Medical Legal Implications When Providing Emergency Care on a Commercial Flight

Pascal J. de Caprariis; Ann Di Maio

INTRODUCTION: U.S. airlines often request a healthcare professional to volunteer to assist an ill passenger. Litigation from a Good Samaritan's care of an in-flight medical emergency (IME) is considered improbable. The 1998 Aviation Medical Assistance Act (AMAA) encourages health care professionals to volunteer with indemnity for standard and good medical care. It does not offer legal or financial assistance. Our review explored the legal support malpractice companies and U.S. airlines provide if litigation is initiated for IME care. Malpractice insurance policies can differ on IME coverage. We found most private practice physicians' policies include IME. Medical institutions may have policies restricting their physicians' coverage to the institution's location. Those without malpractice coverage will need to retain and pay for a legal defense to demonstrate no gross negligence and no willful misconduct. The physician's, airline crew's, and on-ground IME documentation support should be retained by the Good Samaritan especially for a pediatric or adolescent ill passenger. U.S. airlines consider a Good Samaritan medical volunteer as a passenger and do not extend legal assistance. This contrasts with some foreign airlines that do provide liability protection. Knowledge of the malpractice policy IME coverage is essential prior to traveling by air. After completing care for an ill passenger, physicians should generate their medical documentation and request the IME documentation generated by the airline and on-ground medical expert. We also believe U.S. airlines should assume responsibility to provide legal assistance to a Good Samaritan physician in the event of IME litigation.

KEYWORDS: aeromedicine, in-flight medical emergencies, litigations for in-flight medical emergencies, medicolegal issues, Good Samaritans, pediatric medicolegal issues on commercial airliners, aviation medical assistance act, malpractice.

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Various U.S. initiatives have been instituted by airlines in the United States to ensure ill passengers receive the proper medical attention during a commercial air flight. Airlines have trained all crewmembers in first aid. In accordance with the Federal Aviation Agency requirements, they have equipped their commercial aircrafts with emergency medical kits; their contents help in the assistance of the most common medical emergencies. In addition, all aircrafts with a payload over 7500 lb and at least one flight attendant must have an automatic external defibrillator on board.[1,13,32] Finally, several airlines have contracted with on-ground medical consultation services that provide medical expertise and advice to those caring for the ill passenger. The two agencies are MedAire of Phoenix, AZ, and STAT MD of the University of Pittsburg, PA. In 1998, the United States Congress passed the American Medical Assistance Act (AMAA), which defines a Good Samaritan as a health care professional (HCP) licensed in a state to provide medical care.[5] Physicians, physician assistants, nurses, paramedics, emergency medical technicians, and clinical pharmacists are encouraged to volunteer during an in-flight medical emergency (IME) without fear of litigation.

There are multiple publications on comprehensive treatment guidelines for the most commonly reported IMEs in medical journals[12,23] and text books,[8,25] as well as those dedicated to specifically addressing specific situations such as chest pain,[7,28] respiratory events,[7] unresponsive passenger,[16,31]

From Brooklyn, NY, USA.

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Address correspondence to: Pascal J. de Caprariis, Freelance Consultant, Infectious Diseases and Family Medicine, no affiliation; sonopronto@verizon.net.

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allergic reactions,[29,31] suspected communicable diseases,[3] psychiatric disorders,[22,23] and pulmonary embolism.[11] These publications focused on management within the confines of a commercial airplane. The volunteer physician, flight crew, and ground emergency physician have a common goal to medically stabilize the ill passenger.

Once this is accomplished, the physician should document the actions taken.[8,26] The International Air Transport Association has developed a sample form that records the IME.[19] However, some airlines have developed their own forms for IME documentation so they may vary between the airlines.[30]

Of equal importance are the potential legal consequences associated with the medical care provided by the Good Samaritan. We conducted a literature search on medical emergencies during commercial air travel using PubMed, Google Scholar, and the New York Academy of Medicine Library. Our search identified publications from June 2008 to June 2020. We focused mostly on the topic relative to U.S. flights; however, some international issues were included in our review. Considering the litigious environment in the United States, there are legal implications relevant to IMEs.

