

COMBATIVE & VIOLENT PATIENTS

A LEGAL GUIDE FOR MANAGEMENT OF COMBATIVE & VIOLENT PATIENTS
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CRIMINAL PENALTIES FOR OBSTRUCTION OF EMS DUTIES

- Most states have statutes prohibiting interference with an individual performing his/her duties.
- **MCL 750.81D** – Michigan makes it a **felony** to interfere with an individual performing his/her duties & expressly includes EMS.
- **MCL 750.81D (7)(B)** – Defines a “*person*” protected under this act to include:
 - Police officer;
 - Fire fighter;
 - **Any emergency medical service personnel** described in section 20950 of the public health code.
- Felony violation & punishment varies by injury caused by interference.

CRIMINAL PENALTIES FOR OBSTRUCTION OF EMS DUTIES

- **MCL 750.81D (1)**: An individual who assaults, batters, wounds, resists, ***obstructs***, opposes, or endangers the individual performing his/her duties is guilty of a ***felony*** punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.
 - **SECTION D(2)**: Causing ***bodily injury*** requiring medical attention or medical care – **4 yr. Felony** or \$5,000.00 fine, or both.
 - **SECTION D(3)**: Causing a ***serious impairment*** of a body function – **15 yr. Felony** or fine of not more than \$10,000.00, or both.
 - **SECTION D(4)**: Causing ***death*** – **20 yr. Felony** or \$20,000 fine, or both.

CRIMINAL PENALTIES FOR OBSTRUCTION OF EMS DUTIES

- **MCL 750.81D (7)(A)** – Defines the word “***obstruct***” to include the ***use OR threat*** of physical interference or force or a knowing failure to comply with a lawful command.

(7) as used in this section:

(A) “***obstruct***” includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.

- **MCL 750.81D (5)**: This section does not prohibit an individual from being charged with, convicted of, or punished for ***any other violation of law*** that is committed by that individual while violating this section.

LEGAL AUTHORITY FOR MANAGEMENT OF EMERGENCY PATIENT & SCENE

MCL 333.20967(1) – Authority for the management of a *patient- highest licensed* health care professional or licensed EMS personnel.

SEC. 20967(1): Authority for the management of a patient in an emergency is vested in the licensed health professional or licensed emergency medical services personnel at the scene of the emergency who has the most training specific to the provision of emergency medical care. If a licensed health professional or licensed emergency medical services personnel is not available, the authority is vested in the most appropriately trained representative of a public safety agency at the scene of the emergency.

LEGAL AUTHORITY FOR MANAGEMENT OF EMERGENCY PATIENT & SCENE

- **MCL 333.20967(2)** – *Medical control physician* responsible for management of *patient* if life support agency is on scene of emergency.

SEC. 20967(2) – When a life support agency is present at the scene of the emergency, authority for the management of an emergency patient in an emergency is vested in the physician responsible for medical control until that physician relinquishes management of the patient to a licensed physician at the scene of the emergency.

LEGAL AUTHORITY FOR MANAGEMENT OF EMERGENCY PATIENT & SCENE

- **MCL 333.20967(3)**: Authority for management of an emergency *scene* is with **public safety**.
 - **SEC. 20967(3)**: Authority for the management of the scene of an emergency is vested in appropriate ***public safety agencies***.
- Public safety shall manage risk to minimize risk of death or health impairment to an emergency patient.
- Public safety shall consult EMS personnel at the scene to determine risks to patients.

STATUTORY POLICE POWERS

- **POLICE POWERS MCL 28.583** – Statutory authority to arrest and detain limited to *police* and *peace officers*;

MCL 28.583: Law enforcement officers to whom the authority of peace officers and police officers is granted under this section are considered peace officers of this state and have the authority of police officers provided under the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 TO 257.923, and as provided under the code of criminal procedure, 1927 PA 175, MCL 760.1 TO 777.69.

STATUTORY POLICE POWERS

- EMS Does NOT have legal authority to exercise police powers over a patient;
- **Exceptions** applicable to general public:
 - **MCL 764.16** – Felony committed in private person’s presence;
 - **Self defense** (right to exercise such reasonable force as necessary to protect from bodily harm in repelling assault).

LEGAL OBJECTION TO TREATMENT OR TRANSPORTATION

MCL 333.20969: Objection to treatment or transportation

- No legal authority to provide medical treatment or transportation to a hospital of an individual who objects to the treatment or transportation.
- Expressed or implied consent to treatment & transport required.
- Medical treatment or transportation without consent constitutes assault and battery and/or false imprisonment.

LEGAL OBJECTION TO TREATMENT OR TRANSPORTATION

- **MCL 333.20969** – Also provides for *implied consent*.
- EMS exercising *professional judgment* determine that the individual's *condition* makes the individual incapable of *competently* objecting to the treatment or transportation
- If patient is deemed incompetent to object to treatment or transportation, EMS may provide treatment or transportation despite the individual's objection.*

* Exception for objections based on **religious beliefs**.

LEGAL OBJECTION TO TREATMENT OR TRANSPORTATION

▶ STATE PROTOCOL: DEFINES “COMPETENT INDIVIDUAL” :

- One who 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;
- **Is not a clear danger to self or others;** and
- Is 18 years of age or older, or an emancipated minor.

