

**UNIT TERMINAL OBJECTIVE**

1-4 At the completion of this unit, the paramedic student will understand the legal issues that impact decisions made in the out-of-hospital environment.

**COGNITIVE OBJECTIVES**

At the completion of this unit, the paramedic student will be able to:

- 1-4.1 Differentiate between legal and ethical responsibilities. (C-2)
- 1-4.2 Describe the basic structure of the legal system in the United States. (C-1)
- 1-4.3 Differentiate between civil and criminal law as it pertains to the paramedic. (C-1)
- 1-4.4 Identify and explain the importance of laws pertinent to the paramedic. (C-1)
- 1-4.5 Differentiate between licensure and certification as they apply to the paramedic. (C-1)
- 1-4.6 List the specific problems or conditions encountered while providing care that a paramedic is required to report, and identify in each instance to whom the report is to be made. (C-1)
- 1-4.7 Define the following terms: (C-1)
  - a. Abandonment
  - b. Advance directives
  - c. Assault
  - d. Battery
  - e. Breach of duty
  - f. Confidentiality
  - g. Consent (expressed, implied, informed, involuntary)
  - h. Do not resuscitate (DNR) orders
  - i. Duty to act
  - j. Emancipated minor
  - k. False imprisonment
  - l. Immunity
  - m. Liability
  - n. Libel
  - o. Minor
  - p. Negligence
  - q. Proximate cause
  - r. Scope of practice
  - s. Slander
  - t. Standard of care
  - u. Tort
- 1-4.8 Differentiate between the scope of practice and the standard of care for paramedic practice. (C-3)
- 1-4.9 Discuss the concept of medical direction, including off-line medical direction and on-line medical direction, and its relationship to the standard of care of a paramedic. (C-1)
- 1-4.10 Describe the four elements that must be present in order to prove negligence. (C-1)
- 1-4.11 Given a scenario in which a patient is injured while a paramedic is providing care, determine whether the four components of negligence are present. (C-2)
- 1-4.12 Given a scenario, demonstrate patient care behaviors that would protect the paramedic from claims of negligence. (C-3)
- 1-4.13 Explain the concept of liability as it might apply to paramedic practice, including physicians providing medical direction and paramedic supervision of other care providers. (C-2)
- 1-4.14 Discuss the legal concept of immunity, including Good Samaritan statutes and governmental immunity, as it applies to the paramedic. (C-1)

- 1-4.15 Explain the importance and necessity of patient confidentiality and the standards for maintaining patient confidentiality that apply to the paramedic. (C-1)
- 1-4.16 Differentiate among expressed, informed, implied, and involuntary consent. (C-2)
- 1-4.17 Given a scenario in which a paramedic is presented with a conscious patient in need of care, describe the process used to obtain consent. (C-2)
- 1-4.18 Identify the steps to take if a patient refuses care. (C-1)
- 1-4.19 Given a scenario, demonstrate appropriate patient management and care techniques in a refusal of care situation. (C-3)
- 1-4.20 Describe what constitutes abandonment. (C-1)
- 1-4.21 Identify the legal issues involved in the decision not to transport a patient, or to reduce the level of care being provided during transportation. (C-1)
- 1-4.22 Describe how hospitals are selected to receive patients based on patient need and hospital capability and the role of the paramedic in such selection. (C-1)
- 1-4.23 Differentiate between assault and battery and describe how to avoid each. (C-2)
- 1-4.24 Describe the conditions under which the use of force, including restraint, is acceptable. (C-1)
- 1-4.25 Explain the purpose of advance directives relative to patient care and how the paramedic should care for a patient who is covered by an advance directive. (C-1)
- 1-4.26 Discuss the responsibilities of the paramedic relative to resuscitation efforts for patients who are potential organ donors. (C-1)
- 1-4.27 Describe the actions that the paramedic should take to preserve evidence at a crime or accident scene. (C-1)
- 1-4.28 Describe the importance of providing accurate documentation (oral and written) in substantiating an incident. (C-1)
- 1-4.29 Describe the characteristics of a patient care report required to make it an effective legal document. (C-1)
- 1-4.30 Given a scenario, prepare a patient care report, including an appropriately detailed narrative. (C-2)

### **AFFECTIVE OBJECTIVES**

At the completion of this unit, the paramedic student will be able to:

- 1-4.31 Advocate the need to show respect for the rights and feelings of patients. (A-3)
- 1-4.32 Assess his/ her personal commitment to protecting patient confidentiality. (A-3)
- 1-4.33 Given a scenario involving a new employee, explain the importance of obtaining consent for adults and minors. (A-2)
- 1-4.34 Defend personal beliefs about withholding or stopping patient care. (A-3)
- 1-4.35 Defend the value of advance medical directives. (A-3)

### **PSYCHOMOTOR OBJECTIVES**

None identified for this unit.

