

Chapter 3

Medical, Legal, and Ethical Issues

Unit Summary

After students complete this chapter and the related course work, they will understand the ethical responsibilities and medicolegal directives and guidelines pertinent to the EMT. The EMT approach to patient care relating to confidentiality, consent to treat, refusal of care, and advance directives will be explained. Organ donor systems and policies, evidence preservation, and end-of-life issues will also be discussed.

National EMS Education Standard Competencies

Preparatory

Applies fundamental knowledge of the emergency medical services (EMS) system, safety/well-being of the emergency medical technician (EMT), medical/legal, and ethical issues to the provision of emergency care.

Medical/Legal and Ethics

ÉConsent/refusal of care (pp 79683)

ÉConfidentiality (pp 83684)

ÉAdvance directives (pp 84685)

ÉTort and criminal actions (pp 90693)

ÉEvidence preservation (p 94)

ÉStatutory responsibilities (pp 87690)

ÉMandatory reporting (pp 93695)

ÉEthical principles/moral obligations (pp 95696)

ÉEnd-of-life issues (pp 84687)

Knowledge Objectives

1. Define consent, and describe how it relates to decision making. (pp 79680)
2. Differentiate expressed consent, implied consent, and involuntary consent. (pp 80681)
3. Discuss the giving of consent by minors for treatment or transport. (p 81)
4. Describe local EMS system protocols for using forcible restraint. (pp 81682)
5. Discuss the EMT's role and obligations if a patient refuses treatment or transport. (pp 82683)
6. Understand that communication with patients is confidential, protected by the Health Insurance Portability and Accountability Act (HIPAA). (pp 83684)
7. Discuss the importance of do not resuscitate (DNR) orders (advance directives) and provisions in the locality regarding EMS application. (pp 84685)
8. Describe the physical, presumptive, and definitive signs of death. (pp 85687)

9. Understand that organ donors are treated the same way as any other patients needing treatment and that local protocols are followed with such patients. (p 87)
10. Recognize the importance of medical identification insignia in treating the patient. (p 87)
11. Understand the scope of practice and standards of care. (pp 87-90)
12. Describe the EMT's legal duty to act. (p 90)
13. Discuss the issues of negligence, abandonment, assault and battery, and kidnapping and their implications for the EMT. (pp 90-92)
14. Explain the reporting requirements for special situations, including abuse, drug- or felony-related injuries, childbirth, and crime scenes. (pp 93-95)
15. Define ethics and morality, and discuss their implications for the EMT. (pp 95-96)
16. Understand the role and comportment of the EMT in court. (pp 96-97)

Skills Objectives

There are no skills objectives in this chapter.

Lecture

I. Introduction

- A. A basic principle of emergency care is to do no further harm.**
- B. A health care provider usually avoids legal exposure if he or she acts:**
 1. In good faith
 2. According to an appropriate standard of care
- C. Emergency medical care, or immediate care or treatment, is often provided by an EMT.**
 1. First link in the chain of prehospital care
- D. Providing competent emergency medical care that conforms with the standard of care taught to you will help you avoid both civil and criminal actions.**
- E. Even when emergency medical care is properly rendered, there are times when you may be sued by a patient seeking a monetary award for pain and suffering.**
- F. Litigation against EMS participants will no doubt increase due to wider availability of emergency medical care and more complex care.**

II. Consent

- A. Consent is permission to render care.**
- B. A person must give consent for treatment.**
- C. If the patient is conscious and rational, and capable of making informed decisions, he or she has the legal right to refuse care.**

D. The foundation of consent is decision-making capacity.

1. The patient can understand and process the information provided.
2. The patient can make an informed choice regarding medical care that is appropriate for him or her.

E. Patient autonomy is the patient's right to make decisions about his or her health.**F. In determining a patient's decision-making capacity, consider these factors:**

1. Is the patient's intellectual capacity impaired by mental limitation or dementia?
2. Is the patient of legal age (18 years in most states)?
3. Is the patient impaired by alcohol, drugs, serious injury, or illness?
4. Does the patient appear to be experiencing significant pain?
5. Are there any apparent hearing or visual problems?
6. Is there a language barrier?
7. Does the patient appear to understand what you are saying? Does the patient ask rational questions that demonstrate an understanding of the information you are trying to share?

