Ethical and Legal Issues in EMS
South Cook County EMS
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National EMS Standard Competencies/objectives

- Medical Ethics
- Types of Laws
- Scope of Practice
- Standard of Care
- Emergency Medical Treatment and Active Labor Act (EMTALA)
- Crime Scenes
- Mandatory Reporting
- Patient Autonomy
National EMS Standard Competencies (cont’d)

• Violent Patients and Restraints
• Negligence
• Good Samaritan Laws
• Safe Haven Laws
• Patient Privacy
Introduction:

• In one survey, almost 15% of ALS calls in an urban system generated ethical conflict.

• In another survey, EMS providers reported frequent ethical problems related to patient refusals, hospital destinations, and advance directives.

• Other ethical issues include patient confidentiality, consent, the obligation to provide care, and research.
Ethics vs Morals

• Ethics and morals are closely related concepts but distinctly separate.
• Morals are the social, religious, or personal standards of right and wrong.
• Ethics are the rules or standards that govern the conduct of members of a particular group or profession.

“Ethics is the science of morals.”

“Morals are the practice of ethics.”
Ethics

• What is ethics?
  o Ethics is the study of the distinction between right and wrong.

• Who creates ethical standards?
  o Professional groups and societies.
    • American Medical Association (AMA).
    • National Association of Emergency Medical Technicians (NAEMT).
  o Laws and Treaties.
    • Declaration of Geneva, 1948. This is the Oath taken by Medical Students upon their graduation.
Ethics

• Apply three basic ethical concepts to the practice of medicine:
  o Do no harm.
  o Act in good faith.
  o Act in the patient’s best interest.

• Professional EMS Ethics require:
  o A total commitment to act in the best interest of the patient.
  o Conduct yourself in a professional and ethical manner at all times.
    (You should always conduct yourself as if you are on camera, because you probably are!)
4 Principles to Resolve Ethical Problems

- **Beneficence** is the principle of doing good for the patient.
- **Nonmaleficence** is the obligation not to harm the patient.
- **Autonomy** is a competent adult patient’s right to determine what happens to his or her own body.
- **Justice** refers to the obligation to treat all patients fairly.
Types of Laws

• Two types of laws:
  o Civil
    • Establishes liability.
    • Monetary compensation.
    • Mostly resulting from vehicle crashes.
    • Reasonable belief (that the infraction occurred)
  o Criminal
    • Action taken by the government for suspected violations of the law.
    • May result in imprisonment and / or fines.
    • Beyond a reasonable doubt (that the law was violated)
Civil Laws

• **Torts** – A civil wrong which can be redressed by awarding damages.
  o Intentional tort – wrongs which a defendant should have known would occur through their actions or inactions.
  o Negligent tort – wrongs which resulted from a defendant’s unreasonably unsafe act.

• **Examples of Torts:**
  o Assault
  o Battery
  o Libel or Slander
  o False imprisonment
Scope of Practice

• Care an EMS provider may perform according to:
  o Licensure / Certification / Credentialing
  o State Protocols
  o Online / Offline Medical Control
  o Recognized training
Standard of Care

• The degree of care, skill, and judgment expected under similar circumstances by a similarly trained provider in the same community.
  o Did you do the right thing?
  o Did you do it the right way?
Scope of Practice vs Standard of Care

- Scope of Practice – What you can do.
- Standard of care – How you should do it.
Emergency Medical Treatment and Active Labor Act (EMTALA)

- Created in 1986 to ensure public access to emergency medical treatment.
- Prohibits “patient dumping”. (transferring a patient to another facility because of the patient’s inability to pay)
- Guarantees medical screening exam and lifesaving treatment regardless of ability to pay.
- Regulates patient transfers.
Crime Scenes

- Location where the crime was committed or anywhere evidence may be found.
- Be aware of:
  - Scene safety
  - Condition of the scene
  - Patient may carry evidence with / on them.
  - Potential evidence.
Crime Scenes

• Responsibilities at a crime scene:
  o Do not move or touch anything unless absolutely necessary.
  o Protect the scene from contamination.
  o Remember what you touch.
  o Minimize impact on the scene.
  o Work with the police.
  o Document thoroughly.

• Patient care comes first!
  o Do what you need to, but try to minimize impact.
Mandatory Reporting

• Who is responsible for mandatory reporting?
  o Educators
  o Health Practitioners
  o Human Service Workers
  o Police Officers

• Anyone who makes a report in “good faith” is immune from civil liability and criminal penalties.
Mandatory Reporting

• As an EMS Provider you are required to report:
  o Child abuse / neglect
  o Elder abuse / neglect
  o Domestic abuse
  o Sexual assault
  o Stab / Gunshot wounds
  o Animal attacks

• How do I report it?
  o Orally to the appropriate personnel (law enforcement, social services, hot lines, etc.).
  o Written documentation.

