Chapter 24 Medical, Legal, and Ethical Issues

Unit Summary

Upon completion of this chapter and related course assignments, students will understand laws and ethics applicable to prehospital emergency care. Students will be able to differentiate among personal, professional, and medical ethics including the role of each in providing prehospital care. Students will be familiar with the United States legal system and terms specific to criminal, civil, and employment law relevant to the paramedic and EMS system. Students will be able to describe legal accountability of the paramedic as a professional health care provider. Students will be able to explain expectations of the paramedic in patient encounters as it relates to consent and treatment of the patient, including how to protect against negligence claims and awareness of the rights of patients to determine extent of care provided.

National EMS Education Standard Competencies

**Preparatory**

Integrates comprehensive knowledge of the EMS system, safety/well-being of the paramedic, and medical/legal and ethical issues, which is intended to improve the health of EMS personnel, patients, and the community.

Medical/Legal and Ethics

• Consent/refusal of care (pp 96-97)

• Confidentiality (pp 86-87, 93-94)

• Advance directives (pp 105-106)

• Tort and criminal actions (p 88-89)

• Evidence preservation (p 95)

• Statutory responsibilities (p 108)

• Mandatory reporting (p 95-96)

• Health care regulation (p 92-93, 94-95)

• Patient rights/advocacy (p 103-105)

• End-of-life issues (pp 107-108)

• Ethical principles/moral obligations (pp 86-88)

• Ethical tests and decision making (pp 86-88, 97-99)

Knowledge Objectives

1. Differentiate between laws and ethics. (pp 86-91)

2. Describe medical ethics and discuss the implications for paramedics. (pp 86-88)

3. Discuss the legal system in the United States and how it affects paramedics. (pp 88-91)

4. Differentiate between civil and criminal law relevant to the paramedic. ( pp 89-90)

5. Describe the process of a typical EMS lawsuit. (pp 90-91)

6. Discuss the legal and ethical accountability of paramedics. (pp 91-92)

7. Discuss legislation that affects the practice of paramedics. (p 92)

8. Differentiate between licensure and certification as they apply to the paramedic. (p 92)

9. Explain the importance and necessity of patient confidentiality and the standards for maintaining patient confidentiality that apply to the paramedic. (pp 93-94)

10. Discuss the legal and ethical issues surrounding patient transport. (pp 94-95)

11. Describe the actions that the paramedic should take to preserve evidence at a crime or crash scene. (p 95)

12. Explain the reporting requirements for special situations, including abuse, drug-related injuries, childbirth, suicide, and crime scenes. (pp 95-96)

13. Differentiate among expressed, informed, implied, and involuntary consent. (pp 96-97)

14. Describe the processes used by paramedics to determine consent or valid refusal, especially relative to the patient’s decision-making capacity. (pp 97-99)

15. Identify the steps to take if a patient refuses care, and when to transport a patient against his or her will. (pp 97-99)

16. Identify methods for obtaining consent for minors, including exceptions for emancipated minors. (p 99)

17. Discuss the legal ramifications of patient restraint, both physical and chemical, for patient and practitioner safety. (pp 99-100)

18. Discuss the ethical implications of the allocation of resources and triage dilemmas. (p 100)

19. Describe the four elements that must be present in order to prove negligence: duty, breach of duty, proximate cause, and harm. (pp 100-103)

20. Discuss abandonment as it relates to the paramedic. (p 103)

21. Discuss patient rights, including autonomy, end-of-life decisions, and the moral and ethical implications of DNR orders and other advance directives. (pp 103-108)

22. Identify situations in which ceasing resuscitation efforts or not initiating resuscitation efforts would be appropriate for the paramedic in the field. (pp 106-107)

23. Discuss the responsibilities of the paramedic relative to resuscitation efforts for patients who are potential organ donors. (p 108)

24. Discuss common defenses to litigation, including contributory negligence. (pp 108-109)

25. List and describe forms of legal immunity that can apply to paramedics. (pp 108-109)

26. Discuss employment legislation regarding sexual harassment, discrimination, disabilities, FMLA, OSHA law, and other legislation that applies to paramedic practice. (pp 109-111)

Skills Objectives

There are no skills objectives in this chapter.

Readings and Preparation

• Review all instructional materials including Chapter 4 of *Nancy Caroline’s Emergency Care in the Streets*, Seventh Edition, and all related presentation support materials.

• Review any related legal documents such as statutes and regulations that pertain to prehospital care services and personnel.

• Review any recent case studies or legal proceedings that may provide updated information on medicolegal issues. The local law librarian is a good reference source to assist in gathering this type of information.

• Direct students to the following web links:

* “Liability: Is EMS Putting You Out on a Limb?” by D. Harrawood, P. Shepler, & M. Gunderson: http://naemd.org/articles/liability1.htm
* “Emergency Medical Services and the Law: IAFF Monograph 3” by the International Association of Fire Fighters: http://www.iaff.org/tech/PDF/Monograph3.pdf
* “Ethics in Emergency Medical Services-Who Cares? An Exploratory Analysis from Australia” by E. French & G. L. Casali: http://ejbo.jyu.fi/pdf/ejbo\_vol13\_no2\_pages\_44-53.pdf

• Consider reading this article ahead of time and summarizing it for your students or using the contents as a springboard for discussion about the potential conflict of ethics for EMS under Homeland Security and as a health care professional.

* “The Use of EMS Personnel as Intelligence Sensors: Critical Issues and Recommended Practices” by M. Petrie: http://www.hsaj.org/?fullarticle=3.3.6

Support Materials

• Lecture PowerPoint presentation

• Case Study PowerPoint presentation

• Determine whether your local, regional, or state EMS organizations have a Code of Ethics, policies, or rules for EMS professionals. If so, obtain a copy to share with the class or be prepared to provide websites for any available online.

• Obtain local EMS protocols that address specific aspects of patient care and transport related to patient choice; advance directives; use of restraints; policies for reporting suspected abuse, rape, etc.; and refusal of care. Plan to share these with the class.

• Determine if your state has specific laws or rules governing patient autonomy as it relates to living wills, do not resuscitate (DNR) orders, and advance directives. If so, plan to share these with the class or provide websites of state organizations that support this mission.

• Determine if your state has specific laws, statutes, or rules regarding patient choice for destination, rights to refuse care and/or transport, and legal consent age/circumstances. If so, plan to share these with the class or provide the websites for location of these documents.

• Locate examples of litigation involving EMS. Prepare basic summaries for presentation to the class for discussion and debate where the outcome is not known to students at the time.

Enhancements

• Direct students to visit the companion website to *Nancy Caroline’s Emergency Care in the Streets*, Seventh Edition, at http://www.paramedic.emszone.com for online activities.

• If available, consider using the supplemental text, *EMS and the Law*. This text offers more in-depth information about laws as they apply to EMS professionals. Available from http://www.jblearning.com, the ISBN for this product is 978-0-7637-2068-1.

• Contact a local attorney that specializes in health care law. Consider requesting assistance in the form of guest speaking about experiences with EMS and the legal system.

• Contact the local hospital’s ethics committee to determine if there are considerations regarding patient rights that EMS may play a role in. Consider requesting assistance in the form of guest speaking about how medical ethics are applied to various patient issues.

• **Content connections:** Inform students as they progress through the course content that there will be other relevant material for consideration in terms of professional and medical ethics. Ask that they begin to consider some areas where they may have experienced conflict between personal and professional or medical ethics such as in dealing with advance directives and DNR orders.

Remind students of the importance of being aware of requirements necessary for patients to refuse care and how these will apply in pediatric, mental health, geriatric, and medically incompent encounters. The material covered in this chapter will be relevant to others studied later in the text.

• **Cultural considerations:** Remind students that some cultures and religions have different views about patient rights and choices as they relate to treatment. Encourage them to consider situations where personal preference and patient choice have not been consistent and to consider those that may arise such as receiving blood transfusions or surgical interventions. While EMS may not be providers of some of these treatments, there may be situations encountered during the clinical or hospital internship environment, depending on your state’s requirements.

• **Current controversies:** The legal analysis relevant to the question of a minor’s ability to consent to medical care can be complicated and involves not only state common law and statutes, but also federal statutes. However, if the emergency provider applies common sense and treats the minor with the respect and care he or she would want for his or her own child, the law will almost invariably support his or her decisions.

Teaching Tips

• Be cautious not to assume that all students understand the most basic information relevant to legal terms, laws, and regulations. Accurate understanding may vary and the information should be covered to ensure that all students understand by the end of the chapter.

• Consider projecting a terminology presentation and have a short pre-test to assess student understanding of the terms introduced in the text.

• Local EMS protocols that address patient rights, advance directives, refusal of care, and age of consent should be covered during the course to prepare students for their clinical experience.

• Stress the importance of confirming coverage of medical liability insurance for all students and paramedics. Obtain a copy of the program’s or local EMS agency’s policy, and review it with students.

Unit Activities

**Writing activities:** Assign a legal term to each student. Students should determine the legal definition and identify a health care case, particularly those related to EMS, where this was a component. Have them complete a research paper of their findings. *Alternate*: Assign a legal term to each student and have them prepare a paper indicating examples of circumstances where familiarity with the term and ways to prevent litigation related to the issue would be essential.

**Student presentations:** Assign students various laws, rules, or statutes that impact the EMS profession and present findings related to how these are applicable to the field and any specific patient or employee interactions. These may include: Good Samaritan Laws, HIPAA, Medical Practice Acts, EMTALA, ADA, and Civil Rights Acts.

**Group activities:** Assign various legal cases or issues to groups of students to conduct mock trials for the class. Have students role-play realistic parts such as judge, prosecutor, defense attorney, witnesses, patients, and paramedics. Assign remaining classmates to serve as the jury and present their findings.

**Visual thinking:** Using popular media, identify an example of an EMS film where multiple legal or ethical errors are seen. Show clips of these scenes, and have students identify those situations where these concerns exist. Discuss how the paramedic or EMT should have addressed the situation differently. *Alternate*: Have students divide into groups and conduct a mock trial regarding the identified mistakes to determine the outcome and what evidence exists. Encourage them to use existing literature to construct a standard of care for comparison.

**Medical terminology review:** Instructors should present definitions of important terms found in this chapter, asking students to choose the correct term to go with the definition.

Pre-Lecture

### You are the Provider

 “You are the Provider” is a progressive case study that encourages critical-thinking skills.

### Instructor Directions

Direct students to read the “You are the Provider” scenario found throughout Chapter 4.

• You may wish to assign students to a partner or a group. Direct them to review the discussion questions at the end of the scenario and prepare a response to each question. Facilitate a class dialogue centered on the discussion questions and the Patient Care Report.

• You may also use this as an individual activity and ask students to turn in their comments on a separate piece of paper.

Lecture

I. Introduction

A. Medical providers provide care under a set of laws affecting how patients must be treated.

1. Ethics are principles, personal or societal, that determine what is right and wrong.

2. Laws

a. Have sanctions for violations that are enforceable

b. Define the obligations of paramedics

c. Protect our rights and the rights of others

d. A paramedic responding to an emergency works within several types of laws set forth by either (or both) the federal or state government.

i. Motor vehicle laws

ii. EMS legislation

iii. Medical licensing statutes and regulations

iv. Civil and criminal statutes

v. Confidentiality laws, such as the Health Insurance Portability and Accountability Act (HIPAA)

3. You must have a basic understanding of laws and ethics applicable to prehospital emergency care.

a. Failing to perform your job within the law can result in civil or criminal liability.

b. Practicing outside the law can result in regulatory action or action by your agency and medical director.

4. Ethics

a. Branch of philosophy that deals with the study of the distinction between right and wrong and the way these concepts are applied

b. Applied ethics refers to the use of ethical values.

c. Ethics and morality are synonymous.

5. This text is only a framework to help you develop legal understanding.

a. Laws and legal obligations differ between states.

b. Contact an attorney who specializes in representing medical professionals if you need legal advice.

II. Medical Ethics

A. Personal ethics are the product of your upbringing, family, community, religion, and conscience.

B. Professional ethics arise out of the standards and practices of your profession, the Code of Professional Conduct, and state/federal laws.

C. In cases where your personal ethics conflict with professional ethical standards, you must temporarily set your personal ethics aside.

1. The interests of your patient must take precedence over your personal beliefs.

D. Sometimes called bioethics, medical ethics are related to the practice and delivery of health care.

1. Your understanding of medical ethics must be consistent with the general codes of the health care professional.

2. Many ethical codes for health care professionals have existed throughout history.

a. The Oath of Geneva

i. Drafted by the World Medical Association in 1948

ii. Taken by medical students upon completion of their studies, when they are about to enter the medical profession

iii. Refer to page 86 of the text to review a copy of this oath.

b. The Code of Ethics for Emergency Medical Technicians

i. Issued by the National Association of Emergency Medical Technicians in 1978

ii. Still in use

iii. Under this code, the Emergency Medical Technician pledges to:

(a) Conserve life, alleviate suffering, and promote health.

