Refusal of Care
Release at Scene

Nor-Cal EMS
2021

Learning Objectives

1) Understand the difference between Refusal of Care and Release at Scene.
2) Understand Capacity and Competency as it applies to EMS
3) Elements of determining Capacity/Competence in the field
4) Understanding the risks
5) Patient vs person
6) Patient understanding and communication
7) Documentation

Purpose

- To provide guidance for all levels of EMS providers when they encounter patients who are refusing either assessment, treatment, and/or transport.
- To define the mechanisms by which an individual or patient who summoned EMS care, or for whom EMS care was summoned, may refuse assessment, treatment, and/or transport.
- To prevent less than optimal outcomes when there is disagreement between caregivers and patients.

Guiding Principles

- ***Autonomy*** – a patient has the right to refuse or choose their treatment.
- ***Beneficence*** – a health care provider should act in the best interest of the patient.
- ***Non-maleficence*** – "first, do no harm" ***primum non nocere.***
- ***Justice*** – concerns the distribution of scarce healthcare resources, and the decision of who gets what treatment (fairness and equality).

Autonomy

- From the Greek ***autonomia*** meaning independence.
- Definition – independence or freedom, as of the will or one's action's: the autonomy of the individual

Competence and Capacity

- A **COMPETENT** person has the **CAPACITY** to understand and make an informed decision regarding their medical care: assessment, treatment, and transport.

Capacity

- **Definition of Capacity:**
- Legal qualification, competency, power, or fitness.
- Power to grasp and analyze ideas and cope with problems.

From Merriam-Webster

"The capacity of a patient… can be established by a medical provider in a hospital, in an ambulance, or on a street corner and is used as a presumptive determination of a patient's competence".

From Prehospital Systems and Medical Oversight, 3rd Ed., chapter 44 Mottley

Capacity Elements

- Absence of deficits in:
  - ***Cognition*** – thought processing ability.
  - ***Judgment*** – what would be best for self.
  - ***Understanding*** – what the decisions will lead to for me.
  - ***Choice*** – selecting best option for own values.
  - ***Expression of choice*** – communication ability.
  - ***Stability*** – think mental and physical attributes.

- ***From Prehospital Systems and Medical Oversight, 3rd Ed., chapter 44 Mottley***

How to Assess Capacity

- Observe for odor or other signs of ETOH or drug use such as:
  - Ataxic gait and stance.
  - Slurred speech.
  - Confusion.
  - Disorientation.
  - Lethargy.
  - Incontinence.
  - Loss of memory.
- Intoxication may not automatically eliminate decision making capacity ("clinically sober").
- Legal limit only deals with ability to drive not the ability to make decisions.
- This concept may not be fully understood by jury or even judge.

Evaluation Criteria for Intoxicated Patients

- A person who is intoxicated and/or impaired by drugs may be deemed to not have decision making capacity.
- Consider base station contact for patients that have been drinking alcohol and/or doing drugs.
- ***We have the duty to protect those who cannot make informed decisions, including those under the influence of intoxicating (cognition altering) substances.***
- Inebriated patients who are functionally sober and show no evidence of concurrent injury, illness, or mechanism of injury may be safely be released after consultation with medical control.
- Patients who have been drinking and allowed to refuse care should be released to a sober adult.

How to Assess Capacity

- When patients may not have decision making capacity:
  - Blow to the head (fall or hit with object).
  - Experienced loss of consciousness.
  - Can not remember events.
  - Experiencing confusion.
- They may not understand the consequences of their decisions.
- Judged on a case by case basis.
- Never assume either way.

How to Assess Capacity

- Glasgow Coma Scale:
  - Always perform and document.
- O2 saturation.
  - Always check.
- Blood glucose (always check)
- Mental Status
    - Awareness.
    - Perception.
    - Reasoning.
    - Judgment.
  - All are vital components to mental status evaluation.

How to Assess Capacity

- No language barrier ideally.
  - You should be able to communicate with your patient to evaluate and treat him/her.
- Normal vital signs.
  - Ideally you should repeat them to see a trend.
  - Unstable vitals are worrisome and can affect patient judgment.
- No significant mechanism of injury present (trauma patient criteria).
- Person must not be suicidal or homicidal.
  - Law Enforcement involvement key.

