

LIABILITY AND ETHICAL ISSUES

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Working in an international setting allows one to experience the closeness to those who live and experience the totality of deprivation and inhumanity that is inherent in their daily lives. This is the stuff from which compassion and sensitivity are spurred, clinical competence and awareness are reinforced and social medicine and community health become invaluable knowledge and skills.

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Liability Issues

Medical students, residents, and faculty must prepare to observe sensible and safe practices during work time abroad. However, students and residents do not always follow safe practices and even with proper precautions, one can never completely eliminate risk and subsequently liability for the institution. Liability is increased when the school supervises, assists or provides credit for the rotation, implying that it is an institution-sponsored activity. Risk can be reduced by providing information and documenting discussions with students, but again, safety risks and institutional liability can not be totally eliminated. Many schools also require complete documentation of pre-travel risk reduction and a signed release, indemnification and covenant not to sue. Other schools take a less formal approach arguing that such covenants are not helpful in preventing adverse

events or bear much weight in court. If the institution elects to take the proactive approach, guidelines to reduce institutional liability (Box 1) may be helpful.

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An example of a simple and yet practical release and indemnification form used by Harvard Medical School is found at the end of this chapter. For a more detailed form IHMEC suggest reviewing the form used by Dartmouth Medical School (not included in this guidebook).

Malpractice Insurance during IH Rotations

Most commercial malpractice insurers do not cover malpractice claims out of the country. However, an informal po

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of IHMEC members revealed that most self-insured trusts, which typify most universities, would cover claims outside the US. In some cases the student, resident or faculty must notify the risk management office of the activity prior to leaving. For institutional programs where faculty assume the responsibility for organizing the rotation and especially

Box 1: Suggested Guidelines to Reduce Institutional Liability

1. Prepare mandatory orientation programs that outline potential risks.
2. Require a physical exam and/or travel medicine consultation prior to leaving.
3. Require proof of insurance, including evacuation insurance prior to travel, e.g., evacuation insurance: International Student (or teacher) Identity Cards (ISIC): 1-800-226-86245 or Scholastic Overseas Service (SOS): 1-215-244-2227.
4. Require the host country to submit a letter of understanding between the medical school and the international site stipulating a commitment to supervise the student during the rotation.
5. Provide the student with information on obtaining state department advisories (Telephone: 202-647-5225) or (internet: http://travel.state.gov/travel_warnings.html).
6. Provide the student with information on how to obtain health advice, e.g., Center for Disease Control travel information: (Telephone: 404:639-3311 or 404-332-4559) or (Internet: <http://www.cdc.gov/travel/travel.html>).
7. Provide information regarding the risks of certain high-risk activities:
 - i. Sexual activity
 - ii. Auto accidents
 - iii. High altitude sickness
 - iv. Universal precautions and HIV risk and prevention (see chapter on health risks)
 - v. Animal bites and rabies
 - vi. Political crises and risks for Americans
 - vii. Terrorism
 - viii. Unique risks and precautions for women
8. Avoidance of narcotics.
9. Require signature of understanding for each element of the informed consent.
10. Informed consent and indemnification letter should be reviewed by institutional attorney

if it occurs every year, it is the faculty supervisor's the rotation and especially if it occurs office of risk management. In one medical school the risk manager could recall no instances where a claim was filed against a student, resident or faculty during the past ten years for care provided outside the United States. It is probably the infrequency of malpractice claims against students, residents and faculty that has created a relaxed attitude towards malpractice issues in most schools. Perhaps most important is the malpractice problem in the U.S. and virtually all schools require foreign medical students or residents to have some form of malpractice coverage when working or studying in the U.S.

Issues in Ethics

In general, ethical behavior in medicine closely parallels the law. In the United States the code of ethics for medical professionals is articulated by the state licensing board and by law and infractions of these ethical codes can lead to a loss or restriction of the physician's license. For example, in a states there are guidelines that define the situations in which it is appropriate to have a chaperone present such as during the examination of the genitals. When these guidelines are not followed an ethical and a legal violation has occurred. The American Medical Association's Code of Ethics is designed

to facilitate individual decision making designed to facilitate individual decision making for physicians and students. The AMA Council on Ethical and Judicial Affairs publishes Current Opinions that sets forth principles that describe the fundamental elements of the patient – physician relationship. It does not address physician behavior related to

for physicians and students. The AMA medical etiquette and custom therefore the AMA Code of Ethics has limitations when it comes to international rotations. Nonetheless all students should be familiar with the Preamble of the Code, as it is universal in its application to the physician patient relationship.

Preamble:

“The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility not only to patients, but also to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct, which define the essentials of honorable behavior for the physician.