(b) Provide services based on human need, with respect for human dignity, unrestricted by considerations of nationality, race, creed, or status.

(c) Not use professional knowledge and skill detrimental to the public good.

(d) Respect and hold in confidence all information obtained in the course of professional work unless required by law.

(e) Understand and uphold the laws of citizenship, particularly when working with other citizens and health professionals in promoting efforts to meet the health needs of the public.

(f) Maintain professional competence, and demonstrate concern for the competence of other members of the medical profession.

(g) Assume responsibility: in defining and upholding standards of professional practice and education, for independent professional actions and judgment, both independent and dependent emergency functions, and for knowing and upholding laws that affect the practice of emergency medicine.

(h) Have the responsibility to participate in the study of and action on matters of legislation affecting the profession and emergency service to the public.

(i) Adhere to standards of personal ethics that reflect credit upon the profession.

(j) May contribute to research in relation to a commercial product or service, but does not lend to professional status to advertising, promotion, or sales.

(k) Advertise professional services within the conformity and dignity of the profession.

(l) Does Not delegate a service to a person less qualified.

(m) Work harmoniously with, and sustain confidence in, all members of the health team.

(n) Refuse to participate in unethical procedures, and assume responsibility to expose incompetence or unethical conduct in others to the appropriate authority.

iv. Your state, service, or company may have its own code of ethics, policies, and rules for EMS professionals.

c. The ICARE program

i. Developed by a group of EMS students and educators

ii. Incorporates many of the finest qualities of EMS professionals

iii. ICARE: integrity, compassion, accountability, respect, and empathy

iv. Incorporate “ICARE” into the care you provide to you patients.

3. Ultimately, these codes stem from a concern for patient welfare.

a. If you prioritize patient welfare you will rarely (if ever) commit an unethical act.

E. Regardless of the ethical circumstances you may encounter, apply three basic ethical concepts when making a decision.

1. To do no harm

a. “First, do no harm” (*primum non nocere*)

b. Take all due care to ensure:

i. Your patient receives the best possible care

ii. Your actions do not harm the patient

c. Take care in assessment, treatment, and transport to avoid exacerbating the illness or injury.

2. To act in good faith and act in the patient’s best interest

a. These two go hand in hand.

b. Reinforce your commitment to:

i. Place interests of the patient above all else.

ii. Make decisions motivated by a clear desire to benefit your patient.

c. Helps you confidently support decisions you make on the patient’s behalf if he or she is unconscious or otherwise incompetent

F. Paramedics must be accountable for their actions at all times.

1. Your behavior on the job and the way you handle situations will shape your career.

2. Choose a mentor whose style and professionalism you wish to emulate.

G. Professional ethics are extremely important.

1. Especially as EMS continues to seek funding and recognition similar to other medical professions

2. Immature, unprofessional behavior is unacceptable.

3. Criminal acts are unethical and illegal.

a. Off-duty misconduct will affect your reputation and possibly your employment.

4. Negative publicity lessens the public’s confidence in the service you provide.

H. Always be respectful of patients.

1. Never do anything to violate their trust in you as a professional.

2. Avoid misconduct that could question your ethics or integrity.

a. Ethical violations negatively impact the profession as a whole.

3. The ethics of your profession require:

a. A total commitment to acting in the best interest of your patient

b. To otherwise conduct yourself in a professional and ethical manner at all times

4. Do not overlook other providers who engage in misbehavior.

a. Report it to the appropriate chain of command.

5. Report medical errors you make or witness to your medical director as soon as possible.

I. The most successful and fulfilled paramedics:

1. Choose to become patient advocates

2. Participate in and actively seek out the best in training and professional development

3. Put the good of the team above their own personal aspirations

J. You are responsible for the future of EMS.

K. Ethics and EMS research

1. EMS practices have largely evolved from “grass roots” efforts.

2. Properly randomized, controlled studies are not common, but they are emerging.

3. Remember the first principle of medical practice: to do no harm.

a. Continue to seek further education about the effectiveness of EMS practice.

4. EMS care still relies on anecdotal experience that is unsupported by research.

a. Some procedures prove not be helpful to patients.

b. You should act on those recommendations as well.

5. Conducting studies on critically ill or injured patients without their informed consent is a true ethical dilemma.

a. Make yourself aware of how researchers are handling ethical debates concerning patients in research.

III. The Legal System in the United States

A. Federal and state government make, administer, and interpret laws affecting paramedics.

1. Legislative branch

a. Composed of elected officials

i. Example: Congress (federal level)

b. Makes the laws

2. Judicial branch

a. Composed of the court system

b. Enforces and interprets the laws

c. Resolves disputes based on interpretation of laws

d. Courts have a number of levels

i. Examples: trial and appellate

e. Court decisions establish precedent and become the law of the state in which paramedics practice.

i. In most cases, court decisions establish standard of negligence.

3. Executive (administrative) branch

a. Reports directly to the president or the governor

b. Composed of cabinets and agencies (bureaucrats) that carry out and administer laws

i. Often use regulations to establish how things should be done

ii. Example: US Department of Transportation (US DOT) at the federal level

4. You must know and understand your states’ laws and administrative regulations that affect your practice.

B. Types of law

1. Civil and criminal law govern paramedics in court.

a. Under civil law, a patient can sue you for a perceived injury.

b. Criminal law allows the state to prosecute a paramedic for breaking a legal statute.

c. Malpractice suits are tried under civil law.

i. May be based on statutes, but claims usually arise from principles of negligence.

d. Cases of medication misuse are usually tried under criminal law.

2. Most civil law centers on establishing liability.

a. Liability: responsibility

b. The judicial process determines who is responsible when a person is injured and seeks redress.

c. Citizens have a constitutional right to take legal action against a medical provider they believe provided inadequate care.

i. However, he or she must prove that the medical provider was negligent.

ii. A bad outcome alone does not imply negligence.

d. Civil suit

i. Legal action instituted by a private person or corporation (plaintiff)

ii. Defendant: The person against whom a legal action is brought

e. Tort: Wrongful act that gives rise to a civil suit

f. There are two classifications of torts:

i. Unintentional (negligence)

ii. Intentional (where there is an intent to cause harm)

g. The purpose of a civil suit is usually compensation (damages) for injury the plaintiff sustained.

3. In most medical liability cases, the plaintiff seeks compensation for physical suffering, mental anguish, medical bills, and lost earnings.

a. The court may also award punitive damages if the misconduct was intentional or constituted a disregard for public safety.

b. To succeed in a civil suit:

i. The plaintiff needs to show a preponderance of evidence favors his or her position.

ii. 9 of 12 jurors must agree.

4. Most EMS lawsuits result from emergency vehicle crashes.

a. Safe driving is the key to preventing lawsuits.

b. Crashes cause expensive damage and serious harm to providers, patients, and bystanders.

5. Other kinds of lawsuits against EMS providers are on the rise.

a. Many involve dispatch and transport issues.

i. Examples: Delayed transport response, patient deterioration after not being transported

b. Quality of medical care provided by EMS providers, especially paramedics

6. Sometimes the same act that sparked a civil suit may elicit criminal prosecution.

a. Criminal prosecution: An action taken by the government against a person the prosecutors feel has violated criminal laws

b. The government must prove guilt beyond all reasonable doubt to 12 jurors.

c. If guilty, the defendant can be fined, imprisoned, or both.

7. Criminal laws most likely to apply to prehospital care:

a. Assault, battery, and false imprisonment or kidnapping

b. All result from complaints about a paramedic’s behavior.

i. Examples: Making physical contact with a patient before asking, transporting a patient without his or her consent

c. In criminal cases, prosecution needs to prove there was intent to do harm.

d. In civil cases, the plaintiff needs to establish that the conduct took place without his or her consent.

e. Criminal charges of false imprisonment or kidnapping are rarely filed.

f. Civil suits alleging false imprisonment or kidnapping are more common.

i. Usually arise from patient claims of transport or restraint against his or her will.

8. Most suits involve negligent or unintentional conduct, but intentional tort claims are occasionally filed. These include:

a. Assault: When a person (the EMS provider) instills the fear of immediate bodily harm or breach or bodily security to another person (the patient), regardless of whether the threat of harm is actually carried out

b. Battery: When the defendant (the EMS provider) touches another person (the patient) without his or her consent.

c. Example to distinguish the difference:

i. Saying “I’m going to kick your teeth in” is assault.

ii. Actually kicking in someone’s teeth is battery.

d. Any act of medical treatment performed without consent may be considered assault or battery or both.

i. Considered a threat to the patient’s bodily security

e. False imprisonment: When a person is unintentionally and unjustifiably detained against his or her will

i. Examples: If a paramedic transports a patent without his or her consent or uses restraints in a wrongful manner

ii. The best protection against this charge is to obtain informed consent for every action.

f. Paramedics may be sued for defamation.

i. Defamation: Intentionally making a false statement through written or verbal communication that injures a person’s good name or reputation

ii. Libel: Making a false statement in the written form that injures a person’s good name

iii. When writing the patient care report, avoid using terms that may be considered insulting or offensive.

(a) Example: “the patient appears to be drunk”

(b). Think of how the report would be read in court.

(c). Thoughtless comments may be used as evidence against you.

g. Avoid using terms that could be considered offensive to the patient.

i. Slander: Verbally making a false statement that injures a person’s good name

(a) Avoid using terms that could be considered offensive when transferring patient care.

(b) Remember the patient is likely someone’s son, daughter, husband, wife, brother, sister, father, or mother.

C. The legal process

1. A civil suit begins when a patient contacts an attorney, who then files a document for a lawsuit (complaint) with a local court.

2. The complaint contains general allegations against the paramedic and the EMS system, but may not contain specific information about what the patient thinks went wrong.

3. The patient’s attorney must deliver a copy of the complaint and a summons to all persons involved in the lawsuit.

4. From start to finish, the lawsuit may take several years.

a. This is why good documentation is essential.

5. Normally, an attorney will be assigned to you by the insurance company that handles claims for their employer.

6. The complaint will be filed, and your attorney will answer.

7. Then, the discovery period begins.

a. Can last a few months to more than 2 years.

b. Attorneys on both sides seek as much information about the case as possible.

c. The following may take place:

i. The exchange of written questions which must be answered under oath

ii. The exchange of documents

iii. Depositions (statements taken under oath)

d. Stay in touch with your attorney during this time.

e. Your attorney will prepare you for depositions by telling you:

i. Where to go

ii. What to wear

iii. How to respond to certain types of questions

8. Attorneys may also file motions and argue them before the judge.

a. How your attorney will seek to have a lawsuit dismissed

b. How the plaintiff’s attorney will ask the court to rule on certain portions of the claim

c. Can be used to compel either side to produce documents or information

9. Most civil cases are resolved during a settlement process.

a. Taking a case through trial is expensive and time consuming.

b. Settlement involves both parties and their attorneys in mediation or arbitration.

i. Mediation: A meeting between both parties to determine a dollar amount to resolve the case

ii. Arbitration: A mini-trial where arbitrator(s) make a decision based on evidence presented by both sides

c. If the case cannot be resolved during settlement, it will proceed to trial.

i. During trial, a judge rules on the law and a jury determines the facts.

ii. Trial juries can be unpredictable, and in some cases, large monetary damages can be rewarded.

iii. Normally, trial cases are the final step.

iv. The losing party has the right to have the decision reviewed by an appellate court.

(a) Appeals are costly and time consuming, so they are rare.

IV. Legal Accountability of the Paramedic

A. The paramedic and the medical director

1. The relationship between the paramedic and medical director is complex.

2. Ultimately, the paramedic has three lines of authority to answer within the EMS system:

a. The medical director

b. The licensing agency

c. The employer

3. There may be some overlap, but these distinctions are important.

4. Usually, state EMS legislation requires the paramedic perform advanced life-support procedures and skills only under physician supervision.

5. Legislation may also require a medical director.

a. Medical director supervises paramedic

b. Legally, the paramedic is not the medical director’s agent.

6. The acts of the paramedic are not the actions of the physician.

a. The paramedic will be responsible for his or her own actions.

7. However, the medical director can be accountable for failing to supervise closely or take action when a paramedic is not meeting standards.

8. A medical director may do any of the following if he or she does not believe the paramedic is performing to standards:

a. Restrict the paramedic’s practice

b. Withdraw supervision entirely

c. Require remedial training

9. Medical directors are not responsible for an employer’s disciplinary actions.

10. Many paramedics’ activities require an order from a physician.

a. Orders may be given by radio or cell phone (online medical control).

b. May be defined by protocols or standing orders (off-line medical control)

c. Cannot disregard or reverse a physician’s order unless carrying out the order will harm the patient

d. Paramedics may be at the scene of an emergency with an inexperienced physician.

e. Paramedics may feel the orders of the physician are inappropriate.

f. Disregarding orders from a physician places the paramedic on questionable legal ground.

i. The physician’s orders must be appropriate, and they must be licensed in that state.

g. Ask the service medical director to develop protocols in advance.

i. Protocols define the paramedic’s relationship with the medical director of the service and other physician’s in the area, including bystander physician’s.

h. The physician is not required to ride to the hospital with the EMS unless procedures have been performed above the EMS provider’s level of training or the physician has assumed responsibility for patient care.

i. Ensure the physician is licensed in your state

j. Document the physician’s name and contact information prior to patient care.

k. Conflicts should be resolved by online medical control.

