

PAGE, WOLFBERG & WIRTH LLC

ATTORNEYS & COUNSELORS AT LAW

JAMES O. PAGE
1936-2004

DOUGLAS M. WOLFBERG ○ Δ
STEPHEN R. WIRTH ○

CHRISTINA M. MELLOTT ○
JOHN MAYERNICK IV ○
DANIEL J. PEDERSEN ○

○ MEMBERS, PENNSYLVANIA BAR
Δ MEMBER, NEW YORK BAR

5010 EAST TRINDLE ROAD, SUITE 202
MECHANICSBURG, PA 17050

TELEPHONE (717) 691-0100
FACSIMILE (717) 691-1226

www.pwwemslaw.com

DOUGLAS M. WOLFBERG
dwolfberg@pwwemslaw.com

May 31, 2006

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

VIA ELECTRONIC AND FIRST CLASS MAIL

Joseph W. Schmider
Director
EMS Office
Pennsylvania Department of Health
P.O. Box 90
Harrisburg, PA 17108

Re: Use of “Stretcher Vans” for Medical Transportation

Dear Mr. Schmider:

We represent the Ambulance Association of Pennsylvania (“AAP”) and are writing this letter on its behalf in advocacy of the AAP’s position regarding the use of “stretcher vans” in Pennsylvania.

For purposes of this letter, we refer to “stretcher vans” as non-ambulance vehicles such as modified vans, which are capable of accommodating a stretcher for the transportation of individuals in a supine position.

Summary

In brief, the Ambulance Association of Pennsylvania believes, based on quality of care concerns, patient care liability considerations, and serious reimbursement policy implications that could jeopardize the economic stability of ambulance services across the Commonwealth, that stretcher vans should be expressly prohibited from transporting patients in Pennsylvania.

Patient Care Issues

As you know, the use of stretcher vans in Pennsylvania has largely evolved without standards, regulations, staff training, or regulation of the vehicles and companies that operate them. Stretcher vans are not meant to be used for the care of patients as is an ambulance. The level of service that can be provided in stretcher vans is, quite simply, inferior to that level of service capable of being offered by an ambulance provider utilizing minimum equipment and personnel training standards established in current law and regulation. Simply put, if a person is in such a condition as to require a stretcher to be transported, that person is a "patient" who needs to be on an ambulance.

The Problems with Pennsylvania's Unregulated Stretcher Vans

The Lack of Regulations has Glutted the Market with Unscrupulous Providers

With no application process, no laws, no regulations and no standards to follow, it is too easy for unscrupulous people with absolutely no medical background to operate stretcher van services in Pennsylvania. Without any applicable statutory or regulatory standards, entry into the stretcher van services market is ripe for unscrupulous providers and those who desire to make quick money without adequate investment in medical training, equipment or safety. In fact, one internet site – www.milliondollartransportation.com – sells a CD entitled "How to Build a Million Dollar Medical Transportation Company." In his 26-page promotional information for the product, he calls the medical transportation industry extremely easy to get started in, says anyone can do it, and says that he himself began his business in his living room (in 1999) with around \$7,000 (which includes the cost of the used vehicle, his insurance premium, and all other costs associated with the business). With no one regulating the vans, the equipment in the vans or the people driving the vans, it is no wonder that this industry is seen as a source of "easy money."

These Unscrupulous Providers Provide Sub-Standard Service and Often End Up Harming Patients

In one such case, *McCluskey v. Holmes Ambulance Company, et al.*, 583 F. Supp. 740 (S.D.N.Y. 1984), a facility was sued because it utilized the services of an ambulette company who arrived with one driver to transport a patient from the facility to another facility. The driver, in a hurry to leave for another commitment, abandoned the patient at the destination facility in a non-patient receiving area, from which the patient later wandered off, left the facility, and was struck and killed by an automobile. Significantly, the court noted that “it is common sense” that ambulettes are not required “to move people who are healthy; a duty to act with care is mandated by the undertaking of providing vehicles . . . for the purpose of transporting unhealthy and dependent individuals.” The court also noted that the ambulette provider “distinctly and overwhelmingly breached its duty of care” to the patient, which resulted in the lawsuit being filed against the ambulette service as well as the facility itself.

