



MAINE'S LEADING
VOICE FOR HEALTHCARE

MHA BACKGROUND MEMO

Hospital Violence Study

The Maine Hospital Association and our member hospitals were the groups behind LD 629. We appreciate your willingness to assist us as we better understand how to interact with the different aspects of the criminal justice system in cases involving violence against healthcare workers in hospitals.

Background

Violence against healthcare workers is a significant issue in Maine and nationally. According to OSHA, 75% of all workplace violence incidents reported were in the healthcare setting.

- 50% of all emergency room physicians report having been assaulted while on the job;
- Over 70% have witnessed an assault and
- Over 80% have heard threats being made.

Sadly, Maine hospitals' experiences reflect these national statistics.

Existing Law

As you all know, in addition to the standard criminal laws on assault and battery, Maine has a law that provides enhanced penalties in certain circumstances involving emergency medical care.

17-A MRSA §752-C. Assault on an emergency medical care provider

1. *A person is guilty of assault on an emergency medical care provider if that person intentionally, knowingly or recklessly causes bodily injury to an emergency medical care provider while the emergency medical care provider is providing emergency medical care.*

2. *As used in this section, "emergency medical care provider" includes hospital personnel assisting in an emergency and emergency medical services persons, defined in Title 32, section 83, subsection 12, but does not include a firefighter as defined in section 752-E, subsection 2.*

3. *Assault on an emergency medical care provider is a Class C crime.*

The Disconnect

A few years ago, we submitted legislation to essentially expand the breadth of §752-C. The criminal defense bar successfully opposed the bill. The most compelling part of the opposition testimony, in our opinion, was the statement that assault cases involving healthcare workers are not being brought now. Discussions about elevating sanctions only make sense, they argued, when judges are routinely sentencing defendants to the maximums allowed under current law. This is simply not happening, they said.

This appears to us to be a huge disconnect between the level of violence our members experience and the dearth of cases ever brought to court. This begs the question of why?

Example

Here is an example of a case that has led to our frustration:

RN was working in the emergency room caring for behavioral health patients. The patient declined a dose of Maalox and then changed his mind. The patient came to the medication area and stood at the half door opening.

When the RN went to hand the patient the Maalox the patient punched the RN in the face. The RN shut the door and called for assistance, security responded and the patient returned to his room.

The RN was evaluated by emergency room personnel and cleared to return to work, including caring for the patient that had just assaulted him.

Security asked if the RN wanted to press charges and the answer was yes so local police came to take the RN statement. The police took the report and told the RN that the patient would not be removed because the law enforcement officer had been told by his superior's that the DA would not press charges against people who assault health care workers.

He issued a summons to appear to the patient.

Preventing Violence

While the legislature directed us in LD 629 to discuss the criminal justice response to incidence of violence¹, we realize that some would wonder what hospitals are doing to prevent and violence before it happens. This topic would require different participants and a different legislative directive.

¹ *That the task force shall review the process by which criminal cases may be brought related to incidents of violence in hospitals and other health care facilities and settings, in particular, incidents of violence involving patients or individuals related to patients assaulting hospital or medical staff.*

However, we do want to convey that our members take this issue very seriously and are taking many steps to prevent violence before it happens, but that no system is capable of preventing all violent attacks.

As the above case illustrates, oftentimes the assault is not foreseeable; it is a sudden outburst with no escalating tension, no threat, yelling or warning of any kind. This group is to explore what happens next. We can discuss prevention, but we hope not at the expense of the sole duty included in the Resolve.

Issues We'd Like to Explore

As for MHA, following are the primary questions we'd like to discuss. Obviously, we assume others will have even more.

1. **Uncooperative Victim.**

If the victim of an assault chooses not to pursue a case, can a hospital/employer pursue the case instead? If so, how?

2. **Statutory Interpretation.**

How are the terms "*medical care provider*" and "*providing emergency medical care*" in §752-C interpreted by law enforcement and prosecutors?

3. **Criminal Competency.**

Many incidents of violence involve individuals with some level of behavioral health disorder. What process does law enforcement and prosecutors utilize to determine whether an individual who has committed an assault should face charges? Whom do you rely on to make the determination? Are clinicians involved?

4. **Juveniles.**

Due to existing failures in the community care system for juveniles with behavioral health needs, many youths spend extended time periods in our emergency rooms. Frequently, the assaults our members suffer are at the hands of juveniles. Can you help us understand your process to determine when a youth will face criminal charges for assaults?

5. **Warrantless arrest.**

Does it make sense to expand the existing warrantless arrest statute to include assaults in healthcare settings?

6. **Victim Confidentiality.**

Is it possible to provide victims with limited confidentiality (home address, phone number etc.) during the investigation and discovery phase of a case and not just after adjudication (via 17-A M RSA §2108)?

Thank You

Again, thank you for your time helping us understand how you do your work, what we can do to assist you, and how we can better understand the criminal justice process.