Editorial

Providing emergency medical assistance in the vicinity of the hospital
在醫院附近提供醫療援助

CH Chung 鍾展鴻 and WK Tung 董偉杰

In December 2008, a 56-year-old man collapsed while at work. His son immediately drove him to a nearby hospital in Kowloon. Failing to find the way to the accident and emergency department, he went to the front entrance of the hospital instead. Unable to move his father into the hospital, the son laid his father on the ground just outside the front door and approached the receptionist inside for help. As the accident and emergency department was more than 150 metres and at a much higher level from the front entrance, the receptionist advised the son to dial 999 to call for an ambulance (which is under the Fire Services Department). The patient was later sent by ambulance to the accident and emergency department and died subsequently. This created a public outcry on the "mishandling" of the case.[1] The Hospital Authority (HA) hastily announced its "general principles for handling persons requiring emergency medical assistance in the vicinity of HA hospitals and clinics" in early January 2009.[2] This marked a new era as all public hospitals and clinics in Hong Kong from now on have formally extended their "duty of care" outside their perimeters. However, there are still unaddressed issues on the definition of the "vicinity of the hospital", staff safety, training and equipment.

Correspondence to:
Chung Chin Hung, FRCS(Glasg), FHKAM(Emergency Medicine), FHKAM (Surgery)
North District Hospital, Accident and Emergency Department, 9 Po Kin Road, Sheung Shui, N.T. Hong Kong
Email: chunch@ha.org.hk

Kwong Wah Hospital, Accident and Emergency Department, 25 Waterloo Road, Kowloon, Hong Kong
Tung Wai Kit, FRCSEd, FHKAM(Emergency Medicine), LLB(Hons)(London)

Duty to rescue

The common law system of English speaking countries which applies in Hong Kong is chary of imposing positive duties upon individuals. There is no general duty to come to the rescue of others – only an obligation not to make the condition of a victim worse. Therefore, doctors are generally not required to act as 'good Samaritans' to help strangers who appear to require medical assistance, even in emergency situations. Generally, a person cannot be held liable by law for doing nothing while another person is in peril. However, under special circumstances, there may be criminal and/or civil liabilities for the non-rescuer: -

a. Where there has been relevant past conduct on the part of the person failing to act, i.e. the causing of a situation of danger that gives rise to a duty to act to avert the consequences of that situation.
b. Where there is a relationship between the person in peril and a potential rescuer, and the relationship between the two parties may be a family one or it may be an assumed relationship of reliance and support. For example, the duty to rescue has been held to exist in respect of one's children and school students.
c. Where a person occupies a position which requires him to act. The position may be an official one (e.g. policeman, fireman, and paramedic) or it may be one which arises from a contract of employment (e.g. employer).
d. Where the potential rescuer is the owner of the property connected with the peril.

However, in the 1996 Australian case of Lowns vs Woods ((1995) 36 NSWLR 344),[3] the Court of Appeal

of the Supreme Court of New South Wales held that a doctor did owe a duty to attend a person in urgent need of medical care where a direct request had been made to him to do so and there was no reasonable impediment preventing him from attending. The claimant was an 11-year-old boy suffering a prolonged epileptic fit. His 14-year-old sister went on foot to a nearby clinic to summon a doctor. The defendant general practitioner refused to attend, allegedly advising that the child should be brought to his clinic. The majority in the Court of Appeal found that there was sufficient proximity between the doctor and the claimant for a duty of care to arise. Relevant to the existence of such duty were (a) his physical proximity to the patient, (b) the "causal proximity" created by the information given to the doctor and his subsequent understanding that this was a life-threatening emergency with the dire likely consequences if he did not treat, and (c) the "circumstantial proximity" that was created by facts, inter alia, that the doctor was competent and equipped to treat, he was called upon his clinic during clinic hours and no personal health or safety risk or existing disability prevented him from responding to the appeal for his professional services. It is doubtful whether Lowns vs Woods would be applied in England or Hong Kong to support a general duty to attend and treat a stranger in an emergency.

In contrast, European continental legal systems stipulate that any person above legal age, who sees another person in peril or distress, must take all reasonable steps to provide assistance, unless doing so would put either or both of them or a third person in harm's way. In theory, this can mean that if a person finds someone in need of medical help, one must take all reasonable steps to seek or provide medical care. In practice however, almost all cases of compulsory rescue simply require the rescuer to alert the relevant authority (police, fire or ambulance service) with a phone call.

Even though not applicable in Hong Kong and not relevant to the above incident, examples of patient refusal abound, especially for financial reasons. As a result, the United States passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act the Emergency Medical Treatment and Active Labor Act (EMTALA), requiring hospitals and ambulance services to provide care to anyone needing emergency treatment regardless of status or ability to pay.

