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GOOD SAMARITAN STATUTES–ADRENALIN FOR THE "GOOD SAMARITAN"

Within the last five years, over half of the states have enacted, in one form or another, what are commonly referred to as Good Samaritan laws. The impact of this legislation on the common law of torts and a comparative study of the various state enactments form the subject of this discussion.

THE GOOD SAMARITAN CONCEPT

The Good Samaritan statutes exempt physicians, and quite frequently others, from liability for civil damages caused by negligent acts or omissions while rendering care or treatment at the scene of an accident or emergency. The cloak of immunity, excusing negligence, is thus shrouded upon doctors and others who come to the aid of their fellows in time of peril. While the Good Samaritan concept is not entirely foreign to American law, the extinguishment of a cause of action which would otherwise accrue by reason of negligence represents a distinct change in prior law and a significant development in the law of torts. American courts, sympathetic with the moral issue involved, have nevertheless consistently refused to recognize a legal duty to assist a stranger in time of distress.[1] Where a duty to render aid has been found, it generally rests on the sound and realistic basis that the defendant's conduct, although perhaps not actionable, has in some way contributed to the emergent situation.[2] Thus, a 1935 Illinois statute makes a "compulsory Good Samaritan" of any vehicular driver involved in an accident by requiring him to "render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary, or if such carrying is requested by the injured person."[3] Although there is no duty to assist a complete stranger, one who does volunteer aid to another in need assumes thereby a legal responsibility to exercise reasonable care and skill for such other's safety.[4] The fact that the Good Samaritan is acting gratuitously or as an accommodation is immaterial.[5] It is the affirmative act of rendering aid which

[1] PROSSER, TORTS § 38 (2d ed. 1955).

[2] RESTATEMENT, TORTS § 322 (1934).

[3] ILL. REV. STAT. ch. 95½, § 135.

[4] PROSSER, TORTS § 38 (2d ed. 1955), "The Good Samaritan may find himself liable where those who passed by on the other side will not"; RESTATEMENT, TORTS §§ 323, 324 (1934); 38 AM. JUR. 659, *Negligence*, § 17.

[5] Triola v. Frisella, 3 Ill. App.2d 200, 121 N.E.2d 49 (1954); RESTATEMENT, TORTS § 325 (1934).

subjects him to liability for any bodily harm caused another by his failure to pursue a reasonable course of conduct. The reasonableness of conduct, however, is necessarily determined by the surrounding circumstances.[6] Thus, the fact that the Good Samaritan is confronted with a sudden emergency which requires immediate decisions is a factor in determining the reasonable character of his choice of action.[7] The Good Samaritan doctrine further requires, before liability will attach, that the negligence of the volunteer must "worsen the position" of the person in distress.[8] This is particularly relevant where the Good Samaritan's conduct takes the form of rescue,[9] and is considered determinative of the question whether he may, once having undertaken the rescue, abandon or discontinue his efforts.[10]

The objective sought to be accomplished by modern Good Samaritan legislation is to encourage the rendering of emergency medical aid to injured persons without fear of civil liability.[11] While the legislative objective is clear enough, the factors giving rise to such laws are matters of conjecture. There are no reported cases dealing with a physician's malpractice in rendering emergency care or treatment outside of his office or hospital.[12] Thus, it appears that "threat" of a malpractice suit under these circumstances rather than actual suit itself, assuming that some trial cases would have been appealed, is the real impetus behind the sudden rash of Good Samaritan legislation.

PERSONS IMMUNE FROM CIVIL LIABILITY

Nineteen of the twenty-eight states which have enacted Good Samaritan legislation restrict the grant of immunity to licensed medical practitioners and registered nurses.[13] Of this group, five states, Indiana,[14] Maryland,[15] Massachusetts,[16] Utah[17] and Virginia,[18] extend immunity only to physi-

[6] RESTATEMENT, TORTS § 283 (1934).

[7] *Id.* at § 296.

[8] *Id.* at §§ 323, 324.

[9] United States v. DeVane, 306 F.2d 182 (5th Cir. 1962).

[10] RESTATEMENT, TORTS §§ 323, 324, 325.

[11] *Introductory Statement*, N.J. STAT. ANN. §§ 2A:62A-1, 2A:62A-2 (Supp. 1963).

[12] 51 CALIF. L. REV. 816 (1963); Letter dated August 26, 1963 from Hon. Otto Kerner, Governor, State of Illinois, addressed to Secretary of State, vetoing House Bill No. 1489 (proposed Illinois Good Samaritan bill, passed by House and Senate).

[13] See accompanying chart.

