

Can you lift the Good Samaritan shield?

If your client was harmed by someone's negligence in an emergency situation, can that person invoke the protection of a Good Samaritan statute? You need to know what factors the court will consider in determining exactly what qualifies for this immunity.

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U ntil 40 years ago, the law was clear: Once someone chose to assist another person in an emergency, he or she was held to a duty to “exercise reasonable care.”¹ But that changed with passage of the first Good Samaritan statute in California.² Aimed at encouraging prompt assistance for emergency victims by eliminating the fear of legal liability, these statutes provide varying levels of immunity to caregivers if the assistance they render causes or contributes to the victim’s injury or death.

Although these statutes serve a legitimate purpose, they shouldn’t be allowed to shield caregivers from liability if the help they render is grossly negligent or reckless. All states and the District of Columbia have enacted some form of Good

Samaritan law. But their scope varies significantly.

If you encounter the Good Samaritan defense, your first step is a review of the case law interpreting the applicable statute’s requirements. Still, this may not completely clarify the statute’s scope, because the case law does not establish many bright-line rules. Also, some states may have limited case law interpreting the statute at issue. You should be aware of several factors courts have considered in deciding whether Good Samaritan immunity applies.

One factor is the class of people protected. Who is seeking protection, and does he or she have a duty to render assistance? Not everyone can

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claim immunity. People with a preexisting duty to render assistance, such as police officers and firefighters, generally are protected by statutes separate from Good Samaritan laws.³

As an affirmative defense, the burden of establishing Good Samaritan immunity is on the person claiming its protection. Immunity generally is limited to emergency care rendered at the scene of an accident or emergency, so you need to determine whether the situation involved in your case constituted an “emergency” as contemplated by the statute. Relatively few states have defined the term “emergency” in their statutes, unless the statute is dealing with emergency medical care.

In the absence of statutory guidance, courts have defined “emergency” consistent with common vernacular—an unexpected or unforeseen occurrence requiring immediate action.⁴ In one case, the court said a Good Samaritan law was inapplicable because the repetitive nature of someone’s blood sugar problems removed the incident from the penumbra of an emergency.⁵

Jurisdictions differ on what degree of physical assistance is required before a statute’s protection is invoked. In one case, *Flynn v. United States*, the court held that stopping at the scene of an emergency with the intention of rendering assistance, but without physically rendering that assistance, can constitute rendering emergency care.⁶

Another court held that stopping at an accident scene and asking whether any assistance is needed can constitute rendering aid.⁷ And another court held that a physician who arranged for a neighbor to be taken to a hospital rendered emergency treatment under the statute.⁸

But other courts have adopted a more limited definition. One held that calling for emergency assistance at the scene of an accident or emergency is not “administering emergency care.”⁹

The injured person does not neces-

sarily have to be in a critical or life-threatening condition for the assistance given to be deemed emergency care.¹⁰ Courts may consider expert testimony to determine whether emergency care was rendered in your client’s case.

One court held that a doctor’s affidavit created a jury question as to whether care rendered by an off-duty physician was emergency care under circumstances requiring immediate action.¹¹ Although statutes may require that the emergency care be rendered gratuitously, courts generally have not considered the expectation of payment to be controlling.¹²

Another factor to consider is the duration of care. Emergency care may refer to the initial evaluation and immediate assistance given to an injured person *before* he or she can be transferred to professional medical personnel.¹³ This distinction can be important when lay people provide care to someone over time without seeking professional medical assistance. In such circumstances, after the initial intervention, emergency care can become nonemergency care that does not invoke Good Samaritan immunity and may be subject to a negligence suit.

