



**Medical-Legal & Ethical Issues**

Presented by:  
Zvi Joseph, Esq.

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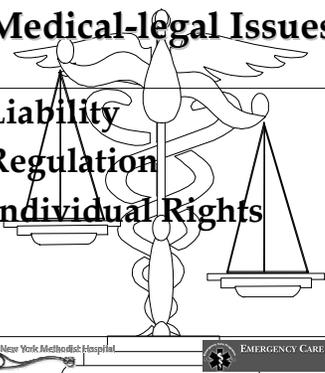
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**Medical-legal Issues**

- **Liability**
- **Regulation**
- **Individual Rights**

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**Ethical Issues**

- **Patient rights**
  - *Self determination*
  - *Confidentiality*
- **Allocation of resources**
- **Professionalism**

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## Terminology

- **Laws**
  - Principles and regulations established by the Gov't applicable to a people.
- **Morals**
  - Principles of "right" or virtuous conduct.
- **Ethics**
  - Principles that identify conduct deemed morally desirable



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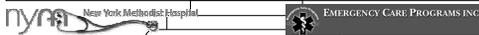
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## Types of Law

- **Legislative law**
  - Criminal law
  - Civil law
- **Administrative law**
- **Common law**



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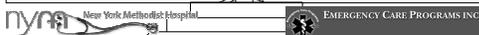
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## Legislative Law

- **Made by legislative branches of government**
  - Congress
  - State assemblies
  - City councils
  - District boards



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## Administrative Law

- Regulations developed by a governmental agency to provide details about the function and process of the law
- Regulatory agencies may hold disciplinary hearings regarding revocation or suspension of licenses



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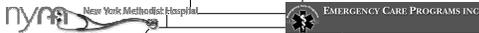
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## Common Law

- Case or judge-made law
- Derived from society's acceptance of customs or norms over time
- Based on decisions of state and federal judicial systems
- Court decisions may provide guidance in defining:
  - Acceptable conduct
  - Negligence
  - Interpretation of EMS statutes and regulations



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## The Road To Liability

- **Litigation**
  - Criminal
  - Civil



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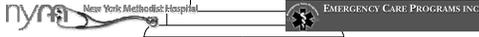
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## Criminal Law

- Area of law in which federal, state, or local government prosecutes individuals on behalf of society for violating laws designed to safeguard society
  - "People vs. Accused" or "U.S. vs. Accused"
- Violation punished by fine, forfeiture, imprisonment, or other penalty



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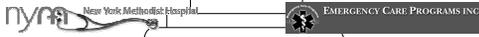
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## Civil Law

- Area of law dealing with private complaints brought by a plaintiff against a defendant for an improper act or wrongdoing (tort)
  - No law need be violated
- Enforced by bringing a civil lawsuit in which plaintiff requests court to award damages or other relief



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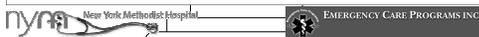
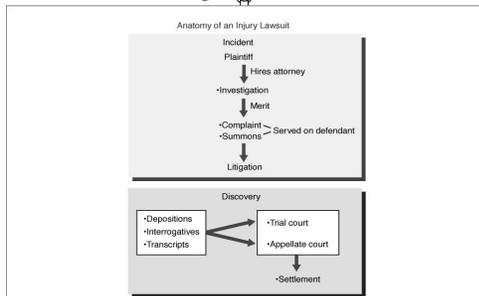
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## Anatomy of a Lawsuit



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## Intentional Torts

- **Assault**
  - No physical contact required
- **Battery**
  - Unconsented physical contact
- **False imprisonment**
  - Unauthorized restraint or detention
- **Defamation**

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## Unintentional Torts

- **Negligence (Malpractice)**
  - Duty
  - Breach
  - Cause
  - Harm (Injury)

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## Duty

- **Statutory**
  - Established by Law
- **Self-Imposed**
  - Voluntarily accepted by an organization or an individual
    - Private contract
    - Showing up to work
    - Stopping to help

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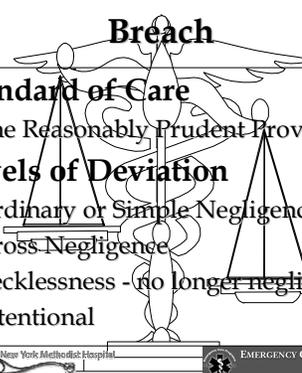
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## Breach



