



### Objectives

Upon completion of the class and any supplemental materials, each participant will independently do the following with a degree of accuracy that meets or exceeds the standards established for their scope of practice to:

- investigate situation to determine if a MOI is present to deem a person a pt.
- illustrate competence.
- implement a plan for obtaining a pt's PMH to help determine competence.
- examine rationale to identifying individuals who are competent to make a legal decision regarding their own health care determination.
- analyze ↑ risk char. of pts who need OLMC in accordance w/ policy.
- compare those able to refuse care with & w/o OLMC.
- identify pertinent + & - info. to include in an (ePCR).
- sequence a plan for consistent verbal & written documentation of information as required per policy that allows a pt to refuse care &/or transport.
- recognize importance of utilizing drop down boxes in an ePCR for later ability to extract that data.
- differentiate information that is able to be placed in drop down boxes from that information which is best documented in narrative portion of the ePCR.

### Discussion Points

- Medical Legal Background
  - As it pertains to the aspect of refusing care and/or transport
- Refusal of Care
- Documentation of Refusals

### One Goal

Do the right thing for the pt in a way that is kind, compassionate and with their full understanding of their current medical condition in accordance with the law.

### Medical Legal Concepts

## What makes a person a patient?

Person with any sort of complaint, possible illness, or mechanism of trauma that could **suggest** injury.



Policy R-6  
p.1

## Patients have rights...

Every decisional adult has the right to the possession & control of his own person, free from all restraint or interference of others unless care is indicated by clear & unquestionable authority of law.

**an adult w/ decisional capacity must consent before medical tx is rendered**

## “Have it your way...”

A decisional adult has the right, arising out of the constitutional right of privacy, to **refuse treatment**, even if doing so will result in serious consequences or death.



Just like Burger King used to do it!



Would you buy a car solely based on its color?

## Informed Consent / Refusal

A pt should not have to make decisions about their care based on limited information

Pt Rights & Disclosure of risk

An effective consent or refusal for a high-risk procedure should be **“informed”**

- EMS personnel should clearly explain the proposed treatments to the pt & when appropriate, the family
- The explanation shall include a **disclosure of risk**

## Information improves pt outcome

Do you believe that is true?

What information is given to the pt when EMS wants to perform...

- a BP?
- a 12 – lead ECG?
- ASA administration?
- cardioversion?
- a trauma assessment?





## What is considered the standard of care for a pt with chest pain?

- Assessment including the A, B, C's
- Placing on the cardiac monitor
- Vascular access
- Providing comfort (O<sub>2</sub>, pain management, anti-emetics)
- Psychological first aid



## What is the standard of care for a refusal?

- An attempt to assess a person who appears to be in need of emergency care and/or transportation
- Identification of age
- Determining the decisional capacity
- Determining competence



## True or False False

Decisional capacity and competency are interchangeable terms.

## Competence vs. Decisional Capacity



What is the difference?

## True or False

Decisional capacity is a constant state of being.

**FALSE**

### Decisional Capacity

A non-permanent designation that can be changed or influenced by medications, pain, time of day, mood and other factors

Requires assessment of the A,B,C's

Example?

### Competence

A permanent decision

A legal designation through court proceedings

A guardian or trustee will have legal authority

Example?






**The Legal Guardian**  
by David Givot

**Negligence explained for the EMS Professional**

Understand the 4 components of a negligent act and how to protect yourself from a negligence claim

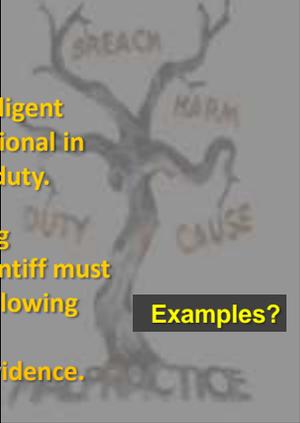


**Malpractice**

Usually refers to negligent conduct by a professional in the performance of duty.

To win a case alleging malpractice, the plaintiff must prove each of the following four elements by a preponderance of evidence.

