This is the first in what we hope will be a (more or less) regular part of ‘Response’. The authors have both worked as ambulance officers/paramedics with NSW Ambulance and are both qualified lawyers who have maintained their interest in paramedic law. Michael Eburn is the author of Emergency Law (4th ed, Federation Press, 2013) and maintains a blog on issues of law and the emergency services (http://emergencylaw.wordpress.com/). Ruth Townsend is (with Morgan Luck) an editor of, and contributor to the book Applied Paramedic Law and Ethics: Australia and New Zealand (Elsevier 2013) and maintains a blog on health law and ethics (http://healthlawethics.wordpress.com/). If we are going to write a regular column we do want to make it relevant so we are happy to receive questions or suggestions for material for discussion. Please send your questions or comments to michele.eburn@anu.edu.au. Usually a ‘quick’ response would be posted onto the Emergency Law blog, and more detailed comments reserved for this column.

Crossing the Line – The Law and Ethics of Going Beyond the Wire

Michael Eburn and Ruth Townsend

Paramedic practice is expanding with an increasing number of paramedics working for the volunteer and private sectors. In these roles paramedics are not engaged to provide emergency services to all callers, but to provide a service to their employer, a company that has entered a contract with their employer or event organiser. In this capacity paramedics are expected to provide emergency medical care within a confined area, whether that’s the employer or contractor’s industrial site or the concert or sporting venue – so what are the legal and ethical issues that arise if paramedics become aware that someone nearby requires their assistance?

Law

The general rule is that there is no duty to go to the aid of a stranger so a paramedic working for a private or volunteer ambulance provider would not be expected to have a legal obligation to go and assist others; but that statement is an oversimplification.

In Woods v Lowns (1996) 36 NSWLR 344, a doctor was found to have been negligent when he refused to respond to a request to assist a child who was fitting nearby. The trial judge, Justice Badgery-Parker concluded that, even though there is no general duty to go to the aid of a stranger, Dr Lowns was under a duty to attend because:

1. He was asked in a professional capacity (to be discussed in more detail, below);
2. In circumstances where he was able to get easily to the patient;
3. Knew of the seriousness of the condition; and
4. Believed he would be able to assist him.

The decision was affirmed on appeal (Lowns v Woods [1986] Aust Torts Reports 181-376; Kirby and Cole JJ, Mahoney J dissenting).

If we assume, for the sake of the argument, that there is a duty to attend, that duty will require the paramedic to act ‘reasonably’. In Wyong Shire v Shirt (1980) 146 CLR 40, Mason CJ in the High Court of Australia

said (at p 48) that determining whether or not conduct was ‘reasonable’

... calls for a consideration of the magnitude of the risk, the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have.

These principles can be applied to a paramedic, on duty at a private event or industrial site who becomes aware that someone outside the area requires the assistance of a paramedic. Like Dr Woods they are at their place of work (for the sake of this paper it does not matter if they are volunteers or paid staff) and we can assume that there is no particular health and safety risk in moving outside the area to assist nor are they physically or mentally unable to assist. The critical difference is that by being ‘on duty’ at a private industrial site or public event, they are in fact ‘occupied in [another]... professional activity which would [or could] preclude... treating the’ injured person. Whether or not the obligation to the employer, contractor or event organiser is sufficient to prevent moving to treat the person will be a question of fact to be determined by the actual circumstances. If the paramedic’s presence is required for a large public event, or a significant industrial undertaking to continue, then that could be a ‘professional activity which would preclude’ moving away to treat the ‘stranger’. If, on the other hand, the paramedic who is approached for assistance is one of many then his or her departure will not affect the ongoing event so any contractual obligations or ‘conflicting duties’ would not be a barrier to providing assistance.

Other relevant considerations will be the risk of harm to the injured person – if the paramedics are aware that the situation is life threatening then a court will be more likely to find that there was a duty to attend, and that a reasonable paramedic would attend. If the call for assistance is because someone has sprained an ankle then there would be no duty to attend and a reasonable paramedic would not move from their current duty to assist. Another consideration will be the availability of others who could assist; if the incident occurs in the centre of a capital city, the paramedics may reasonably take the view that their attendance is not required as the state ambulance service will soon be on scene. The situation would be different in say remote Western Australia where the mine site paramedics may be the only service available for hundreds of kilometres. In that case an assessment of the risk to the patient and the need for attendance would both lend weight to an argument that the paramedics have a duty to assist and that a reasonable paramedic would assist.

Depending on all the circumstances it could be a breach of duty not to assist, that is if it appears that the injury may be serious or life threatening, it is reasonably easy to get to and there is no equally serious obligation not to attend.

Paramedics as Registered Health Professionals

In Woods v Lowns, it was critical that the defendant was a doctor. Doctors are trained at public expense and enjoy a high status in the community because of their training and an expectation that they will assist in cases where people need urgent care. That expectation was reinforced by medical practice legislation that, at the time, said it was unsatisfactory professional conduct for a doctor to fail to attend and provide emergency care when he or she was aware that care was required (see Medical Practitioners Act 1938 (NSW), s27(2), now repealed).

Paramedics are not yet registered health professionals but there is a move to bring them under the Health Practitioner Regulation National Law. As registered health practitioners’ paramedics will be expected to display appropriate, ethical behaviour and will be subject to professional discipline if they engage in unsatisfactory
professional conduct or professional misconduct. When considering a doctor who failed to assist the driver of another car that was involved in a ‘near miss’ with her, the State Administrative Tribunal of Western Australia said:

It is improper conduct in a professional respect for a medical practitioner who is aware that a motor vehicle accident has or may have occurred in their vicinity and that anyone involved has or may have suffered injury not to make an assessment of the situation, including the nature of any injuries and needs of persons involved, and render assistance, by way of first aid, when the practitioner is physically able to do so, notwithstanding that the practitioner immediately reports the matter to police or other emergency services. (Medical Board of Australia v Dekker [2013] WASAT 182 at [39]).

