

HOSPITALS & MEDICAL TRANSPORTATION PROVIDERS – WHAT RISKS DO WE SHARE?



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IN THE BEGINNING



- The word was Cooperation
- Subject Matter/Content
- Training
 - ✓ Facilities
 - ✓ Research
 - ✓ Intubation
 - ✓ Observation – Surgery, CCU, etc.
 - ✓ Medication Administration
- Base
- Equipment
- Shared Transport - specialty
- et al.

*Many Changes Have
Occurred!*



WHY?

The 10 Most Costly U.S. Catastrophes



| Rank | Date | Peril | Insured Loss | |
|------|---------|------------------------|--------------------------|---------------------|
| | | | Dollars When Occurred | Dollars In 2002* |
| 1 | 09.2001 | WTC/Pentagon** | \$20.30 B | \$20.62 B |
| 2 | 08.1992 | Hurricane Andrew | \$15.50 B | \$19.87 B |
| 3 | 01.1994 | Northridge earthquake | \$12.50 B | \$15.17 B |
| 4 | 09.1989 | Hurricane Hugo | \$4.19 B | \$6.08 B |
| 5 | 09.1998 | Hurricane Georges | \$2.90 B | \$3.20 B |
| 6 | 06.2001 | Tropical Storm Allison | \$2.50 B | \$2.53 B |
| 7 | 10.1995 | Hurricane Opal | \$2.10 B | \$2.47 B |
| 8 | 09.1999 | Hurricane Floyd | \$1.96 B | \$2.11 B |
| 9 | 03.1993 | 20-state winter storm | \$1.75 B | \$2.17 B |
| 10 | 10.1991 | Oakland fire | \$1.70 B | \$2.24 B |

* Adjusted to 2002 dollars by the Insurance Information Institute

** Property coverage only.



Source: The Insurance Information Institute Fact Book 2004.

WORLD TRADE CENTER

Siverstein Properties

ONE LOSS

- Willis Policy Form
(prior to 7.1.2000)
 - Single disaster
 - \$ 3.55 Billion

TWO LOSSES

- Traveler's Policy Form
(No formal agreement)
- Double disaster
- \$ 7.10 Billion

Broker – Willis Companies

- Coverage Legally Bound - Policy Form Debatable
- Lawsuit hinges on Broker/Insurer relationships
- Willis has notified their insurers of full limits

IN MEMORIUM



- CONTINENTAL INSURANCE
HEALTHCARE
- PIE
- CNA
- PHICO
- St. PAUL
- RECIPROCAL ALLIANCE

MALPRACTICE



- Before 1970 – virtually unknown
- Personal Injury Litigation rare
 - No Lawyer advertising
- Malpractice Insurance was a “loss leader”
- Malpractice Crises
 - '76 – '86 – '96 – '2000 – '2002
- Tort Reform

PROFESSIONAL NEGLIGENCE



Where the Rubber meets
the road

PROFESSIONAL NEGLIGENCE



- Definition
 - Carelessness, failure to act as an ordinary prudent person, or action contrary to the conduct of a reasonable person which results in harm
 - Failure to comply with or violation of a statute
 - Requires expert testimony (*Vassey v. Burch*)
 - (exception) NEGLIGENCE PER SE

LITIGATION

EMS/MEDICAL TRANSPORTATION

- GL – Lifting and moving
- GL – Vehicular
- PL – Intubation
- PL – Medication
- PL – Exsanguination
- PL – Improper Positioning

LITIGATION HOSPITALS/PHYSICIANS



- Failure to diagnose
- Delayed Treatment
- Medication Error
- Surgical Misadventure
- Late Response
- Incomplete Treatment
- Vicarious Liability

LITIGATION HOSPITAL RESPONSE

- Promotion of Tort Reform
- Creation of comprehensive insurance programs
 - SIR
 - Deductibles
 - Overlapping coverage
- Aggressive Risk Management
 - Risk Avoidance

TYPES OF INSURANCE

Insured Risks



- \$ 1 million/occurrence - \$ 3 million aggregate
 - D& O
 - E & O
 - Employment Acts
 - Property
 - Fiduciary Liability
 - Crime
 - Employee Dishonesty
 - Automobile
 - Non-owned Aviation (Helicopter?)
 - Workers' Compensation

POLICY EXCLUSIONS



- Exemplary Damages
- Terrorism
- Earthquake
- Disposal of Hazardous Waste
- Flood (flood plain location)
- Criminal Acts
 - Fraud & Abuse
 - Violence in the Workplace

