



Medical Legal Considerations in Wilderness Medicine

Medical Legal Considerations in Wilderness Medicine



Wilderness medicine is a relatively new form of medicine that emerged with the increase in wilderness travel (and subsequent injuries) in the mid 1980's. It is defined as the skills necessary to prevent, assess and treat injuries or illness in a prolonged pre-hospital setting. Since assessment and treatment often occur in severe environments with minimal facilities available, practitioners require a broader range of knowledge and skills than standard urban medical courses offer. The United States legal system is complex. The following paragraphs outline some of the legal concepts you should be aware of as a guide, outdoor instructor, Search and Rescue (SAR) team member, or as part of the general public.

Substantive versus Procedural Law

Conceptually our legal system is divided into substantive and procedural law. Substantive law dictates the rules people should follow within a given society, essentially how they should act. Procedural law dictates how a person is treated after they break a law, essentially the procedure that is followed.

Criminal versus Civil Law

The legal system is also divided into criminal and civil law. Criminal law prohibits specific acts (theft, murder, assault, etc.) and sets a range of punishments for violations. The intent is for the severity of the punishment (imprisonment, fine, etc.) to match the severity of the crime. A violation of criminal law requires that the government bring charges against the defendant and prove them beyond a reasonable

doubt; law enforcement is a branch of criminal procedural law. Instead of prohibiting specific acts, civil law dictates what a "reasonable" person's conduct should be in a given situation. Violations of civil law are not punished but the violators may be required to provide compensation for damages. Any given act may violate criminal law, civil law, or both, depending on the act and circumstances; however, a person cannot be judged in violation of civil law if there is a criminal law prohibiting the act. Contract law and tort law are two subdivisions of civil law that relate to wilderness medicine practitioners.

Contract Law

Contract law is the area of civil law that deals with agreements between people and/or organizations. Contracts may be expressed or implied, written or oral. A person may bring a civil suit against a person or organization if they think a contract has been broken or breached.

Tort Law

Social responsibility dictates that people within a given society have a duty to act reasonably towards one another. Tort law is the area of civil law that deals with injury or damage to people and property as a result of a person's "unreasonable" actions. Injured persons are entitled to compensation for the damages caused by the defendant's unreasonable conduct. The standard for reasonable is usually set by the defendant's profession and called the "standard of practice".

Standards of Practice

There are two standards of practice commonly applied to cases involving wilderness medicine. One pertains to sponsoring organizations (outfitters, schools, etc.) and the other to individual care givers. An organization or individual who fails to meet their standards of practice may be in violation of criminal law, civil law, or both. Organizations are held to the industry standards of their profession. Industry standards are defined by committees within a given industry and/or by the state where the organization operates. Industry standards usually dictate the minimum level of training, certification, and/or licensure required for the organization's staff. They may also include requirements or recommendations for expedition equipment. In general, an organization sponsoring a trip into a remote area is responsible

for providing adequate medical care until the patient has entered the local health care system. Care rendered by wilderness medicine providers is likely to be held to the practice guidelines published by the Wilderness Medical Society (WMS), the National Association of EMS Physicians (NAEMSP), and the American Heart Association (AHA). Training, certification, and standing orders/protocols should be in alignment with these guidelines and the Scope of Practice (SOP) documents published by Wilderness Medicine Education Collaborative (WMEC).

Duty to Act

Duty to act (in this case to provide reasonable medical care) is defined by law. How you should act is defined by your profession's standard of practice (as described above), your training, certification, the protocols set by your medical advisor, and state and federal laws. In most cases wilderness medicine providers have been sued for a failure to act rather than for their actions. You have a duty to act if:

- You have a prior relationship with the person.
- The person is under your direct care.
- The person is a participant in an activity you have been hired to instruct or supervise.
- You have entered into a contractual agreement to provide medical services.

If you are a guide or trip leader you have a duty to provide medical care to trip participants under your direct care.

Good Samaritan Laws

To encourage trained people to act in emergencies when they do not have a duty to act, most states have enacted "Good Samaritan" laws that protect physicians and health care providers against simple negligence. They do not protect against gross or willful negligence. In order to be protected by Good Samaritan laws the aid must be unscheduled and unplanned and it must be provided at or near the scene where the illness or injury occurred. The provider must act without compensation and outside of their normal scope of employment. They must also have consent from and not abandon their patient(s). In emergencies, consent is usually implied. Implied consent may be indicated by a patient's lack of resistance prior to and during treatment. It may also be indicated by the situation. Patients with a nor-

mal mental status have the right to refuse treatment. Once aid has begun, medical providers are under a legal obligation to see that it continues until the patient is no longer in danger. Based on their training, a medical provider is also expected to anticipate and plan for common problems that may arise en route to definitive care. Abandonment occurs when a patient's care is terminated prematurely and they suffer subsequent harm as a result of the lack of treatment. Leaving a patient to go for help is NOT considered abandonment.