G. Expressed consent

1. The patient acknowledges he or she wants you to provide care or transport.
2. To be valid, the patient must provide informed consent, which means you have explained the treatment being offered, along with the potential risks, benefits, and alternatives, as well as the potential consequences of refusing treatment.
 - a. Informed consent is valid if given orally.
 - b. Always document when a patient provides informed consent, or have someone witness the patient's consent.

H. Implied consent

1. Applies to patients who are:
 - a. Unconscious
 - b. Otherwise incapable of making a rational, informed decision about care
2. Implied consent applies only when a serious medical condition exists and should never be used unless there is a threat to life or limb.
3. The principle of implied consent is known as the emergency doctrine.
4. Sometimes what represents a "serious threat" is unclear, and it may become a legal question.
5. It is a good idea to try to get consent from a spouse or relative before treating based on implied consent.

I. Involuntary consent

1. Applies to patients who are:
 - a. Mentally ill
 - b. In a behavioral (psychological) crisis
 - c. Developmentally delayed
2. Obtain consent from the guardian or conservator

- a. It is not always possible to obtain such consent, so understand your local provisions. For example, many states have protective custody statutes that allow such a person to be taken, under law enforcement authority, to a medical facility.

J. Minors and consent

1. The parent or legal guardian gives consent.
2. In some states, a minor can give consent.
 - a. Whether a minor may give consent depends on age and maturity. Confusion surrounds the issue of emancipated minors.
 - b. Emancipated minors: A person who is under the legal age in a given state but, because of other circumstances, is legally considered an adult.
 - i. Many states consider minors to be emancipated if they are married, if they are members of the armed services, or if they are parents.
3. Teachers and school officials may act in place of parents (in loco parentis) and provide consent for treatment to injuries that occur in a school or camp setting.
4. If a true emergency exists, and no consent is available, the consent to treat the minor is implied, just as with an adult.
5. Never withhold lifesaving care for a minor because a person authorized to provide consent is not available.

K. Forcible restraint

1. Necessary with a patient who is in need of medical treatment and transportation but is combative and presents a significant risk of danger to himself, herself, or others.
2. Forcible restraint is legally permissible.
 - a. Consult medical control for authorization.
 - b. In some states, only a law enforcement officer may forcibly restrain.
3. Restraint without legal authority exposes you to potential civil and criminal penalties.
4. Be sure you know the local laws about forcible restraint.

III. The Right to Refuse Treatment

A. Adults who are conscious, alert, and appear to have decision-making capacity:

1. Have the right to refuse treatment, even if the result is death or serious injury
2. Can withdraw from treatment at any time, even if the result is death or serious injury

B. Such patients present the EMT with a dilemma. Should you provide care against their will? Should you leave them alone?

C. Calls involving refusal of treatment are commonly litigated in EMS and require you to proceed very cautiously.

D. You must be familiar with local policies regarding refusal of care.

E. Involve online medical control.

F. A patient, parent, or caregiver's decision to accept or refuse treatment should be based on information that you provide:

1. Your assessment of what might be wrong

2. A description of the treatment you feel is necessary
 3. Any possible risks of treatment
 4. The availability of alternative treatments
 5. The possible consequences of refusing treatment
- G. Before leaving the scene where a patient, parent, or caregiver has refused care, you should again encourage the patient, parent, or caregiver to permit treatment and to call for the ambulance if he or she has a change of mind.**
1. Advise the patient, parent, or caregiver to contact his or her physician as soon as possible.
 2. Ask the patient, parent, or caregiver to sign a refusal of treatment form.
 3. A witness should be present.
 4. Thoroughly document all refusals.