[14] IND. STAT. ANN. ch. 63 § 1361 (Supp. 1963).

[15] MD. CODE ANN. art. 43, § 149A (Supp. 1963).

[16] MASS. GEN. LAWS ch. 112, § 12B (Supp. 1962).

[17] UTAH CODE ANN. 58 §§ 12-23 (Supp. 1961).

[18] VA. CODE ANN. tit. 54 § 276.9 (Supp. 1962).

cians licensed by their state; while four states, California,[19] Nebraska,[20] Nevada[21] and Wisconsin,[22] extend protection to physicians and nurses who are licensed or registered under their states' Medical or Nursing Acts. The statutes of ten states[23] protect physicians licensed by any state; and the acts of two of these states, Mississippi[24] and South Dakota,[25] also include nurses registered under the laws of any state. The nine remaining states[26] provide generally that any person who renders aid or treatment at the scene of an emergency will come within the purview of their statute. Thus, close to one-third of the states extend protection only to medical practitioners and nurses licensed by their state; one-third protect medical practitioners and nurses licensed by any state; and one-third seek to protect anyone.

Since the underlying purpose of the Good Samaritan law is to provide on-the-spot emergency medical care or treatment, it is not surprising that two-thirds of the state legislatures have restricted their grant of immunity to those persons trained to administer medical services. Yet it seems unfair that the law should hold accountable an untrained private person who responds in an emergency while it releases the very person who ordinarily would be expected, by reason of his training and experience, to respond properly in an emergency situation. While the distinction between physicians and unskilled persons is not wholly without merit since the policy of the law should be to encourage the best possible aid, the distinction between licensed medical practitioners within the enacting state and those licensed by another state is at best dubious. Each state has licensing and other requirements to assure a minimum degree of competence in its medi-

[19] CAL. BUS. PROF. CODE § 2144 (Supp. 1959). (Physicians); CAL. BUS. PROF. CODE § 2727.5 (Supp. 1963). (Nurses).

[20] NEB. REV. STAT. § 25–1152 (Supp. 1961).

[21] NEV. REV. STAT. ch. 41, §§ 1, 2 (Supp. 1963).

[22] WIS. STAT. ANN. § 147.17(7) (Supp. 1963) (Doctors); WIS. STAT. ANN. § 147.06(5) (Supp. 1963) (Nurses).

[23] ALASKA STAT. ANN. § 08.64.365 (Supp. 1962); CONN. SESS. LAWS 1963 H.B. No. 2576, approved June 3, 1963; MICH. STAT. ANN. § 14.563 (Supp. 1963); MISS. CODE ANN. § 8893.5 (Supp. 1962); N.H. REV. STAT. ANN. ch. 329:55 (Supp. 1963); N.J. STAT. ANN. §§ 2A:62A–1, 2A:62A–2 (Supp. 1963); N.D. CEN. CODE ANN. §§ 43-17-37, 43-17-38 (Supp. 1961); PA. ACTS 1963, No. 301, S.B. No. 511 §§ 1, 2, approved August 8, 1963; R.I. GEN'L LAWS ch. 37, § 5-37-14 (Supp. 1963); S.D. SESS. LAWS 1961 H.B. No. 509, approved January 27, 1961.

[24] MISS. CODE ANN. § 8893.5 (Supp. 1962).

[25] S.D. SESS. LAWS 1963 H.B. No. 678, approved March 5, 1963.

[26] ARK. STAT. ANN. § 72-624 (Supp. 1963); GA. CODE ANN. § 84-930 (Supp. 1962); MONT. REV. CODE ANN. § 17-410 (Supp. 1963); N.M. STAT. ANN. ch. 12-12-3, 12-12-4 (Supp. 1963); OHIO REV. CODE § 2305.23 (Supp. 1963); OKLA. SESS. LAWS 1963 S.B. No. 206, approved May 22, 1963; TENN. CODE ANN. § 63-622 (Supp. 1963); TEX. REV. CIV. STATS. ANN. art. 1a (Supp. 1961); WYO. STAT. ANN. § 33-343.1 (Supp. 1961).

cal practitioners. It is submitted that restricting immunity on the basis of a single state's licensing statute is an unnecessary refinement in this area. Moreover, it impedes uniformity and thus serves only to confuse the ambit of protection in the minds of those persons who are supposedly to be encouraged to act in emergencies.