B. EMS-enabling legislation

1. Defines how EMS is structured

2. Designates responsibilities to government agencies

3. Provides framework for the paramedic’s practice (what is permitted in the field)

a. Example: Defines the need for the medical director

b. Example: Defines the scope of practice for the different levels of EMS personnel

4. Be familiar with EMS legislation in your state and regulations that flow from those statutes.

C. Administrative regulations

1. Set forth by bureaucracies at the state and federal levels

2. Affect and define the specific rules under which paramedics practice

a. Example: Regulations may set out precise skills and medications to be used by each level of EMS provider.

3. Usually developed by the state’s Department of Health or the county agency responsible for regulating EMS practice

4. May further define the paramedic’s role in patient care

5. May define the requirements for:

a. Licensure or certification

b. Renewal

c. Continuing education

d. A list of behaviors that may subject paramedics to suspension or revocation of their license or certification

6. If a paramedic provides less than adequate care, or fails to meet the requirements for recertification, the administrative agency may take action against that paramedic’s license.

a. A license is a privilege, not a right.

7. Failure to abide by the regulations can have serious consequences.

8. Licensure and certification

a. Terms often confused

b. Paramedics are considered licensed in some states, but in others they are considered certified.

c. Certification: A level of credentials based on hours of training and competency, may be granted by a governmental agency or by a private organization

i. Private organization example: American Heart Association or the American Red Cross

d. Certification does not mean he or she has authority to practice the skills in that certification

e. Licensure: A carefully defined level of practice, usually granted by a government agency or local authority

i. Government agency or local authority example: State health department or county EMS authority

ii. These agencies can create and administer the licensing examinations.

f. A license is a privilege granted by a government authority on certain conditions.

g. The paramedic must comply with the government requirements or risk losing licensure.

i. Professional behavior

ii. Continuing education

iii. Licensure renewal

h. Rights and privileges conferred by licensing in one state may not be conferred in other states that certify, rather than license, paramedics.

i. Credentialing may be encountered by the paramedic.

j. May be required for EMS employment

k. Additional eligibility standards may be required .

i. Example: Certification in CPR, trauma, or advanced cardiac life support (ACLS)

9. Discipline and due process

a. Paramedics who commit an infraction to licensure rules may have their license restricted, suspended, or revoked by the granting agency.

b. Administrative agencies can propose a licensing action called due process.

i. Due process: A right to a fair procedure for the action the agency proposes to take; two components: notice and the opportunity to be heard

c. Due process has two components: notice and opportunity to be heard.

i. Notice: The agency notifies the paramedic of his or her infractions.

d. The paramedic is notified by receipt of a certified letter containing a Notice of Contemplated Action.

e. The letter informs of the action to be taken and the regulations the agency is alleging were violated.

f. The letter informs of the right to a hearing and the procedure for requesting a hearing.

g. The hearing allows the paramedic to tell his or her side of the story.

h. A Notice of Final Action is sent if the licensing agency believes action is warranted.

i. The paramedic may have the right to appeal.

D. Medical Practice Act

1. Physicians and other health care practitioners are enabled through provisions of the Medical Practice Act.

a. The Medical Practice Act:

i. Defines the minimum qualifications of those who may perform various health services and the skills that each type of practitioner is legally permitted to use

ii. Establishes a means of licensure or certification for different categories of health care professionals

2. May contain requirements for relicensure or recertification based on continuing education

3. May require a physician to assume responsibility for competency of the paramedic

a. Training

b. Skill competency testing

c. Run review

4. Become familiar with the terms of the Medical Practice Act in your state.

E. Scope of practice

1. May be spelled out in your state’s EMS legislation or regulations

a. The scope of practice: Care that a paramedic is permitted to perform according to the state under its license or certification

2. A medical director may not permit a paramedic to perform all the skills or give all medications for which the paramedic is licensed or certified.

3. A paramedic carrying out procedures outside his or her scope of practice may be considered for negligence or a criminal offense.

a. Scope of practice not to be confused with standard of care

b. Standard of care: What a reasonable paramedic would do in a similar situation

F. Health Insurance Portability and Accountability Act (HIPAA)

1. Provides stringent privacy requirements for patient information

2. Enacted in 1996

3. Provides for criminal sanctions as well as civil penalties for releasing a patient’s private medical information in an unauthorized manner

a. Medical information can be disclosed only:

i. If necessary for a patient’s treatment

ii. Payment for medical/billing operations

iii. Release has been authorized in writing by the patient or lawful patient representative

b. Medical information can be released without patient’s authorization:

i. Legally mandated reporting (dog bites, gunshot wounds, child abuse)

ii. Authorized data collection

iii. Research by public health agencies

iv. Authorized requests by law enforcement

v. Information required to be disclosed pursuant to a valid subpoena

4. Requires each EMS agency to have a privacy officer.

a. Officer is responsible for ensuring that all protected health information (PHI) that the service deals with in either written or electronic form is protected.

i. Must be aware of location of patient information

ii. Cannot casually discuss a patient where the conversation may be overheard

b. Use caution when giving reports or discussing patient information in public places.

i. Example: Crash scenes, emergency department common areas

c. Sharing patient stories may subject you to liability.

d. Use caution when the media or public is riding with you.

5. Some states have laws pertaining to patient confidentiality.

a. Breach of confidentiality may allow patients to sue.

6. Confidentiality is part of the Code of Ethics for Emergency Medical Technicians.

a. Issued by the National Association of Emergency Medical Technicians (NAEMT)

b. If a subpoena is received for a patient’s PHI, notify legal council before releasing a patient’s medical record.

7. Requires patients are provided with a copy of your service’s privacy policies

a. May be difficult in an emergency setting

b. Obliged to do your best to follow compliance with the law

c. Most services make up leaflets.

8. Regulates the manner in which you and your service transmit PHI electronically

a. Contains provisions requiring computer safeguards

G. The Emergency Medical Treatment and Active Labor Act (EMTALA)

1. Established in 1986

2. Combats the practice of patient dumping

3. Pays particular attention to the practice of sending women in labor to distant hospitals.

a. Patient dumping: When a hospital emergency department denies medical screening or stabilizing treatment, or inappropriately transfers a person who is not stable

i. Historically occurred when a hospital discovered the patient did not have health insurance or was unable to pay

b. Economic triage: The practice of making health care decisions based on the ability of the patient or the insurance carrier to provide payment for services

i. Never make decisions to treat or transport based on financial considerations, regardless of the current state of the EMS provider.

ii. Only needs of the patient should be considered.

iii. Reimbursement should be addressed by billing personnel.

4. Paramedics have been accused of providing a lower standard of care for indigent persons or those on public assistance.

a. Ensure financial status does not become a deciding factor.

b. The highest quality of care should be provided to all patients.

5. Understand local protocols regarding hospitals to transfer patients.

a. Rural areas may have limited choices.

b. Other places may have several options.

c. Some systems require patients be transferred to the nearest hospital.

d. Hospital selection may be based on the specific needs of the patient.

i. Example: Trauma center, children’s hospital, hospital with cardiac catheterization

e. Some protocols state the destination may be chosen by paramedic.

f. The paramedic may be required to consult with medical control.

g. Become familiar with the protocols in your area of practice.

6. EMTALA can be enforced.

a. It regulates hospitals that receive Medicare funding.

7. EMTALA issues severe fines for hospitals and doctors who violate its provisions.

a. Allows private persons to sue for violations

b. Normally, neither an ambulance service or paramedic can be sued or charged.

c. Ambulance systems owned by hospitals may be subject to a claim.

8. EMTALA guarantees a medical screening examination and treatment to stabilize any emergency medical conditions found, to any patient presenting to a hospital that has an emergency department.

a. Prohibits discrimination for any reason, including the ability to pay

b. Urgent care centers may be covered.

c. Is the vehicle by which patient dumping takes place

9. EMTALA regulates patient transfers.

a. Applies to both sending and receiving facilities

b. Never transfer a patient who needs care that falls outside scope of practice.

c. Only a stable patient can be transferred.

d. A transferring hospital is obligated to ensure the transferring ambulance and crew are capable of meeting the needs of the patient during transfer.

i. Should request an ambulance that is staffed and equipped

ii. EMTALA violations can occur if a patient with a higher level of care is needed than can be supported during transport.

iii. The transferring hospital must provide someone to ride along.

iv. Paramedics should ensure all paperwork is obtained prior to transport.

v. The receiving hospital should have a bed ready for the patient.

10. EMTALA issues are regulated by the Centers for Medicare and Medicaid Services (CMS).

a. Carry severe monetary penalties

i. Up to and including loss of Medicare funding for hospitals failing to comply

b. Contains complex legal language

i. Example: An emergency medical condition means an acute situation to most paramedics.

H. Emergency vehicle laws

1. Most states have specific statutes that define an emergency vehicle and what traffic should do when an emergency vehicle approaches.

a. Laws vary from state to state.

i. Must be operated in a safe and prudent manner

ii. Laws do not authorize speeding, running red lights, or driving the vehicle in an unsafe manner, which can put the public at risk.

iii. State laws establish higher standards for the operator.

(a) The operator is responsible for operating the vehicle with due regard for the safety of all others.

iv. In a crash, often the EMS provider will be found at fault in civil cases against the driver.

v. The driver may be charged criminally.

vi. Know the laws of the state about emergency vehicle operation.

vii. The blue star of life and flashing red lights do not exempt you from defensive driving and common courtesy.

I. Transportation

1. Patients should be transported to the hospital of their choice.

a. Most EMS systems have protocols to transport certain types of patients to particular hospitals.

i. Example: Trauma, stroke, cardiac events, homeless patients, mentally ill patients, obese patients

ii. The capability of each hospital should guide the EMS system in developing transport protocols.

iii. Patients transported to a facility that does not have the ability to care for the patient may result in liability for the paramedic.

b. Paramedics who have decided not to transport patients have been the subject of litigation.

i. Studies have demonstrated that paramedics should not decide which patients need to be transported to the hospital for any health problems.

ii. The whole EMS system does not have access to sophisticated diagnostic tools or radiography in the prehospital setting.

iii. Failure to transport a patient whose condition later deteriorates can bring out a lawsuit that is difficult to defend.

iv. Most EMS systems have protocols outlining when it is acceptable to transport a patient.

(a) May require online medical control

J. Crime scene and emergency scene responsibilities

1. When handling a situation involving death, or a crime scene, it may take law enforcement officials time to figure out whether the scene involved a suicide, homicide, or some other form of criminal activity.

a. Use extreme caution, and do not disturb or destroy any potential evidence.

b. If the scene is a vehicle crash:

i. Do not move anything unless you have to, including:

(a) Broken glass

(b) Pieces of metal

ii. Leave dead bodies where they are until a coroner or medical examiner arrives to investigate

c. If the scene is indoors:

i. Do not touch anything you do not have to for risk of eliminating fingerprints:

(a) Telephones

(b) Doorknobs

ii. Document statements made by witnesses, and get their contact information.

iii. Limit the number of EMS personnel who enter the scene.

(a) Each person further contaminates what could be a crime scene.

iv. Notify law enforcement personnel if furniture or other objects need to be moved.

v. Preserve any clothing removed from the patient.

vi. Do not alter evidence on the clothing.

(a) Example: Cutting through bullet or knife holes

d. In rape cases, the patient may carry vital pieces of evidence.

i. Example: Fiber, hair, sperm, blood

ii. Protect the evidence.

e. Death at the scene

i. Stay with the body until the police arrive.

ii. Protect the scene from contamination from:

(a) Bystanders, family members, media, other EMS personnel

f. In most jurisdictions, a paramedic is not legally authorized to pronounce a patient dead.

i. When in doubt about the possibility of saving a patient:

(a) Initiate resuscitation.

(b) Transport the patient to the hospital.

K. Mandatory reporting

1. Each state has its own requirements for reporting to authorities.

a. Every state has laws for EMS to report child and elder abuse.

i. Become familiar with the reporting requirements of the state in which you are employed.

ii. In most states, reporting laws contain immunity provisions protecting the health care provider from legal liability.

(a) Provided the report was not made with malicious intent

iii. Failure to report is a crime.

(a) In many states there are serious implications for not reporting.

iv. Complete the reporting yourself.