U.S. and Foreign Airline IME Requirements

The AMAA does not mandate that a physician provide medical care for an IME, but it encourages the health professional to volunteer his/her services. While it is beyond the scope of this article to address the laws of every foreign country, the AMAA is in sharp contrast to some countries. The laws in Germany, France, and Australia are specific: physicians on board during an IME must provide medical assistance.[17] This could be a legal problem for a U.S. physician traveling to these countries, or on airlines whose corporate headquarters are registered in these countries, if he/she does not volunteer.

The Good Samaritan status does not automatically provide immunity. In 1999 a physician volunteered to provide care for an IME while traveling on a Hungarian airline. Sedation was administered by the volunteer physician to the agitated passenger, which resulted in the passenger's death. On landing in Turkey, the physician and the flight crew were arrested. After interrogation by Turkish authorities, they were finally released the next day.[20]

The obligation to treat can be confusing when more than one health professional volunteers. The most clinically experienced professional should assume the lead.[6,33] An interventional radiologist may be multiple boarded and in practice for 20 yr, but should defer to an emergency physician or critical care physician/surgeon for treatment of a critically ill passenger. The age of the ill passenger may determine the physician best suited, i.e., for an ill child an internist should defer to a pediatrician or family physician. A situation could exist where the internist is the only doctor on the flight and would be expected to offer medical care outside his/her specialty. In this instance a close cooperation with the ground support physician is critical.

Medical Care and Statute of Limitations in the U.S.

Healthcare providers and patients alike both want the same result from the healthcare professional, i.e., a good medical outcome. Unfortunately, for some providers, despite their best efforts, they will be faced with a malpractice suit. For a patient to file a lawsuit, certain criteria must be met: 1) duty of practitioner, 2) breach of duty, 3) demonstrable harm, and 4) causation. Next, there is a time limit in which a patient may file a lawsuit against a physician; this is referred to as the statute of limitations. The purpose of the statute is to protect the health care provider from being threatened with a lawsuit after an unreasonable amount of time has lapsed while still allowing the patient to have justice. The statute of limitation varies from state to state and in general is usually limited to within 2 to 3 yr after care has been delivered. There are some exceptions, for example, when the patient can show fraud by the hospital to cover up a diagnosis, or the patient had a mental illness and was incapable of knowing there was malpractice. But in general, most states limit the time to 2 to 3 yr.

IMEs occur can occur with a child or adolescent;[24,35] the statute of limitations for this group varies from state to state and is more comprehensive. In some states it follows the statute for an adult of only 2 to 3 yr. In others it may differ and the time to bring a suit may be longer based on the clinical scenario or the age of the child at the time of the alleged injury. In addition, many states have a provision for when the child attains the age of maturity or turns 18. They are allowed additional time up to 30 mo to bring a malpractice action on their own behalf. This is especially concerning for a physician who 10 yr ago may have cared for a child on an airplane and is now faced with a lawsuit and cannot recall the details and does not have any documentation of the events.

Liability, Litigation, and Legal Representation

The AMAA addresses the liability of physicians; there should be no litigation unless the HCP acts with gross negligence or with willful misconduct. Although many publications have reiterated that a suit against a Good Samaritan HCP is extremely remote, Wong in 2017 published concerns that litigation risks exist.[36] The AMAA's liability protection does not prevent an airline passenger or their family from initiating legal action against a Good Samaritan physician. When the doctor can demonstrate his/her compliance with the AMAA, most likely the court will dismiss the suit. However, the physician still needs a legal representative for guidance and representation during the arduous and lengthy deposition process and precourt preparations. Obtaining the legal support for an IME lawsuit may vary depending on his/her malpractice policy.

