Emergency!

By Mark Cooney

Joe Lawyer lay in a heap on his office floor, unresponsive. His eyes were frozen wide open, his mouth agape. A crowd of panicked coworkers surrounded him.

"Call 9-1-1!"

"What happened to him?"

"I don't know," said Joe's secretary. "I think he was working on the Jones file."

"That's the Emergency Medical Services Act case," said a partner. "Look, there's a printout of the statute on his desk. He must have been reading it when, well…" Her voice trailed off.

"Let me read it," said the firm's mild-mannered new associate, Kent Clark.

"No!" said a distressed coworker. "We can't afford to lose two lawyers in one day. We're just a midsize firm."

Precious time was slipping away. Kent ducked unnoticed out of Joe's office, ran down the hall, and slipped into the file room. He emerged seconds later, but no longer wearing his gray business suit. In a flash, he was back in Joe's office.

"Stand aside, good people. Editor Man is here!" said a masked man wearing a disturbingly tight spandex bodysuit. "I fight for truth, justice, and clarity!"

"Editor Man! Oh, thank goodness you're here. It's the qualified-immunity provision of Michigan's Emergency Medical Services Act."

"I see." The fearless crusader strode to Joe's desk with purpose, stepped over Joe's body, and sat down. He brushed his cape aside and pulled a red pen from his utility belt. Then he faced his foe:

> Unless an act or omission is the result of gross negligence or willful misconduct, the acts or omissions of a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, medical director of a medical control authority or his or her designee, or, subject to subsection (5), an individual acting as a clinical preceptor of a department-approved education program sponsor while providing services to a patient outside a hospital, in a hospital before transferring patient care to hospital personnel, or in a clinical setting that are consistent with the individual's licensure or additional training required by the medical control authority including, but not limited to, services described in subsection (2), or consistent with an approved procedure for that particular education program do not impose liability in the treatment of a patient on those individuals….[1]

"Wait a minute. This is 135 words in a single sentence, and the sentence isn't even finished," said Editor Man. "It continues, adding *or any of the following persons*, which is followed by a long list of people and entities.[2] All told, the block leading into that list is a single 141-word sentence, and it contains two complex series."

"Poor Joe never had a chance," cried Joe's secretary.

"We must be strong, good citizens," said Editor Man. "I just need to attack this methodically. I need to diagnose its flaws."

"Well, duh, sentence length," said an impatient partner.

"True, sir. Sentence length is a big problem. And the drafter's attempt to cram so much information into a single sentence creates a bunch of problems. For instance, it's hard to figure out what some of those modifying words and phrases are supposed to modify. Does that crucial phrase *while providing services*—and the related language that follows it—modify only the final series item referring to *an individual acting as a clinical preceptor*? Or does it modify every person in the long series that preceded it?"

Editor Man paused to look at the text again.

"I also worry about word choice and consistency. Is the *individual* acting as a clinical preceptor in the middle of the sentence the same *individual* whose licensure or additional training is mentioned more than 40 words later? It wouldn't seem so. And I see *providing services to a patient* in one place and *the treatment of a patient* in another. Is *treatment* the same thing as *services*? If so, why two different terms?"

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"Oh, Editor Man, what can we do?"

"Well, first things first. I've got to find the subject and the verb."

The crowd gasped. No ordinary mortal would dare attempt it.

Editor Man studied the statute and, after a moment or two, circled a phrase on the second line. "Well, I've got the subject. As this thing is written, the subject is *acts or omissions*."

He continued reading, but he didn't raise his pen again for some time.

"Where's the verb, Editor Man? For heaven's sake, find the verb!" urged someone in the crowd.

Editor Man's eyes darted back and forth at a fever pitch. A bead of sweat lingered for a moment on his left temple and then rolled down his cheek. The battle was truly joined—one courageous mind against a wall of dense, impenetrable legal text.

"There it is!" proclaimed Editor Man.

"Thank goodness," said a relieved onlooker.

"It's down at the very bottom of the block—a good ten lines down in this printout. The subject's main verb is the phrase *do not impose*. Yes, that's the sentence's core: *the acts or omissions do not impose liability*."

"But that verb phrase is in a different zip code than the subject," said an exasperated associate.

"Indeed. And the farther a subject is from its verb, the harder it is for readers to understand a sentence. That's especially true when the writer forces a bunch of interrupting phrases or a complex series between the subject and its verb, as we have here."[3]

"So we need to put the subject and the main verb closer together?"

"That's a great start, yes," replied Editor Man. "But it's not a completely satisfying cure. If possible, I'd prefer a concrete subject—an actual person—rather than the abstract concept *acts or omissions*."

"But you can't do that here because the statute is designed to protect so many categories of people. You'd have to list them all before the verb, and that would leave the same mess we have now."

