

Medical Missions and Medical Malpractice: The Current State of Medical Malpractice Overseas

Tetsu (Butch) Uejima, M.D.
Committee on Professional Liability

It appears that the incidence of overseas medical malpractice lawsuits is negligible. The July 10, 2010 issue of the *American Academy of Pediatric News* features an article by David Marcus titled “Are You Protected From Liability When Volunteering at Home, Abroad?” The article states that “extensive searches of U.S. and international case law have yielded no active or past cases of medical malpractice against a physician who has volunteered internationally.” Our research turned up a single citation by the Center for Medical Missions (www.cmda.org) showing a few malpractice cases and settlements. The largest settlement cited was for \$100,000-200,000 in Taiwan. There was one pending case in Kenya where the demand appeared to be \$500,000. The citation does not mention whether the lawsuits were surgical, medical or anesthesia-related but appeared to primarily involve long-term volunteers. The data were gathered through a survey of volunteers; 1,000 surveys were sent with only 59 responses, a 5.9 percent response rate, which raises questions about the validity of the survey. However, there is no reason to doubt their lawsuit/settlement data.

We can only speculate whether the incidence of malpractice lawsuits in this arena will rise in the future. The U.S. leads the industrialized world in the incidence of medical malpractice litigation. The rest of the developed countries, however, are becoming increasingly litigious in their appetite for medical malpractice lawsuits. If we were to extrapolate this phenomenon to developing countries, one could argue that lawsuits may be on the rise in the future. The introduction and continued growth of medical tourism may also contribute to a rise in medical

malpractice litigation. An Internet search titled “overseas medical malpractice” will list a number of sites that discuss the medicolegal options Americans would have should they suffer from a medical mishap while overseas.

Current Malpractice Options

There is no consistency regarding coverage provided by sponsoring organizations. Most organizations do not provide medical malpractice coverage, and some go so far as to state that coverage is not necessary because the likelihood of a lawsuit is negligible. A few organizations, such as Doctors without Borders, will provide coverage. Some organizations recommend that volunteers should consider carrying malpractice coverage while overseas. There may be more risk with plastic surgery-type missions as these are elective cases, and smaller organizations lack the administrative/legal structure of larger organizations. International humanitarian law (IHL) protects humanitarian workers, including health care personnel, against litigation while they are serving in an official capacity. IHL was intended to provide protection during war or natural disasters and is not explicit whether coverage will be provided for medical volunteers on elective medical missions. This has not been tested in court. We believe that most organizations are working under the premise that IHL will provide legal protection in the event a lawsuit is filed. In addition, many agencies proactively offer families settlement for adverse events, eliminating the need for litigation.

Thirty-nine malpractice insurance providers were briefly surveyed by e-mail to determine if they provided medical malpractice coverage for humanitarian missions outside the U.S. [Table 1]. Thirty-one providers (79 percent) responded to the survey. Of the 31 responses, 18 providers (58 percent) responded they did not provide coverage, although a few were considering adding this coverage in the future. Several firms mentioned that they had referred inquiring covered physicians to the sponsoring humanitarian organizations for malpractice coverage.

Thirteen respondents (42 percent) currently offered malpractice coverage for humanitarian missions outside the U.S. with all but one listing specific conditions that must be met for coverage to be in effect. Companies were not specifically

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*Tetsu (Butch) Uejima, M.D. is
Director, Liver/Intestinal Transplant
Anesthesia; Medical Director, Risk
Management; Patient Safety Officer;
Associate Professor of Anesthesiology,
Children's Memorial Hospital,
Northwestern University Feinberg
School of Medicine, Chicago.*

Table 1: Survey Results on Malpractice Coverage for Humanitarian Missions Outside the U.S.

