

Joint Position Statement on Criminal Liability for Alleged Deviations from Clinical Standards of Care in Emergency Medical Services

The organizations adopting this position statement (collectively referred to as the “National EMS Organizations”) represent EMS clinicians, physicians, agencies and others, and include:

National Association of Emergency Medical Technicians (NAEMT)
National Association of EMS Physicians (NAEMSP)
American Ambulance Association (AAA)
Association of Air Medical Services (AAMS)
Association of Critical Care Transport (ACCT)
American Paramedic Association (APA)
National Association of EMS Educators (NAEMSE)
National EMS Management Association (NEMSMA)
Academy of International Mobile Healthcare Integration (AIMHI)

This Joint Position Statement was drafted by Page, Wolfberg & Wirth, LLC, and was adopted on March 1, 2025.

Introduction

Emergency Medical Services (EMS) clinicians are entrusted with the care of vulnerable populations and patients in need of emergency care. The National EMS Organizations strongly believe in EMS clinician accountability within a just culture environment for medical errors and treatment that fails to meet applicable clinical standards of care. This Joint Position Statement identifies the various forms that accountability may take, and offers a systematic set of criteria for prosecutors, judges and others in the legal system to help determine whether criminal liability is appropriate in cases of medical error by EMS clinicians.

The criminalization of patient care errors can hinder patient safety, as EMS clinicians may be less likely to report clinical errors for fear of criminal reprisal. Medical error criminalization could also compromise clinical quality improvement efforts, as such errors may result from problems within systems of care rather than arising solely from individual provider mistakes. In addition, criminal liability is most likely to be sought in cases involving patient deaths, which reflects an outcome or severity bias, focusing merely on individual provider errors while providing no mechanism for addressing what may be more prevalent systemic issues in care delivery.

EMS agencies nationwide are also facing an unprecedented crisis in the recruitment and retention of EMS clinicians. This crisis could be exacerbated, even among good clinicians, by a fear of criminal liability for patient care errors. Accordingly, the National EMS Organizations adopt this Joint Position Statement recommending a four-part inquiry in determining whether criminal liability against EMS clinicians is appropriate: (1) whether the acts were committed in the course and scope of duties as an EMS clinician; (2) whether the acts involve alleged deviations from clinical standards of care; (3) whether the acts constitute intentional criminal acts vs. acts of alleged gross negligence or recklessness; and (4) whether the imposition of criminal liability will serve the goals of justice.

EMS Clinician Accountability Within Just Culture

When EMS clinicians fail to meet applicable clinical standards of care, those providers should be held accountable for those deviations within a just culture environment.¹ Just culture promotes accountability and a fair response to errors and adverse events and is based on the idea that errors can result from faulty organizational systems, not always solely through the actions of individuals.

Past criminal cases illustrate a focus on criminal charges in cases that have resulted in death, when most healthcare errors are not fatal (and many do not even result in harm). This reflects a prosecutorial severity or outcome bias, which focuses criminal liability on high-profile cases, overlooking clinical errors that result in lesser harm. This approach essentially “punishes the unlucky and rewards the lucky.”² This inherently biased application of criminal law magnifies human errors and overlooks systemic issues which commonly lead to medical errors.³

In addition, it is well documented that the threat of criminal liability can lead to a fear of self-reporting of medical errors by clinicians, which can perpetuate systemic deficiencies and increase the likelihood of patient harm in future adverse events.^{4 5} The reduction of medical error requires robust clinical quality improvement programs and clinician peer review, both of which can be compromised when EMS clinicians must confront potential criminal liability for medical errors.

The National EMS Organizations recognize that some adverse events necessitate appropriate accountability. When such accountability is indicated, it may take multiple forms, including:

- Employment action – i.e., discipline by the EMS clinician’s employing agency, company or organization, within a just culture environment;
- Administrative action – i.e., discipline by the state licensing agency or certifying body;
- Civil liability – i.e., a tort action seeking compensation for errors or omissions; and
- Criminal liability – i.e., filing criminal charges under one or more state or federal statutes.

These forms of accountability are not mutually exclusive. Those involved in the criminal justice system should, when reviewing future cases, be cognizant of the fact that one or more of these other forms of accountability would likely also be exercised.

The question addressed in this position statement is whether criminal liability should be sought or imposed in addition to the other forms of legal and administrative accountability against EMS clinicians, when the conduct alleged involves medical error.

This paper is not intended to address operational issues of scene control or patient management in situations where EMS clinicians and law enforcement officers interact,⁶ nor is it intended to address

¹ National Association of Emergency Medical Technicians, *NAEMT Position Statement: Just Culture in EMS*, accessed August 30, 2024, https://www.naemt.org/docs/default-source/advocacy-documents/positions/Just_Culture_in_EMS.pdf?sfvrsn=0

² Dickinson, J., *The Criminalization of Human Errors in Healthcare*, American Bar Association Health eSource, July 27, 2022.

