Legal Issues in EMS Education

Now it is my responsibility!!

01-13-07
Liability

• Something for which one is legally obligated
Negligence

- 4 Common Elements
  - Duty to act
  - Breach of Duty
  - Causation
  - Injury
Standards for Instruction

• The standard of instruction is based on the same concept as the standard of care
National Standards for EMS Instructors

• Currently there is no standardized set of guidelines agreed upon by all stakeholders for EMS regarding instructors
Areas of Potential Instructor Liability

- Academic Honesty Issues
- Affirmative Action/Equal Opportunity
- Drug and Alcohol Free Environment
- Code of Conduct
- Students Rights and Responsibilities
- Student Judicial Powers
EMS Agenda for the Future

- A document produced by DOT/NHTSA
- The document addresses where EMS Education wants to be by 2010
- The document addresses where classes can be taught and who can teach them
National References

- DOT --- The Department of Transportation is the guiding light of EMS Education
- BCLS
- ACLS
- PALS
- BTLS
- PHTLS
- Programs such as these have instructional Standards
Areas of Potential Instructor Liability

- Discrimination
- Harassment
- Sexual Harassment
- Student Injury
- Patient Injury
- Americans with Disability Act
- Grievance Procedures for Students
Areas of Potential Instructor Liability

- Student Health Insurance
- Student Malpractice Insurance
- Instructor Malpractice Insurance
- Institutional Considerations
- Confidentiality
I.D. Numbers and Privacy

• Social Security Numbers SHOULD NOT BE USED !!!!
• What ever numbers are used, steps still must be taken to protect individual privacy.
The “Touchy Areas” from the Affective Domain Instructors tend to shy away from
ETHICS

• The critical examination and evaluation of what is good and evil, right and wrong human conduct. (Hoffberger Center for Professional Ethics)

• A specific set of principles, values and guidelines for a particular group or organization. (Hoffberger Center for Professional Ethics)
Ethics is the study of goodness, right action and moral responsibility, it asks what choices and ends we ought to pursue and what moral principles should govern our pursuits and choices. (Theresa Madden, Professor of English, Howard Community College)
Dealing with Ethical Issues In the Classroom

- Plagiarism
- Falsifying documentation
- Cheating
- Patient Care
- Inappropriate Language
Values

• Where emphasis is placed and what is rewarded in an organization
Morals

• Those principles and values that actually guide, for better or worse, an individual’s personal conduct. (Hoffberger Center for Professional Ethics)
Occupational Safety and Health Administration

• Your teaching site as well as field training sites must meet all OSHA requirements
Copyright and Intellectual Properties

- If you did not create the material, it belongs to someone else!
- You should make a good faith effort to obtain permission to use material.
Digital Millennium Act

- Enacted to close holes created by the digital age
- Read the fine print before you make use of downloaded material
Sources of information on EMS Law

- State EMS Office
- D.O.T. / N.H.T.S.A.
- National Association of EMS Directors
- National Association of EMS Training Coordinators
- National Association of EMS Educators
- Lexus-Nexus a data base for legal manuscripts
What am I Getting Into?

- Don’t panic this class is designed to help you with both the **Process** and the **Product** of becoming a teacher. The class is a beginning to the life long art of instructing others!
Let’s look at Med Legal for EMT’s
LEGAL ASPECTS OF PRE-HOSPITAL CARE

EMERGENCY MEDICAL TECHNICIAN - BASIC
Scope of Practice

- Scope of Practice outlines the care EMT’s are able to provide to the patient.
Scope of Practice

- Established by Medical Director
  - Medical Practice Act
    - Allows Physicians to delegate procedures to EMS personnel
  - Protocol
  - On-Line
Standard of Care

- Local Custom
  - Similar Training & Experience
  - Protocol
- Other factors
  - Location
  - Hazards
  - Crowds
Standard of Care

• “- - - how a reasonably prudent person with similar training & experience would act under similar circumstances, with similar equipment, and in the same place.”
Standard of Care

- Law
  - Constitutional
  - Legislative
  - Executive
  - Judicial
Standard of Care

- Professional Standards
  - American Heart Association (AHA)
  - American Ambulance Association (AAA)
  - National Association of Emergency Medical Technicians (NAEMT)
  - Michigan Department of Health (MDH)
  - Department of Transpiration
Standard of Care

