



Ethical and Legal Issues in EMS

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National EMS Standard Competencies

- Medical Ethics (Bioethics)
- Types of Laws
- Scope of Practice
- Standard of Care
- Emergency Medical Treatment and Active Labor Act (EMTALA)
- Crime Scenes
- Mandatory Reporting
- Patient Autonomy
- Violent Patients and Restraints
- Negligence
- Good Samaritan Laws
- Safe Haven Laws
- Patient Privacy

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Ethics

What is ethics?

Ethics is the study of the distinction between right and wrong.

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Ethics

Who creates ethical standards?

Professional groups and societies.

- American Medical Association (AMA).
- National Association of Emergency Medical Technicians (NAEMT).
- World Medical Association (WMA).

Laws and Treaties.

- Declaration of Geneva, 1948.
- Convention on Human Rights and Biomedicine, 1997.

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Ethics

The Oath of Geneva

- Drafted in 1948 by the World Medical Association.
- Taken by Medical Students upon graduation from Medical School.

The Code of Ethics for EMS Practitioners

- Issued by the National Association of Emergency Medical Technicians.
- Applies to all EMS Personnel.

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Ethics

Both apply three basic ethical concepts to the practice of medicine:

- Do no harm.
- Act in good faith.
- Act in the patient's best interest.

Professional EMS Ethics require:

- A total commitment to act in the best interest of the patient.
- Conduct yourself in a professional and ethical manner at all times.

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Types of Laws

Two types of laws:

- Civil
 - Establishes liability.
 - Monetary compensation.
 - Mostly resulting from vehicle crashes.
 - Reasonable belief.
- Criminal
 - Action taken by the government for suspected violations of the law.
 - May result in imprisonment and / or fines.
 - Beyond a reasonable doubt.

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Civil Laws

Torts – A civil wrong which can be redressed by awarding damages.

- Intentional tort – wrongs which a defendant should have known would occur through their actions or inactions.
- Negligent tort – wrongs which resulted from a defendant's unreasonably unsafe act.

Examples of Torts:

- Assault - Libel or Slander
- Battery - False imprisonment

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Scope of Practice

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

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Standard of Care

The degree of care, skill, and judgment expected under similar circumstances by a similarly trained provider in the same community.

- Did you do the right thing?
- Did you do it the right way?

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STAR CARE Checklist

Safe Were my actions safe for me, for my colleagues, for other professionals and for the public?	Customer accountable If I were face-to-face right now with the customers I dealt with on this response, could I look them in the eye and say, "I did my very best for you."
Team-based Were my actions taken with due regard for the opinions and feelings of my co-workers, even those from other agencies?	Appropriate Was my care appropriate – medically, professionally, legally and practically, considering the circumstances I faced?
Attentive to human needs Did I treat my patient as a person? Did I keep him or her warm? Was I gentle? Did I use his or her name throughout the call? Did I tell him or her what to expect in advance? Did I treat his or her family and / or relatives with respect?	Reasonable Did my actions make sense? Would a reasonable colleague of my experience have acted similarly under the same circumstances?
Respectful Did I act toward my patient, my colleagues, my first responders, the hospital staff and the public with the kind of respect that I would have wanted to receive myself?	Ethical Were my actions fair and honest in every way? Are my answers to these questions?

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Scope of Practice Vs Standard of Care

Scope of Practice = What you can do.

Standard of care = How you should do it.

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Emergency Medical Treatment and Active Labor Act (EMTALA)

- Created in 1986 to ensure public access to emergency medical treatment.
- Prohibits "patient dumping".
- Guarantees medical screening exam and lifesaving treatment regardless of ability to pay.
- Regulates patient transfers.

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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.

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Crime Scenes

Responsibilities at a crime scene:

- Do not move or touch anything unless absolutely necessary.
- Protect the scene from contamination.
- Remember what you touch.
- Minimize impact on the scene.
- Work with the police.
- Document thoroughly.

Patient care comes first!

- Do what you need to, but try to minimize impact.

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Mandatory Reporting

Who is responsible for mandatory reporting?

- Educators
- Health Practitioners
- Human Service Workers
- Police Officers

Anyone who makes a report in "good faith" is immune from civil liability and criminal penalties.

