MARCH 2025 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]

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Prof. Bennett (former vol. firefighter / EMT-B at 3 FDs) with his Pet Therapy dog, FRYE.

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- **2025: FIRE & EMS LAW – RECENT CASE SUMMARIES / LEGAL LESSONS LEARNED**: Case summaries since 2018 from monthly newsletters: **https://doi.org/10.7945/j6c2-q930.**

  Updating 18 chapters of my textbook, FIRE SERVICE LAW (Second Edition; 2017): **http://www.waveland.com/browse.php?t=708**

- **2025: FIRE & EMS LAW – CURRENT EVENTS**: **https://doi.org/10.7945/0dwx-fc52**

- **2025: AMERICAN HISTORY – U.S. SUPREME COURT – KEY LEGISLATION IMPACT ON FIRE & EMS**: **https://doi.org/10.7945/av8d-c920**

File: Chap. 1 – Amer. Legal System

U.S. SUP. CT. – PROS. MUST CORRECT FALSE TESTIMONY

On Feb. 25, 2025, in Richard Glossip v. Oklahoma, the U.S. Supreme Court held (5 to 3) that death row inmate Richard Glossip is entitled to a new trial, since the Oklahoma Attorney General admitted that prosecutors failed to disclose their key witness (Justin Sneed, who committed the murder with a baseball bat) falsely testified he did not suffer from bipolar disorder and was not administered lithium by jail psychiatrist to treat that condition Richard Glossip was manager of the Best Budget Inn in Tulsa. Sneed, a part-time employee, said he was paid by Glossip to kill the owner of the hotel (Barry Van Treese) to cover up Glossip's embezzlement of hotel money. Sneed testified against Glossip in exchange for avoiding the death penalty, and when first conviction was reversed for ineffective counsel, he testified in a second trial. Sneed was the "only direct evidence connecting Glossip to the murder."
https://www.supremecourt.gov/opinions/24pdf/22-7466new_6479.pdf

The Majority decision (by Justice Sonia Maria Sotomayor):

> "Nearly two decades later, the State disclosed eight boxes of previously withheld documents from Glossip's trial. These documents show that Sneed suffered from bipolar disorder, which, combined with his known drug use, could have caused impulsive outbursts of violence. They also established, the State agrees, that a jail psychiatrist prescribed Sneed lithium to treat that condition, and that the prosecution allowed Sneed falsely to testify at trial that he had never seen a psychiatrist. Faced with that evidence, Oklahoma's attorney general confessed error.
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> Turning to the merits, we conclude that the prosecution violated its constitutional obligation to correct false testimony. In Napue v. Illinois, [June 15, 1959; https://supreme.justia.com/cases/federal/us/360/264/] this Court held that a conviction knowingly 'obtained through use of false evidence' violates the Fourteenth Amendment's Due Process Clause. 360 U. S., at 269. To establish a Napue violation, a defendant must show that the prosecution knowingly solicited false testimony or knowingly allowed it 'to go uncorrected when it appear[ed].' Ibid. If the defendant makes that showing, a new trial is warranted so long as the false testimony 'may have had an effect on the outcome of the trial," id., at 272—that is, if it 'in any reasonable likelihood [could] have affected the judgment of the jury.'
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> The evidence likewise establishes that the prosecution knew Sneed's statements were false as he testified to them. The prosecution almost certainly had access to Sneed's

medical file, which would have listed both the lithium prescription and the bipolar diagnosis. Among other things, those records would have been provided to the State as part of Sneed's competency evaluation …and the State opposed Glossip's discovery request of Sneed's medical files on its merits….

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For these reasons, we conclude that the prosecution's failure to correct Sneed's trial testimony violated the Due Process Clause. Glossip is entitled to a new trial."

Legal Lesson Learned: Prosecutors must correct false testimony. In arson and other criminal cases, if fire or EMS learn of incorrect testimony by prosecution witness, immediately inform the prosecutor so it can be disclosed to the defense and the Court.

File: Chap. 1 – American Legal System / Arson

AR: LOST FOREST – 3 SIGNAL FIRES – NO "NECESSITY DEF."

On Feb. 24, 2025, in United States of America v. Philip Alejandro Powers, III, the U.S. Court of Appeals for the 9th Circuit (San Francisco) held (3 to 0) that the U.S. Magistrate Judge who presided at two-day bench trial [no jury] properly rejected the "necessity defense" and found the defendant guilty of seven misdemeanor counts of leaving fires unattended, sentenced him to supervised probation, and ordered him to pay restitution to the U.S. Forest Service of $293,413.71 in recoverable fire suppression costs.
https://cdn.ca9.uscourts.gov/datastore/opinions/2025/02/24/23-2218.pdf

The Court wrote:

"Because Powers's actions in setting the fires were objectively unreasonable, and because he was not facing imminent harm when he set the Taylor Fire, he failed to meet the requirements of the necessity defense. Accordingly, we affirm.

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In May 2018, Powers began an approximately nineteen-mile hike on the Taylor Cabin Loop trail near Sedona, Arizona…. After losing the trail while hiking in northern Arizona, [the defendant] deliberately set three fires in the Prescott and Coconino National Forests…. He tried to use his phone to call for help, but he had no signal. He decided to stay at the [Taylor] cabin overnight.

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[TAYLOR FIRE] Around 9:00 p.m., Powers decided to set a signal fire. There was a fire pit next to Taylor Cabin, but Powers believed that a fire in the pit would not create enough smoke to be noticed by passing planes. Thus, he ignited a nearby patch of 'dead

grass mixed in with vegetation' that was 'right next to [the] fire pit.' This first fire, the Taylor Fire, spread over about a tenth of an acre, burning grass, brush, and small trees, but did not attract any rescuers.

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[SYCAMORE FIRE] After hiking about three miles away from Taylor Cabin [100 degrees], Powers decided to set another fire. He 'tried to get to a spot where [he] would be easily visible,' thinking that a higher 'vantage point' would allow the smoke to be 'easily seen from the canyon.' After searching for 'dead brush that would easily ignite,' 'stay lit' and 'cause smoke,' Powers ignited a dead tree. He did not build a fire ring, dig a fire pit or remove any flammable materials from the area before starting the fire.

The Sycamore Fire spread uncontrolled over 230 acres of forest, burning timber, shrubs, and grasses, and threatening Flagstaff, Arizona and the nearby watershed. Firefighters contained the fire after approximately nine day and the USFS incurred $293,413.71 in recoverable fire suppression costs.

By choosing not to take any precautions and to set the Sycamore Fire in an unnecessarily careless manner (and then abandon it, unextinguished), Powers acted unreasonably…. Because Powers has not shown that he was facing imminent harm when he set the Taylor Fire, and because the manner in which he set the fire was objectively unreasonable, his necessity defense as to Counts 2 and 5 fails.

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[SYCAMORE 2 FIRE] About thirty minutes after leaving the Sycamore Fire, Powers saw 'a low-flying helicopter,' which 'looped around' and left. The helicopter returned approximately thirty minutes later, and Powers began doing 'everything [he] could to get its attention.'… He also ignited a third signal fire, the Sycamore 2 Fire, which spread to a three-foot circle before dying out. As with the other two fires, Powers did not start the Sycamore 2 Fire in a fire ring or pit, nor did he clear flammable materials from the area…. In sum, the undisputed facts do not show that Powers acted reasonably to preserve his life when he started the Sycamore 2 Fire.

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The helicopter belonged to USFS, which had received reports of a wildfire. Unbeknownst to Powers, the Sycamore Fire had not died out—flying in, firefighters saw a smoke column and twenty to thirty acres of burning landscape. After landing, firefighters spotted Powers lying under a tree. He was able to walk to the helicopter with the assistance of two firefighters. The helicopter crew gave him water and flew him to Sedona where he was put in an ambulance and given intravenous (IV) fluids. While in the ambulance, Powers admitted to setting the fires."

Legal Lesson Learned: If you start a "signal fire" need to build fire ring or other method to contain it and stay with it.