The general duties of the Hospital Authority of Hong Kong (The Laws of Hong Kong, Chapter 113: Hospital Authority Ordinance, Section 4: Functions of the Authority) is to "manage and control public hospitals". Undoubtedly, it is responsible for the safety and health of its staff, patients and visitors "within the boundaries of public hospitals". Guidelines had been issued to deal with medical emergencies within hospital and clinic compounds only, e.g. a patient who has jumped from height within the hospital. However, in the history of Hong Kong up to the end of 2008, there had never been any written policy or requirement on public hospital or clinic staff to provide emergency assistance to patients outside the institutions, other than patient escorts and the special arrangement with the ambulance service in cases of trapped victims at scene or mass casualty incidents. Similarly, there had been little, if any, training of staff to deal with medical emergencies in the unprotected environment in the "vicinity of their institutions".

The duties of the Fire Services Department (The Laws of Hong Kong, Chapter 95: Fire Services Ordinance, Section 7: Duties of Fire Services Department), among others, shall be to:

a. Assist any person who appears to need prompt or immediate medical attention by
   (i) securing his safety;
   (ii) resuscitating or sustaining his life;
   (iii) reducing his suffering or distress; and
b. Convey
   (i) any person referred to above to a hospital or other place where medical attention is available to him; and
   (ii) in co-operation with the proper authorities, any person to or from any hospital or clinic to or from any other place, and administer care and attention to any person so conveyed.

It is obvious that the ambulance service is legally responsible for the initial management and transportation of any person in distress, at any place. As a result, traditionally, medical emergencies in the

"vicinity of the hospital", and even within certain parts of a hospital, fell inside the responsibility of the ambulance service.

Ethically speaking, the health care profession is expected to have a duty to the sick, both when on duty and as a volunteer. The Physician's Oath of the Declaration of Geneva (1948) includes that "the health and life of my patient will be my first consideration" and "I will maintain the utmost respect for human life". The International Code of Medical Ethics of the World Medical Association (1949) stipulates that "a doctor must give emergency care as a humanitarian duty unless he is assured that others are willing and able to give such care".[4] The public can be assumed to have similar expectations on clinics and hospitals.

Finally, health professionals have to go through their own moral tests on "duty to rescue" when encountering "persons in distress".

Safety, training and equipment

The "official" definition of vicinity is "within walking distance" and flexibility is emphasized. However, this simply means that interpretations and decisions have now been shifted to frontline workers. In other words, "if in doubt, rescue". Prehospital care is somewhat different from inhospital care. Hospitals are safe and secure environments. Hospital workers have little training or experience to work outside their protected environment, which also includes inter-hospital transfers and occasional callouts to scene by the ambulance service. The scenario in the vicinity of the hospital may be entirely different from the inhospital setting. Health care providers may need to handle the scene and patients alone. Crowd control may be necessary. The scene may not be safe, e.g. on a nearby highway, scene of violence. The terrain may be rough. The lighting may be suboptimal. The weather may be hostile, e.g. typhoon, rainstorm. Equipments may not be suitable for the prehospital environment. Staff may not be physically trained or psychologically prepared for the more arduous tasks. As the Hospital Authority has formally announced that the vicinity of its hospitals and clinics are under its "duty of care",[2] occupational safety and health will become an important issue in addition to a new form of duty of patient care. There is no doubt that injury to staff sustained in such circumstances will be counted as arising out of and in the course of employment. The Employment Ordinance of the Laws of Hong Kong (Chapter 57) has made no provisions on the right to refuse unsafe assignment. The HA requires all "essential" staff to report duty as scheduled during typhoon and rainstorm. In the Canadian province of Ontario, the Occupational Health and Safety Act provides all workers with the right to refuse to perform unsafe work. There are, however, specific exceptions to this right. When the "life, health or safety of another person is at risk," then specific groups, including "police, fireman, paramedic or employee of a hospital, clinic or other types of medical worker" are specifically excluded from the right to refuse unsafe work.

Conclusion

Providing assistance in medical emergencies is a humanitarian duty of all health professionals. As the Hospital Authority has formally announced the inclusion of the vicinity of its hospitals and clinics under its duty of care, emergency physicians and nurses should be better prepared in prehospital care, both in training and equipment. If in doubt, rescue. According to basic first aid principles, safety of the rescuer should always be the first priority.

References

1. Hospital Authority, Hong Kong. HA chief executive's statement on Caritas Medical Centre incident, 2008 Dec 22. [cited 2009 Mar 21]. Available from: http://www.ha.org.hk/visitor/ha_visitor_index.asp?Content_ID=643&Dimension=100&Lang=ENG&Change_Page=3&Show_Archived=N
2. Hospital Authority, Hong Kong. HA chief executive's statement on CMC report, 2009 Jan 5. [cited 2009 Mar 21]. Available from: http://www.ha.org.hk/visitor/ha_visitor_index.asp?Content_ID=643&Dimension=100&Lang=ENG&Change_Page=2&Show_Archived=N
3. Lowns v Woods. Aust Torts Reports 81-376;1996.
4. World Medical Association. International code of medical ethics. World Med Assoc Bull 1949;1(3):109, 111.