Assessment of Capacity

- Must consider patient's capacity on every call
- If patient deemed to have capacity, must respect wishes
- Even if contrary to medical opinion
- Disagreement with the provider does not automatically mean loss of capacity.

Documentation of Capacity (Competency)

- Chief Complaint and History of Present Illness.
- Medical History and Medications.
- Capacity (Competency) over 18.
- Mental Status and Glasgow Coma Scale.
- Vital signs.
- Physical examination
- Refusal of Care/Release at scene: specific documentation.

How to Assess Capacity

- Talk to your patient.
- Ask if permissible to speak with others that know the patient.
    - Talk to patient's spouse.
    - Talk to patient's friends.
    - Talk to patient's family.
- Be creative.
- Maintain a courteous and sympathetic attitude.
- These people are not judging your abilities.

Capacity

- A patient's capacity must be determined ***prior* to signing** a refusal of treatment form (Against Medical Advice) or transporting a patient to the hospital.
- Again, utilize family and friends liberally and often to influence the patient.
  - The guilt factor really works.
- Don't be afraid of involving law enforcement if needed.
  - Remember they don't lose refusal rights to evaluation and treatment (if arrested).
- ***Don't hesitate to make base hospital physician contact! But not for every case, only high risk.***
  - ***Literature supports this view***

Capacity

- Examples of "potentially" altered capacity:
- Don't assume incapacitated based upon diagnosis and nosis and these people every time!
  - Intoxication (Alcohol and other drugs)
    - Breathalizer and blood alcohol levels are not necessarily related to capacity.
    - Judge and Jury don't understand difference.
  - Psychiatric illness.
  - Dementia.
    - Be very careful here, not clear cut always. What is the patient's baseline?
  - Mentally disabled.
  - Certain neurologic diseases: don't assume physical equates to not understanding: Parkinson's Disease, ALS, Cerebral palsy.

Summary: Establishing Mental Capacity

- The patient or legal representation is capable of understanding the nature and potential consequences of the proposed medical treatment and/or transport that is being refused.
- The patient or legal representation has the emotional control, judgment, and discretion to manage his/her own affairs.
- The patient or legal representation need to be alert and oriented to person, place, time, and situation/event.
- The patient or legal representation must have full understanding of the potential consequences that may occur of the medical treatment and/or transport that is being refused.
- **These need to be as detailed as possible including but not limited to permanent disability and/or death.**

Summary: Establishing Mental Capacity cont'd

- In a skilled nursing facility where they are at their baseline mental status and can express understanding of the risks of refusal.
- The patient does not have suicidal or homicidal ideation.
- The person is not impaired by alcohol, drugs/medications, mental illness, traumatic injury, gravely disabled or has mental abilities diminished due to age.
- If a person is gravely disabled, the provider will not be able to establish whether they have the mental capacity to refuse care.

Competence (Free Dictionary-Farlex)

- **Definition of Competence:**
- “Law -The quality or condition of being legally qualified to perform an act”.
- “The state or quality of being adequately or well qualified; ability”.

Competency

- "Competency is a legal test and can only be determined by a judge in a courtroom"
- Involves a three-step process that assess whether a patient:
  - A) Can comprehend and retain information
  - B) Believes the information
  - C) Can weigh the information in the balance and arrive at a choice

- ***From Prehospital Systems and Medical Oversight, 3rd Ed., chapter 44 Mottley***

Summary: Mental Capacity/Competence

- Sufficient understanding and memory to comprehend in a general way the situation in which one finds oneself and the nature, purpose, and consequence of any act or transaction into which one proposes to enter.

- "In 1914, Supreme Court Justice Cardoza stated "every human being of adult years and sound mind has a right to determine what shall be done with his own body""

From Prehospital Systems and Medical Oversight, 3rd Ed., chapter 44 Mottley

What is a patient?

A "PATIENT" is an individual that

- Has a complaint **suggestive** of **potential** illness or injury.
- Requests evaluation for potential illness or injury.
- Has **obvious** evidence of illness or injury.
- Has experienced an acute event that could reasonably lead to illness or injury.
- Is in a circumstance or situation that could reasonably lead to illness or injury.
- Is experiencing an **acute** exacerbation of a chronic illness or injury.

What is a “person” or “non-patient?