IV. Confidentiality

- A. Information should remain confidential (between you and the patient).**
- B. In most states, records may be released only:**
1. If the patient signs a release
 2. A legal subpoena is presented
 3. It is needed by billing personnel
- C. A release may not be required if another health care worker needs to know information to continue care or if there is a state law that requires reporting rape, abuse, etc.**
- D. If you release information, you may be liable for breach of confidentiality, which is the disclosure of information without proper authorization.**
- E. HIPAA is the acronym for the Health Insurance Portability and Accountability Act of 1996.**
1. HIPAA contains a section on patient privacy that strengthens privacy laws.
 2. HIPAA safeguards patient confidentiality.
 3. HIPAA provides guidance on:
 - a. What types of information are protected
 - b. The responsibility of health care providers regarding that protection
 - c. Penalties for breaching that protection
 4. HIPAA considers all patient information you obtain in the course of providing medical treatment to a patient to be protected health information (PHI).
 - a. PHI includes medical information.
 - b. PHI includes any information that can be used to identify the patient.

V. Advance Directives

- A. Occasionally you and your partner may respond to a call where a patient is dying from an illness.**
- B. When you arrive at the scene, family members may not want you to resuscitate the patient.**

C. A DNR order (also known as a “do not attempt resuscitation” order) gives permission not to resuscitate.

1. “Do not resuscitate” does not mean “do not treat.” Even in the presence of a DNR order, you are still obligated to provide supportive measures (oxygen, pain relief, and comfort) to a patient who is not in cardiac arrest, whenever possible.
 - a. Each ambulance service should have a protocol to follow in these circumstances.

D. A competent patient makes his or her own decisions.

1. Advance directive specifies treatment should the patient become unconscious or unable to make decisions.

E. An advance directive is also referred to as:

1. Living will
2. Health care directive

F. Some patients may have named surrogates to make decisions for them when they can no longer make their own.

1. Durable powers of attorney for health care
2. Also known as health care proxies

G. Because of terminal nursing home placement, hospice, and home health programs, you may be faced with this situation often.

H. When presented with an advance directive, you should never become annoyed with family members. The patients and their families should be treated with the utmost respect and empathy.

VI. Physical Signs of Death

A. Determination of the cause of death is the medical responsibility of a physician.

B. In the absence of physician orders, the general rule is, if the body is still warm and intact, initiate emergency medical care. Cold temperature (hypothermia) emergencies are an exception to this rule.

C. Presumptive signs of death:

1. Unresponsiveness to painful stimuli
2. Lack of a carotid pulse or heartbeat
3. Absence of breath sounds
4. No deep tendon or corneal reflexes
5. Absence of eye movement
6. No systolic blood pressure
7. Profound cyanosis
8. Lowered or decreased body temperature

D. Definitive signs of death:

1. A body in parts (decapitation)

2. Dependent lividity, which refers to blood settling to the lowest point of the body, causing discoloration of the skin
3. Rigor mortis, which is the stiffening of body muscles caused by chemical changes within muscle tissue
 - a. Occurs between 2 and 12 hours after death
4. Putrefaction (or decomposition) of body tissues, which (depending on temperature conditions) occurs between 40 and 96 hours after death

E. Medical examiner cases

1. Involvement of the medical examiner depends upon the nature and scene of the death.
2. In most states, the medical examiner, or the coroner in some states, must be notified in the following cases:
 - a. The patient is dead on arrival (DOA) (sometimes called dead on scene [DOS])
 - b. Death without previous medical care, or when the physician is unable to state the cause of death.
 - c. Suicide (self-destruction)
 - d. Violent death
 - e. Poisoning, known or suspected
 - f. Death from accidents
 - g. Suspicion of a criminal act
3. If emergency medical care has been initiated, be sure to keep thorough notes of what was done or found.

VII. Special Situations

A. Organ donors

1. Organ donors have expressed a wish to donate organs.
2. Consent is evidenced by information on a donor card or driver's license.
3. Treat organ donors the same as any other patient.
 - a. Your priority is to save the patient's life.
 - b. Remember that organs need oxygen.

