



## UTSW/BioTel EMS TRAINING BULLETIN January 2015

### EMS TB 15-002 Contacting BioTel for Medical-Legal Assistance

#### **Purpose:**

1. To advise UTSW/BioTel EMS Providers how to resolve actual or potential medical-legal issues that arise in the field.

#### **Background and Definition:**

1. EMS Providers often encounter situations in which medical-legal advice should be sought, prior to decision-making about the treatment or transport of a patient in the field. Examples of such situations include:

- a. Determinations of whether a patient has decision-making capacity to refuse evaluation, treatment or transport;
- b. Questions regarding the management of patients in custody;
- c. The evaluation, treatment or transport of patients less than 18 years of age;
- d. "EMTALA" issues;
- e. Situations where an EMS Provider is presented with a legal document (e.g. court order or Power of Attorney) or with a legal situation governing medical outcome (e.g. an Out-of-Hospital Do Not Resuscitate device or order);
- f. Other incidents where an EMS Provider is unsure whether there is a legal issue related to patient care.

2. **ELAP – The Emergency Legal Assistance Program:**

- a. Parkland BioTel has a long-standing relationship with two attorneys who have significant experience and expertise managing medical-legal issues that arise in the field. At least one attorney is ALWAYS available for consultation through BioTel. Both attorneys are capable of responding to the scene, as needed, and can seek to obtain a court order for treatment and/or transport, as necessary.

#### **Procedure:**

1. When EMS Providers have a medical-legal question, BioTel shall be contacted for assistance.
2. Once a report has been given to BioTel staff, one of three possible actions will be taken:
  - a. BioTel staff will provide appropriate direction to the EMS Providers.
  - b. BioTel will consult with an Online Medical Control Physician. The physician may wish to speak directly with the EMS Providers and/or the patient.
  - c. BioTel will seek input from BioTel's legal counsel through the "ELAP".
3. Once BioTel has been consulted for medical-legal advice, the responsibility for incident disposition rests with BioTel.

4. EMS Providers shall also follow their Agency-specific guidelines regarding notification of their chain-of-command when requesting medical legal-assistance.
5. BioTel staff shall advise the EMS Providers in need of legal advice that the ELAP program is being activated.
6. EMS Providers must remain on scene until the incident has been resolved, per BioTel direction.
7. If there is a disagreement between BioTel's direction and the EMS Providers' judgment about the appropriate management of an incident, the EMS Providers shall immediately contact the appropriate EMS Supervisor and request that the BioTel Medical Director or his designee be paged.

#### **Specific Considerations – “Consent”:**

1. If an EMS Provider reasonably believes that a person needs emergency medical evaluation and treatment, the EMS Provider has the right and duty to approach the patient and attempt to obtain consent for evaluation and treatment.
2. EMS Providers shall make every effort to persuade or convince a patient to voluntarily consent to evaluation, treatment and transport, as warranted. This shall include contacting the EMS Supervisor and/or BioTel for support when appropriate, and being mindful that additional assistance regarding consent issues may take time. If feasible, delays raising consent issues should be avoided.
3. **Conscious, not intoxicated adult, not in custody:** If a conscious, adult patient who does NOT appear to be intoxicated and is NOT in custody of law enforcement personnel refuses consent for evaluation, treatment and transport, the EMS Provider DOES NOT have the legal right to treat the patient against his or her wishes.
  - a. If this is this case, and the patient does not appear to have a serious, life or limb-threatening chief complaint, injury, AND EMS Providers believe the patient's refusal to be reasonable and appropriate, EMS Providers shall explain to the patient the potential risks of refusing evaluation, treatment and transport.
  - b. This shall then be documented on the ePCR.
  - c. A witnessed signed refusal shall be obtained, including all possible contact information for the witness.
    - i. Law enforcement officers make excellent witnesses, if present.
  - d. If EMS Providers believe that a patient's decision to refuse evaluation treatment and/or transport puts the patient at any grave or significant risk, BioTel shall be contacted for assistance.
4. **Patient in law enforcement custody or at possible risk of self-harm:** A patient who is in law enforcement personnel custody, OR who is reasonably thought to have possibly harmed himself/herself, OR who is considering harming himself/herself or others MAY refuse treatment. **However, such a patient MAY NOT refuse transport.**
  - a. IF EITHER the EMS Providers OR law enforcement personnel believe it is in the best interest of that patient to be transported by ambulance, the patient shall be transported by ambulance. Refer to the UTSW/BioTel EMS Policy for [Evaluation and Management of a Patient in Custody](#).
  - b. If there are any questions or concerns, or if EMS Providers believe immediate treatment is necessary and recommended, but the patient refuses, BioTel shall be contacted for assistance.

