

Medical Negligence and First Responders: What you Need to Know

By Paul Parks, Legal Nurse Consultant/Research Expert

With specialized knowledge and training all health care professionals are held to certain legal requirements, this article is dedicated to the first responders and the very important medical-legal concepts such as negligence, abandonment, duty to act, as well as assault and battery.

The care you give to a patient is outlined in your scope of practice. This scope of practice is most often defined by state law. Legally, your medical director authorizes you the privilege of to provide patient care. For EMS workers this is done via telephone, radio, standing orders and specific protocols. You must report any problems, such as possible liability, exposure to airborne diseases and blood borne pathogens to your medical director immediately.

Ethical Responsibilities:

In addition to legal duties, you also have certain ethical responsibilities to the public at large. Assess your techniques from time to time-response time, patient outcome. Your first ethical responsibility should be honesty at all times and that includes reporting it's no secret in the real world this is not always the case. Do all stable patient have a RR of 20 HR 72 and bp 120/80's? Absolutely not but when I moonlighted as an ACLS transport nurse it was uncanny how many patients had the same VS, make no mistake the same thing happens in hospitals especially at night when some nurses are too lazy to even check vitals and just write down what similar numbers the patient has been running but I digress. Absolute honesty in reporting is essential; you must provide a complete account of the events with details both oral and written for quality improvement.

Dealing with Advanced Directives:

At times you may respond to a patient who is dying. When you arrive on scene, you come to find out the family members do not want you to resuscitate the patient. Without written documentation from a doctor such as an advanced directive or {DNR} do not resuscitate this request puts you in a conundrum. An advanced directive is also called a living will. DNR orders give you permission NOT to attempt any heroic measures in the event of cardiac arrest. At this point you may be faced with situation often because of nursing home placement, hospice, and home health. Medical directors of ambulance service companies must have written protocols for these situations and guidelines vary from state to state so check your states guidelines and scope of practice. **As the guidelines do vary there are 4 statements that are considered general guidelines:**

1. Patients have the right to refuse treatment, including resuscitation if they can communicate that.
2. In a healthcare facility, a written Dr.'s order is required for a DNR to have validity.
3. Review your local and state protocols regarding advanced directives as codes do change.
4. When in doubt resuscitate.

If death is obvious by rigor mortis, liver mortis, or lividity or obvious destruction of body parts

such as brain or heart-Your responsibility is to cover the body and follow the protocols of your coroner and medical examiner.

Consent:

Consent is a long established legal right, for instance a person can NOT touch another person without permission or consent. Expressed Consent occurs when a patient expressly says you can care and transport them. Expressed consent may be as simple as a nod; it need not take the form of words. You should always try to obtain expressed consent whenever possible. For expressed consent to be valid, the patient must be of legal age and able to make a rationale decision agreeing to consent. Verbal consent is valid and binding; albeit it may be difficult to prove.

Implied Consent:

The law assumes that a patient who needs immediate medical attention to prevent death or permanent impairment would consent to care and transported to a medical facility. This is called Implied Consent- Implied consent is limited to true emergency situations. An example of this type of situation is appropriate when you have a unconscious, delusional patient under the influence of drugs or alcohol or incapable of giving expressed consent. If the patient is so unresponsive that he/she is unable to express consent, you should try to get consent from a family member who is responsible and obtain permission from that relative. In most cases the law allows for the right of a spouse, close relative or next of kin that are available. As a caveat minors can and do give consent, for example a 17 year old girl is likely to give a informed consent rather than a 3 year old child. The laws and principals related to consent of minors only determine who has the right to give consent-not if consent is needed. If a true emergency arises, the consent to treat the minor is implied, just as an adult yet you should the parent's consent if possible.

Consent of the Mentally Ill:

A mentally incompetent adult is NOT capable of giving informed consent. If the patient is declared mentally incompetent, a guardian or conservator can give consent on the patient's behalf. You will come across patients who appear confused or in distress and you need to consider all the factors weather the patient can give valid consent. The rule is when a TRUE emergency situation exists; you can assume implied consent applies.

Assault and Battery:

Very serious legal problems can occur in situations where a patient has NOT given consent for treatment. Assault is the unlawful placing a patient in fear or bodily harm. Even touching a patient or providing emergency care without consent is considered battery in the eyes of the law. If you do so, the patient may have grounds to sue you for assault, battery or both. In order to protect yourself from these charges, always make sure you receive expressed written consent or that the situation allows for implied consent.

The Right To Refuse Treatment:

Many mentally competent people have the right to refuse treatment at any time. These patient will provide a dilemma for you, such as do I provide care against their will only to be accused of battery or do you leave them alone and risk the possibility of their condition deteriorating to be accused of abandonment and or negligence? If a patient refuses transport and treatment-you

MUST make sure that they understand and are informed about the potential risks benefits and treatment and alternatives to treatment. The patient must also be fully informed about the risks and consequences of refusing treatment and encouraged to ask questions. Remember, that there are competent adults who refuse treatment for religious reasons and have the legal right to do so. When dealing with a delusional patient don't assume it's an informed refusal, when in doubt, it is always best to treat-this is the best course of action because providing treatment is a much more defensible position than failure to treat, remember failure to treat is considered abandonment.

Abandonment:

Once you begin to give care, you must follow through all the way with appropriate treatment. You must continue to provide care until that care is transferred to another medical professional of appropriate level of training or the proper medical facility. Failure to continue treatment at any of these levels is considered patient abandonment. Out of all the legal pitfalls abandonment is legally and ethically the most serious act you can commit.

Negligence: *Negligence consists of 4 elements:* duty, breach of duty, physical or psychological injury, and cause. Once you are called to the scene to provide care, you have a duty to act and help the patient. Your failure to act or give care that is not in a manner consistent with the level of care another similarly trained first responder would give is called breach of duty. If physical or psychological harm is caused by the act of doing, or failure to do something for the patient then you have acted in a negligent manner. If that's the case you may be liable to the patient for harm. The important thing to understand here is that all **4 elements** must be present for the doctrine of negligence to apply. **Examples-->** failure to provide care to patient once you have arrived on scene--> Failure to perform important or necessary techniques and also--> providing care in a manner not consistent with the skill that other similarly trained first responders would give under similar circumstances. If your actions are judged reckless, careless, lacking in skill, you have violated the standard of care and may be found negligent.

Duty to Act:

One a unit responds to a call, it has a duty to act. In some situations there may be no legal duty for an ambulance to respond .e. off duty, out of jurisdiction. So, if you are off duty and you or I happen upon an accident scene you are not legally obligated to stop and assist any victims. However, if you happen upon an accident you have a Moral and ethical duty to act due to your training and expertise, the same goes for nurses and doctors who have the required skills. This is only a small picture of the medical, legal and ethical issues you must deal with on a daily basis. The First Responders, EMT and paramedic are viewed as responsible members of the the emergency medical team, your moral and ethical standards must also be of the highest order in your job performance, I hope this medical-legal information will assist you in understanding patients and families who only see you under extreme duress and give you pause about being ethical and protecting yourself and your partner in all runs. With that in mind this article is dedicated to all the flight nurses and paramedics and EMT's I have worked with. The first responders from 9-11 to Katrina, Haiti and all my fallen brothers and sisters who have literally given their lives going down caring for their patients.