Documentations of the incident in the event of litigation is critical for the defense. Ho et al. have advised retaining documents for at least 3 yr.[18] The statute of limitations differs for adults and for children/adolescents, which dictates the critical

retention of documents. Pediatric and adolescents' malpractice in some states can be filed 2 yr past the age of 18. In a situation without documentation, the physician may have to resort to his/her memory and hope that that the airline has retained the necessary documentation.[30]

Assessing Malpractice Policies and Indemnity

Physicians, nurses, physician assistants, paramedics/emergency medical technicians, and clinical pharmacists are capable of providing IME care; however, their malpractice insurance policies vary for each specific profession. We reached out to several malpractice companies that underwrite policies in New York State. The policies considered were for physicians in private practice and those employed by a medical institution (such as a hospital, medical center, or clinic).

Although there were companies who did not respond to our outreach, we did have enough responses to observe similarities and differences. Private and institutional policies had diversities in respect to IME coverage.

- Policies written for physicians in private practice indicated that they provide IME coverage.
- Differences were found among the policies issued for physicians employed by a medical institution (i.e., hospital, medical center, or clinic). The scope of coverage was stipulated by the institution, not only the malpractice insurance company. There was a consensus that a medical institution could request that the underwriting department restrict the coverage specifically to the workplace location. Since coverage could vary from institution to institution, it prevents us from making a general statement relative to an IME policy for institutions.
- Retired physicians have a unique ethical situation. Although they can possess the necessary background to provide IME care, they often no longer retain malpractice coverage.

There were two situations which could not be included in our general statement:

- One company only handles a high-risk pool which imposes its own restriction, limiting coverage within New York State.
- Physicians employed by the public health service[2] are covered for professional liability under the Federal Tort Claim Act.[14,15] Their liability coverage usually is defined in the sites' grant applications. Hence their exclusion from any of our general consensus statements.

Since Gendreau's and DeJohn's publication, which suggested "some" airlines carry an umbrella liability and the ground support company "may" also provide coverage, 18 yr have passed.[16] We contacted eight major U.S. airlines companies. Six of these companies fly both national and international routes. Two companies only had national routes in the United States. However, only three responded; two airlines offered legal assistance as determined by the "uniqueness of the situation", and the third suggested that the doctors use their private malpractice insurance.[10] Hence, U.S. airlines' legal support seems ambiguous or nonexistent. Moreover, the two U.S. ground support companies do not extend their malpractice insurance coverage to the Good Samaritan physician.

Our literature search did reveal some differences between U.S. and foreign airlines. In the United States, when the physician answers the airline's crew for medical assistance, he/she is still considered a passenger, not an airline employee. Therefore, the Good Samaritan physician is not covered under the airline's insurance, which is in sharp contrast with several international airlines.

Air France, KLM, and SAS treat a Good Samaritan physician as an "occasional employee", and British Airways and Virgin Airways offer the Good Samaritan doctor indemnification from liability.[18] The Doctor on Board program was initiated by Lufthansa and once physicians are registered in this program they are indemnified for IME on Lufthansa, Austrian Airlines, and Swiss Air.[21] Turkish Airlines and All Nippon Airways have IME programs for physicians.[4,34] All these airline's programs have a common denominator: protection with indemnification for the physicians when they provide IME care. Cocks and Liew suggested that there may be some airlines that offer indemnity and suggested that written confirmation could be obtained from the aircraft captain "if the doctor requests it."[9] Unlike the United States, where the AMAA has a broad description of a health care volunteer, some foreign airlines' description of a Good Samaritan specifically use the term doctor or physician.

DISCUSSION

As we described earlier, we limited our IME outreach to the New York malpractice companies relative to physicians, but our findings could be relevant to practicing physicians throughout the 50 states and U.S. territories. Given our current litigious society, we cannot be deluded that future litigation will always remain remote. Underwriting of a policy can be influenced by private practice, medical specialty, and/or institutional employment. A private physician's policy usually covers an IME since a physician's basic education provides training on management of general medical problems. We are cognizant that some private policies can be underwritten for a specific medical specialty, hence some restrictions may exist. Specialists may need to recognize their ability to adequately address an IME, as well as acknowledge their limitations which would prevent them from providing medical care. Institutions (i.e., medical centers, hospitals, or clinics) have their malpractice policies restricted to their physical location and consequently excludes an IME.