**Examples?**



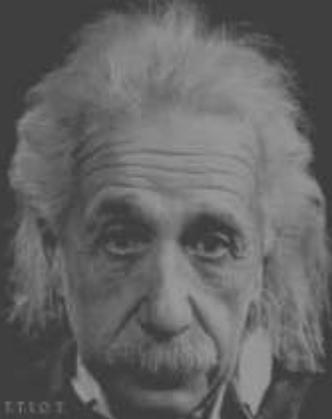
**Good Questions to Ask**



- Was a complete assessment done?
- Was the physical exam, history and HPI documented well?
- Ultimately, a family member may decide to sue the EMS crew and its agency for damages because the pt was not taken to the hospital and something negative happened afterward

**What criteria must be met for negligence to be proven?**

- There is a duty to act
- There is a breach of that duty
- The breach causes an affect
- Damage has been inflicted to another

« Those who have the privilege to know have the duty to act. »

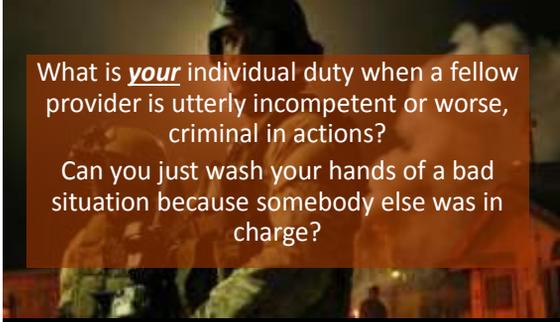
- Albert Einstein



**There is a duty to act**

“not to behave in such a way as to endanger the well-being of others.”

- Each of us owes a general duty of care to pts — the duty not to intentionally harm & to try not to do anything too stupid!
- Bottom line...you showed up to work.  
...and cashed the paycheck!

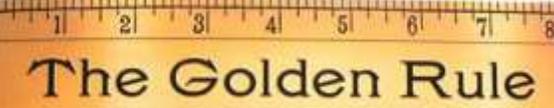


What is your individual duty when a fellow provider is utterly incompetent or worse, criminal in actions?  
Can you just wash your hands of a bad situation because somebody else was in charge?

**One of the toughest questions about duty involves other providers**

**There is a breach of duty**

EMS did something that was within a duty not to do, or failed to do something that was within an absolute duty to do.



**Breach of duty can take on several forms**

There are **three** ways in which a breach of duty can occur through:

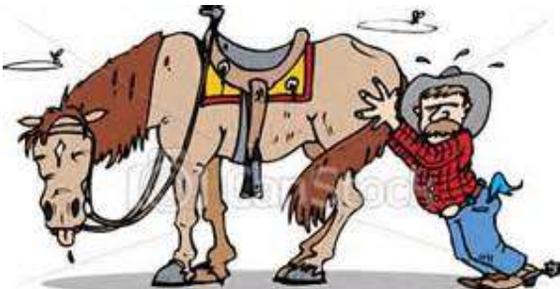
- the wrong act
- performing a legal act in an incorrect way
- Failing to perform a required act or duty




**Example?**

**The wrong ACT**

**The right ACT in a wrong way**



## Failure to perform an ACT



## Make no mistake

- The law is crystal clear on duty when it comes to assessments
- Once pt contact is made, a provider has an absolute duty to perform a thorough assessment & to act on the findings thereof



- The law does not recognize the existence of a partial or truncated assessment

[Wright v. City of Los Angeles](#)  
[Hackman v. AMR](#)

## Thorough Assessments

This is why we reviewed (in last month's CE)  
 Trauma Pt Assessment



Complacency can kill...either the pt or potentially your career!

-David Givot, The Legal Guardian



## Scenario #2



## Scenario #3

## Let's say...

The protocol states that if a pt is either

- a minor, adolescent,
- elderly,
- or in need of ALS care,

but refuse, that patient contact **MUST** be called into OLMC...

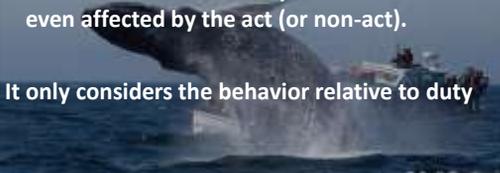
To be clear, that is what our protocol states!

**So...** If the refusal is not called in to OLMC, is there a breach of duty?

**It's a simple answer: Yes.**

The concept of breach (in & of itself) does *not* consider whether anyone was hurt or even affected by the act (or non-act).

