9-1-1 Liability Myths

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Liability1 in the communications center is one of the most challenging subjects for 9-1-1 professionals today. In addition to a hostile legal climate where a steadily increasing number of lawsuits are being brought against the government, public safety itself is experiencing rapid changes as standards of care are raised every day. As a result, emergency communications professionals are continually searching for ways to protect their agencies from legal action.

Unfortunately, their search for answers leads them to adopt some common myths about 9-1-1 liability. Misconceptions seem to run rampant and extend from the telecommunicator level right up to the city manager level. The two most prevalent mistaken beliefs are 1) that a lack of training funds is a defense to a negligence action; and 2) that giving pre-arrival instructions increases liability.

Myth: "Lack of Training Funds Defense"

Many emergency communications agencies have felt the sting of diminishing funds and budget cutbacks in recent years. This puts a heavy burden on already over-burdened and under-funded 9-1-1 facilities. As a result, these agencies are forced to stretch each dollar as far as it will go in order to maximize their efficiency and maintain acceptable standards of performance. Unfortunately, these financial woes can have a dangerous impact on the ability of a 9-1-1 center to adequately perform its central and crucial function as the first responder on the scene of an emergency.

Lack of funding may diminish or render non-existent an agency's capacity to conduct training programs for dispatchers and call-takers. Dispatchers are clearly the most valuable asset in any 9-1-1 center. Regardless of what state-of-the-art equipment may be in the center, without a well-trained, knowledgeable dispatcher there to operate it, correctly note and provide crucial information, and properly deal with hysterical callers, it is impossible to have an effective emergency dispatch center.

As a result of cut-backs and lack of funds, some have come to the conclusion that if an agency is sued for negligence in handling a 9-1-1 call, telling the court that they couldn't afford to train their dispatchers will attach some sort of immunity2 to protect the agency. This is simply not true. Discretionary acts3, such as budgeting for the 9-1-1 center, are indeed immune from liability. Therefore, a plaintiff will rarely be successful in suing the government for negligent failure to train dispatchers. The government could argue that a high-level budgeting decision was made and not enough money was allocated for training dispatchers. High-level planning decisions are discretionary in nature and covered by immunity under the discretionary-ministerial test4. Therefore no liability can be found.

However, if the government is sued for a dispatcher's negligent handling of a 9-1-1 call, it does not avoid liability by raising the lack of funds issue. If this were the case, agencies that didn't train their dispatchers would enjoy complete immunity by stating "sorry, couldn't afford to train 'em" in any negligence case. Whether or not an agency can afford to train dispatchers is irrelevant in determining whether negligence was present in the performance of their duties.

In summary, the "lack of funds" argument has very limited applicability. It is only important in cases where the government is being sued specifically for not training or improperly training dispatchers. In

all other cases where a dispatcher acts improperly, the agency's ability to pay for training is not significant.

Myth: "Pre-Arrival Instructions Increase Liability"
Some 9-1-1 agencies, concerned about the liability risks involved in operating an emergency communications center, have decided to take what they see as the easy way out - they refuse to let dispatchers give any sort of pre-arrival instructions to callers. These agencies reason that since it is usually dispatcher error that results in 9-1-1 lawsuits, the best way to avoid legal trouble is to minimize what their dispatchers do. The less they do, the less chance they will have to make a costly error.

Not only does this possibility underestimate the abilities of the vast majority of 9-1-1 dispatchers, it also seriously undermines the agency's effectiveness in carrying out its life-saving function. In addition, refusing to give pre-arrival instructions to callers in need of immediate help may not have the cost-saving effect that agenies are seeking.

Some agencies only associate pre-arrival instructions with the medical area of emergency services. Although they don't realize it, these same agencies already give pre-arrivals for police and fire incidents! They will tell callers how to handle a hazardous materials incident or how to protect themselves against an intruder in their home, but they will not tell someone how to perform CPR on a child who has quit breathing. This creates an uneven standard of care for those who need help from 9-1-1.

First of all, if the decision not to give pre-arrival instructions originates as a high-level planning decision, the decision itself will be immune from suit under the discretionary-ministerial test. However, it should be noted that the decision may run into trouble under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution in instances where pre-arrival instructions are denied in some types of situations but not in others. This amendment reads in part: "No state shall ... deny any person within its jurisdiction the equal protection of the laws." If, on the other hand, the decision not to give pre-arrival instructions occurs at a lower level, varies based on who is on duty at a given time, or if there is no clear written policy on the matter, liability will definitely be a concern.

