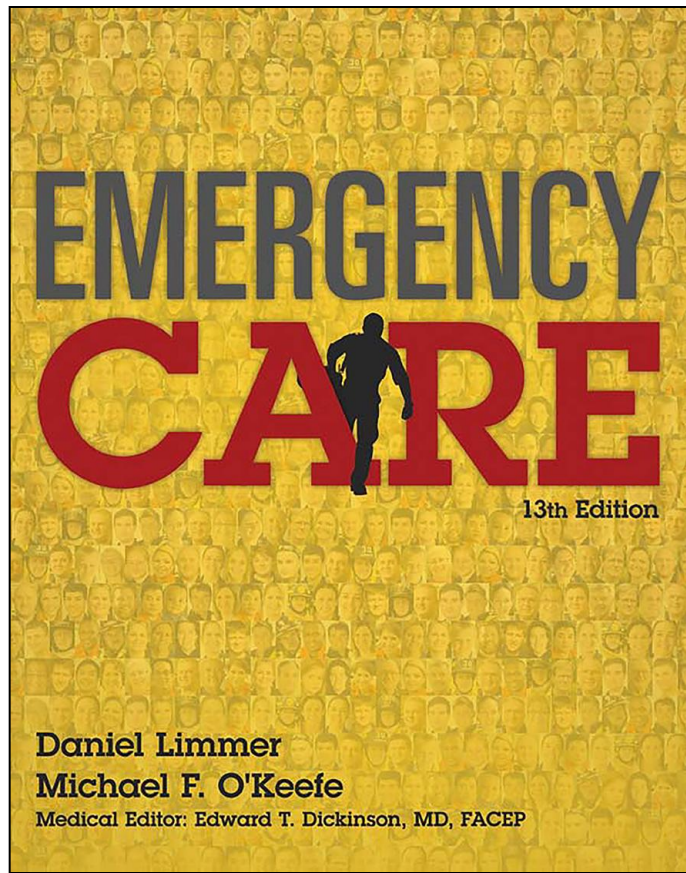


# Emergency Care

THIRTEENTH EDITION



## CHAPTER 4

Medical/Legal and  
Ethical Issues

MDHHS EMS  
Medical/Legal Curriculum

# Topics

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- EMTALA/COBRA
- Scope of Practice
- Duty to Act
- Law of Consent and Refusal
- Protocol Deviation
- Other Legal Issues

# EMTALA/COBRA

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- Emergency Medical Treatment and Active Labor Act-Federal regulations that ensure the public's access to emergency healthcare, regardless of ability to pay.
- Consolidated Omnibus Budget Reconciliation Act of 1985-prevents patient dumping.

# Scope of Practice

# Scope of Practice

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- Actions and care that are legally allowed to be performed by the level of licensure in the State of Michigan
- A licensed EMS provider shall not provide life support at a level that is inconsistent with his/her education, licensure, and approved Medical Control Authority Protocols (333.20956)

# Standard of Care

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- Care that is expected to be provided by a licensed EMT with similar training when managing a patient in a similar situation
- Meeting standard of care reduces risk of legal action

# Duty to Act

# Duty to Act

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- The legal obligation to provide a service
- Follow local laws and protocols.

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# Protocol Deviation

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- There are situations in which deviation from written protocols, policies and procedures may be needed in the interest of patient care.
- In those instances, personnel must request permission for the deviation from on-line medical direction whenever possible.

# Protocol Deviation

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- Documentation with explanation of deviation must be on patient care record (PCR) and reviewed by the medical control quality improvement program.

# Ethics

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- Code of morals
- A Code of Ethics for EMTs, issued by the National Association of EMTs in 1978 states that if you place a patient's welfare above all else when providing medical care, you will rarely commit an unethical act.

# Morals

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- Concepts of right vs. wrong.

# Abandonment

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- To leave behind; Stopping treatment of a patient without transferring the care to another professional with an equal or higher level of training and licensure.
- Failure to do so may constitute abandonment.

# Assault

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- The threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact.

# Battery

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- Battery is a harmful or offensive touching of another.

# False Imprisonment

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- A restraint of a person without justification or consent.
- False imprisonment occurs when a competent adult refuses treatment and/or transport, but the EMS provider continues.



# Law of Consent

# Law of Consent

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- Permission from a patient to assess, treat, and transport and/or refuse care

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# Expressed Consent

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- Expressed consent is when a patient agrees to treatment and transport.
- Must be obtained from every conscious, mentally competent adult before treatment is ever started.

# Informed Consent

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- Permission for care given after the patient has been informed of the care to be provided.
- Patient is made aware of any and all associated risks and consequences of such treatment or patient denial of EMS treatment.