## DECLARATIVE

- I. Introduction
  - A. Legal duties and ethical responsibilities
    - 1. Legal duties are to the patient, medical director, and public
      - a. Set by statutes and regulations
      - b. Based on generally accepted standards
    - 2. Ethical responsibilities as a professional
      - a. Principles that identify conduct deemed morally desirable
      - b. Ethical responsibilities include
        - (1) Responding to the physical and emotional needs of every patient with respect
        - (2) Maintaining mastery of skills
        - (3) Participating in continuing education/ refresher training
        - (4) Critically reviewing performance and seeking improvement
        - (5) Reporting honestly and respecting confidentiality
        - (6) Working cooperatively and with respect for other emergency professionals
      - c. NAEMT Code of Ethics exemplifies ethical guidelines for the paramedic
  - B. Failing to perform the job appropriately can result in civil or criminal liability
  - C. The best legal protection is provision of appropriate assessment and care coupled with accurate and complete documentation
  - D. Laws differ from state to state and area to area - get competent legal advice
- II. The legal system
  - A. Types of law
    - 1. Legislative law
      - a. Enacted at federal, state and local levels by legislative branches of government
      - b. Product of Congress, city councils, district boards, and general assemblies
    - 2. Administrative law
      - a. Regulations developed by a governmental agency
      - b. Agency has the authority to enforce rules, regulations, and statutes
    - 3. Common law
      - a. "Case" or "judge-made" law
      - b. Derived from society's acceptance of customs or norms over time
    - 4. Criminal law
      - a. Area of law in which the federal, state, or local government prosecutes individuals on behalf of society for violating laws designed to safeguard society
      - b. Violation punished by fine, imprisonment or both
    - 5. Civil (tort) law
      - a. Area of law dealing with private complaints brought by a plaintiff against a defendant for an illegal act or wrongdoing (tort)
      - b. Enforced by bringing a civil lawsuit in which the plaintiff requests the court to award damages
  - B. How laws affect the paramedic
    - 1. Scope of practice
      - a. Range of duties and skills a paramedic is allowed and expected to perform when necessary

- b. Usually set by state law or regulation and by local medical direction
  - 2. Medical direction
    - a. Required for paramedic practice
    - b. May be off-line or on-line, depending on state and local requirements
    - c. Each system should have a policy to guide paramedics in dealing with on-scene physician
  - 3. Medical practice act
    - a. Legislation that governs the practice of medicine; varies from state to state
    - b. May prescribe how and to what extent a physician may delegate authority to a paramedic to perform medical acts
  - 4. Licensure and/ or certification
    - a. Certification
      - (1) Grants recognition to an individual who has met predetermined qualifications to participate in an activity
      - (2) Usually granted by a certifying agency or professional association, not necessarily a government agency
    - b. Licensure
      - (1) A process of occupational regulation
      - (2) Governmental agency, such as state medical board, grants permission to an individual who meets established qualifications to engage in the profession or occupation
    - c. Either or both may be required by state or local authorities to practice as a paramedic
  - 5. Motor vehicle laws
    - a. Motor vehicle code varies from state to state
    - b. Set standards for equipping and operating an emergency vehicle
  - 6. Mandatory reporting requirements
    - a. Vary from state to state, but often include
      - (1) Child abuse and neglect; elder abuse; spouse abuse
      - (2) Sexual assault
      - (3) Gunshot and stab wounds
      - (4) Animal bites
      - (5) Communicable diseases
    - b. Content of report and to whom it must be made is set by law, regulation or policy
  - 7. Protection for the paramedic
    - a. Infectious disease exposure notification
    - b. Immunity statutes
      - (1) Governmental immunity
      - (2) Good Samaritan laws
    - c. Special crimes against a paramedic
      - (1) Assault or battery to paramedic while performing duties
      - (2) Obstruction of paramedic activity
- C. The legal process
  - 1. The role of the courts
    - a. Trial court
      - (1) Determines outcomes of individual cases
      - (2) Cases may be determined by judge or jury
    - b. Appellate court