Presuming that the decision not to provide callers with pre-arrival instructions originates at a sufficiently high level of government to cloak the omission with immunity, what is gained and what is lost? The "gain" is clear - dispatchers need not give callers any pre-arrivals over the phone, the agency will avoid suits based on giving improper instructions and enjoy immunity from suits based on their refusal to give those instructions.

The loss involved in having such a policy has many facets. To begin with, many 9-1-1 agencies across the country provide pre-arrival instructions and save lives on a daily basis by doing so. Most people have read articles, heard news accounts or watched television shows recounting the heroic acts of 9-1-1 dispatchers. It is clear that as people become increasingly accustomed to the life-saving benefits of emergency pre-arrival instructions, it will consequently get harder and harder to justify the deadly silence of not providing them. With these public expectations in place, a tragedy that could have been prevented with pre-arrival instructions may provoke fierce public outrage.

Public outrage, of course, does not create liability, but it does reduce the morale of the 9-1-1 agency and may result in intense public pressure on elected officials and others to step in and make fundamental changes to the system.

Refusal to provide pre-arrival instructions puts tremendous stress on dispatchers as well. Forcing them

to listen to callers with immediate emergency needs and not permitting them to provide the necessary help, even in cases where the dispatcher is trained and licensed by the state in such procedures, can be a major cause of stress and one of the reasons behind the high job turn-over rate of dispatch personnel. The apparent conflict between the state-imposed duty to act placed upon licensed paramedics or EMTs and the 9-1-1 center policies preventing those same personnel from performing life-saving actions over the phone are troubling to many medically-trained dispatchers.

In some instances, dispatchers frustrated by this restriction may attempt to give their own pre-arrival instructions in the heat of the moment against a supervisor's orders. One Connecticut dispatcher who had successfully talked a grandmother through the life-saving resuscitation of her two-year old granddaughter, acknowledged in the New York Times that even if there had been a policy against giving pre-arrivals in his department, he would have done it anyway. He reasoned that any punishment he received for violating the order would have been worth it if he saved a child's life.

Unfortunately, in situations where pre-arrival instructions are forbidden and yet attempted, or where clear protocols simply aren't provided to dispatchers, the consequences can be disastrous. This type of action can result in liability on the part of the agency or even on the part of the dispatcher in their personal capacity.

It is also not necessary, as some suggest, for a dispatch center to be staffed by paramedics in order to give emergency medical pre-arrival instructions. With regard to staff qualifications, the applicable standards from DOT/NHTSA and ASTM do not state that a dispatch center must, or even should, be staffed with paramedics or EMTs to engage in emergency medical dispatch. The fact that paramedics or EMTs are not available in a given dispatch center should not deter that center from offering emergency medical pre-arrival instructions to callers. With proper written protocols in place, any responsible individual with good listening and reading skills can successfully provide life-saving instructions.

Agencies might best remedy this problem by offering pre-arrival instructions only in the context of strict procedural protocols. Dispatcher union representatives in California have even lobbied for protocol guidelines in an effort to reduce their liability risks and better serve the public.

If clear, competent protocols are put into place allowing dispatchers to respond to each type of emergency with standard, pre-determined instructions, liability and legal costs may actually be reduced. Under this system, a well-established set of protocols for responding to each category of emergency, possibly compiled in a set of desk reference manuals or a computer program, could be adopted by local government. These protocols, since they were adopted through a high-level government decision, will be protected from liability as a discretionary decision under the discretionary-ministerial test. Dispatchers will then simply follow the approved procedures when giving pre-arrival instructions, perhaps even reading directly from the protocols. So long as dispatchers adhere to the protocols in front of them, they will have little to worry about in terms of liability.

Avoiding liability myths is a crucial step that 9-1-1 agencies must take if they are serious about reducing liability exposure. Meeting expectations and providing better service also results in a more satisfied public and fewer lawsuits. Not only will the agency benefit from this, but the public will receive the immediate assistance so often needed when a 9-1-1 call is placed.

Definitions

1 Liability - A legally enforced responsibility to pay damages for one's wrongful damage.
2 Immunity - The exemption from liability.

3 Discretionary Ac-ts - Acts of government which involve high-level planning or policy decisions.
4 Discretionary-ministerial test - A test developed to determine if a government is protected with immunity from negligence lawsuits. The test is based on making a distinction between the "discretionary" acts of government and the "ministerial" acts of government, with only ministerial acts being subject to liability. Ministerial acts are those acts of government which do not involve high-level planning or policy decisions. All of the day-to-day acts that carry out the public policy of the government are ministerial in nature.

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