Increasing Your Legal Umbrella



The law requires only what a reasonable patient would require in similar circumstances and protects medical providers who act according to their training and in the best interests of their patient. For a defendant's action(s) to be labeled unreasonable and the plaintiff to prevail in a civil suit, the plaintiff must prove four things:

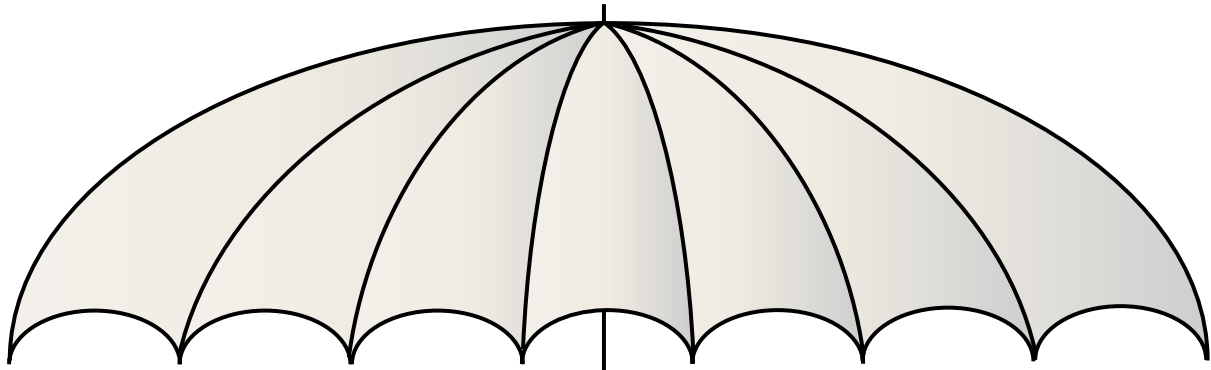
- That the defendant had a duty to act;
- That the defendant did not adhere to the standard of practice of their profession (negligence);
- That the plaintiff suffered a loss or injury; and
- That the plaintiff's loss or injury was caused by the defendant's negligence.

If a court finds against a defendant, the defendant may be required to pay damages consistent with the plaintiff's injury or loss as determined by the judge and/or jury. Given the above information, there are a number of things organizations and individuals can do to increase the size of their legal umbrella (amount of legal protection) before an illness or injury occurs.

Institutions

While it may not be feasible to enact all the recommendations on this list, the more you can do, the greater your legal protection. Needless to say,

Increasing Your Legal Umbrella



Institutional

- Meet or exceed Industry standards.
- Use Participant Release and Assumption of Risk forms.
- Have an active medical control physician who provides oversight and protocols.
- Have your staff trained and certified by a nationally accepted provider according to WMS, NAEMSP, & AHA practice guidelines and the WMEC SOP documents.
- Ensure emergency field communication.
- Ensure field and follow-up documentation using SOAP format.
- Have an Emergency Action Plan.
- Follow state and federal laws.

Individual

- Keep your certification current.
- Maintain your skills.
- Accurately document what happened, the patient's S/Sx, your assessment, and your treatment/evacuation plan using the SOAP format.
- Follow your organization's protocols.
- Follow state and federal laws.

make sure you have adequate liability insurance. Consider rescue and evacuation insurance, especially for third world countries.

- The sponsoring organization should be aware of and meet or exceed the industry standards for their profession.
- Have all participants sign a release form giving advance permission for the sponsoring organization's staff to render appropriate aid in the event of injury or illness. If prescription drugs are to be carried and used, participants and their personal physicians should grant permission for their use as per the organization's protocols or provide alternative field treatments and protocols for the individual in question. The form should also acknowledge that the participant is aware of, accepts, and releases the sponsoring organization and its staff from the risks associated with the

activity and any treatment decisions by its staff. The release form is a contractual agreement and should be drawn up by an attorney licensed in the state where the business is registered or licensed.

- The sponsoring organization should employ a physician advisor who acts in an active advisory capacity and is aware of the WMS, NAEMSP, and AHA practice guidelines and the WMEC Scope of Practice documents. In the absence of direct on-line control via radio or cell phone, the medical advisor should issue written "standing orders" or "protocols" appropriate to the staff's certification and the activities and environmental conditions likely to be encountered during the sponsoring organization's trips.
- Staff should be trained and certified by an organization that teaches according to the above practice guidelines.

- Staff should document their patient care in a standardized SOAP format that includes: time, dates, a description of the mechanism of injury, environmental conditions, a detailed patient history, the staff's assessment, treatment and evacuation plans, and changes in the patient's condition while still under their care. If it isn't written down, it is difficult, and often impossible, to prove. Judges and juries generally place greater weight on field notes written during the incident than on notes recorded after the patient has passed from the staff's care. It is also important for staff to document a patient's refusal of treatment. Many SAR organizations, ambulance squads, ski patrols, etc. require a patient to sign a contractual document releasing them of all liability from damages resulting from a refusal of treatment. Such a document is usually signed in the presence of a witness who in turn signs as well.
- If the course area and finances permit, organizations should carry cell or satellite phones for emergency communication and have an assigned on-call person, preferably a physician familiar with the program, available at all times.
- Have an Emergency Action Plan (EAP) with detailed procedures and contact information (names, phone numbers, addresses and directions to health care facilities, location of pre-placed evacuation vehicles, etc.).
- Have an licensed attorney work with your physician advisor to assure that the organization is aware of and compliant with all state and federal laws.

Individuals

If you are going to work professionally in the outdoors you should keep current with all recommendation on this list. That said, outdoor work is both seasonal and transient making keeping track of state and federal laws extremely difficult; do the best you can.

- It's vitally important to keep your certification current. You have invested a lot of time, energy and money in your certification and training. Maintain it.
- Most wilderness medicine providers certify you based on an evaluation of your skills during a training course and do NOT warrant that you will be able to perform at that level during an

actual emergency. It's up to you to maintain and improve your skills. This may mean taking a refresher course before your actual certification expires, retaking your original course, seeking work within the outdoor medical field where you will gain experience (ski patrol, bike patrol, local Search and Rescue teams, etc.)

- Make sure you are familiar with your organization's rules for documentation. Carry your own Patient SOAP note if your organization does not provide one. Alternately get permission to use the one you prefer. Always keep a copy of your own field notes; they are a legal document and go a long way to verifying your thoughts and actions at the time of the incident.
- Make sure you understand and follow your organization's protocols. Consider carrying an approved wilderness medicine field manual.
- Make sure you understand and follow state and federal laws. Be aware that laws often vary from state to state and may change at any time.