

Legal and Ethical Framework



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Unit 8: Legal and Ethical Framework for SAR Date Last Updated February 20, 2020

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- Legal: What do applicable laws and common law principles say?
- Ethical: What will most reasonable people say is the right thing to do?
- Moral: What do you think is the right thing to do?



A cascade for decision making.

Legal to Ethical to Moral.

Legal – what laws and common law principles apply to the situation?

Ethical – if the law doesn't provide guidance, what would most reasonable people think is the right thing to do?

Moral – if ethics don't provide guidance, what do you think is the right thing to do?

NEWSAR Code of Ethics (selected points)

- Work under the Incident Command System
- Will not respond to any search unless called out by a responsible agency.
- Will not openly or publicly disagree with any aspect of a search.
- A search is a potential criminal investigation, disclosure of information could jeopardize prosecution.
- Will adhere to strict operational security during a search and not divulge information to any individual not participating in the search.

Handout the NEWSAR code of ethics.

Highlighting some elements of the NEWSAR code of ethics.

Ethical guidance for situations that frequently come up around search.



Authority Having Jurisdiction



Volunteer searchers work for an authority having jurisdiction.

In most of the US, that is the county sheriff.

Highly variable in NE US.

In most of the world, some law enforcement entity is the authority having jurisdiction over land search and rescue incidents. **Why?**

Searches run under **Need to Know**

- You won't be told everything.
- Do not tell anyone anything about the search.

- Direct the press to the Public Information Officer. Say nothing to them.



Need to know – you won't know everything.

Don't share information about the search.

Absolutely nothing to the press.

The public does not Need to Know

- No sharing information on social media
- No sharing images on social media
- Any release of information about a search must be cleared with the public information officer first.
- Take no pictures, don't provide an appearance that information might be shared.

Or public.

Do not publicly criticize any
Emergency Services Department.



Constructive criticism in mission critique.

No Freelancing

- Callout only on the request of an authority having jurisdiction.
- Callout is of teams as resources, not individuals.
- Cards/contact information given to authorities having jurisdiction must provide your team's callout point, not your personal contact information.



We work as emergency service organizations.

All resource requests must be approved by the incident commander.

You don't show up at a search unless requested through the proper channels (this means pre-planning the proper channels).

At a search, you don't go off and search things on your own. You only carry out assigned tasks.

Scope of Practice



Are you trained to do this?

No? Then don't.

You are trained up to some level (particularly with regards to medical care). Don't exceed the scope of that training.

Standard of Care

- Consensus of informed opinion of how to care for a given medical condition or pursue a search and rescue operation in the context at the time and place of the condition or SAR operation. Expressed in appellate decisions on malpractice cases.
- For wilderness medicine and wilderness search and rescue there is little if any case law, certainly not enough to establish a standard of care. Current editions of relevant textbooks are seen, to a degree, as expressing this ideal standard of care.



Wilderness medicine and wilderness search and rescue, very little legal precedent to go by. Current texts are probably best guide to standard of care for SAR.

Negligence

- Plaintiff must prove a chain of 5 elements
 - you had a **duty** to act
 - that you **committed** a unreasonable act or omission in the course of this duty
 - an **injury** occurred to the plaintiff
 - your act or omission **caused** the injury
 - you must have been able to **foresee** the injury



Need to prove chain of elements for negligence.

Engendered Reliance

Duty To Act

Abandonment

What do these mean?

Engendered Reliance involves an organization claiming that it can provide some capability, and a community relying on that organization to provide that capability.

In general, paid responders have a duty to act that comes with their job, when called to an incident they have a legal duty to respond, volunteers have a duty to act that takes effect if they respond, but only a moral or ethical duty to respond if called to an incident. **Might engendered reliance come into play if every volunteer in an organization declines to respond?**

Abandonment occurs when someone initiates medical care (touches) a patient, and then ceases to deliver that care without passing the patient on to medical care of equal or higher level.

Consent (to medical care)

- Implied Consent
 - Patient is unconscious or has impaired capacity to make good decisions.
 - Any reasonable person would assume that the patient would want your care.
- Express Consent
 - Patient says “yes”
- Informed Consent
 - Needed not only for agreeing to medical care, but also for refusing care or evacuation or transport.
 - Inform them, what, in your best judgement, the outcomes are if they accept care or if they refuse it.

Obtain consent before providing medical care.

Evaluating Capacity to Consent

- First, when in doubt, do what is best for the patient.
- Second, the needed level of capacity varies with the seriousness of the decision.



If we make a find, the subject may need medical care but may or may not have capacity to consent.

What are some conditions that could be encountered in a search that would affect a subject's capacity to consent to medical care?

Entry onto private property

“[A]s long nobody objects, you are perfectly welcome to walk across someone else’s property in the US. There is no crime in doing so. However, if you do something stupid, like not closing a farmer’s gate behind the last member of your field team, then you may be liable for the loss of cattle.”

