"Is There A Doctor Onboard?" - Do You Answer?

The following is an abridged posting taken from http://www.epmonthly.com/index.php?option=com_content&task=view&id=667&Itemid=28 [1]

In the post, a physician asks about responding to a request for doctors on a cross-country flight. This individual went to help a ma who had collapsed, seemingly with a heart attack. He helped the man regain consciousness and was awarded with a seat in first class and a bottle of champagne. Six months later the man is suing for complications he experienced the following day. The good doctor in question wanted to know if he was still covered under Good Samaritan laws even though he took compensation of a seat upgrade and a bottle of bubbly.

Here is the reply, which, again, can be accessed in its entirety by clicking here. [1]

“First of all, in order to be successful in a medical malpractice lawsuit, a plaintiff must prove that you had a duty to care for him, that you breached that duty, and that the plaintiff suffered damages that were caused by your breach in duty. If you treated the patient as a reasonably well-trained physician would have under the same or similar circumstances, you did not breach any duty and there will be no case against you.

“Most Good Samaritan statutes require that emergency care be provided without compensation or the expectation of compensation. Whether the champagne and seat upgrade amounted to compensation sufficient to negate protection under the Good Samaritan Act in your state would be a question of law that the judge would decide or a question of fact that the jury would decide. Here are several recent Good Samaritan cases that involved the question of whether compensation was expected and/or received.

“In Chamley v. Khokha (2007), a patient undergoing kidney surgery began bleeding during the operation. The surgeon believed that the source of the bleeding was kidney vessels and requested the assistance of a vascular surgeon to help stop the bleeding. A vascular surgeon came emergently to assist in the surgery and helped remove the patient’s kidney. The patient’s vena cava was punctured during the surgery and was also repaired by the vascular surgeon. Later, the patient’s condition deteriorated, she was transferred to another hospital and she died the following day.

“In a subsequent lawsuit, the vascular surgeon claimed the Good Samaritan defense and was dismissed from the case.

“In Willingham v. Hudson, multiple physicians who were not on call for the emergency department were called by the hospital to help treat multiple severely

injured patients from a tornado. One patient with a severe leg laceration was taken to the operating room where the wound was explored, irrigated with saline and antibiotics, then loosely sutured. Several days later, the wound developed a necrotizing infection that ultimately resulted in an amputation of the patient's leg.

"The treating physician presented a Good Samaritan defense in response to the patient's lawsuit. The plaintiff raised several issues. First, she argued that the care provided was not emergency care under the statute. The Georgia appellate court noted that emergency care does not require that the victim be in a critical or life-threatening condition, but only that the patient receive necessary personal services during an unforeseen circumstance that calls for immediate action.

"The plaintiff also alleged that the physician had a duty to go to the hospital to render care at the time of the treatment. The Georgia appellate court reviewed the physician's employment agreement with the hospital and found no such duty.

"Finally, the plaintiff alleged that the physician performed services with the expectation of compensation, which would negate the Good Samaritan immunity. From the physician's deposition the court determined that he had not intended to bill the patient, nor had he billed the other tornado victims he treated in the ED that day. Accordingly, the court held that the physician provided his care without the expectation of compensation during that disaster. Having met all the requirements for Good Samaritan protections, the court dismissed the case."

The full post can be found at http://www.epmonthly.com/index.php?option=com_content&task=view&id=667&Itemid=28

Source URL (retrieved on *11/28/2014 - 12:37am*):
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