- **Standard of Care**
  - The Reasonably Prudent Provider
- **Levels of Deviation**
  - Ordinary or Simple Negligence
  - Gross Negligence
  - Recklessness - no longer negligence
  - Intentional

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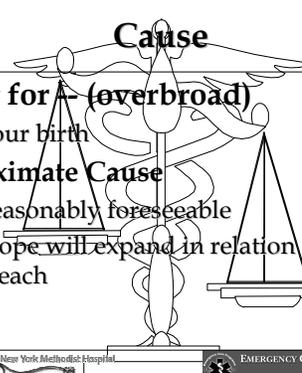
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## Cause



- **But for - (overbroad)**
  - Your birth
- **Proximate Cause**
  - Reasonably foreseeable
  - Scope will expand in relation to the breach

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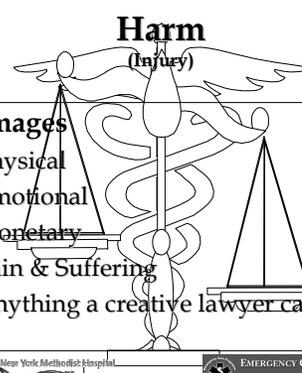
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## Harm (Injury)



- **Damages**
  - Physical
  - Emotional
  - Monetary
  - Pain & Suffering
  - Anything a creative lawyer can prove

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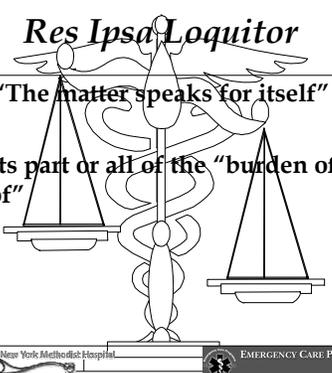
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## Res Ipsa Loquitor

"The matter speaks for itself"

- Shifts part or all of the "burden of proof"



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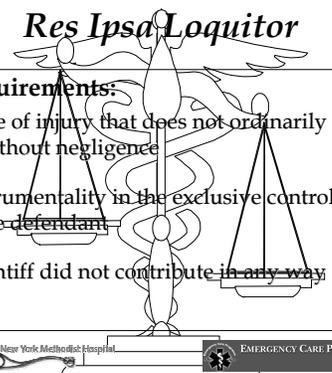
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## Res Ipsa Loquitor

- **Requirements:**
  - Type of injury that does not ordinarily occur without negligence
  - Instrumentality in the exclusive control of the defendant
  - Plaintiff did not contribute in any way



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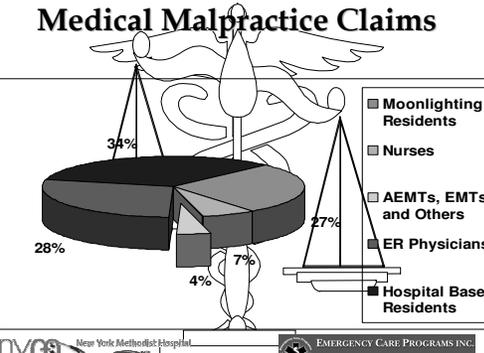
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## Medical Malpractice Claims



Provider Type	Percentage
Moonlighting Residents	34%
Nurses	28%
AEMTs, EMTs and Others	27%
ER Physicians	7%
Hospital Based Residents	4%

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## High Risk Time Periods

- **6 p.m. - 1 a.m. Weekends and Holidays**
  - 63% of all medical malpractice claims
- **Midnight - 7 a.m. Weeknights**
  - 20% of all medical malpractice claims
- **During ER shift changes**
- **In the final hours of shifts longer than 12 hours**



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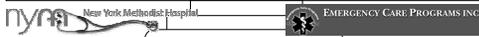
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## Defenses to Negligence

- **Good Samaritan laws**
- **Governmental immunity**
- **Statute of limitations**
- **Contributory negligence**
- **Liability insurance**



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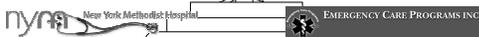
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## Good Samaritan Laws