It is likely that similar reasoning could be applied to paramedics if and when they enter the ranks of registered health professionals.

State ambulance employees

The officers of state ambulance services may also be rostered to provide services at what are, in effect, private events, such as football games, horse races and the like. In that context they too may become aware that someone nearby needs their assistance even if, say, rendering first aid to the public is not their assigned role (for example the paramedic crew rostered to travel behind the horse race may not be expected to assist members of the public attending the race event but what happens if they are notified that a person has collapsed nearby?)

There the argument that there is a duty to attend would be enhanced by the statutory and public functions of the state ambulance services. They are funded by the public purse and have statutory duties to provide ambulance services to the entire community. In Kent v Griffiths [2002] 2 All ER 474 the London Ambulance Service was found to be under a duty to attend when they received an emergency call. A person who approaches an ambulance paramedic and reports an emergency is making an emergency call as much as if they rang triple zero. The paramedics would be under a duty to respond or, if they cannot respond, to contact their coordination centre to arrange for another ambulance to be sent to the scene. Again the final conclusion on what is required would depend on how far away the patient was, what was the reported nature of their injuries or illness, what other services were available and the competing obligations to the event.

Ethics

It may appear morally controversial to suggest to a paramedic that there may be no obligation to attend to a person in need – surely the point of the profession is to respond to those who are vulnerable and injured and in desperate need of help and assistance? If paramedics don’t attend – be they voluntary or otherwise, who will? And surely the needs of those actually sick or injured must take priority over those who might be injured, regardless of any contractual commitments?

But the question is more complicated when you consider the philosophical lens through which you view it. A deontological (or ‘duty’) position might lead to the conclusion that the paramedic must act regardless of the consequences because they have the skills and knowledge to help. Equally it might lead one to conclude that one’s ‘duty’ is to the contractors who have arranged for the paramedic attendance and so fidelity to duty requires that the paramedic remain ‘on post’. A virtues based approach might ask ‘what is the purpose of the paramedic?’ because to act virtuously is to act according to purpose. Presumably the purpose of a paramedic is first and foremost to assist the sick and injured. A consequentialist perspective would require a balance of harms against benefits; if more harm is caused by the paramedics action than the benefit that action brings then there is no ethical obligation to act. That would require balancing the costs that will be incurred by the event organiser, employer or contractor versus the harm to the patient if you do not attend; a complex equation to solve if the paramedics have not actually seen or assessed the patient to determine their level of need.

It may be that in some cases it would be held that there is a legal obligation for a paramedic to act, and in others that there is no such legal obligation. Getting the legal answer does not however resolve the ethical obligations as they may not coincide; staying ‘on duty’ to allow an event to continue, whilst someone outside the event dies, will be ethically problematic as it would treating the patient in the stands, but by doing so being unavailable to ‘chase’ the horse race with the implication that many people are inconvenienced at large financial cost. The ethical problems exist regardless of whether or not the law says there is, or is not, a legal duty to attend.

To arrive at a consistent position in the face of this sort of dilemma, the paramedic, and ideally their employer, must have spent time reflecting on their ethical and legal obligations. A complete decision making model should be utilised that includes considering the issues and potential scenarios, consider applicable Codes of Conduct and relevant law, consider all the alternative options and their outcomes, evaluate the various considerations and make an appropriate policy decision. Those that provide paramedic services should then discuss with their ‘customers’ how they will respond in this unlikely but certainly not far-fetched scenario. Paramedic employers should also make it clear to their employed (and we include here volunteer) paramedics what is expected of them. It should be remembered that as paramedics are employed by, or volunteer for, a larger organisation any liabilities that exist will belong to that organisation not the individual paramedic. (That situation may change if and when paramedics are registered health professionals, can practice in their own right and have professional obligations by virtue of their registration, rather than their employment, but that is not the case today.)

It is therefore in the paramedic service providers’ interest to consider when and how their employees and volunteers should respond keeping in mind that an edict ‘you shall not respond beyond the wire’ may be attractively simple, but is impossible to support, either ethically or legally.

Conclusion

There are few simple answers here; what would be expected of a paramedic will depend on all the circumstances and an assessment of the factors identified in cases such as Woods v Lawns, Wyong Shire v Shirt and the Medical Board v Dekker. Critically they relate to what the paramedic knew (being close enough to see the accident is different to being told there has been an accident); whether they can easily get to the scene (again witnessing the accident is different to being told it is two kilometres down the road) and a risk assessment balancing the potential risk to those in need of assistance balanced against the competing demands of the obligation to remain on site. Because of this complexity, determining whether or not there is a duty to attend cannot be done in the abstract.

There is however one simple conclusion that can be drawn – statements to the effect that private paramedic services (whether volunteer or paid) should never, or need never, go outside their ‘area’ in order to assist those in critical need, are wrong. The conclusion is not that clear and it is easy to imagine circumstances where a duty to at least assess the situation will or could be found. Remember that no-one has been sued for assisting at an accident when they did not need to, but there are at least three cases, Woods v Lawns, Kent v Griffiths and Medical Board v Dekker where legal action has been taken against doctors and an ambulance service for not attending.