Dealing With Presumptions of Death

BACKGROUND

On the date of loss, the claimant (decedent) sent an alarming text to family members instructing them to call the police and have them respond to his home. Officers were dispatched to the location and the Chief of Police also responded. Upon arrival at the scene, police personnel found the claimant hanging in his shed along with a suicide note. The Chief of Police declared the scene to be a crime scene and had officers begin putting out caution tape. The police personnel on scene checked the claimant's pulse and found none. Subsequently, the Chief of Police made a determination that the claimant was dead. Several moments later, Emergency Medical Services (EMS) was requested, dispatched and arrived on scene to make a presumption of death. Upon arrival, EMS had found a heart rhythm and worked to cut and extract the decedent from the hanging position. Ultimately the claimant was transported to the hospital with CPR in progress. The claimant was pronounced deceased in the hospital.

The Notice of Intent to File Suit alleges negligence against the police departments, its officers, Chief of Police and Town for:

- Prohibiting emergency medical personnel from entering a shed where the claimant (decedent) was found adjacent to his home. The notice alleges that police personnel on scene prohibited the EMS staff from entering the shed and tending to the victim who was in need of medical treatment.
- The police personnel on scene failed to assess and/or evaluate the claimant's (decedent) condition to determine if medical assistance was needed, for determining the shed to be a crime scene, and not allowing the EMS staff into the scene before making such medical assessment.

FACTS:

According to the Chief of Police, the claimant was having difficulty coping with the death of his wife, who passed away a month earlier. Subsequently, claimant had been placed on suicide watch and was living with family members.

Apparently, on the first day, the claimant went back to his house after his wife's death, he began calculating his own death. The police department had received numerous calls from family/friends expressing concern for the claimant after receiving text messages from him just minutes before his suicide. The text messages requested that they send the police to his address.

After receiving these calls, the police department responded to the residence. It is noted that they were aware that the decedent's wife had just passed away one month prior and the family expressed concern for his well-being. Two police officers were the first to arrive on the scene and found the claimant with a noose around his neck as well as evidence of extreme lengths to ensure that the knot did not come undone. The officers did not check for a pulse. After a few minutes the Police Chief and EMS Captain arrived. The Chief looked inside the shed and declared it a crime scene – as it needed to be confirmed homicide vs. suicide – and had the area roped off. The physical posture of the claimant's body – a much distended, severely broken neck – assisted in the Chief of Police's determination that the claimant was deceased.

The paramedics were called to the scene by the police officers. An EMT/firefighter from another member town arrived on the scene and requested entry to the shed. The Police Chief denied entry stating that the claimant was deceased and they were awaiting the paramedics to arrive to make the presumption of death. EMT's cannot make presumption of deaths.

Approximately 2 minutes later a paramedic arrived on scene. The paramedic was allowed to enter the scene and begin his process for a presumption of death. The paramedic placed the cardiac monitor onto the claimant; who has not yet been cut down from the noose. At this time, the EKG machine was showing that the claimant had some sort of electrical heart activity. The paramedic indicated that he could not make a presumption of death, that the claimant needed to be cut down and Advanced Life Support (ALS) activities were initiated. The Paramedic and EMT's then transported the claimant to the local hospital where he was pronounced dead.

The police department called in the Connecticut State Police Major Crime Squad to "process" the scene. This was initiated by the Chief of Police because there were now 2 deaths, both 30 year olds in less than 2 months. The State police found that one death was caused by a medical condition, while the second was classified as a suicide; which was confirmed by the Office of the Chief Medical Examiner's Office.

The EMS Captain wrote a report to the Fire Chief and one of his commissioner's, criticizing the police and indicating that they had prevented him from initiating resuscitative efforts in a timely fashion which could and would have resulted in emergency personnel's ability to revive the claimant. The EMS Captain accused the Chief of relegating him to traffic duty under circumstances where he should have been at the patient's side attempting resuscitative efforts. These actions would include advising him:

- Not to pull the ambulance into the driveway, *and*

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- That this was a crime scene, that they would need a paramedic to pronounce, and that the fire department would be useful with regard to gaining entry to the residence.

TIMELINE:

The timeline of events shows that approximately 15 minutes had elapsed between the claimant's text messages to family members and the arrival of the first police officers on scene, and another 15 minutes from the time the first EMS personnel arrived on scene and when they were allowed to enter the shed.

11:06 am - Claimant sent text messages to dad and friends

11:14 am - Police receive calls from claimant's family and friends; officers are dispatched to the scene

11:21 am - First 2 police officers arrived on scene

11:30 am - First 2 officers find the claimant's body hanging in shed

- The two initially dispatched officers proceeded to the claimant's home where they were shortly joined by the Chief and Captain. The claimant's house was locked and the officers were making observations around exterior of the home. Eventually, one of the officers observed the claimant hanging in the shed. The officer initially thought what she saw in the shed was a dummy, she did not think it was real. Ultimately, upon further investigation with the Sergeant, it was determined to be an actual person – the claimant.

11:32 am - Chief of Police and EMS Captain arrive on scene. The EMS Captain is assigned to "traffic duty" by the Chief of Police

11:35 am - Fire/EMS arrive on scene, and are denied access to the claimant's body

11:46 am - Chief of Police allows EMS to enter shed

11:47 am - Paramedic arrives on scene and enters the shed to begin presumption of death process. Claimant is found to have some type of cardiac electrical rhythm and ALS is started.

