



Hoosier Responder

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NIMS Directives and Liability

By Bradley M. Pinsky

For possibly the first time, a high-level court in New York State held that the failure to follow a mandatory, nondiscretionary NIMS directive served as a basis for liability against a fire department. Although the court's ruling is law only in New York State, many states follow similar legal principles. Therefore, the holding should concern first responders in all states. U.S. Homeland Security Directive 5 (HSPD-5) directed the secretary of the Department of Homeland Security (DHS) to develop and administer a National Incident Management System (NIMS), which would provide a consistent, nationwide approach for federal, state, local, and tribal governments to work together.

The Facts

On March 7, 2002, the Manlius (NY) Fire Department in Onondaga County responded to a basement fire in a two-story residence in the Pompey Hill Fire District. An incident command structure was in place, and efforts to attack the basement fire had been ineffective when at least one county fire coordinator (CFC) responded to assist in command operations.

Pretrial discovery revealed allegations that the CFC did not report to either the Incident Commander (IC) or the operations officer after his on-scene arrival. Instead, testimony revealed that the CFC decided to take a "quick look" at the fire, and gave instructions to firefighters about to enter the structure.



Immediately thereafter, two firefighters from Manlius Truck 2 entered the house. The floor collapsed and the firefighters fell into the basement. The heavy involvement of the basement and surrounding areas eventually forced the rescuers to evacuate. Both firefighters died.

The Ruling

One of the firefighter's wives sued the CFC. In most states, including New York State, juries cannot base liability on a firefighter's on-scene decision. That rule is based on the principle that the public should not second-guess a first responder's emergency decision or tactic. However, New York State's second highest court ruled that the failure to follow NIMS may serve as a basis for liability, as it "mandates a reasonably defined and precedentially developed standard of care, and does not require the fact's trier to 'second-guess [a firefighter's] split-second weighing of choices.'"

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From the Director's Chair- Executive Director Joe Wainscott

With National Preparedness Month upon us, it is a good time to remember our professional and personal responsibilities as they relate to emergency preparedness. As public safety professionals, we know we have a duty to provide preparedness information to the public and to motivate individuals to act on that information. Our goal is to have EVERY Hoosier answer yes to the question: "Am I ready?" As fellow Hoosiers, achieving that goal means we personally must also be ready for disaster situations. Like all Indiana residents, we also have a responsibility to act on the life and property saving information we communicate every day. Therefore, I encourage everyone to join me in taking the month of September to

evaluate your personal readiness and the readiness of your family. During an emergency situation, we will be able to respond at our best and fullest capacity if we know our families are able to take care of themselves for at least three days. **Get a kit** together with enough water, food, medication and other essentials to last you and your family several days. **Make a plan** about how you will communicate with your family during a disaster, and where you will reconnect if you are separated. This is especially important for us as public safety professionals since disaster situations are generally times when we have tremendous professional responsibilities. **Be informed** about disasters that could impact your

neighborhood. If you do not already have one, strongly consider purchasing a NOAA weather radio for your own home. Finally, **Get Involved**. Many of us are already very involved with Hoosiers across the state, but remember to get your own family and neighbors involved in preparing for disaster situations. Make sure your loved ones are just as informed and prepared as we strive to encourage the general public to be. A ready Indiana starts right here with each of us. Please visit in.gov/dhs if you would like more information about personal disaster preparedness. ■



Indiana Emergency Medical Services for Children



In March 2009, Indiana University School of Medicine (IUSM) received funding from Health Resources and Services Administration to

re-establish the Indiana Emergency Medical Services for Children (I-EMSC) Program. EMSC is a national initiative designed to reduce child and youth disability due to severe illness or injury. Medical personnel, parents and volunteers, community groups and businesses, and various other organizations such as foundations all contribute to this effort.



Initial goals of I-EMSC are to:

Re-establish the program's infrastructure, Develop mechanisms to collect pertinent data, Establish a functional EMSC Advisory Committee under the auspices of the EMS Commission

Making a Difference

Currently, I-EMSC is focused on collecting data regarding the pre-hospital pediatric-care related capabilities of EMS agencies in Indiana. Surveys will be implemented in October-November to collect these data. On September 11, 2009, in collaboration with Indiana Emergency Nurses Association, I-EMSC will host a one-hour presentation regarding evaluation of suspected child abuse for various healthcare providers, including paramedics and other first responders in Terre Haute. Similar presentations will be held throughout the year.

For more information about the I-EMSC program and how you can be involved, contact:

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Did You Know?