- Any “competent” individual encountered by EMS providers who upon questioning, denies acute illness or injury (or exacerbation of a chronic illness or old injury).
- Does not show any evidence of illness or injury.
- Did not activate 911 or direct 911 to be activated for themselves for an illness or injury.

Minors

Legally able to make medical decisions regarding care

- Was or is legally married.
- Is on active duty in the military.
- Has a court declared emancipation (with a valid copy of the declaration or a Department of Motor Vehicles identification card declaring emancipation)
- Is 15 years of age or older, living separate and apart from parent or guardian, managing his/her own financial affairs.
- Durable Power of Attorney
- Legal guardian
- Is 12 years of age or older, for the treatment of drug or alcohol abuse, or for infectious, contagious, or communicable diseases or sexually transmitted diseases.
- Is pregnant, for care related to prevention or treatment of pregnancy, or rape.

Minors

Legally able to make medical decisions regarding care (cont)

- For medical care related to the diagnosis or treatment of rape or sexual assault.

1. EMS providers shall "attempt" to contact the minor's parent or guardian.
2. A parent or guardian contact is ***not required*** if the patient is over 12 and the alleged act is rape.

Becoming a Patient

- Zepeda v. City of Los Angeles 233 Cal App. 3d 232 (1990)
- There is no duty of care to a victim until EMS undertakes examination and treatment.
- Once EMS begins examination and treatment, a duty of reasonable care is owed.
- Wright v. City of Los Angeles 219 Cal. App. 3d 318 (1990)
- EMS finding a patient lying on the ground had a duty to perform an examination sufficient to determine if the patient has an illness or injury.
- The failure to perform this examination could result in death or serious injury and is negligent.

Who is a Patient?

- All persons who requested transport or called the ambulance are patients.
- All persons who are injured or ill are patients.
- All persons who have a complaint.
- All minors without consenting adult guardians are patients.
- All persons without decision making capacity.

Patient or Person?

- Person? Proceed to Refusal of Service.
- Patient? Proceed to Refusal of Care (in selected case can be release at scene).
- **With Refusal of Care it is preferable (*if possible*) for these patients to have an ALS provider perform this procedure.**
- **BLS providers continue to treat as necessary awaiting the arrival of ALS personnel.**
- **Note: Should be the most trained individual at the scene.**

High Risk Patients

- Minors who do not meet the conditions that would allow them to make medical decisions for themselves.
- Medical history that has the potential to worsen or complicate the illness or injury.
- ALOC.
- Meets trauma, stroke, STEMI triage criteria
- Under the influence of alcohol, illicit drugs, and/or medications that can cause altered judgement.
- Known diabetics who want to refuse care (be careful once they have received glucose).
- Elderly patients and/or patients who are difficult to assess or whose baseline status is chronically altered due to a pre-existing condition. Such as dementia, prior stroke, aphasia.
- A patient who has knowingly been released under this policy more than once in a twenty four hour period.
- ***The lift assist! Warning! Is there underlying pathology?***

High Risk Patients

INCLUDING BUT NOT LIMITED TO:

- Physical complaint that requires ALS intervention
- Markedly abnormal vital signs.
- Uncontrolled hemorrhage.
- Suspected ischemic chest pain.
- New onset of stroke symptoms (TIA resolved).
- New onset of seizures.
- New onset of hypoglycemia.
- New onset of worst headache of life.
- New onset of respiratory distress.

Shared Liability

- Don't assume that since you contacted the base hospital physician that it will eliminate any liability for you!
- Does not equate with a "get out of jail card" for the paramedic provider.

Communication is the Vital Link

Communication

- "In the majority of cases of refusal of care,the problem is a failure not of capacity but of communication"
- "We are obligated to do our best (without coercion) to help patients overcome their reluctance to accept care that is their best interest"
- Ann Emerg Med. 2007;50:456-461

Communication is the key and is crucial!

Avoid Jargon

- ***You are thinking:*** the patient is having a myocardial infarction and needs urgent cardiac catheterization.

- ***You state:*** you might be having a heart attack and that is a blockage in your heart causing the pain. It is killing your heart, a muscle
- You need to get to a hospital able to unblock the artery in your heart and take care of your pain and save your heart.

Consent

- Expressed consent- A clear and voluntary indication of preference or choice freely given in circumstances where the available options and their consequences have been made clear (informed consent).

