

Legal Issues for the Traumatologist

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Goal

At the conclusion of the presentation, the audience should be able to discuss and identify legal issues affecting the traumatologist

Objectives

- 1. Name and describe established laws**
- 2. Identify legal issues in the treatment of trauma patients**
- 3. Identify legal issues in practice management**

Established Laws

1. **The Emergency Medical Treatment and Labor Act (EMTALA)**
2. **Health Insurance Portability and Accountability Act (HIPAA)**
3. **The Abused Patient**

Established Laws

- **The Emergency Medical Treatment and Labor Act (EMTALA) 1986**
 - **Requires Emergency Departments (ED) to:**
 - **Screen patients for emergent conditions and stabilize these conditions**
 - **Cannot discriminate on demographics or ability to pay**
 - **Patient must be treated till stabilized or emergent condition resolved**
 - **Also know as “anti-dumping” law**
 - **Cannot prematurely transfer un- or underinsured patients**
 - **Strict Transfer guidelines**



Established Laws

- **The Emergency Medical Treatment and Labor Act (EMTALA) 1986**
 - EMTALA does not apply to stable patients
 - **An unstable patient may be transferred if:**
 - Benefits of transfer outweigh the risks as certified by a physician
 - Written transfer request is made by patient after the risk-benefit of the transfer is discussed AND the patient knows the hospitals requirements under EMTALA
 - **Transfer guidelines**
 - Transfers must be “appropriate” as defined by the law:
 - Transferring hospital must continue care within capabilities until transfer
 - Supply copies of medical records
 - Receiving hospital has agreed to the transfer and has qualified personnel and space
 - Qualified personnel and medical equipment required for transfer
 - **Hospitals cannot transfer to a lower level of care**

Established Laws

- **The Emergency Medical Treatment and Labor Act (EMTALA) 1986**
 - **Penalties for violation**
 - **Loss of hospital and/or physician's ability to see Medicare patients**
 - **Hospital fines**
 - **Physician fines**
 - **Receiving hospitals can sue for damages from another hospitals EMTALA violation**

Established Laws

- **Health Insurance Portability and Accountability Act (HIPAA) 1996**
 - Designed to “protect sensitive patient health information” from being shared without patient “consent or knowledge”
- **HIPAA is enforced using two rules**
 - HIPAA Privacy Rule
 - HIPAA Security Rule

Established Laws

- **Health Insurance Portability and Accountability Act (HIPAA) 1996**
 - **HIPAA Privacy Rule**
 - Addresses the “use and disclosure” of protected health information by “covered entities”
 - Allows patients to control how health information is used
 - Goal is to allow patient information to be shared to provide high quality patient care, but to do it in a protected manner
 - **Examples of Covered entities:**
 - Insurance companies
 - Healthcare providers
 - Business entities (i.e. hospitals)

Established Laws

- **Health Insurance Portability and Accountability Act (HIPAA) 1996**
 - **HIPAA Privacy Rule**
 - “Covered entities” can disclose information to:
 - The patient
 - Individuals or groups involved in treatment, payment and healthcare operations
 - Research, public health, other approved datasets (if redacted)
 - Persons/entities requested by the patient
 - Situations of public interest/benefit such as but not limited to:
 - Abuse Victims
 - Law enforcement
 - Identification of deceased person
 - Health Oversight
 - When required by law

Established Laws

- **Health Insurance Portability and Accountability Act (HIPAA) 1996**
 - **HIPAA Security Rule**
 - Applies to any electronic protected health information (e-PHI)
 - Does not apply to PHI communicated in writing or orally
 - To be compliant a “covered entity” must:
 - Ensure “confidentiality, integrity, and availability of all e-PHI”
 - Identify and protect information from security threats
 - Protect information from potential improper uses or disclosures
 - Ensure that workforce is compliant

Established Laws

- **Health Insurance Portability and Accountability Act (HIPAA) 1996**
 - **Penalties for violations**
 - All complaints reported to HHS Office for Civil Rights
 - Monetary penalties
 - Can carry criminal penalties
 - Severity of penalty is related to the level of negligence