In one case, for example, a woman suffered a serious head injury as the result of an ATV accident, and her boyfriend’s parents watched over her for more than six hours before calling 911. The court determined that the parents cared for her longer than necessary to transfer care to professional medical personnel so as to fall within the purview of the Good Samaritan statute.¹⁴

Good Samaritan statutes generally require that the care be rendered at the scene of an accident or emergency. This may include not only the place where the injury occurred but also the place to which the victim was moved.¹⁵

Some courts have applied a Good Samaritan law when the injured person was transported from the scene of an emergency to a hospital or other location where medical care could be

provided.¹⁶ This transportation may encompass travel that does not go directly from the scene to a health care facility but includes a brief stop.¹⁷ One court noted that not all accidents are emergencies.¹⁸

Standard of care

For someone who gratuitously stops to render aid at the scene of an emergency, Good Samaritan statutes generally exonerate negligent conduct. This protection typically extends to ordinary negligence—but not to gross negligence.

In *Flynn*, off-duty National Park Service employees who arrived at an accident scene in which a pedestrian had been struck by another vehicle stopped their vehicle on the shoulder. They also activated their vehicle’s emergency lights and siren. The court found that these employees were protected by Utah’s Good Samaritan law when a truck, allegedly distracted by their vehicle, swerved into the pedestrians who had stopped to help with the initial accident.¹⁹ However, a Good Samaritan statute will not serve to protect people who create an emergency.²⁰

Many courts have recognized that Good Samaritan statutes expressly do not extend immunity to acts that constitute gross negligence.²¹ Gross negligence has been defined as “reckless, wilful, or wanton misconduct”²² in the context of a Good Samaritan statute, and in other contexts as “failure to observe even slight care” and “a carelessness or recklessness to a degree that shows utter indifference to the consequences that result.”²³ An example of conduct that has been found grossly negligent, removing it from the purview of Good Samaritan protection, includes fraternity members’ inducing a fraternity pledge to drink excessively and failing to take him to a hospital on realizing his perilous condition (assuming they provided some type of emergency care).²⁴

A small minority of jurisdictions have held that that a person cannot claim Good Samaritan immunity

unless he or she acted with “ordinary prudence” when exercising emergency care.²⁵ Whether the emergency care was rendered “without objection” and in an “ordinary reasonably prudent fashion,” as required by the statute, are questions of fact.²⁶

The statute may require that the emergency care be rendered in good faith, and it may take into account the caregiver’s state of mind. This is an area still open to interpretation; the degrees of negligence that constitute good or bad faith would be a jury issue.

For example, in a case where the defendant stopped his truck to determine whether anyone needed assistance, but without any other evidence regarding the defendant’s subjective intentions or state of mind, a reasonable person could draw more than one conclusion for the defendant’s conduct. The defendant could have stopped because of traffic or navigational issues, or he could have stopped without any intention to render assistance.²⁷ In jurisdictions where the person’s state of mind becomes relevant, courts will review parties’ and witnesses’ deposition testimony.

Medical personnel

Good Samaritan immunity as it applies to doctors and other medical personnel rendering emergency medical care gives rise to another set of issues. In your case, be sure to examine the applicable state statutes—some limit immunity to specific medical personnel.

In the absence of specific statutory immunity, doctors rendering emergency medical assistance can raise the Good Samaritan defense. In deciding whether the Good Samaritan statute applies to a doctor rendering emergency assistance, one compelling factor is whether the emergency aid was administered in a hospital or other health care facility.

At least 11 jurisdictions have Good Samaritan statutes that explicitly exclude emergency care provided in hospitals or other health care facilities.

At least six have legislation that expressly includes hospitals and other health care facilities.²⁹

Among the jurisdictions whose Good Samaritan statutes are silent on this issue, courts in four have interpreted their statutes as applicable to a doctor rendering emergency assistance in a hospital.³⁰ Courts in at least two states without statutory language have rejected applying Good Samaritan immunity to doctors inside a hospital or health care facility.³¹ These courts reason that to do so would not further the legislation’s original intent, since doctors already must provide emergency services to patients through their relationship with hospitals. Moreover, immunizing doctors in the hospital setting might have the “adverse effect of lowering the quality of medical care in hospitals without justification.”³²

However, even in jurisdictions where the Good Samaritan statute applies to doctors rendering emergency aid inside a health care facility, the doctor may not be immune if he or she already had a duty to respond to the emergency. In determining whether the doctor had a duty to respond, courts will consider several factors, including whether the doctor was “on call,”³³ whether the emergency care involved another doctor’s patient,³⁴ and, if so, whether there was a referral relationship between the doctors.³⁵

The fact that the exigency lies within the doctor’s area of expertise is generally not dispositive.³⁶ Because courts may consider contracts that detail duties of the doctor’s employment or association at a hospital, including hospital rules, regulations, and bylaws pertaining to emergency coverage, as evidence of a doctor’s preexisting duty,³⁷ you should include requests for these and similar documents in discovery.