SCOPE OF IMMUNITY

All states which have enacted Good Samaritan legislation, except Mississippi and North Dakota, have granted immunity on the basis of excusing acts or omissions made in good faith. While the statutes of thirteen states specifically exclude from their coverage acts or omissions amounting to gross or wilful and wanton negligence, the statutes of an equal number of states do not.[27] The complete dearth of appellate decisions construing these statutes, even in states which have had them for some time, makes it difficult to predict how the courts will treat them. The problem is further complicated by the introduction of the illusive concept of "good faith," which pervades each statute and thereby dilutes, to the point of ambiguity, the basic grant of immunity. The first Good Samaritan law, for example, was enacted by California in 1959. It provides that "No (physician or surgeon), who *in good faith* renders emergency care at the scene of the emergency, shall be liable for any civil damages as a result of *any acts or omissions* . . . in rendering the emergency care."[28] The overly broad language seemingly confers upon the Good Samaritan a blanket immunity for any and all acts. Yet the courts of that state and others construing statutes similarly worded may view the "good faith" requirement as excluding from the grant of immunity not only acts or omissions amounting to wilful and wanton negligence but those constituting gross negligence as well. It is interesting to note that California's Good Samaritan law protecting *nurses*, enacted four years later in 1963, contains the specific limitation that "This protection shall not grant immunity from civil damages when the person is grossly negligent."[29] Are we to understand that California physicians who render emergency care are immune from liability for their grossly negligent acts, while nurses who render similar care, yet who have inferior training to do so, are held liable for theirs? Perhaps not, but the statute granting the physician immunity is not at all helpful in the determination of this question, and the point will remain doubtful until litigated.

The true anomalies of the Good Samaritan group are the statutes of Mississippi and North Dakota. Instead of abrogating the common law,

[27] See accompanying chart.

[28] CAL. BUS. PROF. CODE § 2144 (Supp. 1959).

[29] CAL. BUS. PROF. CODE § 2727.5 (Supp. 1963).

CHART I

State	Statute Protects: Physicians — Licensed by That State	Statute Protects: Physicians — Licensed by Any State	Statute Protects: Nurses	Statute Protects: Any Person	Statute Applies Where Emergency Care Is Rendered: At Scene of Highway Accident	Statute Applies Where Emergency Care Is Rendered: At Scene of an Accident	Statute Applies Where Emergency Care Is Rendered: At Scene of an Emergency	Statute Applies Where Emergency Care Is Rendered: Outside Place and Course of Ordinary Employment	Statute Applies Where Emergency Care Is Rendered: Without Compensation	Scope of Immunity from Liability for Civil Damages Includes: Any Acts or Omissions Made in Good Faith	Scope of Immunity from Liability for Civil Damages Includes: Excluding Those Amounting to Gross, Wilful, and Wanton Negligence
1. Alaska		X					X			X	X
2. Arkansas				X		X	X		X	X	
3. California	X		X*				XX*	X*		XX*	X*
4. Connecticut		X					X	X	X	X	X
5. Georgia				X		X	X		X	X	
6. Indiana	X					X	X		X	X	X
7. Maryland	X					X		X	X	X	X
8. Massachusetts	X				X					X	
9. Michigan		X					X			X[1]	X
10. Mississippi		X	X				X				
11. Montana				X		X	X		X	X	X
12. Nebraska	X		X				X		X	X	
13. Nevada	X		X				X		X	X	
14. New Hampshire		X			X				X	X	
15. New Jersey		X				X	X			X	
16. New Mexico				X	X	X	X		X	X	X
17. North Dakota		X					X				
18. Ohio				X			X	X	X	X	X
19. Oklahoma				X		X	X			X[2]	
20. Pennsylvania		X					X			X	X
21. Rhode Island		X					X	X	X	X	X
22. South Dakota		X	X				X			X	
23. Tennessee				X		X	X		X	X	X
24. Texas				X			X		X	X	X
25. Utah	X						X			X	
26. Virginia	X				X			X		X[3]	
27. Wisconsin	X		X				X	X		X	
28. Wyoming				X		X	X		X	X	

Cal. X*—Designates "Nurses." X designates "Physicians."
Mich. X[1]—Provided no doctor-patient relation pre-existed emergency treatment.
Okla. X[2]—If not a licensed practitioner, certain enumerated acts only.
Va. X[3]—Provided no doctor-patient relation pre-existed emergency treatment.

