Research Article

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Reevaluation of Emergency Interventions From the Perspective of Health Law

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Abstract

The provision of healthcare services, like all procedures, may lead to legal consequences in cases of negligence, even in emergency situations, resulting in criminal proceedings. Emergency medical practices, due to their involvement in life-threatening situations, require quicker decision-making compared to elective procedures, emphasizing patient benefit and well-being. Despite the urgency of emergencies, a thorough examination, if possible, along with necessary tests and consultations, is essential before making a decision. It is crucial to decide in appropriate indications and provide adequate information to the patient. If a patient is unconscious and has a relative, the family member should be informed. If this is not possible, the authorities should be notified. In situations where a response from legal authorities cannot be awaited due to the urgency, procedures can be carried out without waiting for a response, with appropriate indications, and documented with record-keeping, especially if there is a life-threatening condition. Subsequently, when the patient regains consciousness, the procedures and reasons should be communicated to them. The aim of this study is to emphasize the importance of medical documentation, with clearly stated justifications and recorded indications in emergencies. In appropriate conditions, obtaining patient consent and providing information becomes crucial to mitigate potential legal consequences.

Keywords: Emergency medicine, health law, emergency health services, emergency medical ıntervention.

Introduction

Emergency Medicine, as defined by the International Federation for Emergency Medicine, is a medical specialty that encompasses the knowledge and skills required for the prevention, diagnosis, treatment, and management of acute and urgent conditions involving various physical and mental disorders in patients of all age groups (1). Additionally, the understanding and development of pre-hospital and in-hospital emergency medicine systems are crucial in the field of Emergency Medicine. This includes managing surgical and medical conditions that are life-threatening, limb-threatening, or carry a significant risk of death (2). This concept was first defined in the United States in the 1960s, though its practices date back to the ancient roots of medicine. It is known that emergency interventions, such as treatments for brain injuries called trepanation, were performed in ancient Egypt; these treatments aimed to reduce intracranial pressure (3).

The modern formation of emergency departments began during World War II with the emergence of small emergency care units known as accident rooms (3). In the United States, the American College of Emergency Physicians established Emergency Medicine as a specialty in 1968, and the first Emergency Medicine residency program was initiated at the University of Cincinnati in 1970 (4). In Turkey, the development of emergency medicine made significant progress in 1990 when American emergency medicine specialist Dr. John Fowler started working at the invitation of İzmir Dokuz Eylül University (1). These advancements raised the standards of emergency medical practices in our country, thereby enhancing the quality of healthcare services. By 1993, the establishment of a department under the name of Primary and Emergency Care Specialty was announced in the Official Gazette No. 21567 (5). Thus, emergency health services began to be provided at the specialist level.

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Emergency Services and Medical Intervention

Emergency departments, which serve individuals of varying ages and income levels, are healthcare units that provide free and continuous 24-hour service (6). According to the Emergency Health Services Regulation, the emergency departments of public and private hospitals are required to accept every patient who presents themselves as an emergency case and to provide the necessary medical intervention. In this context, every patient presentation is considered an emergency, and the services provided continue until proven otherwise.

This situation can lead to patient-physician relationships that go beyond routine operations in emergency departments. During the provision of healthcare services, it may not be possible to obtain a sufficient medical history for diagnosis, or treatment may be initiated without performing necessary laboratory tests. Additionally, the presence of cases that are often of a forensic nature can complicate the physician's duties and responsibilities compared to other situations (7).

The increased expectation for healthcare standards in both diagnosis and treatment leads to the demand for timely diagnosis, necessary laboratory and radiological examinations, and the selection of appropriate treatment or interventional methods for patients presenting to the emergency department (8). This situation necessitates the establishment of standardized approaches in emergency medical service delivery and the implementation of necessary medical interventions specific to each case. Therefore, it ensures the use of all available resources in the emergency department and the formulation of the most suitable treatment plan for the patient's condition.