Established Laws

- **The Abused Patient**
 - **Children, adults and elders are all at risk for abuse**
 - **As a physician it is your responsibility to identify abuse**
 - **As a physician you need to report abuse according to governing rules and laws**
 - **Abuse can be the reason for presenting with a medical complaint**

Established Laws

- **The Abused Patient**

- **Child abuse**

- **Definition: “Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation.”**
 - **Occurs in over 1 million children per year in the United States**
 - **Presentation/Suspected Abuse:**
 - **Inconsistent story from caregiver**
 - **Femur fracture in non-ambulatory child**
 - **Multiple bruises in multiple stages of healing**
 - **Delayed presentation for care**
 - **Corner fractures on x-ray**
 - **Skin changes most common**



Established Laws

- **The Abused Patient**

- **Child abuse**

- **Child Abuse Prevention and Treatment Act (CAPTA) is a federal law that sets:**
 - **Minimal standards for reporting**
 - **Mandates states have mechanism to report**
 - **In the all US States child abuse is required to be reported to child protective services (CPS) if suspect by a healthcare provider**
 - **Reporters only need to report the facts and do not bear the “burden of proof.”**
 - **Importance of reporting**
 - **Child abuse is the second most common cause of death**
 - **Up to 50% chance of repeat abuse and up to 10% chance of death**



Established Laws

- **The Abused Patient**

- **Adult/Domestic Abuse**

- **Definition: “Pattern of behaviors used by one partner to maintain power and control over another partner in an intimate relationship.”**
 - **Also known as: intimate partner violence, relationship abuse**
 - **Affects women more than men**
 - **Around 1/3 of women presenting to ED with injuries are due to domestic violence**
 - **Child abuse can be as high as 50% in homes with domestic abuse**

Established Laws

- **The Abused Patient**
 - **Adult/Domestic Abuse**
 - **Risk Factors:**
 - Female
 - Pregnant
 - Short relationship
 - Low-Socioeconomic status
 - **Presentation/Suspected Abuse:**
 - Flat Affect
 - Repeat ED visits
 - Refusal or excuses to delay discharge home
 - Delay between injury and seeking treatment

Established Laws

- **The Abused Patient**

- **Adult/Domestic Abuse**

- **Reporting**

- **Unlike child abuse most states physicians do not have the authority to report suspect abuse**

- **If abuse suspected**

- **Be familiar with state law requirements**
 - **Enquire if patient is safe at home**
 - **Provide resources**
 - **Encourage patient to report incidents to law enforcement**
 - **Document encounter and interventions carefully**

Established Laws

- **The Abused Patient**

- **Elder Abuse**

- **Definition: Is the exploitation, abuse or neglected of an adult over 65 years old.**
 - **Exploitation is often monetary in nature**
 - **Male and Female Genders affected equally**
 - **Around 2 million elders in American affected a year**

Established Laws

- **The Abused Patient**

- **Elder Abuse**

- **Risk Factors:**

- **Functional or cognitive impairment**
 - **Increasing age**
 - **Caretake is dependent on the elder person (i.e. financially)**

- **Presentation/suspected abuse:**

- **Burns/bruising**
 - **Sudden changes to daily activities or cognition.**
 - **Drastic changes to financial situation/status**
 - **Tense relationships or reoccurring arguments between elder and caregiver.**

Established Laws

- **The Abused Patient**

- **Elder Abuse**

- **Reporting**

- All states have a mechanism to report elder abuse and physicians are mandated to report
 - Concerns are reported to **Adult Protective Services (APS)**
 - If elder is in immediate danger you can:
 - Call law enforcement
 - Admit to hospital

Legal Issues In The Treatment of Trauma Patients

- 1. Informed Consent**
- 2. Medical Power of Attorney (MPOA) and Living Will**
- 3. Do not resuscitate/Do not intubate (DNR/DNI)**

Legal Issues In The Treatment of Trauma Patients

- **Informed Consent**

- **Definition: The process of telling a patient their diagnosis, the recommended treatment, and the risks and benefits of pursuing or not pursuing the recommended treatment.**
- **All patient should have the opportunity to ask questions in the informed consent process to understand their condition and procedure.**
- **A consent form should be signed establishing agreement between the surgeon and patient.**
- **If informed consent is not obtained it can be considered assault/battery if procedures are performed.**