> Note: The defendant is lucky to be alive; next time purchase a GPS handheld phone**.**
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> "Durable devices that go wherever you go and track your precise location along the way. Go farther than ever before when hiking and finding adventure." **https://www.garmin.com/en-US/c/outdoor-recreation/handheld-hiking-gps/?gad_source=1&gclid=Cj0KCQiA_Yq-BhC9ARIsAA6fbAg8Hzg7tt3LxTDrvBKQ6Iq20PiW7TlBW7J0osrwHwlbOwcCFzY0rTcaAu65EALw_wcB**

File: Chap. 1 – American Legal System

OR: FF SUED BY COUNCILMEN - RECALL – ANTI-SLAPP LAW

On Jan. 29, 2025, in Johnny Waggoner, Sr., Joanne Dixon; Kerry McQuisten v. Casey L. Husk, et al., the Court of Appeals of Oregon held (3 to 0) that the three former members of City Council may proceed with their lawsuit under the Oregon Corrupt Practices Act against Casey Husk, a former Lieutenant with the fire department. He filed recall petitions against 6 of the 7 member of City Council, including the 3 plaintiffs, claiming they voted to "dissolve" the fire department. The city council in April 2022 voted to have County EMS take over all EMS runs in the city; the department was not dissolved (staffing went from 15 career firefighters to 9). Oregon, like many states, has an "Anti-SLAPP law" [strategic lawsuits against public participation] that protects press and citizens from lawsuits by public officials for alleged misconduct, but that protection does not protect against a knowingly false statement. The lawsuit by the former Council members may now proceed to pre-trial discovery. https://cases.justia.com/oregon/court-of-appeals/2025-a181038.pdf?ts=1738179139

The Court wrote:

> "There is evidence that defendant worked as a firefighter for the Baker City Fire Department from 2020 to July 2022, was involved in union negotiations with the city regarding the fire department, and attended multiple city council meetings relating to the April 2022 vote. The record supports a reasonable inference that he knew that the city council did not vote to dissolve the fire department. See id. at 360 (concluding, with respect to an allegedly false statement regarding the fire department, that the plaintiff made out a prima facie case on the mental state element where, among other things, the defendant knew or should have known the true facts as a former fire department lieutenant and former city mayor). Accordingly, we conclude that the trial court did not err in denying defendant's special motion to strike plaintiff's complaint for a violation of ORS 260.532."

Legal Lesson Learned: When filing recall petition or other complaints against public official, carefully review allegations – opinions are protected under First Amendment and anti-SLAPP statutes, but not intentional false statements.

> Note: "Anti-SLAPP laws are intended to prevent people from using courts, and potential threats of a lawsuit, to intimidate people who are exercising their First Amendment rights. In terms of reporting, news organizations and individual journalists can use anti-SLAPP statutes to protect themselves from the financial threat of a groundless defamation case brought by a subject of an enterprise or investigative story. Under most anti-SLAPP statutes, the person sued makes a motion to strike the case because it involves speech on a matter of public concern. The plaintiff then has the burden of showing a probability that they will prevail in the suit — meaning they must show that they have evidence that could result in a favorable verdict. If the plaintiff cannot meet this burden and the suit is dismissed through anti-SLAPP proceedings, many statutes allow defendants to collect attorney's fees from the plaintiff." https://www.rcfp.org/resources/anti-slapp-laws/

File: Chap. 2 – LODD / FF Safety

MS: LT MURDERED - HALF BROTHER – CONV. AFFIRMED

On Feb. 20, 2025, in Terrance Watts v. State of Mississippi, the Supreme Court of Mississippi held (3 to 0) that the defendants was properly convicted by a jury of first degree murder, and sentenced by the judge to life imprisonment. "Around 8:00 a.m., Watts turned himself in at the Flora Police Department. Watts agreed to be interviewed by McNeal. During the video and audio recording of the interview, Watts recounted that he had just met Williams after finding out they were half brothers. Williams had met up with Watts on March 22, 2020, to get to know each other." https://www.courts.ms.gov/images/Opinions/CO182132.pdf

The Court held:

> "Shortly after midnight on March 23, 2020, Crime Scene Investigator Andrew Harris of the Jackson Police Department (JPD) was dispatched to a shooting at a Marathon gas station on Hanging Moss Road. Harris photographed the scene and collected evidence. Several of Harris's photographs depicted a deceased male lying on the ground with a gunshot wound to his head.
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> Also dispatched to the Marathon was Kevin McNeal, who was a detective with JPD at the time. McNeal obtained the surveillance footage from the Marathon. These video recordings were played in front of the jury. McNeal also spoke with the firemen who responded to the shooting and was informed that Williams had visited Jackson Fire Station Number 20 on March 22, 2023, with a man named Terrance, later identified as Terrance Watts.

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Michael Stinson was a fireman at JFD with Williams. He recounted seeing Williams twice on March 22, 2020. The first time when Williams brought Watts to Fire Station Number 20, Stinson recalled wrestling around with Williams and related that they would wrestle almost every shift. The second time Stinson saw Williams that day, Williams was deceased at the Marathon. Stinson was part of the rescue unit that responded to the shooting. Stinson identified the deceased body as Williams.

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A reasonable juror could infer based on common sense and lived experience that Watts formed a plan to kill Williams when he retrieved Williams's pistol from the center console, pulled back the slide, and ejected one live round onto the floorboard. The jury reasonably could have found that Watts's actions revealed that he, being previously unfamiliar with Williams's pistol, was unsure whether the hand gun had a bullet in the chamber. The jury reasonably could have found that once Watts ejected the live round, he then had confirmation that the pistol was ready to fire. Accordingly, the jury reasonably could have found that Watts was fully aware of what he was doing when he exited the Tahoe and intentionally shot Williams in the head. Viewing the evidence in the light most favorable to the prosecution, therefore, any rational juror could have found each element of first degree murder beyond a reasonable doubt.

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Occurrences of fratricide are nearly as old as humanity itself. The factual details of today's case unfortunately add another example to this ancient litany. Finding no error, we affirm."

Legal Lesson Learned: Responding to a shooting and finding body of fellow firefighter is particularly tragic.

Note: See article / video on the case. Feb. 20, 2025. "Court upholds man's conviction for killing Jackson firefighter." https://www.wjtv.com/news/local-news/court-upholds-mans-conviction-for-killing-jackson-firefighter/

March 23, 2000: https://www.firerescue1.com/firefighter-death/articles/miss-fire-lieutenant-killed-in-gas-station-robbery-jMwIEdZ3rDnt54xe/

File: Chap. 6 – Employment Litigations / Work Comp

IL: DIAB. HEALTH INSUR IF "EMERGENCY" - LIFT PT

On Feb. 20, 2925, in Charles R. Ford v. Village of Northbrook, et al., the Court of Appeals of Illinois, First District, Fourth Division, held (3 to 0) that the trial court correctly held the firefighter was met the definition of the health insurance statute – he was injured in "response to

what is reasonably believed to be an emergency." The had responded non-fire emergent to a "person feeling week" – and found patient (325-pounds, 65-years old) sitting on the toilet with two family members holding her upright. They used a stair chair, moved her the ambulance, and transported her red lights and siren. While moving her to hospital bed he felt pain in his right shoulder. The shoulder showed no fracture or dislocation, but Mr. Ford had a narrowing of his cervical spine in certain areas. An MRI also showed a narrowing of Mr. Ford's cervical spine, and he received a line-of-duty pension, but the Village denied health insurance since the emergency transport had concluded. https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/09ac8ced-f502-4e22-9f67-a03c9e14d801/Ford%20v.%20Village%20of%20Northbrook,%202025%20IL%20App%20(1st)%20231952-U.pdf

The Court wrote:

> "The circuit court granted Mr. Ford's writ of certiorari, finding that the Village's determination that Mr. Ford was not injured while responding to what he reasonably believed to be an emergency was clearly erroneous. The court observed that the medical records showed that the patient presented with pale skin, was on numerous medications, was complaining of pain, and was given oxygen in the ambulance. The court noted at the time Mr. Ford was injured while transferring the patient, he did not have a diagnosis for the patient, did not know the cause of her pain, and could not have known if the emergency had passed. The court determined that it was reasonable for Mr. Ford to believe that the emergency was ongoing. The court therefore reversed the decision of the Village and instructed the Village to provide Mr. Ford health insurance benefits under the Act.
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> Accordingly, we find that these facts establish that Mr. Ford was injured as a result of his response to what he reasonably believed to be an emergency. We are therefore left with the definite and firm conviction that the Village's finding to the contrary was clearly erroneous. We find that, under the circumstances of this case, Mr. Ford was entitled to benefits under section 10 of the Act and we affirm the judgment of the circuit court reversing the decision of the Village."