- **Liability limited to gross negligence**
- **Section 3000-a of the public health law**
  - Volunteer w/ o expecting compensation
    - paid but outside of jurisdiction
  - Makers of equipment used by volunteers for other than own negligence



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## Good Samaritan Laws

- **Section 3013**
  - Volunteer ambulances and ALS units
  - Certified Individuals
- **Billing not necessarily dispositive of "volunteer" status**
- **Has been applied to vehicle operations**

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## Off-Duty Paramedic

- **May not have authority to perform paramedic procedures that require delegation from a physician**
- **Varies from state to state**
  - In NY ALS may only be performed while operating for an ALS agency

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## Consent

- **Informed consent**
- **Expressed consent**
- **Implied consent**
- **Involuntary consent**

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## Informed Consent

- **Patient must be properly informed**
  - Nature of the illness or injury
  - Treatment recommended
  - Risks and dangers of treatment
  - Alternative treatment possible and the risks
  - Dangers of refusing treatment (including transport)
- **Facts that the reasonable person would want to know**
  - Based on provider's medical judgment
  - HIV+ Providers

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## Expressed Consent

- **Consent must be "Informed"**
- **Conscious, competent patient can revoke consent at any time during care and transport**

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## Expressed Consent

- **Adults and certain minors have the right to determine the course of their treatment**
- **Capacity to Consent**
  - Pt. has the ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of the alternatives to any proposed health care.

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## Implied Consent

- **Adults**
  - Unconscious or Non-Competent
- **Minors**
  - Unaccompanied Minors if Emergent
    - Public Health Law § 2504

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## Minors

- **In most states, a person is a minor until age 18, unless emancipated**
- **Unemancipated minors are not able to give or withhold consent**
  - Consent of parent, legal guardian, or court-appointed custodian is usually required
- **Emergency doctrine applies to minors when parent or guardian cannot be contacted**

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## Minors

- **Emancipated minor is a myth in NY**
- **Public Health Law § 2504 (1)**
  - "Any person who is eighteen years of age or older, or is the parent of a child, or who has married, may give effective consent for medical . . . services for himself or herself, and the consent of no other person shall be necessary."

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## Minors

- **Public Health Law § 2504 (2-3)**

- "Any person who has been married or who has borne a child may give effective consent for medical . . . services for his or her child."
- "Any person who is pregnant may give effective consent for medical . . . services relating to prenatal care."

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## Minors

- **Note:**

- The ability to consent to medical care may not be co-extensive with the ability to refuse medical care.

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## Mentally Incompetent Adults

- If there is a legal guardian, consent may be given or withheld by guardian
- Emergency doctrine applies if no one legally able to give consent can be contacted

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## Prisoners of Arrestees

- Court or police who have custody may authorize emergency treatment
- Usually limited to care needed to save life or limb

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## Abandonment

- **Turfing to BLS**
  - any transfer to less trained providers
- **Short term inattentiveness**
  - patients left alone in ambulance
- **RMA's**

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## State Anti-dumping Laws

Gen. Mun. L. § 122

- **Refusal to Transport**
  - applies to any call you respond to where patient wants to be transported to ER
- **NYC/Buffalo Exception**
  - EMT or AEMT examines
  - Medical control is contacted
  - MD determines that transport by ambulance unnecessary
- **Criminal Misdemeanor**

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**COBRA**  
Consolidated Omnibus Budget Reconciliation Act

- Prevents “patient dumping”
  - Strict liability
- Does not create federal claim for ordinary malpractice
  - i.e. Improper diagnosis and discharge

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**COBRA**

- Applies to any hospital with an ER that receives Medicare funds
  - Hospital-based EMS units
  - Transport services
- Applies to patients with emergency medical conditions or in active labor
  - Active labor is from beginning of contractions until delivery of the placenta

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**COBRA**

**Emergency Medical Condition**

A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

1. placing the patient's health in serious jeopardy;
2. serious impairment to bodily functions; or
3. serious dysfunction of any bodily organ or part.

42 U.S.C. § 1395dd

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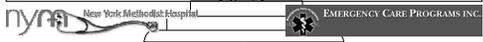
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**COBRA**

**Transfer**

The movement (including the discharge) of a patient outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital.