Legal Issues In The Treatment of Trauma Patients

- **Informed Consent**

- **Some patients cannot give informed consent due to:**

- **Age Under 18 (minors)**

- **Parents or guardian can give informed consent**

- **Certain states have exceptions for minors to give informed consent (i.e. pregnant minors, emancipated minors, minor seeking treatment for drug dependence).**

- **Cognitive disability**

- **Appointed guardian (parents, family, state official) can give informed consent**

Legal Issues In The Treatment of Trauma Patients

- **Informed Consent**

- **Some patients cannot give informed consent due to:**

- **Emergent situations**

- **Every attempt should be made to obtain informed consent per state and hospital policy especially before surgical procedures.**
 - **If informed consent cannot be obtained and emergent procedure and treatment is needed then implied consent should be utilized**
 - **Implied consent assumes that if the patient was aware of their emergent situation, they would want their emergent conditions treated under the “reasonable man” standard to save their life/limb.**
 - **If implied consent is used patient, family or guardian should be informed as soon as possible about the applied intervention during the emergent situation**

Legal Issues In The Treatment of Trauma Patients

- **Medical power of attorney (MPOA) and Living Will**
 - In situations where a patient cannot make decisions two pathways exist for decisions to be made on the patient's behalf according to their wishes
 - Medical Power of attorney (MPOA) is a person appointed by the patient to make medical decisions on their behalf if they cannot
 - A Living Will is a document that the patient expresses treatment wishes in to help guide treatment if they cannot make their own decisions
 - MPOA and a living will are not mutually exclusive and if both exist the directives in a living will take precedent over the MPOA.

Comparison of MPOA and Living Will

• MPOA

- Person appointed to make decisions
- MPOA and patient discuss wishes
- MPOA is expected to make the best decision with patient wishes in mind

• Living Will

- Patients own wishes written out
- Usually refers to specific situations and action to take
- If living will take precedent over MPOA if the will addresses the situation

Legal Issues In The Treatment of Trauma Patients

- **Do not resuscitate/Do not intubate (DNR/DNI)**
 - Patients can have very specific wishes regarding life saving measures.
 - A Do Not Resuscitate order (DNR) states that no life saving measures (i.e. hemodynamic support with medication) should be taken to keep them alive
 - A Do Not Intubate order (DNI) means the patient does not want intubation to keep them alive but does not in itself exclude measures or resuscitation.
 - Like a living will DNR/DNI orders override MPOA orders, but an MPOA can decide to make a patient DNR/DNI if that patient has stated so

Comparison of DNR and DNI

• DNR

- No resuscitative measures used to keep alive
 - No vasopressors for hypotension
 - No ventilation for respiratory failure
 - No antibiotics to treat infection
 - No Cardiopulmonary Resuscitation (CPR)

• DNI

- No intubation can be used to keep patient alive

BUT....

- Patient can be given resuscitative measures to keep alive
 - Vasopressor to treat hypotension
 - Antibiotics to treat infection
 - Can perform CPR

Legal Issues In The Treatment of Trauma Patients

- **Do not resuscitate/Do not intubate (DNR/DNI)**
 - **Some procedures are considered palliative in nature such as:**
 - Cephalomedullary nail for hip fracture in an elderly patient to control pain
 - Treatment of long bone metastatic disease to prevent fracture
- **In these situations a patient may have a DNR/DNI in place and discussion should be pursued about suspending these for the duration of the palliative procedure**
 - Not all states/hospitals require DNR/DNI to be suspended during palliative procedures
 - Suspension allows the treatment team to correct life-threatening conditions during and around the procedure to allow the patient to live to benefit from the intervention



Legal Issues In Practice Management

- 1. Conflict of Interest (COI)**
- 2. Second Opinion Doctors**
- 3. Advertising**

Legal Issues In Practice Management

- **Conflict of Interest (COI)**
 - **Definition: “A situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee, or a professional.”**
 - **Patients should be informed of potential COIs when appropriate to completely disclose and inform them of the treatment plan**
 - **In Orthopaedics COIs can occur through a few different mechanisms.**
 - **Therefore it is important to recognize and disclose all possible COIs**

