

MODULE 4: LEGAL ISSUES IN EMS EDUCATION

Cognitive Goals

At the completion of this module the student-instructor should be able to:

- 4.1 Define liability, negligence and the standard of instruction
- 4.2 Identify areas of legal liability for the instructor and the educational institution
- 4.3 Identify risk management considerations for the student, instructor, and educational institution
- 4.4 Explain the importance of confidentiality
- 4.5 Identify applicable federal, State and local laws which affect the EMS teaching profession and the educational institution
- 4.6 Explain legal considerations regarding copyright and intellectual property issues

Psychomotor Goals

There are no psychomotor objectives for this module

Affective Goals

At the completion of this module the student-instructor should be able to:

- 4.1 Value the importance of adhering to local, state, and federal laws governing the teaching profession and the conduction of EMS education programs

Declarative

- I. Why this module is important?
 - A. We live in a litigious society and EMS instructors and training institutions are not immune from suits or liability
 1. Ignorance of the law is not an excuse
 - B. All EMS providers should have a clear understanding of the common elements of EMS law
 1. It is the EMS instructors responsibility to inform the student of EMS laws
 2. Instructors should provide students with current legal resource sites
 - C. Instructors should be aware of laws that pertain to the practice of teaching
- II. Liability
 - A. Something for which one is legally obligated
- III. Negligence
 - A. Is considered synonymous with malpractice
 - B. 4 elements are included and must be proven
 1. Duty to act
 - a. The individual believed to be responsible had a legal obligation to act
 2. Breach of duty
 - a. The duty to act was breached by doing (committing) or not doing (omitting) a reasonable and prudent action
 3. Injury

- a. An injury was sustained to the person who is suing
 4. Cause (or causation)
 - a. A linkage exists between the injury that occurred and the breach of the duty to act
- IV. Standard for instruction
1. The standard of instruction is similar in concept to the standard of care
 - a. It represents the actions of a “reasonable and prudent” individual who possesses similar training and experience
 - b. It may be defined within state law
 2. National standards for EMS instructors
 - a. Currently there is no standardized set of guidelines agreed upon by all stakeholders of EMS regarding instructor standard of practice
 - i. This document (and previous versions of this document) is an attempt to provide a standard
 - b. Some states and jurisdictions have formalized programs of instruction and processes for certification and review for instructors to ensure consistency and quality of instruction
 3. Various organizations have standards for instructors that may or may not carry the force of law
 - a. NHTSA/DOT standards and guidelines
 - b. Programs with formal instructor training competencies BCLS, ACLS, PALS, BTLS, PHTLS, etc.
 - c. National organizations for EMS instructors within fire-based systems
 - d. Others
- V. Areas of potential liability for instructors
- A. Discrimination
 1. Use consistent, fair practices for all your students
 2. Listen first and then decide guilt or innocence using due process
 3. Written documentation of every incident for your protection
 - B. Harassment
 1. Use consistent, fair practices for all your students
 2. Bring in other instructors to assist you- but do not influence their objectivity with your personal opinions
 - C. Sexual harassment
 1. Always be aware of how your actions may look to observers
 2. Avoid intimate situations or contact with students
 - a. Counsel students in private but leave the door open
 - b. Avoid suggestive statements, even in jest they may be misinterpreted and offensive
 - D. Student injury
 1. Clinical experience accidents
 2. Instructor error
 3. Improper or inadequate supervision
 4. Inadequate, malfunctioning or faulty equipment
 - E. Patient injury
 1. Due to improper actions by the student (not due to instruction)