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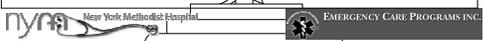
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**COBRA**

- All ER patients must be provided a medical screening and be treated alike.
  - No discrimination based on ability to pay or Medicare status
- Pre-transfer evaluation and stabilization
  - Unless: patient or his representative requests the transfer; or
  - MD or other qualified person determines the medical benefits outweigh the risks
- Requires specialized units to accept transfers of patients who require those services
  - "if the hospital has the capacity to treat the individual"




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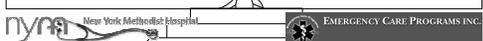
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**COBRA**

- Severe Penalties
  - \$50,000 fines for each violation
  - 5 year loss of Medicare Provider status
  - Civil suits by receiving hospital and patient
  - Generally not covered by malpractice insurance




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## Special Liability Concerns

- **Liability of paramedic medical director**
  - On-line
  - Off-line
- **Liability for "borrowed servants"**
  - When ALS instructs BLS

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## Civil Rights

- **May not discriminate in providing service to a patient by reason of race, color, gender, national origin, or, in some cases, ability to pay**
- **Patients should be provided with appropriate care regardless of disease condition**

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## The PCR

- **Quality not Quantity**
  - Too much: You didn't know what you were looking at
  - Too little: You never looked. (WNL)
- **Creativity can kill you**
  - Your findings should not at odds with the ER admission record
- **Cover-ups are worse**
  - Date and initial all changes or write a separate report

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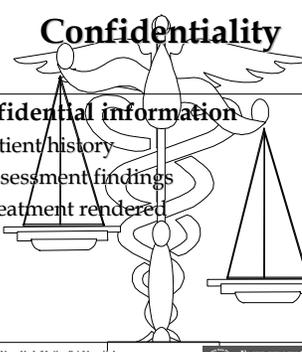
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## Confidentiality



- **Confidential information**
  - Patient/history
  - Assessment findings
  - Treatment rendered

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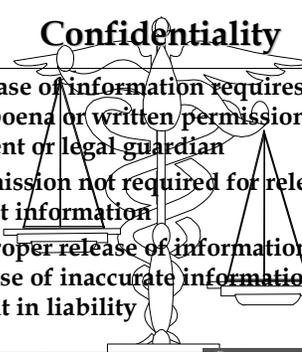
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## Confidentiality



- **Release of information requires valid subpoena or written permission from patient or legal guardian**
- **Permission not required for release of select information**
- **Improper release of information or release of inaccurate information can result in liability**

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## Medical Records



- **Unauthorized release of medical records**
  - Defamation
  - Right of Privacy
  - DOH Policy 96-01
- **Alteration**
  - Blackline and date changes
  - Concealing changes is legally indefensible

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## HIV Related Information

- **Public Health Law (Art. 27-F)**

- "No person who obtains confidential HIV related information in the course of providing any health . . . service . . . may disclose or be compelled to disclose such information except . . . when knowledge of the HIV related information is necessary to provide appropriate care or treatment to the protected individual or a child of the individual."

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## The RMA

- **Creates potential liability**

- Condition deteriorates
- Patient injures self or others
  - usually drug or alcohol related

- **More frequent in pre-hospital setting**

- only 0.1 percent of patients leave ERs AMA
- 5-40% of pre-hospital patients RMA

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## Refusal of Care or Transport

- **Patient must be conscious and able to make a reasonable decision**
- **Make multiple attempts to convince the patient to accept care**
- **Enlist help of others to convince patient**
- **Assure that patient is informed about the implications of the decision and potential for harm**

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## Refusal of Care or Transport

- Consult medical direction
- Request patient and a disinterested witness to sign a "release from liability" form
- Advise the patient that he or she may call again for help if needed
- Attempt to get family or friends to stay with patient
- Document situation and actions thoroughly on patient care report

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## Documenting the RMA

- Start with your patient
  - History & observations
  - How far do you go?
- Why was patient competent to refuse treatment
  - Incompetent patient cannot RMA

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## Documenting the RMA

1. What was patient told concerning the dangers of refusing treatment
  - Include advice to see personal physician or to seek alternative treatment/transport where applicable