Sprint-Nextel has an Emergency Response Group (ERG) standing by and ready to assist public safety emergencies anywhere in the country with critical needs. This service is available not only to current Sprint-Nextel customers, but to all public safety agencies. The Sprint-Nextel ERG provides equipment, personnel, and infrastructure to agencies in need. The ERG maintains a stock of 40,000 spare batteries for long-term incidents where electricity is unavailable. They have several Cellular Tower-on-wheels, Satellite trucks (SAT-Colts) on Ford E-650 Super Duty chassis, and mobile Internet Satellite broadcast trailers. They have 25,000 handheld phones, data devices, and air cards ready at all times. They have participated in 35 Presidential Disasters, 100 Field Training Exercises, 20 National Security Special Events, and 50+ "Major Events." Items in need can be shipped quickly from storage cache's located in Dulles VA, Orlando FL, or Grand Prairie TX. To avoid shipping problems, the popular "Go-Kits" are also available.

The Sprint-Nextel Emergency Response Group can be contacted by calling 1-888-639-0020, or GETS Users can call 1-254-295-2220 to be connected. ■



3 New Ways to Stay Informed

Follow IDHS on twitter at www.twitter.com/IDHS and become a fan of the Department of Homeland Security on Facebook.

To receive critical communications about significant scale disasters, emergencies or public safety events,

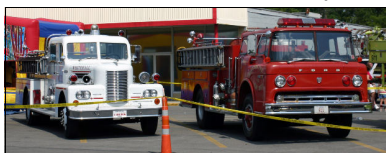
Follow www.twitter.com/INPublicSafety. This multi-agency account represents a cooperative effort among Indiana state agencies to provide potentially life-saving information from one consistent, timely and unified source. Tweets from IN-PublicSafety will be reserved for emergency or critical information only. ■

NIMS Directives and Liability

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You May Be Liable:

This surprising ruling means that first responders and their paid or volunteer agencies may be held liable for failing to adhere to mandatory NIMS requirements because they are an adopted state standard that requires no discretion. If an agency is not careful, operating procedures and policies could also serve as standards for liability. Some first response agencies have implemented policies under the title *Standard Operating Procedures*, which give the impression that certain actions are mandatory and not



discretionary. Such documents could be introduced into court against the agency to prove that the first responder failed to follow adopted, nondiscretionary procedures.

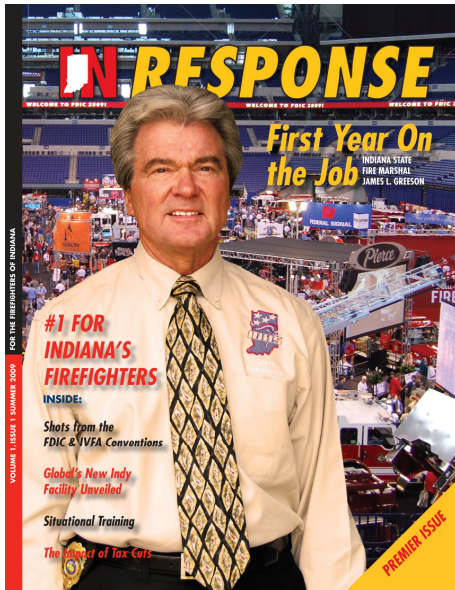
Consider the following actions:

- Name the document *Best Practice Guidelines*. Most states do not permit the introduction of "best practices" when such practices are stricter than recognized "standards of care."
- Insert introductory language in your *Best Practice Guidelines*, which describes the document's purpose.
- Eliminate words such as "must" and "shall" from best practices, and use words such as "should." Words that indicate no room for discretion might qualify that procedure as a "standard." It is unclear whether the NIMS program drafters intended the word "must" to carry liability for noncompliance, but the New York court viewed the word's use seriously.

- Separate policies from procedures and keep them in separate manuals or sections of a manual.
- Determine what items are policies and what are "best practices." Policies are mandatory in nature. There is no discretion or judgment as to how to follow a procedure. Generally, firefighting issues are all discretionary and should not be policies.
- Review which policies and procedures are actually being enforced. If a policy is not being enforced, either change the policy to mandate only that conduct required by state law, or enforce the policy as written. ■

BRADLEY M. PINSKY is an attorney in Syracuse, New York, and a captain in the Manlius (NY) Fire Department. His law practice represents approximately 200 fire departments, fire districts, and ambulance services throughout the state.

State Fire Marshal James Greeson Featured in IN Response



Has being a firefighter always been a dream of yours?

"I grew up in an Indianapolis neighborhood that had two fire stations close by to my home. When I was in eighth grade, my parents gave me a fire radio which I had on 24 hours a day and listened to all the calls. That really kept my interest in firefighting and gave me an informal education by hearing the calls and the responses."

Take us through your career as a firefighter.

"Before I was appointed Chief of IFD in 2004, I also served as Deputy Chief of Administration, Deputy Chief of Operations and Shift Commander...When I joined the force [at 21] most of the firefighters at the time were older and veterans of either WW II, the Korean, or the Vietnam War. I learned a lot from their work ethic and values and had a great deal of respect for them."

