Chapter 3

Medical, Legal, and Ethical Issues

Unit Summary

After students complete this chapter and the related course work, they will understand the ethical responsibilities and medicolegal directives and guidelines pertinent to the EMT. The EMT approach to patient care relating to confidentiality, consent to treat, refusal of care, and advance directives are explained. Organ donor systems and policies, evidence preservation, and end-of-life issues are also discussed.

National EMS Education Standard Competencies

Preparatory

Applies fundamental knowledge of the emergency medical services (EMS) system, safety/well-being of the emergency medical technician (EMT), medical/legal, and ethical issues to the provision of emergency care.

Medical/Legal and Ethics

• Consent/refusal of care (pp 85–90)

• Confidentiality (p 90)

• Advance directives (pp 90–92)

• Tort and criminal actions (pp 98–100)

• Evidence preservation (p 102)

• Statutory responsibilities (pp 94–98)

• Mandatory reporting (pp 101–102)

• Ethical principles/moral obligations (pp 102–103)

• End-of-life issues (pp 92–94)

Knowledge Objectives

1. Define consent and how it relates to decision making. (p 85)

2. Compare expressed consent, implied consent, and involuntary consent. (pp 86–87)

3. Discuss consent by minors for treatment or transport. (p 87)

4. Describe local EMS system protocols for using forcible restraint. (p 88)

5. Discuss the EMT’s role and obligations if a patient refuses treatment or transport. (pp 88–90)

6. Describe the relationship between patient communications, confidentiality, and the Health Insurance Portability and Accountability Act (HIPAA). (p 90)

7. Discuss the importance of do not resuscitate (DNR) orders and local protocols as they relate to the EMS environment. (pp 90–92)

8. Describe the physical, presumptive, and definitive signs of death. (pp 92–93)

9. Explain how to manage patients who are identified as organ donors. (p 94)

10. Recognize the importance of medical identification devices in treating the patient. (p 94)

11. Discuss the scope of practice and standards of care. (pp 94–97)

12. Describe the EMT’s legal duty to act. (pp 97–98)

13. Discuss the issues of negligence, abandonment, assault and battery, and kidnapping and their implications for the EMT. (pp 98–99)

14. Explain the reporting requirements for special situations, including abuse, drug- or felony-related injuries, childbirth, and crime scenes. (pp 101–102)

15. Define ethics and morality, and discuss their implications for the EMT. (pp 102–103)

16. Describe the roles and responsibilities of the EMT in court. (pp 103–105)

Skills Objectives

There are no skills objectives in this chapter.

Readings and Preparation

Review all instructional materials including ***Emergency Care and Transportation of the Sick and Injured***, **Eleventh Edition**, Chapter 3, and all related presentation support materials.

• Review any related legal documents such as statutes and regulations that pertain to prehospital care services and personnel.

• Review any recent case studies or legal proceedings that may provide updated information on medicolegal issues. The local law librarian is a good reference source to assist in gathering this type of information.

Support Materials

• Lecture PowerPoint presentation

• Case Study PowerPoint presentation

• Local/state statutes, regulations, or policies related to prehospital care including:

– EMT scope of practice

– DNR orders

– Policies for reporting suspected child/elderly abuse, rape, and other crimes

– Refusal of care policies

– Use of restraints

Enhancements

• Direct students to visit Navigate 2.

• Contact a local human organ donation coordinator for handout materials on the human organ donation process.

• Contact a local hospital, EMS system administrator, or medical association for handout materials or guest lecturers on issues of medical ethics.

• Contact a local legal bar association for guest lecturers on issues related to medicolegal policies, procedures, and guidelines.

• **Content connections:** Emphasize to students that the courts consider the following two rules of thumb regarding reports and records:

* If an action or procedure is not recorded on the written report, it was not performed.
* An incomplete or untidy report is evidence of incomplete or inexpert emergency medical care.

Chapter 4, “Communications and Documentation,” discusses the importance of accurate, thorough, and legible reporting. Remind students that the information in the report may be used in court and may help to prove that they have provided a standard of care, and, in some instances, shows they have properly handled unusual or uncommon situations.