³ *Id.*

⁴ American Society of Anesthesiologists, *Statement on Criminalization of Medical Error*, October 18, 2023.

⁵ Dickinson, *supra*.

⁶ See, Levy, M, et al., *Consensus Statement of the National Association of EMS Physicians, International Association of Fire Chiefs and the International Association of Chiefs of Police: Best Practices for Collaboration Between Law*

situations in which one discipline should or should not intervene in the activities of the other. The National EMS Organizations recognize and respect the fact that both EMS clinicians and law enforcement officers have distinct training, duties and standards of care to uphold in the course of their work.

The Impact of Criminal Liability on EMS Clinician Recruitment and Retention

Past criminal convictions of healthcare clinicians, including paramedics, have sent shock waves throughout EMS and the broader healthcare profession. The National EMS Organizations are concerned that the potential for criminal liability for medical errors could have a substantial negative impact on EMS clinician recruitment and retention, similar to concerns that have been raised among other healthcare professions.⁷ These concerns arise at a time when EMS agencies nationwide are suffering from the most acute workforce challenges in the profession's history. NAEMT has called this "a crippling workforce shortage."⁸ As noted in a recent national EMS workforce survey, [w]ith nearly 60% of respondents reporting inadequate personnel to meet the demands of 911 calls in their primary service areas, this shortage not only impacts response times, but also contributes to increased dissatisfaction among both EMS workers and external stakeholders."⁹

As a specific example, a department which employed two paramedics who were subsequently convicted of criminally negligent homicide following the death of a patient reported an immediate 10% paramedic workforce attrition rate following the convictions.¹⁰

Recommended Four-Part Inquiry Regarding Criminal Liability Against EMS Clinicians

The National EMS Organizations do not take the position that the filing of criminal charges against EMS clinicians is *never* warranted. Rather, the imposition of criminal liability may be indicated on a *case-by-case basis* in the exercise of reasonable prosecutorial discretion. However, the National EMS Organizations recommend that prosecutors apply four criteria in the exercise of that discretion, and that judges apply these criteria in their consideration of legal questions or appeals surrounding such cases:

- 1) Were the acts committed in the course and scope of duties as an EMS clinician?
- 2) Did the acts involve alleged deviations from clinical standards of care?
- 3) Do the acts constitute intentional criminal acts vs. acts of alleged gross negligence or recklessness?
- 4) Will the imposition of criminal liability serve the goals of justice?

Enforcement and Emergency Medical Services During Acute Behavioral Emergencies, Prehospital Emergency Care 28:4, 1058-1062 (2024).

⁷ Davis, C., *Former Nurse's Criminal Conviction Will Have a 'Chilling Effect' on Healthcare*, Accreditation and Quality Compliance Center, March 22, 2022; accessed on December 10, 2024 at

<https://www.accreditationqualitycenter.com/articles/former-nurse%E2%80%99s-criminal-conviction-will-have-%E2%80%98chilling-effect%E2%80%99-healthcare>

⁸ National Association of Emergency Medical Technicians, *Workforce Development*, accessed on August 30, 2024 at <https://www.naemt.org/resources/workforce-development>

⁹ EMS1, *What Paramedics Want in 2024*, accessed August 29, 2024 at <https://www.ems1.com/ems-trend-report/digital-edition-what-paramedics-want-in-2024>.

¹⁰ Levy, M., *Aurora Fire Says 10% of City Paramedics Limiting Medical Roles Because of Elijah McClain Verdict*, Sentinel Colorado, March 3, 2024.

Part 1: Were the acts committed in the course and scope of duties as an EMS clinician?

The first inquiry is whether the alleged criminal acts committed by the EMS clinician were committed in the course and scope of the individual's duties as an EMS clinician. Acts falling within the scope of the EMS clinician's duties should be afforded a higher degree of deference, because of the significant judgment and discretion that EMS clinicians are expected to exercise in emergency situations that are often tense, fast-changing, dangerous and unpredictable.

If an EMS clinician performs acts outside the course and scope of their duties as an EMS clinician, i.e., those acts had no reasonable nexus to legitimate patient care, then those acts should be entitled to less deference in the decision to file criminal charges.

Examples: (1) An EMT stealing the wallet of a patient is outside the course and scope of duties as an EMS clinician and a decision to criminally charge the EMT should be no different than for a non-EMS clinician who commits the same offense. (2) Deciding to administer a medication to a patient, but then making an error that results in the administration of an incorrect medication, falls within the course and scope of duties as an EMS clinician and should be afforded greater deference prior to any charging decision.

Part 2: Did the acts involve alleged deviations from clinical standards of care?

Under the second inquiry, prosecutors contemplating the filing of criminal charges against an EMS clinician should consider whether the alleged criminal conduct pertained to potential deviations from applicable clinical standards of care. Proving criminal behavior that allegedly arose through deviations from applicable clinical standards of care necessarily involves questions of clinical judgment, where no single judgment may be the only acceptable approach to treating the patient. Medical care is both an art and a science, and thus reasonable minds may differ on many aspects of treatment. Cases involving the provision of healthcare also involve questions on the appropriateness of clinical protocols, the opinions of expert witnesses, the state of clinical research and evidence-based medicine, and other issues which make it inappropriate to criminalize medical errors.