LEGAL OBJECTION TO TREATMENT OR TRANSPORTATION

- **MCL 333.6501(3)***: Defines "*incapacitated*" as meaning that an individual, as a result of the use of alcohol, is unconscious or has his or her mental or physical functioning so impaired that he or she either poses an immediate and substantial danger to his or her own health and safety or is endangering the health and safety of the public.

* Repealed effective 12/28/2012 & replaced by MCL333.7101

LEGAL OBJECTION TO TREATMENT OR TRANSPORTATION

- **MICHIGAN PROTOCOL PATIENT RESTRAINT PROCEDURES** (Section 7-16) cites to MCL 333.30969 as legal authority to restrain a patient.
 - **Authority to restrain** – EMS personnel are able to restrain and treat and transport an individual under authority of Sec. 20969 of Public Act 368.*

* See **procedures patient restraint** initial date: 5/31/2012 revised date: 10/26/2018 Section 7-16

PATIENT RIGHTS & RESPONSIBILITIES

- **MCL 333.20201(1)**: A *health facility or agency* that provides services directly to patients or residents and is licensed under this article **shall adopt a policy describing the rights and responsibilities of patients** or residents admitted to the health facility or agency.
- **333.20106 (1)**: "*Health facility or agency*", except as provided in section 20115, **means**:
 - (A) an *ambulance operation*, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.

PATIENT RIGHTS & RESPONSIBILITIES

MICHIGAN PATIENT BILL OF RIGHTS, MCL 333.20201(L)

- A patient is entitled to be *free from mental and physical abuse and from physical and chemical restraints*;
- *Except* those restraints authorized in writing by the attending physician, by a physician's assistant with whom the physician has a practice agreement, or by an advanced practice registered nurse;
- For a *specified and limited time* or as are necessitated by an emergency to protect the patient or resident from injury to self or others;
- In which case the restraint may only be applied by a *qualified professional*;

PATIENT RIGHTS & RESPONSIBILITIES

MICHIGAN PATIENT BILL OF RIGHTS, MCL 333.20201(L)

- Qualified professional shall set forth *in writing* the circumstances requiring the use of restraints;
- Qualified professional shall *promptly report* the action to the attending physician physician's assistant, or advanced practice registered nurse who authorized the restraint.
- In case of a **chemical restraint**, the physician, or the advanced practice registered nurse who authorized the restraint, shall be consulted within 24 hours after the commencement of the chemical restraint.

LEGAL CASES-COMBATIVE & VIOLENT PATIENTS

- **Excessive force** used in self-defense when intoxicated patient attempted to strike paramedic at emergency scene – 1992 trial in Washtenaw County Circuit Court-no cause of action.
- **Negligent restraint** of combative patient suffering from effects of cocaethylene allegedly resulting in cardiac arrest. EMTs accused of choking patient to death during restraining of patient.
- **Criminal complaint** filed against paramedic who held patient down using trained self-defense technique. Criminal complaint dismissed, but state licensure action taken against paramedic.

LEGAL CASES-COMBATIVE & VIOLENT PATIENTS

- **Combative protester/physician** arrested on scene of UofM protest demanding that police and EMS uncuff violent protestor; accused EMS of using ammonia capsules for “**punitive**” reasons and sued EMS and MCA medical director in federal court.*
- **Behavioral health/psych patient** jumped from moving ambulance while attempting to take attending EMT with him.
- **Police custody** psych patient handcuffed in squad car released & placed in back of ambulance without pat down search attacks paramedic with knife during transport.

MED-LEGAL RECOMMENDATIONS

- ▶ **SCENE SAFETY** IS ALWAYS THE NUMBER ONE RULE;
- ▶ **EARLY IDENTIFICATION** OF POTENTIALLY COMBATIVE PATIENT CRITICAL;
- ▶ **EARLY INTERVENTION** OF POLICE;
- ▶ **TRAINING:** LEARN RESTRAINT TECHNIQUES;
- ▶ **PROTOCOL AND POLICY GUIDANCE (NAEP POSITION PAPER);**
- ▶ **COORDINATION** WITH HOSPITAL AND OTHER AGENCIES;
- ▶ **COMMUNICATIONS SYSTEMS AND CODES;**
- ▶ **DOCUMENTATION & REPORTING.**

MED-LEGAL RECOMMENDATIONS

- ▶ Michigan law provides EMS with the legal authority to imply consent for the treatment and transport of a combative patient.
- ▶ Also provides **limited** authority for the use of physical & chemical restraints when necessary for the protection of the patient and/or others, including the pre-hospital care provider.
- ▶ When such restraints appear to be necessary, they should be administered in accordance with applicable system protocols & company policies.
- ▶ Circumstances requiring physical & chemical restraints should be **very carefully documented**.

MED-LEGAL RECOMMENDATIONS

- EMS does not apply force or threat of force for the purpose of acquiring physical control (“custody”).
- Restraints for medical purposes does not constitute “custody”.
- To the extent EMS must apply force (i.e. restraints), it should be done **ONLY** after exercising **medical judgment** for purpose of administering medical care. NOT for the distinct purpose of acquiring physical control over a patient.
- Legal authority to physically restrain patient for purposes other than medical care (i.e. acquiring physical control) dramatically increases liability claims.