It only considers the behavior relative to duty



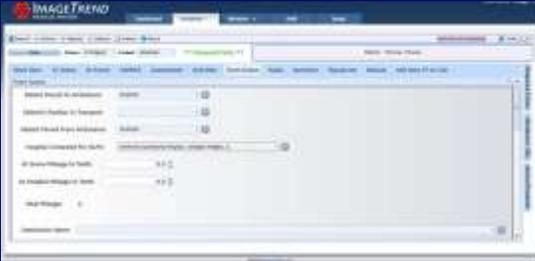
**3 year old pt  
Treated & refused transport**

*Narrative Summary of Events*

A crew member was walking through level primary care on a station when one of the crew members came in physical contact with a 3 year old male pt. Crew member was walking and carrying a canned food can in his left hand when crew member came in contact with the child's head. The pt sustained an approx 1 inch laceration just above the left eye. EMS created a splint of the accident, and EMS accompanied mother and pt to ambulance to render care. BLS care initiated on scene. Pt did not fall to ground or take consciousness, and only visible injury was laceration on forehead. Pt immediately began crying and he is neither other injuries. EMS advised pt to be transported to hospital for further care. Pt's mother refused transport, stated she would take pt to hospital for a visit, and then transport her to hospital for evaluation. Pt was being approximately according to his mother. Pt's vision did not appear affected as he was able to keep his eye open and basic assessment. Release form explained to and signed by pt's mother. EMS on scene also filed sub report, FD Battalion Chief and Deputy Chief contacted prior to pt and incident being moved.

What should be done?  
No evidence of contacting OLMC

**WHERE AND HOW TO DOCUMENT  
OLMC CONTACT**



From Scene Tab – hospital contacted for OLMC

**Another common basis for civil cases against EMS providers is...**

**"Abandonment"**

...which is the unilateral termination of a provider/pt relationship when the pt still needs care, but provision is not made for that care & an injury results.

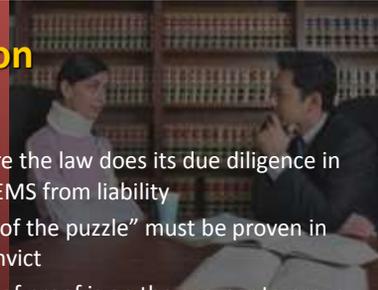
...refusal to transport a pt or talking a pt out of being transported to a hospital is an invitation for an abandonment claim.

Northwest Community EMS System			
<b>POLICY MANUAL</b>			
Policy Title: ABANDONMENT vs. PRUDENT USE OF EMS PERSONNEL		No.	A - 1
Board approval: 10/20/05	Effective: 11/1/05	Supersedes: 9/1/01	Page: 1 of 3

**POLICY**

- Every time EMS personnel respond to or are presented with a person with any sort of **complaint**, possible illness, or mechanism of trauma that could suggest injury, that person is considered a "patient".
- A reasonable search of the scene must be completed to determine if a patient is present. All patients shall have a reasonable assessment to the extent allowed if there is a potential for illness or injury based on the circumstances. If after a reasonable search, no patient is identified, efforts to find the patient shall be documented in accordance with EMS agency policies.

**Causation**



- This is where the law does its due diligence in protecting EMS from liability
- All 4 "parts of the puzzle" must be proven in order to convict
- the burden of proof is on the accuser to prove that the situation that occurred happened as a direct correlation of the infraction by EMS & not something else



## Scenario #4

## Because EMS is often handed sick patients...

It comes down to the "chicken or the egg" type of situation

In the end, this is a good thing.

EMS should not perform based on fear of lawsuits.

Our behavior should be based on doing the right thing for patient care



emergencypics.com

- When duty is breached **AND** that breach is the *direct cause* of damage, then you will be considered a cause of the damage
- The law generally requires that you also be the proximate (most direct) cause
- Thus, it is possible for your breach to cause damage, but if there are unforeseeable, superseding or intervening factors, you may not be completely liable or even negligent

## Damages

Any:

- Physical
- Financial
- Emotional injury

caused by  
the breach  
of a duty



## In the eyes of the law...

The goal is to make the damaged person whole & place individual back in the position they would be in prior to negligent act

## There are various ways that providers can reduce their exposure to lawsuits

First, EMS providers must pay strict attention to patient run report documentation.

A properly documented run report can diffuse potential lawsuits.

**There have been few studies of litigation involving EMS providers**

- Prehospital & Disaster Medicine conducted retrospective research in 1993 & published in 1994.
- Analyzed cases between 1987-1992.
- Revealed half of cases recorded involved an ambulance collision, & remainder involved alleged negligence of a pt care provider.
- Negligence allegations were based on arrival delays, inadequate assessment, inadequate treatment, pt transport delays, **& no pt transport.**

- Researchers concluded that EMS systems should include a risk management component that focuses on reducing the legal risk to EMS agencies & prehospital care providers

- Risk management activities may be conducted within quality assurance/quality improvement or training components of EMS systems.