Mississippi's statute merely confirms it by providing that no physician or nurse—"who, in good faith *and in the exercise of reasonable care,* renders emergency care to any injured person at the scene of the emergency, or in transporting said injured person to a point where medical assistance *can be reasonably expected,* shall be liable for any civil damages as a result of any acts or omissions by such persons in rendering the emergency care. . . ."[30] Thus, in Mississippi, the Good Samaritan must continue to conform his conduct to that of a reasonable man under like circumstances in order to come within the statute, which is the identical standard of conduct imposed by the common law.[31] North Dakota's statute provides that "Any physician . . . who in good faith renders . . . emergency care at the scene of the emergency shall be expected to render only such emergency care *as in his judgment* is at the time indicated."[32] The legislature may have attempted to fix a standard of conduct, but the courts of that state when interpreting the statute are not likely to apply a purely subjective standard of conduct.[33] It is established law in malpractice that physicians are required to exercise reasonable and ordinary care or skill, judged by standards of care or skill ordinarily exercised by other practitioners in the same locality[34] or community.[35] Since the physician's judgment must be reasonable, it can be argued that the North Dakota statute does little more than iterate existing law and the fact of emergency is a circumstance to be considered together with others in determining the question of negligence.

LIMITATIONS ON IMMUNITY

The fact that care or treatment must be rendered at the "scene of an emergency" is the most frequently recited limitation contained in Good Samaritan legislation. Other variations of this include "at the scene of an accident,"[36] "at the scene of an accident or emergency,"[37] and "the scene of a highway or roadside accident."[38] While the term *emergency* is char-

[30] MISS. CODE ANN § 8893.5 (Supp. 1962).

[31] RESTATEMENT, TORTS § 283.

[32] N.D. CEN. CODE ANN. §§ 43-17-37, 43-17-38 (Supp. 1961).

[33] See generally Seavey, *Negligence—Subjective or Objective,* 41 HARV. L. REV. 1 (1927); Silverman and Seidler, *A Psychological Evaluation of the Law of Torts,* 47 A.B.A.J. 180 (1961).

[34] Hanson v. Thelan, 42 N.D. 617, 173 N.W. 457 (1919).

[35] Tvedt v. Haugen, 70 N.D. 338, 294 N.W. 183 (1940); Sinz v. Owens, 33 Cal.2d 749, 205 P.2d 3 (1949); RESTATEMENT, TORTS §§ 298, 299.

[36] MD. CODE ANN. art. 43, § 149A (Supp. 1963).

[37] GA. CODE ANN. § 84-930 (Supp. 1962).

[38] VA. CODE ANN. tit. 54 § 276.9 (Supp. 1962).

acteristic of the Good Samaritan law, the statute of only a single state, New Mexico, sets forth its definition: "an unexpected occurrence involving injury or illness to persons, including motor vehicle accidents and collisions, disasters, and other accidents and events of similar nature occurring in public or private places."[39] This definition appears to describe substantially those situations traditionally included within the "emergency" doctrine.[40]

Under Oklahoma's statute,[41] the emergency care renderable by non-practitioners is specifically limited to certain enumerated acts: artificial respiration; preventing or retarding the loss of blood; and aiding or restoring heart action or circulation of blood. No limitations are placed upon the acts of a licensed practitioner who presumably has a free hand in selecting the method of treatment and may render care as the circumstances dictate.

Seven states have limited the coverage of their acts to emergency care rendered "outside the place and course of ordinary employment,"[42] which, in the case of doctors and nurses, would exclude from coverage all situations where aid or treatment is administered in the physician's office or a hospital, even though under emergency circumstances. The statutes of two other states have attached the proviso to their grants of immunity that "no doctor-patient relationship pre-exist the rendering of emergency treatment."[43] The majority of states require that the emergency care be rendered "without compensation";[44] and two states have added to this "and without expectation of remuneration."[45] This latter provision could cause the courts difficulty since physicians who render emergency treatment are generally accorded a right in quasi contract to collect for the reasonable value of services rendered.[46]

CONCLUSION

The importance and popularity of Good Samaritan legislation are apparent when it is considered that thirty-two states during 1963 entertained bills or amendments to existing laws designed to afford civil liability immunity for those rendering aid or assistance in emergency situations.[47]

[39] N.M. STAT. ANN. ch. 12-12-3, 12-12-4 (Supp. 1963).

[40] See PROSSER, TORTS § 32 at 138 (2d ed. 1955).

[41] OKLA. SESS. LAWS 1963 S.B. No. 206, approved May 22, 1963.

[42] See accompanying chart.

[43] *Ibid.*

[44] *Ibid.*

[45] N.M. STAT. ANN. ch. 12-12-3, 12-12-4 (Supp. 1963); TEX. REV. CIV. STATS. ANN. art. 1a (Supp. 1961).

[46] See RESTATEMENT, RESTITUTION § 116 (1937).

[47] AMERICAN MEDICAL ASSOCIATION, 1963 STATE LEGISLATION ROUNDUP at pp. 1, 2.