In Illinois: Department of Children and Family Services - 1-800-252-2873
  Elderly Abuse/neglect in a non-nursing setting- 1-800-252-8966
  Elderly Abuse/neglect in a nursing home - 1-800-252-4343
Patient Autonomy

• A patient has the right to direct their own care.
• EMS Providers must respect and honor the patient’s rights.
• This includes:
  o Consent of Treatment
  o Refusal of Care
Patient Autonomy

- Types of consent:
  - **Informed Consent** - Required from every adult with decision making capacity.
    - Describe the problem and proposed treatment.
    - Discuss the risks and alternatives.
    - Advise the patient of consequences of refusal.
  - **Expressed Consent** – Patient approves the treatment or procedures.
  - **Implied Consent** – The patient is unable to provide expressed consent so implied consent is assumed.
    - Unconscious / Unresponsive patient
    - Altered mental status
    - Minor - In Loco Parentis
Patient Autonomy

• **Transportation Decisions**
  • The patient has the right to be transported to a facility of their choice, within reason, in accordance with existing Protocols.

• **Refusals**
  • Must be informed.
  • If Against Medical Advise – consider contacting Medical Control using “people skills”
  • You are still the patient’s advocate.
  • Do not judge any patient refusing care based on their personal beliefs.
  • Document!
Patient Autonomy

• Minors (Under 18 years of age)
  o Generally need parental / guardian consent to treat.
  o Emergency treatment may be provided without parental consent when a life/limb threatening condition is present.
  o A minor who is a parent may consent to his or her own treatment even though they are under 18. If the minor’s status as a parent were to end (i.e. the minor’s child were given up for adoption), the minor would no longer have authority to consent to their own health care.
  o A pregnant minor can consent for her own treatment
  o Any parent, including a parent who is a minor, may consent to health care on behalf of his or her own child.
  o A 16 y/o driver involved in a minor traffic accident, may refuse treatment and transport, if they have decision-making capabilities and no obvious injuries. This relates only to the licensed driver of the vehicle. This does not include any other minors which may be involved in the vehicle.
Patient Autonomy

• Consent and Refusal may also be expressed by:
  o Advanced Directives
  o Healthcare Power of Attorney
  o Do Not Resuscitate (DNR) Orders
  o Practitioner Orders for Life Sustaining Treatment (POLST) Orders
Violent Patients and Restraints

- Scene and Provider safety comes first. If in doubt wait for law enforcement to secure the scene.
- You can only use force in response to force used against you.
- Your use of force must be reasonable to the situation.
- Patients who are a danger to themselves or others may be restrained.
  - If you restrain a patient, you are 100% liable for their safety.
  - If restraints are needed, attempt to have law enforcement perform the restraint.
Negligence

• Something was not done, or was done incorrectly.

• Negligence occurs when:
  o There was a legal duty to act.
  o There was a breach of duty.
  o The breach of duty was the proximate cause of injury or harm.
Negligence

• A Duty to Act is a legal obligation to provide care.

• When is there a duty to act?
  o An EMS Provider that is on duty.
  o An EMS Provider that stops to assist at an incident.
  o An EMS unit traveling where it would not otherwise hinder patient care.
  o No unreasonable threat to provider safety.
Negligence

• Breach of Duty
  o Violation of Standard of Care or Scope of Practice
    • Failure to act
    • Acted inappropriately
  o Patient abandonment
    • Termination of care without the patient’s consent.
      o Once you make patient contact, you cannot leave until a provider of equal or higher training accepts responsibility of the patient.
      o Still required to give report to the accepting provider.
Negligence

- Negligence is a Tort, therefore monetary penalties may apply.
- Additionally, action may be taken by the company or jurisdictional review boards.
  - Reprimand
  - Retraining
  - Suspension
  - Revocation of License
Good Samaritan Laws

• Provides immunity for lay people attempting to provide “good faith” assistance.
• Provides limited protection for off duty EMS personnel.
• Does not apply to on duty EMS personnel.
• Very few jurisdictions recognize a difference between career (paid) and volunteer EMS personnel.
• Career and volunteer personnel receive the same training, so they are held to the same standards.
Safe Haven Laws

- Every state has a Safe Haven Law and these laws vary from state to state.
- In Illinois:
  - Any infant up to and including 30 days old may be turned in unharmed to any hospital, specially designated facility, or responsible adult by the parent or a designee of the parent, without question.
  - The parent of the infant may provide information if they wish, but it is not required.
  - Any infant turned in under the Safe Haven Law must be taken to a hospital for evaluation before being turned over to social services.