- Implied consent- Consent which is not expressly granted by a person, but rather implicitly granted by a persons actions and the facts and circumstances of a particular situation (or in some cases by a person's silence or inaction).

Legalities

- The issue of "informed refusal" was considered by the California case ***Truman v. Thomas***.
- The court found the concepts of "***informed consent***" and "***informed refusal***" to be "***indistinguishable***"
- The exceptions are with regards to emergency situations when the patient lacks capacity.
- "In 1972, ***Cobbs v. Grant***, which ruled that the patient's right of self-decision is the measure of the physician's duty to reveal. "That right can be effectively exercised only if the patient possesses ***adequate information*** to enable an intelligent choice. The scope of the physician's communication to the patient, then, must be measured by the patient's need, and that need is whatever information is material to the decision.""
- ***From Prehospital Systems and Medical Oversight, 3rd Ed., chapter 44 Mottley***

Informed Consent

- We the healthcare practitioners are required to inform patients “fully” about the benefits, options available, and risks of the treatment(s).
- They need to understand the available choices to reflect their personal values and wishes.
- This concept helps promote the exchange of information between the patient and the provider.
- This does not literally mean the process of obtaining consent.

Elements of Informed Consent

- ***ACDC***
  - Autonomous decision
  - Capable individual
  - Disclosure of adequate information by provider
  - Comprehension of the information by individual

Informed Consent Summary

- Criteria for informed consent/refusal of medical care:
  - Patient is given complete/accurate information about risks for refusal and benefits of treatment.
  - Patient is able to understand and communicate these risks and benefits.
  - Patient is able to make a decision consistent with their beliefs and life goals.

Liabilities with Informed Consent

- Traditional
  - Assault and Battery
  - Touching without consent
  - Exceeding scope of consent
- Medical Negligence
  - Lack of informed consent

Patient Restraint

- False imprisonment:
  - Restraint without proper justification or authority.
  - Intentional and unjustifiable detention of an individual without his/her consent.
- Assault and Battery:
  - Assault.
    - Unlawfully placing an individual in apprehension of immediate body harm without consent.
- Battery:
  - Unlawfully touching an individual without consent.

Patient Restraint

- Abandonment:
  - Premature termination of the Paramedic/Patient relationship.
    - Failure to follow necessary steps to ensure definitive care.
- Reasonable Force:
  - Dependent on amount of force required to ensure patient does not cause injury to himself or others.
    - Excessive force is EMS liability.

Informed Refusal

Is where a person has refused a recommended medical treatment based upon an understanding of the facts and implications of not following the treatment.

- Educate your patient.
- Don't use medical jargon.
- Feel comfortable that they understand the risk/benefits before you terminate your relationship.
- Have them repeat back to you what you said in their words, not just have them nod their heads.

BE A PATIENT ADVOCATE

Why do Patients Refuse Care?

- Poor comprehension:
  - Medical jargon.
  - Language barrier.
  - Altered Mental Status.
  - Education.
- Not appreciating the seriousness of their condition.
- Fear.
- Financial concerns.
- Denial – "***the force can be strong here***".
- Not being listened to by provider or family.
- Failure of communication.
- Basic human need lacking e.g. cold, needs blanket.

Patient Education

- Educate about definitive treatment options in hospital.
- Educate patients that EMS has limited diagnostic and treatment options
- Educate that they can always call 911 again.
  - Can always call their primary care providers, clinics, or take private vehicle if they are refusing transport

Non-Transport

- Patients refusing care/transport defined:
  - No medical need.
  - Normal decision making capacity.
    - Voluntarily declines after being informed.
- Impaired decision making Capacity:
  - Inability to understand nature of illness/injury.
  - Inability to understand risks or consequences of refusing.

Keeping it Simple

- If the person has a medical complaint, is determined to be mentally competent (has the capacity to make decisions) and now is refusing service =>REFUSAL OF CARE
- If the person has NO medical complaint, is determined to be mentally competent , and refuses evaluation=> REFUSAL of SERVICE.

Kyser v. Metro Ambulance

- 764 So. 2nd 215 (La App. 2000)
- 52 year old male found by girlfriend face down on living room floor- called 911.
- Kyser answered all questions appropriately and refused transport but allowed evaluation.
- Blood pressure and pulse rate elevated.
- Paramedics followed refusal protocol.
- Contacted medical control, Physician said "okay" to accept refusal.
- Patient signed refusal of service form.
- Girlfriend insisted they take him but they told het they could not without hos consent,
- Paramedics left patient with girlfriend.

