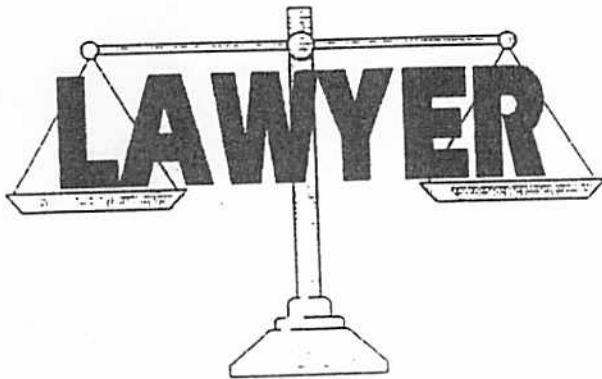


**The Legal System:  
What You Need to Know**



**Frank W. Nagorka, JD, EMT-P**

# The Legal System

**A. Definition: Enforceable rights among parties**

**B. Types of law**

**1. Criminal Law**

- a. Public Rights
- b. Incarceration
- c. Fines

(Under the criminal system, the state through the prosecutor has complete discretion to determine when and how to prosecute. Additionally, the state must prove its case beyond a reasonable doubt.)

**2. Civil Law**

- a. Private rights
- b. Money Damages
- c. Contempt of Court

(Under the civil system, the plaintiff must prove its case by a preponderance of the evidence. This standard of proof is known as the 51% rule.)

**NB: American law is adversarial and advocacy based. To fail to recognize this cardinal rule is to invite disaster.**



# The Legal Process

## A. Perception of the problem

- ⇒ Contingency fee
- ⇒ Words and not works lead to liability
- ⇒ Very few secrets in the world

## B. Filing the Complaint

- ⇒ Nothing stops the filing
- ⇒ Medical malpractice acts
- ⇒ Summons vs. Subpoena
- ⇒ What is the venue?



## C. Answer or other responsive pleadings

- ⇒ Motion to Dismiss
- ⇒ Summary Judgment
- ⇒ Attorney client privilege

## D. Pretrial Discovery

- ⇒ Interrogatories
- ⇒ Requests to admit or produce
- ⇒ Depositions

[Settlement can occur during this period and is encouraged. But there may be times when settlement is not an option; in those cases make certain that you have competent counsel.]

## E. Trial

- ⇒ Jury selection (voir dire)
- ⇒ Opening statements
- ⇒ Case in Chief
- ⇒ Closing arguments

- ⇒ **Instructions**
- ⇒ **Verdict and judgment**

**[Appeals can always be taken from adverse judgments, but appeals are even rarer than trials and should not be counted upon to deliver justice. WIN AT TRIAL]**

## **Negligence**

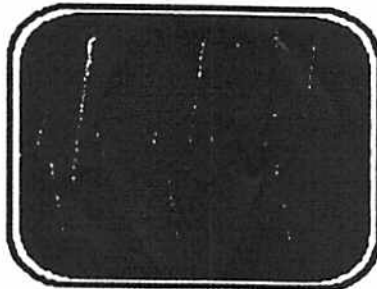
### **A. Duty**

**Duty is always a question of law for the court to determine. It can arise out of custom, practice, or contract. Duty can always be assumed and once assumed, the law presumes ordinary negligence standards.**



### **B. Breach of Duty--Standard of Care**

- ⇒ **Omissions vs. Commissions**
- ⇒ **What would a reasonable person do under like or similar circumstances?**
- ⇒ **Set by expert testimony and can be set by your own words in your policy manuals**
- ⇒ **National standards will be used unless you can show that your circumstances are unique**



### **C. Proximate cause**

- ⇒ **Defined as a logical chain of events linking the act and the resulting damages**
- ⇒ **Always a question of fact**
- ⇒ **Ask your lawyer about remoteness and foreseeability**

### **D. Damages (Injuries)**

- ⇒ **All cases are about damages**
- ⇒ **Liquidated Damages**
- ⇒ **Unliquidated Damages**
- ⇒ **No income tax on compensatory damages**



