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## **Medical Care Providers Assume Duty when they Provide Care**

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For decades, municipal fire services have escaped liability for negligent acts of their firefighters as a result of a plaintiff's inability to prove the existence of a "special relationship". The law requires that before any municipality can be liable for injuries to a person, the municipality must have assumed a "special duty" to that person.

Generally, acquiring a special duty requires that the municipality had direct contact with the injured party, that the injured party was given instructions from the municipality, that the injured party relied upon those instructions, that the municipality should have foreseen that the party would have relied upon those instructions, and that the municipality should have known that the failure to carry through with its part could result in harm to the injured party.

For example, many years ago a case reviewed the following fact pattern: A person called 911 to report an intruder in her house. A 911 operator instructed the caller to remain in the house, as the police were on the way. The police arrived at the wrong house and never checked to find the correct house. Soon thereafter, the caller was killed by the intruder. The court held that a special duty was assumed by the municipality to provide help to the caller. 911 had assumed a duty by having direct contact with the caller, and providing instructions and promises which the caller reasonably relied upon.

In the fire service, it is very difficult to establish that an owner of a house which is on fire has a special relationship with the fire department. The plaintiff rarely proves that it had a special relationship with fire department. Thus, the fire department rarely loses a claim against it for failing to properly extinguish a fire.

That is not the case in the area of medical care.

In December, 2004, the Appellate Division held that a fire district had assumed a special duty to a patient of the fire district's ambulance by the act of providing medical treatment. (See, *Kowal v. Deer Park Fire Dist.*, 787 N.Y.S.2d 352 [2nd Dept. 2004].

This is a reasonable holding. Therefore, municipal ambulance services should not believe that once they begin to provide care to a patient, that they can claim no duty existed between their municipal ambulance service and the patient.