• **Cultural considerations:** Culture is not restricted to different nationalities—it also includes age. Discuss the concept of emancipated minorswith students. Ask students to look up your state’s laws concerning the issues surrounding emancipation and discuss them.

• **Current controversies:** The legal analysis relevant to the question of a minor’s ability to consent to medical care can be complicated and involves not only state common law and statutes, but also federal statutes. However, if emergency providers apply common sense and treats minors with the respect and care they would want for their own child, the law will almost invariably support their decisions.

Teaching Tips

• You must know and explain to your students the local protocols regarding confidentiality, consent, refusal of care, advance directives, and other issues in this chapter that may have local variations.

• Be sensitive to possible emotional reactions to violent crime scenes from your students.

• Provide an opportunity for private discussion if necessary.

• Role-playing can be helpful in allowing students to practice some of these refusals of care and consent to treatment situations and explore their feelings and reactions.

Unit Activities

**Writing assignments:** Assign students a research paper on the topic of lawsuits against EMS. Ask them to explain what could have been done differently to minimize the potential for litigation.

**Student presentations:** Ask students to give a presentation to the class on a recent lawsuit that has been settled against EMTs in regard to negligence.

**Group activities:** Ask students to create scenarios that present difficult situations regarding consent, as well as end-of-life issues.

**Medical terminology review:** Instructors should present definitions of important terms found in this chapter, asking students to choose the correct term to go with the definition.

Pre-Lecture

### You Are the Provider

“You Are the Provider” is a progressive case study that encourages critical thinking skills.

### Instructor Directions

**1.** Direct students to read the “You Are the Provider” scenario found throughout Chapter 3.

**2.** You may wish to assign students to a partner or a group. Direct them to review the discussion questions at the end of the scenario and prepare a response to each question. Facilitate a class dialogue centered on the discussion questions and the Patient Care Report.

**3.** You may also use this as an individual activity and ask students to turn in their comments on a separate piece of paper.

Lecture

I. Introduction

A. A basic principle of emergency care is to do no further harm.

B. A health care provider usually avoids legal exposure if he or she acts:

1. In good faith

2. According to an appropriate standard of care

C. Emergency medical care, or immediate care or treatment, is often provided by an EMT.

1. First link in the chain of prehospital care

D. Providing competent emergency medical care that conforms with the standard of care taught to you will help you avoid both civil and criminal actions.

E. Even when emergency medical care is properly rendered, there are times when you may be sued by a patient seeking monetary compensation.

II. Consent

A. Consent is permission to render care.

B. A person must give consent for treatment.

C. If the patient is conscious and rational, and capable of making informed decisions, he or she has the legal right to refuse care.

D. The foundation of consent is decision-making capacity.

1. The patient can understand and process the information provided.

2. The patient can make an informed choice regarding medical care.

E. Patient autonomy is the patient’s right to make decisions about his or her health.

F. In determining a patient’s decision-making capacity, consider these factors:

1. Is the patient’s intellectual capacity impaired by mental limitation or dementia?

2. Is the patient of legal age (18 years in most states)?

3. Is the patient impaired by alcohol, drugs, serious injury, or illness?

4. Does the patient appear to be experiencing significant pain?

5. Does the patient have a significant injury that could distract him or her from a more serious injury?

6. Are there any apparent hearing or visual problems?

7. Is there a language barrier?

8. Does the patient appear to understand what you are saying? Does the patient ask rational questions that demonstrate an understanding of the information you are trying to share?

G. Expressed consent

1. The patient acknowledges he or she wants you to provide care or transport.

2. To be valid, the patient must provide informed consent, which means you have explained the treatment being offered, along with the potential risks, benefits, and alternatives, as well as the potential consequences of refusing treatment.

a. Informed consent is valid if given orally.

b. Always document when a patient provides informed consent, or have someone witness the patient’s consent.

H. Implied consent

1. Applies to patients who are:

a. Unconscious

b. Otherwise incapable of making a rational, informed decision about care

2. Implied consent applies only when a serious medical condition exists and should never be used unless there is a threat to life or limb.

