



Medical/Legal Aspects of Advanced Prehospital Care

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Topics

- ❑ Legal Duties and Ethical Responsibilities.
- ❑ The Legal System.
- ❑ Laws Affecting EMS and the Paramedic.
- ❑ Legal Accountability of the Paramedic.
- ❑ Paramedic-Patient Relationships.
- ❑ Resuscitation Issues.
- ❑ Crime and Accident Scenes.
- ❑ Documentation.

Best Protection

- ❑ Your best protection from liability is to perform systematic assessments, provide appropriate medical care, and maintain accurate and complete documentation.

Legal Duties and Ethical Responsibilities (1 of 2)

- Promptly respond to the needs of every patient.
- Treat all patients and their families with respect.
- Maintain your skills and medical knowledge.
- Participate in continuing education.

Legal Duties and Ethical Responsibilities (2 of 2)

- Critically review your performance, and constantly seek improvement.
- Report honestly and with respect for patient confidentiality.
- Work cooperatively and with respect for other emergency professionals.

Each EMS response has the potential of involving EMS personnel in the legal system.



Sources of Law (1 of 2)

- **Constitutional**—based on the U.S. Constitution.
- **Common**—derived from society's acceptance of customs and norms.

Sources of Law (2 of 2)

- **Legislative**—created by law-making bodies such as Congress and state assemblies.
- **Administrative**—enacted by governmental agencies at either federal or state levels.

Categories of Law

(1 of 3)

- **Criminal**—division of the legal system that deals with wrongs committed against society or its members.

Categories of Law

(2 of 3)

- **Civil**—division of the legal system that deals with non-criminal issues and conflicts between two or more parties.

Categories of Law

(3 of 3)

- **Tort**—a civil wrong committed by one individual against another.

Components of a Civil Lawsuit

- | | |
|-----------------------|--------------|
| ■ Incident | ■ Discovery |
| ■ Investigation | ■ Trial |
| ■ Filing of complaint | ■ Decision |
| ■ Answering complaint | ■ Appeal |
| | ■ Settlement |

Laws Affecting EMS and the Paramedic

Scope of Practice

- **Range of duties and skills paramedics are allowed and expected to perform.**

You may function as a paramedic only under the direct supervision of a licensed physician through a delegation of authority.

Licensure and Certification

- Certification refers to the recognition granted to an individual who has met predetermined qualifications to participate in a certain activity.
- Licensure is a process used to regulate occupations generally granted by a governmental body to engage in a profession or occupation.

Motor Vehicle Laws

- Vary from state to state, and govern operation of emergency vehicles and the equipment they carry.

Mandatory Reporting Requirements

- Spouse abuse
- Child abuse and neglect
- Elder abuse
- Sexual assault
- Gunshot and stab wounds
- Animal bites
- Communicable diseases

Legal Protection for the Paramedic

- ❑ Immunity—exemption from liability granted to governmental agencies.
- ❑ Good Samaritan Laws—provide immunity to certain people who assist at the scene of a medical emergency.
- ❑ Ryan White CARE Act—requires notification and assistance to paramedics who have been exposed to certain diseases.
- ❑ Local laws and regulations.

Legal Accountability of the Paramedic

Negligence

- ❑ Deviation from accepted standards of care recognized by law for the protection of others against the unreasonable risk of harm.

Always exercise the degree of care, skill, and judgment expected under like circumstances by a similarly trained, reasonable paramedic in the same community.

Components of a Negligence Claim

- Duty to act.
- Breach of duty.
- Actual damages.
- Proximate cause.

Duty to Act

- ...is a formal contractual or informal legal obligation to provide care.

Breach of Duty

- ...is an action or inaction that violates the standard of care expected from a paramedic.

Breaches of Duty

- Malfeasance—performance of a wrongful or unlawful act by a paramedic.
- Misfeasance—performance of a legal act in a harmful or injurious manner.
- Nonfeasance—failure to perform a required act or duty.

Actual Damages

- ...refers to compensable physical, psychological, or financial harm.

An action or inaction that immediately caused or worsened the damage is called proximate cause.

Special Liability Concerns

Medical Direction (1 of 2)

■ A paramedic's medical director and on-line physician may be sued if:

- Medically incorrect orders were given to the paramedic;
- There was a refusal to authorize the administration of a necessary medication;

Medical Direction (2 of 2)

■ **A paramedic's medical director and on-line physician may be sued if:**

- The paramedic was directed to take the patient to an inappropriate facility;
- Negligent supervision of a paramedic is proven.

Borrowed Servant Doctrine

■ **While supervising an EMT-I or EMT-B, a paramedic may be liable for any negligent act that person commits.**

Civil Rights

■ **If medical care is withheld due to any discriminatory reason, a paramedic may be sued.**

- **Examples:**
 - Race
 - Creed
 - Color
 - Gender
 - National origin
 - Ability to pay (in some cases)

Off-Duty Paramedics

- Performing procedures that require delegation from a physician while off-duty may constitute practicing medicine without a license.

Paramedic-Patient Relationships

Legal Principles (1 of 5)

- Confidentiality is the principle of law that prohibits the release of medical or other personal information about a patient without the patient's consent.

