

## President's Message

## Due Process: Why It Is So Important

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I just finished reading a very stimulating article that drew an interesting comparison between the airline industry and emergency medicine titled, "Why 'Be More Like Pilots' Just Doesn't Fly in Emergency Medicine" written by Dr. McGowan.<sup>1</sup> The article highlights what the book "Why Hospitals Should Fly" completely misses about why the airline industry and

emergency medicine cannot be compared. Building on this discussion, I'd like to address one key problem that the article failed to cite, and one of the key problems that no one really wants to mention: lack of due process protections.

The Academy's mission statement is clear, with Principle #5 of our mission stating, "The Academy supports fair and equitable practice environments necessary to allow the specialist in emergency medicine to deliver the highest quality of patient care. Such an environment **includes provisions for due process** and the absence of restrictive covenants."

The author outlined some key points about how different the airline industry and emergency medicine are. Let's start by focusing on one point. The airline industry is all about safety. Imagine if an Airbus 380 with 550 persons on board crashed every day of the year ... what would happen? In reality, this would not be tolerated as the airline industry is heavily regulated to promote a culture of safety and the airline industry would quickly change forever. When we compare numbers, the airline industry in the U.S. alone carried more than 895.5 million people in 2015 compared to 141.4 million ED visits that same year. Nearly six times more people fly per year with estimated deaths to be less than 20 for that year, and mostly due to medical conditions or from smaller planes and human error. On the other hand, in our health care industry, according to the Institute of Medicine (IOM) report entitled "To Err is Human" at least 44,000 people, and perhaps as many as 98,000 people, die in hospitals each year as a result of medical errors that could have been prevented.<sup>2</sup> I would state that the figures from both publications have serious methodological errors, but this is not the point — more an example to illustrate that there is a problem.

So, let's look at some of the major differences between the two industries:

In the world of the airlines, pilots can delay or cancel the flight if there is not sufficient crew, a mechanical issue, weather problems, or weight problems. A passenger may wait hours, and sometimes are put up in a hotel for a flight the next day. Anyone can speak-up if they feel it is unsafe or have concerns. A disruptive passenger could even be arrested for non-compliance with a flight attendant or air marshal. Are you all shaking your heads?

In the ED, we are faced with a myriad of problems, yet we don't stop. For example: a nurse or tech will call out for the day and we work short staffed — that does not stop us, the CT scan is down — that does not stop us, we are at twice the capacity — that does not stop us, medication shortage — that does not stop us, the violent, scary, and cursing patient or family members we are made to apologize to and do customer recovery — that does not stop us.

We are faced with all of these challenges, yet the single biggest challenge we are faced with is our lack of due process. Without due process, if you speak up, you potentially could lose your job. Many doctors fear reprisal if they speak up — they fear that their job is on the line. Many emergency physicians work in a culture that does not allow for people to



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come forward and say "doctor stop!!!" without the doctor belittling them, or the threat of them being fired. A survey published in May 2013 in the *Journal of Emergency Medicine*, showed that 20% of emergency physicians would not call attention to a quality issue because of lack of due process rights.<sup>3</sup> They were afraid of termination if they did so!

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Pilots are mandated to not fly more than 30 hours in one week. In just these past five days I worked 70 hours in direct patient care. Contract management groups will track your patients seen per hour and if they feel you are missing their target, may push for more productivity, and perhaps by also reducing coverage, all in the quest for larger profits.

Now go and try to speak up!

Oh wait, did you waive your due process? Or did you sign a non-compete (restrictive covenant) clause? For the many emergency physicians, working for a contract management group, at any moment, and for any given reason, we could be asked to leave.

As a pilot, before even going to the airport, I check the weather, ceiling visibility, and fill a flight plan. At the airport, I do a pre-flight check list, then an engine start-up check list, etc., etc. I've flown plenty of Cessna 172s or Cherokee Pipers and the checklist is fairly easy. The fuel check valve for water is in the same place on every Cessna, the command the same on each and every Cessna 172. Every patient we see has a unique history with subtle but important differences in presentation. Medication lists of patients are almost always different. Add in past surgeries, genetics, alcohol and drug use and every single patient we see will be different than the next. A checklist simply does not work in the emergency department.

The Academy has been advocating for due process and will continue to do so. AAEM feels this issue is not simply about physician practice rights, but is a core driver of patient safety. If all physicians had due process and the right to a fair hearing then maybe we would not be afraid to speak up. We could say, "Stop, we cannot take it," "This nurse is caring for six critical patients," "We cannot or do not have all the monitors we need."

The American Academy of Emergency Medicine (AAEM) is greatly concerned with physicians' due process rights. Unfortunately some hospitals and physician staffing companies attempt to limit them. This practice is a threat to physician autonomy and patient safety. This is the most important first step necessary to move towards minimizing medical errors.

When a physician makes the right clinical choice for a patient, which may go against the financial interest of a hospital or contract management group, the physician should have basic protections, just like an airline pilot does. Until then, stop comparing apples with oranges... ●

#### References

1. McGowan T. Why "Be More Like Pilots" just doesn't fly in emergency medicine. *Emergency Medicine Monthly*, December 22, 2017.
2. Kohn LT, Corrigan JM, Donaldson MS, eds. To err is human: Building a safer health system. Washington, D.C.: National Academy Press, 2000.
3. McNamara et al. *J Emerg Med* 2013; 45:111-116.

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