# Implied Consent

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- Any patient with an urgent/life-threatening illness or injury who is incapable of competently objecting to treatment or transportation shall be transported by EMS for further evaluation and treatment. (333.20969)
- Implied consent is also used in the absence of a parent or guardian to those under the age of 18.

# Transport Destination

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- If a patient does not have a threat to life or limb, the patient will be taken to the closest appropriate facility or the facility of his/her choice.
- In matters of imminent threat to life or limb, transport to the closest appropriate facility.

# Transport Destination

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- Closest appropriate facility may be a facility capable of providing definitive care or, if definitive care is not readily available, resuscitative care for the patient's condition in consultation with on-line medical control or as defined by protocol.

# Objection to Treatment or Transport

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- 333.20969: This does not authorize medical treatment for or transport to a hospital of an individual who objects to the treatment or transport.



# Objection Cont.

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- EMS personnel, exercising professional judgment, determines that the individual's condition makes them incapable of competently objecting to treatment or transport.
- EMS may then provide treatment or transport despite the individual's objection, unless the objection is expressly based on the individual's religious beliefs.

# Competent Individual

- Patient is awake, oriented, and is capable of understanding the circumstances of the current situation.
- Does not appear to be under the influence of alcohol, drugs or other mind-altering substances or circumstances that may interfere with mental functioning.
- The patient is 18 years of age or older, or emancipated, and the patient is not a danger to self or others.

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# Emancipated Minor

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- 722.1-722.6: May occur by court order via a petition filed by a minor with the family division of circuit court.

# Emancipated Minor Cont.

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- In Michigan, emancipation also occurs by operation of law under any of the following circumstances:
- When a minor is validly married
- When a person reaches 18 years of age
- When a minor is in active duty with the armed forces of the U.S.

# Negligence

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- 333.16185: "Gross negligence" means conduct so reckless that it demonstrates a substantial lack of concern for whether an injury results.

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# Negligence

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- *Res ipsa loquitur* “the thing speaks for itself.”
- A rebuttable presumption or inference that the defendant was negligent.

# Negligence Cont.

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- Four elements needed to prove negligence:
- Duty to Act
- Breach of that duty
- Damages occurred (real and/or demonstrable)
- Proximate cause (injuries suffered by the patient were the direct result of the EMTs negligence).

# Causation/Proximate Cause

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- An act from which an injury results as a natural, direct, uninterrupted consequence and without which the injury would not have occurred.



# Think About It

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- What are the risks of beginning treatment and/or transport without getting consent from the patient?
- What if the patient refuses to sign the refusal of care form?

# When a Patient Refuses Care

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- Patient may refuse care or transport under the following circumstances:
  - Patient must be legally able to consent.
  - Patient must be awake and oriented.
  - Patient must be fully informed.
  - Patient will be asked to sign a "release" form.
- Despite all precautions, EMT may still be held liable.

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# When a Patient Refuses Care

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- Take all possible actions to persuade the patient to accept care and transport.
  - Spend time speaking with the patient.
  - Listen carefully to try to determine why the patient is refusing care.
  - Inform the patient of the consequences of not going to the hospital.

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# When a Patient Refuses Care

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- Consult medical direction.
- Ask the patient if it is all right if you call a family member—or advise the patient that you would like to call a family member.
- Call law enforcement personnel if necessary.

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# When a Patient Refuses Care

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- Subjecting the patient to unwanted care and transport has actually been viewed in court as assault or battery.
- Have witnesses to refusal.
- Inform patient that if they change their mind, they can call back.

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# When a Patient Refuses Care

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- If possible, have friend or relative remain with patient.
- Document attempts thoroughly.

# Living Wills

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- A living will is a written document in which you inform doctors, family members and others what type of medical care you wish to receive should you become terminally ill or permanently unconscious

# Advanced Directives

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- An advance directive is a written document in which you specify what type of medical care you want in the future, or who you want to make decisions for you, should you lose the ability to make decisions for yourself.



# Do Not Resuscitate Orders

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- Under state law, a do-not-resuscitate order is valid outside of a health care facility.
- Public Act 368 of 1978, as amended, and Acts 192 and 193 of 1996 cover Michigan's DNR policies.

# Do Not Resuscitate Orders

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- A document of executive pursuant to Act 193, directing that in the event a patient suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, nursing home, or mental health facility owned or operation by the Department of Community Health, no resuscitation will be initiated.

# Do Not Resuscitate Orders

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- EMS providers shall not attempt resuscitation of any individual who meets ALL of the following criteria:

# Do Not Resuscitate Orders

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- 18 years of age or older
- Patient has no vital signs. (No evidence of pulse or respiration.)