Safe Haven Baby Box
Patient Privacy / HIPAA
Patient Confidentiality

• Health Insurance Portability and Accountability Act, 1996 (HIPAA).

• Specifies what is Protected Health Information (PHI).

• Applies to most health care providers, including EMS.

Your obligation to every patient is to maintain as confidential the information you obtained as a result of your participation in the medical situation.
What is PHI?

- Individually identifiable information dealing with past, present, or future physical or mental health care or payment that is created by or received by a health care provider.

- Forms of PHI include:
  - Oral
  - Written
  - Photographic
  - Electronic / Digital
• Obligations of the provider:
  o Respect the privacy of the patient’s information as you would your own.
  o Do not share PHI with others not involved in patient care except as permitted.
  o Keep disclosures to the “minimum amount necessary”. This means that you should limit information to only info that is reasonably necessary.
Patient Privacy / HIPAA

• Permitted uses of PHI:
  o Treatment
    • PHI may be freely shared with other health care providers who are also responsible for treating the patient.
    • Minimum necessary rule does not apply to treatment related disclosures.
  o Payment
    • PHI may be used to file claims for reimbursement with insurances and bill patients.
  o Health Care Operations
    • PHI may be used for Quality Assurance / Continuous Quality Improvement or Training following the minimum necessary rule. Do not disclose more information than necessary to perform the function.
Patient Privacy / HIPAA

- Protecting PHI
  - Dispatch and Response
    - PHI can be shared over the radio with responding agencies as needed for appropriate treatment purposes.
  - On Scene
    - PHI can be discussed with first responders or other on-scene providers.
    - Limit discussion with family members and friends, unless needed to appropriately treat the patient.
    - Do not discuss with Media or other third parties.
    - Minimize incidental disclosures.
  - Enroute to the Hospital
    - PHI can be shared as needed for appropriate treatment purposes.
    - Use secure communication methods when appropriate / available.
Patient Privacy / HIPAA

• Protecting PHI
  o At the Hospital
    • Verbal report and Written PCR may be given to hospital staff involved in caring for the patient. Minimum necessary rule does not apply.
    • You may obtain a face sheet from the hospital for the patient.
    • Take care to minimize incidental disclosures.
  o After the call
    • Discussions in the station, quality improvement activities, and CISD is all permissible. However, the minimum necessary rule does apply – limit disclosures as much as practical.
Patient Privacy / HIPAA

- Protecting PHI
  - Disclosures to Law Enforcement
    - HIPAA greatly limits disclosures by EMS to law enforcement.
    - EMS personnel are patient care advocates – not law enforcement tools.
    - Permitted disclosure:
      - A police officer who is a medically trained First Responder was on scene assisting with patient care. The police officer needs additional information to complete their PCR.
      - Mandatory reporting cases.
    - Restricted disclosure:
      - A police officer stops by the station and asks for a copy of a PCR from a vehicle crash.
      - Law enforcement have appropriate channels to request this information if needed for a report.
Patient Privacy / HIPAA

• Protecting PHI
  o Mass Casualty Incidents
    • PHI may be disclosed to any public or private entity involved in relief efforts, such as the American Red Cross for the purpose of notifying of a family member or other personal representative of the location, condition, or death of a patient.
  o Safeguarding Written PHI
    • PCRs should not be left unattended in the open.
    • PCRs should be maintained in a locked cabinet with limited, role based access.
    • In addition to PCRs, any written notes, call intake records, physician certification, or any other documents which contain PHI must be secured.
    • PCRs cannot be posted or distributed as examples unless PHI is removed.
Patient Privacy / HIPAA

• Protecting PHI
  o Safeguarding Electronic PHI
    • Implementation of password protection to computers, networks, or websites where PHI is maintained.
    • Encryption technology should be used if available.
    • Fax machines which receive PHI must be kept in a secure location.

• Violation of Patient Privacy is a Tort
  o Fines may be in the tens of thousands of dollars.
• Notice of Privacy Practices (NPP)
  o The NPP is a written document which must be furnished to any patient upon request.
  o The provider should obtain a signed acknowledgement of receipt if possible.
  o The NPP explains how we protect and use a patient’s information, as well as how they can review what information we have.
Patient Privacy / HIPAA

• Patient Rights
  • Patients have the right to inspect and copy their medical records.
  • Patients have the right to request amendments to their medical records if information is incorrect.
  • Requests are directed through the company privacy officer.

• Company Policies
  • Policy on Confidentiality of Patient Information
  • Policy on Security, Access, Use and Disclosure of Protected Health Information
  • Role Based access
  • Disclosure of PHI to Others
  • Incidental Disclosures
Credits:

Jones and Bartlett
Pearson
PWW EMS Law Firm
NAEMT