisions from within your own jurisdiction can set a strong precedent, but cases from other jurisdictions can be persuasive, too, especially if they apply to the case at hand better than your own cases.

If that wasn't enough, think about this. There are many situations that are simply not covered by existing laws, whether constitutional, legislative, regulatory, ***or*** common law. And, unless there is reason enough for courts or legislatures to "fix" things, they may stay uncovered.

Particularly if "fixing" the problem is a big hassle, and nobody cares enough about it to force the issue.

Here is an example. Once, Keith Conover, and Jack Grandey, both members of Allegheny Mountain Rescue Group at the time ( Jack subsequently moved to North Carolina), and also staff with the Wilderness EMS Institute and Eastern Region, National Cave Rescue Commission, decided there was a legal



problem and tried to do something about it.

Medicine is regulated by the states. By the Constitution, the Federal government isn't really allowed to control medicine in the states. (Though it is trying to do so by the power of the purse. The Feds simply threaten to cut off Federal money unless you play by their rules. But that's a story for another time.)

A rescue a few years ago in Crossroads Cave, in Bath County, Virginia, had stretched cave rescue resources in the region to the max. A crew of a hundred responded from the ER-NCRC "weeklong" training class in West Virginia. By the time we arrived, all of the local resources were exhausted and had to come out of the cave. The patient needed medical care badly. We had a doctor from Pennsylvania, a doctor and a nurse from North Carolina, and medics from Ohio, Pennsylvania, West Virginia, and Maryland, all of whom were cave-rescue trained but none of whom were licensed in Virginia. Did we just stand there because Virginia regulatory law forbids us to practice in the state? No. In the first case, nobody cared about legalities at that point. And, on reflection, we realized that what we were doing was not only lawful – if, after responding to the rescue, we refused to render medical care, we would be guilty of the common-law "sin" of abandonment. And, the common-law "doctrine of necessity" made our caring for the patient, to the best of our ability, lawful, and in a way that made common law completely overwhelm the Virginia regulatory law.

Afterwards, Keith and Jack went to a meeting of the Atlantic EMS Council, which is the cooperative EMS body between several states in the mid-Atlantic area, including both Pennsylvania and Virginia. The state EMS directors were there, as were top lawyers for the Department of Health for the various states. Keith and Jack made a presentation about what had happened, and explained that they wanted to find a way to make such operations "lawful" in terms of regulatory law as well as common law. All of the state EMS directors and lawyers agreed that (1) the medical personnel there had done the right thing, (2) if something similar happened again in the near future the medical personnel should do it again, and (3) they would add this problem to their list as #11. Eleven what? Eleven things that we have to do right now that are where the doctrine of necessity conflicts with regulatory and legislative law in the states and we have to change the state laws to make them correspond with reality. A classic example is medical flights and long-distance transports across state lines. According to regulatory law, as soon as one crosses a state line in a helicopter, fixed-wing aircraft, or ground ambulance, one is then required to practice under all of the laws, regulations, and EMS protocols in the new state. This is essentially unworkable, so the EMS services' home base provides medical direction and medical protocols until the patient arrives at the destination.

So how are they working on this? They have to have an interstate agreement, singed by at least the Secretary of Health, and more likely the Governor, for all the states. Will this happen quickly? Not bloody likely. And what about states outside the Atlantic EMS Council? Just use that doctrine of necessity again.

It is also worth looking at such between-the-cracks situation at three levels:

- Legal: What do applicable laws and common-law principles say? Sometimes you just don't know, so then you may move to another level:
- Ethical: What will most reasonable people say is the right thing to do, according to commonly-accepted ethical principles? You may sometimes need to move to even another level:
- Moral: What do you think is the right thing to do?

There are two cheap paperback "must read" books to learn more about these topics.

*Karl Llewellyn, The Bramble Brush*

Great book, easy to read. A classic. Next is:

*Oliver Wendell Holmes, The Common Law*

This is the definitive book on the common law. However, it is not an easy read. Get a law dictionary to refer to (Black's is the standard) while reading.

## Duty to Act

### Duty to Act and Abandonment

Are you under any duty to help someone in distress? Frew, writing in his book Street Law, cites an example: "You are walking down the street while vacationing in a neighboring state. Across the street, you observe a man in his late fifties suddenly clutch his chest and fall to his knees and then to the pavement. His wife is frantically calling for help. You are an EMT . . . Is there a duty to help this person? In these circumstances, the legal concept of duty [in the U.S., as derived from British common law -KC] says that you are under no duty to aid a person to whom you had no special relationship and to whom you had not caused injury. There is no legal duty requiring you to be a Good Samaritan."