In two other cases from our neighboring state of New York, although the facilities were ultimately able to escape liability, two hospitals were sued for the negligent acts of ambulette operators. In *Gouldborne v. Our Lady of Mercy Medical Center*, 767 N.Y.S.2d 609 (App. Div. 2003), a hospital was sued in a wrongful death case where a patient fell in an ambulette that was transporting him to the facility for treatment. In *Abreu v. New York Hospital – Cornell Medical Center*, 756 N.Y.S.2d 855 (App. Div. 2003), a hospital was sued for negligent failure to investigate an ambulette operator to provide a transport for the plaintiff, during which the plaintiff was injured.

In the case of *Hinckley v. Palm Beach County and AAA Wheelchair, et al.*, 801 So.2d 193 (Fl.Ct.App. 2001), a county agency that arranged to provide ambulette services to developmentally disabled clients was sued for failing to arrange for the provision of safe transportation services when an ambulette driver sexually molested a client during a transport.

In 2004, the Bronx District Attorney’s Office indicted an ambulette driver on charges of negligent homicide when he hit a person with his vehicle at a high rate of speed. The defendant ambulette driver was a “persistent violent felony offender.” Also in 2004, a medical transport van driver was arrested in Waterford, Connecticut for driving under the influence and possession of narcotics. In Wisconsin, also in 2004, a medical transport van being chased by police for speeding crashed and rolled over, trapping two elderly passengers inside, one of whom later died. In New York in April 2005, a prominent cancer surgeon died after being hit by a medical transportation van. In 2005, the New York Times reported on widespread fraud in the medical van transportation industry (*New York Medicaid Fraud May Reach Into Billions*, New York Times, July 18, 2005).

**Policy Implications of Doing Anything Short of
Prohibiting the Use of Stretcher Vans to Transport Patients in Pennsylvania**

The AAP holds the position that stretcher vans should be prohibited from transporting patients in Pennsylvania. There are many potentially serious economic consequences that could follow if Pennsylvania does not prohibit the use of stretcher vans for the transportation of patients.

First, there are economic and financial considerations. Many facilities and individuals would choose to go with the least expensive option, rather than the option that best meets the patient's needs. Unregulated stretcher vans can obviously operate at a much lower cost than ambulances, unburdened by equipment and personnel standards. And many patients who need ambulances are currently being taken by stretcher van. This can put the patient at a serious risk.

If Pennsylvania were to choose to fix this problem by regulating stretcher vans instead of by banning them, this could produce even more serious problems. Medicare currently does not pay for stretcher vans. The majority of private insurance companies follow Medicare's lead and also do not pay for stretcher vans. As you know, Medicare (and, therefore, the majority of private insurance companies) will not pay for ambulance transportation "where other means of transportation is contraindicated." One of the key factors in determining if transportation by other means is "contraindicated" is whether the patient is "bed-confined," which means that the patient (1) cannot ambulate; (2) cannot sit in a chair or a wheelchair; and (3) cannot get out of bed without assistance.

Therefore, under these longstanding Medicare regulations, if Pennsylvania decides to expressly permit the transportation of bed-confined patients by stretcher vans, then it is a short leap for Medicare to adopt the position that, since Pennsylvania has decided it is appropriate for bed-confined patients to be transported by stretcher van, Medicare will not pay for non-emergency ambulance transportation. Once Medicare (which constitutes the single biggest payor for most ambulance services) takes this step, most, if not all, private insurance companies are sure to follow shortly thereafter.

For ambulance services that provide both emergency and non-emergency ambulance services, the non-emergency ambulance services typically subsidize the emergency ambulance services. The loss of revenue for non-emergency ambulance transportation would cripple ambulance services across Pennsylvania, and could force large numbers of ambulance services to go out of business. Having such a dramatic decrease in available emergency service providers in Pennsylvania could quickly become a homeland security problem for the Commonwealth, because the money will not be there for ambulance services to safely respond to emergencies within the Commonwealth.

When the AAP first started exploring this issue several years ago, some members believed that the "doomsday" predictions about Medicare stopping payment for non-

emergency ambulance service was rather far-fetched. However, this is precisely what has happened in a pilot program in Kentucky that is now being spread to other states.¹ Consequently, the AAP members clearly understand that all of this is really not far-fetched. The AAP now firmly holds the consensus position that banning stretcher vans is the only way to fix the problems and potential future consequences with the use of unregulated stretcher vans to transport patients in Pennsylvania.