3. The principle of implied consent is known as the emergency doctrine.

4. Sometimes what represents a “serious threat” is unclear, and it may become a legal question.

5. It is a good idea to try to get consent from a spouse or relative before treating a patient based on implied consent.

I. Involuntary consent

1. Applies to patients who are:

a. Mentally ill

b. In a behavioral (psychological) crisis

c. Developmentally delayed

2. Obtain consent from the guardian or conservator.

a. It is not always possible to obtain such consent, so understand your local provisions. For example, many states have protective custody statutes that allow such a person to be taken, under law enforcement authority, to a medical facility.

J. Minors and consent

1. The parent or legal guardian gives consent.

 a. In every state, when a parent cannot be reached to provide consent, health care providers are allowed to give emergency care to a child.

2. In some states, a minor can give consent.

a. Whether a minor may give consent depends on age and maturity. Confusion surrounds the issue of emancipated minors.

b. Emancipated minor: a person who is under the legal age in a given state but, because of other circumstances, is legally considered an adult.

i. Many states consider minors to be emancipated if they are married, if they are members of the armed services, or if they are parents.

3. Teachers and school officials may act in place of parents (in loco parentis) and provide consent for treatment to injuries that occur in a school or camp setting.

4. If a true emergency exists and no consent is available, the consent to treat the minor is implied, just as with an adult.

5. Never withhold life-saving care for a minor because a person authorized to provide consent is not available.

K. Forcible restraint

1. Necessary with a patient who is in need of medical treatment and transportation but is combative and presents a significant risk of danger to self or others

2. Forcible restraint is legally permissible.

a. Consult medical control for authorization.

b. In some states, only a law enforcement officer may forcibly restrain an individual.

3. Restraint without legal authority exposes you to potential civil and criminal penalties.

4. Make sure you know the local laws about forcible restraint.

5. If restraint is utilized, it is essential to protect the patient’s airway and monitor the patient’s respiratory status to avoid asphyxia, aspiration, and other complications.

III. The Right to Refuse Treatment

A. Adults who are conscious, alert, and appear to have decision-making capacity:

1. Have the right to refuse treatment, even if the result is death or serious injury

2. Can withdraw from treatment at any time, even if the result is death or serious injury

B. Such patients present the EMT with a dilemma. Should you provide care against their will? Should you leave them alone?

C. Calls involving refusal of treatment are commonly litigated in EMS and require you to proceed very cautiously.

D. You must be familiar with local policies regarding refusal of care.

E. Involve online medical control and document this consultation.

F. A patient, parent, or caregiver’s decision to accept or refuse treatment should be based on information that you provide:

1. Your assessment of what might be wrong

2. A description of the treatment you feel is necessary

3. Any possible risks of treatment

4. The availability of alternative treatments

5. The possible consequences of refusing treatment

 a. All of this information should be included in the patient care report.

G. When treatment is refused, you must assess the patient’s ability to make an informed decision:

1. Ask and repeat questions.

2. Assess the patient’s answers.

3. Observe the patient’s behavior.

H. If the patient appears confused or delusional, you cannot assume that the decision to refuse is an informed refusal.

I. Patients who have attempted suicide, or conveyed suicidal intent, should not be regarded as having normal mental capacity.

J. When in doubt, providing treatment is a much more defensible position than failing to treat a patient.

1. Do not endanger yourself to provide care.

2. Use the assistance of law enforcement to ensure your own safety.

K. Before leaving the scene where a patient, parent, or caregiver has refused care, you should again encourage the patient, parent, or caregiver to permit treatment and to call for the ambulance if he or she has a change of mind or his or her condition worsens.

1. Advise the patient, parent, or caregiver to contact his or her physician as soon as possible.

2. Ask the patient, parent, or caregiver to sign a refusal of treatment form.

3. A witness should be present.

4. Thoroughly document all refusals.

IV. Confidentiality

A. Information should remain confidential (between you and the patient).

B. In most states, records may be released only:

1. If the patient signs a release

2. If a legal subpoena is presented

3. If they are needed by billing personnel

C. Confidential information includes:

1. Patient history

2. Assessment findings

3. Treatment provided

D. If you inappropriately release information, you may be liable for breach of confidentiality, which is the disclosure of information without proper authorization.

E. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

1. HIPAA contains a section on patient privacy that strengthens privacy laws.

2. HIPAA safeguards patient confidentiality.

3. HIPAA provides guidance on:

a. Which types of information are protected

b. The responsibility of health care providers regarding that protection

c. Penalties for breaching that protection

4. HIPAA considers all patient information you obtain in the course of providing medical treatment to a patient to be protected health information (PHI).

a. PHI includes medical information.

b. PHI includes any information that can be used to identify the patient.

F. There are certain situations when you may be legally mandated to report your findings, such as in the case of child abuse or when you receive a subpoena.

1. Only the minimum amount of information necessary should be released.

G. Failure to abide by the provisions of HIPAA laws can result in civil and/ or criminal action against your response agency and against you personally.

V. Advance Directives

A. Occasionally you and your partner may respond to a call where a patient is dying from an illness.

B. When you arrive at the scene, family members may not want you to resuscitate the patient.

C. A DNR order (also known as a “do not attempt resuscitation” order) gives permission not to resuscitate.

1. “Do not resuscitate” does not mean “do not treat.” Even in the presence of a DNR order, you are still obligated to provide supportive measures (oxygen, pain relief, and comfort) to a patient who is not in cardiac arrest, whenever possible.

a. Each ambulance service should have a protocol to follow in these circumstances.

D. A competent patient makes his or her own decisions.

1. An advance directive specifies treatment should the patient become unconscious or unable to make decisions.

E. Other names for advance directives:

1. Living will

2. Health care directive

F. To be valid, DNR orders must meet the following requirements:

1. Clear statement of the patient’s medical problem(s)

2. Signature of the patient or legal guardian

3. Signature of one or more physicians or other licensed health care providers

4. DNR orders with expiration dates must be dated in the preceding 12 months to be valid.

G. You may encounter physician orders for life-sustaining treatment (POLST) and medical orders for life-sustaining treatment (MOLST) forms when caring for patients with terminal illnesses.

1. These medical orders explicitly describe acceptable interventions for the patient.

2. Such orders must be signed by an authorized medical provider to be valid.

3. If you encounter these documents, contact medical control for guidance.

H. Some patients may have named surrogates to make decisions for them when they can no longer make their own.

1. Durable powers of attorney for health care

2. Also known as health care proxies

I. Because of the growing number of hospice home health programs, you may be faced with this situation often.

J. When presented with an advance directive, you should never become annoyed with family members. The patients and their families should be treated with the utmost respect and empathy.

VI. Physical Signs of Death

A. Determination of the cause of death is the medical responsibility of a physician.

B. In the absence of physician orders, the general rule is “If the body is still warm and intact, initiate emergency medical care.”

 1. Cold temperature (hypothermia) emergencies are an exception to this rule. The patient should not be considered dead until he or she is warm and dead.

C. Presumptive signs of death:

1. Unresponsiveness to painful stimuli

2. Lack of a carotid pulse or heartbeat

3. Absence of chest rise and fall

4. No deep tendon or corneal reflexes

5. Absence of pupillary reactivity

6. No systolic blood pressure

7. Profound cyanosis

8. Lowered or decreased body temperature

D. Definitive signs of death:

1. Obvious mortal damage (decapitation)

2. Dependent lividity, which refers to blood settling to the lowest point of the body, causing discoloration of the skin

3. Rigor mortis, which is the stiffening of body muscles caused by chemical changes within muscle tissue

a. Occurs between 2 and 12 hours after death

4. Putrefaction (or decomposition) of body tissues, which (depending on temperature conditions) occurs between 40 and 96 hours after death

E. Medical examiner cases

1. Involvement of the medical examiner depends on the nature and scene of the death.

2. In most states, the medical examiner—or the coroner, in some states—must be notified in the following cases:

a. A patient who is dead on arrival (DOA) (sometimes called dead on scene [DOS])

b. Death without previous medical care, or when the physician is unable to state the cause of death.

c. Suicide (self-destruction)

d. Violent death

e. Poisoning, known or suspected

f. Death from accidents

g. Suspicion of a criminal act

h. Infant and child deaths

3. You should make every attempt to limit your disturbance of a scene involving a death.

4. If emergency medical care has been initiated, keep thorough notes of what was done or found.

VII. Special Situations

A. Organ donors

1. Organ donors have expressed a wish to donate their organs.

2. Consent is evidenced by information on a donor card or driver’s license.

3. Treat potential organ donors the same as any other patient.

a. Your priority is to save the patient’s life.

b. Remember that organs need oxygen.