In the United States, as of 2009 ten states had laws on the books requiring that people at least notify law enforcement of and/or seek aid for strangers in peril under certain conditions: California,Florida,Hawaii, Massachusetts, Minnesota, Ohio, Rhode Island, Vermont, Washington, and Wisconsin.

However, if you are a member of an organized search and rescue team, a court might decide that you, indeed, have a duty to act. This is, in an organizational sense, the same as an individual being found liable for abandonment.

The legal theory is summed up like this. What if you see someone on a city street who needs help? Further, what if you take one step toward the person? In that case, you are obligated to continue on your way to help the person. Why? Because other people might have seen you take that first step. And, though they were initially going to help, they saw you heading toward the person and distress, and decided that the situation was well-in-hand.

There are other issues related to the doctrine of abandonment, too. What if you are a paramedic expert on taking care of hypothermic patients, and you turn a hypothermic patient over to an EMT-Basic for transport to the hospital. If something bad happens en route to the hospital, the patient might have a claim against you, because (a) you were certified to a higher level of prehospital care, and (b) you have specific expertise applicable to this patient.

I can remember one summer rescue (Red Creek Canyon at Dolly Sodsin wilderness area in West Virginia) inwhich I had to balance getting on a helicopter to aid in a quite-stable patients' care, vs. the added weight's effect on the helicopter. In the thin summer air in a narrow canyon the danger of the added weight outweighed, in my judgment, the small potential benefit from my riding along in the helicopter for 20 minutes.

### Good Samaritan Laws

Medical practice is regulated on a state-by-state level, and every state has a different "Good Samaritan Law." And so you have to preface this by noting that each state is different.

But there are several general principles that apply for almost all states.

Good Samaritan Laws provide immunity from civil actions (being "sued") for those who provide emergency care:

1. without compensation

2. in good faith

3. without gross negligence.

Note that (1) may or may not apply to the salaries of EMTs, paramedics and doctors who are paid to provide prehospital care – some states specifically include such people in Good Samaritan protection, other states exclude them.

(2) means that you aren't pretending to help and really trying to kill the person.

Some states offer protection specifically to those who have CPR, AED or other medical certifications, others apply to everyone. The first Good Samaritan laws were specifically to encourages physicians to stop at the scene of an emergency without fear of being sued.

Note that (3) specifically says "gross" negligence, which requires a higher standard of proof than plain negligence.

### Negligence

Law suits (civil suits) are a legal action where a person attempts to get money from someone who allegedly wronged the person. This is distinguished from a criminal action, which is brought by the government against a person for violating the law. Civil suits may arise from claims of negligence, or from claims of intentional damage. A civil suit can be brought by anyone against anyone else, irrespective of how poorly grounded the claim, Good Samaritan and other laws notwithstanding. An example of a tort claim would be a claim of battery, when you treated (touched) a patient who was alert, oriented, and legally competent, and who refused treatment. Another would be a claim that through your negligent emergency care at the roadside, the patient suffered harm. A good Samaritan law may be cited in the defense of such a claim, but is only one of many items that are taken in consideration.

To review an important point: the two main things you are concerned about are torts, which are basically legal battles between two people, and crimes, which in court are battles between one person and the government.

Indeed, there was an abstract in **Prehospital and Disaster Medicine** that is apropos:

*Liability Immunity as a Legal Defense for Recent Emergency Medical Service System Litigation*, David L Morgan,

MD, Vicky A. Trompler, MD, William R. Trail, JD.

This study looked at EMS tort claims from 1987 to 1992 (only those that were appealed, as those are the only ones that are generally available for inspection). Good Samaritan laws were used in 53 of the 86 case. Citing a Good Samaritan law was associated (slightly) with a better verdict: 72% vs 68%.

Negligence claims hinge on the plaintiff (the individual suing) proving that a chain of five elements occurred. To prove negligence, the plaintiff must prove

(1) that you had a duty to act on behalf of the plaintiff,

(2) that you committed an unreasonable act or omission in the context of this duty,

(3) an injury occurred to the plaintiff,

(4) proximate cause (your act or omission must have caused the injury), and

(5) forseeability: you must have been able to foresee the possibility of injury.

For a tort claim to succed, all of these must be present. If any link in this chain of five things fails, then the claim itself fails.