2. Obligation to report frequently applied to:

a. Neglect or abuse of children

b. Neglect or abuse of older people

c. Domestic violence

d. Injury from a felony or suspicious origin

e. Drug-related injuries

f. Rape

g. Animal bites

h. Certain communicable diseases

3. Reporting requirements vary from state to state.

a. Learn the laws of the state.

b. Observe reporting obligations applicable to you.

L. Coroner and medical examiner cases

1. EMS systems have a list of procedures that involve the coroner and medical examiner.

a. Generally, the police should be notified in all cases.

i. Obvious or suspected homicide

ii. Obvious or suspected suicide

iii. Violent or sudden, unexpected death

iv. Death of a prison inmate

V. Paramedic–Patient Relationships

A. The most important rule in medical care is to do what is best for the patient.

1. Paramedics are trained in emergency medical care, not law.

2. Every decision should be based on the standards of good medical care not on the possible legal consequences.

3. Doing what is best for the patient will avoid problems with the law.

a. Defense will be enhanced when keeping the patient’s best interest in mind.

B. Consent and refusal

1. The patient must consent prior to providing emergency medical care.

a. Consent: Patients who are of legal age and possess decision-making capacity making medical care decisions for themselves

b. Patients have the right to refuse all or part of the emergency medical care.

c. Two types of consent:

i. Informed consent

ii. Implied consent

2. Informed consent must be obtained from every adult patient who has decision-making capacity.

a. Informed consent can be obtained by:

i. Describing the suspected problem to the patient

ii. Describing the treatment you would like to administer, and list the potential risks associated with the procedure

iii. Discussing any alternative types of available treatments

iv. Advising the patient regarding potential consequences of refusing treatment

3. A number of things may impede you giving patients what they need to make decisions:

a. Language barriers

b. Emotional sates

c. Mental abilities

4. Ensure the patient understands what you are trying to do and grants you permission to treat.

5. Informed consent may lack formality in the hospital.

a. Document the patient’s consent to protect yourself against potential legal action.

6. Informed consent is routinely obtained verbally.

a. May also be communicated through patient conduct

i. Rolling up sleeve to allow for blood pressure

b. Expressed consent is a type of informed consent:

i. When the patient demonstrates he or she is giving you permission to provide care

7. Implied consent is a form of consent:

a. Assumed to be given by unconscious adults or those who are too ill or injured to consent verbally to emergency lifesaving treatment

i. Assume the patient would want care due to severity of condition.

ii. Patient does not have the decision-making capacity.

8. Some EMS personnel incorrectly use the term *involuntary consent.*

a. Incorrectly referred to situations where a law enforcement officer or legal guardian grants permission to treat someone under arrest, incapacitated, a minor, or other reason

b. It is actually an oxymoron.

c. Consent can never be involuntary.

d. Persons under arrest or in prison do not necessarily lose their right to be involved in medical treatment decisions.

e. Not uncommon for law enforcement to direct EMS personnel to treat a person under arrest.

i. Paramedic should continue to follow informed consent guidelines.

f. Medical control should be involved if a prisoner refuses treatment.

C. Decision-making capacity

1. Refusals must be informed.

a. The same prerequisites as consent apply.

i. Decision-making capacity: The ability of patients to understand the information that is being provided to them, understand that information, and make a choice regarding appropriate medical care

b. The best tool to evaluate a patient’s decision-making capacity is the ability to talk to the patient to see if he or she understands what is happening to him or her.

c. If pulse oximetry and blood glucose measurements are outside normal ranges, these can provide information about the patient’s ability to understand and communicate.

d. Include detailed documentation of decision-making capacity in the patient care report.

i. Demonstrates that the patient was able to understand the plan of care.

2. If a patient with decision-making capacity refuses medical care, that person may not be treated without a court order.

a. Consult with medical control for instructions.

b. Inform the patient in a calm and sympathetic manner of the potential consequences of refusing treatment.

c. Remember, people who refuse medical treatment do so out of fear and emotional distress.

d. The patient’s distress needs to be recognized and managed in an understanding way.

e. Not uncommon for patients to refuse treatment and transportation to the hospital due to cost

i. Cost of ambulance

ii. Cost of hospital treatment

f. Adding these concerns can be challenging.

g. May require all of your people skills

3. Inappropriate to consider a person who refuses treatment as a “bad patient”

a. Inappropriate to behave in a hostile or aggressive manner toward patient

b. Remember, you are there to help the patient.

c. Try to figure out what is bothering the patient.

i. Why are they rejecting help?

d. Always respect the patient’s rights.

4. Some patients refuse treatment as a way to deny they have a problem.

a. Example: Middle-age man with chest pain refuses treatment in order to deny he may be having a heart attack

i. Offering a sympathetic ear and reassurance may convert an unconvinced patient into someone you can help.

ii. Remember the phrase: “It never hurts to have these things checked out.”

5. Patients speaking with medical control by radio or telephone may be helpful.

a. If the patient still declines care after explaining the medical situation and possible consequences, there is not much that you can do.

b. Even so, do not close any doors.

c. Inform the patient that if they change their mind, you will be willing and ready to help them.

6. Maintain a courteous and sympathetic attitude.

a. Let the patient know your chief concern is his or her well-being.

b. Tell the patient “It’s OK if you change your mind.”

c. Urge the patient to seek further medical evaluation from a physician of their choice.

d. Help the patient make concrete plans for follow-up.

e. Some patients will consent to transport but not treatment.

f. Some patients will consent to treatment but not transport.

i. Make sure someone will be with the patient after you leave.

ii. Advise them to call back for help.

7. Documentation of patient refusals is critical.

a. Litigation may arise.

b. Patient may claim you committed abandonment.

c. Document all findings of your assessment and mental status carefully including:

i. Patient’s history

ii. Patient’s stated reasons for refusing care

iii. All instructions and explanations given to patient

iv. How much time you spent attempting to provide care

d. The report should be signed:

i. By the patient

ii. An impartial observer: police officer

e. The purpose of a witness/observer is to hear the exchange of information.

f. Signatures from others at the scene who may not have been paying attention may pose legal issues.

8. Prehospital refusal forms may look like the answer to documentation of a difficult refusal problem.

a. The forms must be backed up with action.

b. Legally, you must have undertaken the process of attempting to obtain informed consent to treat the patient.

c. A patient signing a refusal form does not mean they have given an informed refusal.

d. You must inform the patient of what you propose to do including:

i. Potential risks of refusing care

ii. Providing the information in a manner the patient can understand

9. A patient refusing care can be difficult for the paramedic.

a. Patient’s rights must be respected regardless:

i. Of your beliefs

ii. What you think you should be doing

b. Courts have upheld patient refusals when paramedics documented a patient’s decision-making capacity.

10. Problems sometimes arise in determining if a patient has decision-making capacity.

a. Example: You are called to help a patient who has had a seizure in a retail store.

b. Upon arrival, the seizure is over and patient is conscious.

c. The patient states she is OK and refuses to go to the hospital.

d. You smell alcohol on her breath.

e. Does the patient possess the decision-making capacity to refuse treatment?

f. Evaluate the patient.

g. Explain that you cannot let her go until you have checked her over and that she talks to you enough to convince you that she is OK that that she understands the situation.

11. In general, any patient with an altered mental status or unstable vital signs probably cannot be considered able to refuse transport.

a. The paramedic must establish whether the patient has decision-making capacity.

b. Criteria for determining mental competence should be spelled out in detail in the protocols of every ambulance service.

c. Criteria will include the following:

i. The patient is oriented to person, place, and day.

ii. The patient responds to questions appropriately.

iii. There is no significant mental impairment from alcohol, drugs, head injury, or other organic illness. Ask a family member, if present.

iv. The patient can demonstrate that he or she understands the nature of his or her condition and the potential risks of refusing immediate care.

v. The patient can describe a reasonable plan for follow-up care.

vi. Oxygen saturation levels are within normal limits.

vii. Blood glucose levels are within normal limits.

viii. The patient does not appear to have serious, distracting injuries that may impair rational decision making.

12. If a patient has a life-threatening illness or injury, and there is doubt of their decision-making capacity, transport them to the hospital, even if it is against their will.

a. The decision to allow an impaired patient to refuse treatment is a medical decision.

i. It requires judgment and experience.

b. Best made by a physician in a hospital

13. Some states have emergency transportation statutes.

a. Permits EMS personnel to transport patients against their will under narrow circumstances.

b. Designed to protect paramedics who make good faith judgment

c. In 1993, New Mexico passed a law permitting transport without consent if:

i. There is online medical control.

ii. The provider is certified to at least the EMT level.

iii. The provider has made a good faith judgment.

iv. The patient is incapable of making an informed decision.

v. The patient is reasonably likely to experience death or disability without medical help.

14. Psychiatric emergencies present problems of consent.

a. A person’s life is not in danger.

b. Police officer is generally the only person given authority to restrain and transport the patient against his or her will.

c. EMS should not do so unless at the express request of the police.

d. A physician nor the patient’s family may authorize transport in most regions.

i. They may authorize involuntary commitment.

ii. Authority does not extend to the forcible transport of a patient against his or her will.

e. EMS service must establish protocol based on local laws dealing with mentally disturbed patients who refuse transport.

f. Police may be required.

g. The role of each agency involved should be clearly defined beforehand.

D. Minors

1. Present special issues for the paramedic

a. Have no legal status

b. Cannot refuse or consent to medical care

c. Consent must be obtained from the parent or legal guardian of children or adults who have legal guardians.

i. If the legal guardian is not available, emergency treatment to sustain life may be undertaken without direct consent under the doctrine of implied consent.

d. Be aware of the legal principle *in loco parentis*.

i. *In loco parentis*: In place of the parent

ii. May apply in school, day care, or summer camp

iii. The school administrator or day care director may make decisions on behalf of the minor.

2. Difficult circumstances may arise if a parent or legal guardian refuses to grant consent to a minor who clearly requires lifesaving or limb-saving treatment.

a. Adults have the right to refuse treatment.

b. State laws generally do not permit a parent or guardian to deny treatment to a minor child.

c. The failure to allow treatment may constitute neglect.

d. The paramedic should notify law enforcement and medical control.

e. State law may permit the state to assume custody of the child.

3. Emancipated minors are under the legal age in a given state but can be treated as legal adults due to qualifying circumstances.

a. Individual state law determines circumstances.

b. Most state recognizes any minor who has been emancipated by court order.

c. Some states add criteria.

i. Marriage

ii. Pregnancy

iii. Active military service

d. May be treated as adults when obtaining consent or refusal

e. Obtaining consent may be a difficult skill to acquire.

f. Expertise will build over time.

g. Patient or child’s guardian may not want assessment.

h. Remember to anticipate potential problems for obtaining permission.

i. Prepare to discuss the need for care.

E. Violent patients and restraints

1. The use of force by paramedics has been the case of many lawsuits.

a. You will encounter violent patents.

b. Patients must be restrained in order to protect themselves and those caring for them.

2. Force can only be used in response to a patient’s use of force against you.

a. If attacked, you may defend yourself.

b. The use of temporary disabling sprays, knives, or firearms are usually prohibited by the EMS agency.

c. The amount of force allowed by law is either equal to or slightly greater than the force offered by the patient.

i. Must be in response to the patient’s actions

d. Violence against EMS providers is on the rise.

e. Do not enter a scene that is unsafe.

f. Let law enforcement secure the scene.

3. Restraint can be used for medical reasons.

a. Only when the patient is a danger to themselves or others

b. Violence can be a result of:

i. Hypoxia

ii. Hypoglycemia

iii. Mental illness

iv. Brain injury

v. drug abuse or overdose

vi. Alcohol

vii. A variety of underlying medical and psychiatric causes

c. Medical protocols cover what is appropriate.

i. Spells out what medications or devices are allowed

d. Many EMS systems use medications.

i. Benzodiazepines

ii. Antipsychotic

e. Medications calm patients who are violent.

f. Allows transport to a hospital to discover the medical or psychiatric cause of their outbursts

F. Triage and allocation of resources

1. Resources of personnel and equipment become limited when treating a significant number of injured people.

2. Triage: The process of establishing treatment priorities among the injured in order to best allocate the available resources to provide care to the most people

a. Generally follow well-established protocols used in the United States and other countries for many years.

b. The number of injured may exceed the number of medical personnel or equipment available to provide treatment.

i. Natural disasters

ii. Terrorist attacks

c. Presents serious triage challenges

3. Ethical conflict regarding allocation of limited resources during triage. Example:

a. Giving special consideration to an injured person you know personally

b. Providing prompt care for an innocent victim while delaying care to the more seriously injured intoxicated driver

c. Applying triage protocols objectively to a person who is abusive toward you

d. Setting aside bias

i. Triage requires you to be professional and ethical in every respect

ii. Decisions made during triage affect life and death

VI. Negligence and Protection Against Negligence Claims

A. Unless immunity exists, nothing can protect a paramedic from liability for gross negligence.

1. Negligence occurs when:

a. The paramedic or EMS system had a legal duty to the patient.

i. Example: Paramedic hired to serve the community has a legal duty to the citizens of that community

b. There was a breach of duty.

i. The person accused of negligence failed to act as another person with similar training would have acted under the same of similar circumstances.

ii. May involve doing less than the person was trained to do

iii. Doing more than the person was trained to do

c. The failure to act appropriately was the proximate cause of the plaintiff’s injury.

d. Harm resulted.