B. Medical identification insignia

1. Bracelet, necklace, key chain, or card indicating:

a. DNR order

b. Allergies

c. Diabetes, epilepsy, or other serious condition

2. Helpful in patient assessment and treatment

3. Some patients wear medical bracelets with a USB flash drive.

a. Often stored as a PDF file that can be read on most computers

VIII. Scope of Practice

A. Outlines the care you are able to provide

B. Usually defined by state law

C. The medical director further defines scope of practice by developing:

1. Protocols

2. Standing orders

D. Authorization to provide care is given by medical director via:

1. Telephone or radio (online)

2. Standing orders or protocols (off-line)

E. Carrying out procedures outside the scope of practice may be considered:

1. Negligence

2. Criminal offense

F. Do not confuse scope of practice with standards of care, which are what a reasonable EMT in a similar situation would do.

IX. Standards of Care

A. The manner in which you must act or behave is called the standard of care.

B. The law requires you to act or behave toward other individuals in a definite, definable way, regardless of the activity involved.

C. Generally speaking, you must be concerned about the safety and welfare of others when your behavior or activities can potentially cause others injury or harm.

D. Standard of care is established in many ways:

1. Standards imposed by local custom

a. How a reasonably prudent person with similar training and experience would act under similar circumstances, with similar equipment, and in the same or similar place

2. Standards imposed by law

a. Standards of emergency medical care may be imposed by statutes, ordinances, administrative regulation, or case law.

b. Be familiar with the particular legal standards in your state.

3. Professional or institutional standards

a. Recommendations published by organizations and societies that are involved in emergency medical care

b. Specific rules and procedures of the EMS service, ambulance service, or organization to which you are attached

c. An example of a professional standard is the American Heart Association’s standards for BLS and CPR.

4. Standards imposed by textbooks

a. Most textbooks follow the standards established by the National Highway Traffic Safety Administration (NHTSA).

b. These textbooks are often recognized as contributing to the standard of care that is followed by EMTs.

c. Local protocols or state standards may differ. The EMT is always bound to follow local protocols.

5. Standards imposed by states

a. Medical Practices Act

i. In some states, the EMT is exempt from the licensure requirements of the Medical Practices Act because an EMT is regarded as a nonmedical professional.

b. Certification and licensure

i. Certification is the process by which an individual, institution, or program is evaluated and recognized as meeting predetermined standards to ensure safe and ethical care.

ii. Licensure is the process by which a competent authority, usually the state, grants permission to practice a job, trade, or profession.

iii. Credentialing is an established process to determine the qualifications necessary to be allowed to practice a particular profession, or to function as an organization.

X. Duty to Act

A. Duty to act is an individual’s responsibility to provide patient care.

B. Responsibility comes from either statute or function. A bystander is under no obligation to assist a stranger in distress; there is no duty to act.

C. Once your ambulance responds to a call or treatment is begun, you have a legal duty to act.

D. In most cases, if you are off duty and come upon a crash, you are not legally obligated to stop and assist patients.

1. There may be some circumstances where this is not true, and you should be familiar with the laws and policies that apply in your service area.

2. If you choose to intervene while off duty, you much continue to provide care until an equal or higher medical authority assumes care.

XI. Negligence

A. Negligence is the failure to provide the same care that a person with similar training would provide in the same or similar situation.

B. All four of the following factors must be present for the legal doctrine of negligence to apply and for a plaintiff to prevail in a lawsuit against an EMS service or provider:

1. Duty

a. The obligation to provide care

2. Breach of duty

a. The EMT does not act within an expected and reasonable standard of care.