**So why even worry?**

Lawsuits=Expense  
 (You take minutes to write a report and lawyers get years to rip it to shreds!)  
 Job and reputation on the line  
 Perception of the public  
 You may get a good lawyer working opposite you!

The root cause of most lawsuits result from...

- Lack of:
  - Compassion
  - Kindness
  - Understanding
  - Empathy
  - Communication
  - Initiative to do the right thing

**ATTITUDE**

**In your organization...**

“KING” of apathy

Who wins the crown?  
 Do NOT say it out loud!



**Concern for liability is greatest with...**

- Vehicle accidents
- **Bad refusals and consent**
- Abandonment
- Improper restraint



# PBPI July 2015

Monthly (completed by coordinators) & quarterly data reported system wide for a compliance goal of 100%.

Total Refusals	1173
Total refusals that met criteria for contacting OLMC per Policy	720
Total number non-compliant w/ policy	59
Non-compliance	8%

## Snapshot of Stats from PBPI

September (was not a full month at time of reporting) Raw Data

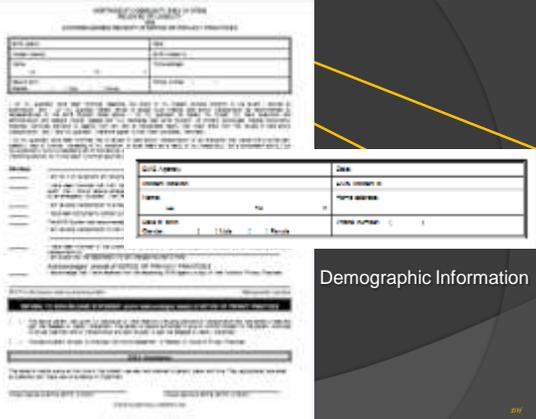


No Apparent Illness / Injury	10
Traumatic Injury	7
Diabetic Hypoglycemia	5
Other Illness/Injury	4
Behavioral/Psychiatric Disorder	4
None Documented	4
Chest Pain or Discomfort	2
Dizziness / Vertigo	2
Cardiac Rhythm Disturbance	2
Nausea/Vomiting (Unknown Etiology)	2
Invalid Assist / Lifting Assist	1
Pain	1
Near Syncope	1
Altered Level of Consciousness	1
Hypertension	1
Headache	1
General Malaise	1
OB / Pregnancy Complications	1
Electrocution	1

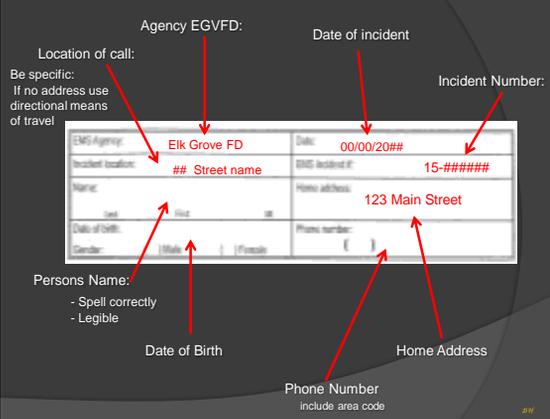
# Now to document it!




**The Paper Release**



**Demographic Information**



Agency EGVFD: Elk Grove FD  
 Date of incident: 00/00/20##  
 Incident Number: 15-#####  
 Location of call: ## Street name  
 Home address: 123 Main Street  
 Persons Name: - Spell correctly - Legible  
 Date of Birth: [Field]  
 Phone Number: include area code

NEW FRONT COMMUNITY EMS SYSTEM

I am not ill or injured and am refusing EMS services and transportation to a hospital.  
 I have been informed that from the history of my complaints, the mechanism of injury, or the findings of a physical exam, that I should receive emergency care and transportation to the nearest hospital for a more detailed evaluation by an emergency physician. I am refusing any further assessment and/or care at this time.  
 I am refusing transportation to a hospital.  
 I have been instructed to contact a physician for an examination and/or treatment if my condition changes in any way.  
 The EMS System has recommended transport to: \_\_\_\_\_ I am refusing transportation to that hospital and am requesting transportation to: \_\_\_\_\_  
 I have been informed of the jurisdictional limitations of the responding BMS vehicle(s) and am accepting alternative transportation by: \_\_\_\_\_  
 I am aware that the responsibility for any charges incurred is mine.  
**Acknowledged receipt of NOTICE OF PRIVACY PRACTICES**  
 I acknowledge that I have received from the responding EMS agency a copy of their Notice of Privacy Practices