Legal Principles (2 of 5)

- Defamation is an intentional false communication that injures another person's reputation or good name.

Legal Principles (3 of 5)

- Libel is the act of injuring a person's character, name, or reputation by false statements made in writing or through the mass media with malicious intent or reckless disregard for the falsity of those statements.

Legal Principles (4 of 5)

- Slander is the act of injuring a person's character, name, or reputation by false or malicious statements spoken with malicious intent or reckless disregard for the falsity of those statements.

Legal Principles (5 of 5)

- A paramedic may be accused of invasion of privacy for the release of confidential information, without legal justification, regarding a patient's private life, which might reasonably expose the patient to ridicule, notoriety, or embarrassment.

The fact that the information released is true is not a defense to an action for invasion of privacy.

Consent

- The granting of permission to treat a patient.
- You must have consent before treating a patient.
- Patient must be competent to give or withhold consent.

Informed Consent

- ❑ Consent based on full disclosure of the nature, risks, and benefits of a procedure.
- ❑ Must be obtained from every competent adult before treatment may be initiated.
- ❑ In most states a patient must be 18 years of age or older to give or withhold consent.
- ❑ In general, a parent or guardian must give consent for children.

Expressed Consent

- ❑ Verbal, non-verbal, or written communication by a patient who wishes to receive treatment.
- ❑ The act of calling for EMS is generally considered an expression of the desire to receive treatment.
- ❑ You must obtain consent for each treatment provided.

Implied Consent

- ❑ Consent for treatment that is presumed for a patient who is mentally, physically, or emotionally unable to give consent.
- ❑ It is assumed that a patient would want life-saving treatment if able to give consent.
- ❑ Also called emergency doctrine.

Involuntary Consent

- ❑ Consent for treatment granted by a court order.
- ❑ Most commonly encountered with patients who must be held for mental-health evaluation or as directed by law enforcement personnel who have the patient under arrest.
- ❑ May be used on patients whose disease threatens a community at large.

Special Consent Situations (1 of 2)

- ❑ **Minors**
 - Usually a person under 18 years of age.
 - Consent must be obtained from a parent or legal guardian.
- ❑ **Mentally incompetent adult**
 - Consent must be obtained from the legal guardian.

Special Consent Situations (2 of 2)

- ❑ **For Minors & Mentally incompetent adults...**
 - If a parent or legal guardian cannot be found, treatment may be rendered under the doctrine of implied consent.

Emancipated Minors

■ **Person under 18 years of age who is:**

- Married
- Pregnant
- A parent
- A member of the armed forces
- Financially independent living away from home

Emancipated minors may give informed consent.

Withdrawal of Consent

- **A patient may withdraw consent for treatment at any time, but it must be an informed refusal of treatment.**

An example of a “release-from-liability form.”

REFUSAL OF TREATMENT AND TRANSPORTATION	
<small>I, THE UNDERSIGNED HAVE BEEN ADVISED THAT MEDICAL ASSISTANCE ON MY BEHALF IS NECESSARY AND THAT REFUSAL OF SAID ASSISTANCE AND TRANSPORTATION MAY RESULT IN DEATH, OR IMPERIL MY HEALTH. NEVERTHELESS, I REFUSE TO ACCEPT TREATMENT OR TRANSPORT AND ASSUME ALL RISKS AND CONSEQUENCES OF MY DECISION AND RELEASE GOLD CROSS AMBULANCE COMPANY AND ITS EMPLOYEES FROM ANY LIABILITY ARISING FROM MY REFUSAL.</small>	
_____ WITNESSED BY	_____ SIGNATURE OF PATIENT
	_____ DATE SIGNED

Refusal of Service

- ❑ Not every EMS run results in the transportation of the patient to the hospital.
- ❑ Emergency care must always be offered to the patient, no matter how minor the injury or illness.

If a Patient Refuses

(1 of 4)

- ❑ Is the patient legally permitted to refuse care?
- ❑ Make multiple, sincere attempts to convince the patient to accept care.

If a Patient Refuses

(2 of 4)

- ❑ Make sure the patient is informed in his or her decision.
- ❑ Consult with on-line medical direction.

If a Patient Refuses

(3 of 4)

- Have the patient and a disinterested witness sign a release-from-liability form.
- Advise the patient he or she may call again for help.

If a Patient Refuses

(4 of 4)

- Attempt to get someone to stay with the patient.
- Document the entire situation thoroughly.

Some EMS systems have checklists for procedures to follow when a patient refuses care.