3. Damages

a. A patient is physically or psychologically harmed in some noticeable way.

4. Causation

a. A cause-and-effect relationship between a breach of duty and the damages suffered by the patient

C. Negligence falls under the general category known as torts. Torts are civil wrongs—for example, defamation of character and invasion of privacy.

XII. Abandonment

A. Abandonment is the unilateral termination of care by the EMT without the patient’s consent and without making any provisions for care to be continued by a medical professional who is competent to provide care for the patient.

B. Once care is started, you have assumed a duty that must not stop until an equally competent EMS provider assumes responsibility.

C. Failure to perform that duty is a serious legal and ethical matter and can result in civil action against you.

D. Abandonment may take place at the scene or in the emergency department where you are dropping off your patient.

E. It is always a good idea for you to obtain a signature on your patient care record from the person accepting transfer of care at the hospital.

XIII. Assault and Battery, and Kidnapping

A. Assault: unlawfully placing a person in fear of immediate bodily harm

1. Includes threatening to restrain a patient who does not want to be transported

B. Battery: unlawfully touching a person

1. Includes providing emergency care without consent

C. Kidnapping: seizing, confining, abducting, or carrying away by force

1. Could include a situation where a patient is transported against his or her will

2. A false imprisonment charge is more likely because EMTs are almost always acting in good faith to provide care.

3. False imprisonment is the unauthorized confinement of a person.

D. Serious legal problems may arise in situations in which a patient has not given consent for treatment or transport.

XIV. Defamation

A. Defamation: the communication of false information that damages a person’s reputation

1. Libel: written

2. Slander: spoken

B. Defamation could arise out of:

1. A false statement on a run report

2. Inappropriate comments made on social media or during “station house” conversation

3. Sharing “war stories” with friends, relatives, or neighbors

C. Be sure your run report and documentation is accurate, relevant, and factual.

D. Communicate information about your patients only to authorized persons.

XV. Good Samaritan Laws and Immunity

A. Good Samaritan laws are based on the common law principle that when you reasonably help another person, you should not be held liable for errors or omissions that are made in giving care.

B. To be protected by provisions of Good Samaritan law, several conditions must generally be met:

1. You acted in good faith in rendering care.

2. You rendered care without expectation of compensation.

3. You acted within the scope of your training.

4. You did not act in a grossly negligent manner.

C. Gross negligence: conduct that constitutes a willful or reckless disregard for a duty or standard of care

D. Another group of laws grants immunity from liability to official EMS providers, such as EMTs, in some circumstances.

1. These laws do not provide immunity when injury or damage is caused by gross negligence or willful misconduct.

E. The laws vary; consult with your medical director for more information about the laws in your area.

XVI. Records and Reports

A. You should compile a complete and accurate record of all incidents involving sick or injured patients.

B. Such a record is an important safeguard against legal complications.

C. The courts’ perception of records and reports:

1. If an action or procedure was not recorded on the written report, it was not performed.

2. Incomplete or untidy reports are evidence of incomplete or inexpert emergency medical care.

D. The National EMS Information System (NEMSIS) provides the ability to collect, store, and share standardized EMS data throughout the United States.