2. Paramedics and the EMS systems are protected from liability as long as they perform according to the standards for paramedics and EMS systems.

a. Best protection is to behave in all circumstances according to established procedures and standards set by national agencies

i. Example: Guidelines for ambulance design and equipment from the National Highway Traffic Safety Administration (NHTSA)

b. These standards are not law.

c. Can be introduced as evidence in litigation

d. May affect the outcome of the lawsuit

e. Ensure your vehicle is maintained in optimal condition.

f. Equip vehicle according to prevailing standards.

3. Paramedics may obtain their own insurance coverage, in addition to their employer, to provide for additional protection.

a. Having additional insurance provides protection:

i. If employer’s insurance carrier is required to pay out on a claim based on wrongdoing for which you are responsible

ii. If you are sued as a result of having provided off-duty emergency assistance

iii. If you are an instructor teaching EMS-related classes outside the scope of your employment and are sued by a student or other party

b. Insurance is reasonably priced.

c. May be a wise investment

4. One aspect of negligence is foreseeability.

a. Implies that the injury or harm could have been predicted

b. Avoided if proper precautions were taken

i. Example: Giving an incorrect dosage of a drug will foreseeably result in harm to the patient .

5. Negligence is divided into three categories.

a. Malfeasance: When a paramedic performs an act that he or she was never authorized to do

i. Example: Medical intervention outside the scope of practice

b. Misfeasance: When a paramedic performs an act that he or she is legally permitted to do but improperly carries it out

i. Example: Administering medication that is clearly within the scope of practice but accidentally calculates an incorrect dose

c. Nonfeasance: When a paramedic fails to perform an act that he or she is required or expected to perform

i. Example: Failure to perform CPR when a patient goes into cardiac arrest

B. Elements of negligence

1. Duty

a. Is prescribed by the law

b. What you must do and how you must do it

c. First duty is to do no further harm to a patient.

d. First element of negligence a patient must prove for a successful lawsuit is duty.

i. Duty: “an obligation, to which law will give recognition and effect; to conform to a particular standard of conduct toward another”

ii. Failure is “subject to the liability to the person to whom the duty is owed for any injury sustained by that person of which the conduct is the legal cause”

e. Confusion around the concept of legal duty in EMS

i. Example: Many paramedics think they are legally obligated to stop at roadside crashes because they are paramedics.

ii. In all but a few states, this is not the case.

iii. Most states do not require it.

f. Obligated to respond to calls when working a shift or volunteering for a squad

i. Most services have a policy addressing the passing by of another incident when en route to a call or to the hospital with a patient.

ii. Make sure the appropriate personnel are dispatched.

g. Common misconception: The sticker “paramedic” on your vehicles invokes the responsibility to stop at all emergencies.

i. This is not true.

h. The paramedic does have a legal duty to perform within the standard of care if a decision is made to stop and provide assistance.

i. Further legal duty not to abandon the patient once treatment has begun

j. Know what your legal obligations are when off duty.

k. Understand your state laws.

l. Educate your peers regarding off-duty obligations.

m. Concept of duty

i. Maintaining licensure or certification

ii. Attending continuing education courses

iii. Maintaining your skills

iv. Maintain health.

v. Maintain psychological well-being.

(a) Be prepared for rigors of prehospital patient care.

vi. Duty to check equipment to ensure it is functioning properly

vii. Duty to honor patient’s rights to privacy

viii. Honor patient’s right to refuse or limit care you provide.

n. EMS agencies and systems can be held to a legal duty.

i. Agencies have a duty to respond to calls for air.

ii. Use mutual resources appropriately if call volume is heavy.

iii. Allows response within an appropriate time frame

iv. May operate with contracts specifying legal duties

(a) Example: Minimum response time

o. Legal duty

i. Is a concept in the law that tells you what your standards of practice are

(a) Unpredictable legal concept

ii. Often defined in the context of a case tried in court of law

iii. Used by attorneys defending EMS providers

(a) Example: An off-duty paramedic stopped at a crash to render aid. The attorney may attempt to show the paramedic had no duty to the patient, but provided assistance he or she was not required by law to provide.

p. Attorneys are trained to work from the most general defense to the most specific elements.

i. Lack of legal duty is a general defense.

ii. However general, it may still be true.

2. Breach of duty

a. A lawsuit will be successful if a paramedic failed to perform within the standard of care.

i. Standard of care: What a reasonable paramedic, in the same or similar situation, would have done

b. A jury will listen to the testimony of expert witnesses on both sides.

c. The jury will decide whether the paramedic’s care was reasonable or not.

d. The expert witnesses will provide sources, including:

i. Their own training and experience

ii. The paramedic’s training, experience, and continuing education

iii. Textbooks

iv. Protocols

v. National standards

vi. Standard operating procedures

vii. The patient care report

e. Good documentation will help prove your standards of care.

f. Some states differ between ordinary negligence and gross negligence.

i. Standard of care from a paramedic differs by state.

ii. Some states provide immunity.

(a) Covers all but the poorest care given by the paramedic

(b) Comes in the form of a Good Samaritan law

(c) When a paramedic was off duty and no compensation was paid for the assistance provided

g. Some states follow a gross negligence standard.

i. Lawsuits against paramedics will not be successful unless the paramedic has seriously departed from accepted standards.

ii. Gross negligence: If actions are found to be willful or wanton (malicious) under the law

iii. Difficult for plaintiff to meet

iv. Either intentional conduct or recklessness is essential to the finding of willful or wanton conduct.

(a) Example: Ohio has defined as “the intent, purpose, or design to injure another” or “an intentional disregard of a clear duty or definite rule of conduct” (see p 102 for additional information)

(b) Other states: Reckless disregard, utter indifference, conscious disregard for the safety of others

v. If the paramedic can convince the jury that he or she acted in good faith, the paramedic will be acquitted (relieved from the charge) of gross negligence.

h. In other states, the plaintiff shows ordinary negligence.

i. Ordinary negligence: A failure to act or simple mistake that causes harm to a patient

ii. Much easer for plaintiff to prove negligence

i. Special theory or negligence

i. *Res ipsa loquitur* applies even though the plaintiff is unable to demonstrate clearly the exact manner by which an injury occurred.

ii. *Res ipsa loquitur*: The thing that speaks for itself

iii. You could be held liable:

(a) By showing that the plaintiff was injured

(b) The instrumentality causing the injury was in your control.

(c) Such injuries do not ordinarily occur unless there is negligence.

iv. Example of *res ipsa loquitur*

(a) You and your partner are called to the home of a patient who lost consciousness as a result of an apparent drug overdose.

(b) While loading the patient into the ambulance, your partner slips, the stretcher tips over and the patient strikes the ground sustaining a laceration to the head.

(c) The patient sues for negligence.

(d) Although the patient was unconscious, under the doctrine of *res ipsa loquitur*, the patient can prevail in his or her lawsuit.

j. Negligence *per se*

i. Applied to circumstances where a paramedic inexcusably violates a statute

(a) Example: A paramedic treats a patient despite an expired license

ii. A finding that a statute has been violated can sometimes lead to an automatic finding of negligence.

3. Proximate cause

a. Applies in cases where the paramedic has a legal duty to the patient

b. The paramedic breaches the standard of care.

c. The plaintiff must link the act that fell below the standard of care directly to his or her injury.

i. By showing that the act (or failure to act) proximately caused the harm

ii. Proximate cause: That which, in a natural and conscious sequence, unbroken by any intervening cause, produces injury, and without which the result would not have occurred

iii. Plaintiff must prove the paramedic’s improper action, or failure to act, was the cause of the injury.

d. An act, or failure to act causes injury.

i. Most difficult part of a lawsuit to prove

ii. Example: Paramedics treating a patient with a spinal cord injury

iii. The paramedics drop the stretcher.

iv. The patient may try to show that his or her injury resulted from the dropped stretcher.

v. Careful documentation of the patient’s status at their first encounter will be essential to their defense.

4. Harm

a. The final element plaintiffs must prove in a negligence lawsuit

b. In addition to physical injury, patients can claim damages for:

i. Emotional distress

ii. Loss of income

iii. Loss of enjoyment of life

iv. Loss of spousal consortium

v. Loss of household services

vi. Loss of future earning capacity

c. Will need to show paramedic’s actions were proximate causes of each of these losses

C. Abandonment

1. A form of negligence that involves the termination of care without the patient’s consent

a. Implies the patient had continuing need for medical treatment

b. The abrupt termination of treatment was cause to injury or death

c. You may not leave a patient in need of medical treatment until another competent health care professional with equal or higher level of training has taken responsibility.

d. You must notify appropriate health care professional of the presence in the ED

e. Notify that you are transferring responsibility for care

2. Complete a written report.

a. Often submitted electronically

b. Frequently arrives after the call

c. The emergency department physician or nurse taking over care of your patient must receive this report.

d. The report will permit the ED physician and staff to review your findings.

e. Medications you gave the patient

f. Procedures you performed

3. Some situations may not require transport but are not considered abandonment.

a. Frequent calls for patients who do not really need treatment or transportation

i. Patient may have fallen and needs help getting up

ii. Patient may need help taking medication

iii. Patient with hypoglycemia may feel fine after treatment

b. Medical director provides protocols.

c. Encourage transport.

4. Some ambulance services may have a mix of providers of various levels of training.

a. May not have a full staff at all times

b. Paramedic may not need to be part of the transport crew if patient does not need advanced care

c. When in doubt, contact your medical control.

5. A tiered response

a. Basic life support (BLS) providers reaching the patient quickly

b. Followed by advanced life support (ALS) providers

c. If BLS responds and makes an improper determination, the system may be exposed to liability.

d. Work with every provider involved .

e. Set up protocols providing guidance for these situations.

VII. Patient Autonomy

A. Patients have the right to direct their own care and decide how they want their end-of-life medical care provided to them.

1. Patient autonomy is at the forefront of medical ethics.

a. Does not apply when the patient is a minor or lacks decision making capacity

b. You must respect and honor the patient’s right to make medical decisions, however irrational or unsound.

2. Medical technology has made the line between life and death more imprecise.

a. A number of high-profile cases have brought the issue to the forefront of medical ethics in the past 20 years.

i. Example: Terri Schiavo case demonstrates the court will support the right of a patient, or the patient’s closest relative to make end-of-life decisions.

ii. Terri Schiavo did not leave written advance directives, putting the case in the hands of the courts (state and federal).

3. Patients’ decisions

a. May not be accepted by other members of the public or the patient’s family

b. Important to remember that our courts, including the US Supreme Court, have recognized the right of people to make decisions about their own medical care.

c. People can make their own decisions, even if it means death.

d. Ethics has become the subject of many paramedic discussions.

e. Paramedics find themselves being accountable to more systems than the average health care provider in trying to respect the wishes of the patient.

f. The following can compete with the wishes of the patient:

i. The EMS system

ii. Your medical director

iii. The EMS service for which you work

iv. Your community’s standard of care

g. Competing interests can create an ethical conflict.

h. You will need to resolve through communication with all involved parties

4. Physician’s orders

a. You may feel they are detrimental to the patient’s best interests.

b. Immediately discuss your feelings with the physician.

c. You are in a better situation to understand.

d. Your job is to communicate fully with the physician.

e. Never perform a procedure or administer a medication you believe will harm the patient.

i. Example: If a physician asks you to perform a procedure in which you are not trained

f. Obtain clarification from the physician.

g. Communicate your objections.

h. Discuss your current standing orders.

i. Offer a feasible alternative within your scope of practice.

j. Request the physician speak with your medical director.

k. Act in the patient’s best interest as his or her advocate.

5. Treating patients against their wishes

a. Generally permissible when the patient lacks decision-making capacity

b. Consent is implied.

i. Example: A man who does not want to admit he is having a myocardial infarction

ii. Use your best diplomatic negotiating skills.

iii. Coupled with your medical knowledge

c. These situations should be covered in protocols.

d. Discussed regularly and in detail with your medical director

e. Involve the patient’s family.

f. Your supervisor

g. Medical control

h. Obtain the best care for your patient.

B. Advance directives

1. Usually a written document

a. Can be an oral statement

b. Expresses the wants, needs, desires of a patient in reference to his or her future medical care

c. State what medical care the patient wants or does not want when the patient is unable to express his or her wishes

d. Examples:

i. Living wills

ii. Do not resuscitate (DNR) orders

iii. Organ donation

2. Differ from state to state

a. DNR order may restrict any ALS care.

b. Others provide for comfort care.

c. This includes pain medication and oxygen therapy.

i. Example: In Colorado, a person designated as the medical durable power of attorney can revoke a resuscitation directive.

d. Know your own local and state protocols and regulations.

