



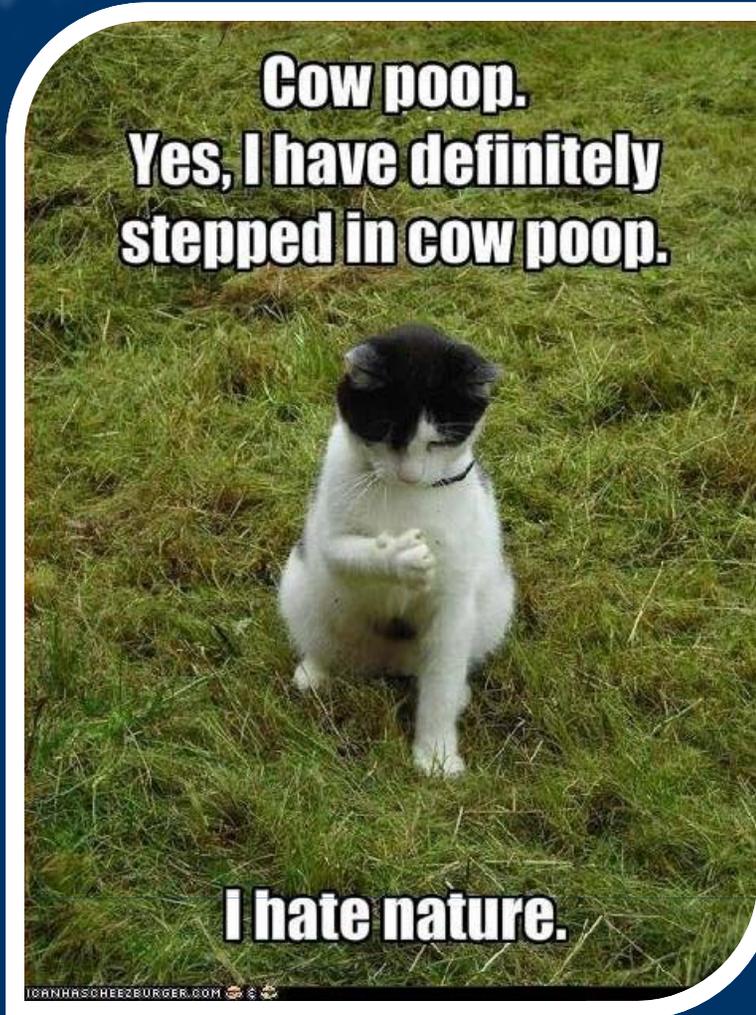
# Medico-Legal Considerations BLS Academy

Virginia EMS Symposium  
2011



# INTRODUCTION

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NREMT-P, VAAEM





# What did you see?

How many windows did you see on the trailer?

How many steps did the dog climb?

How many dogs were on the beach?



# Paint a Picture! {with words}

Phase 1

Phase 2

Phase 3



# Exercise

Write me an ACCURATE description:

- Look closely at the picture you have before you. Describe, in writing what you are looking at so that someone else can recreate what you see. You must complete the description in words ONLY – no pictures!



# Key Area's of Liability to EMT's

## Bad Refusals

- Failure to consider “competency”
- Failure to document

## Negligence

- Ordinary negligence vs. Gross negligence

## Abandonment

- Transfer of care
- Failure to document

## Patient Care Issues

- Airway
- Spinal Immobilization
- Equipment Failure



# Bad Refusals

Failure to consider AND document  
“competency”

Know your state’s requirements

Informed consent to refuse:

- 14 years of age
- Legally emancipated
- Is the patient “informed” of the potential consequences of the refusal



# Negligence

Negligence, as a legal standard, is the failure to exercise that degree of care which a person of ordinary prudence would exercise under the same or similar circumstances

*Barron's Law Dictionary, Fifth Edition, 2003*



# Negligence

## Elements:

- **Duty** “obligatory conduct owed by a person to another person.” In tort law, duty is a legally sanctioned obligation – the breach of which results in liability.
- **Breach** “a failure to perform a duty owed to another; a failure to exercise that care which a reasonable, prudent man would exercise under similar circumstances.”
- **Damages** “for actual harm resulting from the defendant’s wrongful act or omission”
- **Proximate Cause** “results were caused by one’s conduct or omission.”