1. Used to improve the speed and accuracy of data collection

XVII. Special Mandatory Reporting Requirements

A. Most states have a reporting obligation for certain individuals, ranging from physicians to any person.

B. The following special mandatory reporting requirements may vary from state to state:

1. Abuse

a. Children

b. Older people

c. “At-risk” adults

2. Injury during commission of a felony

3. Drug-related injuries

4. Childbirth

5. Attempted suicides

6. Dog bites

7. Certain communicable diseases

8. Assaults

9. Domestic violence

10. Sexual assault or rape

11. Exposures to infectious disease

12. Transport of patients in restraints

13. Scene of a crime

14. The deceased

XVIII. Ethical Responsibilities

A. In addition to legal duties, EMTs have certain ethical responsibilities as health care providers.

B. These responsibilities are to themselves, their coworkers, the public, and the patient.

C. Ethics is the philosophy of right and wrong, moral duties, and ideal professional behavior.

D. Morality is the code of conduct affecting character, conduct, and conscience.

E. Bioethics specifically addresses ethical issues that arise in the practice of health care.

F. EMTs will encounter ethical dilemmas.

G. Such dilemmas will require you to evaluate and apply ethical standards

1. Your own

2. Those of the profession

H. Allow rules, laws, and policies to guide your decision making.

I. Be honest in your reporting.

J. Keep accurate records.

XIX. The EMT in Court

A. You can end up in court as:

1. A witness

2. A defendant

B. The case could be either civil or criminal.

C. Whenever you are subpoenaed to testify in any court proceeding, you should immediately notify:

1. Your service director

2. Legal counsel

D. As a witness:

1. Remain neutral during your testimony.

2. Review the run report before your court appearance.

E. As a defendant, an attorney is required.

1. The attorney is generally supplied by your service in a civil suit.

F. Defenses may include:

1. Statute of limitations: the time within which a case must be commenced

2. Governmental immunity: generally applied to municipalities or other governmental entities. If your service is covered by immunity, it may mean that you cannot be sued at all or that it would limit the amount of monetary judgment recovered.

3. Contributory negligence: a legal defense that may be raised when the defendant feels that the conduct of the plaintiff somehow contributed to injuries or damages sustained by the plaintiff

G. Discovery

1. An opportunity for both sides to obtain more information to reach a better understanding of the case

2. Two types of information gathering:

a. Interrogatories (written requests or questions)

b. Depositions (oral requests or questions)

H. Trial

1. Most cases are settled following the discovery phase during a settlement phase and do not go to trial.

2. For those that go to trial, several types of damages may be awarded:

a. Compensatory damages are intended to compensate the plaintiff for the injuries he or she sustained.

b. Punitive damages are intended to deter the defendant from repeating the behavior and are reserved for cases where the defendant has acted intentionally or with a reckless disregard for the safety of the public. These damages are not commonly awarded in negligence cases.

3. In most cases, if a judgment is rendered against you, your service or its insurance carrier will pay the judgment.

4. Any EMT charged with a criminal offense should secure the services of a highly experienced criminal attorney immediately.

Post-Lecture

This section contains various student-centered end-of-chapter activities designed as enhancements to the instructor’s presentation. As time permits, these activities may be presented in class. They are also designed to be used as homework activities.

## Assessment in Action

This activity is designed to assist the student in gaining a further understanding of issues surrounding the provision of prehospital care. The activity incorporates both critical thinking and application of basic EMT knowledge.

### Instructor Directions

**1.** Direct students to read the “Assessment in Action” scenario located in the Prep Kit at the end of Chapter 3.

**2.** Direct students to read and individually answer the quiz questions at the end of the scenario. Allow approximately 10 minutes for this part of the activity. Facilitate a class review and discussion of the answers, allowing students to correct responses as may be needed. Use the quiz question answers noted below to assist in building this review. Allow approximately 10 minutes for this part of the activity.

**3.** You may wish to ask students to complete the activity on their own and turn in their answers on a separate piece of paper.

### Answers to Assessment in Action Questions

**1. Answer:** B duty to act.

**2.** **Answer:** C failure to obtain consent.

**3. Answer:** D expressed consent.

**4. Answer:** A Let him know how important it is that he accept transport to the hospital.

**5. Answer:** B abandonment.

**6. Answer:** C serving in the patient’s best interest.

**7.** **Answer:** Your partner did not treat the patient professionally or ethically. You were also faced with a patient who initially refused treatment despite having a potentially serious medical problem. You had an ethical obligation to try your best to convince the patient to agree to treatment and transport.

**8.** **Answer:** You should report the heroin use to the nurse, physician assistant, or physician who accepts transfer of care from you at the hospital. This information will be important to continuity of patient care. As healthcare providers, we should regard drug addiction as an illness, not a crime. You would not need to notify law enforcement unless there are extenuating circumstances.

## Assignments

A. Review all materials from this lesson and be prepared for a lesson quiz to be administered (date to be determined by the instructor).

B. Read Chapter 4, “Communication and Documentation,” for the next class session.