3. State law

a. Whether EMS personnel are bound by advance directives

b. Those that cover DNR orders are usually strict.

c. Usually limited to terminal patients in nursing homes or hospice care

d. Learn and follow the laws of your state .

e. Provides a framework for decisions

4. Living will and health care power of attorney

a. Types of advance directives

b. A patient can express wishes regarding end-of-life medical care.

c. Sometimes called health care durable powers of attorney

d. Remain in effect once a patient loses decision making capacity

e. Can sometimes be confusing

f. Various types of powers of attorney

g. Not all authorize the designated agent to make decisions regarding health care

h. Elderly patients commonly execute powers of attorney.

i. Enable others to conduct financial affairs on their behalf

ii. Have no effect on health care whatsoever

i. May have been executed outside the state in which the patient now resides

i. Effect in your state may be questionable

j. Ask to see the power of attorney.

k. Carefully review it.

l. Determine whether it authorizes the agent to make health care decisions.

m. When in doubt, contact medical control.

n. Living wills need a precondition to activate.

i. Example: Terminal illness or irreversible coma

ii. Spells out exactly what kind of treatment a patient wishes to be given

iii. Contains a health care power of attorney

iv. Designates another person to make health care decisions for the patient at any time the patient is unable to make those decisions

v. The person designated does not have to be a relative.

(a) Should be someone close who understands his or her wishes

vi. If a health care power of attorney is not identified, use in the field will be limited

(a) Consult medical control.

o. Heath care power of attorney

i. Often called the surrogate decision maker

(a) Surrogate Decision Maker: Legally obligated to make decisions as the patient would want

(b) Has discussed these decisions with the patient

ii. Has no authority until the patient becomes incapable of making decisions

iii. If a surrogate decision maker is attempting to make decisions that conflict with a competent patient’s decisions, the patient’s decisions are always followed.

p. Uncertainty

i. Begin care.

ii. Immediately contact medical control to discuss termination of resuscitative effort.

5. DNR Orders

a. Do not resuscitate order

i. Also known as do not attempt resuscitation (DNAR)

b. An advance directive that describes which life-sustaining procedures should be performed if a patient’s medical condition suddenly deteriorates

c. Recognized in the pre-hospital setting in the last 20 years

d. EMS recognized patients both outside and inside the hospital have the same rights

e. Many states have DNR forms specific to EMS.

f. Most states have laws that govern the process of dying.

g. Patients have rights to direct that process.

h. States have their own procedures for recognizing valid DNR orders.

i. Some states rely on written physician orders.

i. These may not be available to the EMS provider.

j. Others require the patient to wear a bracelet or necklace.

i. Jewelry indicates the patient has consented to stored information.

(a) Example: DNR status

k. DNR orders expire in some states and must be renewed to remain valid.

l. Some DNR orders may not expire.

m. In some cases, the DNR order must be executed within your state by a physician licensed to practice medicine within the state.

n. Be familiar with the DNR documents in your state.

o. Know what you are expected to do if the documents are not available.

p. DNR orders must have requirements to be valid.

i. Clearly state the patient’s medical problems.

ii. Signature of the patient or legal guardian

iii. Signature of one or more physicians

iv. DNR orders that expire must be dated in the preceding 12 months to be valid.

q. You are obligated to provide supportive measures.

i. Example: Oxygen, pain relief, comfort

ii. Provided to a patient who is not in cardiac arrest, when possible

iii. Each ambulance service develops protocol with its medical director and legal council.

6. Withholding or withdrawing resuscitation

a. Rely on the use of common sense and reasonable judgment.

b. Decide when to stop CPR and resuscitation efforts.

c. Not continue at all

d. Medical studies show that resuscitation of medical and trauma patients is sometimes futile.

e. May become futile

f. Not medically or ethically indicated

g. Paramedics working in rural and wilderness situations

i. Must consider time it will take for a patient to receive care and the likelihood of survival

ii. May hear stories of patients recovering from hopeless situations

iii. Provides motivation for you to attempt to save a patient under impossible circumstances

iv. Remember that rare survival cases should not be your guide to decision making.

v. Lifesaving efforts in the field may seem contrary to the instincts of health care providers.

vi. Your focus is to provide 15 minutes of the best available method of resuscitation.

(a) If spontaneous circulation may not return or no extenuating medical circumstances exist for the patient, termination should be considered.

vii. Follow written protocols.

h. Each state has different laws defining the role of the paramedic in resuscitation issues.

i. In some states, a paramedic can pronounce death.

ii. Other states, only a medical investigator or physician may do so

iii. State laws govern your practice even if the patient is clinically deceased.

iv. Some laws include guidelines for basic life support.

(a) Example: Resuscitation should not be attempted on patients who are obviously dead or have injuries incompatible with life.

v. If resuscitation has begun, cessation may be appropriate when:

(a) Blunt trauma arrest

(b) A prolonged rescue or response time

(c) Lengthy medical resuscitation efforts

i. The decision to halt resuscitation is difficult and emotional.

i. Especially when dealing with a pediatric patient

ii. Studies show that paramedics are uncomfortable about terminating resuscitation in children.

iii. Paramedics and medical professionals tend to be action-oriented.

iv. Sometimes, you can do more for the grieving family than the child who has died.

(a) Ethically, be prepared to support the family.

(b) This can be the hardest part of the job.

j. Guidance and concerns about difficult resuscitation efforts

i. Training

ii. Literature reviews

iii. Open discussions

iv. Continuing education may provide alternative viewpoints.

(a) May offer a broader picture to allow you to make decisions in the field

k. Acquire a thorough understanding of the basic consequences of EMS interventions.

i. Medical interventions and lifesaving attempts may prolong suffering.

ii. May fail to return a patient to a meaningful life

iii. When in doubt, contact medical control.

iv. If communication is hindered, use your judgment.

v. Know about interventions and consequences of interventions in advance

C. End-of-life decisions

1. You will often deal with patients at the end of their lives.

a. Treat the patient and their families with the utmost respect and empathy.

b. Never question why they called for help.

i. Represents the paramedic moral code getting in the way of the paramedic’s medical ethics

c. Understand that the family of a dying patent may not know how to check a pulse.

d. May not understand that difficult, agonal gasps may continue before a patient dies

e. A loved one, despite knowing that death is near, will call for an ambulance.

f. Many people have never been with someone at the moment of death.

g. Your job is to provide information and support.

2. Avoid imposing your moral code.

a. Patient’s value system may be different from your own

b. You will encounter patients with varied cultural beliefs.

c. Be prepared to respect a patient’s lifestyle even if it greatly differs from your own.

3. You are likely to encounter confusing scenarios when the DNR paperwork may not be available.

a. Begin resuscitation efforts, and then discontinue when the paperwork is confirmed.

b. Obtain agreement from online medical control.

c. In some cases, DNR paperwork may be available, but the patient’s family may disagree with the DNR order.

d. Avoid hostile encounters.

e. Carry out the patient’s wishes to the best of your ability.

f. Contact medical control in confusing situations with questions.

g. The medical control physician can be a valuable resource.

4. Medical orders for life-sustaining treatment (MOLST)

a. An end-of-life document

b. Similar to a DNR

c. More expansive than a DNR

d. Intended to be followed by all health care providers

e. DNR applies to patients who are in cardiac arrest.

f. MOLST may apply to patents with impending pulmonary failure who are not in cardiac arrest.

g. MOLST orders typically contain provisions addressing:

i. Initiation of CPR

ii. Intubation

iii. Feeding tubes

iv. The use of antibiotics

v. Palliative care

h. Apply only when the patient has lost decision-making capacity

i. MOLST orders are not used in all states.

j. Check to see if your state has adopted such provisions.

5. Organ donation

a. A major issue in medical ethics

b. Donor organs are badly needed .

c. Many patients wait years for a match.

d. Major organs are not appropriate for organ donation after prolonged hypotension or CPR.

i. Example: Kidneys and liver

ii. Other tissues may be valuable (such as corneas and skin).

iii. Many states have programs allowing patients to agree to organ donation.

iv. Noted on a driver’s license

v. If a patient’s wishes are not known, obtain consent from a family member.

vi. Additional resources

(a) Workshops offered by organ transplant teams

(b) EMS leaders as continuing education for paramedics

(c) Be aware of the vital role you play in securing transplants.

VIII. Defenses to Litigation

A. The media and public education have made the public more aware of what to expect from the EMS system.

1. Citizens may perceive your response as delayed or efforts incompetent.

a. Result, lawsuits will be filed seeking compensation for injuries

b. Explain to your patients why you were delayed.

c. Explain why a procedure is difficult.

d. Not doing so leaves yourself open to consequences

e. A patient may seek legal action.

f. Your first defense to litigation is an open, informative, trust-based relationship with all patients.

g. Sometimes, this relationship is not possible or fails.

h. Several legal defenses may be used in the courtroom.

2. When a lawsuit is filed

a. The paramedic and their employer may implement one of two defenses.

i. Statue of limitations

ii. Contributory negligence

b. Every state has laws that limit the time within which a lawsuit can be filed.

c. Called statutes of limitations

d. The time to file in states vary.

i. 1 to 6 years

e. Suits filed beyond these periods can be dismissed as untimely.

f. Extended for minors until the minor reaches the age of majority

3. Contributory negligence

a. Applies when the plaintiff has done something that contributes to his or her injuries

b. Example: A paramedic encounters a patient with chest pain that appears to be cardiac.

i. Prior to administering nitroglycerin, the paramedic inquires about current medications.

ii. The patient does not tell the truth.

iii. The paramedic administers the medication.

iv. The patient almost dies as a result of interaction between the medications.

v. In the lawsuit, the paramedic is able to assert the defense of contributory negligence.

vi. The patient failed to state he had used medication.

vii. The dosage contributed to adverse reaction to treatment.

B. Good Samaritan legislation

1. All but 13 states have some form.

2. Provides immunity from liability to any member of the community who stops and helps at the scene of an emergency

3. Initially passed to encourage the public to help at emergency scenes

4. Provides some protection for EMS personnel who are off duty and assist in an emergency

5. The laws of most states limit legal protection provided:

a. The emergency care is provided free of charge.

6. An EMT or paramedic on duty providing emergency care while on duty is not protected.

7. If a paramedic has a legal duty to a patient, they will not be covered.

8. May help cover paramedics rendering assistance in another state

a. Do not supersede the laws of the licensing agency in the paramedic’s own state

9. Requirements of the Good Samaritan laws

a. Persons responding to an emergency must do all that they can, within their knowledge, to support and sustain life and prevent further injury.

b. Paramedic not expected to function as a physician.

c. Paramedic expected to deploy those skills that any other paramedic with similar training would use under the same or similar circumstances.

10. Application in court

a. Have not been generous during routine EMS work

b. Have been applying the concept during emergencies

C. Governmental immunity

1. In English law, you cannot sue the queen or king.

2. Sovereign immunity in the United States

a. Legislation that identifies only limited types of lawsuits that can be filed against government agencies

b. Paramedics working for government agencies have some immunity.

c. May set limited time frames in which lawsuits can be filed

d. May limit the amount of money a plaintiff can recover

D. Qualified immunity

1. Does not cover civil rights violations

2. Lawsuits have been filed against public sector paramedics.

3. EMS personnel improperly restrain a violent patient.

4. Use of excessive force

5. Conduct deviates from standard of care where a civil rights violation is said to occur.

6. Paramedics working or volunteering for public agencies

a. Sued by patients alleging civil rights violations

b. Have qualified immunity

c. Held liable only when the plaintiff can show the paramedic violated a clearly established law they should have known

d. Does not apply to tort cases.

IX. Employment Law and the Paramedic

A. There are a number of important laws that affect your relationship with your employer.

1. Becoming involved in a legal issue regarding your employment are likely greater than your chances of being sued by a patient.

a. Relationship with employer and employee involves a complexity of state and federal laws and regulations.

b. Have a basic understanding

B. Americans with Disabilities Act

1. A federal law

2. Adopted to protect qualified persons with disabilities from being discriminated against in employment

3. Applies to all employers with a minimum of 15 employees

4. State laws may provide protection for employers with fewer employees

5. Applies to all aspects of employment:

a. Hiring

b. Promotions

c. Training

d. Salary

e. Benefits

f. Termination

6. Common misconception is that employers must hire disabled employees not qualified for the job.

7. To be protected, a person must meet the following qualifications:

a. Have a physical or mental disability that impairs one or more major life activities such as hearing ,seeing, walking, or speaking

b. Posses the basic qualifications of the job and be able to perform the essential functions of the job adequately, with or without reasonable accommodations

8. An employer may not inquire about an applicant’s disability or require a medical exam.

a. May be done once the job offer has been made

b. If a disabled person could perform the job using reasonable accommodations, the employer may be required to provide and pay for the cost of these accommodations.

c. Law does not require the employer to provide accommodations that would result in undue hardship to the employer or to other employees.