If a person is in need of transport on a stretcher, that person, by definition, should be deemed to be a "patient." Patients require medical attention. Ambulances must meet prescribed statutory and regulatory standards for medically trained personnel, equipment, background checks and other requirements, and must be licensed by the Department of Health. Stretcher van operations are not required to comply with any of these safeguards. There is absolutely no medical reason why any supine patient who requires stretcher transportation should be transported on board anything less than an ambulance. If a patient needs to be transported on a stretcher, the patient needs to be on an ambulance with the appropriate staff and equipment to monitor the patient, and the Pennsylvania General Assembly should enact legislation banning the transportation of patients on stretchers aboard stretcher vans, and expressly requiring that all patients who need to be transported on board stretchers be transported by ambulance.

New Jersey has such a regulation that bans stretcher vans. *See* 36 N.J. Reg. No. 22. This Regulation refers to stretcher vans as "mobility assistance vehicles" and states that mobility assistance vehicles "shall not be used to transport persons who, based upon current medical condition or past medical history, require . . . transportation in a prone or supine position (including persons who are bed or stretcher bound)." N.J.A.C. 8:40-5.2(b).

Proposed Solution

Ban the Transport of Patients on Stretchers Aboard Stretcher Vans

The new EMS Act should contain definitions and provisions that make it clear that anyone requiring transportation by stretcher is a patient who must be transported by ambulance. The March 15, 2006 proposed changes to the EMS Act define "emergency medical services agency" or "EMS agency" as:

An entity that engages in the business or service of providing EMS to patients within this Commonwealth by operating one or more of the following:

¹ UMWA is the United Mine Workers of America Medicare plan. The UMWA plan in Kentucky initiated a program whereby it pays for all non-emergency ambulance services at Medicaid stretcher van rates because Kentucky permits the use of stretcher vans (instead of banning them), and UMWA has now deemed all non-emergency patients on stretchers to be able to be transported by stretcher van instead of by ambulance.

- (i) An ambulance.
- (ii) An ALS squad vehicle.
- (iii) A BLS squad vehicle.
- (iv) A QRS
- (v) A stretcher vehicle
- (vi) A special operations EMS team, which may include but need not be limited to, a tactical EMS response team, a wilderness EMS response team, a mass gathering EMS team, and an urban search and rescue team.
- (vii) Another vehicle or service that provides EMS outside of a health care facility, as prescribed by the department or by regulation.

March 15, 2006, "Proposed Changes to EMS Act," § 3, pages 5-6. In order to properly ban stretcher vans in Pennsylvania, "stretcher vans" would need to be removed from number (v), above, number (vii) above would need to be changed to read, "Another vehicle or service, except stretcher vehicles, that provides . . .". Further, the following should be added to the definition of an "emergency medical services agency" or "EMS agency":

No EMS agency or any other person or entity may transport patients or any other persons who require stretcher transportation or any person whose medical condition indicates that transportation by stretcher is indicated, by stretcher vehicle. All such patients or persons shall be transported only on ambulances operated by ambulance services appropriately licensed under this Act.

Other State Examples

Our neighboring states of Ohio and New Jersey place their stretcher van regulations in the same section of the law in which the regulations for ambulance services are found. Additionally, in these states, all wheelchair van/mobility assistance vehicles are regulated by the same entity that regulates ambulance services. The first section in Ohio's Medical Transportation Board Regulations states, "[e]xcept as otherwise provided in this chapter, no person shall furnish, operate, conduct, maintain, advertise, engage in, or propose or profess to engage in the business or service in this state of transporting persons who are seriously ill, injured or otherwise incapacitated or who require the use of a wheelchair or are confined to a wheelchair unless the person is licensed pursuant to this section." Ohio Revised Code, Chapter 4766, § 4766.04(A). This Section clearly puts the public on notice that anyone who provides any sort of medical transportation is subject to these regulations.

Section (C) of these same Ohio Regulations, which concerns the regulation of stretcher van services, states “[t]o qualify for a license to provide ambulette service, a non-emergency medical service organization shall do all of the following, (1) Apply for a permit for each ambulette owned or leased as provided in section 4766.07 of the Revised Code; (2) Meet all of the requirements established in rules adopted by the Ohio medical transportation board regarding ambulettes, including requirements pertaining to equipment, communications systems, staffing, and level of care the organization is permitted to render; (3) Maintain the appropriate type and amount of insurance as specified in section 4766.06 of the Revised Code; (4) Meet all other requirements established under rules adopted by the board for the license.” Without going into great detail on the exact requirements of the ambulette vehicles, communications systems, staffing and level of care specified in this Regulation, this Regulation requires *anyone* transporting the sick, ill, injured, incapacitated, or wheelchair-bound, to comply with certain, minimum standards.