Legal Lesson Learned: The firefighter won his appeal; court viewed the entirety of the EMS run as an emergency, including the transport and lifting her on hospital bed.

File: Chap. 6 – Employment Litigation / Work Comp

MO: CARPEL TUNNEL – 3 MDs AGREE "DUTY-RELATED"

On Feb. 19, 2025, in State of Missouri ex rel. Jeremy Starr v. Board of Trustees for the Firefighter's Pension System of the City of Kansas City, Missouri, the Court of Appeals of Missouri, Western District, Second Division, held (3 to 0) the Circuit Court correctly reversed the Board, and awarded him a "duty-related" disability pension. Jeremy Starr served on the

Kansas City fire department for 18.5 years. Three medical experts - plaintiff's treating physician and the Boards' two independent medical examiners – all agreed the carpal tunnel "substantially caused by actual performance of [Starr's] duty as a firefighter."
https://cases.justia.com/missouri/court-of-appeals/2025-wd87111.pdf?ts=1739982610

The Court wrote:

> "The Pension Board rejected the opinions of Starr's treating physician and the Medical Board doctors, and consequently found that Starr had failed to satisfy his burden to prove work-relatedness, based primarily on two factors: (1) that Starr had overstated his use of particular vibrating equipment (driving a pumper truck; using power tools and chainsaws); and (2) that Starr had been on modified duty, and was therefore not exposed to the rigors of fire suppression work, for half the time in the twenty-seven months before his disability manifested.
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> The Pension Board's conclusion that Starr had failed to prove that his disability was work related is unsupported by sufficient competent evidence, and must be reversed."

Legal Lesson Learned: The Board improperly rejected the conclusion of its two independent medical examiners.

File: Chap. 7 – Sexual Harassment / Hostile Work Atmosphere

TX: FEMALE DIR. EMS FIRED – YOUNGER, MALE – PAY RAISE

On Feb. 28, 2025, in Debra Fishbeck v. Lavaca County, Texas, et al., United States District Court Judge Drew B. Tipton, U.S. District Court for Southern District of Texas, Victoria Division, held that the sexual discrimination and age discrimination claims may proceed to trial. She is in her 60s; her replacement, Michael Furrh, 35-year-old male, was given large salary increase and also was allowed to hire a Deputy Director with increased budge. She, however, cannot sue Furrh for libel or slander; he told local newspaper (without naming her) and Board about missing DEA drug license and a problem with bed bugs at station; no proof false or malice on his part.
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ihmq1V3jfZ6cRq%2F16g6oMzehMbU6sCAAVLwj8mhDWJ%2Fs?utm_medium=email&_hsenc=p2ANqtz-8JjGZ-lR6fl1RsNdDcqsnpcmrG6whJWTlMARettGwx0ES-A1dRSAgBXSDZpV9bN9izHFsIevXUDCelhj20uXc0U1Zv-w&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court wrote:

"Defendants offer the following reasons for Fishbeck's termination, which they allege are legitimate and nondiscriminatory: (1) LCRS's operational revenue declined significantly for three years in a row; (2) LCRS received an unsatisfactory third-party audit of its bookkeeping; (3) an EMT resigned shortly after accepting a job with LCRS because of concerns with the department; (4) Fishbeck did not attend Lavaca County Medical Center meetings for several years; and (5) a lack of cleanliness at LCRS facilities.

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Yet after they hired Furrh, he was given every resource (and more) that Fishbeck requested to fix those very deficiencies in the department. (*Id.* at 4-5). In other words, Defendants knew about LCRS's problems, did not give Fishbeck the tools to succeed, and only considered the problems a terminable offense because they wanted to replace her with a man-one whom they equipped with the same resources they withheld from her…. Fishbeck's evidence, when viewed in the light most favorable to her, shows a genuine dispute about whether Defendants' proffered reasons are a pretext.

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Fishbeck also offers the Lavaca County 2021 Fiscal Year Budget as evidence of disparate treatment between her and Furrh…. Among other things, the budget shows that the salary for the LCRS Director increased 27.73% after Fishbeck was fired. (*Id.* at 3);… Fishbeck was paid $58,718 annually, while Furrh was paid $75,000….Fishbeck was not allotted a budget for an assistant; but in FY 2021, the Commissioners Court approved an allocation of $64,500 to hire an LCRS Assistant Director….. Fishbeck received no financial support from the County's General Fund to supplement LCRS's operations; but in 2021, the Commissioners Court approved a $1,000,000 transfer to supplement LCRS's revenue for Furrh.

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As discussed above, Fishbeck has made out her prima facie case of intentional sex discrimination under Title VII and satisfied her burden of disputing Defendants' reasons for firing her."

Legal Lesson Learned: Giving 27% increase in salary to younger new hire ($75,000 v. $58,718) is certainly a "red flag" for a jury. The case will now proceed to trial.

Chap. 7 - Sexual Harassment / Hostile Work Atmosphere

NY: FIRED - PROTOCOL COURSE - NOT HOSTILE WORK

On Feb. 17, 2025, in Marcia Parke v. Assist Ambulance, United States District Court Judge Orelia E. Merchant, U.S. District Court for Eastern District of New York, granted the defense motion to dismiss; she was fired for not completing protocol updated course by Dec. 29, 2020.

Her claims of gender and racial discrimination, retaliation, and hostile work environment dismissed – including claim that there was a hostile workplace when her Supervisor on December 23, 2020 ordered to take off her work jacket to confirm she was not wearing uniform shirt. She had on "low cut" tee shirt. https://cases.justia.com/federal/district-courts/new-york/nyedce/1:2023cv09066/507538/25/0.pdf?ts=1739862975%20https://media.cadc.uscourts.gov/orders/docs/2025/02/25-5028LDSD.pdf

The Court wrote:

> "Plaintiff alleges that, on or about December 23, 2020, she had spilled coffee on her shirt on her way to work and that because the shirt was soaked, she removed it…. While Plaintiff was at work, her supervisor Jason Cohen ("Cohen") asked her whether she was wearing a work uniform shirt under her jacket….Plaintiff was wearing a 'low-cut' t-shirt under her jacket, and she responded that she was not wearing a uniform shirt…. She states that Cohen could have seen that she was not wearing her work uniform, but Cohen nonetheless asked that she unzip her jacket so that he could confirm Plaintiff was not wearing a work uniform shirt and 'insisted [that] she unzip her jacket more so he could see more.… Plaintiff alleges that Cohen asked her to unzip her jacket a 'third time' thereby 'exposing part of her [upper] breast.' … Later that day, Plaintiff met with Cohen, Assistant Ambulance employees Carey Peguese [and another]…where she was informed that she would be suspended.
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> Plaintiff asserts a Title VII sex discrimination claim for harassment on numerous occasions, including the December 23, 2020 incident involving Cohen….to state a claim for hostile work environment, a plaintiff must plead facts that would tend to show the complained of conduct: (1) "is objectively severe or pervasive—that it creates an environment that a reasonable person would find hostile or abusive"; (2) creates an environment "that the plaintiff subjectively perceives as hostile or abusive"; and (3) 'creates such an environment because of the plaintiff's sex.' Patane v. Clark, 508 F.3d 106, 113 (2d Cir. 2007) (citing Gregory v. Daly, 243 F.3d 687, 691–92 (2d Cir. 2001)) (cleaned up)."