B. Medical identification insignia

1. Bracelet, necklace, or card indicating:
 - a. DNR order
 - b. Allergies
 - c. Diabetes, epilepsy, or other serious condition
2. Helpful in patient assessment and treatment

VIII. Scope of Practice

A. Outlines the care you are able to provide

B. Usually defined by state law

C. The medical director further defines by developing:

1. Protocols
2. Standing orders

D. Authorization to provide care is given by medical director via:

1. Telephone or radio (online)
2. Standing orders or protocols (off-line)

E. Carrying out procedures outside the scope of practice may be considered:

1. Negligence
2. Criminal offense

F. Do not confuse scope of practice with standards of care, which are what a reasonable EMT in a similar situation would do.

IX. Standards of Care

A. The manner in which you must act or behave is called a standard of care.

B. The law requires you to act or behave toward other individuals in a definite, definable way, regardless of the activity involved.

C. Generally speaking, you must be concerned about the safety and welfare of others when your behavior or activities can potentially cause others injury or harm.

D. Standard of care is established in many ways, including:

1. Local custom
 - a. How a reasonably prudent person with similar training and experience would act under similar circumstances, with similar equipment, and in the same or similar place
2. Statutes
 - a. In many states, this may take the form of treatment protocols.
 - b. Be familiar with the particular legal standards in your state.
3. Professional or institutional standards
 - a. Recommendations published by organizations and societies that are involved in emergency medical care
 - b. Specific rules and procedures of the EMS service, ambulance service, or organization to which you are attached
 - c. An example of a professional standard is the American Heart Association's standard for BLS and CPR.
4. Standards imposed by textbooks
 - a. Most textbooks follow the standards established by the National Highway Transportation Safety Administration (NHTSA).
 - b. These textbooks are often recognized as contributing to the standard of care that is followed by EMTs.
 - c. Local protocols may differ. The EMT is always bound to follow local protocols.
5. Standards imposed by states, including:
 - a. Medical Practices Act
 - i. In some states, the EMT is exempt from the licensure requirements of the Medical Practices Act because an EMT is regarded as a nonmedical professional.
 - ii. The practice of medicine is defined as the diagnosis and treatment of an illness or disease.
 - b. Certification and licensure

- i. Certification is the process by which an individual, institution, or program is evaluated and recognized as meeting predetermined standards to ensure safe and ethical care.
- ii. Licensure is the process by which a competent authority, usually the state, grants permission to practice a job, trade, or profession.

X. Duty to Act

- A. Duty to act is an individual's responsibility to provide patient care.**
- B. Responsibility comes from either statute or function. A bystander is under no obligation to assist a stranger in distress; there is no duty to act.**
- C. Once your ambulance responds to a call or treatment is begun, you have a legal duty to act.**
- D. In most cases, if you are off duty and come upon a crash, you are not legally obligated to stop and assist patients.**
 1. There may be some circumstances where this is not true, and you should be familiar with the laws and policies that apply in your service area.

XI. Negligence

- A. Negligence is the failure to provide the same care that a person with similar training would provide in the same or similar situation.**
- B. All four of the following factors must be present for the legal doctrine of negligence to apply and for a plaintiff to prevail in a lawsuit against an EMS service or provider:**
 1. Duty
 - a. The obligation to provide care
 2. Breach of duty
 - a. The EMT does not act within an expected and reasonable standard of care
 3. Damages
 - a. A patient is physically or psychologically harmed in some noticeable way
 4. Causation
 - a. A cause-and-effect relationship between a breach of duty and the damages suffered by the patient
- C. Negligence falls under the general category known as torts. Torts are civil wrongs. Other tort actions are suits for defamation of character and invasion of privacy.**

XII. Abandonment

- A. Abandonment is the unilateral termination of care by the EMT without the patient's consent and without making any provisions for care to be continued by a medical professional who is competent to provide care for the patient.**
- B. Once care is started, you have assumed a duty that must not stop until an equally competent EMS provider assumes responsibility.**
- C. Failure to perform that duty is a serious legal and ethical matter and can result in civil action against you.**

D. Abandonment may take place at the scene or also in the emergency department where you are dropping off your patient.

XIII. Assault and Battery, and Kidnapping

A. Assault: Unlawfully placing a person in fear of immediate bodily harm

1. Includes threatening to restrain a patient who does not want to be transported

B. Battery: Unlawfully touching a person

1. Includes providing emergency care without consent

C. Kidnapping: Seizing, confining, abducting, or carrying away by force

1. Could include a situation where a patient is transported against his or her will
2. A false imprisonment charge is more likely because EMTs are almost always acting in good faith to provide care.
3. False imprisonment is the unauthorized confinement of a person.