There is basically no literature on liability for volunteer search and rescue; as far as I know, there are no cases of volunteer US SAR being sued and making it to appeal and thus into the law books. The most notable case recently nearby was in British Columbia, where Golden and District Search and Rescue was sued, along with the Royal Canadian Mounted Police, when two people were skiing out of bounds of a ski area and one died before the SAR effort found them. There are issues including whether a RCMP crew saw an SOS stamped out in the snow. The SAR team briefly ceased operations due to lawsuit, but is now up and running. There was massive negative publicity, not against the SAR team, but against the man suing. The province quickly passed a Good Samaritan law. As far as I know, the case is still pending.

## Q&A: Wilderness EMS

**1. I have just taken a [wilderness first aid][Wilderness First Responder][Wilderness Emergency Medical Technician] course, and they taught me to [use an Epi-Pen][reduce shoulder dislocations][give oral antibiotics][perform field appendectomies]. Is it legal for me to now do these things?**

It depends. If you are already a physician licensed in your state, and you're operating in your state, the answer is yes.

If you are a first aider, and are think you are just performing first aid, the answer is yes. You may have to persuade a judge and or jury of this later on. If it's just splinting a broken leg, no problem. If it's using an Epi-Pen on someone who just got stung by a bee and who swelled up and turned blue and almost died, or even did die, you're probably in good shape. If you are a first aider and botch a field appendectomy, I wouldn't bet on you – most judges and juries would see that as practicing medicine without a license, or perhaps a reason to award damages against you for exceeding your ability. Other medical procedures fall in between. Sorry for the fuzzy answer, but that's the way the law works.

If you are a Wilderness First Responder, and have not been trained to the level of a non-wilderness First Responder, nor received state Emergency Care—First Responder certification, you're just another first-aider and the above applies.

If you are indeed certified as an Emergency Care-First Responder, you may or may not be regulated by the state EMS act – it depends on the state. If you are regulated by the state, then you're supposed to do only what the state says you can do. (Same for EMT-Basics, EMT-Paramedics and in between, and for nurses, PAs, CRNPs, etc.) If, as part of your regular job as a [First Responder][EMT][paramedic], do something well outside of your "scope of practice" your supervisor will not like it. The state will not like it. Bad things may or may not happen to you. You're unlikely to face criminal charges of "practicing medicine without a license" but you may receive a reprimand, get fired, have your license as an [First Responder][EMT][paramedic] suspended, or be assigned to care for only demented nursing home patients with diarrhea for the next month. However, if you did a good job of what you did, and it really helped the patient, and you didn't act like an a**hole about it, you may even get a commendation. Many EMS systems have provisions for personnel occasionally exceeding the scope of practice. Ideally this occurs with online consultation with a medical direction physician who will back you up.

If you expect to only occasionally do things "outside your scope of practice" on a rare, emergency basis, see below for more.

If you expect to perform advanced medical procedures above your "scope of practice" on a regular basis with your SAR team or EMS agency, and there's no state law permitting it, you better coordinate with your state EMS people and see about changing the laws or regulations.

**2. What is a Medical Practice Act and why should I care?**

In the U.S., each state has a Medical Practice Act that restricts the practice of medicine to those who are licensed by the state. There are two primary reasons for licensing physicians from the state's view: 1) it provides money for the state in the form of licensing fees (a form of tax), and 2) it provides the state's citizens some protection from quacks by establishing criteria for licensing. From the physicians' viewpoint, it both elevates the profession to a higher level and restricts entry to those who meet the criteria, allowing more prestige, higher fees, and some protection against incompetents in their midst. Again, controlling the practice of medicine is entirely a state prerogative, and the federal government basically isn't involved at all. This means that the privilege to practice medicine ends at the state line.

**3. What is Delegated Practice and how does it apply to Wilderness EMTs?**

From the earliest time, physicians didn't want to do everything themselves. They wanted to delegate certain tasks (applying leeches, drawing blood, administering

medications) to others. States have universally allowed this "delegated practice" in their Medical Practice Acts. So, a physician could tell an office medical technician to give a vaccination, or tell an office orthopedic technician to apply a cast, and it was OK (not a violation of the Medical Practice Act). However, the physician has to directly order the "technician" (the generic term used in most Medical Practice Acts), and accept responsibility for the technician's work quality. Delegated practice provisions vary widely from state to state.