Legal Lesson Learned: Hostile work environment claim based on her wearing tee shirt in place of her work shirt properly dismissed.

File: Chap 7 - Sexual Harassment / Hostile Work Atmosphere

VA: NEG JOB REFERENCES – SHE "SWINGER" - NO CASE

On Jan. 31, 2025, in Natalie Lundberg v. Delta Response Team, LLC and Thomas Walton, United States District Court Judge Jasmine H. Yoon, U.S. District Court for Western District of

Virginia, Charlottesville Division, granted defense motion for summary judgment. The plaintiff applied to two different municipal fire departments; DRT Vice President Tom Walton told the prospective employers she was a "swinger." He claimed Lundberg had "a very different view on her private life" and that "her and her fiancé are open swingers and partiers and so forth." https://casetext.com/case/lundberg-v-delta-response-team-llc-1

The Court wrote:

> "Lundberg applied to two positions with municipal fire departments in late 2021 and early 2022. In November 2021, she applied to work as a firefighter for the City of Lynchburg Fire Department ('City of Lynchburg')…. Following the background check, the City of Lynchburg informed Lundberg that she had not been selected for the position.
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> Lundberg next applied for a position with Bedford County Fire and Rescue ("Bedford County")…. On February 16, 2022, she received and accepted a conditional offer of employment, which was contingent on a background investigation and physical and psychological examinations…. Bedford County's background investigator spoke to Lundberg, Walton, and a couple personal references…. On March 7, 2022, Bedford County informed Lundberg that it was rescinding her conditional offer of employment…. The official who made the decision, Bedford County Fire and Rescue Chief Janet Blankenship, affirmatively states that it was not based on the background investigation report or the information Walton provided to the investigator….Instead, Blankenship explains that her decision was based on the results of Lundberg's psychological health evaluation.
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> With four independent references outright recommending against hiring Lundberg for the position, and one (Millner) sharing even more detailed allegations about her sex life, the record does not support a finding that Walton's comments made the City of Lynchburg less likely to hire her. While Lundberg suggests that Walton is well-known in the first-responder community, that fact does not create a jury question on this issue, particularly when all four references who recommended against hiring her worked as firefighters for the City of Lynchburg at the time she applied.
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> In sum, even if an employment reference can support a Title VII discrimination claim when it negatively impacts a job application, there is insufficient evidence that Walton's references had such an impact here. For that reason, the court concludes that Lundberg's disparate-treatment discrimination claims fail as a matter of law."

Legal Lesson Learned: Negative job references were from several individuals.

> Note: See Ohio Revised Code: "Section 4113.71 | Immunity of employer as to job performance information disclosures. (B) An employer who is requested by an employee

or a prospective employer of an employee to disclose to a prospective employer of that employee information pertaining to the job performance of that employee for the employer and who discloses the requested information to the prospective employer is not liable in damages in a civil action to that employee, the prospective employer, or any other person for any harm sustained as a proximate result of making the disclosure or of any information disclosed, unless the plaintiff in a civil action establishes, either or both of the following:

(1) By a preponderance of the evidence that the employer disclosed particular information with the knowledge that it was false, with the deliberate intent to mislead the prospective employer or another person, in bad faith, or with malicious purpose;

(2) By a preponderance of the evidence that the disclosure of particular information by the employer constitutes an unlawful discriminatory practice described in section 4112.02, 4112.021, or 4112.022 of the Revised Code." https://codes.ohio.gov/ohio-revised-code/section-4113.71

Chap. 8 - Race Discrimination

MD: TRUMP DEI PROGRAMS - PREL. INJUCTION – DOJ FDs

On Feb. 21, 2025, in National Association of Diversity Officers in Higher Education, and American Association of University Professors v. Donald J. Trump, et al., United States District Court Judge Adam B. Abelson in Baltimore issued a nationwide preliminary injunction against the Termination, Certification and Enforcement Threat Provisions of President Trump's Executive Order of January 20, 2025. However, an appeal is likely to 4th Circuit (Richmond) and possibly request to U.S. Supreme Court. [See Note at end of this case review. Feb. 26, 2025, "Attorney General Pam Bondi Dismisses DEI Lawsuits Involving Police Officers and Firefighters, Advances President Trump's Mandate to End Illegal DEI Policies."] On Feb. 26, 2024, Attorney General announced https://www.justsecurity.org/wp-content/uploads/2025/02/National-Association-of-Diversity-Officers-in-Higher-Education-v.-Trump-feb-21-2025.pdf.

Judge Abelson wrote:

> "Plaintiffs are likely to succeed on their claim that the Enforcement Threat Provision, § 4(b)(iii) of the J21 Order, violates the First Amendment, because it threatens to initiate enforcement actions against Plaintiffs (in the form of civil compliance investigations) for engaging in protected speech…. The Enforcement Threat Provision applies broadly to the private sector; therefore, unlike with the other provisions, the analysis is based on pure private speech regulated by the First Amendment as opposed to the speech of federal contractors or grantees.
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The White House and Attorney General have made clear, through their ongoing implementation of various aspects of the J21 Order, that viewpoints and speech considered to be in favor of or supportive of DEI or DEIA are viewpoints the government wishes to punish and, apparently, attempt to extinguish."

Legal Lesson Learned: Fire & EMS departments with federal grants or contracts may be required to certify that they are complying with DEI Executive Order. Consult with your legal counsel.

Note:

On Feb. 26, 2025, Press Release: "Attorney General Pam Bondi Dismisses DEI Lawsuits Involving Police Officers and Firefighters, Advances President Trump's Mandate to End Illegal DEI Policies." https://www.justice.gov/opa/pr/attorney-general-pam-bondi-dismisses-dei-lawsuits-involving-police-officers-and-firefighters

See 2/27/2025 article: **"**Justice Department Drops Alleged Discriminatory First Responder Hiring Cases In DEI Rollback…. A Justice Department official said the administration is walking away from four cases, including one that led to a settlement agreement resolving an investigation into discriminatory hiring practices affecting Black and female applicants to the Maryland State Police. It's part of a broader effort by President Donald Trump's administration to roll back initiatives and programs promoting diversity, equity and inclusion, which Republicans contend threaten merit-based hiring…. Other cases were related to fire or police departments in North Carolina, Georgia, and Indiana, Mizelle said." https://www.firerescue1.com/legal/justice-department-drops-alleged-discriminatory-ff-hiring-cases-in-dei-rollback?utm_source=delivra&utm_medium=email&utm_campaign=FR1-Daily-2-27-25&utm_id=8566464&dlv-emuid=fed355b8-46a2-4fa4-b55c-4d602dde33c4&dlv-mlid=8566464

File: Chap. 12 – Drug-Free Workplace

PA: MEDICAL MJ – PTSD – LAB HIRE DEMOTED – NO ADA

On Feb. 12, 2025, in Nicole Zimmerman v. Health Network Laboratories, L.P., United States District Court Judge Gail A. Weilheimer, U.S. District Court for Eastern District of Pennsylvania, granted defense motion for summary judgment' medical marijuana use is not protected under the Americans with Disabilities Act (ADA). The company (50 locations; 1,500 employees) hired the plaintiff on March 3, 2022 as a Phlebotomist II. She suffers from Post-Traumatic Stress Disorder ("PTSD") and Generalized Anxiety Disorder ("GAD") and uses medical marijuana to support her treatment for these diagnoses. On April 13, 2022, Ms. Zimmerman was instead offered a position as a Laboratory Assistant [classified as non-safety sensitive] which constituted a demotion with a lower hourly rate of pay.

https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IkeXMb88bktridCVT2cNJQMzpCQ6GgqcAq9z2DsPb3SV?utm_medium=email&_hsenc=p2ANqtz-85xVo1nyN3HdtXmyEBbnKz3steTpDAfhmpvG3xr6TrZ9DYf7Sn2b546JhEk92EHRSHghCxIzSuD7PvUX919GE5tGfx5g&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court wrote:

> "Because the adverse employment action here was precipitated by Ms. Zimmerman's use of medical marijuana, she is not a qualified individual per the ADA.
>
> [Fire Department case – in] *Eccleston v. City of Waterbury,* No. 3:19-cv-1614, 2021 WL 1090754, at *6 (D. Conn. Mar. 22, 2021). In *Eccleston,* the District Court of Connecticut held that a firefighter, lawfully prescribed medical marijuana under Connecticut state law, was not protected as a qualified individual under the ADA. *See Eccleston,* at *6. The Court explained that to hold 'otherwise would place [the ADA] in direct tension with the clear provisions of the CSA-a statute the ADA relies upon to define the term "illegal drug use.'
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> Similarly, the District Court of Colorado held termination on account of complainant's medical marijuana use did not constitute discrimination under the ADA. *Steele v. Stallion Rockies Ltd,* 106 F.Supp.3d 1205, 1218 (D. Colo. 2015); *see also Aiiderson v. Diamondback Investment Group,* 117 F.4th 165 (4th Cir. 2024) (terminating individuals taking illegal drugs to treat a disability is permissible, so long as the goal of the drug testing scheme does not intentionally exclude any individual taking a *lawfully prescribed* drug to treat a disability); *Zarazua v. Ricketts,* 8:17CV318, 2017 WL 6503395, at *2 (D. Neb. Oct. 2, 2017) (exception for medical marijuana in state law is not a reasonable accommodation under the ADA); *Barber v. Gonzalez* No. CV-05-0173, 2005 WL 1607189, at *1 (E.D. Wash. Jul. 1, 2005) (physician supervised drug use must be authorized under the Controlled Substances Act or other provisions of Federal law, regardless of any state law authorization).
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> Accordingly, this Court concludes that employees properly prescribed marijuana in compliance with Pennsylvania law, who then experience adverse employment determinations based on that use, are not "qualified individuals" contemplated at 42 U.S.C, § 12101, et seq. Although this specific issue has not been decided by the Third Circuit, this Court's conclusion accords with case law within the Circuit examining failed drug tests in slightly different factual contexts. *See Drift, supra* (use of marijuana precludes and individual from being "qualified" under the ADA if the employer acts on this use); *Lehenky v. Toshiba America Energy Systems Corp.,* No. 20-4573, 2022 WL 523739, at *3 (E.D. Pa. 2022) (over-the-counter CBD product resulting in positive drug test and subsequent termination not covered by ADA), *aff'd,* 2023 WL 3562981 (3d Cir.

May 19, 2023). As such, Plaintiff cannot make *a prima facie* showing of discrimination to even engage the *McDonnell Douglas* burden shifting framework in the first place."

Legal Lesson Learned: Fire & EMS department dug use policies should address medical marijuana and recreational marijuana.

File: Chap. 13 - EMS

NY: CHEST PAIN - PT 5 FLIGHTS – DIED – GOV. IMMUNITY

On Feb. 27, 2025, in Yajaira Morales, et al. v. The City of New York, et al., the Supreme Court of New York, Appellate Division, First Judicial Department, held (5 to 0) that trial court correctly granted summary judgment to the City and EMS personnel. The court had previously remanded the case to the trial court judge for further briefing and re-argument, and the judge once again granted summary judgment to the defense. Based on her vitals and overall appearance, the EMS told the patient that she could walk down the stairs with them on oxygen and be quickly transported to the hospital, or they could go down and get the stair-chair from the ambulance. The patient elected to walk down the stairs but unfortunately collapsed and could not be revived. The City and EMS enjoy governmental immunity when making a "discretionary" decision about getting the patient to the ambulance
https://www.nycourts.gov/courts/AD1/calendar/AppsMots/2025/apps/20250227/2024-01363%20et%20seq..pdf

The Court wrote:

> "While the City's witnesses generally concurred that it was ill-advised to increase the oxygen demand of a patient with cardiac symptoms by walking down stairs, the firefighters also testified that decedent's general presentation was not that of someone in cardiac distress or otherwise in an emergent condition. Based on their assessment of decedent, the firefighters offered decedent the option of walking down to a waiting ambulance to permit her to reach a hospital more quickly.
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> ***
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> A municipality is immune from liability where the actions of its employees in performing governmental functions involves the exercise of discretion (see McLean v City of NY, 12 NY3d 194, 202-203 [2009]). Discretionary acts 'involve the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result' (Tango v Tulevech, 61 NY2d 34, 40-41 [1983]). Applying that standard, we find that the City is immune from lability because the responding firefighters were performing discretionary acts.

> ***
> Plaintiffs' expert opined that the assessment 'protocol' provided a mandatory course of action from which the firefighters could not deviate, demonstrating that their actions were merely ministerial. However, a generally uniform approach in assessment and care does not change the discretionary nature of the firefighters' actions and the governmental function."

Legal Lesson Learned: Thoroughly document on EMS report the condition of the patient prior to her consent to walk down the stairs.

File: Chap. 13 - EMS

VA: EMTs NO CPR - MISREAD DNR – GOOD SAMARITAN LAW

On Feb. 25, 2025, in Rebecca Ann Shoots, Administrator of the Estate of Calvin Harmon Stools v. Marion Life Saving Crew, Inc., the Court of Virginia held (3 to 0; unpublished decision) that the trial court properly dismissed the lawsuit against the ambulance company since plaintiff's attorney failed to provide medical expert testimony that the patient (diabetic ketoacidosis) would have lived if given prompt resuscitation. The EMTs were previously held not liable by the Virginia Supreme Court under state law that Good Samaritans, unpaid, not liable even if negligent. https://cases.justia.com/virginia/court-of-appeals-unpublished/2025-1999-23-3.pdf?ts=1740501043

The Court wrote:

> "It is true that MLSC's EMTs were negligent: the trial court previously 'found that the [EMTs] were 'clearly negligent, and probably grossly negligent' in failing to thoroughly read the Advance Directive,' [Virginia Supreme Court, Stoots I, 300 Va. at 361], and the Supreme Court acknowledged in its previous review of this case that 'it is undisputed that the [EMTs] committed a grave mistake in failing to evaluate the Advance Directive more thoroughly,' id. at 367. But the question before us is not whether the EMTs were negligent in their reading and interpretation of the Advance Directive, or whether MLSC can be held liable for damages caused by their negligence. Rather, the issue before us is, as alleged in her complaint, whether their failure to provide 'any therapeutic treatments, including resuscitation drugs, IV solution, chest compressions, ambu bagging or any other treatment,' in light of Calvin's diabetic ketoacidosis, destroyed his chance of survival. And further, whether Calvin could have survived his underlying medical emergency even had resuscitative treatment been timely and effectively administered. Given the various types of therapeutic interventions allegedly withheld by the EMTs, we cannot conclude that a lay jury would possess the technical knowledge necessary to determine whether those interventions would have been efficacious and led to Calvin's survival."

Legal Lesson Learned: EMTs must carefully read the Advanced Directive to confirm it is a DNR.

