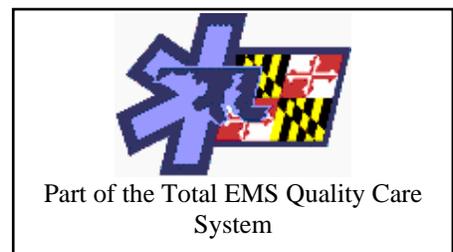


EMERGENCY MEDICAL SERVICES  
CONTINUOUS QUALITY IMPROVEMENT

A REVIEW OF LEGAL ISSUES AND RECOMMENDED  
PATIENT TRANSPORT PRACTICES



COMMITTED TO  
QUALITY

*Pursuing excellence in pre-hospital care*

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

### A BRIEF SUMMARY OF LEGAL ISSUES

- **Consent** or permission from the patient is required for any treatment or action by the pre-hospital care provider. Consent must be given to touch, examine, treat, and transport the patient. Unlawful touching of a patient or performing a procedure that is not wanted is considered battery.
- **Battery:** an offensive touching or use of force on a person without the person's consent.
- **Assault:** a threat or attempt to inflict offensive physical contact or bodily harm on a person (e.g. intimidating the patient with a syringe and needle prior to obtaining consent) that puts the person in immediate danger of or in apprehension of such harm.
- **Expressed consent:** The consent given by adults who are of legal age and mentally competent to make a rational decision in regard to their medical well-being. This is also known as informed consent.
- **Implied consent:** In the case of an unconscious patient, consent may be assumed. The law states that rational patients would consent to treatment if they were conscious. In this situation, the law allows the health care provider to provide treatment, at least until the patient becomes conscious and able to make rational decisions.
- **Consent for children and mentally incompetent adults:** Children and mentally incompetent adults are not legally allowed to provide consent or to refuse medical care and transportation. For these patients, the parents or guardians have the legal authority to give consent. If a life-threatening illness or injury exists, and the parents or guardians are not present, then the consent is considered implied.
- There also may be a case where you feel a child or mentally incompetent adult requires immediate medical attention but the parents or guardians will not allow transport (because religious beliefs for example). If the parent(s)/guardian(s) still refuse care and transportation after being politely informed of the need and possible risks if ignored, the police should be requested to issue an **Emergency Petition (EP)**. An **Emergency Petition** is simply protective custody. Law enforcement is essentially making the decision on the premise that the patient would want care if he or she was mentally competent and able to make that decision for themselves. The law enforcement official issuing the EP is now responsible for the patient and should make every effort to accompany them to the hospital, especially if they are restrained.
- We must take special precautions if the police are summoned to issue an **Emergency Petition**. Pre-hospital providers have minimal training in restraint techniques. The police need to accomplish this task, but they may ask for your assistance. An exception would be if you feel that the patient is an immediate threat to themselves or others. In this case, you may *consider* restraining the patient if there is; adequate manpower, you are properly trained in the technique, and there is little or no threat to you or your crew. Be sure to thoroughly document the events and reasons on the report.
- If a language barrier is present, and a reliable interpreter is not available, the best thing to do is transport the patient to the hospital if he/she does not resist.
- Always take a caring, conservative approach and err on the side of the patient. Anticipate the patient's needs. Most litigation in the pre-hospital setting comes from not transporting the patient to the hospital. **This should be a clue!**

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

Transport decisions that we frequently encounter are listed in this document. They include perceptions; theirs (the customer's) and ours (the caregivers). Somewhere in the balance of these perceptions and the customer's expectations is the *moment of truth*. Your performance and your ability to make the right decisions measure this *moment of truth*. You can not go wrong if you always (not sometimes) treat the customer the way you would want to be treated. You heard it here first. . .

You can not go wrong if you always treat the customer the way you would want to be treated.

### RELEASE FROM RESPONSIBILITY WHEN PATIENT REFUSES SERVICES

Make sure that you understand the various scenarios contained in this document and know how to act and write reports accordingly. Every customer, who is ill or injured, no matter how minor, should be offered transport. It does not matter how experienced you are, or how vast your medical knowledge is, offer to take the customer to the hospital!