2. Due to improper instruction
 3. Due to inattention of the preceptor
 - F. Americans with Disability Act
 1. Scope of this law as it applies to making accommodations for students with learning or physical disabilities
 - a. There will be more information on this topic later in this module
- VI. Grievance procedures for students
- A. Provide written information on grievance procedures and due process in the student handbook
 - B. Allow students to go through the process without intimidation
 - C. Document all incidents at the time of occurrence so you can protect yourself later if a grievance arises
- VII. Academic honesty issues
- A. Written policies given to students should include:
 1. Academic standards
 - a. Grading policies
 - b. Penalties for infractions
 2. Policy on internet usage
 - a. Web sites to use to check to see if the paper a student submits is plagiarized
 3. Clearly written statement regarding what constitutes academic dishonesty including:
 - a. Cheating on examinations
 - b. Falsification of clinical work and experiences, logs or other program documents
 - c. Attempts to reconstruct or obtain information regarding examination
 - B. Affirmative action / equal opportunity
 1. Prerequisites and entrance requirements must be fair and impartial
 2. Provision for remedial or developmental education
 - C. Drug and alcohol free environments
 1. Drug testing of students
 - a. May be easier to administrate in settings where the individual is also an employee, (training academy setting) than in a purely academic environment (college)
 - b. Random and suspicion-based drug testing may be legal
 2. Drug testing of instructors
 - a. Random and suspicion-based drug testing may be legal
 3. Possession issues
 - a. Unauthorized (not prescribed) possession of controlled substances is never allowed
 - D. Code of Conduct
 1. Professional standards like the EMT Code of Conduct exist for practitioners of the EMS profession
 - a. These documents define the ethic and moral standards of the profession and are applicable to the instructors of these practitioners as well
 - E. Student right's and responsibilities
 1. Written code of conduct for the academic setting
 - a. Places the emphasis on students having responsibilities in addition to rights
 - F. Student judicial powers

1. May be seen in academic settings like colleges and universities
2. Honor code for cadets of academies may have statement on judicial powers

VIII. Risk management considerations

- A. Student health insurance
 1. Health insurance supplied by educational or the student is responsible to obtain it independent of the training institution
 2. Requirements imposed by the clinical affiliations regarding immunizations, physical examinations, safety training, etc
- B. Student malpractice insurance
 1. Required by the clinical setting
 2. Individual policies may be obtained by students from insurance brokers
- C. Instructor malpractice insurance, including errors and omissions
 1. Coverage by the employer
 2. Scope of coverage
 3. Individual policies are available from many of the insurance brokers who provide malpractice insurance to EMS providers
- D. Instructor health insurance
 1. Liability for your instructors (classroom and clinical) in the event of accidental exposures to biohazard materials
- E. Institutional considerations
 1. Clinical sites liability
 2. Policies and procedures for reporting incidents and exposures
 - a. Written and notification process
 3. Indemnification issues from clinical sites or other agencies
 - a. Indemnification: to protect and insure against loss, damage, theft, etc. that also provides for reimbursement
 - i. This is difficult for some clinical sites, including the government, making clinical contracts sometimes difficult to negotiate

IX. Confidentiality

- A. Buckley Amendment (The Family Education Rights Act of 1974):
 1. This law specifies:
 - a. The conditions for availability of funds to educational agencies or institutions
 - b. The process for inspection and review of education records
 - c. Limits on the specific information to be made available
 - d. The procedure for access to education records, including the reasonableness of time for such access
 - e. The process for hearings
 - f. The procedure and limits on providing written explanations to parents
 2. The law provides students the right to:
 - a. Access their education records upon request
 - b. Challenge their educational records
 3. Disclosure of “personally identifiable” information from these records, without permission, is illegal
 4. The educational institution has an obligation to notify students in writing of their rights

- B. Identification numbers and privacy
 - 1. It is a violation of privacy to post student's names with grades or other sensitive information in public view
 - a. Training programs may instead use a number to identify students
 - b. This creates a secondary issue of security because of the possibility of obtaining a lot of information from an individual through the use of an ID number like the social security number
 - i. Some states have enacted legislation prohibiting the use of the SSN (social security number) for identification purposes (other than Social Security) and include the use of the "last 4" digits within that legislation
 - 2. If a number system is chosen, it should not be the SSN or an easily decoded number

- X. U.S. Department of Labor, Internal Revenue Service
 - A. Employers must follow laws regarding
 - 1. Wages and hours to work.
 - 2. Taxes and FICA
 - 3. Worker's compensation

- XI. Americans with Disabilities Act (ADA)
 - A. Certain reasonable accommodations must be made to students with documented disabilities
 - 1. These accommodations must be reasonable: in other words, if the accommodations represent something that would not be an expected element of job performance, than it is generally safe to provide it
 - a. Example 1: Your student cannot read and he has asked for an accommodation to have the test read to him. You will of course take this matter to your administration (and perhaps their lawyers and the state EMS or Attorney Generals office) to solve but most likely you will not have to accommodate this because reading ability is a requirement for the profession
 - b. Example 2: Your student has documentation diagnosing dyslexia from a physician. She is able to process information if given a little longer to take written tests. Again you consult with your administration and they rule that it is acceptable to add some additional time to the written test because there does not seem to be a standard in EMS requiring how fast a person must be able to read.

