



## FIRE, EMS & SAFETY NEWSLETTER

### SPECIAL EDITION

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Larry Bennett is Program Chair, Fire Science & Emergency Management at the University of Cincinnati. He has been an attorney since 1970, and certified as firefighter (FF II) and emergency medical technician (EMT-B) since 1980. These case summaries update the 18 chapters in his textbook, *Fire Service Law*, Prentice Hall/Brady (2008), which is used in the National Fire Academy's "degrees at a distance" course, Political and Legal Foundations of Fire Protection.

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#### **UC Fire Science – HAZMAT / HOSPITAL SAFETY Added To New Graduate Certificate; Free CE for June 12, 2012 “Dry Run”**

We have expanded our Grad. Cert. program (starts online Aug. 2012); our latest course: “Regional Approach To Hazmat, Hospital, School & Corporate Security.” Very pleased to announce the following have been added to our Team:

- Fire Chief B.J. Jetter (PhD), Sycamore Township FD (Director, Greater Cincinnati Hazardous Materials Unit);
- Bob Harper, P&G Technical Engineer / Captain with Golf Manor FD (active member of Greater Cincinnati Hazardous Materials Unit), and
- Dudley Smith (former Director of UC Hospital Air Care).

We now have 32 professors “team teaching” 7 courses:

[http://aerospace.ceas.uc.edu/FireScience/graduate\\_certificate.html](http://aerospace.ceas.uc.edu/FireScience/graduate_certificate.html).

Dry Run / Free Continuing Education: If you would like to join us on June 12, 2012 (9 am – 3 pm) for “Dry Run” of all 7 courses, just send Larry Bennett an e-mail at [lawrence.bennett@uc.edu](mailto:lawrence.bennett@uc.edu).

#### **Ohio: ET Tube Misplacement – Patient Died - Capnography - Paramedics And City of Columbus Properly Dismissed From Lawsuit**

On July 26, 2011, in William Blair [Individually, and as the Administrator of the Estate of

Barbara Gail Blair, Deceased] v. Columbus Division of Fire, 2011-Ohio-3648 (Ohio Court of Appeals for 10<sup>th</sup> District), held that the trial judge in Franklin County Court of Appeals properly granted summary judgment for the city, and four Columbus firefighters / EMS. View entire case: <http://www.sconet.state.oh.us/rod/docs/pdf/10/2011/2011-ohio-3648.pdf>

On March 7, 2007, while driving her daughter to work, Ms. Blair had difficulty breathing, pulled over and called 911 at 6:48 am. She told the first arriving Columbus firefighter / paramedic that she had a history of asthma and chronic obstructive pulmonary disease (COPD). Mrs. Blair also explained that her symptoms had begun the night before. The Court described the next actions taken by the paramedics.

“The paramedic perceived the situation as a moderate asthma attack. In effort to provide some quick relief, he initiated a breathing treatment with a nebulizer mask. \*\*\* [I]t soon became clear that the nebulizer treatment was not providing sufficient relief, as was demonstrated by her level of consciousness. Therefore, she was given a nonrebreather mask on 100 percent oxygen.

Nevertheless, her condition continued to decline. She was taken into Medic 2. The medics laid her flat and hooked her up to a monitor. An EKG demonstrated sinus bradycardia with a heart rate in the 30s. At this point, she also had an oxygen saturation of 48 percent oxygen on room air. A medic listened to her breathing and heard rales, which is indicative of pulmonary edema, or fluid buildup in the lungs. As a result, congestive heart failure was considered as one of the differential diagnoses.

The medics considered using continuous positive airway pressure (‘CPAP’) to assist with breathing but decided against it because of Mrs. Blair’s unconsciousness. She was given nitrous spray at 6:59 a.m., but her heart rate and respiratory rate both continued to drop. Her breaths continued to get shorter and shallower. The medics knew that they had to establish an airway and decided that Mrs. Blair was a candidate for endotracheal intubation.”

A paramedic-student doing a ride-along asked to try to place the ET tube. He could not do it and a Columbus FD paramedic took over.

“After [the Columbus FD paramedic] placed the ET tube, Mrs. Blair vomited, and the medics realized the ET tube was in the esophagus, rather than being properly in the trachea. The medics removed the ET tube and suctioned the airway. Mr. Ruh continued ventilation via a bag-valve-mask as a new ET tube was prepared.

[The paramedic] performed the second attempt at intubation. At this point, Mrs. Blair became asystolic, which was demonstrated by a straight-line cardiac rhythm with no electrical activity. As a result, [the paramedic] initiated cardiopulmonary resuscitation (‘CPR’).

After the second ET tube was placed, the medics proceeded through the criteria for determining whether it was properly in the trachea, which include: movement in the chest wall, the presence of breathing sounds, the absence of epigastric sounds, the presence of condensation on the tube, and verification of the tube’s placement by using capnography.