Medical intervention is defined as activities carried out by individuals authorized to practice medicine for the purpose of diagnosing, treating, or preventing diseases (9). According to this definition, medical intervention encompasses all types of invasive or non-invasive actions performed on the human body for the prevention, diagnosis, treatment, or reduction of effects of physical or psychological disorders, as well as non-disease conditions (10). Invasive interventions include physical procedures such as surgical operations, while non-invasive interventions encompass less invasive methods such as medication, physical therapy, or diet. Therefore, even in emergency interventions, the human body is a fundamental element of personal rights and is considered a "personal, inviolable, non-transferable, and inalienable" constitutional right. Medical intervention is essentially an action performed on the human body and, as such, can be seen as an act that might constitute an offense of bodily harm (11). However, medical interventions are regulated as exceptions to this general prohibition. Article 17/2 of the Constitution specifies that medical interventions are clearly outside the scope of prohibition with the phrase "except for medical necessities and situations specified by law." The same principle is detailed further in Article 5 of the Patient Rights Regulation (12).

Suitability of Medical Intervention in Emergency Services

Any intervention performed on a human being related to medical practices can be considered under the concept of medical intervention (11). This definition covers a wide range of activities, from life-saving emergency interventions to aesthetic or cosmetic procedures. The patient-physician relationship is typically examined within the concept of medical intervention, and within this context, the legal framework of medical intervention is subject to specific conditions, even in emergencies.

Among these conditions are informing the patient and obtaining their consent, having the authority to intervene, ensuring the intervention is for legal purposes, and adhering to medical standards (13). In certain situations, actions that might be considered illegal can be made lawful under specific conditions by the physician (14).

The first condition for legality is that the patient has been adequately informed and has given their consent voluntarily, which is known as informed consent (14). When the physician informs the patient about all the details of the treatment and possible outcomes, and obtains the patient's consent, the intervention on bodily integrity is legally appropriate. Additionally, the consent must comply with the law, ethics, and personal rights, and must specifically include the potential results and complications of the intervention before it takes place (15,16). Even when a medical intervention is technically correct, it may not be legally appropriate if these conditions are not met.

The patient's informed consent is as crucial as their understanding. Topics that need to be explained to the patient include the possible causes and progression of the illness, who will perform the medical intervention, where, how, and with what methods, the estimated duration of the intervention, alternative diagnostic and treatment options along with their potential benefits and risks, possible complications, risks and benefits of refusing the intervention, important characteristics of the medications to be used, critical recommendations for healthy living, and how to obtain emergency medical assistance for the same issue.

The second condition for the legality of a medical intervention is that it must be performed by authorized individuals. This authority belongs to persons known as physicians, and in Turkey, it is defined by the provisions of the 1219 Law on the Practice of Medicine and Medical Sciences and the 6023 Law on the Turkish Medical Association. Within this framework, the person performing the intervention must have a medical degree, possess expertise in the relevant field, and fulfill specific formalities (13).

The third condition for the legality of an intervention is that it must be aimed at legally prescribed objectives. Medical interventions are generally performed for the purpose of improving the patient's condition or protecting their health. Interventions carried out for unlawful purposes are not considered legal, even if other conditions are met (13). Therefore, it is crucial that there is a legitimate indication for performing the intervention. The physician can only intervene based on these indications (11).

The fourth and final condition for the legality of an intervention is that it must conform to medical principles and standards. The physician is required to apply treatments that are consistently used in similar situations and are considered standard medical practice (17). In this context, it is expected that the physician adheres to the current standards of medical science and observes medical ethical principles during the intervention. It is important to note that the physician is not obligated to use all new methods.

In emergency interventions, while the general conditions specified are required, there are also some regulations and exceptions:

- The **Convention on Human Rights and Biomedicine** stipulates that in emergencies, "medically necessary" interventions may be performed (18).
- Principle 4 of the **Lisbon Declaration** states that interventions may be carried out in cases where "emergency medical intervention is required" and the patient is unconscious (19).
- According to the **Medical Deontology Regulations**, in emergencies, the physician is obliged to perform the initial intervention regardless of their role and specialty (20).