9. ADA does not require an employer to give preference to a person with a disability.

a. Requires an employer make employment decisions based on reasons that are unrelated to the disability

b. Applicant or employee is capable of performing the essential functions of the job.

C. Title VII of the Civil Rights Act

1. Prohibits discrimination in employment based on race, color, religion, gender, national origin, or sexual discrimination

2. Provides protection against sexual harassment in the workplace

3. Applies to all aspects of employment including:

a. Recruiting

b. Hiring

c. Promotions

d. Benefits

e. Termination

4. Applies only to businesses with more than 15 employees

5. Unusual for an employer to blatantly refuse to hire or promote someone

a. Based on race, gender, religion, color, or national origin

b. Successful claims involve the identification of a discriminatory hiring pattern

c. Develops over time

d. Demonstrates a particular class of persons

i. Example: Women or African Americans

e. Rare promotions

f. Vastly underrepresented in the overall workforce

6. Hiring practices violate Title VII, even when they appear neutral.

a. Employer places classified ad.

b. Ad stated that the qualification for the job was a minimum height requirement.

c. May seem neutral in respect to gender.

d. Negative impact on the ability of a woman to apply

e. Employer would have to prove the necessity of the height requirement.

D. Sexual harassment

1. The most common claim filed under Title VII

a. Has seen its share in EMS

b. Two types:

i. *Quid pro quo*: A person in authority attempts to exchange some work-related benefit for sexual favors

ii. Hostile environment: The employer or agent of the employer either creates or allows to continue an offensive practice related to sex that makes it uncomfortable or impossible for an employee to continue working

c. Most claims fall into the category of hostile environment

d. No precise definition in the law

e. Court decisions have identified a number of circumstances that can be considered harassment:

i. Sexual jokes or comments

ii. Display of sexually offensive photographs or other material

iii. Unwelcome sexual advances

iv. Inappropriate and unwelcome touching or kissing

v. Inappropriate inquiry into an employee’s sex life

f. All employers have an obligation to prevent sexual harassment.

g. Investigate any and all claims promptly.

h. Employers should provide training.

i. All new employees

ii. All employees on an annual basis

i. Promptly report any conduct you feel constitutes sexual harassment to your supervisor or human resources department.

E. Additional federal laws dealing with discrimination

1. Several federal laws prohibit various types of discrimination in the workplace.

a. The Pregnancy Discrimination Act

i. Illegal to discriminate against pregnancy, childbirth, or any medical condition related to pregnancy

ii. Adopted in 1978 as an amendment to Title VII

iii. Requires employers to provide health benefits and medical leave for pregnancy and childbirth equal to those provided for other medical conditions

b. The Equal Pay Act of 1963

i. Illegal to pay different rates of pay to men and women if they perform equal work in the same workplace

ii. Executives and managers are generally exempt

c. The Age Discrimination in Employment Act of 1967

i. Protects persons who are 40 years of age or older from discrimination based on age

ii. Applies to businesses with 15 or more employees

F. State laws

1. Deal with discrimination in the workplace.

a. Address the same issues covered under federal law.

b. Some states provide more rights than federal laws.

i. Example: Some states prohibit discrimination based on sexual orientation or marital status.

c. Many apply whether or not there are 15 or more employees.

d. Become familiar with the laws of your state.

G. Family Medical Leave Act (FMLA)

1. Established in 1993

a. Grants eligible employees to take up to 12 weeks of unpaid leave per year under certain circumstances

b. Employee must work for an employer with at least 50 employees.

c. Have worked for that employer for at least 12 months

d. Leave may be taken to deal with a medical condition of the employee.

e. Family member

f. Birth or adoption of a child

2. Some states have their own FMLA.

a. May provide the employee with more rights than the federal law

b. May apply to employers with fewer than 50 employees

H. Occupational Safety and Health Administration (OSHA)

1. Federal agency that regulates safety in the workplace

a. States may enforce regulations tighter than those set by OSHA.

b. May not make regulations more lenient

c. All employers are covered by OSHA or an OSHA-approved safety plan.

d. Enacted in 1970

e. All employers have several basic responsibilities:

i. To comply with all OSHA standards, rules, and regulations that are applicable to his or her business

ii. To provide all employees with a workplace that is free from hazards

iii. To warn employees of potential hazards

iv. To ensure that all employees are provided with appropriate safety equipment

v. To establish and maintain a reporting system for all workplace injuries or illnesses

vi. To provide training for all employees

f. Health care employers have additional responsibilities:

i. Development of an exposure control plan to assist employees who may have been exposed to certain bloodborne pathogens

ii. Development of training programs for all newly hired employees

iii. Annual refresher training for all employees that address issues related to bloodborne pathogens

iv. Making the hepatitis B vaccine available at no charge to all employees

v. Development of standards regarding the use of universal precautions

g. OSHA regulations and standards are changing.

h. Be familiar as possible with these changes.

i. Thousands of EMS employees sustain injuries and illnesses each year.

j. You share an obligation to do all you can to avoid injuries.

I. Ryan White Act

1. A federal law that provides certain safeguards and protections for health care workers who are potentially exposed to certain designated diseases

a. Have been established by the Centers for Disease Control and Prevention

b. Include human immunodeficiency virus (HIV)

c. Acquired immunodeficiency syndrome (AIDS)

d. Tuberculosis

e. Hepatitis B

f. Meningitis

g. Diphtheria

h. Hemorrhagic fevers

i. Plague

j. Rabies

k. Contains several important provisions:

i. Hospitals and emergency response employers are required to establish a notification system to be used when exposure occurs.

ii. Employers must appoint a designated infection control officer to handle exposures and to assist all employees who may have been exposed.

iii. Access to the medical records of the patient who is the source of the exposure may be obtained to determine whether the patient has tested positively for, or is exhibiting signs and symptoms of a covered infectious disease.

l. Notify your infection control officer if you believe you have been exposed to an infectious disease.

J. National Labor Relations Act

1. Many paramedics are employed by EMS services that are unionized.

a. Employees have elected to have a union represent them as their collective bargaining agent for purposes of negotiating issues such as:

i. Compensation

ii. Benefits

iii. Work conditions

b. Also known as the Wagner Act

c. Primary law establishing the rights of unions and union workers

d. Regulates unfair labor practices by employers

e. Employees have a wide variety of rights with which they should become familiar.

f. Each state has its own set of laws.

g. Affects the rights of union members

h. In some states the “right to work laws” do not allow an employer or a union to require you to join a union as a condition to being hired or retained on the job.

i. Other states may require you to join the union within a certain time period after you are hired.

X. Summary

A. Paramedics are exposed to professional liability and must have a solid understanding of law and ethics. Failure to perform their job as expected exposes them to civil and/or criminal liability.

B. When professional ethics conflict with personal ethics, the paramedic must set personal ethics aside.

C. Three primary ethical principles for paramedics are to do no harm, act in good faith, and act in the patient’s best interest.

D. EMS research presents ethical dilemmas regarding informed patient consent. Stay aware of the issues and latest research.

E. The three branches of government are executive, judicial, and legislative.

F. The two types of law are civil and criminal.

G. Paramedics are susceptible to assault and battery charges.

H. False imprisonment occurs when a paramedic restrains a patient against his or her will.

I. Defamation, slander, and libel present risks to paramedics.

J. Lawsuits start with a complaint, followed a response by the defendant, then discovery, settlement discussions, and finally, a trial process.

K. Paramedics are subject to multiple legal jurisdictions.

L. Paramedics are held personally responsible for their own actions.

M. Directives given to paramedics by the medical director are binding, unless they believe it will cause harm to the patient.

N. State legislation allows paramedics to practice in every state.

O. Licensure given to paramedics is a privilege.

P. Paramedics have a right to due process.

Q. The Medical Practice Act defines the scope of practice for the paramedic.

R. HIPAA protects patient information.

S. EMTALA prevents hospital emergency departments from turning patients away.

T. The operation of an emergency vehicle must be performed in a manner that protects the public from injury.

U. The patient’s preference and medical needs determines transportation to a medical facility.

V. At crime scenes, paramedics must preserve evidence and document scenes or actions that may be introduced on behalf of a criminal prosecution.

W. Paramedics can be held legally responsible when they fail to report particular cases.

X. Particular types of death must be reported to local law enforcement personnel.

Y. Paramedics cannot infringe on the privacy, consent, and refusal from patients of sound mind.

Z. The only protection against a civil suit over refusal is documentation.

AA. Informed consent must be obtained prior to any medical process.

BB. Expressed consent must be obtained prior to any treatment.

CC. Implied consent exists when patients cannot answer for themselves and paramedics deem treatment is required.

DD. Factual documentation of a patient can help in the decision-making capacity of a patient. The best protection against lawsuits is through documentation and consultation with medical control.

EE. A minor has neither the right to consent to care not the right to refuse it, although exceptions exist for emancipated minors.

FF. If violent patients are a danger to themselves or others, they may be restrained using physical or chemical means following local medical and law enforcement protocols.

GG. Well-established protocols and professional ethics should take precedence over any personal feelings or ethics of the paramedic.

HH. Negligence occurs when duty to act, breach of duty, proximate cause, and injury-related processes have occurred.

II. Negligence can be acts of commission or acts of omission.

JJ. Paramedics cannot abandon their patients.

KK. Documentation prevents the appearance of abandonment.

LL. Patients have the right to determine their own care.

MM. Do not resuscitate (DNR) orders define the care a patient wants when lifesaving procedures are required.

NN. Paramedics need to become familiar with the choices patients have made regarding medical care and treatment issues.

OO. Prior to an emergency event, futile resuscitation efforts must be addressed and considered.

PP. Good Samaritan laws protect a paramedic who provides care when off duty, but only when performing within their training and education if they do not receive compensation.

QQ. Governmental immunity clauses protect paramedics only if the paramedic has not committed negligence or if he or she is deemed personally liable.

RR. Two common legal defenses are the statute of limitations and contributory negligence.

SS. Federal and state laws affect the relationship between the paramedic and his or her employer.

Post-Lecture

This section contains various student-centered end-of-chapter activities designed as enhancements to the instructor’s presentation. As time permits, these activities may be presented in class. They are also designed to be used as homework activities.

## Assessment in Action

This activity is designed to assist the student in gaining a further understanding of issues surrounding the provision of prehospital care. The activity incorporates both critical thinking and application of paramedic knowledge.

### Instructor Directions

**1.** Direct students to read the “Assessment in Action” scenario located in the Prep Kit at the end of Chapter 4.

**2.** Direct students to read and individually answer the quiz questions at the end of the scenario. Allow approximately 10 minutes for this part of the activity. Facilitate a class review and dialogue of the answers, allowing students to correct responses as may be needed. Use the quiz question answers noted below to assist in building this review. Allow approximately 10 minutes for this part of the activity.

**3.** You may wish to ask students to complete the activity on their own and turn in their answers on a separate piece of paper.

### Answers to Assessment in Action Questions

**1.** **Answer:** A. Contact medical control

 **Rationale:** When in doubt, you should contact medical control. Any decision regarding patient care should be based on the standards of good medical care. As a paramedic you answer to your medical director, your licensing agency, and your employer. The medical director specifies what you can do through protocols, standing orders, and online medical direction. Online medical control should also be the decision maker when confronted with a bystander physician who just happens to show up at a scene.

 It is important to describe the situation and findings completely when contacting medical control because the physician is not on the scene and can make decisions based only on information that you provide. Pertinent findings for this patient include not only the absence of a pulse and open cranial vault, but also the length of time that the patient has been apneic and pulseless and any previous medical history. Another consideration in this situation is whether the patient might be a known organ donor. If the airway can be maintained and the organs perfused, performing CPR on this patient may be a viable option.

 Although you work as an extension of the medical director, you are still responsible for your actions. If your performance is not up to standard, your medical director may restrict your scope of practice and/or require remedial training. Failing to perform up to the standard of care may also result in disciplinary actions by your employer.

**2.** **Answer:** B. HIPAA

 **Rationale:** The Health Insurance Portability and Accountability Act (HIPAA) provides stringent privacy requirements for patient information. It was enacted in 1996 and provides for civil penalties and/or criminal sanctions for releasing a patient’s private medical information in an unauthorized manner. This information may be given only when transferring care of a patient as part of the continuum of care or for payment or medical/billing operations. HIPAA requires each EMS agency to have a privacy officer to ensure that personal information is not released in an unwarranted manner.

 It is pertinent to pay attention to where you are and who may be listening. Simply talking in a hospital elevator without mentioning a patient’s name is a HIPAA violation. Bystanders may recognize the patient based on history or other information that you inadvertently reveal. This includes leaving patient care reports in public areas of your office where they can be seen by anyone who happens to walk by. You may also be subjected to liability by telling “war stories” to others. You must also be careful of what you discuss when someone is riding third. This includes members of the media as well as the general public or even students.