> Note: See State of Ohio Do Not Resuscitate order form which is effective as of September 1, 2019. The form is one page and includes the DNRCC [Comfort Care] and DNRCC-Arrest choices, the DNR Protocol, and information regarding the protections provided to health care providers, and instructions.
> **https://odh.ohio.gov/wps/wcm/connect/gov/9660690e-44bf-4c71-b7bd-2310f9b644e7/DNR%2Bcomfort%2Bcare%2Bform1.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_79GCH8013HMOA06A2E16IV2082-9660690e-44bf-4c71-b7bd-2310f9b644e7-mSn9I9G**

File: Chap. 13 - EMS

CA: NO C-COLLAR – QUADRIPLEGIC – NOT GROSS NEG

On Feb. 20, 2025, in Manju Devga v. City of Santa Monica, the California Court of Appeals, Second District, Division Two, held (2 to 1; unpublished decision) that trial court properly dismissed the lawsuit. The conduct of EMS may have been negligent and led to the permanent injuries of the patient (a Medical Doctor), as they ignored the warnings from his wife (another Medical Doctor), but under California law the EMS and the City are immune from liability unless proof of "bad faith or gross negligence."
https://www4.courts.ca.gov/opinions/nonpub/B332479.PDF

Court described facts:

> "Manju and Baldev were medical doctors. On April 27,2022, Baldev fell at home, hitting his head on the bathtub. Manju found her husband on the bathroom floor and called 911. She did not move him because she was concerned that he may have sustained orthopedic injury or brain trauma.
>
> Manju informed City's emergency medical technicians (EMT's) that she is a doctor, and that they needed to protect and stabilize Baldev's neck before moving him because he had hit his head. They replied that they 'are professionals and you need to let us do our job,' and pushed her out of the bathroom.
>
> Manju witnessed the EMT's actions through the doorway. They did not put a cervical spine (C-spine) immobilization collar on Baldev, or take precautions to protect his spine, contrary to Manju's warning. They moved him, had him sit up, and tried to get him to stand. They opined that 'he looks ok' " and was able to move his extremities. They sat him on a chair.
>
> When EMT's placed Baldev on a gurney, he voiced concern that no precautions were being taken to protect his spine from further injury. Nonetheless, they put the gurney in

an upright position and moved him downstairs 'with a bouncing, jarring motion with each step.' Baldev expressed discomfort and distress, and Manju protested. The EMT's put Baldev in a supine position to load him in the ambulance, further jarring him. He complained of pain, and asked the EMT's to place supports on him for safety when the vehicle's movement jostled him while it drove down the road. They ignored his requests.

Baldev was evaluated at a nearby hospital. A CT scan showed a serious neck injury. Physicians placed a C-spine collar on him and transferred him to UCLA for emergency surgery for a spinal cord injury. He became quadriplegic after his fall."

The Court held:

"The issue is whether EMT's efforts were grossly negligent. However, the pleading does not show an 'extreme departure' from the standard of care. Baldev was awake, alert, talking, moving his extremities, and able to sit in a chair. If EMT's undertake triage measures and arrange transport to a hospital, it is immaterial if their acts or omissions are alleged to be below the standard of care: Efforts that are ultimately unavailing are not an 'extreme departure' from the standard of care.

***

The facts here show ordinary negligence, not gross negligence. The Legislature has chosen to give immunity to EMT's who must make rapid decisions without the benefit of a testing device, such as a CT scanner, that would show injury."

DISSENT:

"Despite this information, the EMTs failed to 'put a cervical spine ('c-spine') immobilization collar' on Baldev or 'otherwise secure and protect his spine' before proceeding to sit him up. The EMTs moved Baldev to a gurney, converted the gurney into a sitting position, and brought it down two flights of stairs 'with a bouncing, jarring[] motion with each step.' 'With each jarring movement[,]' Baldev indicated his distress, 'informing the [EMTs] of [the] discomfort the movements were causing him.'
Once loaded into the ambulance, Baldev again informed the EMTs of his discomfort, including spinal pain, and requested support as he continued to be jarred by the motion of the ambulance. These requests were ignored. As a result, Baldev was rendered quadriplegic.

***
Because, liberally construed, the complaint here states a cause of action for gross negligence, it cannot be said at this early juncture that the City of Santa Monica is entitled to section 1799.107 immunity as a matter of law…. I proffer that appellant has sufficiently pled gross negligence or, at a minimum, should be permitted an opportunity to amend the complaint."

Legal Lesson Learned: These are very disturbing facts; please share with your personnel in continuing education sessions.

> Note: California code – Section 1799.106
> https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1799.106.&lawCode=HSC
> "CHAPTER 9. Liability Limitation
>
> 1799.106.
> (a) In addition to the provisions of Section 1799.104 of this code, Section 2727.5 of the and Professions Code, and Section 1714.2 of the Civil Code, and in order to encourage the provision of emergency medical services by firefighters, police officers or other law enforcement officers, EMT-I, EMT-II, EMT-P, or registered nurses, a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse who renders emergency medical services at the scene of an emergency or during an emergency air or ground ambulance transport shall only be liable in civil damages for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. A public agency employing such a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse shall not be liable for civil damages if the firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse is not liable.
> (b) For purposes of this section, "registered nurse" means a registered nurse trained in emergency medical services and licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code."

File: Chap. 13 - EMS

DE: EMT REPORT - WOMAN INTERFERED – 2-YR STATUTE

On Feb. 10, 2025, in Donicha McCann-Cross v. Dover EMS and Kent County EMS, Resident Judge Jeffery J. Clark, Superior Court of Delaware, dismissed the defamation lawsuit filed by the sister of deceased driver since she failed to file within the two-year statute of limitations. In her pro se (no attorney) lawsuit she claimed that EMS report defamed her by stating she interfered at the scene, and police had to remove her.
https://courts.delaware.gov/Opinions/Download.aspx?id=375250

The Court wrote:

> "Ms. McCann-Cross alleges the following facts which are accepted as true for purposes of this motion to dismiss. Ms. Donnine McCann-Cross (hereafter the "Decedent") passed away suddenly because of injuries suffered in a car accident at the intersection of Saulsbury and College Road in Dover on February 20, 2021. Immediately after the accident, the Decedent's daughter called Ms. McCann-Cross and informed her of the accident. Ms. McCann-Cross then drove to the accident scene within four minute. When she arrived, Kent EMS's personnel were already at the scene, but the Decedent, her sister,

was still in her vehicle. Ms. McCann-Cross alleges that Kent EMS personnel unreasonably delayed treating the Decedent's life-threatening injuries.

***

Ms. McCann-Cross further contends in her complaint that EMS personnel, including Kent EMS, falsified records to conceal their negligence. She also alleges that Kent EMS personnel defamed her in those records when they documented that (1) she interfered with their treatment of the Decedent, and (2) the police had to remove her from the scene because of her unruliness.

***

In this case, Ms.McCann-Cross mistakenly equates allegedly false statements to fraudulent conduct that tolls a statute of limitations. That argument misunderstands the proper focus— that is, the need to determine whether the defendant allegedly perpetrated a fraud intended to affirmatively hide the existence of the claim. Here, Ms. McCann-Cross alleges no facts to support that Kent EMS took any action, much less fraudulent action, to hide those statements from her. The statute of limitations applicable to her defamation claims was not tolled. Those claims must be dismissed because she did not meet the statutory deadline for filing them."

Legal Lesson Learned: EMS report properly included information about third party interfering with EMS rendering care.

File: Chap. 13 - EMS

DE: EMT REPORT - WOMAN INTERFERED – 2-YR STATUTE

On Feb. 10, 2025, in Keisha Cappel and Alfonso Jones v. Aston Township Fire Department, et al, United States District Court Judge John F. Murphy approved the settlement of $950,000. "After apparently convincing Ms. Jones not to go to the hospital, the paramedics left the scene and inaccurately documented the encounter." The contingency fee agreement distributes 33.3% of sums recovered after costs to counsel, totaling a fee of $303,504.96. "Following our review of the proposed settlement agreement, as required by Pennsylvania's Probate, Estates, and Fiduciaries Code, we find the proposed settlement amount to be adequate, the allocation of proceeds to be reasonable, and the attorneys' fees and costs to be reasonable." https://cases.justia.com/federal/district-courts/pennsylvania/paedce/2:2023cv00155/604825/106/0.pdf?ts=1739281859

The Court wrote:

"This case involves the death of a woman, Tamika Jones. Ms. Jones's family called 911 for help because she was experiencing significant and concerning COVID-19 symptoms. Two teams of paramedics were sent, including an advanced team, but only one junior

paramedic evaluated Ms. Jones. After apparently convincing Ms. Jones not to go to the hospital, the paramedics left the scene and inaccurately documented the encounter. Ms. Jones died the next day.