Now that you've completed your first year as State Fire Marshal, what are some of the highlights?

"One instance that really stands out in my mind from this past year is the flooding across the State and the combined efforts of the volunteer and full-time departments. The flooding around Jasonville last June on the Eel River compromised the town's water supply. The volunteer departments were completely exhausted and we were able to send 40 more

firefighters from the Indianapolis Fire Department to give them relief and staff their department...it was great to see how everyone pulled together to help each other and get the job done."



Jim Greeson was appointed as the Indiana State Fire Marshal in May, 2008.

For the full story, see IN Response, premier issue, Volume 1, Summer 2009.

IN Response is a quarterly publication dedicated to Indiana firefighters, according to Editor-in-Chief, Jon Heiniger. IN Response wanted to "check-in" with the State Fire Marshal and "learn more about him and the role he and his team play in keeping our state safe and prepared." Here's some of what they learned:

RACES: Emergency Communications

The IDHS Amateur Radio Disaster Communications ("Ham") Team supports auxiliary communications through the Radio Amateur Civil Emergency Service (RACES) program using amateur radio frequencies and any other means necessary.

The team also supports all other amateur emergency communications programs in the state of Indiana. They are trained not only in operation of communications equipment, but how to set up temporary emergency systems and equipment that is far less infrastructure-dependant than that employed by standard public safety communications.

As Deputy RACES Officer for the IDHS team, Greg Oberc reports to and supports the IDHS Communications Chief and the RACES Officer. Most recently, in addition to participating at Camp Atterbury during the Ardent Century Exercise, Oberc's team was activated during Indiana 2008 flooding. He holds an amateur radio extra class FCC license, and has worked with RACES for several years. Oberc says he particularly enjoys assisting in the recruitment and structuring of a diverse volunteer team.

His family of 5 includes several young radio enthusiasts. His 7-year-old daughter insists she is ready to start studying for her technician license, and Oberc's six-year-old son loves talking on his FRS (family radio services) radios.

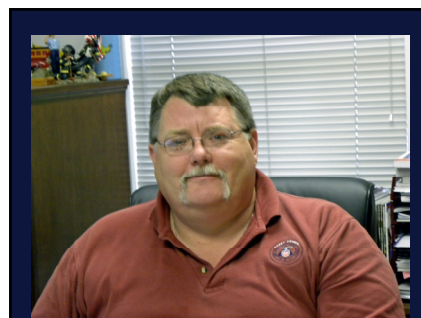
Oberc is a career engineer within the medical device and pharmaceutical industry; and besides playing radio, he enjoys the outdoors and fishing. ■



EMA SPOTLIGHT - Larry Robb, Posey County

Larry Robb, the director of the Posey County EMA for the past four years, has a solid background in emergency services. Prior to being appointed EMA director, Robb served as the 911 dispatch director as a 911 dispatcher for eight years, Posey County jailer and jail commander for 12 years and as a member of the New Harmony Volunteer Fire Department for more than 27 years. As EMA Director he also serves on the 911 Advisory Board and is the Chairman of the Posey County Local Emergency Planning Committee (LEPC).

Since becoming EMA Director, Robb has improved relationships with the area emergency responders by supporting their training efforts in NIMS, Hazardous materials communications and other areas. Larry has also worked on expanding the emergency siren coverage in Posey County, and established a RACES team. Being active in District 10 Planning Council and working together with the District 10 EMA Directors better prepares Robb for coping with the various emergencies that may occur in Indiana.



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Bordered by the Wabash River on the West and the Ohio River to the south, Posey County is located in the extreme Southwest corner of Indiana and is home to 27,000 residents. ■

New Firefighter Training Program



Course Delivery

The course practicals are conducted through the NFA website where each student must complete 2 scenarios provide by the NFA and complete worksheets provided by the Indiana Firefighter Training System. These worksheets are to be turned in to the lead evaluator prior to the start of the final practical exam. Students

The Indiana Firefighter Training System has completed the pilot program for the Fire Officer Strategy and Tactics (FOST) course. IDHS Firefighter Training Section Chief David Probo expressed his appreciation for the instructors and students who “suffered through the challenges of pilot courses” and who offered valuable suggestions leading to necessary changes that have improved the course now offered. Feedback from courses delivered in the future will continue to be welcome.

Course Materials

The new program is completely different from the previous National Fire Academy (NFA) course and uses the second edition Brady Strategic and Tactical Considerations on the Fire ground manual. Chief Probo also created the FOST Instructors Resource disk containing the curriculum, chapter quizzes, PowerPoint instructions for all practicals, and all necessary evaluation forms, etc. Disks will be distributed shortly, and instructors in need of books may contact their district chairman or coordinator, or Chief Probo.

and instructors who experience problems with the website are asked to contact Chief Probo as soon as possible so issues may be resolved in a timely manner. The final practical exam is a series of scenarios on PowerPoint. The lead evaluator may select two of the scenarios provided in the curriculum or create two of his own.