The provision of emergency medical services is based on presenting signs and symptoms whose cause often cannot be determined with certainty in an out-of-hospital setting, where EMS clinicians lack the tools, equipment and other resources available to hospital clinicians to render definitive diagnoses before care must be provided in emergency situations. And, as noted above, clinical errors can often arise due to systemic issues, not just human failure, and are more effectively resolved in a just culture environment beyond the simple assignment of individual blame. Accordingly, alleged medical errors are more appropriately addressed in non-criminal proceedings.

Examples: (1) Driving an ambulance at an excessive rate of speed without due regard for the safety of others and causing a crash does not involve deviations from clinical standards of care and criminal liability might be more clearly established. (2) Choosing to administer a paralytic drug to help manage a patient's airway, including questions of whether the drug was appropriately selected or administered, involve clinical standards of care and are more appropriate for resolution in non-criminal proceedings.

Part 3: Do the acts constitute intentional criminal acts vs. acts of alleged gross negligence or recklessness?

The third recommended inquiry is whether the alleged acts of the EMS clinician would, if proven, constitute intentional criminal acts, or acts of alleged gross negligence or recklessness. If an EMS clinician commits an indisputably intentional criminal act, the filing of criminal charges may be justified. However, in cases where the alleged acts rise to the level of gross negligence or reckless conduct, but not intentional criminal acts, such conduct may be more appropriately addressed in non-criminal proceedings.

Most state EMS laws already recognize this distinction, in that most states provide a form of qualified or limited immunity from civil liability to EMS clinicians for acts of simple or ordinary negligence.¹¹ In most states, such qualified immunity statutes require plaintiffs to plead and prove either gross negligence or recklessness to establish civil liability on the part of EMS clinicians. Although criminal statutes provide for prosecution for offenses such as *negligent* homicide or *reckless* manslaughter, civil actions are more appropriate for addressing alleged grossly negligent or reckless acts related to medical errors, given that the laws in the majority of states clearly make this the threshold for *civil* liability.

Examples: (1) An EMT punching a verbally abusive patient in the face may constitute an intentional criminal act. (2) A paramedic administering an incorrect dose of a medication through inaccurately estimating the weight or age of a patient is more appropriate for a non-criminal disposition.

Part 4: Will the imposition of criminal liability serve the goals of justice?

The fourth and final recommended inquiry in any decision to file criminal charges or uphold criminal convictions against EMS clinicians alleged to have deviated from clinical standards of care considers whether justice will be served in accordance with the goals of criminal law. The literature generally describes four main goals of criminal punishment: (1) retribution; (2) deterrence; (3) rehabilitation and (4) incapacitation.¹² In cases where EMS clinicians are alleged to have committed grossly negligent or reckless acts in the course and scope of providing patient care, the goal should be to correct both systemic failures and human errors that led to the medical error. It does not improve patient safety, or make the public more secure, to focus solely on individual provider blame without also improving systems of care in cases where both contributed to medical error. The goals of justice are satisfied amply through civil, administrative and/or employment accountability within a just culture in cases of medical error.

Examples: (1) An EMS clinician sexually assaults a patient in the back of an ambulance. Criminal accountability would be vital to provide justice to the victim, to protect the community and to punish the offender. (2) A paramedic inadvertently gives an adult dose of a drug to a pediatric patient, causing the patient's death. Imposing criminal liability will add little to the goals of justice that would best be satisfied through non-criminal forms of accountability.

¹¹ See, e.g., Pennsylvania (42 Pa.C.S. § 8332); California (Cal. Health & Safety Code § 1799.106); Massachusetts (ALM GL ch. 111C, § 21); Michigan (MCL § 333.20965); Illinois (210 ILCS § 50/3.150).

¹² See, e.g., Meyer, J., *Reflections on Some Theories of Punishment*, J. Criminal Law and Criminology, Vol. 59, No. 4 (1968) and Raymond, FB, *Reasons We Punish*, J. Humanics, Vol 7, No. 2 (1979).

Conclusion

Medical error often results from problems in systems of care, and not merely from individual clinician conduct. Patient safety is better protected when EMS clinicians can freely report and address medical errors without fear of criminal prosecution, and when EMS systems can promptly and effectively address medical errors through clinical quality improvement programs and peer review processes. This ensures accountability for medical error within a just culture environment. The imposition of criminal liability against EMS clinicians for medical error is inconsistent with these principles and could harm patients due to non-reporting of medical errors, and could further exacerbate a serious ongoing EMS workforce crisis. This Joint Position Statement recommends several important factors that prosecutors, judges and others in the criminal justice system should consider in the determination of whether criminal liability should be sought or imposed, or convictions upheld, against EMS clinicians alleged to have committed medical errors.