Kyser v. Metro Ambulance

- His parents came later, patient said he did not want to go to the hospital.
- Girlfriend stayed the night.
- Patient vomited and may have had a seizure.
- Girlfriend called 911 again.
- Patient transported this time.
- Diagnosed with ruptured aneurysm.
- LA provides for EMS liability only in cases involving gross negligence.
- Trial court dismissed the case.
- Appels court affirmed- no gross negligence.
- Disputed refusal was valid.
- EMS had documented their efforts to convince patient to be transported well.

Green v. City of New York

- Failure to determine whether patient with ALS (Lou Gehrig's Disease) had decision making capacity to refuse treatment formed basis for claim under the ADA (Adults with Disabilities Act).
- Paramedics failed to follow established protocols for communication with disabled patient.
- Patient could communicate by blinking and by computer.
- Paramedics forced transport on patient despite family's protests.
- Family claimed patient was denied system for evaluating refusals.
- Failure to follow protocol.
- Failure to contact medical control.

The Refusal of Care Checklist

When a patient is refusing treatment/transport the following checklist shall be considered:

- ❑ Is the patient competent to refuse any of the following: assessment, treatment and / or transport (consider anatomic, physiologic or psychiatric dysfunction)i.e. ETOH, post-ictal, hypoglycemia, and hypoxia.

- ❑ The risks and consequences have been explained and documented on the PCR (i.e, the patient may sustain permanent disability or death).

Refusal of Care Checklist (cont)

- Does the patient understand and comprehend the reasons to be seen and evaluated further? For the EMS provider, have the patient verbally repeat back in their own words what he/she understands about the situation.
- Can you type/write the report at scene? Include in your report observations about the patient, results of repeat assessments, and a second set of vital signs to demonstrate stability or improvement.

Refusal of Care Checklist (cont)

- Ensure the patient signs the paper or electronic report. This demonstrates the physical ability and eye-hand coordination necessary to function in at least a limited capacity.
- Has the base hospital been notified and given report? This is essential for all high risk patients before being released.
- Have you as the EMS provider informed the patient that they can change their mind at any time? Clearly state that if there are any problems that they should call 911 and EMS will respond back and provide treatment and/or transport.

Refusal of Care Checklist (cont)

- EMS providers will inform the patient that their training and diagnostic resources are limited thus the patient should be evaluated by a physician at the closest healthcare facility.
- The field exam is not a substitute for a medical exam by a physician.
- If the patient is a minor and not able to release themselves or is a competent legal parent or guardian present to sign?
- The AMA form needs to state that the patient may suffer permanently life or limb threatening condition, disability and/or death.

Documentation

Describe the entire patient/person encounter. Remember this is a legal document. Include:

- Chief complaint, history of injury/illness, mechanism of injury.
- Vital signs.
- Medical history, medications, allergies, PMD.
- Physical assessment and findings (pertinent positives and negatives).
- Base hospital contact, whom was talked to and title.
- Assessment, treatment, and transport offered and refused.
- Have the patient and a witness sign.

Refusal of Care Key Points

NEED HELP CONVINCING?

- Get law enforcement involved

- Get your base hospital involved
- Get the patients family involved

Refusal of Care Key Points

- Full medical exam on the patient, History, physical, vital signs.
- Explain clearly the risks and complications of refusal.
- Assure that the patient can understand and comprehend the risks.
- Assure that they have a clearly articulated plan for medical assessment and/or follow-up
- Assure they have reasonable and prudent transportation to receive this care.

Summary

- Do your best to be a patient advocate
- Respect your patients rights to refuse care and/or transport.
- To refuse care or transport patients must be:

1. A&OX4.
2. Competent adults, or emancipated minors.
3. Able to have the capacity to understand the risks of refusal.
4. You should be trying to “rule-in” conditions rather than ruling them out.

REMEMBER, contact the base hospital if you need assistance at anytime. They are there to help.


Thank You
Mahalo
Kiitos
Tack
Toda
Grazie
Thanks
Obrigado
Takk
Merci
Gracias