However, these regulations emphasize that interventions exceeding the physician's knowledge and skills are restricted to emergency situations only (21). In this context, the necessity of emergency situations and the nature of interventions are considered to ensure that medical interventions are carried out within a legal and ethical framework.

In some significant medical interventions, the obligation of providing information can be more critical than the presence or absence of an indication (15). There are exceptions to this; especially in life-threatening patients and certain emergency situations, medical interventions may be carried out without informing the patient (22). Indication is a very important criterion in the health process. The physician decides whether a medical intervention is necessary based on the specifics of the case and, if so, which indication will be used (13). This indication can sometimes be medical, and other times social or psychological (13). From a legal and criminal responsibility perspective, the primary condition sought is the appropriateness of the indication. Legal responsibility typically arises in the form of compensation and may lead to the physician being required to provide material and moral compensation to the patient under general legal rules (13). While indication is a fundamental condition for the legality of a medical intervention, obtaining informed consent and other conditions, which mean obtaining the patient's informed consent, are also additional requirements 23). This is because informed consent obtained without a proper indication will be incorrect, and similarly, incorrect informed consent obtained with a correct indication can also lead to legal issues. In this context, incorrect determination of the indication is one of the most critical errors that can occur, particularly in emergency medicine practices. This situation can lead to interventions that could harm the patient's health and may have serious ethical and legal consequences.

In emergency medicine practice, there are two models: the Anglo-American Model and the Franco-German Model. The Anglo-American Model, preferred by countries with high levels of development, aims to transfer patients to the hospital as quickly as possible. This model is implemented in Turkey as well as in countries like the USA, Canada, New Zealand, and Australia (24). In contrast, the Franco-German Model, commonly practiced in European countries such as Germany, France, Malta, and Austria, involves emergency medicine specialists stabilizing patients at their location and providing active intervention (24). In an emergency medical practice following the Anglo-American Model, patients are brought to hospital emergency departments either by their own choice or by emergency intervention teams. The openness of emergency departments to outpatient visits results in non-emergency patients also seeking care, which increases the workload of emergency departments. This necessitates effective triage in emergency healthcare services. There is a crucial phase starting with the triage process in emergency interventions. The medical indication is determined based on the urgency and necessity of the patient's condition. During this process, the physician works in coordination with health personnel such as Emergency Medical Technicians (EMTs), nurses,

or health officers. However, it is necessary to dispel the misconception that medical interventions can only be provided by physicians. According to the relevant provisions of Law No. 1219, emergency medical technicians and paramedics can also intervene in patients as part of emergency medical assistance and care. These personnel can perform their duties within the framework of regulations set by the Ministry of Health, having completed specific training. Additionally, certain authorized individuals, such as personnel from the Turkish Armed Forces and the Special Operations Department of the General Directorate of Security, can perform emergency medical interventions in the absence of health personnel. These arrangements are made to meet the need for rapid intervention in emergencies. However, even in such cases, it is essential that interventions are carried out based on emergency medical indications and are appropriate to the patient's condition. For the legality of medical interventions, not only is the correct determination of indication important, but so are other legal and ethical requirements such as informing the patient and obtaining consent. In emergency situations, if no other options are available, even individuals without medical training can perform medical interventions. What is crucial here is the presence of an indication for the emergency intervention. The more urgent and necessary the indication, the more lenient the obligation to inform may be (25). This is particularly significant for unconscious patients, those without a guardian, legally incapacitated individuals, or very young children who cannot express themselves. The Biomedicine Convention provides guidance for physicians in this regard (18). To ensure legal compliance in medical interventions, certain conditions must be met: the intervention must be indicated, the patient must be informed, and consent must be obtained. According to Articles 18 and 22 of the Patient Rights Regulation, medical procedures cannot be performed without the patient's consent, except in exceptional cases. The patient should be informed and their consent obtained, and this process should generally be carried out with a reasonable time period provided to the patient, applicable to non-emergency cases. In emergency healthcare, obtaining consent for medical intervention can pose legal issues for physicians, especially if the patient is unconscious, lacks family, or requires rapid intervention. If the patient is not in a position to consent (for example, due to age, legal incapacity, or loss of consciousness), consent can be obtained from a relative. However, if there is no relative or guardian available to consent and emergency intervention is needed, permission is not required; medical interventions necessary for life are performed. If there are relatives or a guardian but they refuse consent, emergency intervention can be carried out with a court decision according to the relevant articles (346 and 487) of the Turkish Civil Code. In such cases, if the person's life is at risk and immediate intervention is necessary, the physician can proceed with the required emergency intervention (7).