- (1) Hears appeals of decisions by trial courts or other appeals courts
    - (2) Decisions may set precedent for later cases
  - 2. Anatomy of a lawsuit
    - a. Incident occurs
    - b. Investigation is conducted by plaintiff's representative
    - c. Complaint is filed in court and served on defendant
    - d. Complaint is answered by defendant
    - e. Discovery occurs
      - (1) Depositions (oral) or interrogatives (written) are taken
      - (2) Documents are gathered (e.g., patient records, patient care reports, etc.)
    - f. Trial is conducted
    - g. Decision is handed down by judge or jury
      - (1) Determines guilt or liability
      - (2) Determines damages and award, if any, to the plaintiff
    - h. Decision may be appealed
      - (1) Either side may appeal
      - (2) Usually can only be based on errors in law made by the court
    - i. Settlement occurs
      - (1) May occur at any stage of the lawsuit
      - (2) Plaintiff agrees to accept settlement in exchange for promise not to pursue case

- III. Legal accountability of the paramedic
  - A. Responsible to act in a reasonable and prudent manner
  - B. Responsible to provide a level of care and transportation consistent with education/ training
  - C. Negligence can result in legal accountability and liability
    - 1. Components of negligence
      - a. Duty to act
        - (1) May be a formal contractual or an informal duty
        - (2) Duty may be undertaken voluntarily by beginning to care for a patient
        - (3) Duties include
          - (a) Duty to respond and render care
          - (b) Duty to obey laws and regulations
          - (c) Duty to operate emergency vehicle reasonably and prudently
          - (d) Duty to provide care and transportation to the expected standard
          - (e) Duty to provide care and transportation consistent with the scope of practice and local medical protocols
          - (f) Duty to continue care and transportation through to its appropriate conclusion
      - b. Breach of duty
        - (1) Standard of care
          - (a) Exercising the degree of care, skill, and judgement which would be expected under like or similar circumstances by a similarly trained, reasonable paramedic in the location involved
          - (b) Standard of care is established by court testimony and reference to published codes, standards, criteria and guidelines applicable to the situation
        - (2) Breach of duty may occur by

- (a) Malfeasance - performing a wrongful or unlawful act
      - (b) Misfeasance - performing a legal act in a manner which is harmful or injurious
      - (c) Non-feasance - failure to perform a required act or duty
    - (3) In some cases, negligence may be so obvious that it does not require extensive proof
      - (a) Res ipsa loquitur - the injury could only have been caused by negligence
      - (b) Negligence per se - negligence is shown by the fact that a statute was violated and injury resulted
  - c. Damage to patient or other individual (i.e., the plaintiff)
    - (1) Proof that the plaintiff suffered compensable physical or psychological damages, such as
      - (a) Medical expenses
      - (b) Lost earnings
      - (c) Conscious pain and suffering
      - (d) Wrongful death
    - (2) Punitive (punishing) damages could be awarded
      - (a) Awarded to punish gross negligence or willful and wanton misconduct
      - (b) Punitive damages are usually not covered by malpractice insurance
  - d. Proximate cause
    - (1) The action or inaction of the paramedic was the cause of or worsened the damage
    - (2) The fact that the paramedic's act or inaction would result in the damage must have been reasonably foreseeable by the paramedic
    - (3) Usually established by expert testimony
- 2. Defenses to negligence
  - a. Good Samaritan laws
    - (1) Do not generally protect providers from acts of gross negligence, reckless disregard, or willful or wanton conduct
    - (2) Do not generally prohibit the filing of a lawsuit
    - (3) May provide coverage for paid or volunteer providers
    - (4) Varies from state to state
  - b. Governmental immunity
    - (1) Trend is toward limiting protection
    - (2) May only protect governmental agency, not provider
    - (3) Varies from state to state
  - c. Statute of limitations
    - (1) Limit the number of years after an incident during which a lawsuit can be filed
    - (2) Set by law and may differ for cases involving adults and children
    - (3) Varies from state to state
  - d. Contributory negligence
    - (1) Plaintiff may be found to have contributed to his or her own injury
    - (2) Damages awarded may be reduced or eliminated based on the plaintiff's contribution to his or her injury

