Yakima County Medical Program Director

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To: All EMS Providers
Fr: Kevin Hodges, MD, FACEP, MPD

Broader Issues Regarding Capacity of a Patient to Refuse Care

Regarding treatment and/or transport without consent of the patient: this is an ongoing and long-standing issue with many variables. County Protocol G10 addresses this in a basic sense using an algorithmic approach. Questions naturally arise when an EMS provider suspects significant illness or injury but the patient declines evaluation, treatment, or transport. In this setting, the EMS providers on scene must evaluate the patient's "decision-making capacity".

I strongly recommend review of the following article for more specific information:

https://journalofethics.ama-assn.org/article/taking-no-answer-refusal-life-sustaining-treatment/2010-06

Capacity relates to the soundness of mind and to an ability to comprehend both the nature and the consequences of one's acts.

Decision-making capacity exists along a continuum, referring to the ability of a patient to make a specific decision at a specific time; it is not a global determination. Medical decision-making capacity is present when the patient is able to understand information about the medical condition and its consequences, to reason and deliberate about the various choices, to make a choice consistent with his or her values and goals, to communicate this choice to the medical provider, and to maintain this choice consistently over time.

How do I assess these things?
Clearly a 6 year-old, a comatose patient, a severely demented patient, or an intubated patient does not have the capacity to refuse care and emergency consent is implied. Alternatively, an alert and communicative patient who clearly comprehends the situation has the ability to direct his/her health care *even if their decision is contrary to the recommendations or wishes of the healthcare providers*. The grey area lies in between.

Decision-making capacity may be altered by acute physical or mental illnesses, substance abuse, and other factors. Note that I wrote "may be altered". The presence of physical illness, mental illness, substance abuse or intoxication does not universally mean the person does not have the capacity to make informed decisions.

When there is a disagreement between the patient and the EMS providers regarding medical need or care, in addition to the algorithm explained in protocol G10, it is the duty of the EMS provider to:

1. Explain their medical concerns
2. Explain the recommended treatment course
3. Explain the benefits of this recommended course
4. Explain the risks of refusal of any or all of the recommended actions.
5. Assess the patient's ability to comprehend the situation and the consequences of refusing assessment, treatment, and/or transport.

6. Document all of the above including factors that weigh in your decision such as severity of the life-threat, presence of intoxicants, profound disability due to mental illness, head injury, and all other factors.

If a patient is unable to comprehend and understand the nature of the current event and/or the consequences of their decisions to refuse, then they lack capacity to make that decision for themselves. In these situations, an EMS crew may reasonably compel a patient to seek medical treatment/transport.

How do we compel medical treatment/transport?
Protocol M3 "Behavioral Emergencies", addresses this algorithm effectively. In addition to expectations of establishing rapport and leveraging effective verbal persuasive techniques, there are references to summoning law enforcement and mental health professionals. These may not be available, but the algorithm does not change. You may continue to request police assistance and presence, but you must understand that police on scene interventions are limited. Contacting online medical control may be considered but is only likely to be helpful when the patient has capacity, and you believe that the added weight of a "physician recommendation" may persuade the patient to permit medical care.

Providers should continually assess the risks to the patient and to the EMS responders. If at any time the risks to the EMS responders are unacceptable, withdraw from the situation and clearly document your decision-making. In situations where the threat to the EMS responders clearly outweighs the benefits of response, I expect EMS responders to withdraw to a safe distance until the situation changes in a way where the benefits outweigh the risks. Clearly, not all situations or patients are of equal threat. For example, a 15yo female reporting suicide attempt or threat by ingestion of pills carries a very low risk to EMS personnel compared to a 300lb bodybuilder hyped up on methamphetamines and brandishing a firearm.

*** Utilize your resources including persuasion, family, or friend "peer pressure", available responding personnel, mental health professionals, restraints, and medications, in the safest manner for you and the patient.

If we withdraw, then what do we do?
If there is threat of imminent harm to you or other people, law enforcement should be requested. Do not wait until an EMS responder is attacked or injured. Work with the patient, family, bystanders, police officers, mental health professionals, and your dispatcher to determine the most-appropriate plan in each individual situation. The most reasonable plan may be that all 911 responders leave the scene.

As in any complex medicolegal situation, your documentation of your physical assessment, assessment of capacity, your medical concerns, the patient's responses, and all other factors explaining your medical decision-making will save or break you when the case is reviewed. Make it clear in the medical record what your assessment revealed, what you did to persuade the patient to cooperate with treatment and/or transport, and any evidence in weight of support of your ultimate decision.

You may utilize additional mental health resources to assist with evaluation and care of a mental health emergency.

- **Adams County** utilize Adams County Mental Health at 509-488-5611.
- **Benton and Franklin counties** call the county Crisis worker, who may be reached at 509-783-0500.
- **Yakima County** request the DCR who may be contacted through the 911 dispatcher. Other specific resources may exist in your area.

Thank you all for your continued professionalism as we navigate these changes. As always, I am available for questions or clarifications at BFCountyMPD@gmail.com, or by cell phone at 509-392-2176.

Sincerely,

Kevin Hodges, MD, FACEP
EMS Medical Program Director
Adams, Benton, Franklin, and Yakima Counties, Washington