D. Serious legal problems may arise in situations in which a patient has not given consent for treatment or transport.

XIV. Defamation

A. Defamation is the communication of false information that damages a person's reputation.

1. It is termed libel if written.
2. It is termed slander if spoken.

B. Defamation could arise out of:

1. A false statement on a run report
2. Inappropriate comments made during station house conversation

C. Be sure your run report is accurate, relevant, and factual.

D. Only communicate information about your patients to authorized persons.

XV. Good Samaritan Laws and Immunity

A. Good Samaritan laws are based on the common law principle that when you reasonably help another person, you should not be held liable for errors or omissions that are made in giving care.

B. Most states have Good Samaritan laws.

C. To be protected by provisions of Good Samaritan law, several conditions must generally be met:

1. You acted in good faith in rendering care.
2. You rendered care without expectation of compensation.
3. You acted within the scope of your training.
4. You did not act in a grossly negligent manner.

D. Gross negligence is defined as conduct that constitutes a willful or reckless disregard for a duty or standard of care.

E. Another group of laws grants immunity from liability to official EMS providers, such as EMTs.

1. These laws do not provide immunity when injury or damage is caused by gross negligence or willful misconduct.

F. The laws vary; consult with your medical director for more information about the laws in your area.

XVI. Records and Reports

A. You should compile a complete and accurate record of all incidents involving sick or injured patients.**B. Such a record is an important safeguard against legal complications.****C. The court's perception of records and reports:**

1. If an action or procedure was not recorded on the written report, it was not performed.
2. Incomplete or untidy reports are evidence of incomplete or inexperienced emergency medical care.

XVII. Special Mandatory Reporting Requirements

A. Most states have a reporting obligation for certain individuals, ranging from physicians to any person.**B. The following special mandatory reporting requirements may vary from state to state:**

1. Abuse
 - a. Children
 - b. Elderly
 - c. At-risk adults
2. Injury during commission of a felony
3. Drug-related injuries
4. Childbirth
5. Attempted suicides
6. Dog bites
7. Communicable diseases
8. Assaults
9. Domestic violence
10. Sexual assault
11. Exposures to infectious disease
12. Transport of patients in restraints
13. Scene of a crime
14. The deceased

XVIII. Ethical Responsibilities

- A. In addition to legal duties, EMTs have certain ethical responsibilities as health care providers.**
- B. These responsibilities are to themselves, their coworkers, the public, and the patient.**
- C. Ethics is the philosophy of right and wrong, moral duties, and of ideal professional behavior.**
- D. Morality is the code of conduct affecting character, conduct, and conscience.**
- E. Bioethics specifically addresses ethical issues that arise in the practice of health care.**
- F. EMTs will encounter ethical dilemmas.**
- G. Such dilemmas will require you to evaluate and apply ethical standards**
 - 1. Your own
 - 2. Those of the profession
- H. Allow rules, laws, and policies to guide your decision-making.**
- I. Be honest in your reporting.**
- J. Keep accurate records.**

XIX. The EMT in Court

- A. You can end up in court as a:**
 - 1. Witness
 - 2. Defendant
- B. The case could be either civil or criminal.**
- C. Whenever you are subpoenaed to testify in any court proceeding, you should immediately notify:**
 - 1. Your service director
 - 2. Legal counsel
- D. As a witness:**
 - 1. Remain neutral during your testimony.
 - 2. Review the run report before your court appearance.
- E. As a defendant, an attorney is required.**
 - 1. The attorney is generally supplied by your service in a civil suit.
- F. Defenses may include:**
 - 1. Statute of limitations: the time within which a case must be commenced.
 - 2. Governmental immunity: generally applied to municipalities or other governmental entities. If your service is covered by immunity, it may mean that you cannot be sued at all or that it would limit the amount of monetary judgment recovered.
 - 3. Contributory negligence: a legal defense that may be raised when the defendant feels that the conduct of the plaintiff somehow contributed to injuries or damages sustained by the plaintiff.
- G. Discovery**
 - 1. An opportunity for both sides to obtain more information to reach a better understanding of the case
 - 2. Discovery includes:

- a. Interrogatories (written requests or questions)
- b. Depositions (oral requests or questions)

H. Trial

1. Most cases are settled following the discovery phase during a settlement phase and do not go to trial.
2. For those that go to trial, several types of damages may be awarded, including:
 - a. Compensatory damages are intended to restore the plaintiff to the same condition he or she was in prior to the incident.
 - b. Punitive damages are intended to deter the defendant from repeating the behavior and are reserved for cases where the defendant has acted intentionally or with a reckless disregard for the safety of the public. These damages are not commonly awarded in negligence cases.

XX. Summary

- A. Consent is generally required from every conscious adult before care can be started. The foundation of consent is decision-making capacity.**
- B. You should never withhold lifesaving care unless a valid DNR order is present.**
- C. A parent or legal guardian must give consent for treatment or transport of a minor.**
- D. Conscious, alert adults have the right to refuse treatment or withdraw from treatment.**
- E. Patient communication is confidential and generally cannot be disclosed without permission from the patient or a court order.**
- F. Advance directives, living wills, or health care directives are often used when a patient becomes comatose.**
- G. There are both definitive and presumptive signs of death. In many states, death is defined as the absence of circulatory and respiratory function.**
- H. A donor card or driver's license indicates consent to organ donation.**
- I. Standard of care is established in many ways, including local customs, statutes, ordinances, protocols, textbooks, administrative regulations, and case law. The scope of practice outlines the care you are able to provide for the patient.**
- J. When your ambulance responds to a call or treatment is begun, you have a legal duty to act. In most cases, if you are off duty and come upon a crash, you are not legally obligated to stop and assist patients.**
- K. Negligence is based on duty, breach of duty, damages, and causation. All four elements must be present for the legal doctrine of negligence to apply and for a plaintiff to prevail in a lawsuit against an EMS service or provider.**
- L. Abandonment is termination of care without the patient's consent or without provisions for transfer of care to a medical professional with skills at the same level or at a higher level than your own skills. Abandonment is legally and ethically a very serious act.**
- M. Assault is unlawfully placing a person in fear of immediate bodily harm.**
- N. Battery is unlawfully touching a person, which includes providing emergency care without consent.**
- O. Good Samaritan laws protect persons who stop to render aid.**

- P. Records and reports are important, particularly if a case goes to court. Courts consider an action or procedure that was not recorded on the written report as not having been performed, and an incomplete or untidy report is considered evidence of incomplete or inexperienced medical care.**
- Q. You should know the special reporting requirements for abuse of children, the elderly, and others; injuries related to crimes; drug-related injuries; and childbirth.**
- R. You must meet legal and ethical responsibilities while caring for patient's physical and emotional needs.**
- S. As an EMT, a number of situations might cause you to end up in court, either as a witness or defendant in a civil lawsuit or as a witness or defendant in a criminal case.**

Post-Lecture

Unit Assessment

1. Mentally competent patients have the right to refuse treatment.
 - A. True
 - B. False
2. When a patient is unconscious, you may provide treatment under the concept of _____.
 - A. expressed consent.
 - B. informed consent.
 - C. duty to act.
 - D. implied consent.
3. List conditions where minors may, by state law, give consent for medical care despite their young age.
4. _____ is sometimes necessary when you are confronted with a patient who is in need of medical treatment and transportation but is combative and presents a significant risk of danger to himself, herself, or others.
5. What is the difference between advance directives and DNR orders?
6. You respond to the home of a 72-year-old cancer patient with a valid DNR order. The patient's family has called because he is having difficulty breathing. Should you give him oxygen?
7. The laws that define what an EMT can do are called _____.
8. What four elements must be present to prove negligence?
9. Despite the expressed refusal of care by a competent 40-year-old patient, you splint an ankle that you believe may be sprained. What crime have you committed by doing this?
10. List four special situations that may, based on state or local laws, have to be reported.