**4. How do nurses fit into Delegated Practice, then?**

After a while, nursing became a profession, with standardized training. Nurses, too demanded licensure, for the same reasons as physicians. Physicians agreed, too, because it gave them a big benefit. Just like the industrial revolution allowed us to build things with uniformly manufactured interchangeable parts, registered nurses became (somewhat) interchangeable. This meant the physician didn't have to take total responsibility for the nurse's training; a R.N. could be assumed to meet certain minimum standards. As part of this process, state laws laid out what RNs could and couldn't do. Similar state laws for Physician's Assistants, Nurse Practitioners, and other "technicians" also evolved.

As EMS developed, paramedics and later EMTs were placed in a similar "interchangeable parts" category by state laws. However, as with nursing and to a lesser extent medicine, the state laws vary.

**5. What is the role of the physician in Emergency Medical Services and Wilderness EMS?**

Some prehospital personnel (e.g., many SAR team members) just provide first aid. Most states don't see first aid as the practice of medicine and don't regulate it. The Wilderness First Responder sometimes falls into this "first aid" category, sometimes not – depends on who you ask (even state health department lawyers and judges).

Some (let's use the new term "out of hospital" from now on) out-of-hospital personnel clearly practice medicine: paramedics. In the U.S., paramedics can generally only practice medicine at the direction of a physician. This can be "on-line command"/"direct medical control" where this paramedic and physician are talking over the radio, or "off-line command"/"indirect medical control" where a physician medical director provides protocols and standing orders, and reviews the performance of paramedics. To provide the "interchangeable" (see 3, above) paramedic and physician "parts," state laws provide specific authorization for paramedic's delegated practice.

In England, though, paramedics have a distinct independent right to practice a subset of medicine independent of physician medical direction. And there is a growing tendency in a few U.S. states to recognize, in legislation, some independent right to practice by paramedics. Most states, however, emphasize the dependence of the paramedic's right to practice on a physician's license.

Do EMTs practice medicine? With the current EMT-Basic Curriculum, which includes medication administration (epinephrine, nitroglycerin, and albuterol), the answer is clearly yes. Under the old Curriculum, some states, deliberately or by ignoring the issue, classed EMT-Basics with first aiders and let them practice without medical direction. However, the trend is clearly away from EMTs as "first aiders." And there is a new emphasis on the need for medical direction for EMT-Basics.

**6. What happens when a paramedic or an EMT goes across state lines?**

Well, basically, the EMT or paramedic has no right to practice medicine in the other state unless specifically granted by that state. And, indeed, many states have established "reciprocity" (but see below) arrangements for both EMTs and Paramedics. The Atlantic EMS Council consists of PA, NJ, RI, DE, DC, MD, VA, and WV. It has arrangements for "granting reciprocity" between EMT and paramedic levels between all members. Specifically, this agreement allows providers of equivalent levels to apply for certification and licensure in another state. Providers have to apply for this, it's not automatic. But among these states, it's generally easy to get EMT or paramedic licensure in another state.

Your state EMT certificate is good in another state only if your state and the other state has a special agreement, and you have previously applied for EMT certification in that state. In general, granting EMT certificates is a state responsibility, and they can't automatically offer "reciprocity" for other states' EMTs. But, states can and often do make arrangements to make it easier for EMTs to get a license in another state (e.g., maybe all you have to do is submit paperwork rather than take the state test).

Unfortunately, however, this doesn't apply to the physicians who are providing medical control. This means you, as an EMT or paramedic, can practice your limited kind of medicine in a "foreign" state only under the medical direction of a medical control physician who is licensed in the "foreign" state.

The Atlantic EMS Council has long been working on a cooperative agreement that will cover many different problems with EMS between its member states, including helicopter transports between one state and another. (Note that the standard practice for cross-state emergency medical flights – that the sending facility provides medical direction until the aircraft arrives at the receiving facility – has no basis whatsoever in law. )