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Mandatory Reporting

As an EMS Provider you are required to report:

- Child abuse / neglect
- Elder abuse / neglect
- Domestic abuse
- Sexual assault
- Stab / Gunshot wounds
- Animal attacks

How do I report it?

- Orally to the appropriate personnel (law enforcement, social services, etc.).
- Written documentation.

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Patient Autonomy

- A patient has the right to direct their own care.
- EMS Providers must respect and honor the patient's rights.

This includes:

- Consent of Treatment
- Refusal of Care

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Patient Autonomy

Types of consent:

Informed Consent	Expressed Consent	Implied Consent
Required from every adult with decision making capacity. <ul style="list-style-type: none"> Describe the problem and proposed treatment. Discuss the risks and alternatives. Advise the patient of consequences of refusal. 	Patient approves the treatment or procedures.	The patient is unable to provide expressed consent so implied consent is assumed. <ul style="list-style-type: none"> Unconscious / Unresponsive patient Altered mental status Minor - In Loco Parentis

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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 and using "people skills"
- You are still the patient's advocate.
- Do not judge any patient refusing care based on their personal beliefs.
- Document! Document! Document!

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Patient Autonomy

Minors (Under 18 years of age)

- Generally need parental / guardian consent to treat.
- In Loco Parentis – assumes implied consent.
- Emancipation
 - Gives minors the right to express consent.
 - Can be granted if
 - Marries
 - Joins the Armed Forces
 - Demonstrates they are supporting themselves and living independently
 - Emancipation is unlikely to occur unless the minor is 16 years of age.
 - Emancipation requirements vary from state to state.

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Patient Autonomy

Express Consent and Refusal may also be expressed by:

- Living Wills
- Advanced Directives
- Healthcare Power of Attorney
- Do Not Resuscitate (DNR) Orders
- Physician Orders for Life Sustaining Treatment ([POLST](https://youtu.be/qy8ojdN8q_k)) Orders https://youtu.be/qy8ojdN8q_k

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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.

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Negligence

- Something was not done, or was done incorrectly.
- Negligence occurs when:
 - There was a legal duty to act.
 - There was a breach of duty.
 - The breach of duty was the proximate cause of injury or harm.

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Negligence

- A Duty to Act is a legal obligation to provide care.
- When is there a duty to act?
 - An EMS Provider that is on duty.
 - An EMS Provider that stops to assist at an incident.
 - An EMS unit traveling where it would not otherwise hinder patient care.
 - No unreasonable threat to provider safety.

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Negligence

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

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Negligence

- Negligence is a Tort, therefore monetary penalties may apply.
 - Res Ipsa Loquitur (the thing speaks for itself).
- Additionally, action may be taken by the company or jurisdictional review boards.
 - Reprimand
 - Retraining
 - Suspension
 - Revocation of License

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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.

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Patient Privacy / HIPAA

- Health Insurance Portability and Accountability Act, 1996 (HIPAA).
- Specifies what is Protected Health Information (PHI).
- Applies to most health care providers, including EMS.

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Patient Privacy / HIPAA

What is Protected Health Information (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

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Patient Privacy / HIPAA

- Obligations of the provider:
 - Respect the privacy of the patient’s information as you would your own.
 - Do not share PHI with others not involved in patient care except as permitted.
 - Keep disclosures to the “minimum amount necessary”.

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Patient Privacy / HIPAA

- Permitted uses of PHI:
 - 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.
 - Payment
 - PHI may be used to file claims for reimbursement with insurances and bill patients.
 - 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.

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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.
 - En-route to the Hospital
 - PHI can be shared as needed for appropriate treatment purposes.
 - Use secure communication methods when appropriate / available.

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Patient Privacy / HIPAA

Protecting PHI

- 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.
- 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.

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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.

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Patient Privacy / HIPAA

Protecting PHI

- 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.
- 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.

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Patient Privacy / HIPAA

Protecting PHI

- 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.

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Patient Privacy / HIPAA

Notice of Privacy Practices (NPP)

- The NPP is a written document which must be furnished to any patient upon request.
- The provider should obtain a signed acknowledgement of receipt if possible.
- The NPP explains how we protect and use a patient's information, as well as how they can review what information we have.

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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

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Patient Privacy / HIPAA

Violation of Patient Privacy is a Tort

Fines may be in the tens of thousands of dollars.

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