# Do Not Resuscitate Orders

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- Patient is wearing a Do-Not-Resuscitate identification bracelet which is clearly imprinted with the words “Do-Not Resuscitate Order”.
- Name and address of declarant, and the name and telephone number of declarant’s attending physician.

# Do Not Resuscitate Orders

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- OR the EMS provider is provided with a do-not-resuscitate order from the patient.
- Such an order form shall be in substantially the form outlined in Annex 1 or 2 and shall be dated and signed by all parties.

# Do Not Resuscitate Orders

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- A DNR will not be followed if the declarant or patient advocate revokes the order.
- An order may be revoked at any time and in any manner by which the declarant or patient advocate is able to communicate this intent.

# Do Not Resuscitate Orders

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- Resuscitation effort must be initiated and EMS personnel shall contact On-Line Medical Control to advise them of the circumstances.
- Link to PA 193 of 1996 is here:  
[http://www.legislature.mi.gov/\(S\(dgza2okhdjnf0tev22zrdejz\)\)/documents/mcl/pdf/mcl-Act-193-of-1996.pdf](http://www.legislature.mi.gov/(S(dgza2okhdjnf0tev22zrdejz))/documents/mcl/pdf/mcl-Act-193-of-1996.pdf)



# Patient Advocate

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- Patient Advocate Designations are legal documents that allow individuals (called “Patients”) to appoint another person or persons (a “Patient Advocate”) to exercise powers over their care, custody and medical treatment decisions during any period in which they are unable to participate in making those decisions.

# Patient Advocate

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- A Patient Advocate Designation is sometimes identified as a Medical Power of Attorney or a Health Care Proxy. (333.20201)

# Other Legal Issues

# Good Samaritan Laws

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- Protection of a person from liability for acts performed in good faith, unless those acts constitute gross negligence. See immunity from liability.  
(333.20965)

# Think About It

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- You arrive on the scene of a patient in cardiac arrest. The family says she has a DNR, but don't know where it is. How should you handle this?
- You are off duty and arrive on the scene of a vehicle crash. Police and EMS have not yet arrived. Are you legally obligated to stop and render aid?

# Patient Confidentiality/HIPAA (Health Insurance Portability and Accountability Act)

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- Every patient has a right to privacy.
- State and Federal laws protect the privacy of patient health care information and gives the patient control over how the information is distributed and used.

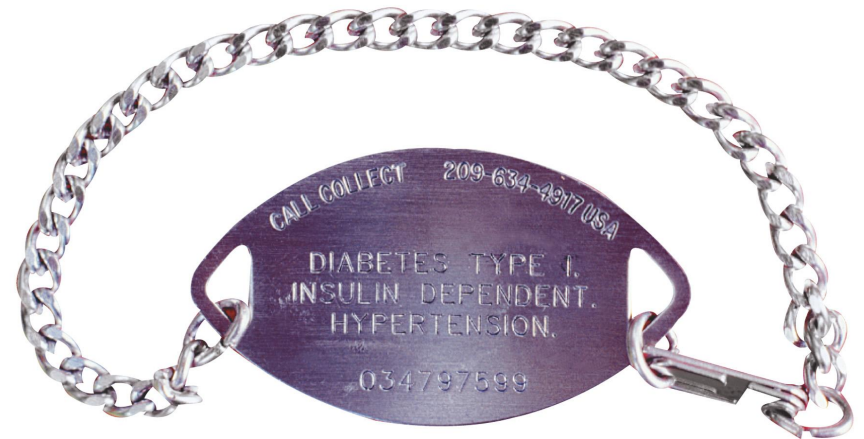
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# Patient Confidentiality/HIPAA (Health Insurance Portability and Accountability Act)

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- Discussion of patient's medical condition is limited to only those individuals with whom it is medically necessary to do so.

# Medical Identification Devices



Example of a medical identification device (front and back).



# Special Situations

- Medical identification devices
  - For particular medical conditions
  - Necklace, bracelet, or card
  - Conditions include:
    - Heart conditions
    - Allergies
    - Diabetes
    - Epilepsy

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# Special Situations

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- Organ donors:
- 333.10112 Search for document of gift or other information; persons required to make search; document to be sent to hospital for documentation; failure to discharge duties; administrative sanctions.

# Revised Uniform Anatomical Gift Law

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- Sec. 10112.(1) As soon as practical after any necessary medical intervention or treatment, each of the following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

# Revised Uniform Anatomical Gift Law

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- A law enforcement officer, firefighter, paramedic, other emergency rescuer finding the individual, or medical examiner or his or her designee.
- If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

# Revised Uniform Anatomical Gift Law

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- If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (1)(a) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall immediately send the document of gift or refusal to the hospital for documentation.