# Gross Negligence

## Willful & wanton disregard

- Providing care beyond your scope of practice
- Unsafe driving
- Driving with emergency lights and sirens when there is no emergency suspected to exist
- Failure to contact medical direction when “out of the box” procedures are going to be used
- Abandoning a patient



NOT ALL INCLUSIVE



# Abandonment

Failure to ensure your patient is turned over to the same or greater level of care, based upon the assessed and documented needs of the patient!

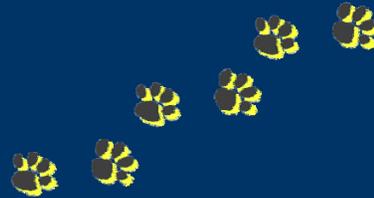
If you fail to document the transfer of care, the perception is perhaps you did not transfer care in accordance with the Standard of Care!



# Documentation

## Golden Rule

Complete, Accurate,  
Timely (CAT)

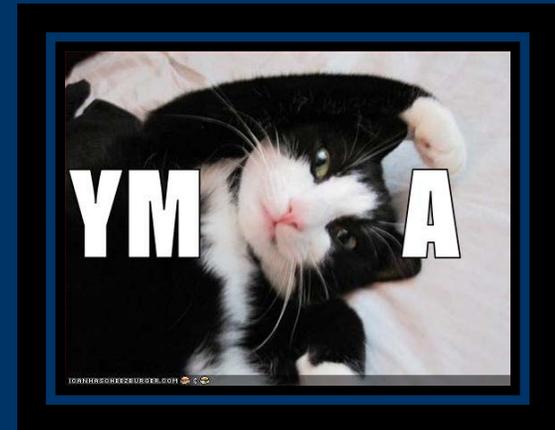


Confidentiality & Security of Records

# CAT Documentation

## Complete

- Thorough
- Neat
- All Items Marked
- NO Blanks
- All Required Signatures
- Addendums, Strips, etc. Attached



Accurate

Thorough

Truthful

Explanations of delineations from  
protocol

Special Orders from Medical Direction  
Extenuating Circumstances



# Timely

Prepared Immediately During or After Call

Submitted as per Policy

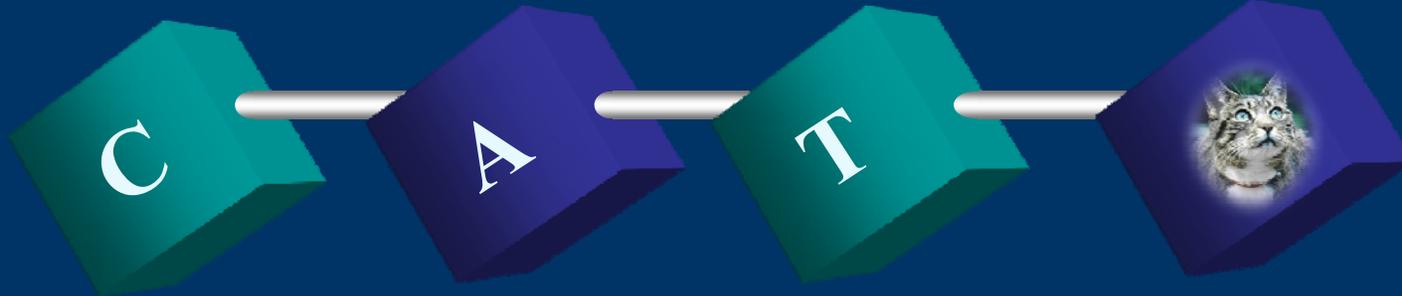
Refusals Documented

Addendums Attached / 24 hours or <

Data Reported Per Code of Virginia



# Benefits of Proper Documentation



**Reduce  
the  
potential  
to miss  
things!**

**Stronger  
continuum  
of care for  
your  
patient!**

**Reduce  
the  
potential  
for  
liability!**

**Write to  
withstand  
litigation!**



# Rights

“every human being of adult years and sound mind has a right to determine what shall be done with his own body”

*Justice Benjamin Cardozo, 1914, Schoendorff v. Society of New York Hospital*

This became the foundation of informed consent.  
The “doctrine of informed consent” continues to be upheld in all jurisdictions!