**You are better off taking the customer to the hospital rather than face charges of negligence.**

**The standard "release" used in conjunction with FIRES is a patient refusal not a care-provider refusal.** Just a reminder, most litigation in the pre-hospital setting comes from not transporting the patient to the hospital. You are better off taking the customer to the hospital rather

than face charges of negligence. Read each scenario herein carefully and think of similar incidents you may have encountered. Did you make the correct decision?

#### When obtaining a release on the standard form:

1. Be sure to document using similar language that is specified for the given incident, and;
2. Make sure the customer knows and understands the release, and;
3. Obtain two witnesses, preferably other than fire/rescue personnel, and;
4. Place the incident number, date, location, and unit number on the form, and;
5. Place the form in a predetermined and secure file. The local fire and rescue department designates the location of this file.

The scenarios are in template form to simplify teaching. It is recommended that these *templates* be transferred to transparencies or slides for instruction.

# LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

## TYPES OF SITUATIONS WE ENCOUNTER

<p><b>1.</b> Nature of illness or injury dictates medical treatment and the patient consents to go to the hospital (implied, informed, or expressed consent)</p> <p>The provider feels that treatment and transport is warranted. Appropriate treatment and transport provided.</p>	<p><b>2.</b> Nature of illness or injury dictates medical treatment but the patient refuses treatment and transport.</p> <p>The provider feels that there is a need for treatment and transport.</p>	<p><b>3.</b> Patient receives major treatment (e.g. ALS service for a diabetic) and then does not want to be transported.</p> <p>The provider feels that patient should be transported. Obligated by medical protocols.</p>
<p><b>4.</b> The patient feels that their injury or illness warrants appropriate treatment and transport to a hospital.</p> <p>Care provider does not feel that the patient needs medical attention or emergency services. Care provider does not want to transport.</p>	<p><b>5.</b> The patient does not require medical treatment or transportation and does not want to go to the hospital.</p> <p>The care provider agrees with the patient and does not feel that there is a need for treatment and transport.</p>	<p><b>6.</b> Patient accepts minor treatment but does want to go to the hospital.</p> <p>The care provider agrees that injury or illness is minor and immediate transport is not necessary.</p>
<p><b>7.</b> The patient refuses certain portions of care but allows other care.</p> <p>The provider wants to provide all necessary care.</p>		

# LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

## TYPES OF SITUATIONS THAT WE ENCOUNTER THE SHADED AREAS REQUIRE SPECIAL ATTENTION.

<p><b>1.</b> Nature of illness or injury dictates medical treatment and the patient consents to go to the hospital (implied, informed, or expressed consent)</p> <p>The provider feels that treatment and transport is warranted. Appropriate treatment and transport provided.</p>	<p><b>2.</b> Nature of illness or injury dictates medical treatment but the patient refuses treatment and transport.</p> <p>The provider feels that there is a need for treatment and transport.</p>	<p><b>3.</b> Patient receives major treatment (e.g. ALS service for a diabetic) and then does not want to be transported.</p> <p>The provider feels that patient should be transported. Obligated by medical protocols.</p>
<p><b>4.</b> The patient feels that their injury or illness warrants appropriate treatment and transport to a hospital.</p> <p>Care provider does not feel that the patient needs medical attention or emergency services. Care provider does not want to transport.</p>	<p><b>5.</b> The patient does not require medical treatment or transportation and does not want to go to the hospital.</p> <p>The care provider agrees with the patient and does not feel that there is a need for treatment and transport.</p>	<p><b>6.</b> Patient accepts minor treatment but does want to go to the hospital.</p> <p>The care provider agrees that injury or illness is minor and immediate transport is not necessary.</p>
<p><b>7.</b> The patient refuses certain portions of care but allows other care.</p> <p>The provider wants to provide all necessary care.</p>	<p><b>RECOMMENDED PRACTICES ARE FOUND IN THIS BLOCK FOR EACH SITUATION. SINCE EVERY INCIDENT IS DIFFERENT, IT IS DIFFICULT TO DICTATE A STANDARD PROCEDURE FOR EACH. THIS AREA INCLUDES LEGAL CONSIDERATIONS WHEN DEALING WITH SIMILAR SITUATIONS. Each situation, with recommended practices, is listed separately.</b></p>	

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

1. Nature of illness or injury dictates medical treatment and the patient consents to go to the hospital (implied, informed, or expressed consent)

The provider feels that treatment and transport is warranted. Appropriate treatment and transport provided.

