

Medicolegal Issues in Expedition and Wilderness Medicine



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KEYWORDS

- Medical malpractice • Professional liability • Medical clearance • Waiver of liability
- Good Samaritan laws • Duty to rescue

KEY POINTS

- There are unique liabilities inherent in wilderness trips that guides, organizers, and health care providers should understand to help mitigate risk and protect their clients and themselves.
- The elements of a medical malpractice claim in a wilderness medicine setting are the same as those in a hospital setting.
- There is variability in state statutes on licensing requirements and level of medical training mandated for guides and trip leaders.
- Good Samaritan laws immunize liability if there is no preexisting duty to treat, no established doctor–patient relationship, no compensation or expectation of compensation, and gross negligence did not occur.

INTRODUCTION

Wilderness activities are generally quite safe, especially when compared with other athletic activities, with the majority of injuries being minor musculoskeletal trauma and lacerations that can most often be addressed with basic first aid.^{1–3} However, in recent years, there has been a significant increase in expeditions and wilderness trips to remote and austere environments. Wilderness enthusiasts and adventure seekers now encompass a wide range of ages, abilities, experience, and underlying medical conditions, which present many opportunities for tour organizations and outfitters, but also present several medicolegal challenges in the event of an accident, injury or medical emergency (**Box 1**).

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Box 1**Medicolegal scenarios to consider in wilderness and expedition medicine**

A family practice physician is participating as a client in an organized rock climbing trip in a remote setting and comes upon an injured man who has an obvious limb-threatening injury associated with an open fracture.

Is she legally obligated to help?

Answer: It depends on where the accident occurs, but in general she is not legally obligated to help this victim in the United States or in many other common law countries. In some states, she would be required to at least call for assistance. Note that there may be a difference between legal actions and ethical actions.

The victim has full decisional capacity and refuses any and all care.

What should the physician do in that circumstance?

Answer: She should respect the patient's personal autonomy. There has not been a physician-patient relationship established and those with decision-making capacity are entitled to refuse care.

The victim subsequently becomes disoriented and confused. The physician decides to render aid by splinting and suturing the gaping wound to the best of her ability. The wound later becomes infected and ultimately the victim loses his limb from gangrene. He sues for medical malpractice.

Is this physician protected by Good Samaritan laws?

Answer: Yes, provided that there was an emergency situation, the physician had no preexisting duty to treat, there was no expectation of compensation, and the physician acted reasonably and prudently. It is important to understand the fundamental elements found in all Good Samaritan laws as well as the variations that occur by jurisdiction to be prepared when responding to a medical emergency in a wilderness setting.

Wilderness settings may pose increased risks of injury and illness to participants as compared with more urban settings for a variety of reasons, such as extremes in weather, adverse and rapidly changing environmental conditions, and delays and challenges in transport and evacuation, as well as limitations in readily available medical supplies and trained personnel.⁴ These circumstances also increase the liability exposure to organizers and leaders of wilderness and adventure travel trips. Trip organizers, leaders, and medical personnel should be familiar with liability issues to mitigate risks and implement risk management strategies when planning trips.

Health care providers, guides, trip leaders, and organizers should have a fundamental understanding of basic medicolegal principles, such as the elements necessary for medical malpractice claims, professional liability, extent and geographic variability of immunity provided by Good Samaritan laws, waivers, and medical clearance, as well as duty to rescue and abandonment doctrines. It is important for trip health care providers and organizers to have a thorough understanding of the laws surrounding the duty to act and degree of medical training to which they must adhere to mitigate these increased liability risks, especially with clients who may have little to no wilderness experience or who may have unrealistic expectations of receiving the same standards of care and resources available in tertiary care settings.⁵ Wilderness medicine malpractice claims are most often based on complaints of lack of proper health warnings, failure to provide medical services and facilities, and negligent delivery of medical care causing harm or injury.⁴

MEDICAL MALPRACTICE

Medical malpractice law in the United States is derived from English common law and has evolved over time subsequent to rulings in various state courts.⁶ Tort law in common law jurisdictions, such as the United States, is a civil wrong or wrongful act

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