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## Documenting the RMA

### 2. The indications that the patient understood the dangers of refusing treatment

- Beware of language barriers
- Speak in plain language not medicalese

### 3. Why did patient refuse treatment

- Use patients words where possible

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## Documenting the RMA

### 4. Any unusual circumstances

- Pressure from parents, spouses or significant others
- Document your observations not your conclusions

### 5. Witness signatures

- Bystander or sister service preferred

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## Reporting Requirements

### ● Child Abuse

- actual or suspected

### ● Certain Weapon Wounds

- All gunshots, powder burns etc.
- Any knife, ice pick etc. where death may result
- 5% 2d and 3d burns or laryngeal edema

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## Mandatory Reporting Requirements

- Domestic Violence
- Elder abuse
- Spouse abuse
- Sexual assault
- Animal bites
- Certain communicable diseases
- Content of report and to whom it must be made is set by law, regulation, or policy

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## DOH Mandated Reporting

- Patient dies, injured or otherwise harmed (by act or omission)
- An EMS vehicle crash in which a patient, crew or other person is killed or injured
- Any on duty crew member is killed or injured
- Patient care equipment fails while in use, causing patient harm
- Allegation that crew member responded to an incident or treated a patient while under the influence of alcohol or drugs

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## Use of Force

- Unruly or violent patients
- Use of restraints
- Involve law enforcement, if possible
- Use only force considered to be "reasonable" to prevent harm to the patient or others
- Must always be humane and never punitive in nature

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## Restraining A Patient

### ● Considerations

- Harm to self or others
  - As cause to restrain
  - If adequate personnel are lacking
- Least restrictive alternative
  - Talk first, force later
- Capacity to consent/refuse treatment
  - If pt with capacity refuses its not your job
    - Use police or social services



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## Restraining A Patient

### ● Documentation

- Description of cause for restraint
  - Violence is not only reason to restrain
- Consent or pt's incompetence to consent
- Failure of less restrictive methods
- Type of restraints and limbs restrained
- Injury (or lack thereof) from restraints
- Periodic check of distal circulation



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## Controlled Substances

(PHL Part 80)

### ● Security Issues

- Double locks
- On your person
  - not in a personal vehicle
- Shift change reports

### ● Documentation

### ● Record keeping



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## Resuscitation Issues

- As a rule, patients who are pulseless should be resuscitated, unless directed otherwise by a physician, or unless one or more of the following is present:
  - Obvious clinical signs of death
  - Resuscitation attempts that would place the rescuer at significant risk of personal injury
  - Presence of documentation in the form of:
    - "NO CPR" orders
    - "Do Not Resuscitate" (DNR) orders
    - "Do Not Attempt Resuscitation" (DNAR) orders
  - Another reliable reason to believe that CPR is not indicated, warranted, or in the patient's best interest

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## Advance Directives

- Status depends on state laws and local protocols
- Written patient statements of preference for future medical treatment
  - Do not resuscitate (DNR) orders
  - Living wills
  - Durable power of attorney for health care
- Authority granted in part by the Patient Self-determination Act

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## DNR (Art. 29-B)

- Non-Hospital DNR
  - State form or bracelet
  - Signed by MD and reviewed every 90 days
- Exceptions
  - Good faith belief that it was revoked
  - Physical confrontation appears likely
  - Medical control can direct that an order be disregarded if other significant and exceptional medical circumstances warrant disregarding the order

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## "Do not resuscitate" order.

**SAMPLE NYS HEALTH DEPARTMENT FORM FOR NONHOSPITAL USE ONLY**

State of New York, Department of Health  
Neurological Order Not to Resuscitate (NOR Order)

Person's Name \_\_\_\_\_  
Date of Birth \_\_\_\_/\_\_\_\_/\_\_\_\_

Do not resuscitate the person named above.

Physician's Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
License Number \_\_\_\_\_  
Date \_\_\_\_/\_\_\_\_/\_\_\_\_

It is the responsibility of the physician to determine, at least every 90 days, whether the order continues to be appropriate, and to indicate this by a note in the person's medical chart. The issuance of a new form is NOT required, and under the law this order should be considered valid unless it is known that it has been revoked. This order remains valid and must be followed, even if it has not been reviewed within the 90-day period.