Legal Issues In Practice Management

- **Conflict of Interest (COI)**
 - **Royalties**
 - **Payments made from a company to physician.**
 - **Payments can occur for:**
 - **Speaking for the company**
 - **Designing implants**
 - **Global implant utilization**
 - **Conducting research/trials**
 - **If utilizing an implant on a patient, you should disclose any royalties or conflicts related to using that implant to the patient**

Legal Issues In Practice Management

- **Conflict of Interest (COI)-Mitigation**
 - **The Physician Payments Sunshine Act (PPSA) 2010**
 - **Part of the Affordable Care Act**
 - **Requires medical product manufactures to report all and any payments made to physicians**
 - **Goal was to increase transparency of the relationship between the physician and the medical industry –pharma and implants**
 - **Database available on the internet for public to access**
 - **<https://openpaymentsdata.cms.gov/>**

Legal Issues In Practice Management

- **Conflict of Interest (COI)**
 - **Physicians can also own interest in surgery centers, medical equipment such as MRIs, and therapy centers which can create a conflict of interest.**
 - **Physicians can be conflicted to self-refer patients for health services to entities they own which potentially could carry civil law consequences**
 - **These conflict have been managed and addressed by Anti-kickback Statute and Physician Self-Referral Laws (Stark Laws)**

Legal Issues In Practice Management

- **Conflict of Interest (COI)-Mitigation**
 - **Anti-kickback Statute**
 - Criminal statute
 - Prohibits the “exchange of anything of value, in an effort to induce the referral of business reimbursable by federal health care programs.” Prohibited activities include:
 - Financial incentives for referrals
 - Waving co-payments either as practice or selectively
 - Kickbacks have led to increasing healthcare costs
 - Violators can face fines, jail time and risk being excluded from seeing Medicare/Medicaid patients

Legal Issues In Practice Management

- **Conflict of Interest (COI)-Mitigation**
 - **The Physician self-referral laws (Stark Laws)**
 - Civil Law
 - **Stark I: prohibited physicians from referring Medicare patients to a clinical laboratory that the physician or their family had a financial interest in.**
 - **Stark II: expanded Stark I to included Medicaid patients. Stark II also prevent physicians from referring patients to Designated Health Services (DHS) that a physician had financial interest in.**
 - **DHS included but are not limited to:**
 - Durable medical equipment/prosthetics
 - Home health services
 - Outpatient pharmacy services



Legal Issues In Practice Management

- **Conflict of Interest (COI)-Mitigation**
 - **The Physician self-referral laws (Stark Laws)**
 - **Exceptions to Stark Laws include but are not limited to:**
 - **Referral to a doctor who is a member of the same group practice**
 - **Services are done in the same location as the treating doctor**
 - **Intra-family rural referrals**
 - **Penalties for Stark Law violations**
 - **Carries no jail time**
 - **Can have significantly higher financial penalties compared to Anti-kick back laws**

Legal Issues In Practice Management

- **Second opinion doctor**
 - Occasionally patients or doctors will seek a second opinion to help care for the patient
 - The “second opinion doctor” has an ethical, but no legal obligation to discuss previous care that deviated from the standard of care.
 - If your patient seeks a second opinion you:
 - Should supply medical records with their consent
 - Cannot terminate the physician patient relationship
 - The “second opinion doctor” does not have to assume the patient’s care

Legal Issues In Practice Management

- **Advertising**
 - **Physician advertising is governed by the Federal Trade Commission Act**
 - **Advertising is allowed as long as advertising is not “false, deceptive or misleading”**
 - **Examples of misleading advertising**
 - **Bloodless surgery**
 - **Painless surgery**
 - **Offering a cure for a disease which no cure exists**

Summary

- **Multiple laws ensure that the care of trauma patients is consistent, and penalties exist for those surgeons and entities that do not comply**
- **While child and elder abuse is reportable, reporting domestic violence between adults varies by state and local laws.**
- **Multiple situations exist where patient may not be able to give informed consent and mechanisms to ensure patients are cared for by their wishes even when they cannot give consent**
- **Conflicts of interest can arise from royalties, physician payments and referrals. Knowledge of the laws and disclosure of these conflicts are important in provide transparent patient care.**
- **Advertising by physicians is not illegal; but advertisements cannot be deceptive in nature.**

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