

LEGAL ASPECTS OF TACTICAL EMERGENCY MEDICAL
SUPPORT

InfoBrief



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About

This International Public Safety Association InfoBrief discusses the legal aspects of tactical emergency medical support.¹ TEMS is integral to SWAT and law enforcement tactical units in providing special operations medicine in a pre-hospital setting. Tactical paramedics deliver point of wounding care in the direct threat, indirect threat and tactical evacuation phases of the austere environment. TEMS teams respond to high threat incidents such as: high-risk warrants, terrorist attacks, active shooter/hostile events and other intentional mass casualty incidents.

Legal issues surrounding TEMS teams, law enforcement and allied emergency responders need to be fully considered prior to an incident. All agency administrators must have a solid understanding of their legal rights and duties. Once these legal considerations are realized, it is incumbent on them to make sure their personnel (volunteer and paid employees) understand how they should act or respond in any given event.

The IPSA's TEMS Committee is committed to advancing the IPSA mission and contributes to the professional development of the public safety community. The IPSA's TEMS Committee works to establish an all hazards approach and integrated response to public safety emergencies. This InfoBrief was authored by several members of the IPSA's TEMS Committee.

The TEMS work environment

The work environment of a TEMS team is inherently dangerous, and agency administrators are increasingly realizing that the scope of practice is influenced by the threat of violence. The type of threat in which a TEMS team is operating has a direct influence on the medical care provided and the methods of providing medical care.

TEMS teams are trained to accept more risk and learn how to mitigate certain risks by adjusting the type of care provided. For example, they assess whether to provide rapid hemorrhage control and then move a patient prior to any further care; or they decide whether to move the patient from the "X" or crisis point before providing any medical care. The dynamic environment, threat and form of care is not new to the TEMS provider.

Allowing tactical paramedics to make entry with SWAT and law enforcement tactical units is becoming increasingly more popular around the world. Lives are being saved with medical personnel present to perform lifesaving treatments within seconds of injury. The law enforcement environment puts TEMS providers in an area that they traditionally would not be. While every first responder is being tasked with doing more with less, there are legal issues to consider before giving an additional assignment (e.g. evidence collection) beyond the TEMS provider's scope of practice.

Agency administrators need to determine whether their TEMS providers need law enforcement training. They need to know the implications and legalities of having a non-law enforcement officer performing law enforcement tasks.

A need for standards

There is no national or international recognized standard or bare minimum training requirement for tactical paramedics. This deficiency creates a tremendous amount of risk.

Across the globe, TEMS teams' skill sets, abilities and knowledge-base and are highly variable. Given this, agency administrators must establish a baseline job description and an actual standard of education. Creating

job descriptions and establishing educational standards will help protect an agency from patient care liability and other lawsuits.

Further, job descriptions and educational standards are important for outlining the responsibilities of providers within the TEMS team. Law enforcement agencies that utilize tactical paramedics must educate them in a manner that will enable a seamless blend of professionals working toward a common goal. While on scene, it is important not to overload them with assignments that may blur their line of expertise because that tactical paramedic may be the one who is tasked to save a life.

The IPSA unequivocally recommends the development of national or international educational standards and/or a certification process for tactical paramedics.

TEMS policies

Policies will influence a TEMS team's response. There are several disparities on how policies are constructed and interpreted across the globe. Given this variation, agencies must consult with counsel to clarify their rights, recognize where they presently stand and learn how to adjust its current policies or practices before an incident occurs.

Once an agency meets with counsel, existing policies are updated, and new policies are created, they must train their personnel on these updated legal issues. This practice will provide the TEMS team with a layer of understanding for where boundaries exist and help personnel prevent serious legal problems before they occur. Best practices suggest that the training plans be reviewed by legal counsel and those in administrative roles, and the training should be conducted every six months.

Liability

Because there are no specific laws or regulations regarding tactical medicine, assessing liability is not easy. Variances in both tactical and medical training may even create different exposure levels in civil liability. There are existing laws that are not aimed at tactical medical providers, but they govern healthcare providers. It is likely that courts would treat the medical care given similarlyⁱⁱ.

The IPSA identified four types of law that may apply to liability for TEMS providers: (1) civil; (2) criminal; (3) administrative and regulatory; and (4) constitutional. Many legal standards for healthcare providers allow judges and jury to judge the medical provider based upon the individual's level of training.

Duty to Act

Generally, there are three factors that must be in place when determining civil liability: (1) the existence of a duty to act (this could also be thought of as standard of care); (2) the duty was breached; and (3) the breach of duty directly resulted in harm or damage.