# Commonwealth of Virginia:

## VA CODE § 54.1-2969.C

Provides a minor in need of emergency care can be treated without consent of legal authority, but if the minor is 14 years or over and able to respond, he or she must be consulted for his or her consent.

The authority to consent necessarily contains the authority not to consent, or in other words, to refuse.



# Emancipation

Note: Emancipation is not established by marriage, but only by a court order, according to VA Code §§ 16.1-33.1 et seq. The fact of marriage is merely a piece of evidence the court may consider in determining emancipation



# Consent

Informed / Expressed: permission to treat or not treat, obtained after detailed explanation of the potential risks involved in receiving or not receiving care

Implied: a legal presumption that permission to provide care is in the best interest of the patient and the patient would be presumed to have given consent



# Competence

Patient must have the capacity to grant consent

Doctrine of implied consent has been extended in most jurisdictions to include temporary incompetence secondary to intoxication

Contact medical direction / document



# Rules of Documentation

Develop & practice a systematic approach  
Consistency reduces the potential to miss a  
key piece of information

Never ignore negative findings – document  
pertinent negatives

- Things you find during your exam that warrant no care, but show evidence of your thorough performance

Never falsify any information on the chart



# Mistakes???

The presiding judiciary seeks the truth...

Humans make mistakes

Do NOT lie or alter your report

Document what happened

Can write addendum in follow up



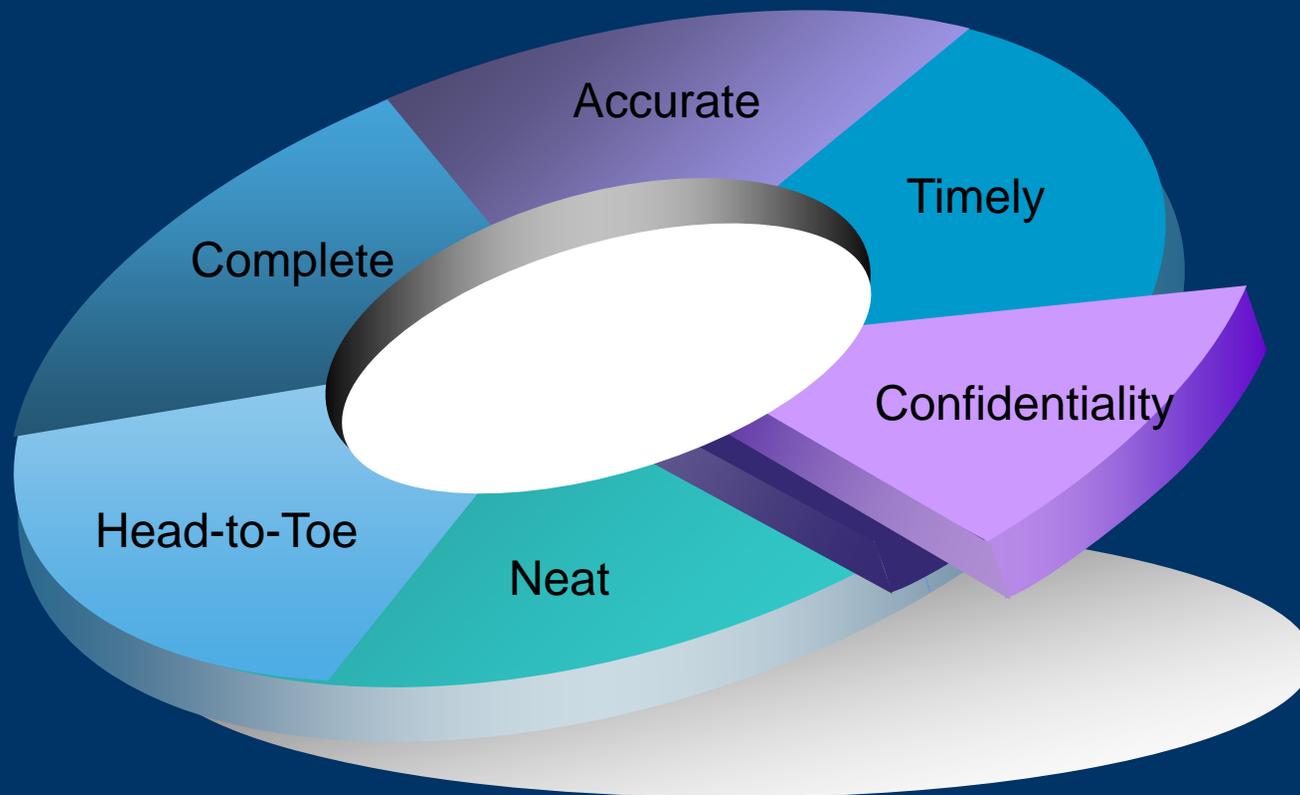
# The Medical Record

Your PPCR is the only record of events immediately after the accident...