Conover, 2013 p.18



There is variation from state to state.



Some people object.

Trespass

- Someone tells you to get off their property
- The Property is posted **No Trespassing**
- Entry makes you liable for damages



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Trespass occurs when you enter somewhere you've been told not to (in person or through posting).

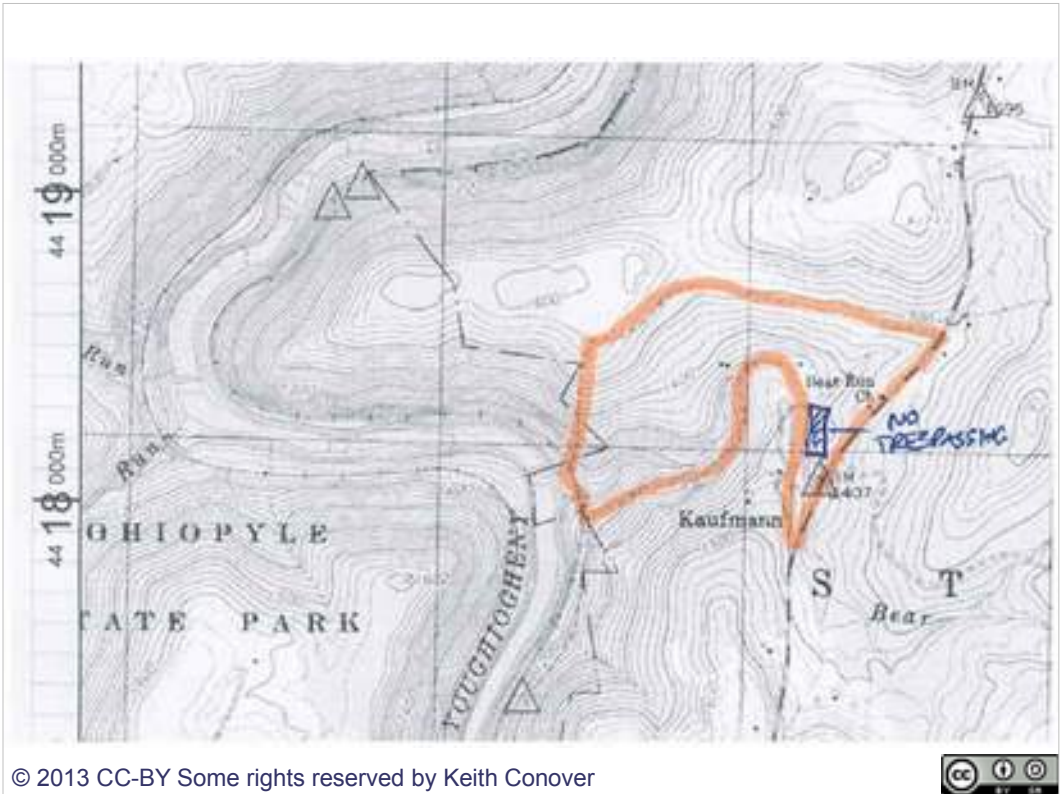
Except

- Sworn peace officers with jurisdiction may legitimately enter lands posted No Trespassing during a search, and may take the rest of the team along with them.
- Doctrine of Necessity – to save a life – **very limited circumstances** – e.g. you **see** a person who needs immediate medical care.



Some exceptions.

Doctrine of necessity is very limited. It doesn't allow you to enter a posted property to search if a subject might be there and might be injured – you need to see the person, they need to need immediate medical care.



So, what do you do when you encounter property that you don't have permission to enter?

Report it in debriefing.

If you ask for permission to search property and it isn't granted, report that.

Good Samaritan Laws

- Medical
- SAR

- Vary from state to state.
- Generally cover care rendered:
 - Without compensation
 - In good faith
 - Without gross negligence.



There are good Samaritan laws for both medical care and SAR. They vary.

Generally three elements:

No compensation

In good faith

No gross negligence

Details are Important

- MA SAR Good Samaritan Statute
 - Covers volunteers called out by the MA State Police.



Details state to state are important.

Confidentiality

- Never share any specifics of tasks outside debriefing
 - May compromise a criminal investigation
- Never share any information about the subject's condition
 - Illegal under HIPAA
- Press: Refer them to the Public Information Officer.

As said earlier – confidentiality is critical in a search.

A search may involve a crime. Shared information might compromise a criminal investigation or prosecution.

HIPAA protects medical information.

Refer the press to the PIO.

What Not To Say over the radio

- Assume all communications are being monitored (by the general public and the news media and the perpetrator).
- Use other communication channels (cell phone) to report a find of a deceased person.
- No codes, unless you have been briefed on a code to use to communicate sensitive information (such as a find of a deceased subject when cell coverage aren't available).
- You do not want someone to overhear something they shouldn't (the perpetrator may be monitoring search communications).
- Absolutely no swearing the radio

Radio transmissions may be legally monitored, and in a search, they will be.