When the patient regains consciousness, the procedures performed and their justifications should be communicated in detail. This notification is crucial for the patient to understand their treatment process and to be informed about their care. Below is a suggestion for how to communicate the reasons for the procedures performed when the patient regains consciousness:

- **Diagnosis Explanation:** The patient should be informed about what their condition is and how it was diagnosed. For example, information should be provided about the disease the patient has, its symptoms, and the diagnostic methods used.
- **Treatment Options:** Explanations should be given regarding the treatment methods applied, their purpose, and how they work. If alternative treatment options are available, their advantages and disadvantages should also be presented to the patient.
- **Need for Intervention:** Every medical intervention performed should be explained in detail regarding why and how it was necessary. For interventions performed urgently, the reasons for immediate action and the expected benefits should be described.
- **Probability of Adverse Outcomes:** The potential risks and possible side effects of each treatment or intervention should be communicated to the patient. This way, the patient can make an informed decision about whether to accept or refuse the treatment.
- **Questions and Answers:** The patient should have the opportunity to ask questions about the procedures or treatment options, and these questions should be answered satisfactorily.

The process of informing the patient when they regain consciousness allows for active participation in their treatment process and increases their trust in the treatment. Additionally, it contributes to the patient's decision-making process in their care and strengthens the patient-physician communication.Formun ÜstüFormun Altı

Given the legal importance of all these situations, it should be emphasized that official records must be made in the hospital information management system and emergency service observation forms. According to the Law on the Practice of Medicine and the Art of Medicine, physicians are required to keep medical records and protocol books for judicial cases, ensure that records are taken in a timely manner, and ensure that these records are not altered or destroyed (26). The necessity of collecting and preserving records related to patients, injured individuals,

emergency patients, and judicial cases is explicitly stated in the Regulations on Medical Record and Archive Services of Inpatient Care Institutions. According to this regulation, documents and records related to judicial cases must be preserved for a period of 20 years (27).

Emergency Medical Intervention: Complications and Malpractice

Even in emergency medical interventions, if there is negligence on the part of the physician at any stage of the physician-patient relationship (such as diagnosis or treatment), this can lead to legal responsibility. Even for emergency medicine physicians, negligence and causation are significant in issues arising during their professional activities. Generally, the following elements must be present to establish negligence: 1- An action or inaction, 2- Material and immaterial damage, 3- The result being foreseeable and preventable, 4- Causation between the action and the damage, 5- The result being unintended (28).

Negligence can occur at any stage of the diagnosis and treatment processes. In the diagnosis phase, negligence can manifest in the following ways: 1- Failure to conduct necessary tests or conducting them inadequately. 2- Lack of necessary consultations. The physician should seek consultations from other specialists when the patient's condition and suspected disease necessitate it. 3- Misinterpretation or inadequate evaluation of data despite performing necessary tests and consultations (28).

In the treatment phase, negligence can appear as follows: 1- Errors in choosing tools and methods: The physician should select the more reliable and less harmful method, but may resort to risky or dangerous methods in cases with difficult or life-threatening risks. 2- Errors in applying medical principles: The physician should apply generally accepted medical principles correctly (28).