- For a mentally competent, conscious adult, explain procedures, continue to obtain consent and treat as needed.
- Children and mentally incapable adults require consent from parent or guardian unless a life-threatening illness or injury exists then the consent is implied.
- Transport the patient to the closest appropriate hospital or referral center.

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

	<p style="text-align: center;"><b>2. Nature of illness or injury dictates medical treatment but the patient refuses treatment and transport.</b></p> <p style="text-align: center;">The provider feels that there is a need for treatment and transport.</p>	
	<ul style="list-style-type: none"> <li>• Attempt to persuade the patient to go to hospital. Use family and friends to support you and the need for transport. Explain the risks if the patient does not obtain medical treatment. Contact medical control when needed to cover all the bases.</li> <li>• Assuming that the patient is a mentally competent adult, <u>explain and repeat</u> this information several times. If the patient still refuses treatment/transport, document the following on the run sheet and have the patient sign:             <ol style="list-style-type: none"> <li>1. The patient is an alert and oriented adult. <b>*Note* as pre-hospital providers, we can not legally determine if a patient is mentally competent.</b></li> <li>2. You have been advised that you have an illness/injury that requires medical attention, and;</li> <li>3. Further harm could result without medical treatment and/or transportation. You have been advised of the risks of not seeking appropriate medical attention such as _____, and;</li> <li>4. Transport by means other than ambulance could place yourself or others at risk, and;</li> <li>5. You are refusing (treatment/transport to a medical facility) by this ambulance.</li> </ol> <p>This must be read to the patient, and they must understand it. The patient must then sign the release. A witness other than fire/rescue should also sign. If the patient does not want to sign the form after being informed of the need and risks associated with their decision, then have a witness, such as a police officer, sign the form and document "refused to sign."</p> </li> </ul>	

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

		<p style="text-align: center;"><b>3. Patient receives major treatment (e.g. ALS service for a diabetic) and then does not want to be transported.</b></p> <p style="text-align: center;">The provider feels that patient should be transported. Obligated by medical protocols.</p>
	<p>This situation normally arises if the patient regains consciousness after a seizure or a hypoglycemic patient receives an IV and Dextrose.</p> <ul style="list-style-type: none"> <li>• Attempt to persuade the patient to go to hospital. Use family and friends to support the need for transport. Explain the risks if the patient does not obtain medical treatment. Contact medical control and consider having the patient talk to physician on-line.</li> <li>• Assuming that the patient is a mentally competent adult, <u>explain and repeat</u> this information several times. If the patient still refuses treatment/transport, document the following on the run sheet and have the patient sign:             <ol style="list-style-type: none"> <li>1. The patient is an alert and oriented adult. <b>*Note* As pre-hospital providers, we can not legally determine if a patient is mentally competent.</b></li> <li>2. You have been advised that you have an illness/injury that requires medical attention, and;</li> <li>3. Further harm could result without medical treatment and/or transportation. You have been advised of the risks of not seeking appropriate medical attention such as _____, and;</li> <li>4. Transport by means other than ambulance could place yourself or others at risk, and;</li> <li>5. You are refusing treatment and/or /transport to a medical facility.</li> </ol> </li> </ul> <p>This must be read to the patient, and they must understand it. The patient must then sign the release. A witness other than fire/rescue should also sign. If the patient does not want to sign the form after being informed of the need and risks associated with their decision, then have a witness, such as a police officer, sign the form and document "refused to sign."</p>	

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

--	--	--

<p><b>4. The patient feels that their injury or illness warrants appropriate treatment and transport to a hospital.</b></p> <p>Care provider does not feel that the patient needs medical attention or emergency services. Care provider does not want to transport.</p>		
--	--	--