The duty to act/standard of care is often dependent on the level of training. For example, a doctor would have a higher duty/standard than a paramedic. In civil cases, the initial line of questioning is likely to be centered around the level of training of the TEMS provider and determining the standard of care that should have been providedⁱⁱⁱ.

Immunity

Immunity laws, such as the Good Samaritan Act, do not guarantee immunity from a lawsuit. However, these laws raise the threshold that a plaintiff must meet to prove negligence or breach of duty. In the United States, every state has some form of a Good Samaritan Law enacted. Similar laws can be found around the world in Canada, Australia, Germany, the Philippines and China. While the details of these laws vary by location, they generally protect TEMS providers if they are acting in good faith and within their scope of practice^{iv}.

TEMS providers can mitigate their liability risks by having the proper documentation of care given (local forms or TCCC Card according to local protocol), working within the provider scope of practice and good attitude/patient rapport^v.

No consistency in scope of practice

Scope of practice varies between disciplines, level of training and even between similarly credentialed providers working in the same state or jurisdiction. Policies and training affect providers' scope of practice.

For example, some jurisdictions may allow the use of hemostatic agents as part of the EMT scope of practice and a neighboring jurisdiction may not allow this. Or perhaps one fire department carries hemostatic dressings and another fire department does not.

The discussion about exceeding scope of practice or failure to act is complicated in the realm of TEMS for two key reasons (1) TEMS services are provided by such a wide array of service models and (2) the high-risk and dynamic environment in which services are provided. Compounding the inconsistency in scope of practice are the myriad ways of staffing a TEMS team. As example here is a short list of TEMS staffing models:

- Emergency medical technician (EMT) level law enforcement officers
- Paramedic law enforcement officers
- Basic first aid law enforcement officers
- EMT firefighters
- Paramedic firefighters
- EMT third service EMS providers
- Paramedic third service EMS providers
- Doctors
- Doctors who are reserve law enforcement officers
- Nurses
- Firefighters who are reserve law enforcement officers
- Members of private ambulance services
- Members of private ambulance services that are also reserve law enforcement officers
- Civilian volunteers
- Civilian paid team members
- Combination of all the above

Each of the above disciplines have a different scope of practice by default of their training or license level –

which significantly varies; therefore, the training or license level of a responder is not a good indicator of their scope of practice.

Ultimately, the scope of practice is influenced by many factors including regulatory requirements, local area protocols and agency policy. The scope of practice provided by a TEMS team will be dependent on the response model used, combined with local policies and training.

Scope of practice and liability

Regardless of which service model is used, the scope of practice is the scope of practice. If a TEMS provider works outside his or her scope of practice, there is a threat of criminal and civil liability.

Positive stories of an emergency medical provider saving a life by using a skill outside of their scope of practice do occur, however, many of these stories end in criminal and civil charges. Working outside the scope of practice occurs when a provider uses a skill allowed in a jurisdiction where he or she previously worked, but the skill is not allowed in the current jurisdiction. There is a big difference between this type of scenario and the scenario in which a provider is using a skill that he or she has never used or was never in his or her scope of practice; such as an EMT using a pocketknife and a pen to do a cricothyroidotomy.

Working outside of the scope of practice will put a jurisdiction, TEMS team, agency and provider in criminal and or civil jeopardy. Many of the success stories that occur when a provider works outside his or her scope of practice end in criminal and civil charges.

References

ⁱ InfoBrief was developed by members of the International Public Safety Association's TEMS Committee. Members included Jason Zubkowski, J. Scott Quirarte, Michael Carr, Sean O'Connor, Committee Chair Shane Fitzpatrick, Committee Vice-Chair Allison G.S. Knox and Executive Director Heather R. Cotter.

ⁱⁱ Raffaele, D., (2016). Legal Considerations for Tactical Medical Responders: for both the Individuals and Agencies.

ⁱⁱⁱ Raffaele, D., (2016). Legal Considerations for Tactical Medical Responders: for both the Individuals and Agencies.

^{iv} Stark, Ryan, Esquire (2010). Liability for EMS Providers. *National EMS Industry Law Firm*. Retrieved from: https://www.ncemsf.org/about/conf2010/presentations/stark_liability.pdf

^v Stark, Ryan, Esquire (2010). Liability for EMS Providers. *National EMS Industry Law Firm*. Retrieved from: https://www.ncemsf.org/about/conf2010/presentations/stark_liability.pdf