

Civil Liability & Pre-Hospital Emergency Care

What are the legal implications for those who attempt to provide pre-hospital emergency care?

The Pre-Hospital Emergency Care Council has commissioned opinion on the legal implications for those who attempt to provide pre-hospital emergency care. The following is a memorandum prepared by Dr. Ciaran D. Craven B.L.

1. General

This is a general memorandum prepared for PHECC summarising the principal issues in respect of the civil liability of those providing pre-hospital care. Its purpose is to give general guidance only. It is not, and it is not intended to provide, either an exhaustive legal analysis of all of the issues that can arise or specific legal advice on any particular issue.

2. Introduction

For those involved in pre-hospital care, the two principal areas of liability to be considered are in **trespass to the person** and **negligence**. Both are torts - civil wrongs committed by one person against another.

3. Trespass to the Person

3.1 The essence of a trespass to the person is unconsented touching – this is a **battery**. To cause another person to apprehend that (s)he is about to be battered is an **assault**. Obviously, therefore, a person who is asleep or unconscious cannot be assaulted, insofar as the civil law is concerned. In short, a battery is a touching of the body and an assault the ‘touching’ of the mind.

3.2 Where a person is incapable of giving consent, treatment – involving touching without consent - may lawfully be given if it is *necessary*. The **defence of necessity** justifies what would otherwise be unlawful in the absence of consent. However, the defence is limited to that which is necessary to save life or limb. If treatment, or the touching, goes beyond that which is necessary, it becomes unlawful, at that point. Although necessary treatment may often arise in an emergency situation, it is the *necessity* for the intervention, not the emergency of the situation that is central to the defence.

3.3 In summary, the **defence of necessity** – subject to the limitations of that defence – is sufficient to justify, and render lawful, the unconsented resuscitation and treatment of an unconscious patient and to avoid what would otherwise be liability in trespass and pre-hospital care personnel can usefully be reassured in this regard.

4 Negligence

4.1 There are four constituent elements to the tort of negligence. *Firstly*, there must exist a **duty of care**. This is a legally imposed obligation, the essence of which is to avoid causing reasonably foreseeable harm to those who might reasonably foreseeably be harmed by your acts or omissions. In our legal order, however, there is no legally imposed duty to rescue or to stop to give assistance. (However, a duty will be imposed where one actually does stop and provides assistance.)

4.2 *Secondly*, there must be a failure to conform to the required **standard of care**. Insofar as persons trained in pre-hospital care are concerned the standard applicable is “the standard[s] of the ordinary skilled first-aider exercising and professing to have that special skill of a first-aider”. For the word ‘first-aider’ can be substituted para-medic, EMT or nurse, as the case may be. At its simplest, the standard of care falls to be determined by what a reasonably competent person possessing, or professing to have, the particular level of skill would have done, in the circumstances.

4.3 *Thirdly*, the patient must suffer some injury, damage or loss. If this occurs, in a pre-hospital situation, it is usually self-evident. *Fourthly*, it must be established, as a matter of probability, that but for the failure to conform to the required standard of care, the patient would not have suffered injury, damage or loss or whatever the harm happens to be.

4.4 In summary, unless a patient can establish (i) that not alone did the person providing pre-hospital care fall below an acceptable standard of care, in all of the circumstances, (ii) but also that that, as a matter of probability, caused the harm complained of, an action in negligence is bound to fail.

4.5 Given the factual background and clinical complexity of most pre-hospital care situations, trying to establish this second element, i.e. that it is more likely (which is what ‘as a matter of probability’ means) that the harm ultimately suffered was caused by the pre-hospital care that was given rather than by the initial illness or accident, will present a formidable obstacle to success in any such action, as a matter of practicality.

*Dr. Ciaran D. Craven B.L.
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Conclusion

Should a pre-hospital emergency care provider act in accordance wholly with their training status and not act in a grossly negligently fashion then it is unlikely that any litigious claim would be successful. This conclusion is also in keeping with the position of the Resuscitation Council of the United Kingdom. www.resus.org.uk/pages/legal.htm