The physician should act by being aware of, adopting, and adhering to the accepted knowledge and practices related to their profession or specialty. The physician must keep up with the level of development in national medicine and continuously update themselves in this field. Otherwise, professional errors may be considered as inexperience (28,29).

Emergency Department Patient Treatment/Doctor Refusal and Doctor-Patient Refusal

Up to this point, the discussion has predominantly focused on health law from the perspective of patients seeking medical care. But what happens if, even in an emergency, the trust between the patient and the physician is broken, and the physician refuses to treat the patient? How is this situation handled?

Article 18 of the Medical Deontology Regulation provides guidance for this scenario. According to this article, in mandatory and emergency situations, the physician is explicitly required to provide medical assistance. This obligation arises from the physician's professional responsibilities and is independent of whether the physician is a public or private practitioner. In an emergency, if a physician knowingly fails to assist a patient, fully aware that this could result in harm or death, such inaction may be considered intentional. In such cases, Articles 448 (manslaughter) or 456 (bodily harm) of the Turkish Penal Code may be applied. However, if there is no intent to cause harm or death, but the failure to assist is due to negligence or carelessness, this may constitute a negligent offense. Negligent offenses are defined as crimes resulting from a violation of attention and care obligations and are assessed differently in criminal law (28).

Therefore, a physician may refuse to treat a patient for professional or personal reasons, but this is only applicable outside of emergency, official, or humanitarian duties. This rule also applies to situations where an emergency consultation is required. For example, even if the physician is an official or in an emergency situation, if they intentionally refuse to provide medical intervention despite the patient being at risk of death, they could be penalized under Article 83 of the Turkish Penal Code. Even if the physician does not intentionally neglect, failure to assist someone in danger could result in responsibility under Article 98 of the Turkish Penal Code (25) Additionally, a consulting physician's failure to respond to an emergency call may also constitute a dereliction of duty.

According to the Emergency Health Services Regulation, the procedures for transferring patients from the emergency department to another facility are organized as follows: Initially, an emergency medical assessment and necessary intervention are provided for every patient. If advanced medical care and treatment are needed and the current facility lacks sufficient resources, the patient is transferred to another suitable hospital. During this process, all medical care provided is documented in writing by the responsible unit and sent along with the patient to the receiving hospital. However, the transfer is carried out if stabilization of the patient is achieved, or if it is determined that the current facility lacks adequate care and treatment resources in life-threatening situations.

What should be done if a patient wishes to leave the emergency department or change hospitals/doctors?

According to Article 8 of the Patient Rights Regulation (Right to Choose and Change Health Institutions), patients have the right to choose or change healthcare institutions in accordance with the procedures and conditions set forth by the legislation. Patients can change health institutions in accordance with the referral system defined by legislation. However, the physician must inform the patient about the potential risks and consequences of changing institutions or refusing treatment, and assess whether it is medically appropriate to change the health institution. If a patient wants to exercise their right to refuse treatment according to the Patient Rights Regulation, their refusal of emergency medical intervention should be recorded and signed. If the patient refuses to sign, this should be documented in a report.

Conclusion

Emergency medical practice involves non-elective and life-critical situations that require rapid and practical decision-making. However, it is crucial that these decisions are made in the best interest and benefit of the patient. Ideally, patients presenting in emergencies should undergo detailed examinations, necessary laboratory tests, and consultations. Yet, the nature of emergencies often makes this impractical.

In this context, it is essential to prioritize the training of emergency department physicians and the implementation of pre-planned diagnostic and treatment protocols to reduce the risk of professional errors. Additionally, meticulous recording of medical information and documents, even when emergency interventions are immediately performed, can serve as vital evidence in potential future legal cases.

Implementing these principles should be viewed as significant steps toward enhancing patient safety and ensuring the legal protection of physicians.

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