LIABILITY ASSESSMENT:

There are 3 key issues that were identified:

1. It appears that the Police Chief did not have knowledge of the existing State guidelines with regard to resuscitation and determination of death – *Resuscitation Initiation and Termination 6.15;*
2. It appears that there is a potential failure to properly train the officers in the EMS protocol once he became aware of it, based on the clear absence of knowledge on the part of all responding officers concerning the EMS protocol at the time of the response to the claimants home;
3. There was an attempt to maintain that the Chief's report contains false statements which the Chief knew or should have known were false.

The Chief knew that he needed to call a paramedic to make a presumption of death and was waiting for the paramedic to pronounce death, yet had already concluded that the claimant was dead. This created a conflict and disconnect that the plaintiff's counsel argued, stating that the whole reason to have the paramedic pronounce death **is to discontinue resuscitative efforts.** The response from the Chief of Police was that "…it is a process and that we need to follow the process which requires a finding of death…". This does not mean that officers, when faced with circumstances of obvious death, do not in the field reach that conclusion prior to a presumption of death. **This is inconsistent with the four corners of the guideline.**

The Chief of Police completed a 12 hour refresher course and 4 course hours on resuscitation in December of 2015, some 3 months prior to the incident in question.

Concerns existed about the EMS protocols and their apparent conflict with the Chief's orders. The Chief recognized the concerns and focused on his overall assessment that the decedent was obviously dead based on appearance and that he was treating the matter as a crime scene.

In his report, the Chief of Police acknowledged that:

- CPR was not started until approximately 12:07 pm.
  - The ambulance arrived at 11:35 am, which is the quickest ALS could have started. However, the EMS Captain is accusing the Chief of relegating him to traffic duty under circumstances where he should have been at the patient's side attempting resuscitative efforts. The Chief of Police said the EMS Captain wanted access to the shed – which he initially declined - as it was a crime scene and an EMT could not do a presumption of death, this could only be done by a paramedic. After a few minutes passed, the Chief of Police; who was dealing with arriving family members and trying to keep them away from the shed; told the EMT he could take a look if he wanted to since the medic had not yet arrived. The EMT went into the shed, looked at the body and took no action.

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- **The officer who initially discovered the claimant's body was a former EMT with previous EMS field experience and training** yet she did not take the claimant's pulse. In fact, no one took a pulse. She did not enter into the shed nor go up to the body, but rather stayed near the shed's entrance. The officer worked for both Danbury Ambulance and Vin Tech EMS, which is an EMS service provider that provides staffing needs to various ambulance providers. The officer indicated that she has responded to several attempted hangings in her previous EMS positions, and from what she recalls, all resuscitation efforts were failed attempts. Once police recognized the claimant's body they were quick to dispatch the fire department which brought EMS to the scene.

- Responding officers were certified in CPR, AED, and EMR by the State of Connecticut.
  - **The police are supplemental first responders. All police officers are certified through American Red Cross in first aid**, CPR and AED, and are certified EMR's. This would have allowed BLS resuscitation efforts to begin at 11:21 am; only 15 minutes after the initial call from the claimant's family.
- All police cars were equipped with AED's however, no one thought to use it.
  - **Per the officers on scene, there was no question the claimant was deceased when they arrived on scene.** The decision was made by the officers responding not to cut the claimant down. The Chief confirmed there are no written departmental policies that state when investigating a hanging the body must immediately be cut down. They have general investigation policies, not specific policies that refer to suicide by hanging.

An EMT has an obligation to render medical care in the field until one is confident the victim is dead and that the State of Connecticut EMS guidelines/protocols are adhered to. Irrespective of whether EMS can or cannot make a presumption of death, he has a statutory obligation to render medical care in the field. EMT protocols require resuscitation efforts for non-breathing and pulseless patients until such time that death can be pronounced.

State of Connecticut EMS protocol ***Resuscitation Initiation and Termination 6.15*** states– *"Resusitation must be started on all patients who are found apneic and pulseless UNLESS the following traumatic injury or body conditions exist: decapitation, decomposition or putrefaction, transection of the torso or incinetration."*

- The police vehicles were all equipped with AEDs but no AED was applied to the claimant.

The Police Chief declared this a crime scene immediately after locating the body. He did not allow the EMS/Fire Captain to enter the shed right away. There was a delay, after some discussion and thinking perhaps he could do a presumption of death, he allowed him to enter. He entered with no equipment. The EMT came out of the shed as the paramedic arrived at the shed and entered with EKG equipment. This is when, after hooking the victim to the EKG machine, pulseless electrical activity (PEA) was detected. The claimant was then cut down and transported to the hospital with resuscitation efforts.

SETTLEMENT AMOUNT:

Based on multiple factors; expert witness, testimony from the Chief of Police, the Towns executive leadership; it was determined that the best course of action would be to enter into settlement negotiations. **This claim was ultimately settled for - $1,050,000.**

CIRMA RECOMMENDATIONS:

CIRMA Risk Management is seeking feedback from the Law Enforcement Advisory Committee on the recommended best practices to reduce liability associated with this type of claim:

- Ensure that a policy exists which clearly explains an officers responsibilities, based on medical certification levels, when responding to medical calls, including trauma's.
- Ensure that all officers are versed and trained to the proper EMS protocols; specifically pertaining to their:
  - Obligations to render care as certified EMS professionals,
  - Obligations to initiate care based on their level of certifications,
  - Obligations to continue care until directed otherwise by the highest level of certification on scene or a doctor issuing medical control.
- Ensure that proper documentation is maintained in each officers' file as to their medical certification and training on EMS protocols and department policies.

In addition, a claim was made for loss of consortium, distress, anxiety and depression.

Questions? Ask your Supervisor or contact your CIRMA Risk Management Consultant at (203) 946-3700.

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