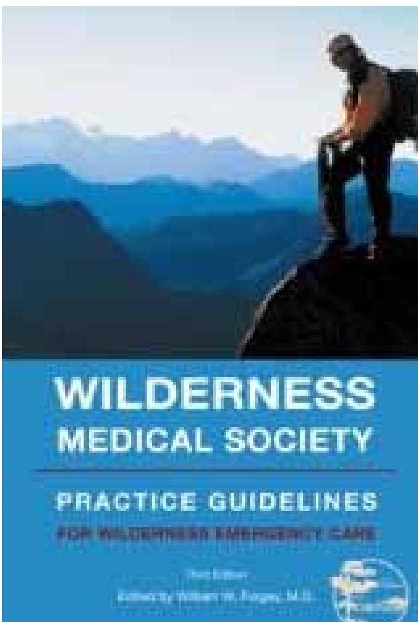
Once upon a time, some Wilderness EMS Institute staff attended one of the Atlantic EMS Council meetings and spoke about the need for making out-of-state providers able to provide advanced care, even beyond the paramedic level. We gave as example a rescue at Crossroads Cave in Bath Co., Virginia several years ago. By the time the entire NCRC Eastern Region cave rescue class (about 100 students and instructors) learned of the incident and drove to the site (and just after the final exercise, we might add), the local cave-rescue trained people were exhausted and had to come out of the cave.

As we continued the rescue over the next 12 hours or so, we used a North Carolina orthopedic surgeon, a Pennsylvania emergency physician, and out of state paramedics to care for the patient. We used all sorts of "EMS-unapproved" medications (e.g., ketorolac IM) and procedures (e.g., shoulder dislocation reduction, clearing the cervical spine in the field, medical direction by an orthopedic surgeon for orthopedic problems).

When we explained to the assembled lawyers and state

EMS directors that we wanted to figure out a way to make this all have some semblance of lawfulness, they said "OK, we'll add that to the list of other unlawful things we have to do all the time. Let's see, that's #11 on the list."

We hope this makes you feel more sanguine (or at least less fearful) when you decide to do something that's unlawful but in the patient's best interest. Remember that helicopter and fixed-wing crews are doing similar unlawful things all the time and nobody's suing them or taking away their certification.




**7. So if I'm an First Responder, EMT or paramedic, what is my legal status in the backcountry in another state, both for unexpected emergencies and if I respond to the other state regularly as part of a search and rescue team?**

At present, the only state that we know of with officially state-certified Wilderness EMTs is Maryland, with West Virginia getting ready to do the same. So at present there is no way for these Wilderness EMTs to get "reciprocal" WEMT certification by another state. Several other states "recognize" WEMT certificates from various providers, but there are no reciprocity arrangements of which we are aware.

(A) Unexpected Emergencies: Assume you find yourself in an "exceptional" circumstance, such as this. You are an EMT from Virginia. You are hiking along a trail in Pennsylvania's Potter County, a mile from the nearest road. You run across a hunter who was shot in the leg and has an open fracture. In such a case, you have no legal authority to provide medical care. But Pennsylvania has a Good Samaritan law, specifically designed to encourage people like you to render care. This suggests that, despite the letter of the law that requires you to have a Pennsylvania EMT to provide care, that you should go ahead and provide care for the patient.

In the unlikely situation where you end up in court or in a hearing, what standard of care would you be held to? If your training is EMT-Basic, you would be expected to control bleeding and dress and splint. If you are trained as a Wilderness EMT, you would also be expected to, if possible, irrigate the wound before dressing it.

(B) Routine Backcountry Care: What if you are part of a SAR team, and your team responds regularly into another state? Well, since there isn't yet any Wilderness EMT "reciprocity," so you can't do that. (Maryland may decide to make it easy for EMTs with WEMSI Wilderness EMT certificates to get Maryland WEMTs, but that's still only a remote possibility at this point). It certainly would be a good idea to get a certificate at the EMT or paramedic level even if, as in Pennsylvania or Maryland, this doesn't extend to the wilderness setting. (If you get into court or into a hearing, it would be evidence of a good-faith intent to abide by the states' laws as much as possible.)

**8. But what about aeromedical transports across state lines? We all know that the sending facility's physician provides medical direction until the craft lands, and that the paramedics and nurses continue to follow the standing orders from their original medical director until the land.**

"Legally," medical direction for helicopter crews must stop at state lines. Though it has no grounding in law, only in common sense, there is an informal agreement pretty much nationwide to allow the helicopter's (or plane's) medical direction to continue until it arrives at the receiving facility. A few helicopter services' medical direction facilities are registered in more than one state, but overall most long-distance medical air transports have little legal backing for physicians or others providing medical care en route.

For those with questions about the "legality" of certain wilderness EMS issues, this should be reassuring – states have many bigger "legal" EMS problems than wilderness EMS. Indeed, when WEMSI approached the Atlantic EMS Council with a request to add interstate medical direction for wilderness EMS to their agenda for the new interstate agreement, it was #11 on the list of "unlawful EMS things we are already doing but need to put into the law."