***

On the evening of January 22, 2021, while at the home of her mother and father — where she was living to help her mother who was battling cancer — Tamika Jones was struggling to breathe and could not walk…. Five days earlier, Ms. Jones's father, Mr. Jones, had been hospitalized for symptoms related to COVID-19.

***

The Aston Township Fire Department unit arrived first, and Marshall, a new EMT-B, went inside the home…. According to the complaint, Marshall 'consciously disregarded two blood oxygen readings [of Ms. Jones] which Marshall himself stated would be nearly fatal' and "instead of investigating further by checking vital signs, [] acted with deliberate indifference by halting his evaluation.' … Marshall purportedly told Ms. Jones 'I can take you to the hospital, but they will just bring you back home' and added 'I'd stay here. They are really wanting people to stay home. Your best chance is to stay here.' … Before leaving Ms. Jones, Marshall did not get a signed refusal form or contact Medical Command, which is supposed to be 'the final sign-off in deciding not to transport a patient.' Meanwhile, Kisela, the more experienced EMT-B, 'waived off' the Advanced Life Support unit….The incident report completed by Marshall and Kisela indicated 'No Patient Assessed.' …Ms. Jones died the next day."

Legal Lesson Learned: Get a set of vitals and if no transported is indicated, obtain a signed patient refusal.

File: Chap. 13 - EMS

MA: FIRED - DIDN'T DELETE PT PHOTO – WHISTLEBLOWER

On Jan. 30, 2025, in Nial Luu v. Falon Service, Inc., the Appeals Court of Massachusetts held (3 to 0) that trial court improperly dismissed the lawsuit. On Nov. 30, 2019, the EMT was driving ambulance transporting patent from Encompass Health Rehabilitation Hospital experiencing an altered mental status to a hospital. "Upon arrival at the hospital, the plaintiff became aware of a new hemorrhage wound on the patient's arm. The plaintiff questioned his partner about how the injury resulted, but the partner was not able to provide an explanation. Believing that the injury was a result of his partner's misconduct and neglect of the patient, the plaintiff used his personal cell phone to take photographs and one video recording of the patient's arm injury prior to taking the patient into the hospital." After reporting this to his Supervisor and sending her a copy of the photo, his job duties now included sweeping, mopping, and sanitizing the station and paramedic trucks. On Jan. 8, 2020 he was told to delete the photo in meeting with Vice-President, Human Resources Director, and Senior Vice-President. Instead, on Jan. 14, 2020 he

made report to the State Office of Emergency Medical Services – he was fired on Jan. 17 for not deleting the photo.

The Court wrote:

> "Concluding that G. L. c. 149, § 187 (*b*), prohibits retaliation by an ambulance service against an EMT employed by it for reporting medical misconduct to the government, we reverse the dismissal of the whistleblower claim.
>
> ***
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> The plaintiff here falls squarely within 'any other health care provider who performs or has performed health care related services for and under the control of a health care facility for care-related services.' G. L. c. 149, § 187 (*a*). As an EMT employed by Fallon, the plaintiff performed care-related services for and under the control of Fallon, a health care facility, including driving an ambulance and providing patient care in transport. During the incident in question, the plaintiff responded to a call at a rehabilitation hospital for a patient experiencing a medical emergency. The plaintiff was responsible for driving the ambulance as his partner provided medical care to the patient in the vehicle. In each of these tasks, the plaintiff interacted directly with the patient, who required immediate health care service. This falls within the patient care that G. L. c. 149, § 187, was designed to safeguard."

Legal Lesson Learned: Avoid whistleblower lawsuits. When an employee reports possible misconduct by another employee, promptly conduct an investigation and advise of your actions.

File: Chap. 15 – Mental Health

CO: PARAMEDIC TACKLED MENTAL - PT DIED – NO CASE

On Feb. 28, 2025, in Estate of Kevin Dizmang v. Sean Reed, a Colorado Springs Police Officer and Nick Fischer, a Colorado Springs Paramedic, United States District Court Judge Charlotte N. Sweeney, U.S. District Court for District of Colorado, granted motions to dismiss the paramedic and the police officer. The paramedic was on a three-person crisis response team (CRT) with a police officer and a licensed clinician. The paramedic tackled the mental patient to prevent him walking back into the street and then render care. Both the paramedic and the police officer have qualified immunity.
https://storage.courtlistener.com/recap/gov.uscourts.cod.231472/gov.uscourts.cod.231472.63.0.pdf

The Court described facts:

> "[Officer]Reed approached Mr. Dizmang, who walked back into traffic and bent over with his hands on his knees, displaying respiratory distress. Id. Mr. Dizmang said, 'HELP

me,' then walked farther into the road…. Mr. Dizmang repeatedly said 'please' and walked in circles in a 'clearly confused and panicked state.' … Defendant Reed then told Mr. Dizmang, 'sit down or put your hands behind your back.'

***

The parties dispute what happened next. [Court now references the plaintiff's complaint.] Plaintiff alleges that, as Mr. Dizmang stood in the tree line approximately 20 feet from the road, [Paramedic] Fischer 'suddenly and violently tackled' him to the ground…. As alleged, Defendant Fischer put Mr. Dizmang into a chokehold by wrapping his arms around his neck while Defendant Reed handcuffed Mr. Dizmang's hands behind his back…. Defendant Fischer maintained this hold for approximately 30 seconds…. Mr. Dizmang stopped moving.

Defendant Fischer then rolled Mr. Dizmang face down on the ground, with his hands on the back of Mr. Dizmang's neck and 'driving his body weight downward, [Mr. Dizmang's] neck and face into the ground. … Plaintiff alleges that Defendant Fischer stayed in that position, 'with his body weight on [Mr. Dizmang's] neck and back,' for approximately forty-five seconds….Defendants Fischer and Reed then rolled Mr. Dizmang into a seated position…. At that point, Mr. Dizmang still had a faint pulse, but he was struggling to breathe and was unresponsive to questions and commands…. A bystander repeatedly told Mr. Dizmang, 'talk to me,' but he never responded…. Defendant Reed called for an ambulance…. Defendants Reed and Fischer left Mr. Dizmang in handcuffs…. He remained handcuffed for nearly seven minutes before he was loaded onto a stretcher and moved into an ambulance…. As alleged, Defendant Fischer took no actions to provide medical care or resuscitate Mr. Dizmang…. Defendant Fischer commented, 'He's not aspirating' and 'I want to attempt a nasal airway.' …Medical staff attempted resuscitation measures once Mr. Dizmang was transferred to the ambulance…. Once at the hospital, emergency room staff also attempted life-saving measures, but Mr. Dizmang was pronounced dead at 6:16 p.m."

The Court held:

"Here, based on the allegations in the complaint, it appears that [Paramedic] Fischer was not attempting to arrest Mr. Dizmang or otherwise enforce the law; he was trying to subdue him so that he could be properly treated…. It is clear that Mr. Dizmang needed treatment and that Defendant Fischer was attempting to fulfill his role as a treatment provider.

***

Even if a paramedic's attempt to provide treatment amounts to a violation of a constitutional right to be free from an unlawful seizure, the right was not clearly established. The Tenth Circuit has not opined on whether or in what circumstances a paramedic can effectuate a Fourth Amendment seizure…. Thus, the Court grants Defendant Fischer's motion to dismiss and declines to exercise supplemental jurisdiction over state law claims brought here.

***

> [Police Officer] Reed is also entitled to qualified immunity based on the second prong. Plaintiff has not pointed to any Tenth Circuit precedent establishing a Fourth Amendment claim based on a failure to intervene in a paramedic's alleged use of excessive force."

Legal Lesson Learned: Critical Response Teams are a wonderful community asset; when subduing a mental patient it is helpful to have a member of the team videotape the conduct.