The general public will be listening.

The media will be listening.

A perpetrator may be listening.

Searches involve multiple kinds of agencies – follow NIMS/ICS principles and use plain language for all communications: Except if you have been briefed on a specific code to use in the case of a find of a deceased subject.



No pictures.

Absolutely no pictures of someone injured.

No pictures – don't even provide the appearance that you might leak information.



Safety

Think safety. Think your own safety, think the safety of your fellow searchers, think the safety of the general public.



Think.

Emergency Response

- Volunteers, Most Responders: With Traffic
- Emergency Services: Follow Departmental Protocols.



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Search is an emergency, but it is generally a slow motion emergency.

Response generally with traffic.

What do your departmental protocols say? Lights and sirens, or with traffic for response? Particular circumstances for lights and sirens?

Accountability

3 Cases in ISRID are of missing SAR Personnel



Important to know where everyone involved in the search is – and when they are out of contact.

Who has been called out. Who is where in the search.

Accountability check – radio net, typically every 30 minutes, are all assigned resources in contact.

Is everyone back from the field?

Getting home safely.

“In a bank, bad accounting may cost money. In a search, bad accounting may be life threatening”

Bad accounting may mean what?

Discuss.

Inadequately documenting the search effort.

Loosing track of where your searchers are.

How does this relate to freelancing?

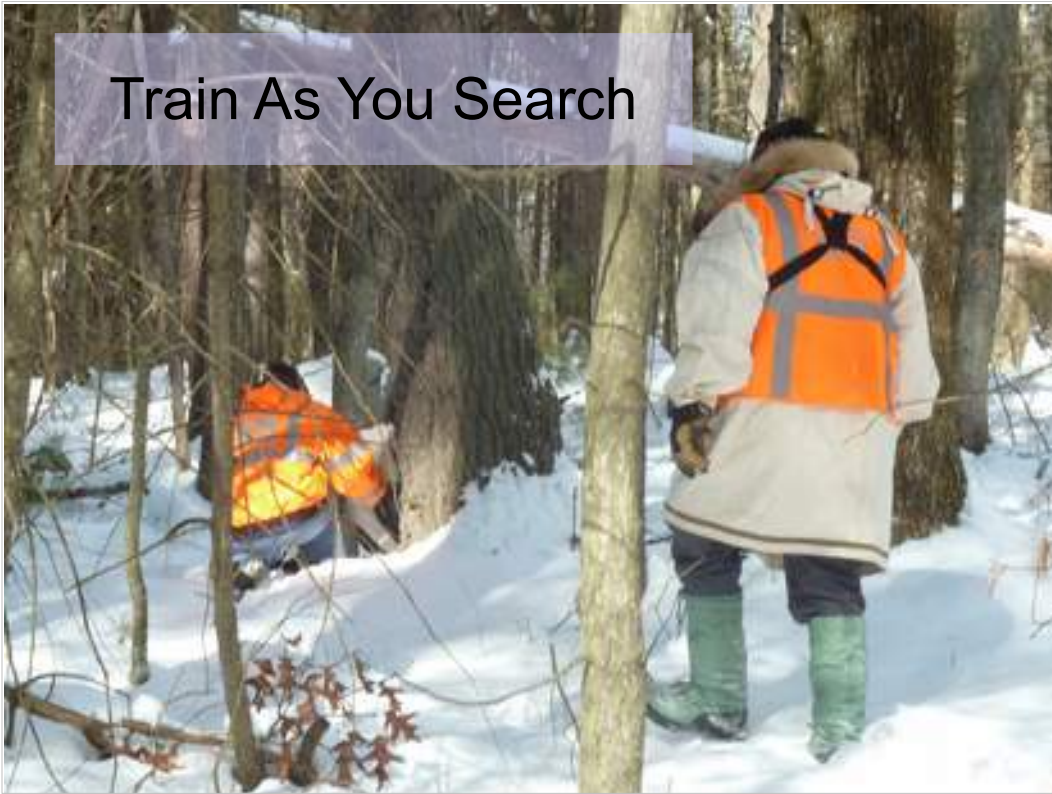
Nobody Leaves Last



Good general principle for all incidents, including all training.

Why?

Train As You Search



The habits you get into in training will be the ones that you fall into when under stress in a search.

Look up.

Look for clues (and hide them in training).

Write things down. Maintain the same documentation for training that you maintain in a search.

Train in adverse weather conditions. Know that your gear will keep you warm and dry and comfortable and effective.

Documentation

- Search Documentation
- Your Own Documentation
 - Training Logs
 - Mission Logs

Why is documentation important?

What needs to get documented?

Where does documentation get used?

Key bits: Documenting search effort.
Communicating search effort from one operational period to the next.

Documenting your own training.



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