Medical/Legal Aspects of Advanced Prehospital Care

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.
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.

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
- Investigation
- Filing of complaint
- Answering complaint
- Discovery
- Trial
- Decision
- 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.
<table>
<thead>
<tr>
<th>Legal Principles (2 of 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defamation is an intentional false communication that injures another person's reputation or good name.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal Principles (3 of 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal Principles (4 of 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>
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 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.
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.
Do Not Resuscitate Order (DNR) indicates which, if any, life-sustaining measures should be taken when the patient’s heart and respiratory functions have ceased.

Some systems have developed protocols that address organ viability after a patient’s death.

A death in the field must be appropriately dealt with and documented by following local protocol.
If you believe a crime has been committed, involve law enforcement.

Protect yourself and other EMS personnel.

Initiate patient care only when the scene is safe.

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.