- XII. Occupational Safety and Health Administration:
 - A. Education programs must follow all applicable national and state OSHA rules and regulations

- XIII. Copyright and intellectual property issues
 - A. A document does not have to carry the copyright symbol to be copyrighted
 - 1. Any document that you did not author completely by yourself is owned by somebody else
 - a. The owner/developer deserves credit, and maybe even compensation, for work used in other sources

- b. The “public domain” is anything that is exempt from copyright laws because of the age of the document or if the information is considered to be known by most individuals
 - i. For example: the phrase and descriptions for “the ABCs of CPR” is not owned by any particular organization because all of the medical field, and the majority of the lay public, has knowledge of this information and it would be difficult to find the original author of the concept
 - c. You should always make a good faith effort to obtain permission to use any document that is not your own
- B. Copyright Clearance Center
- 1. Is the clearinghouse for permission to use copyrighted materials
 - a. A fee is charged for this service
 - 2. Contact them at: Copyright Clearance Center, Inc. 222 Rosewood Drive, Danvers, MA 01923 Phone 978-750-8400 Fax 978-750-4470 www.copyright.com
- C. Copyright Act of 1907
- 1. The original copyright law
 - a. Difficult to determine how it applies to internet and digital distributed materials
 - 2. Application of federal law varies by the state and district
 - 3. Academic usage standards are more general than for the public, but they still exist
 - 4. “Fair use” test is generally applied for use of materials in an academic setting
 - a. Many factors in the fair use test
 - b. Consult with the agency attorneys for advice regarding use in academic setting
 - c. “Fair use” involves determining how much material is being distributed (whole document vs. parts of a document), how many times it is being used (generally the first time is the only time that is acceptable without paying a fee for use), if the authors are properly cited for their work, and how much the use of the document impacts the owners ability to realize a profit from your use of it
- D. Digital Millennium Copyright Act (1998)
- 1. This law was enacted to cover copyright issues regarding digital transmission of information
 - 2. Law is still being defined and tested in court
 - a. For example: Be careful that you do not link too far into a website as this may open you up to liability – companies do not want you to bypass their opportunity to present their “for sale” items and may bring suit if you link directly to a document on their website
- E. Intellectual property rights
- 1. Actual ownership of educational materials you design and produce while employed for an educational setting
 - 2. Determine if there are any rules and regulations prior to usage
 - a. Employer – generally if the product is produced during employment then the employer may claim that it is within the scope of your duties and may retain ownership of the product
 - b. If created on your own time, with your own materials you own it
 - 3. Work for hire arrangements are in effect when you are contracted to produce a product (usually for a publisher)
 - a. You seldom retain ownership in this circumstance
 - 4. Royalty arrangements

- a. Individual is paid a fee per every item sold
 - b. Individual may also receive a flat fee for work
- XIV. Other laws and regulations
- A. Insert here any additional laws that are important to the teaching of EMS in your jurisdiction
- XV. Sources for information on EMS laws:
- A. State EMS Office
 - B. Federal Government Agencies dealing with regulation and oversight
 - C. National organizations
 - 1. National Association of State EMS Directors
 - 2. National Association of State EMS Training Coordinators
 - 3. National Association of EMTs
 - 4. National Association of EMS Educators: Legal Committee
 - D. Trade journals for EMS
 - E. Books on EMS law
 - F. Internet
 - 1. Lexus-Nexus is a database of legal manuscripts
 - 2. EMS organization websites

Bibliographical references

Aiken, T. D. (2002). *Legal and ethical issues in Health Occupations*. Philadelphia: W. B. Saunders Company.