Companies offering malpractice coverage for humanitarian missions outside the U.S.	Companies not offering malpractice coverage for humanitarian missions outside the U.S.
Pennsylvania Medical Society Liability Insurance Company	First Professionals Insurance Group
ProAssurance National Capital Insurance Company	Anesthesiologists' Professional Assurance Company
ProAssurance Indemnity Company, Inc.	Conventus Inter-Insurance Exchange
ProAssurance Wisconsin Insurance Company	American Physicians Assurance Corporation
ProAssurance Casualty Company	ProMutual Medical Professional Mutual Insurance Company
MAG Mutual Insurance Company	Medical Assurance Company of Mississippi
State Volunteer Mutual Insurance Company	Louisiana Medical Mutual Insurance Company
The Academic Group	Mutual Insurance Company of Arizona (MICA)
Midwest Medical Insurance Company (MMIC Group of Co's)	CAP-MPT Cooperative of American Physicians, Inc. Mutual Protection
Physicians Insurance: A Mutual Company	Kansas Medical Mutual Insurance Company
Medical Insurance Exchange of California	Medical Liability Mutual Insurance Company NYC
Medical Mutual Insurance Company of Maine	Princeton Insurance Companies
Risk Management Foundation	Utah Medical Insurance Association
	Preferred Physicians Medical Risk Retention Group, Inc.
	Medical Mutual Liability Insurance Society of Maryland
	Professionals Advocate Insurance Company
	The Doctors Company
	Texas Medical Liability Trust

A number of conditions to coverage may be present:

1. Lawsuit must be filed within the United States.
2. Mission must be of short duration.
3. Company does not offer a stand-alone policy for humanitarian missions.
4. Insurance provider must be notified of mission prior to mission.
5. Humanitarian mission must be approved by M.D.'s employer or group.
6. Physician must be properly licensed and authorized to provide those health care services.
7. Coverage is provided through AMPIERRG, a division of The Academic Group, with costs determined by activities to be performed and length of time involved in mission work.

Note: The list of conditions and liability insurance companies listed above is not exhaustive.

asked about conditions; this summary reflects the information companies volunteered in this brief survey. Therefore, the list should not be considered exhaustive. The most common condition reported (10 of 13) was that coverage was only for claims filed within the U.S. Three companies stated the mission must be of short duration, and five stated that they did not offer stand-alone policies for physicians who only perform humanitarian work. One company mentioned a London-based carrier that will provide stand-alone coverage. Other conditions included: malpractice coverage provider must be notified prior to mission, employer or group must also approve the physician's participation in the mission, and physician must be properly licensed and authorized to provide the types of health care services.

Current Summary of Your Malpractice Options

The malpractice coverage options available [Table 2] for overseas volunteer anesthesiologists include:

1. **Sponsoring organization provides coverage.** Only a very small minority of organizations provide coverage. Other organizations may be operating on the assumption that IHL will provide protection or that a proactive settlement will avoid a lawsuit.
2. **Current malpractice carrier extends coverage.** If your carrier is a standard commercial third-party vendor, the carrier is unlikely to provide coverage. Anesthesiologists in institutions that are self-insured may possibly obtain coverage

from their home institutions. However, what coverage means is unclear: Do they send attorneys to a foreign country? What happens if the physician is held by a foreign government to prevent fleeing?

3. **Purchase coverage for the trip.** One should closely examine the terms of the policy, especially exclusion clauses, liability limits and policy period. Bear in mind that most of the policies will be claims-made policies and will require purchase of a tail if there is concern that a claim may be filed beyond the policy period.
4. **Travel without liability coverage.** This is the most common scenario today. Lawsuits are exceedingly rare, so it becomes an individual risk/benefit/cost decision on whether to purchase insurance.

Conclusion

The risk of malpractice lawsuits on overseas humanitarian medical missions is extremely small. Only a few humanitarian organizations and some self-insured groups, such as universities, provide coverage. Options include extension of current coverage (if available), purchase of coverage for the trip or travel without liability coverage. However, it is unclear what "coverage" means.

Table 2. Malpractice Coverage Options for Medical Mission Volunteers

Coverage options	Comments
Coverage through sponsoring organization.	Most organizations do not provide coverage. Physicians should inquire regarding coverage.
Coverage from current malpractice carrier.	Commercial carriers unlikely to extend coverage. Self-insured entities (academic and large private hospitals) may provide coverage on an individual basis.
Purchase separate coverage for the trip.	Very few carriers offer this type of coverage. Carefully review and understand conditions, exclusions and terms. Purchase of a tail may be required.
Travel without insurance – "go bare."	Most common practice today. Risk/benefit/cost decision by practitioner.