Medical/Legal Issues

Chapter 4:

Legal Duties

• Legal duties to patient, employer, medical director, and public
  • Set by statutes and regulations
  • Based on generally accepted standards

Ethical Responsibilities

• Principles that identify conduct deemed morally desirable
**Ethical Responsibilities**

- Responding with respect to the physical and emotional needs of every patient
- Maintaining mastery of skills
- Participating in continuing education/refresher training
- Critically reviewing performance and seeking improvement
- Reporting honestly

**Ethical Responsibilities**

- Respecting confidentiality
- Working cooperatively and with respect for other emergency workers and health care professionals
- Staying current with new concepts and modalities
- NAEMT Code of Ethics
  - Exemplifies ethical guidelines for paramedic

**Legal & Ethical Responsibilities**

- Failing to perform the job appropriately can result in civil or criminal liability
- Best legal protection is:
  - Appropriate assessment and care
  - Accurate and complete documentation
- Laws differ from state to state and area to area
  - Get competent legal advice
Types of Law

- Legislative law
- Administrative law
- Common law
- Criminal law
- Civil law

Legislative Law

- Made by legislative branches of government
  - City councils
  - District boards
  - General assemblies
  - Congress

Administrative Law

- Regulations developed by a governmental agency to provide details about the function and process of the law
- Regulatory agencies may hold disciplinary hearings regarding revocation or suspension of licenses
**Common Law**
- Case or judge-made law
- Derived from society’s acceptance of customs or norms over time
- Based on decisions of state and federal judicial systems
- Court decisions may provide guidance in defining:
  - Acceptable conduct
  - Negligence
  - Interpretation of EMS statutes and regulations

**Criminal Law**
- Area of law in which federal, state, or local government prosecutes individuals on behalf of society for violating laws designed to safeguard society
- Violation punished by fine, imprisonment, or both

**Civil (Tort) Law**
- Area of law dealing with private complaints brought by a plaintiff against a defendant for an illegal act or wrongdoing (tort)
- Enforced by bringing a civil lawsuit in which plaintiff requests court to award damages
How Laws Affect the Paramedic

- Scope of Practice
- Medical Direction
- Medical Practice Act

Licensure/Certification

- Licensure
- Certification

Motor Vehicle Laws

- Motor vehicle codes usually define standards for equipping and operating emergency vehicles
  - Vary by state
- Review state codes regarding:
  - Reckless driving
  - Excessive speeds
  - Failure to consider roads and weather conditions
  - Inappropriate use/nonuse of sirens and lights
Mandatory Reporting Requirements

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

- Content of report and to whom it must be made is set by law, regulation or policy

Protection for the Paramedic

- Infectious disease exposure notification
  - Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (PL 101-381)
- Immunity statutes
  - Governmental immunity
  - Good Samaritan laws

Protection for the Paramedic

- Special crimes against a paramedic
- If the scene is not safe, and it cannot be made safe—retreat from the scene and do not enter the area until it is properly secured
The Role of the Courts

- **Trial court**
  - Determines outcomes of individual cases
  - Cases may be determined by judge or jury
- **Appellate court**
  - Hears appeals of decisions by trial courts or other appeals courts
  - Decisions may set precedent for later cases

Anatomy of an Injury Lawsuit

- Incident occurs
- Investigation conducted by plaintiff’s representative
- Complaint is filed in court and served on defendant
- Complaint is answered by defendant

Anatomy of an Injury Lawsuit

- Discovery occurs
- Trial is conducted
- Decision is handed down by judge or jury
- Decision may be appealed
- Settlement occurs
**Legal Accountability - Paramedic**

- Responsible to act in a reasonable and prudent manner
- Responsible to provide a level of care and transportation consistent with education/training and local protocol
- Negligence can result in legal accountability and liability

**Negligence**

- Lawsuits involving patient care usually result from civil claims of *negligence*: the failure to act as a reasonable, prudent paramedic would act in similar circumstances

**Components of Negligence**

- In most states, four elements must be proved for negligence to exist:
  - Duty to act
  - Breach of duty
  - Damages
  - Proximate cause
Negligence - Defenses

- Best protection for health care professionals against claims of negligence:
  - Training
  - Competent patient care skills
  - Thorough documentation of all patient care activities

Negligence - Defenses

- Good Samaritan laws
- Governmental immunity
- Statute of limitations
- Contributory negligence
- Liability insurance

Special Liability Concerns

- Liability of Paramedic Medical Director
  - On-line
  - Off-line
- Liability for “Borrowed Servants”
Civil Rights

- May not discriminate in providing service to a patient by reason of race, color, gender, national origin, or, in some cases, ability to pay
- Patients should be provided with appropriate care regardless of disease condition

Off-Duty Paramedic

- May not have authority to perform paramedic procedures that require delegation from a physician
- Varies from state to state

Protection Against Negligence Claims

- Appropriate education/training and continuing education
- Appropriate medical direction
  - On- and off-line
- Accurate, thorough documentation
- Professional attitude and demeanor
**Confidentiality**

- Confidential information
  - Patient history
  - Assessment findings
  - Treatment rendered

- Release of information
  - Requires written permission from patient or legal guardian
  - Permission not required for release of select information

- Improper release of information or release of inaccurate information can result in liability
  - Invasion of privacy
  - Defamation
    - Libel
    - Slander