- What does the record indicate?
- What information was not recorded?
- Could you be perceived as breaching your duty to the patient?
  - Was your care sub-standard?
- Would the reasonable and prudent EMT testify that the standard of care was not adhered to?
- IT'S ALL IN YOUR RECORD, RIGHT???



# Documentation Chart



# PHI



## Disclosure



Health Insurance Portability &  
Accountability Act



Care



Investigation



Billing



Training  
QM/QI



# Systematic Approach

CHART  
What's Your  
System?  
SOAP

Hx, Pe, Tx



# SOAP Method

Subjective

Objective

Assessment



Plan

# Objective vs. Subjective

- Factual
- Can be Measured
- Quantifiable
- Unbiased
- Verifiable

- Opinion
- Personal Belief
- Perspective of Writer's View
- Open to Interpretation
- Often Uncertain

Dog is a German Shepherd



Dog is Cute

# CHART Method

**C**hief Complaint

**H**istory

**A**ssessment

**Rx** (Prescription for Treatment)

**T**ransport



# HPT Method

Hx = History



PE = Physical Examination



Tx = Treatment & Transport



# TRUE Examples of poor documentation

Arrived on scene, pt sick to her stomach, said she ate some fud that may be bad. V/S normal. Placed pt in POC and transported to ER.



LAZY?



# Another **TRUE** example:

On scene found patient drunk. He's a regular who always gets drunk. He called for EMS to avoid going to jail. He stinks bad. We turned him over to PO.

DUMB ASS



# And another....

Called 4 medical raisins. Patience in  
floore. She wus sikk. She puuked  
on floore. Blud wus in the puok.  
She didn't waunt us so we lift.



*Buddy*

# Proper Documentation

HX: Upon arrival, I found a 64 y/o female patient (Pt), lying prone on carpeted floor in living room. Pt states “I laid down on the floor because I am just too weak to stand”. Pt’s C/C is nausea, vomiting and weakness. Pt has been sick x 2 days and vomited x 3 within the last hour. Pt denies allergies, takes Atenolol for HTN and low-dose ASA. No GI hx. Pt states she ate a can of tomato soup yesterday evening but doesn’t remember what time.

PE: Pt CAO x 3, denies loss of consciousness, denies any trauma. Pt denies SOB &/or chest pain. V/S: B/P 108/62, P 94 & Regular, R 24 & non labored at time of exam, PERL, skin Pale/W/D. BBS = clear. Poor skin turgor. ABD soft & non-tender at time of exam. Pt denies diarrhea & states urinary function is normal. Distal pulses weak, grips =/strong. Balance of PE unremarkable. Noted vomitus on floor which appears to contain a small amount of dark colored blood.

TX: Evaluation and assist back to chair only. Pt refusing additional treatment &/or transport adamantly because her daughter is on the way. Pt states she will go POV to the hospital when her daughter arrives. I explained to the patient that she may be bleeding internally, which is a serious condition that warrants immediate transport and evaluation by a physician in an emergency department. I informed the patient of the potential risks associated with refusal and delay in care. I advised her to call us back immediately if her condition worsens or if she changes her mind. Pt still refusing transport AMA, pt signed refusal, witnessed by Troy Copeland, FF, Co. 1. Crew returned to quarters and I contacted medical control to advise them of the situation. *Good Paramedic, NREMT-P*

# Burden of Proof

## Preponderance of the Evidence

- The greater weight of the evidence



## Clear & Convincing Evidence

- A standard of proof higher than preponderance, maybe 75% - 90% (if you were to think of it in terms of percentages)



## Beyond a Reasonable Doubt

- The highest standard of proof



# COMMUNICATION???

**A brief video of ???**