Good Samaritan laws provide a valuable function by insulating volunteers from legal liability, but, like all legislation, there is a danger in applying them too broadly to protect questionable conduct.

Perhaps the cases where the issues become hardest to contain within the four corners of exact definition present the best issues for a jury or judge to decide, because these cases involve factual questions that still need resolution. ■

Notes

1. *Restatement (Second) of Torts* §324(a) (1965).
2. Cal. Bus. & Prof. Code §2144 (1959).
3. *Lee v. State*, 490 P.2d 1206, 1209–10 (Alaska 1971), *overruled on other grounds, Munroe v. City Council for Anchorage*, 545 P.2d 165 (Alaska 1976); *but see Flynn v. U.S.*, 681 F. Supp. 1500, 1505–06 (D. Utah 1988), *aff’d in part and remanded*, 902 F.2d 1524 (10th Cir. 1990).
4. *See e.g. Hirpa v. IHC Hosps., Inc.*, 948 P.2d 785, 788 (Utah 1997); *see also Anderson v. Little & Davenport Funeral Home, Inc.*, 251 S.E.2d 250, 252 (Ga. 1978); *Swenson v. Waseca Mut. Ins. Co.*, 653 N.W.2d 794, 799 (Minn. App. 2002).
5. *See Herrin Bus. Prods., Inc. v. Ergle*, 563 S.E.2d 442, 444–45 (Ga. App. 2002).
6. 681 F. Supp. at 1507.
7. *See McDowell v. Gillie*, 626 N.W.2d 666, 674 (N.D. 2001).
8. *Rodriguez v. N.Y.C. Health & Hosps. Corp.*, 505 N.Y.S.2d 345, 347 (N.Y. Sup. 1986).
9. *Howell v. City Towing Assocs., Inc.*, 717 S.W.2d 729, 731 (Tex. App. 1986).
10. *See e.g. Willingham v. Hudson*, 617 S.E.2d 192, 196 (Ga. App. 2005); *Swenson*, 653 N.W.2d at 799–800.
11. *See Gilley v. Hudson*, 642 S.E.2d 898 (Ga. App. 2007).
12. *See e.g. Deal v. Kearney*, 851 P.2d 1353, 1358 (Alaska 1993); *Clayton v. Kelly*, 357 S.E.2d 865, 867 (Ga. App. 1987).
13. *See Mueller v. McMillian Warner Ins. Co.*, 714 N.W.2d 183, 186 (Wis. 2006).
14. *Id.* at 193.
15. *See e.g. id.*; *see also McCain v. Batson*, 760 P.2d 725 (Mont. 1988).
16. *See e.g. Swenson*, 653 N.W.2d 794; *Campbell v. Schwartz*, 712 N.E.2d 1196, 1200 (Mass. App. 1999); *Youngblood v. Schireman*, 765 P.2d 1312, 1319 (Wash. App. 1988); *but see Dahl v. Turner*, 458 P.2d 816, 824 (N.M. App. 1969) (holding that a defendant who transported an injured plaintiff with confusion and a lacerated arm did not provide emergency care, since no facts indicated a pressing necessity for such transportation).
17. *See e.g. Swenson*, 653 N.W.2d 794.
18. *See Beckerman v. Gordon*, 614 N.E.2d 610, 613 (Ind. App. 1993) (holding that “accident” under Indiana law means a “type of sudden calamitous event, and not all situations that might require immediate action”).
19. *Flynn*, 681 F. Supp. at 1508.
20. *Id.* The court noted that, if the employees had caused the second accident, the Utah

Good Samaritan statute would not exonerate any negligent conduct by them in assisting the victims of the second accident. *See also Markman v. Kotler*, 382 N.Y.S.2d 522, 523 (N.Y. App. 1976).