**Consent**

- Conscious, competent patients have the right to decide what medical care and transportation to accept

- Patient must be of legal age and able to make a reasoned decision
Consent

- Patient must be properly informed
  - Nature of the illness or injury
  - Treatment recommended
  - Risks and dangers of treatment
  - Alternative treatment possible and the risks
  - Dangers of refusing treatment (including transport)
- Conscious, competent patient can revoke consent at any time during care and transport

Consent

- Informed consent
- Expressed consent
- Implied consent
- Involuntary consent

Minors

- In most states, a person is a minor until age 18, unless emancipated
- Unemancipated minors are not able to give or withhold consent
  - Consent of parent, legal guardian or court-appointed custodian is usually required
- Emergency doctrine applies to minors when parent or guardian cannot be contacted
**Mentally Incompetent Adults**

- If there is a legal guardian, consent may be given or withheld by guardian.
- Emergency doctrine applies if no one legally able to give consent can be contacted.

**Prisoners or Arrestees**

- Court or police who have custody may authorize emergency treatment.
- Usually limited to care needed to save life or limb.

**Refusal of Care or Transport**

- Patient must be conscious and able to make a reasonable decision.
- Make multiple attempts to convince the patient to accept care.
- Enlist help of others to convince patient.
- Assure that patient is informed about the implication of the decision and potential for harm.
**Refusal of Care or Transport**

- Consult medical direction
- Request patient and a disinterested witness to sign a “release from liability” form
- Advise the patient that he or she may call again for help if needed
- Attempt to get family or friends to stay with patient
- Document situation and actions thoroughly on patient care report

**Refusal of Care or Transport**

- Cases involving refusal of care are a significant cause of lawsuits against EMS agencies
- Always consult with medical direction

**Decisions Not to Transport**

- Involve medical direction
- Thoroughly document reasons for decision
Abandonment

- Terminating care when it is still needed and desired by patient, and without assuring that appropriate care continues to be provided by another qualified provider
- May occur in field or when a patient is delivered to emergency department

False Imprisonment

- May be charged by a patient who is transported without consent or who is restrained without proper cause or authority
- May be a civil or criminal violation

Assault / Battery

- Assault
  - Threatening, attempting or causing fear of offensive physical contact with a patient or other individual
- Battery
  - Unlawful touching of another person without consent
### Use of Force
- Unruly or violent patients
- Use of restraints
- Involve law enforcement, if possible
- Use only force considered to be “reasonable” to prevent harm to the patient or others
- Must always be humane and never punitive in nature

### Transportation of Patients
- Level of care during transportation
- Use of emergency vehicle operating privileges
- Choice of patient destination
- Payer protocols

### Resuscitation Issues
- Withholding or stopping resuscitation
  - Procedure should be established by local protocols
  - Role of medical direction should be clearly delineated
Resuscitation Issues

• As a rule, patients who are pulseless should be resuscitated (unless directed otherwise by a physician), or unless one or more of the following is present ...

- Obvious clinical signs of death
- Resuscitation attempts which would place the rescuer at significant risk of personal injury
- Presence of documentation in the form of:
  - "NO-CPR" orders
  - "Do Not Resuscitate" (DNR) orders
  - "Do Not Attempt Resuscitation (DNAR) orders
- Or another reliable reason to believe that CPR is not indicated, warranted, or in patient’s best interest

Advance Directives

- Status depends on state laws and local protocols
- Written patient statements of preference for future medical treatment:
  - Living will
  - Durable power of attorney for health care
  - Do not resuscitate (DNR) orders
- Authority granted in part by Patient Self-Determination Act
- Medical direction must establish and implement policies for dealing with advance directives

Figure 4-2
Potential Organ Donation

- Identify the patient as a potential donor
- Establish communication with medical direction
- Provide emergency care that will help maintain viable organs
  - Airway management
  - Appropriate fluid resuscitation to maintain adequate perfusion
  - Eye care
- Careful documentation

Death in the Field

- In the field, determination of death usually is confirmed by the following signs:
  - No spontaneous electrical activity in the heart as confirmed by ECG in several leads
  - No spontaneous respirations
  - Absent cough and gag reflex
  - No spontaneous movement
  - No response to painful stimuli
  - Fixed and dilated pupils
  - Dependent lividity
  - Rigor mortis

Death in the Field

- When an apparent death is encountered in the field, the paramedic should:
  - Contact medical direction for guidance and follow established state and/or local protocols
  - Document any observations or unusual findings at the scene
  - Notify appropriate authorities per protocol (e.g., police, coroner)
  - Disturb the scene as little as possible
  - Provide emotional support to surviving family and friends at the scene
**Crime Scene**

- Protect self and other EMS personnel
- Care for the patient(s) as necessary
- Notify law enforcement if not already involved
- Observe and document any items moved or anything unusual at the scene
- Protect potential evidence

**Accident Scene**

- Protect self and other EMS personnel
- Care for the patient(s) as necessary
- Summon additional personnel if needed

**Documentation**

- Importance
  - If it is not written down, it was not done
- Memory is fallible
  - Claims may not be filed until years after an event
Effective Patient Care Report

- Completed:
  - Promptly
  - Thoroughly
  - Objectively
  - Accurately
  - Maintained
- Copy to become part of patient's hospital record
- Maintained at least for extent of statute of limitations