## **RISK MANAGEMENT FOR THE MEDICAL PROFESSIONAL**

### **I Definition:**

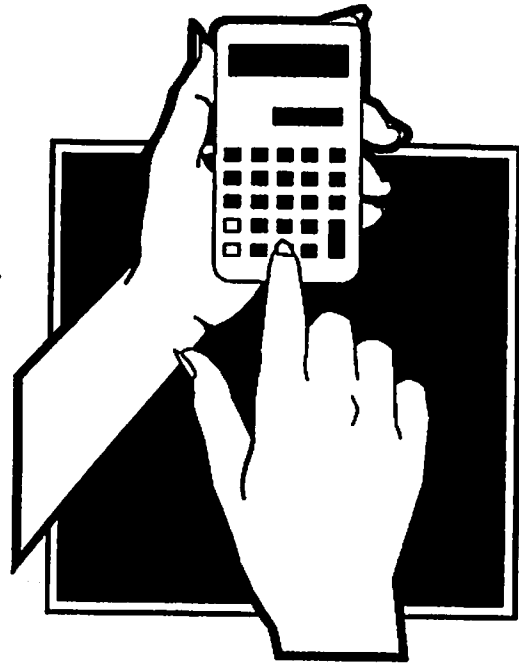
**The recognition and understanding of mechanisms that can reduce the risk of loss.**

### **II Identification of problems**

**A Define the problem**

**B Create ways to arrive at solutions to the problem**

**C The best method to understand the problem set is to understand the system. Managers manage best who understand how the system creates its problems.**



### **III Medical Control**

**All medical care systems must have as their cornerstone medical control. This means that there must exist consistent and comprehensive chart review. Standards are set and followed from the top.**

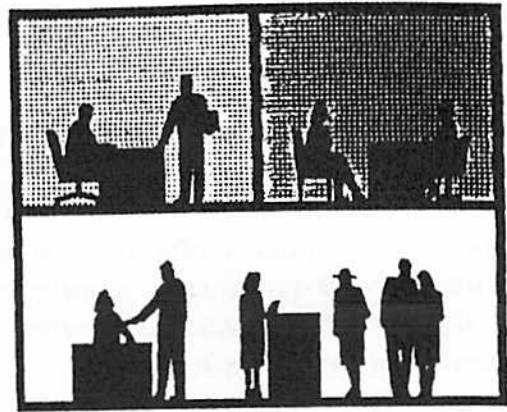
**For example: A Medical Director may have the following responsibilities:**

- **Developing standard orders**
- **Developing lists of drugs and equipment to be used**
- **Obtaining and keeping current all necessary system approvals**
- **Coordinating didactic and clinical experience**
- **Keeping training records**
- **Having responsibility for supervision of all personnel**
- **Designating standby physician**



#### **IV Case Review**

**Should be regular and ongoing. The defense lawyers of the world defend cases on the basis of the words used by the care giver. There is really no other way in which a case can be defended.**



**Coupled with case review is continuing training. This training must be relevant and exciting. No better way to lose the care giver can be imagined than to create a boring program.**

#### **V The quality assurance model**

- \*\* Prospective--This assures the development of written medical policies and procedures**
- \*\* Readily accessible treatment procedures that encompass the care giver's scope of practice.**
- \*\* Local medical control polices and procedures as they pertain to base hospitals, service providers and the local EMS agency.**
- \*\* Criteria for initiating specified emergency treatments**
- \*\* No transport policies.**
- \*\* Specific policies with respect to record retention**
- \*\* Immediately: System must provide direct voice control for field actions.**
- \*\* Retrospectively:**

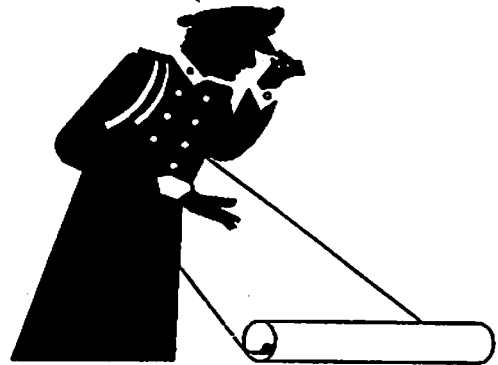
**Organized evaluation and continuing education (Review by a base physician, Maintenance of records, Organized Field Care Audits,**



