

EMS Subspecialty Certification Review Course

2.1.2 Legal Issues

The lecturer is a non-attorney spokesperson and can not provide legal advice!

2025



1

Learning Objectives

Upon the completion of this program participants will be able to:

- Describe the difference between capacity and competence
- Describe the elements of informed consent, definition of a patient, and ethical rights of a patient
- Describe the legal supervisory role of the EMS Medical Director
- Describe issues surrounding determination of death/cessation of resuscitation
- Understand the federal regulations that impact EMS



2

Which of the following terms best describes the relationship between a medical director and a paramedic?

- A. Agent
- B. Supervisory
- C. Partnership
- D. Delegation



3

Overview of Legal Aspects of EMS Medical Direction

- The birth of EMS was tied to federal highway grants
- States passed enabling legislation to qualify for these funds
- Many of these laws are still in effect unchanged three decades later
- Liability of the rescuer was a later consideration
- Immunity laws rarely recognized the physician medical director as a component



4

Statutes, Rules and Ordinances

Statutes (Laws, codes, legislation)	Federal	Created by congress Supersedes all below
Rules (regulations)	Federal	Created by the agencies under authority granted to them by statute (example: HHS) More technically detailed than statutes
Statutes (Laws, codes, legislation)	State	Created by the state legislature Most EMS laws are made on the state level
Rules (regulations)	State	Created by the agencies under authority granted to them by statute (example: State DOH) More technically detailed than statutes
Ordinances	Local/Municipal	Created by local government May addresses things like: response times, costs, local EMS standards
Common Laws	Judiciary	Based on judicial presence or case law



5

State Statutes and Regulations

- Most EMS laws come from the state level
- Wide variability among states regarding role of the medical director
- Scope of practice, licensure/certification/verification and training of prehospital personnel
 - Licensure: conveys a “property interest” which requires due process to remove
 - Medical directors may sign attestations to the state that a provider is qualified to receive a state certification



6

Local Ordinances

- Another layer of codifications
- Can be very stringent (and outdated!)
- Infractions can jeopardize ambulance license or political relationships



7

Legal Standing of the EMS Physician

- Medical oversight of EMS not uniformly recognized as a necessary component in legislation
- Not all states require a medical director for BLS services
- Medical oversight will become increasingly recognized legally as a fundamental component of EMS care
- Basic understanding of pertinent legal principles is required of the EMS Physician



8

Physician-EMT Relationship

- Myth: “The EMT practices under the license of the physician”*
 - Difference of “Supervision” vs “Agency”
 - Agent: person authorized by another to act for him, person is an agent or representative of an entity
 - Supervision: in a supervisory relationship duty is to properly oversee an employee

* Except for “delegated practice” states such as TX



9

Respondeat Superior vs. Negligent Supervision

- ***Respondeat Superior*** “Let the Master Answer”
 - This actually applies to the EMS agency
 - This does **not** apply to the medical director unless he/she owns the EMS agency or has administrative oversight
 - Agency
- ***Negligent Supervision***
 - This is a source of liability for the medical director
 - Applies when a medical director initially credentials or allows a provider to continue to practice who is incompetent
 - Not “agency”.



American College of
Emergency Physicians®
ADVANCING EMERGENCY CARE

10

License vs Certification

- Legally correct term for the EMS provider is that they are **licensed**.
- By definition, a license allows an individual to perform an act or acts that in the absence of government sanction would be illegal.
- **Certification** allows a formal assertion but does not give special privileges.
- States may refer to a credential or registration, but in the eyes of the court, EMS personnel are licensed.



American College of
Emergency Physicians®
ADVANCING EMERGENCY CARE

11

Assessment of Provider Competence and Fitness for Duty

- In 1971, Supreme Court ruled in *Bell v Burson* that a license is a property right subject to due process protection
- Thus, in all assessments of a provider, the medical director is held to due process standards
- Due process simply means the provider has a fair and full opportunity to challenge the basis for the action and to present their own evidence



American College of
Emergency Physicians®
ADVANCING EMERGENCY CARE

12

Assessment of Provider Competence and Fitness for Duty

- Medical Director's role is generally to:
 - Ensure the public is protected from incompetent practitioners
 - Offer reasonable assurance to the public regarding skills and capabilities
 - Provide a means by which failing practitioners can be rehabilitated or removed from practice



American College of
Emergency Physicians®
ADVANCING EMERGENCY CARE

13

Immunity

Good Samaritan Laws

- Established on the state level and vary by state
- Typically protect the citizen who comes upon a person in distress and tries to do their best, some go further to include others
- Typically do not extend to the medical director
- The Aviation Medical Assistance Act is a federal Good Samaritan act that immunizes qualified individuals from liability for response to in-flight emergencies.

Sovereign Immunity

- Limits the liability of the government
- May apply to actions brought against a municipal agency and or their employees



American College of
Emergency Physicians®
ADVANCING EMERGENCY CARE

14

Public Duty vs Special Duty

- Courts have sometimes held that the duty of public safety is to the public at large but not to the individual patient
- This is referred to as the **public duty** of Fire/Police/EMS. In this case, individuals have very little standing to sue
- This is contrasted with **special duty** – this is to the individual



American College of
Emergency Physicians®
ADVANCING EMERGENCY CARE


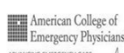
15

Tip

#1

2.1.2	Legal Issues
2.1.2.1	Definition of a patient
2.1.2.2	Mandatory reporting issues
2.1.2.3	Determination and/or pronouncement of death
2.1.2.4	Capacity to refuse care
2.1.2.4.1	Understand the elements of informed consent and informed refusal
2.1.2.4.2	Understand the difference between capacity and competence
2.1.2.5	Federal regulations impacting EMS



Subcategories are there for a reason...
be able to say a few intelligent things about each of them.