Capnography involves connecting a device to the ET tube to measure the level of carbon dioxide being expelled. When it is used, a monitor displays a numeric value demonstrating the quality of the gas exchange that is occurring. If no gas exchange is occurring, the display shows a flat, straight line. Standard operating procedures for

Columbus firefighter/paramedics require the use of capnography to verify the proper placement of an ET tube.

When the medics attempted to verify the ET tube's placement with capnography, the capnography display did not appear on the monitor. No numeric value was displayed. No flat line was shown. Instead, the monitor merely showed a dashed line. For approximately 10 or 15 seconds, the medics discussed whether anyone knew how to enable the capnography function. Because none of them did, and because they had arrived at Grant Hospital's Emergency Department ('Grant'), they took Mrs. Blair into the hospital without having verified the ET tube's placement using capnography."

The ER doctor concluded the ET tube was incorrectly placed.

"Apparently, he viewed the medics' ET tube and observed 'what appears to be stomach contents shooting out of the end of the ET tube with each bag ventilation.' ... Dr. Marcus performed a laryngoscopy and believed that the medics' ET tube was in the esophagus. Dr. Marcus then attempted to intubate Mrs. Blair with another ET tube, while the medics' ET tube remained in place. After Dr. Marcus placed his ET tube, the nurse could not compress the bag, and therefore Mrs. Blair could not be ventilated. Dr. Marcus's ET tube was removed before he attempted another intubation. Again, however, ventilation could not occur through Dr. Marcus's newly placed ET tube. At this point, the medics' ET tube was removed, which allowed ventilation through Dr. Marcus's newly placed ET tube. In spite of continued resuscitation efforts, Mrs. Blair was pronounced dead at 7:28 a.m."

The plaintiff must prove under Ohio law that the paramedics conduct constituted willful or wanton misconduct.

Ohio Revised Code 4765.49(A), which provides, in pertinent part:

"A first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the individual's administration of emergency medical services, unless the services are administered in a manner that constitutes willful or wanton misconduct. "

Plaintiff filed the affidavit of Dr. Bryan Bledsoe. The Court rejected many of his conclusions.

"Appellant suggests that summary judgment was improper because Dr. Bledsoe opined that appellees' actions constituted willful or wanton misconduct.

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Dr. Bledsoe criticized their decision not to use CPAP because it 'may have negated or delayed the need for mechanical ventilation and endotracheal intubation.' (Bledsoe

affidavit, at 8b.) This statement also fails to create genuine issues of material fact. First, Dr. Bledsoe does not state with any sort of certainty that using CPAP would have changed the course of treatment or its outcome. Indeed, with respect to the use of CPAP, Dr. Bledsoe's opinion is riddled with reservations. Secondly, and more importantly, the

evidence demonstrates that the paramedics considered using CPAP, but because of Mrs. Blair's unconsciousness, CPAP was contraindicated because it requires some degree of responsiveness on the part of the patient. Nowhere does appellant dispute this. As a result, no genuine issues of material fact exist with regard to appellees' recognition of the urgency of the situation and their decision not to use CPAP.”

City of Columbus expert.

“Appellees' expert, Dr. David Keseg, opines that it is entirely appropriate to confirm an ET tube's placement via the manual methods when capnography is not working. This is precisely what appellees did.”

Court of Appeals (3 to 0) agrees that trial judge properly dismissed the lawsuit – no willful or wanton misconduct.

“Given these circumstances, there was no deliberate intent to ignore the standard operating procedures requiring capnography. Nor was there a failure to exercise any care, which demonstrated a reckless indifference toward the consequences to Mrs. Blair. Instead, the paramedics were concerned for Mrs. Blair's health and administered care accordingly. Based upon the record before us, the paramedics' failure to verify the ET tube's placement with capnography was not willful or wanton misconduct. The same can be said of their inability to enable capnography.”

**Legal Lessons Learned:** When things go wrong on a run, thoroughly document your EMS activities so it is clear you acted in good faith; and retain a good expert witness because plaintiff will undoubtedly have an expert.

[Note: Plaintiff's expert in this case was Dr. Bryan Bledsoe, well known emergency physician and author. His bio, posted on Internet, includes: “Dr. Bryan Bledsoe is an emergency physician and EMS author from Midlothian, Texas. He entered EMS in 1974 as an EMT and attended one of the first paramedic programs in north Texas. Dr. Bledsoe worked for several years in Fort Worth as a paramedic and went on to become an EMS Instructor and Coordinator. Dr. Bledsoe has a B.S. from the University of Texas and a D.O. from the University of North Texas. He completed a residency at Texas Tech University Health Sciences Center and at Scott and White Memorial Hospital/Texas A&M College of Medicine. He is board-certified in emergency medicine. Dr. Bledsoe holds medical licenses in Texas and Nevada.”  
[http://www.bryanbledsoe.com/about. \]](http://www.bryanbledsoe.com/about.)



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