5. **Unconscious patient:** Any age patient who is unconscious may be evaluated, treated and transported under the doctrine of “implied consent”.
6. **Clinically intoxicated or possibly impaired patient:** A patient who is clinically intoxicated or whose medical condition appears to significantly impact his/her decision-making capacity may be “alert and oriented X 3”, but may lack adequate decision-making capacity, and/or the ability to effectively communicate his/her understanding of voluntary consent for medical treatment and/or transport.
  - a. If there is ANY question regarding whether a patient should be evaluated, treated or transported against their wishes, EMS Providers shall immediately contact the appropriate EMS Supervisor and BioTel.
7. **Minors:** For medical-legal purposes, a minor is defined as a person less than 18 years of age. Generally, minors **cannot** consent for their own treatment or transport **UNLESS**:
  - a. The child is legally married and possesses a marriage certificate;
  - b. The child is unmarried and pregnant and consents to treatment related to the pregnancy, so long as the treatment does not concern an abortion;
  - c. The illness or injury involves drug or chemical addiction, dependency or abuse by the child;
  - d. The child is on active duty in the armed forces;
  - e. The child is 16 years of age or older, lives separate or apart from the parent or guardian, and is not dependent upon the parent or guardian for support or maintenance;
  - f. The child suffers from an infectious, contagious or communicable disease;
  - g. Is unmarried, is the parent of a child, has actual custody of the child, **and** consents to the medical treatment of the child;
  - h. Is at least 16 years of age and consents to treatment in a mental facility;
  - i. Consents to counseling relating to suicide or to sexual, physical or emotional abuse, absent a court order prohibiting such counseling.
8. **Emancipated Minors:** If a child has had the “disabilities of minority” removed by a court order, s/he is referred to as “emancipated”.
  - a. An emancipated minor may consent or refuse to consent to treatment just as an adult may do so, **UNLESS** s/he is in law enforcement custody.
  - a. If a minor states that s/he is emancipated, s/he must be able to produce a copy of the court order confirming this statement.
  - b. In any such case, BioTel shall be immediately contacted about further treatment of this patient.
9. **Minors with parent/guardian refusal or parent/guardian absence:** Absent special circumstances (discussed under sections 7 and 8 above) enabling a minor to consent to his/her own treatment or transportation, consent **MUST** be obtained from the minor patient’s parent or legal guardian.
  - a. If the parent or legal guardian **REFUSES** consent for treatment of transportation and the EMS Providers believe that the life of the child may be in immediate jeopardy, BioTel shall be contacted immediately for further instructions.
  - b. If a parent or legal guardian **IS NOT PRESENT** on the scene, an adult relative, such as an aunt, uncle, grandparent, sibling) or an appropriate surrogate (with written documentation allowing them to make medical decisions in the absence of the parent or legal guardian), such as a school official, may provide consent for treatment and transport of the minor.

### **Specific Considerations – EMTALA:**

1. **Definition:** EMTALA is the Emergency Medical Treatment and Labor Act, a federal law that requires anyone presenting to an emergency department requesting emergency medical evaluation be stabilized and treated, regardless of his/her insurance status or ability to pay.
    - a. The statute is commonly referred to as the “anti-dumping” law and was designed to prevent hospitals from transferring uninsured or Medicaid patients to public hospitals without, at a minimum, providing a documented medical screening examination (“MSE”) to ensure that the patient is stable for transfer.
    - b. This statute is vigorously enforced by the United States Center for Medicare and Medicaid Services (CMS) and by the Office of the Inspector General of the U.S. Department of Health & Human Services (OIG).
  2. **EMTALA Significance for EMS Providers:**
    - a. EMTALA prohibits EMS Providers from leaving a hospital with a patient once the ambulance has crossed the property line of that hospital, without prior approval from BioTel online medical control.
    - b. EMTALA also requires that patients found on the grounds of a hospital or within that hospital’s clinic(s) be taken to that specific hospital’s emergency department.
    - c. There are special rules regarding the transport of both an adult and a pediatric patient in the same ambulance to Parkland Hospital and Children’s Medical Center Dallas. These are complicated issues, and any questions regarding possible EMTALA concerns shall be immediately directed to BioTel.
    - d. EMS Providers must be familiar with these [UTSW/BioTel EMS Policies](#):
      - i. EMTALA
      - ii. Evaluation and Transport of a Patient in Custody
    - e. Questions or concerns about EMTALA issues shall be directed to the appropriate EMS Supervisor or to the UTSW/BioTel Medical Director.
- ***EMS Providers may contact BioTel at any time with questions or concerns about medical-legal issues.***