*Patient's Name*  
 PRINT NAME of person refusing care/transportation \_\_\_\_\_ Patient/guardian signature \_\_\_\_\_

Patient **must** Initial proper areas, depending on presentation and treatment given

Patient **must** then sign release of liability refusal form

NEW FRONT COMMUNITY EMS SYSTEM  
 BOARD OF EMERGENCY MEDICAL SERVICES

REQUIRED TO SIGN RELEASE STATEMENT AND NOTICE OF PRIVACY PRACTICES

1. The undersigned person must be a duly licensed emergency medical technician, paramedic, or other emergency care provider who is duly licensed and registered with the State of Washington. This person must also be a member of the National Association of EMS Educators (NAEMSE) or the National Association of EMS Educators (NAEMSE) or the National Association of EMS Educators (NAEMSE).

2. The undersigned person must be a duly licensed emergency medical technician, paramedic, or other emergency care provider who is duly licensed and registered with the State of Washington. This person must also be a member of the National Association of EMS Educators (NAEMSE) or the National Association of EMS Educators (NAEMSE) or the National Association of EMS Educators (NAEMSE).

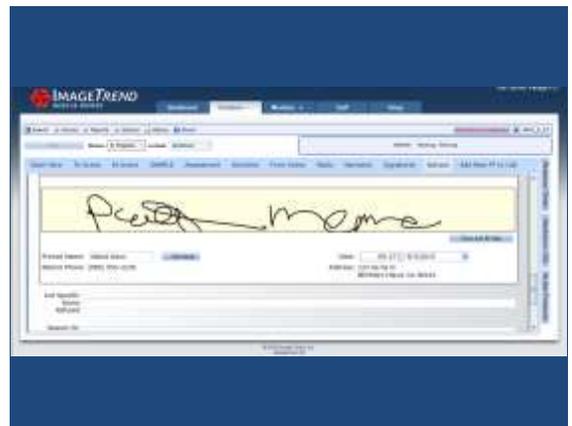
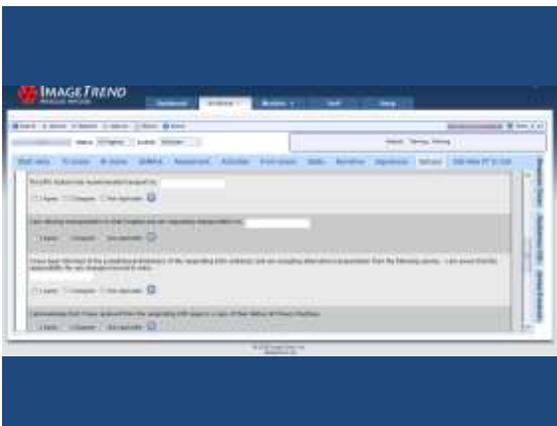
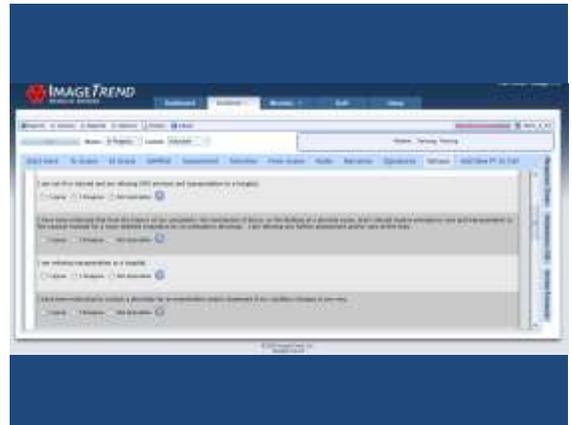
EMS Signature

*John Doe* \_\_\_\_\_ *Herb Handcock* \_\_\_\_\_

Refusal **MUST** be signed by **TWO** medics or EMT's



### Pt perspective



## Careful Documentation is ESSENTIAL

- Required demographic information including incident number, name of pt, address, DOB, gender and phone number.

What is your date of birth?