- I. A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.
- II. A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements, which are contrary to the best interests of the patient.
- IV. A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law.
- V. A physician shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical services.
- VII. A physician shall recognize a responsibility to participate in activities contributing to an improved community.”¹

Students on international health rotations should be aware of the differences in the ethical standards and subsequently even the law, in the country where they are working. Although in some instances, the ethical and legal are universal, e.g., assault or sexual misconduct, in others, it may be different, e.g., abortion or female circumcision. In either case, students and physicians should practice according to thoughtful, personal ethical principles but within the range of the local law (See Box 2). However, consider a less obvious scenario such as a case of reproductive rights. If a student or more

likely resident, assumed that the laws (and ethics) related to reproductive rights were the same in the host country and he/she performed a sterilization

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procedure on a woman without the informed consent of her husband, there may be a legal concern. Although the

student or resident may consider such a decision to be the woman's exclusive rights, the law and also the ethical standards of many countries would

assert otherwise. Such a violation could result in a malpractice claim and in many, if not most, developing countries,

Box 2: Guidelines for students and residents: Cultural Sensitivity and Ethical Integrity

In addition to the issues outlined above which should be thoroughly discussed with the student prior to departure students and residents should be advised to assume the role of a learner; to be a student of the host country and culture. The acronym LEARN is appropriate when dealing with patients cross-culturally.

- L** Listen to the patient from his/her own cultural perspective
- E** Explain personal information
- A** Acknowledge the patient's concerns as legitimate, no matter unusual they may see
- R** Recommend a course of action
- N** Negotiate a plan that takes into consideration the patient's cultural norms and personal lifestyle and resources

malpractice is not considered a civil offense but a criminal one. A guilty verdict therefore may result in a fine or imprisonment. In addition, most U.S. malpractice insurers do not cover cases out of the country and of course the would be of little help in a criminal case.

The Ethics of Research

In general research in developing countries follows the agenda of the principal investigator from a more developed country.² If the research also addresses the issues relevant to the health care priorities of the developing country it is a win-win project. If not, the developing country may gain little, or worse, may have valuable resources and personnel pulled out of the health care system to assist the researcher.

The Institutional review boards of both home and host countries should approve research projects. Mutually rewarding collaboration should involve the hosts in

early stages of project design. Publications should reflect joint authorship, and authors from both sites should review drafts of manuscripts prior to submission for publication. Budgets should be shared and mutually agreed upon. When students or residents are involved, ethical issues should be considered thoroughly and discussed prior to departure. In many countries, their significant concerns are regarding placebo-controlled trials. Developing countries are sensitive to ensure that they are not subjecting their population to trials that are considered unethical in a developed nation. These concerns must be openly discussed and agreed upon by Academic IRBs AND governmental authorities.

Culture and Language

Learning a language often helps students delve deeper into a culture and shows respect for the people. When learning the language is not possible, an effort

can be made to learn common phrases and especially medical terms. However, any effort, no matter how imprecise, to learn some of the local language is always appreciated. Other simple examples of courtesies to keep in mind while abroad:

1. Ask permission before taking photographs.
2. Express to your hosts how you will benefit from the experience and your gratitude for accommodating you.
3. Develop genuine interest and sensitivity to indigenous cultures.
4. Try to understand the health belief model of the culture and the role of traditional medicine and its interface with.
5. Observe; don't be judgmental ; act appropriately.

6. Dress according to the dress code of the country or area in which you the work is being done, not according to U.S. standards.

For further discussion of these questions and an annotated list of resources see the chapters on cross cultural issues and language learning.

References

1. AMA Code of Ethics: Preamble
2. Sachs J. Helping the World's Poorest. *The Economist*. August 14, 1999.



**Guidelines for International Courses and Experience
Harvard Medical School/ Harvard School of Dental Medicine**

Each year a number of students participate in credit-bearing activities outside of the United States through organized courses and independently arranged experiences. In many cases, the countries where these activities take place present a variety of challenges and risks to students for which they may not be prepared. These include unfamiliar cultures and languages, political instability, and infectious diseases and other health hazards that are uncommon in the United States.

To assist students in preparing for these eventualities, Harvard Medical School and Harvard School of Dental Medicine require that all students enrolled in a credit-bearing course or independent activity with an international component perform the following prior to departure from the United States:

- Participate in a course, seminar series, or supervised self-study for cultural orientation and preparation for the trip.
- Gather information concerning any political problems or health hazards which may place them at risk by consulting current State Department and Centers for Disease Control information. *State Department* -- Phone: 202/647-5225 or Internet: <http://travel.state.gov/travel-warnings.html> *Centers for Disease Control* -- Phone: 404/639-3311 or Internet: www.cdc.gov/travel/travel.html
- Obtain medical travel advice and immunizations appropriate for the country to which travel is planned.
- Obtain medical and accident insurance which includes provisions for emergency evacuation to a United States medical facility.
- Designate persons both in the foreign country and in the United States who may be contacted in the event of an emergency.
- In addition, competency or training in the local language is strongly encouraged.

Completion of these steps is the responsibility of the individual student and not Harvard Medical School or Harvard School of Dental Medicine. The Committee for International Programs, which grants approval for all international activities is available to assist students who are preparing for overseas travel. Directors for international courses are being asked to put in place mechanisms to facilitate completion of the steps listed above as an integral part of their course design.

I . have read and understand the above guidelines. I further understand that the decision whether to undertake study abroad is mine alone, and the Harvard Medical School and the Harvard School of Dental Medicine bear no responsibility for any health or safety risks presented by such study.

Signed: _____ Date: _____

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