"It's a challenge, for sure, but there are a number of things we might try. One possibility is to get vague."[4]

"Get what? Vague? But vagueness is always bad, especially in legal drafting," said a skeptical partner.

"Don't mistake vagueness for ambiguity. Ambiguity—being forced to choose between two possible meanings—is always bad. But some vagueness is necessary in drafting. Imagine making it illegal to drive *a station wagon* faster than 70 miles per hour. Now it's perfectly legal for other kinds of cars to exceed 70 miles per hour. That probably wasn't the drafter's intent. The original is too specific, too precise. It isn't vague enough. So you might broaden your term—perhaps making it illegal to drive *a motor vehicle* over 70 miles per hour. Now you've captured all kinds of cars, as well as trucks and motorcycles. That's a rough example, mind you, but you get the point. Legislative drafters must shape vagueness appropriately, and it's not easy."

"But how does that help here?"

"Well, I wonder if we might create an appropriately vague term for our main subject—perhaps *emergency medical responder*. I'll also pull those buried qualified-immunity elements out of the dense text and organize them with a vertical list.[5] And I'll create separate sections and subsections, with informative headings, for added clarity:

(1) **Immunity**. An emergency medical responder is not liable for his or her act or omission if:

(a) it occurs while treating a patient outside a hospital, in a hospital before hospital personnel take over the patient's care, or in a clinical setting; and

(b) the treatment is consistent with the responder's licensure or required training, or with an approved procedure for the responder's educational program.

(2) **Exception**. This immunity does not apply if the emergency medical responder's act or omission amounts to gross negligence or willful misconduct.

"I'm happier with this, but our work isn't quite done," said Editor Man. "Even though creating appropriately vague terms can often do the trick by itself, here we'd better define *emergency medical responder* to explicitly capture the six types of emergency medical workers listed in the original; each type, I believe, has a unique license and statutory job title:

(3) **Definition**. 'Emergency medical responder' means a medical first responder; an emergency medical technician; an emergency-medical-technician specialist; a paramedic; a clinical preceptor; or a director of a medical-control authority, or his or her designee.

"But what about the long list that follows the qualified-immunity provision, Editor Man?"

"That seems to list people and entities protected from vicarious liability. I like the original drafter's instincts in using a vertical list, but we can be clearer—and avoid a rambling lead-in sentence—if we put that list in a separate subsection. Now, I'm not familiar with all these people and organizations, and I wasn't privy to the discussion and debate that—"

"Get on with it! We've got a man down," shouted someone in the crowd.

"Right. The 14-item vertical list in the original seems endless. But when I read it carefully, it looks like we might capture those people and entities within slightly broader terms:

(4) **Others Protected**. If under subsection (1) an emergency medical responder is not liable, then the following people and entities also are not liable for the responder's act or omission:

(a) an employer, trainer, or supervisor;

(b) an educator or education-program sponsor;

(c) a state department or state advisory body, or any person affiliated with either;

(d) a hospital or any person affiliated with it;

(e) a physician or a physician's designee;

(f) a medical-control authority or any person affiliated with it;

(g) a life-support agency or any person affiliated with it;

(h) a dispatcher;

(i) a governmental unit or officer;

(j) an emergency medical worker from another state.

"This is still a bit long, but it's a first draft, at least. If I really had my way, instead of this long list, I'd use an existing statutory term—'emergency medical services system'[6]—and try to streamline things, like this:

(4) **Others Protected**. If under subsection (1) an emergency medical responder is not liable, then no person or entity affiliated with an emergency-medical-services system is liable for the responder's act or omission.

I suppose this might cast too broad a protective net. And again, I'd need to research and recheck all this to—"

But the crowd cut him off. "Print it! Print it!"

Editor Man clicked the print icon, and Joe's secretary ran to the printer. In moments, she was back in Joe's office, waving the redraft in the air. She handed it to Editor Man, who held it in front of Joe's eyes. A tense silence gripped the room. But then Joe blinked. His pupils returned to normal. He shook his head with a start, gathered himself, and then grabbed the paper and started reading.

"Why, this is…but it can't be. It looks like the qualified-immunity provision from the Emergency Medical Services Act, but it's… it's comprehensible."

After the onlookers exhaled, they cheered Joe's miraculous revival.

"Editor Man, how can we possibly thank you?" said Joe's secretary.

But Editor Man was nowhere to be seen. Young Kent Clark later claimed that Editor Man had slipped out of Joe's office during the commotion, rushing off to redraft a turgid local ordinance. "So much legalese," rang Editor Man's words as he shot away down the hall, "so little time." ■

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FOOTNOTES

1. MCL 333.20965(1).
2. See MCL 333.20965(1)(a) through (n).
3. See Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* (Durham: Carolina Academic Press, 2006), p 146.
4. See *id.* at 146–147.
5. See *id.* at 147.
6. MCL 333.20904(6).