	<p>Some customers feel that they have a bona fide illness or injury that requires medical evaluation and care. The pre-hospital provider may feel that the incident is not a true emergency and transporting by ambulance is not indicated or even necessary. We are not in the business to question the customer's beliefs and must do everything possible to satisfy their needs. Remember that we are not physicians. Since every incident is different, we must use good judgement through past experiences to make an educated decision. <b>Remember, however, that most litigation that surfaces in the pre-hospital care field is the result from not transporting the patient to the hospital. Contact medical control for a second opinion and obtain medical direction.</b></p> <ul style="list-style-type: none"> <li>• If you still feel that the patient does not require your care or transportation, you must thoroughly document your decision with all reinforcing <u>proof</u>. You should actually document more when you do not transport.</li> <li>• Before you decide to refuse transport, try to think of how you are going to explain your decision to a jury.</li> <li>• If you still feel that your decision is correct, present your decision to the patient in a nice, calm, and reassuring manner. Try to help the patient find an alternative way to the hospital if they still want to go.</li> <li>• Do not argue with the patient. If the patient is insistent on you taking them, then the best advice is to transport rather than begin a conflict. That is a true lose/lose situation!</li> </ul> <p>If the customer becomes a "system abuser" you must document each call as a malicious false alarm (not a good intent, or service call, etc.). Keep documentation on the customer and follow the appropriate procedure for handling system abusers.</p>
--	--

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

	<p><b>5.</b> The patient does not require medical treatment or transportation and does not want to go to the hospital.</p> <p>The care provider agrees with the patient and does not feel that there is a need for treatment and transport.</p>	
	<p>This situation often arises when a third party calls 9-1-1, thinking that someone is in need of our services. These “good intent” calls often do not require any service. If both parties (not including the 9-1-1 caller) truly feel the incident does not require medical treatment and transportation, then thoroughly document the incident and list any witnesses. If the call originated from a third party (and not the patient) then a signed release is not normally necessary. When in doubt however, document the event on the narrative or refusal form including language such as:</p> <ol style="list-style-type: none"> <li>1. The customer did not initiate the call, and;</li> <li>2. Does not want medical attention or transportation, and;</li> <li>3. The care provider does not see an immediate need for medical treatment and transportation, and;</li> <li>4. The customer fully understands this information.</li> <li>5. The care provider reads this information verbatim and has the customer sign the release.</li> </ol>	

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

		<p><b>6. Patient accepts minor treatment but does want to go to the hospital.</b></p> <p>The care provider agrees that injury or illness is minor and immediate transport is not necessary.</p>
	<p>This may arise when the customer has a minor injury or illness, such as a very small laceration that can be covered with an adhesive strip. It does not appear immediately life threatening and the patient can follow up with his or her physician or find an alternate means of transportation to the hospital.</p> <p>Be very careful! Minor illnesses and injuries can lead to major problems if they are not addressed in a timely manner. Even though the customer says that he/she will "get it looked at" does not mean that will occur. Next thing you know, your customer has an infection, tetanus, or some other serious complication. <b>Obtain medical direction to assist you and document the case.</b></p> <p>It must be reemphasized that <b>transportation to a hospital should be offered to all customers, even if an illness or injury appears minor.</b> You should use some language similar to the documentation in situation #3 when writing your narrative or release. Make sure the customer reads and fully understands this information. This information must be present before the release is signed. Make sure that the customer signs the release.</p>	

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES


7. The patient refuses certain portions of care but allows other care.

The provider wants to provide all necessary care.

There may be situations when a patient accepts some treatment but refuses other interventions. The patient may have any number of reasons for accepting limited treatment, but whatever the reason, we are not to force treatment on a patient or have the *all or none attitude*. **It must be reemphasized that we must obtain consent to touch, examine, and treat every conscious, mentally competent adult. If they do not want certain interventions, we must simply explain the risks if they refuse, thoroughly document the incident, and explain the situation to the receiving hospital.** Actually, we should be informing the patient of risks when we are going to perform them as well. For example, explain the risk of an IV (possible infection, etc.) **Obtain medical direction and follow physician recommendations to assist you.**

## LEGAL ISSUES AND RECOMMENDED PATIENT TRANSPORT PRACTICES

Keep this document to use as a handy reference.  
For training, have class share their experiences with each situation or create sample scenarios.

Did the team handle the situation correctly?

© Copyright 1997 Montgomery County, Maryland  
Fire and Rescue Service

Prepared by District Chief Barry C. Reid

Questions, suggestions, or comments should be directed to the EMS Section, Office of Quality Assurance at 301-279-1311.

### References

Brady Emergency Care 7<sup>th</sup> Edition  
EMS and the Law, 1983, Brady  
Merriam Webster's Collegiate Dictionary, 10<sup>th</sup> Edition

