Objectives

- Describe structure of legal system
- Relate how laws affect paramedic practice
- List situations paramedic must report
- List four elements of negligence
- Describe how paramedics can protect themselves from claims of negligence

Objectives

- Define the paramedic's responsibility to protect patient confidentiality responsibilities
- Outline the process for obtaining consent
- Describe legal complications related to consent
- Describe actions in refusal of care situation
- Describe legal considerations regarding patient transportation
Objectives

- Outline legal issues related to resuscitation
- List measures to preserve evidence
- Detail the components of narrative documentation
- Define medical-legal terms related to EMS

Scenario

Your preceptor doesn’t flinch when the alert patient with chest pain says he doesn’t want to go to the hospital. He tells him, “You have no choice,” and then forcibly transports him. During the struggle, the patient’s condition worsens and he suffers a serious heart attack.

Discussion

- Does this call meet any of the elements needed to prove negligence?
- What type of consent should have been obtained on this call?
- Should this patient have been transported against his wishes?
- What criminal or civil laws may relate to this situation?
**Paramedic’s Legal Duties**
- Patient
- Employer
- Medical director
- Public
- Statutes and regulations
- Accepted medical standards

**Ethical Responsibilities**
- Respect for patient’s physical and emotional needs
- Mastery of skills
- Continuing education
- Reviewing performance
- Reporting honestly
- Respecting confidentiality
- Working cooperatively with other professionals
- Staying current with new concepts and modalities

**Legal and Ethical Responsibilities**
- Civil or criminal liability
- Best legal protection:
  - Appropriate assessment and care
  - Accurate and complete documentation
- Laws differ from state to state
  - 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
- Statutes, constitutions
  - City councils
  - District boards
  - General assemblies
  - U.S. Congress

Administrative Law

- Regulations developed by a governmental agency to provide details about the function and process of the law
  - General requirements for paramedic licensure
- Regulatory agencies may revoke or suspend license
Common Law

- Case or judge-made law
- Derived from customs or norms over time
- Based on decisions of state/federal judicial systems
- Court decisions may define
  - Acceptable conduct
  - Negligence
  - Interpretation of EMS statutes and regulations

Criminal Law

- Government prosecutes person for violating laws designed to protect society
- Public complaint
- Punishment by fine, imprisonment, or both

Civil (Tort) Law

- Private complaints brought against a defendant for illegal act/wrongdoing
- Plaintiff requests court to award damages
How Laws Affect the Paramedic

- **Scope of practice**
  - Duties/skills paramedic is allowed to perform
  - Dictated by state law or regulation

- **Medical direction**
  - Online or off-line

- **Medical practice act**
  - Legislation governing practice

- **Licensure/certification**

Motor Vehicle Laws

- **Standards for equipping and operating emergency vehicles**
  - Vary by state

- **State codes regarding**
  - Reckless driving
  - Excessive speeds
  - Failure to consider road 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**
- **Some communicable diseases**
Protection for the Paramedic

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

In some areas
- Illegal to harm EMS providers or obstruct care
- Best to avoid unsafe scenes

Anatomy of an Injury Lawsuit
Anatomy of an Injury Lawsuit

Discovery
- Depositions
- Interrogatives
- Transcripts

Trial court
- Appellate court

Settlement

Legal Accountability—Paramedic
- Act in reasonable and prudent manner
- Provide level of care consistent with education and local protocol
- Failure to meet these responsibilities can result in legal liability

Negligence
The failure to act as a reasonable, prudent paramedic would act in similar circumstances
Components of Negligence

- Four elements needed to prove negligence exists:
  - Duty to act
  - Breach of duty
  - Damages
  - Proximate cause

Defenses to Negligence Claims

- Training
- Competent patient care skills
- Thorough documentation of patient care
- Good Samaritan laws
  - Limited protection for EMS

Defenses to Negligence Claims

- Governmental immunity
  - Variable
- Statute of limitations
  - Different for adults/children
- Contributory negligence
  - May affect size of award
### Liability Insurance
- Covers legal defense and judgments
- Primary policy
- Umbrella policy
- Individual coverage

### Special Liability Concerns
- Medical director
  - On-line
  - Off-line
- Liability for “borrowed servants”
- Considerations for issues relating to civil rights

### Civil Rights
- COBRA/EMTALA 1986: May not discriminate by reason of race, color, gender, national origin, or, in some cases, ability to pay
- Rehabilitation Act of 1973: May not discriminate based on a handicap
- Title II of the Americans with Disabilities Act: Guarantees equal accessibility
Protection Against Negligence Claims

- Education/training/CE and skill retention
- Appropriate quality improvement
- Appropriate medical direction
- Accurate, thorough documentation
- Professional attitude and demeanor

Confidentiality—HIPAA

- Confidential information
  - Patient history
  - Assessment findings
  - Treatment rendered
- Information may be used for
  - Treatment
  - Payment
  - Operations

Confidentiality

- Release of information
- Requires written permission
- Legal exceptions
- 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
- Must be of legal age

