



Kathleen Yodice, Attorney at Law

## A CASE IN FLIGHT— WHAT WOULD YOU DO? A Case Study for Thought

How far do you have to go, or how right are you expected to be, when you're trying to make a medical diagnosis and give treatment recommendations over the phone? A federal court may soon be deciding that exact issue in the context of a medical emergency that occurred on an airliner in flight.

In this case, a passenger was hurrying to catch his flight from a northern European city to a city in the southwest United States, and he boarded the aircraft experiencing chest pain and shortness of breath. The passenger reported this to the crew and continued to complain to the crew after takeoff. The crew administered oxygen and aspirin, but the passenger's symptoms did not stabilize or improve, but worsened. Three hours later, the crew contacted the medical consulting company that was under contract with the carrier to provide medical advice in the event of in-flight medical emergencies.

The physician on duty advised the crew to determine if there was a doctor on board, which they were able to do. The consultant doctor directed the crew and the on-board doctor to administer nitroglycerin to see if the passenger's vitals stabilized. Thirty minutes later, the on-board physician reported the passenger's blood pressure and pulse and that he had "crackles" in his left chest. The consultant doctor

advised the crew not to administer more nitroglycerine, because the blood pressure readings were too low but to continue oxygen and monitoring. Three hours later, because there was no improvement, the crew called the consultant doctor. He had gone off-shift, so another doctor with the company answered the call and told the crew to administer nitroglycerine.

Neither of the two consultant doctors recommended a flight diversion, and the flight landed in Phoenix 10 hours and 41 minutes after takeoff. The passenger was immediately taken to the hospital where it was determined that he had suffered a heart attack 6 to 8 hours earlier, causing significant coronary damage. About three months later, the passenger passed away while waiting for a heart transplant.

The passenger's widow sued the medical consulting company and its physicians, claiming that the consultant doctors "negligently failed to provide adequate and appropriate medical assessment, advice, information, instructions and treatment options ... causing [the passenger] to sustain severely aggravated personal injuries and ultimately fatal injuries to his body." The medical consulting company filed a motion to dismiss the case on the pleadings, essentially arguing that there was no factual issue necessary to resolve at a trial to find that there was no legal liability under the "Good Samaritan" provision of the Aviation Medical Assistance Act of 1998. In particular, the medical consulting company argued that the law shielded the consulting doctors from liability for damages that arise from actions or omissions in providing or attempting to provide assistance for an in-flight medical emergency (except in the instance of gross negligence or willful misconduct). The court found this defense unavailing for the reasons that the company and its

physicians were not volunteers and they were not on the airplane, thus the Act did not apply to them. The flight crew and the on-board physician who provided medical assistance would be shielded under the law, but not the consulting doctors providing the on-ground medical advice for hire.

The interim court decision doesn't go into extensive detail of the facts beyond what we've reported here, such as the qualifications of the physician on board, the details of the information being reported, the duties expected under the contract between the carrier and the medical consulting company, and why it took so long for the crew to call the physicians, but those will likely come out in the litigation over any liability stemming from the actions of the consulting doctors.

Ms. Kathleen Yodice has been representing aviation legal interests for almost 30 years, beginning her career as an FAA prosecutor and regulatory lawyer, before moving into private practice defending air carriers, commercial operators, repair stations, pilots, and mechanics against FAA enforcement actions and assisting entities and individuals in aviation compliance matters, medical certification concerns, and aviation-related business and transactional issues.

Ms. Yodice received her law degree from the university of Maryland School of Law and a BA Degree from Frostburg State University, where she concentrated her studies on psychology and mathematics. She is admitted to practice in Maryland and the District of Columbia, as well as the U.S. Courts of Appeals and the U.S. Supreme Court. She is an active member of the Maryland and D.C. Bar Associations, the Lawyer Pilots Bar Association, and the International Air & Transportation Safety Bar Association. Ms. Yodice is a Past President of the Lawyer-Pilots Bar Association and currently sits on their Board, and she served on AOPA's Board of Aviation Medical Advisors. She was appointed to, and continues to serve on, the Editorial Board for the ABA Forum on Air and Space Law, and she is a former long-time panel member in the Transportation Research Board's Airport Cooperative Research Program.