# Revised Uniform Anatomical Gift Law

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- A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section, but may be subject to administrative sanctions.

# Safe Delivery of Newborns

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- On June 26, 2000, Michigan enacted the Safe Delivery of Newborns law with an effective date of January 1, 2001.
- While targeting desperate parents, the law encourages the placement of their newborns in a safe environment as opposed to an unsafe environment.

# Safe Delivery of Newborns

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- This law allows for the safe, legal, and anonymous surrender of an infant, from birth to 72 hours of age, to an emergency service provider (ESP).
- An emergency service provider is a uniformed or otherwise identified employee or contractor of a fire department, hospital or police station that is inside the building and on duty..



# Safe Delivery of Newborns

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- Emergency service provider also includes a paramedic or emergency medical technician when either of those individuals is responding to a 9-1-1 call.
- The parent has the choice to leave the infant without giving any identifying information to the ESP.

# Safe Delivery of Newborns

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- The ESP, upon accepting the infant will provide whatever care may be necessary.
- Following an examination at a hospital, temporary protective custody will be given to a private adoption agency for placement with an approved adoptive family, if the child is unharmed.

# Safe Delivery of Newborns

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- If the examination reveals signs of abuse and/or neglect, hospital personnel will initiate a referral to Children's Protective Services for an investigation.

# Crime Scenes

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- Location where crime was committed or anywhere evidence may be found
- Once police have made scene safe, EMT's priority is patient care.
- Know what evidence is.
- Take steps to preserve evidence.

# Crime Scenes

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- Examples of evidence
  - Condition of the scene
  - The patient
  - Fingerprints and footprints
  - Microscopic evidence

# Crime Scenes

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- Preservation of evidence
  - Remember what you touch
  - Minimize your impact on the scene
  - Work with the police

# Special Reporting Requirements

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- Child, elderly, or domestic abuse
- Violence (gunshot wounds or stabbings)
- Sexual assault
- Situations where restraint may be necessary

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# Special Reporting Requirements

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- Intoxicated person with injuries
- Mentally incompetent people with injuries
- Check local laws and protocols.



# Mandated Reporter and Child Protection Law

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- 722.623; Public Act 238 of 1975.
- An individual is required to report child abuse or neglect.

# Mandated Reporter and Child Protection Law

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- Report can be done by telephone, online reporting system or written report contents; transmitting report to centralized intake..

# Mandated Reporter and Child Protection Law

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- Copies sent to prosecuting attorney and probate court; conditions requiring transmission of report to law enforcement agency; pregnancy or presence of sexually transmitted infection in child less than 12 years of age; exposure to or contact with methamphetamine production

# Chapter Review

# Chapter Review

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- Medical, legal, and ethical issues are a part of every EMS call.

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# Chapter Review

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- Consent may be expressed or implied.
- If a patient who is awake and oriented and has the capacity to fully understand his situation refuses care or transport, you should make every effort to persuade him, but you cannot force him to accept care or go to the hospital.

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# Chapter Review

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- Negligence is failing to act properly when you have a duty to act.
- As an EMT, you have a duty to act whenever you are dispatched on a call.
- You may have a legal or moral duty to act even when off duty or outside your jurisdiction.

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# Chapter Review

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- Abandonment is leaving a patient after you have initiated care and before you have transferred the patient to a person with equal or higher training.

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# Chapter Review

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- Confidentiality is the obligation not to reveal personal information you obtain about a patient except to other health care professionals involved in the patient's care, under court order, or when the patient signs a release.

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# Chapter Review

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- As an EMT, you may be sued or held legally liable on any of these issues.
- However, EMTs are rarely held liable when they have acted within their scope of practice and according to the standard of care and have carefully documented the details of the call.

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# Chapter Review

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- At a crime scene, care of the patient takes precedence over preservation of evidence; however, you should make every effort not to disturb the scene unnecessarily and to report your actions and observations to the police.

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# Remember

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- EMTs must use good judgment and decision-making skills when dealing with patient consent and refusal.
- Avoiding negligence implies using good judgment; critical thinking is an essential component for avoiding liability.

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# Remember

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- EMTs hold responsibility for patients' protected health information; exercising care when dealing with this information is a legal and ethical obligation.

# Questions to Consider

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- Define scope of practice, negligence, duty to act, abandonment, and confidentiality.
- What steps must you take when a patient refuses care or transportation?
- What types of evidence may be found at a crime scene? How should you act to preserve evidence?

# Critical Thinking

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- You respond to a motor vehicle crash and find a seriously injured patient. He has no pulse and you are about to begin CPR when someone says, "Don't do that! He's got cancer and a DNR!" No one has the DNR at the scene. Do you start CPR and transport the patient?