Must inform patient of:
- Nature of illness or injury
- Treatment recommended
- Risks and dangers of treatment
- Alternative treatments possible
- Dangers of refusing treatment/transport

Conscious, competent patient can revoke consent at any time

Informed consent
- Based on full information disclosure

Expressed consent
- Written or verbal

Implied consent
- Presumed due to condition

Involuntary consent
- By authority of law
Special Consent Situations

- Minors
- Mentally incompetent adults
- Prisoners or arrestees
- Refusal of care or transport

Minors

- Usually 18, unless emancipated
- Unemancipated minors can’t give or withhold consent
  - Consent by parent, legal guardian, or court-appointed custodian
  - Emergency doctrine applies when parent or guardian cannot be contacted
    - Thoroughly document nature of emergency

Mentally Incompetent Adults

- Legal guardian may give or withhold consent
- Emergency doctrine is used if legal guardian can’t be contacted
  - Contact medical direction
**Prisoners or Arrestees**

- As a rule, incarceration does not deny a person’s right to decide about medical treatment.
- If limb- or life-threatening injury present, court or police who have custody may authorize emergency treatment (in some cases)

**Refusal of Care or Transport**

- Must be able to make a reasonable decision
- Make multiple attempts to have patient accept care
- Have others try to convince patient
- Make risks of refusal clear
- Advise that patient may call again
- Try to get someone to stay with patient
- Consult medical direction
- Document thoroughly
- "Release from liability" form
Legal Complications Related to Consent

- Abandonment
- False imprisonment
- Assault
- Battery

Abandonment

- Terminating care needed by patient without ensuring that care is provided by another qualified provider
- May occur in the field or when a patient is delivered to emergency department

False Imprisonment

- Intentional or unjustifiable detention of a person
  - Transport without consent
  - Restraint without proper cause or authority
- May be a civil or criminal violation
Assault/Battery

- Assault
  - Threatening, attempting, or causing fear of offensive physical contact
- Battery
  - Unlawful touching without consent

Use of Force

- Use of restraints or “reasonable” force
- Unruly or violent patients
- Involve law enforcement if possible
- Be humane
- Never punitive in nature

Transportation of Patients

- Care must be continued until
  - Patient is transferred to appropriate personnel
  - Patient no longer requires care
  - Patient terminates relationship
**Emergency Vehicle Operating Privileges**

- “Right-of-way” privileges
  - Travel slightly faster than the posted speed limit (usually no more than 10 mph)
  - Move safely from one lane into opposing traffic
  - Safely travel through red-light intersections
  - Appropriately use audible and visual warning devices
  - Park in unauthorized areas

**Choice of Patient Destination**

- Based on patient needs and hospital capability
- Protocols for hospital selection
- Involve medical direction when patient’s choice cannot be honored

**Payer Protocols**

- Paramedics need basic understanding of reimbursement programs to help patients determine what services are likely to be covered by their insurance policies
- In life-threatening emergencies, payer protocols should not be a factor
  - Document patient care thoroughly
Resuscitation Issues

- Withholding or stopping resuscitation
  - Obvious signs of irreversible death
  - Resuscitation would place the EMS provider at risk of personal injury
  - Patient or surrogate has indicated resuscitation is not desired
  - Established by local protocols
  - Role of medical direction should be clearly delineated

Resuscitation Termination

- When patient cannot be resuscitated after adequate trial of BLS and ACLS:
  - Airway successfully secured
  - IV access established
  - Appropriate drugs and shocks given
  - Persistent asystole or agonal rhythm
  - No reversible cause identified

Advance Directives

- Patient Self-Determination Act
- State laws and local protocols
- Written patient statements
  - Living will
  - Durable power of attorney for health care
  - Do not resuscitate (DNR) orders
- Medical direction policies
Potential Organ Donation

- Identify potential donor
- Notify medical direction
- Care to help maintain viable organs
  - Airway management
  - Fluid resuscitation to maintain perfusion
  - Eye care
- Careful documentation

Death in the Field

- Determined by
  - No spontaneous cardiac electrical activity (confirmed by ECG in two leads)
  - No spontaneous respirations
  - Absent cough and gag reflex
  - No spontaneous movement
  - No response to painful stimuli
  - Fixed and midpoint pupils
  - Dependent lividity
  - Rigor mortis

Death in the Field

- Paramedic should
  - Contact medical direction for guidance
  - Follow protocols
  - Document observations or unusual findings
  - Notify appropriate authorities
  - Disturb the scene as little as possible
  - Provide emotional support
Crime Scene Responsibilities

- Protect self and other EMS personnel
- Patient care
- Notify law enforcement
- Document unusual findings
- Protect potential evidence

Documentation

- 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
- Confidentiality maintained
- Copy is part of patient's hospital record
- Maintain for extent of statute of limitations
Conclusion

To safeguard against litigation, the paramedic must be knowledgeable about legal issues and the effects they may have.