Before embarking on any air travel, it behooves a physician to ascertain whether there are any IME restrictions in his/her institution's insurance policy. While our outreach to New York state insurance companies examined malpractice only for physicians, we believe similar evaluations for other health care professions should be considered in the future.

A precarious situation exists for a retired physician even when he/she has the necessary qualifications to provide IME

care. A physician has a moral obligation to adhere to the Hippocratic oath; however, a lack of malpractice insurance could influence the decision to volunteer assistance. It is inconceivable that a retired physician would request indemnity from the airline crew prior to examining the passenger.

The IME management document generated by the flight crew and the on-ground physician should be provided to the Good Samaritan physician. It must be made available within a reasonable time after the flight's conclusion. He/she should also make personal notes as to the medical care provided. Retention of the document is subject to state and local laws. This is extremely important in the event of litigation.

In the unlikely event that a malpractice lawsuit is initiated against the retired physician, he/she must seek and pay for an entire legal defense. To dismiss the plaintiff from litigation, compliance with AMAA must be demonstrated. The AMAA is clear on the issue of liability. "An individual shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the individual in providing or attempting to provide assistance in the case of an in-flight medical emergency unless the individual, while rendering such assistance, is guilty of gross negligence or willful misconduct."[5]

Wong cited a case[18] where litigation was brought against a Good Samaritan physician for the IME care provided. However, he noted that it was eventually dismissed by the court. The anxiety, mental stress, and financial burden encountered during the deposition and the lengthy pretrial preparation had a profound effect on the physician.[27] This situation (as with a retired physician's dilemma) has not been fully appreciated nor explored in medical journal publications.

Nurses, physician assistants, paramedics/emergency medical technicians, and clinical pharmacists can also volunteer in the event of an IME. However, it was beyond the scope of our review to consider their various malpractice insurance companies and the different specifics addressed in their insurance policies. A future study to specifically scrutinize malpractice coverage for these medical providers would be of value.

The Hippocratic oath strengthens the physicians' moral obligation to volunteer as a Good Samaritan when circumstances arise. When physicians correctly manage a medical case, they can be assured of the backing from their malpractice carrier. Unfortunately, the complex world of litigation has confounded physicians, especially when called to volunteer their services in an unfamiliar location within an aircraft at 35,000 ft above sea level. While litigation is not the primary concern during a medical emergency, subsequent evaluation of the situation reveals that the AMAA act does not cover the cost of the defense of the Good Samaritan. Some physicians are also unaware of the limitations that could exist with their malpractice policy and may not realize their obligations to foreign laws when flying on an international flight. The risk management department and/or the underwriter of the insurance policy can offer guidance if an insurance malpractice policy provides coverage for an IME in the United States and in foreign countries.

While an IME litigation directed against a Good Samaritan physician is improbable, it is not impossible. Documentation at the conclusion of IME care is critical and would be supportive of the physician in the event of future litigations. While it is unfortunate that U.S. airlines do not offer liability coverage, it is reassuring that several international carriers provide legal assistance and indemnity for the Good Samaritan physician.

Prior to air travel, every physician should have knowledge of the IME coverage within his/her malpractice policy and any restrictions that exist. In the event a physician responds to the request for medical assistance, the Good Samaritan should retain his/her record of the event, as well as request the specific IME documents of the airline's crew and the on-ground medical expert. The documentation of IME care should be in the possession of the physician at the conclusion of the flight, and all pertinent documentation should be retained based on the statute of limitations relative to the ill passenger's age. Retired physicians without malpractice insurance should be aware of their liability since the AMAA does not require U.S. airlines to provide legal support to demonstrate compliance with the AMAA law. We firmly believe an effort should be made to reduce undue stress on the part of the Good Samaritan in regard to litigation. All U.S. airlines should assume the responsibility of providing legal assistance to the medical Good Samaritan in the unlikely event of litigation.

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Authors and Affiliations: Pascal J. de Caprariis, M.D., FAAFP, and Ann Di Maio, M.D., FAAP, freelance consultants, no affiliations.

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