

# Legal matters: Transport destination decisions aren't always clear cut

by Doug Wolfberg

At first glance, the decision regarding where to transport an emergency patient may seem simple. But it is becoming increasingly complex based on multiple factors, including patient choice, protocols, emergency department status and geography.

At the outset, it is worth noting that some areas have few, if any, choices in patient destinations. In some rural or remote areas of the country, there may be only one option in the patient destination decision-making process. But in many areas, there are multiple facilities to choose from. Four factors should be considered where there are multiple potential destinations.

**Patient choice.** Some EMS practitioners presume that the patient's choice is an overriding factor in making a destination decision. While this is a significant consideration, it is by no means the only one. First, the practitioner must determine if the patient has the legal and mental capacity to make an informed decision. Only then can the patient's choice be considered. ("Legal capacity" means that the patient must be of the requisite age in your state to make a health care decision; "mental capacity" means that the patient must be capable of understanding the risks and benefits of treatment and non-treatment, and be able to make an informed decision on these matters.) If the patient is incapacitated, then the EMS practitioners may follow the direction of the patient's legally responsible decision-maker, such as a legal guardian, or a parent, if the patient is a minor. If a competent patient expresses a destination preference, that should be given substantial weight. However, that might not be the end of the inquiry. For instance, a protocol may suggest that the patient's wishes be overridden in favor of an alternate destination.

**Protocols.** The next factor that a practitioner should consider in making a destination decision is whether the local EMS system has protocols that may be applicable to the situation. For instance, if the patient has suffered serious injuries, or a potentially serious mechanism of injury, your local trauma protocols may direct that the patient be transported to a trauma center instead of a community hospital. If the patient, or his legal decision-maker, directs you to transport the patient to a non-trauma hospital, this decision might not be in the patient's best interests. In this case, EMS practitioners should apply principles of informed consent and discuss with the patient (if competent) or the patient's legal decision-maker the benefits of bypassing the community hospital in favor of the trauma center. The assistance of the online medical command physician may be useful in having this discussion.

**Emergency department status.** Another crucial factor to consider is whether the intended emergency department has the capacity to care for your patient. Many E.D.s experience overcrowding and, as a result, are forced to issue "bypass" or "diversionary" instructions to incoming ambulances. Federal regulations permit hospitals to issue diversionary orders only when they lack the staff or facilities to accept any additional emergency patients. Even when a diversionary order is given to the EMS crew, federal law also makes it clear that once a patient is physically on the hospital's property, the hospital must accept the patient, even if the EMS crew disregarded the diversionary instruction and came to the hospital anyway.

**Geography.** Finally, the EMS crew needs to consider geography in the patient destination decision-making process. For instance, if the patient insists on being transported to a destination that is well beyond your service area, when a closer facility is capable of handling the patient's needs, that extended transport time might needlessly tie up the ambulance, leaving your community underserved. The patient's choice is not absolute, and most EMS systems would permit their ambulance services to adopt reasonable policies indicating that patients will be transported to the "closest appropriate" facility or to a facility within the ambulance service's locality in most cases, making it clear that the ambulance is not required to take patients just *anywhere* merely because they request it.

Deciding where to transport an emergency patient is not always a straightforward determination. However, with some prior planning and appropriate policies and training, this process can be made much smoother.

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