Several states and counties have regulations and ordinances that specify the types of patients who are *not* permitted to be transported by stretcher van.

New Jersey regulations pertaining to mobility assistance vehicles (“MAVs”) are found at 36 N.J. Reg. No. 22. In this regulation, mobility assistance vehicles are defined as:

[A]n entity that is validly licensed by the Department to provide non-emergency health care transportation of sick, infirm or otherwise disabled persons who are under the care or supervision of a physician or other recognized health care provider and whose medical condition is not of sufficient magnitude or gravity to require transportation in a basic life support ambulance, but does require transportation from place to place for medical care, and whose utilization of an alternate form of transportation, such as taxicab, bus or public conveyance or private vehicle, might create a serious risk to life and health. This service was formerly known as invalid coach service prior to the enactment of N.J.S.A. 30:4D-3a.

N.J.A.C. 8:40-1.3.

New Jersey’s Regulation of MAVs goes on to state:

An MAV shall not be utilized to provide transportation to persons who, based upon current medical condition or past medical history, require:

1. Transportation in a prone or supine position (including persons that are bed or stretcher-bound);
2. Constant attendance due to medical and/or mental condition;
3. Aspirator or suctioning;
4. Management or observation of intravenous fluids and/or intravenous medications unless:
 - i. The device is totally self-sufficient, including medication supply and patient interface devices;
 - ii. The device requires no interaction or intervention by MAV crewmembers; and
 - iii. The device is of the type approved by the FDA for home administration of medications;
5. An automatic ventilator or who breathing is ventilator assisted unless:
 - i. The device is totally self-sufficient (including gas supply and power source);
 - ii. The device requires no monitoring or interaction by MAV crewmembers; and
 - iii. The device is of the type approved for home utilization on patients;
6. Pre-hospital basic or advanced life support emergency medical care;
7. A BLS or ALS inter-facility transfer;
8. Treatment in the emergency department of a general hospital (for other than a set appointment or routine non-emergency follow-up care of a previously diagnosed condition);

9. Treatment in, or admission to, the obstetrical unit (labor and delivery unit) or the Intensive and/or coronary care unit of a general hospital; or
10. Transportation in physical behavioral restraints.

N.J.A.C. 8:40-5.2(b).

Another example is the Volusia County, Florida, Ordinance, which lists the following types of patients as not permitted to be transported via stretcher van:

1. Passengers requiring IV fluid/medication administration en route.
2. Passengers who are ventilator dependent without a reliable power source for the ventilator.
3. Passengers requiring cardiac monitoring.
4. Passengers who are uncooperative, restless or experiencing acute dementia, including passengers who require more than two-point active restraints.
5. Passengers requiring orthopedic traction of any kind.
6. Passengers with airway compromise of any kind, including the need for suctioning or other assistance by another person in order to maintain airway patency.
7. Passengers with acute onset of an altered level of consciousness.
8. Passengers with suspected or confirmed acute onset spinal injury.
9. Any passenger who has the reasonable potential for needing medical care during transport.
10. Transportation for any passenger being transported to an emergency department.
11. Any passenger who has received medication that has the potential of mental obtundation during transport.
12. Any passenger requiring oxygen who is unable to manage or change his/her equipment, is receiving greater than four (4) liters per minute of oxygen, or who will need additional oxygen supplementation during transport.

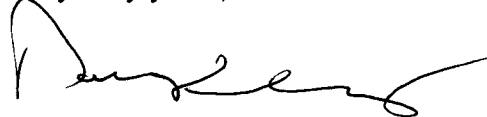
See Article II, Chapters 46-81 through 46-94 of the Volusia County (FL) Code, and the rules and regulations thereto. While the Volusia County Ordinance seems thorough in most respects, it is missing the critical language about patients on stretchers not being permitted to be transported by stretcher van.

Conclusion

A person who requires supine, stretcher transportation should be deemed a "patient" who requires transportation on board an ambulance. There is no good reason why any such patient should be transported on board a stretcher van without the benefit of trained personnel and appropriate medical equipment.

The Ambulance Association of Pennsylvania believes that the transport of patients by stretcher van should be expressly prohibited. The use of stretcher vans for all other purposes needs to be so heavily regulated that those unscrupulous providers who have simply gotten into this industry as a source of easy money will either go out of business or at least move their operations out of Pennsylvania.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Douglas M. Wolfberg', with a long horizontal flourish extending to the right.

Douglas M. Wolfberg
for PAGE, WOLFBERG & WIRTH, LLC

DMW:dmw/cmm