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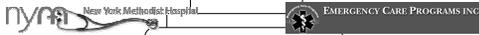
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## Health Care Proxy (Art. 29-C)

- Principal/agent relationship
- Principal's wishes or best interests
- Determination of incompetence by physician
- Consultation with physician about options



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## Living Will

- Evidence of patient's wishes
- Used to guide a court or a health care agent



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## Potential Organ Donation

- Identify the patient as a potential donor
- Establish communication with medical direction
- Provide emergency care that will help maintain viable organs
  - Airway management
  - Appropriate fluid resuscitation to maintain adequate perfusion
  - Eye care
- Careful documentation

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## Death in the Field

- In the field, determination of death usually is confirmed by the following signs:
  - No spontaneous electrical activity in the heart as confirmed by electrocardiogram (ECG) in several leads
  - No spontaneous respirations
  - Absent cough and gag reflex
  - No spontaneous movement
  - No response to painful stimuli
  - Fixed and dilated pupils
  - Dependent lividity
  - Rigor mortis

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## Death in the Field

- When an apparent death is encountered in the field, the paramedic should
  - Contact medical direction for guidance and follow established state and/or local protocols
  - Document any observations or unusual findings at the scene
  - Notify appropriate authorities per protocol (e.g., police, coroner)
  - Disturb the scene as little as possible
  - Provide emotional support to surviving family and friends at the scene

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## Crime Scene

- Protect self and other EMS personnel
- Care for the patient(s) as necessary
- Notify law enforcement if not already involved
- Observe and document any items moved or anything unusual at the scene
- Protect potential evidence

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## Protection for the Paramedic

- If the scene is not safe, and it cannot be made safe, retreat from the scene and do not enter the area until it is properly secured

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## Accident Scene

- Protect self and other EMS personnel
- Care for the patient(s) as necessary
- Summon additional personnel if needed

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## Vehicle & Traffic Laws

- Its a privilege not a right of way
- Due care
- Lights & sirens

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## Ethical Responsibilities

- Responding with respect to the physical and emotional needs of every patient
- Maintaining mastery of skills
- Participating in continuing education/ refresher training
- Critically reviewing performance and seeking improvement
- Reporting honestly

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## Ethical Responsibilities

- Respecting confidentiality
- Working cooperatively and with respect for other emergency workers and health care professionals
- Staying current with new concepts and modalities
- NAEMT Code of Ethics
  - Exemplifies ethical guidelines for paramedic

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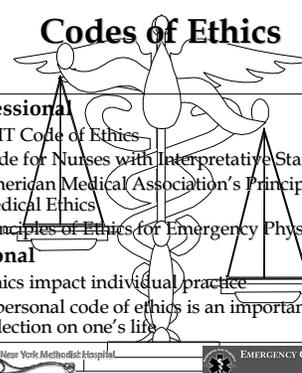
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## Codes of Ethics



- **Professional**
  - EMT Code of Ethics
  - Code for Nurses with Interpretative Statements
  - American Medical Association's Principles of Medical Ethics
  - Principles of Ethics for Emergency Physicians
- **Personal**
  - Ethics impact individual practice
  - A personal code of ethics is an important reflection on one's life





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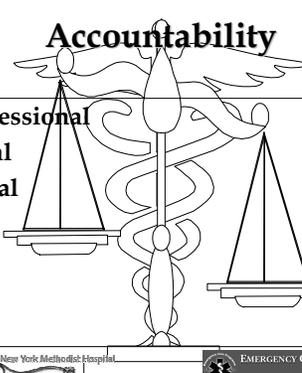
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## Accountability



- **Professional**
- **Legal**
- **Moral**





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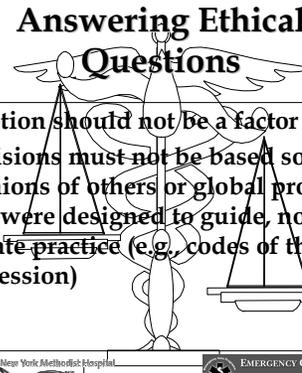
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## Answering Ethical Questions



- **Emotion should not be a factor**
- **Decisions must not be based solely on opinions of others or global protocols that were designed to guide, not dictate practice (e.g., codes of the profession)**





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## Answering Ethical Questions

● **Remember:**

- No one knows all the answers
- None of the tools or techniques available to use is sufficient in every case to arrive at the "right" decision

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## Rapid Approach to Emergency Medical Problems

● **"Rule of thumb" process**

- Test 1: Would you accept the action if you were in the patient's place?
- Test 2: Would you feel comfortable having this action performed in all relevantly similar circumstances?
- Test 3: Are you able to provide good reasons to justify and defend your actions to others?