- e. Liability insurance
  - D. Special liability concerns
    - 1. Liability of the paramedic medical director
      - a. On-line - direct supervision regarding patient care
      - b. Off-line
        - (1) Provided by use of protocols, including standing orders
        - (2) Indirect supervision
    - 2. Liability for "borrowed servants"
      - a. Liability for actions of EMT-Basic supervised by the paramedic
      - b. Depends on degree of supervision and control given to the paramedic
    - 3. Civil rights
      - a. May not discriminate in providing service to a patient by reason of race, color, sex, national origin, or, in some cases, ability to pay
      - b. Patients should be provided with appropriate care regardless of disease condition (e.g., AIDS/ HIV, other communicable disease, etc.)
    - 4. Off-duty paramedic
      - a. May not have authority to perform paramedic procedures which require delegation from a physician
      - b. Varies from state to state
  - E. Protection against negligence claims
    - 1. Appropriate education/ training and continuing education
    - 2. Appropriate medical direction -- on- and off-line
    - 3. Accurate, thorough documentation
    - 4. Professional attitude and demeanor
- IV. Paramedic - patient relationships
- A. Confidentiality
    - 1. Confidential information
      - a. Patient history
      - b. Assessment findings
      - c. Treatment rendered
    - 2. Release of information
      - a. Requires written permission from patient or legal guardian
      - b. Permission not required for release of select information
        - (1) To other providers with a need to know in order to provide care
        - (2) When required by law
        - (3) When required for third party billing
        - (4) In response to a proper subpoena
    - 3. Improper release of information or release of inaccurate information can result in liability
      - a. Invasion of privacy
        - (1) Release, without legal justification, of information on a patient's private life which might reasonably expose the individual to ridicule, notoriety or embarrassment
        - (2) The fact that the information is true is not a defense
      - b. Defamation - making an untrue statement about someone's character or reputation without legal privilege or consent of the individual
        - (1) Libel
          - (a) False statements about a person made in writing or through the

- mass media
      - (b) Made with malicious intent or reckless disregard for the falsity of the statements
    - (2) Slander
      - (a) False verbal statements about a person
      - (b) Made with malicious intent or reckless disregard for the falsity of the statements
- B. Consent
  - 1. Conscious, competent patients have the right to decide what medical care and transportation to accept
    - a. Patient must be of legal age and able to make a reasoned decision
    - b. Patient must be properly informed
      - (1) Nature of the illness or injury
      - (2) Treatment recommended
      - (3) Risks and dangers of treatment
      - (4) Alternative treatment possible and the risks
      - (5) Dangers of refusing treatment (including transport)
    - c. Conscious, competent patient can revoke consent at any time during care and transport
  - 2. Types of consent
    - a. Expressed consent
      - (1) Patient directly agrees to treatment and gives permission to proceed
      - (2) Consent can be expressed non-verbally by action or allowing care to be rendered
    - b. Informed consent - consent given based on full disclosure of information
    - c. Implied consent
      - (1) Consent assumed from a patient requiring emergency intervention who is mentally, physically or emotionally unable to provide expressed consent; sometimes called emergency doctrine
      - (2) Is effective only until patient no longer requires emergency care or regains competence to make decisions
    - d. Involuntary consent
      - (1) Treatment allowed in certain situations granted by authority of law
      - (2) Patients held for mental health evaluation or as directed by law enforcement personnel who have the patient under arrest
  - 3. Special consent situations
    - a. Minors
      - (1) In most states, a person is a minor until age 18, unless emancipated
      - (2) Emancipation may include
        - (a) Minors who are married, parents, or in the armed services
        - (b) Individual living independently and self-supporting (e.g., college student not living at home or receiving financial aid from parents)
      - (3) Unemancipated minors are not able to give or withhold consent - consent of parent, legal guardian or court-appointed custodian is usually required
      - (4) Emergency doctrine applies to minors when parent or guardian cannot be contacted
    - b. Mentally incompetent adults
      - (1) If there is a legal guardian, consent may be given or withheld by the