**Organized opportunities for continuing education.)**

## **V Data Collection and Evaluation**

**Those who know what is happening can make necessary changes. The only reasonable way to understand medical services is to have a reasonable data collection and review mechanism in place.**



## **VI Insurance**

**Insurance is the recognition that no organization except the very largest can maintain all its risk in-house. Insurance spreads the risk among various parties.**

### **A) Types of Insurance**

**Claims Made: Covers only those incidents when coverage is in place. This is a less desirable form of insurance.**

**Occurrence: This type of insurance covers you as long as you had insurance in place when the incident occurred.**

**Tail Coverage: If you have a claims made policy then you must purchase tail coverage if you leave the carrier.**

### **B) Insurance policy provisions**

**--Types of risk**

**--Who is covered by the insurance**

**--Limits of liability**

**--Legal and indemnification costs**

### **C) Types of risks insured against**

**--General Liability**

**--Auto**

**--Professional Liability**

## **VII Good Medicine is Good Law**

### **Patient Surveys:**

**Every patient receives a primary and secondary survey. Yes, rely on other's observations but you too must observe and observe well. You must look for the life threatening condition and then document that you looked for it. (N.B. Cases are defended on the words used.)**

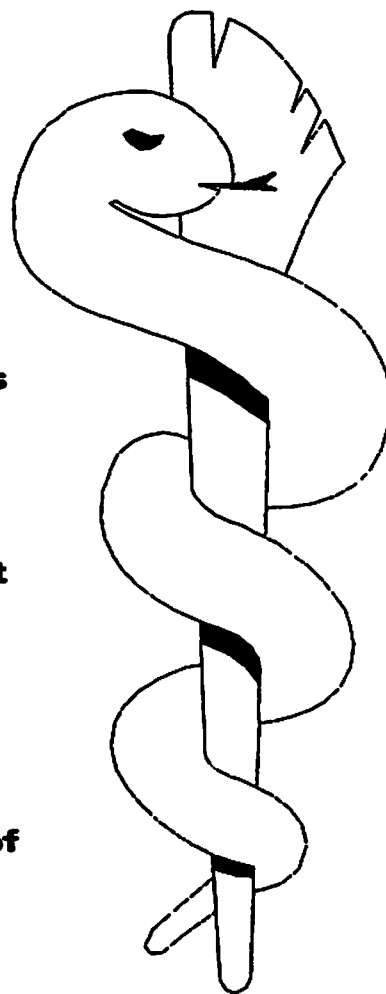
### **Attitude:**

**Do you care about what you are doing? How would others perceive your patient approach? During training patient approach should be stressed.**

**Each patient should be viewed as a test of your medical detective skills. Don't be fooled by the obvious. It is most important to ask for advice and help. Only the foolhardy go into the wilderness without a guide.**

**Start with the attitude of suspecting injuries as opposed to ruling them out. Please do not start with the attitude that the patient is "faking" it.**

**As a competent medical provider it is essential to make certain that your emergency equipment will work when needed. Numerous incidents arise through the failure of a specific piece of equipment at a critical time.**



## VIII Avoiding Litigation

### THE PRIMARY CAUSE OF MALPRACTICE SUITS IS MALPRACTICE.

The human nature guidelines;

- 1) People do not sue people that they like.
- 2) EMS services are considered more valuable before than after.
- 3) The guilty try to shift blame onto others.

The professional image

Generally speaking, your image is quite good. But that image can be lost through inappropriate actions and behavior. Good will can only be taken so far. The key word is pride in doing a good job.

- 1) Must gain the confidence of the patient
- 2) Appearance is important. The calm, orderly approach works best.
- 3) Honest is a good way to start.
- 4) Never give overly optimistic promises. Desperate people will grasp at straws.
- 5) Does communication make sense? Yes.