My notes from discussions with Pennsylvania Department of Health and Board of Medicine: "Pennsylvania's legal provisions for delegated practice by physicians are broad, and can include the kind of delegated practice that SAR teams use" "Delegated practice isn't limited to just the office, or just the hospital." "The Medical Practice Act places no restrictions on when or where a physician may delegate practice." "However, there may be liability concerns for both physician and delegatee – this kind of delegated practice doesn't have the same liability protection as afforded under the EMS Act, limited as it is."

Assume a "street" EMT or paramedic is in exceptional circumstances that are not a part of his or her "regular" or "street" EMS job, (e.g., in a wilderness rescue with life or limb potentially at risk). Assume the patient needs something that's not acceptable for "street" EMS, at least in Pennsylvania. E.g., the patient needs a shoulder dislocation reduction to facilitate evacuation, or needs a medicine such as phenytoin = Dilantin. Assume there

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is contact with a Medical Command Physician. Assume the Medical Command Physician has some understanding of wilderness EMS. In such a case, "Medical Command Physicians are expected to exercise broad discretion in what they direct the EMT or paramedic to do, consistent with their ability to practice medicine." If the physician ordered the EMT to reduce a shoulder dislocation (and the EMT had previous training in this), or ordered the paramedic to give PO phenytoin, there might be the potential for disciplinary action. However, when considering a potential disciplinary action, the Board of Medicine and state EMS are expected to exercise broad discretion, particularly when the situation is one not foreseen by the EMS law. This is not ideal, but should suffice for many wilderness EMS situations.

However, note that the above applies to those who find themselves in exceptional circumstances outside their normal EMS practice. For medically-trained members of search and rescue teams, whose main EMS practice is taking care of wilderness patients, a wilderness patient would not be an exceptional case but the norm, and the non-EMS delegated medical practice option discussed below would be a better legal route to providing wilderness medical care.

**9. Are there national "standards of care" for wilderness EMS?**

There are national and regional clinical standards for the treatment of patients in the backcountry. These standards are in part reflected in the Practice Guidelines of the Wilderness Medical Society.

**10. If I am faced with a patient in the backcountry, and I don't know what it's legal for me to do, what should I do?**

The very bottom line is that when in doubt, do the very best for your patient that you can. Providing bad care because you're afraid of the legal consequences is an almost sure way to get in both medical and legal trouble. Providing good care even if you're not sure it's "legal" is the best way to care for your patient and keep yourself clear of the court system.

Just about any lawyer will tell you the same; lawyers are always giving doctors this advice in medical-legal seminars. A good example is a child who comes to the Emergency Department with a significant injury. In some legal sense, the doctor can't treat a minor without the parent's permission. However, if the doctor delays Emergency Department care pending the parent's permission, he or she is taking a big medical and legal risk. Dr. Conover (WEMSI's Medical Director) says he doesn't even ask about parental permission until after he sees the child and figures out if the child needs treatment. Unless the medical treatment the doctor is contemplating is clearly elective, or can wait without any detriment to the child at all, lawyers advise doctors to just go ahead and "do it": suturing a wound, giving an antibiotic, whatever. Only later should the doctor worry about parental permission. Since what the lawyers tell doctors to do what they want to do anyway, it's very satisfying.

If in the field and you have a choice between what is right and what you think is legal, choose what's right and you'll probably do better in court, if it ever comes to that, than if you did what's "legal."

Here are some quotes from noted medical ethicist, Dr. Ken Iserson:

"Rather than concern about scope of practice, the ethical bottom line is always the patient. When physicians (or probably other licensed health care providers) are involved, there should be no problems, since they are legally covered as Good Samaritans. With others, someone has to bite the legal bullet to guarantee the best patient care. In our case, I simply use off-line control to extend the scope of practice. In many of our calls, on-line medical control is impractical or unavailable.

"Think of it this way: no EMS protocol takes wilderness medical scenarios into consideration; our patients need help; the law should not prevent this help if it can be safely delivered by wilderness personnel whether trained or not; it is our responsibility to make sure our personnel are as well trained as possible in safe practices for themselves and the patients.

"While we can squabble over minutiae involved with first-aiders, EMTs, etc. performing certain tasks in the field, there is no ethical squabble that if they can and do not help the patient, they violate the ethical principles associated with medicine (at all levels), the ethical principles associated with wilderness search and rescue, and the ethical principles associated with being a member of our society."