Note to Instructors

Instructors preparing to teach their first FOST class are requested to contact Chief Probo at least one week prior to the start to have any questions answered and to ensure they have everything they need for course delivery. Chief Probo may be contacted at either the phone number or email address listed below.

Firefighter Training Section Chief
 Indiana Firefighter Training System
 Ph# (317) 234-6589
 Cell# (317) 508-9165
 Email dprobo@dhs.in.gov ■

Governor Requests Assistance for August 19th Storm Victims

Gov. Mitch Daniels has requested U.S. Small Business Administration (SBA) loan assistance for Porter County as a result of serious damage sustained to homes and businesses from severe storms and a tornado August 19. The storm tore part of the roof from the middle school gymnasium, damaged an apartment complex and several area homes, and left nearly the entire town without power.



SBA provides low interest, long term loans to individuals, businesses and private non-profit organizations in a declared disaster area for losses not fully covered by insurance. Loans can include funds for physical losses or to help meet working capital needs caused by the disaster. The disaster loan program is the only form of SBA assistance not limited to small businesses. The amount of damage in Porter County did not meet the Federal Emergency Management Agency (FEMA) guidelines for a presidential disaster declaration. ■

IDHS Midwest SAR Conference

The IDHS Midwest Search and Rescue (SAR) Conference will be held **September 24-27, 2009**. Manager Lillian Hardy developed a full conference schedule of courses, including but not limited to: Wilderness First Aid, Cadaver Search, Canine Tracking and Trailing, ICS 300, Rope Operations, Hazmat Awareness, Hazmat Operations, Land Navigation, Visual Tracking, Introduction to GPS for Search and Rescue, Edible and Medicinal Plants of the Eastern U.S. Woodlands, New Technologies in Search and Rescue, Canine Legal Issues, Introduction to Cave Rescue, and Introduction to Mounted Search and Rescue.



Breakout session sizes are limited. online registration is available at <http://tinyurl.com/nkcje3>. For additional information, please call 812-526-0013. ■

Integrated Emergency Management Course

In August, more than 100 IDHS and other state agency personnel participated in the Integrated Emergency management Course from FEMA’s Emergency Management Institute. The 3 and a half day course helped build awareness and skills needed to develop and implement policies, plans, and procedures in the state EOC. The class consisted of two days of instruction and one and a half days of functional exercise. The 7.1 Wabash Valley Fault earthquake exercise initiated a Level 1 Activation of the State EOC. The EOC was fully staffed and an expansion area was used for additional personnel. A Joint Information Center (JIC) was also established. The overall experience was extremely beneficial and will ensure state partners continue to improve operations. ■



EMA Spotlight – Brandon Taylor, Huntington



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Thirteen-year Roanoke Volunteer Fire Department veteran, Brandon Taylor, has served as fire chief for the last five years, and Huntington County EMA Director for the last 3 ½ years. Since beginning his work as director, 800MHz radios have been distributed to all first responder agencies, and all law enforcement is on the state Safe-T system. Tyler credits the establishment of strong working relationships with the increased cooperation and information sharing that has developed between the EMA and the emergency response agencies in the county. He also oversaw the completion of the county's 28 -foot mobile command/mobile dispatch trailer used on large incidents for command and rehab and as back up for the dispatch center and

Public Safety Answering Point (PSAP).

A hazmat technician and state certified instructor, Taylor chairs the Local Emergency Planning Committee and also sits as county representative on the District Training Council, which just finished construction on a new fire training facility for the southern portion of IDHS District 3. He remains committed to the fire department as well. "I love the fire service, and I spend a lot of time going to trainings," he said. Taylor and his wife enjoy camping and watching their son and daughter play sports. ■

Happy September Birthday!



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|------------------|----------------------------|
| Gail Fennel—5 | Gary Parker—17 |
| Jay Penndorf—6 | John Bayse—18 |
| Larry Parkey—7 | Tim Hayes—18 |
| John Gettler—7 | Nichelle Elliott—21 |
| John Webber—8 | Cecilia Ernestes-Boxell—24 |
| James Whitaker—9 | Frank Cating—25 |
| Gerri Husband—11 | Dennis Leonardo—25 |
| David Probo—12 | Jan Crider—26 |
| Lillian Hardy—12 | Jim Greeson—26 |
| Bud Meiring—14 | Carlos Garcia Baker—28 |
| Jim Bennett—14 | Greg Hadnott—30 |

- Eric Gentry—1
Denise Clarke—1
Rachel Meyer—2
Cheryl Morris—3
Gary Davis—3
Kathy Dayhoff-Dwyer—5



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