 There are specific steps to take for subpoenaing protected health information (PHI). If notice is received, it should be directed to the privacy officer in your department or to the person who usually deals with supplying this information.

**3.** **Answer:** A. Implied consent

 **Rationale:** Because the patient is unresponsive and unable to make a decision, he should be treated as any reasonable person would wish to be treated in a similar situation. Prior to providing care for a patient who is alert and oriented you must obtain consent. Otherwise you may be charged with assault and/or battery for touching the patient without permission. A patient may “express” consent by holding out a bleeding hand toward you or pointing to an area that hurts. A patient may also be “informed” of what you intend to do and then tell you it is fine to proceed.

 When a patient is unable to make an informed decision because of an altered mental status, he or she is treated under the principle of implied consent. This is also true of those who are too ill or injured to make a decision or those who are mentally challenged, whose guardian is not present, and who need immediate care. Minors and mentally challenged persons cannot consent or refuse treatment. If there is a life-threatening illness or injury, emergency treatment is supplied to sustain life under the doctrine of implied consent. If the situation is not life-threatening, a parent or legal guardian must give consent for treatment.

 Emancipated minors, those who are under the legal age but due to certain circumstances—pregnancy, military service, or marriage—may be treated as adults for purposes of consent or refusal. Regardless of the patient, you should be aware of potential problems for obtaining consent and be prepared to explain the need for care.

**4.** **Answer:** C. Preserve the crime scene.

 **Rationale:** If there is nothing that can be done to help the patient, you should avoid contaminating the scene for the investigating officers. If you disturbed anything in the course of reaching the patient, document carefully and alert law enforcement personnel as to what has been rearranged. Use extreme caution so you do not destroy any potential evidence. Do not touch any objects such as walls or doorknobs to keep from destroying any fingerprints that may be on them. Also avoid walking in any blood or other fluid/tissue that may disrupt evidence.

 If the scene is a motor vehicle crash, do not move any objects from the roadway such as pieces of broken glass or metal or anything in or around the vehicle. Do not reposition or cover bodies until a coroner or medical examiner arrives on scene.

 Limit the number of persons who enter a scene. Gather contact information from any potential witnesses and carefully document what they tell you. If the scene involves a death and law enforcement personnel are not on scene, stay with the body and protect the scene from contamination by bystanders, family members, media, or additional EMS personnel.

 In most jurisdictions, paramedics are not legally authorized to pronounce death. If there is any question or you have any doubts about viability of the patient, initiate resuscitation and provide immediate transport. Document thoroughly what you saw upon arrival and your care for the patient.

**5.** **Answer:** C. Physical examination

 **Rationale:** The physical examination portion of the PCR is where you give a detailed description of your assessments or findings. For this patient, your findings are your reason for making the decision that the patient is not viable. In your assessment you should also include any pertinent negatives. These are things that you expect to find that are not there. For example, you may expect a person complaining of abdominal pain to experience pain on palpation of the abdomen. The lack of pain when palpating the abdomen would be a pertinent negative.

 Your patient care report is your best defense in court. Make sure your documentation is thorough, accurate, and objective. Any information recorded should only be a record of the facts, findings, and treatment. Any information added that was told to you by bystanders should be placed in quotation marks with the person listed who gave you the information.

 Because the physician is not on scene, it is your responsibility to paint a picture for him or her of what you saw. A description of damage to a vehicle along with where the patient was in the vehicle and whether or not he or she was restrained may lead a physician to suspect and test for specific injuries that may not be readily seen. Whenever you care for a patient in the field, complete a careful and detailed report. Characteristics of an effective patient care report include the date and times, history, observations, physical examination, treatment, and any changes. Complete your report as soon as possible after the call so you do not to forget any pertinent information.

**6.** **Answer:** B. Breach of duty

 **Rationale:** Breach of duty is a failure of a paramedic to perform up to the standard of care. The standard of care is what a reasonable paramedic would do in the same or a similar situation. Once the case reaches the court, a jury listens to expert witnesses describe how they would handle the same situation. An expert witness is someone who is trained to your same level who uses their own training and experience and continuing education to make a case for the standard of care. This along with textbooks, protocols, national standards, standard operating procedures, and the patient care report that was completed for the call are all a basis for the case. Some states differentiate between ordinary negligence and gross negligence as well as how high a standard of care the paramedic will be held.

 Unless a paramedic has been found willful or wanton due to seriously departing from accepted standards, a gross negligence lawsuit will not be successful in those states that follow a gross negligence standard. A plaintiff would have to prove either intentional conduct or recklessness, which is difficult to do. Some states define willful or wanton conduct as “reckless disregard,” “utter indifference,” or “conscious disregard” for the safety of others. If the paramedic is able to convince the jury of acting in good faith, this is the defense for gross negligence.

 For states that require only a finding of ordinary negligence, this can be simply a failure to act or a simple mistake that causes harm to the patient. It is much easier for a plaintiff to prove ordinary negligence than to prove gross negligence.

**7.** **Answer:** A. a civil suit.

 **Rationale:** A civil suit is an action instituted by a private person or corporation against another private person or corporation. In this case, the family of the patient against you. The objective is usually to obtain compensation or damages for the injury (or resulting death) the plaintiff sustained. The plaintiff may seek monetary damages in this situation for mental anguish, physical suffering, or loss of earnings. Because the patient will no longer be able to provide for his family, the family may suffer mentally and physically. To succeed in a civil suit, the plaintiff needs only to show that a preponderance of the believable evidence is in his or her favor. Only 9 of the 12 jurors have to agree.

 Every person has a constitutional right to take legal action against the parties involved in care. However, the burden of proof falls to the plaintiff. He or she must prove that the provider(s) he or she is suing caused harm by failing to meet the accepted standards of care. All of the elements of negligence must be present in order for the lawsuit to be successful.

 Most lawsuits against EMS providers result from emergency vehicle collisions. However, other kinds of lawsuits are on the rise. Assault, battery, and false imprisonment may also be grounds for a civil suit, but are rare. To avoid a lawsuit it is imperative to obtain consent prior to treating a patient. To avoid lawsuits for defamation and libel you should provide careful, accurate, and objective documentation for all patient contact. Slander is verbally making a false statement and is yet another ground for a civil suit.

### Additional Questions

**8. Rationale:** The decision-making capacity is the patient’s ability to understand the information presented and to process that information to make an informed decision regarding medical care. A patient must have decision-making capacity in order to refuse care.

 To assess a patient’s decision-making capacity, you must first talk to the patient. Ask questions about what happened and how the patient is feeling. Assess the patient’s vital signs including pulse oximetry and blood glucose levels. Hypoxia or hypoglycemia or hyperglycemia can interfere with a patient’s mental faculties. It is also important to include detailed documentation to show that a patient understands your proposed plan of care.

 Any person who is alert and oriented has the right to refuse care and may not be treated without a court order. If you believe that a patient who has refused care needs care, you should consult with medical control for direction. You should explain to the patient in a calm, reassuring manner why you think he or she needs care and what you can offer. This may include alternative options. Although the most appropriate choice is to transport the patient for care, if the patient refuses but agrees to go with a family member, it is better for the patient to receive care than to refuse altogether. You are there to help the patient. Sometimes it helps to have the patient talk directly to medical control. A patient may believe that a physician has more “credibility” and may then agree to treatment.

 If, after all of your best efforts, the patient refuses care, it is imperative that you explain that the patient can change his or her mind and call you back. Maintain a sympathetic attitude, and let the patient know that his or her well-being is your primary concern. Urge the patient to see his or her personal physician, and explain why it is important.

 A patient with an altered mental status or unstable vital signs is not considered able to refuse transport to the hospital. You must be able to evaluate the patient’s decision-making capacity quickly with minimal information. In the case of psychiatric emergencies where the patient is not in imminent danger, law enforcement personnel may be required to step in and transport the patient. Follow local protocols in these situations. It is always best to err on the side of caution and to transport any patient you believe to be in danger. Your careful, thorough documentation is your best protection against a lawsuit. There are statutes in place in most states to protect the paramedic who makes a “good faith” judgment for a patient who does not have decision-making capacity.

**9. Rationale:** He cannot legally refuse treatment because he is mentally impaired. His decision-making capacity has been altered by hypoglycemia. You should first try to talk to him from a distance and encourage him to eat or drink something. By not invading his personal space he may be more cooperative.

 If restraint becomes necessary to treat this patient, you should first call for more assistance. A patient with an altered mental status is capable of causing damage to himself as well as to you or your partner. Even though this patient is not trying to cause harm intentionally, he is still a threat. The amount of force used to restrain him should be only slightly greater than the force from his opposition. Having one person restrain each extremity is preferable. You should also talk to him in a calming tone throughout the restraint and continually tell him what you are doing and why you are doing it.

 Follow your local protocols for restraint. You may need to call medical control for orders prior to restraining a patient. For this patient, chemical restraints are contraindicated because his condition can be easily treated with the administration of oral glucose, glucagon, or D50W. As soon as he responds appropriately to treatment and his mental status improves, the restraints should be removed. Thoroughly document why this patient was restrained, if it was ordered by medical control, the treatment given, and the patient’s response to the treatment.

## Assignments

A. Review all materials from this lesson and be prepared for a lesson quiz to be administered (date to be determined by instructor).

B. Read Chapter 5, EMS Communications, for the next class session.

## Unit Assessment Keyed for Instructors

1. Define ethics. Differentiate between personal, professional, and medical ethics.

 **Answer:** Ethics are principles, personal or societal, that determine what is right and wrong. Personal ethics are the product of your environment including your upbringing, family, community, religion, and conscience. Professional ethics are those that are formed from standards and practices of your profession, including Codes of Conduct and state or federal laws. Medical ethics are related to the practice and delivery of health care.

 (pp 85-88)

2. What three basic ethical concepts should be applied when making a decision?

 **Answer:** To do no harm; to act in good faith; and to act in the patient’s best interest

 (p 87)

3. Explain the difference between a civil lawsuit and a criminal prosecution.

 **Answer:** A civil suit is an action instituted by a private person or corporation. This may be based on any perceived injury. Criminal prosecution occurs when action is taken by the government against an individual who prosecutors believe has violated a criminal law.

 (p 89)

4. What three lines of authority must the paramedic answer to within the EMS system?

 **Answer:** Medical director; licensing agency; and employer

 (p 91)

5. What is included in a Medical Practice Act?

 **Answer:** It defines minimum qualifications for specific health care practitioners, skills that each type of practitioner is legally permitted to use, and establishes a means of licensure or certification for different categories of health care professionals.

 (pp 92-93)

6. Identify four components of informed consent.

 **Answer:** Suspected problem is described to the patient; proposed treatment and risks are explained to the patient; alternative treatments available for the problem are discussed with the patient; and consequences of refusing treatment are explained to the patient.

 (p 96)

7. Discuss the four components of negligence.

 **Answer:** The four components of negligence are:

 *Duty to act*: Paramedic or EMS system had a legal duty to the patient.

*Breach of duty*: Responsibility or obligation was not met.

 *Harm results*: Patient suffers some type of harm or loss including, but not limited to emotional distress, physical loss, or financial loss.

 *Proximate cause*: Failure to act appropriately under breach of duty such that the injury resulted

 (pp 100-101)

8. Identify and describe three types of advanced directives.

 **Answer:** Living will: Requires precondition to activate and spells out patient’s wishes for exact treatment; Health care power of attorney: Designates surrogate decision maker for health care decisions during any period the patient is unable to make decisions; and do not resuscitate (DNR) order: Describes which life-sustaining procedures should be performed if there is a sudden deterioration in the patient’s condition, but must include the patient or guardian’s signature, at least one physician’s signature, and must not be expired

 (pp 105-107)

9. Discuss how a Good Samaritan law applies to the paramedic.

 **Answer:** It is not applicable while the paramedic is on duty. It may help a paramedic who offers assistance outside his or her home state, but it does not supercede the laws of the paramedic’s home state licensing agency.

 (p 108)

10. Give four examples of employment laws that may affect the paramedic.

 **Answer:** Any four of the following: Americans with Disabilities Act (ADA); Civil Rights Act (Title VII); Pregnancy Discrimination Act; Equal Pay Act of 1963; Age Discrimination Act of 1967; Family Medical Leave Act (FMLA); National Labor Relations Act; and Ryan White Act

 (pp 109-111)

## Unit Assessment

1. Define ethics. Differentiate between personal, professional, and medical ethics.

2. What three basic ethical concepts should be applied when making a decision?

3. Explain the difference between a civil lawsuit and a criminal prosecution.

4. What three lines of authority must the paramedic answer to within the EMS system?

5. What is included in a Medical Practice Act?

6. Identify four components of informed consent.

7. Discuss the four components of negligence.

8. Identify and describe three types of advanced directives.

9. Discuss how a Good Samaritan law applies to the paramedic.

10. Give four examples of employment laws that may affect the paramedic.