File: Chap. 15 – Mental Health

AR: PTSD –1 YR OF "DIAGNOSIS" TO FILE WORK COMP

On January 27, 2025, in City of Tucson v. The Industrial Commission of Arizona; Christopher Mercer, Respondent Employee, the Court of Appeals of Arizona, Second Division, (3 to 0; unpublished decision) upheld the Administrative Law Judge who ruled the 1-Year statute of limitations to file worker's comp claim starts when the official diagnosis of PTSD has been made, not when employee has sought help for mental issues. Time line: In 2017, with anger issues, his Captain suggested he see a psychiatrist; met six times between 2017 and 2021; in 2020 moved to slower station; April 2022 attended music festival off duty and helped female patient who feel 15 feet; that night at home threatened suicide including pulling trigger of 9 mil firearm (presumably unloaded); hospitalized 28 days at facility for first responders where for first time was diagnosed with PTSD; filed works comp claim July 30, 2022. https://cases.justia.com/arizona/court-of-appeals-division-two-unpublished/2025-2-ca-ic-2024-0003.pdf?ts=1738026580

The Court wrote:

> "The ALJ determined that he was never 'officially diagnosed with PTSD' until April 2022, and there was 'insufficient evidence to find that his symptoms had become serious and acute enough to meet the diagnosis for PTSD' before then. The ALJ further explained that April 2022 was also the point at which Mercer first required inpatient psychiatric treatment and first became unable to return to work. Accordingly, the ALJ determined that Mercer's July 2022 ICA claim was timely.
>
> ***
>
> [T]he City contends it produced expert testimony that Mercer's PTSD was diagnosable prior to July 2021, it has satisfied some portion of the test for the accrual of mental injuries. Not so."

Legal Lesson Learned: Excellent decision; city can't force employees to file workers comp claim when they are merely seeking assistance.

File: Chap. 16 - Discipline

CA: CHIEF FIRED B/C - CITY ADVISED NOT - RETALIATION

On Feb. 21, 2025, in Patrick Vargas v. City of Tracy, South San Joaquin County Fire Authority; Randall Bradley, et al., United States District Court Judge William B. Shubb, U.S. District Court for Eastern District of California, denied the defense motion for summary judgment by County Fire Authority and Fire Chief Randall Bradley. Battalion Chief Vargas' wife on city council and opposed city fire department becoming county department. He was suspended during investigation of harassment, but "City officials concluded that the harassment investigation did not provide a basis to terminate plaintiff and directed that plaintiff be removed from administrative leave and return to work, but [Fire Chief] Bradley terminated plaintiff on January 12, 2022."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IvnyNWPww1WM4x9Gu%2FtN0VhNRAtIpNmmlJ0KM%2F7ZbO911LK6og3L2kiKY%2FASa5mScG8uOsEhAwFbnlzs62F6rSE%3D?utm_medium=email&_hsenc=p2ANqtz-8WZqH_E7rdb_OeZm87WsAQDzZautt0uiTp2Bj7gwVxym265a6f7pCBzZ-RPNW5j-Z8_i7kqeL1it9h0mjMyyn0Q0mh5A&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court wrote:

> "Bradley brought allegations of timecard fraud to [City] Human Resources Director Kimberly Murdaugh on September 15, 2020 and third-party investigators ultimately found the allegation unsupported on March 23, 2021….On March 31, 2021, Bradley contacted Ms. Murdaugh and implored her to further investigate plaintiff, and harassment allegations against plaintiff surfaced on April 7, 2021, prompting a second investigation during which Bradley placed plaintiff on paid administrative leave. City officials concluded that the harassment investigation did not provide a basis to terminate plaintiff and directed that plaintiff be removed from administrative leave and return to work, but Bradley terminated plaintiff on January 12, 2022.
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> Plaintiff contends that Bradley, on behalf of the Fire Authority, took adverse employment actions against him based on Bradley's perception that plaintiff spoke negatively of the Plan [to replace city fire department with County department] to his wife, Ms. Vargas, who was a city councilor and was involved in the adoption and implementation of the Plan. Regardless of whether plaintiff actually spoke to his wife about the Plan, a retaliation claim based on 'perceived speech'--i.e., speech that the plaintiff was incorrectly thought to have made -- is cognizable under the First Amendment.
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> There is also evidence tending to show that Bradley's proffered reason for plaintiff's termination was pretextual. After an independent investigation found that the harassment investigation into plaintiff was biased by Bradley's involvement, City officials concluded that the harassment investigation's findings did not warrant termination and instructed Bradley to remove plaintiff from administrative leave, but Bradley terminated plaintiff regardless."

Legal Lesson Learned: Terminating a Battalion Chief, despite an independent investigation and city recommendation not to fire, raises serious suspicion of retaliation that can now go to a jury trial.

File: Chap. 18 – Legislation

MD: HUD "GOOD NEIGHBOR" HOMES – POLICE / FIRE

On Feb. 24, 2025, in Robert D. Kaetzel v. The Secretary of Housing And Urban Development, United State District Judge Brendan A. Hurson granted HUD motion to dismiss because the plaintiff real estate agent (pro se; acting without an attorney) does not have standing because he did not include his two firefighter clients in the case. The two firefighters sought to buy homes with 50% discount from list price under the HUD "Good Neighbor Next Door" program in revitalization areas. Firefighter Kendra L. Slydell, a career firefighter with Princes George County fire department was denied HUD reduced price home in Capitol Heights, a town in PG County; firefighter Kenneth Hudson, a career firefighter with Baltimore City fire department was denied a home in Baltimore City. The real estate agent alleged HUD determined "that the individual purchaser[s'] regular work locations are not within the same 'neighborhood or community' as the property, [and] therefore [the purchasers] do not qualify." https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1InNcYbqVaI0RKJVNmSUWwC4uBfhrqEaMCXW4t6jftSIgD4%2FHoHLdH48y39slr7kZWrEMnvLTwJnn0bFKh%2B9XZVQ%3D?utm_medium=email&_hsenc=p2ANqtz-9jIRW7ECQxdsfZzinN3lzy-N6WwmOPS0xWaDDWCvHvPAgLyigDSOvaGk0u5IT3PeW4EZ19aOxVZon74RIrJmMQwWSuhw&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court wrote:

> "Plaintiff Robert D. Kaetzel …proceeding pro se, brought suit against the Secretary of Housing and Urban Development … challenging HUD's implementation of its Good Neighbor Next Door ("GNND") Program….
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> HUD created the GNND Program 'to improve the quality of life in distressed urban communities ... by encouraging law enforcement officers, teachers, and

firefighters/emergency medical technicians to purchase and live in homes that are located in the same communities where they perform their daily responsibilities and duties.' 24 C.F.R. § 291.500. The Program allows eligible purchasers to 'purchase a specifically designated HUD-acquired home located in a HUD-designated revitalization area' '[a]t a 50 percent discount from the list price' and '[w]ith a downpayment of $100, but only if the [eligible purchaser] finances the home through a Federal Housing Administration (FHA) insured mortgage.' § 291.510(a)(1)-(2).

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Here, Plaintiffs claims are entirely derivative of those of his clients, who are not parties in this suit. Even assuming Plaintiff has met the first two criteria, there is nothing before the Court to suggest that Plaintiffs clients are unable to bring suit on their own behalf challenging HUD's application of its own GNND Program regulations. Plaintiff therefore cannot establish third-party standing."

Legal Lesson Learned: The two firefighters who were denied HUD approval of "Good Neighbor Next Door" purchases may bring a lawsuit.

Note: See HUD Good Neighbor Next Door program:
https://www.hud.gov/program_offices/housing/sfh/reo/goodn/gnndabot

See Regulation:

"§ 291.530 Eligible firefighter/emergency medical technicians. A person qualifies as a firefighter/emergency medical technician for the purposes of the GNND Sales Program if the person is:
(a) Employed full-time as a firefighter or emergency medical technician by a fire department or emergency medical services responder unit of the Federal Government, a State, unit of general local government, or an Indian tribal government; and
(b) The full-time employment in paragraph (a) of this section must, in the normal course of business, directly serve the locality where the home is located.
[81 FR 53003, Aug. 11, 2016] https://www.law.cornell.edu/cfr/text/24/291.530