INSURANCE PROGRAM STRUCTURE

| | | |
|--|---|---|
| Super Excess - \$ 20 Million | | |
| Second Layer of Excess - \$ 20 Million each and every | | |
| First Layer of Excess - \$ 2 Million Shared Limits with \$ 2 Million Stop Loss | | |
| GL/HPL/PHYSICIAN MALPRACTICE \$ 1 Million per occurrence - \$ 3 Million Aggregate (may be SIR or large deductible) | Nursing AHP's Paramedics Employees \$ 1M/3M | D & O Property Fiduciary Auto Workers' Comp |

HIPAA



- ATLA – gagging doctors and hospitals
- Effect on peer review
- information sharing between hospitals and medical transportation personnel

PEER REVIEW



- A Beneficial Activity
- Required by ACOS?
- Protected in many states
- A major component of tort reform
- Not generally inclusive of pre-hospital services

2006 Case Study

- MVA – Rural Road Intersection
- 47 YO Male Driver – Unrestrained
- Obvious head trauma
- Combative - Confused
- 2 EMS Providers on scene in approximately 8 minutes

2006 Case Study

- Local County EMS took charge
 - ✓ 1 EMICT
 - ✓ 1 EMT-A
- Per Protocol
 - ✓ Valium
 - ✓ Vecuronium
 - ✓ Patient Intubated
- Transported to Tertiary Care

2006 Case Study

- Transport time 16 minutes
 - ✓ Documentation enroute was lacking
- Patient pronounced on arrival
- No serious injuries
- Esophageal Intubation
 - ✓ Confirmed on Autopsy

2006 Case Study



- Peer Review Required
- Problems
 - ✓ Evaluation
 - ✓ Intubation
 - ✓ Protocol
- Report to Bureau of EMS
- PROBLEMS?

2006 Case Study

- PROBLEMS?
 - Local Medical Director is a recent graduate of a FP program – no trauma experience
 - Local Medical Director has no real intubation experience or surgical experience
 - Protocols were in place – approved by prior Medical Director at the request of the paramedics
 - Prior Medical Director was similarly trained with similar experience

2006 Case Study



- PROBLEMS?
 - Local Medical Director approved protocols

2006 Case Study



- PROBLEMS?
 - Local Medical Director approved protocols
 - Local Medical Director has no insurance specific to being Medical Director

2006 Case Study

- PROBLEMS?
 - Local Medical Director approved protocols
 - Local Medical Director has no insurance specific to being Medical Director
 - Local Medical Director and Trauma Surgeon are colleagues in a large multi-specialty group based at the tertiary care center

2006 Case Study



- NAEMSP

Required formal Training or Demonstrated Proficiency

- Training or significant experience in the clinical practice of out-of-hospital emergency medical services
- Training or significant clinical experiencein the spectrum of out-of-hospital skills (BLS and ALS).....

2006 Case Study

- NAEMSP (continued)

The Medical Director should ultimately be responsible for development of:

- Procedures for reviewing and updating patient care protocols
- ...assess compliance to protocols and policy

2006 Case Study

- NAEMSP (continued)

The EMS system has an obligation to provide:

- Compensation
- Necessary material/resources
- Liability insurance for duties and actions performed

2006 Case Study

ACEP POSITION PAPER – 2007

Responsibilities – Medical

Directors should at a minimum:

- Develop and implement the protocols and standing orders under which the out-of-hospital provider functions

2006 Case Study

Florida Case – 1990

- Doctor legally responsible for the death of a 5 year old girl
- Paramedics evaluated and released
- No written protocols for pediatric vital signs, etc.

2006 Case Study

Additional Medical Director issues

- Negligent hiring, credentialing, continuing education and/or supervision
- Vicarious Liability
 - *Respondeat Superior* – “let the master answer”

2006 Case Study

- Issues for Tertiary Care Center
 - Operates Rural Health Clinics in 12+ counties
 - 13 Employed physicians are Medical Directors for local EMS
 - Has worked closely with EMS in Past
 - Only Trauma Center within 60 miles

2006 Case Study

- Alternatives from retained legal counsel/insurers
 - Stop providing Medical Direction
 - Develop a contract
 - Specific duties and responsibilities outlined
 - Indemnification for Tertiary Care Center and its physicians

2006 Case Study

INDEMNIFICATION

" EMS of Mohawk County shall indemnify, defend and hold harmless John Proctor, MD and Tertiary Care Center against any and all claims and/or lawsuits, including reasonable legal fees, that occur, or are alleged to occur as a result of Dr. Proctor's performance of the duties outlined in this Agreement"