16

2.1.2.1 - Definition of a Patient


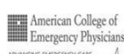
- There is no uniform definition included in any texts.
General concepts:
 - Duty is attached at the request for service
 - Knowledge of local laws regarding pediatrics/emancipated minors are essential
 - Rights of the patient are discussed on subsequent slides

17

2.1.2.2 - Mandatory Reporting Issues

- These rules trump confidentiality statutes.
- Considerations when one may or may not report:
 - Confidentiality
 - Patient autonomy
 - Legal mandates with possible sanctions for non-compliance
 - Medico-legal risk

18

2.1.2.2 - Mandatory Reporting Issues

- Abuse/neglect
 - Pediatrics – mandatory reporting in nearly every state
 - Elder – mandatory reporting in many states
 - Domestic Partner – in some states
- Injury by Deadly Weapon
 - Shooting or stabbing
 - Most exempt “victimless” crimes such as drug overdose



19

2.1.2.2 - Mandatory Reporting Issues

- Driving impairment – very unclear and varies state to state. Includes items such as seizure, Parkinson’s, substance abuse, etc.
- Infectious diseases:
 - STDs including HIV
 - Viral hepatitis
 - Lyme disease
 - Pertussis
 - Drug resistant streptococcal pneumonia



20

2.1.2.3 - Determination and/or pronouncement of death

- Yes we do this
- Covered in detail elsewhere



21

2.1.2.4.2 - Capacity vs Competence

- Competence is a legal standard that is determined by the judicial system
- Capacity is a clinical determination at the time of patient encounter.
- Patients who demonstrate capacity may participate in the informed consent process



22

2.1.2.4.1 - Elements of Informed Consent

- Elements of informed consent include:
 - Provision of information and the patient's ability to understand the information
 - Patient understands risks and benefits of decision, including decision not to act
 - Communication of decision that is apparently consistent with patient's own values
 - Patient can communicate this decision
 - Patient is free from undue influence from outside parties



23

2.1.2.5 - Federal Regulations that Impact EMS

- Sexual Harassment
- CMS Rules/Medical Necessity
- Civil Rights Laws
- HIPAA

Things your malpractice coverage, doesn't cover



24

2.1.2.5 - Federal Regulations that Impact EMS

Sexual Harassment:

- The “creation or perpetuation of a hostile work environment” can be harassment.
- Does not need to be a single overt act.
- Not just the individual doing the harassing.



25

2.1.2.5 - Federal Regulations that Impact EMS

Medical Necessity

- From the Social Security Act
“No Medical Payment shall be made for items or services that are not reasonable and necessary for the diagnosis or treatment of an illness or to improve the functioning of a malformed body member”
- Implied consent for transport against a patient’s will rests upon the EMS provider’s assessment of medical necessity
- Key Questions: Do you need an ambulance?
 Do You Need ALS?



26

2.1.2.5 - Federal Regulations that Impact EMS

- Federal Civil Rights Statute 42 USC 1983 provides that any individual who impacts another individual’s Constitutional rights “may be liable”
- For the EMS medical director, this revolves around discipline/suspension of practice privileges.
 - Must offer due process
 - Must not be discriminatory
- Unless the medical director is the employer, the medical director is not subject to American Disabilities Act



27

Failure to Transport-"No Loads"

- Case law with many examples and claims
- Paramedic denials of transport: research shows significant undertriage, unrecognized criticality
- Patient refusal: was the decision "informed"?
 - Was the assessment thorough?
 - Was the communication of risk to patient sufficient?
- Pitfalls: EMT dx, Determination of "competence", capacity, truly informed consent.



American College of
Emergency Physicians®
ADVANCING EMERGENCY CARE

28

Alternative destination/no-loads

- Published evidence suggests EMS providers lack sufficient sensitivity in their examinations to safely determine medical necessity in this sense.
- Literature is evolving quickly – its unclear if the test will



American College of
Emergency Physicians®
ADVANCING EMERGENCY CARE

29

EMS High Risk Legal Areas

- Non Transported patients
 - An area that requires diligent medical oversight
 - Data suggests EMS skill set may not be sufficient to determine need to transport
- Motor Vehicles Collison (involving an ambulance)
- Discipline and Actions Upon Provider's Ability to Practice
- Sexual Harassment ("oppressive environment")
- Medicaid/Medicare Fraud: medical necessity of transport



American College of
Emergency Physicians®
ADVANCING EMERGENCY CARE

30

Legal Concepts associated with CQI Activities

- Covered in the QI Programs lecture
- Three types of claims
 - Defamation
 - Antitrust (loss of employment)
 - Patient claim of negligent supervision
- Confidentiality
 - HIPAA – exchange of info
 - Immunity for Peer Review****
 - Check local statutes
 - Clearly define CQI activities



31

Due Process

- Cannot deprive someone of their life, liberty or property* without due process
- Due process
 - Required under certain circumstances as required by law
 - Due process = Notice + Hearing
 - The provider has a fair and full opportunity to challenge the basis for the action and to present their own evidence
- There is no formal definition – a flexible concept

* License is considered a property right



32

Which of the following terms best describes the relationship between a medical director and a paramedic?

- A. Agent
- B. Supervisory ←
- C. Partnership
- D. Delegation



33

Take Home Points

- Respondeat Superior vs Negligent Supervision
- License and property rights
- Federal regulations
 - Sexual harassment
 - CMS/Medicare
 - Due process – civil rights
- Mandatory reporting concepts