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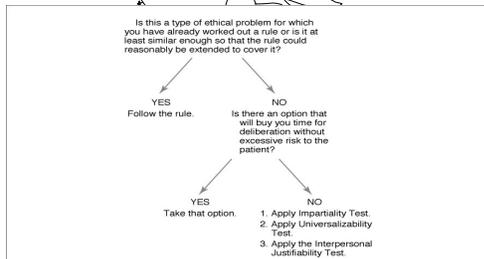
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## Rapid approach to emergency ethical problems.




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## Ethical Tests in Health Care

- "What is in the patient's best interests?"
- Determining what the patient wants
- Role of "good faith" in making ethical decisions

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## Global Concepts

- Provide patient benefit
- Avoid harm
- Recognize patient autonomy

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## Resolving Ethical Dilemmas

- Resolving ethical dilemmas when global concepts are in conflict
  - Within health care community
  - Within the public

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## Contemporary Ethical Issues

- Paramedics will face several ethical issues during the course of their careers
- Most will deal with:
  - Patient's right to self-determination (autonomy)
  - Paramedic's obligation to provide patient care (beneficence)

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## Allocation of Resources

- Factors affecting true equality in allocation of resources include:
  - Person's access to health insurance
    - May define which medical services are covered or excluded
  - Treatment decisions that are made when resources are inadequate to meet patient care needs (e.g., during a multiple casualty disaster)

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## Decisions Surrounding Resuscitation

- What the patient really wants
- When in doubt, resuscitate
- Resuscitation after an advance directive is found

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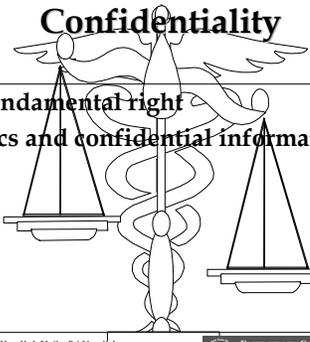
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## Confidentiality



- A fundamental right
- Ethics and confidential information

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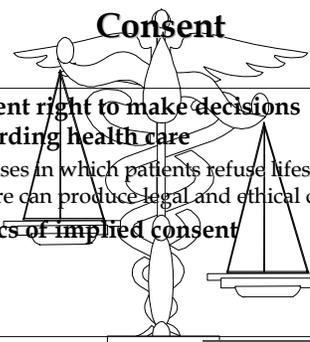
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## Consent



- Patient right to make decisions regarding health care
  - Cases in which patients refuse lifesaving care can produce legal and ethical conflicts
- Ethics of implied consent

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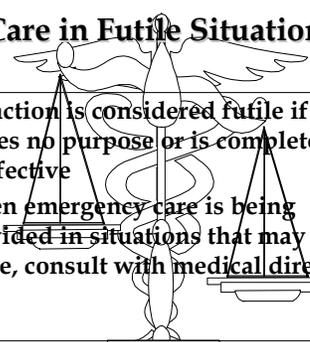
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## Care in Futile Situations



- An action is considered futile if it serves no purpose or is completely ineffective
- When emergency care is being provided in situations that may be futile, consult with medical direction

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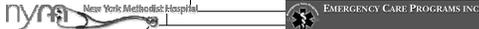
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## Care in Futile Situations

● It generally is accepted that CPR is futile and should not be attempted on patients with obvious signs of death:

- Decapitation
- Rigor mortis
- Tissue decomposition
- Extreme dependent lividity



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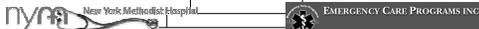
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## Obligation to Provide Care

- Good Samaritan
- Inability to pay
- Isn't in the "health plan"
- Patient "dumping"
- Economic triage



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## Advocacy and Accountability

● Paramedic serves as patient advocate while providing care



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## Role As Physician Extender

- The paramedic must generally follow the orders of the medical director or his or her designee

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*The End*

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