EMS PATIENT REFUSAL CHECKLIST

PATIENT'S NAME: _____ AGE: _____
LOCATION OF CALL: _____ DATE: _____
ADDRESS NUMBER: # _____ ASSISTANT CODE: _____
NAME OF PROVIDER/UNIT/UNIT NUMBER: _____

I. ASSESSMENT OF PATIENT (Check appropriate responses for each item)

1. Conscious? Yes No
2. Able to follow directions? Yes No
3. Able to communicate? Yes No
4. Able to sign? Yes No

II. PATIENT REFUSED (Check appropriate response for each item)

Yes No Medical intervention/transport refused
 Yes No Ambulance transport refused
 Yes No Patient has read and signed refusal of transport/transportation
 Yes No Transport by means other than ambulance could be hazardous to life of patient's condition
 Yes No Patient provided with Patient Information Sheet
 Yes No Patient accepted Refusal Information Sheet

III. DISPOSITION

Release of patient
 Refused transport, but accepted transport
 Refused transport, but accepted first aid/transport
 Patient transported by private vehicle to _____
 Refused in care of family or friend
 Refused in care of another agency
 Refused in care of law enforcement agency
 Agency
 Refused in care of other agency
 Other _____

IV. COMMENTS: _____

Legal Complications Related to Consent

Legal Complications Related to Consent (1 of 4)

- Abandonment is the termination of the paramedic-patient relationship without assurance that an equal or greater level of care will continue.

Legal Complications Related to Consent (2 of 4)

- Assault is an act of unlawfully placing a person in apprehension of immediate bodily harm without his or her consent.
- Battery is the unlawful touching of another person without his or her consent.

Legal Complications Related to Consent (3 of 4)

- ❑ False imprisonment is the intentional and unjustifiable detention of a person without his or her consent or other legal authority.

Legal Complications Related to Consent (4 of 4)

- ❑ Reasonable force is the minimal amount of force necessary to ensure that an unruly or violent person does not cause injury to himself, herself, or others.

Patient Transportation

- ❑ Maintain the same level of care as was initiated at the scene.
- ❑ Know the closest, most appropriate facility.
- ❑ Respect the patient's choice of facility without putting patient care in jeopardy.

Resuscitation Issues

Advance Directives

- A document created to ensure that certain treatment choices are honored when a patient is unconscious or otherwise unable to express his or her choice of treatment.

A Living Will allows a person to specify what kinds of medical treatment he or she should receive.

LIVING WILL

I, _____, make the following **Living Will** declaration to my family, physicians, hospitals, and other health-care providers and any Court or Judge:

After thoughtful consideration and while I am of sound mind, I make this statement as an expression of my settled and firm wishes if the time comes when I can no longer take part in decisions about my own future health.

My Wishes. If at any time I have a terminal condition, and in the opinion of my attending or treating physician there is no reasonable probability that I will recover and the condition can be expected to cause my death within a relatively short time if medical procedures which serve only to prolong the process of dying are not used, or if I am in a permanent vegetative state in which I have no voluntary action or cognitive behavior and cannot communicate or interact purposefully and which is a permanent and irreversible condition of unconsciousness, I request that I be allowed to die naturally and not be kept alive by artificial means. I ask that all life-prolonging procedures, including medical assistance to eat and drink when it is highly unlikely that I will regain the capacity to eat and drink without medical assistance, be withheld or withdrawn in such a situation.

Resuscitation. It is my further wish that no cardiopulmonary resuscitation shall thereafter be administered to me if I sustain a cardiac or respiratory arrest. In those circumstances I consent to an order not to resuscitate, and direct that such an order be placed in my medical record.

I direct that these decisions shall be carried into effect even if I am unable to personally reconfirm or communicate them, without seeking judicial approval or authority.

I recognize that there may be instances besides those described above for which life-sustaining treatment should be withheld or withdrawn and this instrument shall not be construed as an exclusive enumeration of these circumstances.

Revocation and Responsibility. This instrument and its instructions may be revoked by me at any time and in any manner. However, no physician, hospital, or other health-care provider who withholds or withdraws life-sustaining treatment in reliance upon this Living Will or upon my personally communicated instructions shall have any liability or responsibility to me, my estate, or any other persons for having withheld or withdrawn treatment.

I intend this declaration to be accepted in the circumstances described as an exercise of my legal right to refuse medical treatment even if I am unable to personally reconfirm or communicate that. It is made in the presence of the witnesses who have signed below in my presence.

Signed on (date): _____ Witness: _____

Signature: _____ Witness: _____

Crime and Accident Scenes

(1 of 3)

- If you believe a crime has been committed, involve law enforcement.
- Protect yourself and other EMS personnel.

Crime and Accident Scenes

(2 of 3)

- Initiate patient care only when the scene is safe.

Crime and Accident Scenes

(3 of 3)

- Preserve the scene as much as possible:
 - Observe and document anything moved;
 - Leave gunshot or stabbing holes intact if possible;
 - If something must be moved, notify investigating officers and document your actions.

Documentation

- ❑ Complete promptly after patient contact.
- ❑ Be thorough.
- ❑ Be objective.
- ❑ Be accurate.
- ❑ Maintain patient confidentiality.
- ❑ Never alter a patient care record.

Some EMS systems require paramedics to dictate patient care reports, which are later transcribed and placed in the patient's medical records.



Summary

- ❑ Legal duties and ethical responsibilities.
- ❑ The legal system.
- ❑ Laws affecting EMS and the paramedic.
- ❑ Legal accountability of the paramedic.
- ❑ Paramedic-patient relationships.
- ❑ Resuscitation issues.
- ❑ Crime and accident scenes.
- ❑ Documentation.