- Institutional Standards
  - Service
  - Regional Systems
Negligence

• Simple (Ordinary) Negligence
• Gross Negligence
• Proving Negligence
  • Duty to Act
  • Breach of Duty
  • Damages
  • Causation
Abandonment

- Failure to Continue Treatment:
  - Termination of care without Pt’s consent
  - Termination of care without provision for continued care
Abandonment

- Failure to transport
- Handing over care to lesser trained personnel
  - EMT > EMT
  - EMT > EMT-P
  - EMT > ECA
  - EMT > Physician
  - EMT > Nurse
Adult Consent

- **Adult** - Any person over 18 years of age who is not under a court-ordered disability
- **Actual Consent** (Informed, Expressed)
- **Implied Consent**
  - Pt. is unconscious or unable to communicate and is suffering from what appears to be a life-threatening injury or illness
Adult Consent

• **Involuntary Consent**
  - An adult may be treated against his will only if:
    - Treatment is ordered by a magistrate
    - Treatment is ordered by a peace officer or corrections officer who has the patient under arrest or in custody

• **Consent of the Mentally Ill**
Adult Consent

• Right of Refusal of Treatment/Transport
  • Mentally competent adults have the right to refuse care
  • the person must be informed of risks, benefits, treatments, & alternatives
  • Obtain signature & witness
Minor Consent

• Minor - any person under 18 years of age who has never been married and who has not had his/her minority status changed by the court

• Actual Consent (Informed, Expressed)
  • Parents
  • Guardian
  • Others Closely Related of Majority Age
Minor Consent

- Implied Consent
  - Life or Limb Threatening
  - No Parental Refusal
Minor Consent

• Right of Refusal of Treatment/Transport
  • Mentally competent adults (Parent/Guardian) have the right to refuse care for their children
  • the person (Parent/Guardian) must be informed of risks, benefits, treatments, & alternatives
  • Obtain signature of Parent/Guardian & witness
Assault & Battery

- **Assault**
  - Unlawfully placing a person in fear of immediate bodily harm without consent

- **Battery**
  - Unlawfully touching a person
Immunity

• Governmental (Sovereign) Immunity
• “Good Samaritan” laws
  • Do not prevent lawsuits
  • Offer a defense for those who act in “Good Faith” and meet the Standard of Care”
  • Do not protect against Gross Negligence
Do Not Resuscitate

• “Living Will”/ “Advance Directives” must be Presented upon Patient Contact
• Determine validity
  • May Not be Witnessed by Anyone Who would Benefit from the Death of the Patient
Do Not Resuscitate

- Determine Specificity as to Levels of Care to Render
  - Usually Comfort Measures Only
- Consider Family Reaction
- If in Doubt - Treat!
Organ Retrieval

• Provide Care
• Identify Possible Candidates
  • Donor Card or Driver’s License Sticker
  • Nature of Injury
• Notify Proper Officials
Records & Reports

• Complete & Accurate
• Legible & Neat
  • An untidy or incomplete report is evidence of incomplete or inexpert care.
• Legal Document
  • If it wasn’t written down, it didn’t happen!
Patient Confidentiality

• Patient Confidentiality must be Kept:
  • To Ensure the Patient’s Right to Privacy
  • To Maintain the EMT’s Reputation of Professionalism
  • To Maintain the Service’s Reputation of Professionalism
  • It is No One else’s Business!
Patient Confidentiality

- Patient Information May Only be Released:
  - It is necessary to ensure continuity of care
  - It is requested by Law Enforcement
  - It is required for billing purposes
  - It is Subpoenaed
  - When the Patient Signs an Information Release Form
Special Reporting Requirements

- Childbirth
- Child Abuse
  - Report to:
    - Law Enforcement
    - Physician - Emergency Department
    - Child Protective Services (CPS)
  - Don’t Accuse - Report Observations Only
  - Immunity - Good Faith
Special Reporting Requirements

- Elder Abuse
- Injury During the Commission of a Felony
- Drug Related Injuries
Special Reporting Requirements

- Crime Scene
  - Scene Survey
  - Document
  - Preserve
  - Report to Law Enforcement
Special Reporting Requirements

• Sexual Assault
  • Report to Law Enforcement (with Patient’s Permission)
  • Retain Evidence
Special Reporting Requirements

- Dead on Scene
  - Document Absence of Vital sign
  - Contact Coroner/Medical Examiner
  - Contact Law Enforcement
  - Do Not Disturb or Move Body