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GUIDANCE ON RESPONSIBILITY AND LIABILITY ISSUES RELATED TO THE USE OF THE EMERGENCY MEDICAL KIT/BAG AND EVALUATION OF ITS USE IN EMERGENCY INCIDENTS

1 The Maritime Safety Committee (MSC), at its seventy-seventh session (28 May to 6 June 2003), recalled that MSC 75 had approved MSC/Circ.1042 on the List of contents of the Emergency Medical Kit/Bag and medical considerations for its use on ro-ro passenger ships not normally carrying a medical doctor.

2 Having considered the recommendation of the Sub-Committee on Radiocommunications and Search and Rescue (COMSAR), at its seventh session (13 to 17 January 2003), MSC 77 decided that the Guidance developed needed further examination and should be issued immediately after COMSAR 8.

3 The COMSAR Sub-Committee, at its eighth session (16 to 20 February 2004), re-considered and finalized the Guidance on responsibility and liability issues related to the use of the emergency medical kit/bag and evaluation of its use in emergency incidents, as set out in the annex.

4 Member Governments are invited to bring the annexed Guidance to the attention of SAR service providers, National Maritime Authorities, shipowners, ship operators, ship masters, medical authorities, medical services and others concerned.

5 Member Governments are also invited to report on their experience gained in the use of the Emergency Medical Kit/Bag (EMK) to the Organization.

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ANNEX

GUIDANCE ON RESPONSIBILITY AND LIABILITY ISSUES RELATED TO THE USE OF THE EMERGENCY MEDICAL KIT/BAG (EMK) AND EVALUATION OF ITS USE IN EMERGENCY INCIDENTS

1 Responsibility and liability issues related to the use of the EMK

1.1 The master of the ship is responsible for medical care on board ships which have no doctor as part of the crew (ILO Convention 164/9).

This responsibility includes making use of any existing and relevant measures to provide the patient with the best possible medical care:

- examination of the patient and assessment of the severity of the medical incident
- providing first aid;
- getting medical advice by TMAS or calling for a doctor among the passengers;
- providing medical facilities including the emergency medical kit and performing medical care; and
- taking the operational decision in the light of the best medical advice (care on board, ship diversion, medevac,..).

1.2 If there is a medical doctor among the passengers he/she will be asked for advice by the ship's master. When the doctor agrees to intervene in the case, he/she will be responsible for his/her own medical action. However, at any time, the master can get telemedical advice from a TMAS either to confirm the passenger doctor's action or to help him/her in rendering the best possible care. At all times, the captain should supervise the performance of the treatment and be ready to provide assistance as required.

1.3 If there is no doctor on board, the master's responsibility can be shared with a remote doctor through TMAS. The degree of responsibility/liability of the master/doctor would be determined in the first instance by an assessment of how they fulfilled their pre-established duties.

1.4 In relation to the kit itself, it is an obligation on the master and the company (as defined in ISM Code) to keep the emergency medical kit in good repair. If either neglected to do so, both would be open to an action for damages in negligence/tort. Assuming the kit is in good repair but something goes wrong with the treatment given by the passenger doctor leading to physical injury to or death of the patient, the passenger doctor might be liable if he/she acted negligently. In assessing negligence the court would ask whether the doctor acted reasonably in all circumstances of the case. The emergency nature of the situation will be taken into account, in assessing what was reasonable action on the doctor's part.

1.5 The master or the company would not incur liability merely by asking for the doctor's assistance. Nor would the master or the company normally be liable vicariously for any negligence on the doctor's part in treating the patient – this is because the doctor in such a situation would not be employed by the company nor could the doctor be regarded as acting as the agent of the company.

1.6 However, in line with precedents in air transport, it is recommended that the companies offer insurance or legal assistance to cover cases where passengers qualified as doctors accept at the request of the master to assist another passenger or a member of the crew and take part of the responsibility on a voluntary basis.

2 Evaluation of the use of the EMK in emergency incidents

2.1 In order to monitor evaluation and research in the use of the EMK in emergency incidents, the "Debriefing Form", given in the appendix was developed.

2.2 This "Debriefing Form" should be included in the "Emergency Medical Kit".

2.3 After each case of a medical emergency in which the kit has been opened or offered, this form should be filled in by the ship's officer responsible for medical care on board and sent to a Central Institution designated by the National Maritime Authority.

2.4 This Central Institution is invited to send these forms and when possible an evaluation report to the Organization.

APPENDIX

EMERGENCY MEDICAL KIT
Debriefing Form

VESSEL: …….

Flag: …….
Type: …….

Number of Crew:
Number of Passengers

INCIDENT

Date: ……
Time (local): ……
Time to the nearest Port: Hours

Weather Conditions: Good ☐
Rough ☐
Very Rough ☐

PATIENT

Crewmember ☐ Passenger ☐ Age: ……
Accident ☐ Illness ☐ Severity Mild ☐
Serious ☐
Vital ☐

Diagnosis / Symptoms:

…….
…….
…….

USER

Medical Doctor ☐ Speciality: ……..
Nurse ☐ Paramedic ☐ Crew Member ☐

Telemedical Consultation (TMAS) Yes ☐
No ☐

RESULTS

Recovery ☐ Improvement ☐ Steady ☐
Worsening ☐ Death ☐

DECISION

Care onboard ☐ Ship Diversion ☐ Medevac ☐
Delay caused by the incident: …….…… Hours

COMMENTS

(Used Medicines / Equipment, Missing Equipment, Problems, Complications, Proposals for improvement).