State laws

- According to FARE, all the other states (except two) have laws allowing teachers to be trained and allowing schools to have epi available (legislation is pending in 4 states)
- Mostly applicable to schools.
- Check FARE website for a map and listing of each state's law.
  - http://www.foodallergy.org/advocacy/epinephrine/map

Other state laws

- Some have limited definition (camps, i.e. New York; higher ed in New Jersey)
- Some have a broader application--if have responsibility for others (i.e. Utah 26-41-101 et. seq., California, Arkansas, Florida, Maryland,)
- Some allow any lay person to be trained to administer epi
  - Alaska (AS 17.22.010)
  - North Carolina (10A NCAC 13P .0509)
  - North Dakota (23-01-05.2)

Alaska's model statute (AS.17.22.010)

- Covers:
  - Auto injectors and ampules
  - Can use for anaphylaxis or severe asthma
  - Allows for getting a rx and purchasing epi
  - Outlines what training is required
  - Includes immunity from liability

Current state of the law

- Doctor's ability to prescribe
- Pharmacies ability to fill a script to an organization or individual who is not the end user

Is this practicing medicine?

- Considered first aid by:
  - American Red Cross (offers class)
  - American Medical Association
  - Amer Acad of Allergy Asthma and Immunology
  - American Academy of Pediatrics (implied)
  - Wilderness Medical Society
    - Scope of practice, WMS panel recs
  - CDC advocates use by lay people
- Some states explicitly say not practicing med or that it is first aid

The Good News

- Doctors have lower threshold for defining anaphylaxis
- CDC recommends giving at first sign of reaction
- Generally regarded as basic first aid
- Most states (44/50) have laws that allow (or require) staff at school to be trained
- More states are allowing others to be trained
- Epi-Pens are becoming more mainstream—advertising on national TV

The Bad News

- Likely is still illegal for many to administer it.
- Most states don't cover our industry.
- NY and Missouri explicitly prohibit it unless it is expressly authorized.
- Some states even prohibit EMTs from using auto-injectors.
- Real disconnect in the law. Thus,
- **You must know the law in the states where you operate.**

Potential legal issues

- Can be negligence per se
  - If you violate a law intended to protect one from harm that happened
- Insurance may have exclusion for illegal acts
- Affects medical advisor, pharmacy, organization, and staff
- May be implications on professional licenses

Giorgi v. City of Sacramento
Sacramento Co. Superior Court
2104-00162222, filed 4/18/14

- 13 year old died at camp after ingesting Rice Krispies made with peanut butter
- Only prior evidence of allergy was mild reaction at age 3
- Father, a physician, administered 2 doses of child's own epi
- Camp had epi in locked cabinet, could not find key. Father broke cabinet and administered third dose but it was delayed.

Allegations:

- Camp had been told about peanut allergy.
- Failed to identify food with nuts when knew had allergy.
- Was foreseeable that might have anaphylaxis and need for emergency medication.
- Negligent for failing to have epinephrine readily available.

NOW WHAT?

OPTIONS AND ACTIONS

You must know the law in the states where you operate.

Then, consider your options.

Carry where legally authorized only

- Complete research in every state where operate
- Complete staff training, if necessary, and obtain certification or other evidence of authorization
- Varying policies within org?
  - Geographically
  - Confusing for staff
- Adjust policy/inform staff
- Inform participants of risks/remote operations and/or have bring own?
  - Policy if does not bring own?
  - Logistically feasible?

Have students bring own supply

- Is this a requirement?
- What to do if student does not or chooses not to bring?
- Mandate type, dosage, etc.?
- What is policy for administering to others?
- Disclosure to clients?

Have medications available/teach administration of meds regardless of law

- Be certified in state when possible
- Understand penalties and defenses
- Inform staff
- Inform participants/get consent?
- Inform wilderness medicine trainers and students
- Confer with consulting physicians
- Contact dr. before administering?
- Limit to non-urban settings?

Change the law

- Position statements from medical entities
- Include wilderness organizations
- State vs. federal law
- State law vs. agency regulations
- Work with land managers (NPS, Forest Service, etc.)?

What to do in any event

- Learn the law in the state where you offer programs
  - Confer with a knowledgeable attorney
- Confer with your medical advisor
- Confer with your Board
- Decide what your policy will be
- Advise staff of your policies and the implications
- Include in curricula for wilderness medicine courses
- Provide notice to participants about your policies and consider getting consent for treatment in writing in advance
- Try to have a doctor available for field staff to consult before administering or as soon as possible after the administration (if you decide to carry)
- Advocate with state agencies, state legislature, and/or Congress for changes in the law, if needed

Resources

- Article by Rufus Brown, Maine attorney, on legal issues related to epi. Lists what states are doing and relevant statutes. www.brownburkelaw.com/articles-epinephrine.html
- FARE list of state laws re schools http://www.foodallergy.org/advocacy/epinephrine/map
- CDC Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs http://www.foodallergy.org/cdc
- Wilderness Medical Society guidelines http://www.wemjournal.org/article/S1080-6032(10)00202-4/fulltext
- Auto-injector additional epinephrine retrieval www.wemjournal.org/article/S1080-6032(13)00094-X/fulltext