- guardian
      - (2) Emergency doctrine applies if no one legally able to give consent can be contacted
    - c. Prisoners or arrestees
      - (1) Court or police who have custody may authorize emergency treatment
      - (2) Usually limited to care needed to save life or limb
    - d. Refusal of care or transport
      - (1) Patient must be conscious and able to make a reasonable decision
      - (2) Make multiple attempts to convince the patient to accept care
      - (3) Enlist the help of others to convince the patient
      - (4) Assure that the patient is informed about the implication of the decision and potential for harm
      - (5) Consult medical direction
      - (6) Request patient and a disinterested witness to sign a "release from liability" form
      - (7) Advise the patient that he or she may call again for help if needed
      - (8) Attempt to get family or friends to stay with the patient
      - (9) Document situation and actions thoroughly on patient care report
    - e. Decisions not to transport
      - (1) Involve medical direction
      - (2) Thoroughly document reasons for decision
- 4. Legal complications related to consent
  - a. Abandonment
    - (1) Terminating care when it is still needed and desired by the patient, and without assuring that appropriate care continues to be provided by another qualified provider
    - (2) May occur in the field or when a patient is delivered to the emergency department
  - b. False imprisonment
    - (1) May be charged by a patient who is transported without consent or who is restrained without proper cause or authority
    - (2) May be a civil or criminal violation
  - c. Assault
    - (1) Threatening, attempting or causing fear of offensive physical contact with a patient or other individual (for example, threatening to restrain a patient unless he or she quiets down)
    - (2) May be a civil or criminal violation
  - d. Battery
    - (1) Unlawful touching of another person without consent (for example, drawing a patient's blood without permission)
    - (2) May be a civil or criminal violation
- C. Use of force
  - 1. Unruly or violent patients
  - 2. Use of restraints
  - 3. Involve law enforcement, if possible
  - 4. Use only force considered to be "reasonable" to prevent harm to the patient or others
  - 5. Must never be punitive
- D. Transportation of patients

1. Level of care during transportation
    - a. Level of personnel attending the patient
    - b. Complications resulting from changing the level of care delivered
  2. Use of emergency vehicle operating privileges
    - a. Must operate in conformity to laws, regulations and policies
    - b. Must operate in a manner which safeguards the patient, crew and public
  3. Choice of patient destination
    - a. Hospitals selected based on patient need and hospital capability
    - b. Protocols, the paramedic, medical direction, and patient play a role
    - c. Patients choice should be honored unless situation or patient's condition dictates otherwise
  4. Payor protocols
- V. Resuscitation issues
- A. Withholding or stopping resuscitation
    1. Procedure should be established by local protocols
    2. Role of medical direction should be clearly delineated
  - B. Advance directives
    1. Status depends on state laws and local protocols
    2. Written patient statements of preference for future medical treatment
      - a. Living will
      - b. Durable power of attorney for health care
      - c. Do not resuscitate (DNR) orders
    3. Authority granted in part by the Patient Self-Determination Act of 1990
    4. Medical direction must establish and implement policies for dealing with advance directives
      - a. Policy should specify paramedic care for the patient with an advance directive
      - b. Must provide for reasonable measures of comfort to the patient and emotional support to family and loved ones
  - C. Potential organ donation
    1. Identify the patient as a potential donor
    2. Establish communication with medical direction
    3. Provide emergency care that will help maintain viable organs
  - D. Death in the field
    1. Follow state or local protocols
    2. Consult medical direction for guidance
- VI. Crime and accident scene responsibilities
- A. Crime scene
    1. Protect self and other EMS personnel
    2. Care for the patient(s) as necessary
    3. Notify law enforcement if not already involved
    4. Observe and document any items moved or anything unusual at the scene
    5. Protect potential evidence
      - a. Leave holes in clothing from bullet or stab wounds intact, if possible
      - b. Do not touch or move items at scene unless necessary in delivery of care
  - B. Accident scene
    1. Protect self and other EMS personnel

2. Care for the patient(s) as necessary
3. Summon additional personnel if needed

VII. Documentation

- A. Importance
  1. If it is not written down, it was not done.
  2. Memory is fallible - claims may not be filed until years after an event
- B. Characteristics of an effective patient care report
  1. Completed promptly
    - a. A report made "in the course of business", not long after the event
    - b. Prompt completion essential to the patient care report becoming part of the hospital record
  2. Completed thoroughly
    - a. Coverage of assessment, treatment and other relevant facts
    - b. Should paint a complete, clear picture of patient condition and care
  3. Completed objectively
    - a. Observations rather than assumptions or conclusions
    - b. Avoid use of emotionally and value-loaded words or phrases
  4. Completed accurately
    - a. Descriptions should be as precise as possible
    - b. Avoid using abbreviations or jargon not commonly understood
  5. Confidentiality maintained
    - a. Should have a standard policy on release of information
    - b. Whenever possible, patient consent should be obtained prior to release of information
- C. Copy to become part of patient's hospital record
- D. Maintained at least for extent of statute of limitations