Day: [ ] Month: [ ] Year: [ ]

## Careful Documentation is ESSENTIAL

- Patient's ability to make and intelligent, informed decision regarding their health care
- Complete patient assessment as able to obtain based on pt consent

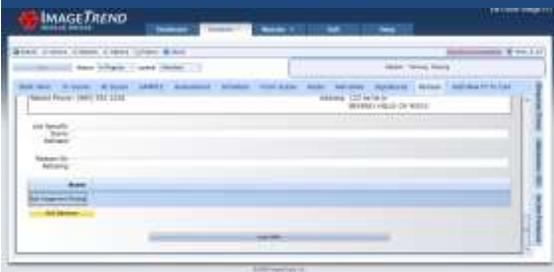


- Advise pt of S & S to watch for & to call back if needed – *then* document it.
- Document clearly that the pt was told to call back if symptoms return, worsen / change.
- Document clearly that the pt was instructed that they can change their mind.
- State clearly IF this refusal is being executed AMA.

## In addition to the patient's signatures...



## EMS MUST SIGN



## EMS must attest to



Found under *Signature tab*

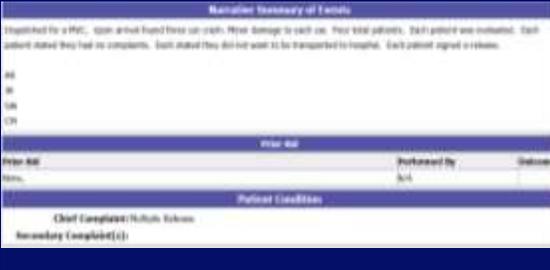
**Signature bears witness of patients'**



**Decisional capacity**



**Multiple Pt Release**  
Minimal information



**What NOT to include**

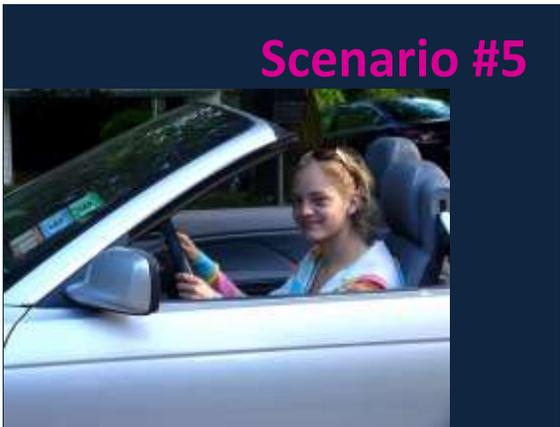
- Name
- DOB
- ANY person with any injury

\*If an injury occurred, that pt should have an individual ePCR.

**Policy Manual R - 6**

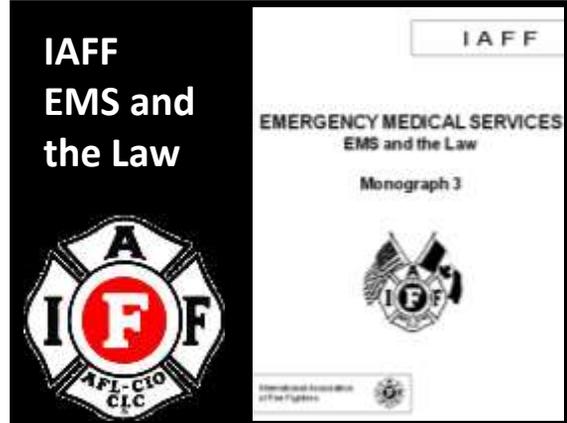
I. Multiple Releases

I. If EMS personnel have been called to a scene with multiple potential patients and a mechanism of illness/injury exists, each individual must be provided an appropriate screening exam, to the extent authorized by the person, in an attempt to determine whether an emergency medical condition exists



**Legal Issues are a part of EMS but do not have to be consuming if...**

- The right thing is done for the patient
- Continue to seek out knowledge and keep current on information pertaining to the job!



Provides informational support

EMS Provider Medical-Legal Issues  
Immunity and Liability



EMS System Administrative Issues  
/ Litigation

**Policy Manual R - 6**

2. If more than one adult with decisional capacity steadfastly refuses assessment, care, and / or transportation and there is no apparent illness/injury-their refusal of service can be grouped on one PCR and processed as a multiple release

**Wow!  
After all of that  
legal stuff...**

**Aren't you glad  
you are a  
paramedic???**