21. *See e.g. Bunting v. U.S.*, 662 F. Supp. 971, 973 (D. Alaska 1987); *McCain*, 760 P.2d at 727-31; *Youngblood*, 765 P.2d at 1319.

22. *Lee*, 490 P.2d at 1208 (citing Alaska Stat. §09.65.090(b)).

23. *Flynn*, 681 F. Supp. at 1508 (quoting *Atkin Weight & Miles v. Mt. Sts. Tel. & Telegraph Co.*, 709 P.2d 330, 335 (Utah 1985)).

24. *See e.g. Ballou v. Sigma Nu Gen. Fraternity*, 352 S.E.2d 488, 497-98 (S.C. App. 1986).

25. *See e.g. Botte v. Pomeroy*, 438 So. 2d 544, 545 (Fla. App. 1983); *McDowell*, 626 N.W.2d at 674; *Alston v. Blythe*, 943 P. 2d 692, 698 (Wash. App. 1997).

26. *See Botte v. Pomeroy*, 497 So. 2d 1275, 1277 (Fla. App. 1986).

27. *McDowell*, 626 N.W.2d at 674-75.

28. *See* D.C. Code §2-1344(a) (West 2009); Fla. Stat. §768.13(2)(a) (2009); Idaho Code Ann. §5-330 (Lexis 2009); Ind. Code §34-30-12-1(a) (1999); Ky. Rev. Stat. Ann. §411.148(1) (West 2009); 14 Me. Rev. Stat. Ann. §164 (2003); Minn. Stat. §604A.01(2)(b) (2000); N.Y. Educ. Law §6527(2) (McKinney 2001); Ohio Rev. Code Ann. §2305.23 (Lexis 2009); R.I. Gen. Laws §5-37-14 (2009); Wis. Stat. §895.48(1) (2006).

29. *See* Alaska Stat. §09.65.090(a) (Lexis 2009); Cal. Bus. & Prof. Code §2395 (West

2003 & Supp. 2009); Colo. Rev. Stat. §13-21-108-1 (Lexis 2005 & Supp. 2009); Ga. Code Ann. §51-1-29.5 (2005 & Supp. 2009); La. Stat. Ann. §37:1731A (2007); Mich. Comp. Laws §691.1502(2)(1) (2000).

30. The four are Georgia (*Clayton*, 357 S.E. 2d at 868); Illinois (*Johnson v. Matviuw*, 531 N.E. 2d 970, 975-77 (Ill. App. 1988)); Oklahoma (*Jackson v. Mercy Health Ctr., Inc.*, 864 P.2d 839, 844 (Okla. 1993)); and Utah (*Hirpa*, 948 P.2d at 788).

31. *See e.g. Guerrero v. Copper Queen Hosp.*, 537 P.2d 1329, 1331 (Ariz. 1975); *Velazquez ex rel. Velazquez v. Jiminez*, 763 A.2d 753, 774-76 (N.J. Super. App. Div. 2000), *aff'd*, 798 A.2d 51 (N.J. 2002).

32. *See* Stewart R. Reuter, *Physicians as Good Samaritans: Should They Receive Immunity for Their Negligence When Responding to Hospital Emergencies?*, 20 J. Leg. Med. 157, 189 (1999).

33. *See Henry v. Barfield*, 367 S.E.2d 289, 291 (Ga. App. 1988); *see also Colby v. Schwartz*, 144 Cal. Rptr. 624, 628 (App. 1978).

34. *See McKenna v. Cedars of Lebanon Hosp.*, 155 Cal. Rptr. 631, 635 (App. 1979).

35. *See Burciaga v. St. John's Hosp.*, 232 Cal. Rptr. 75 (App. 1986).

36. *See Colby*, 144 Cal. Rptr. at 628 (finding that Good Samaritan statutes are directed at persons, including physicians, "who, by chance and on an irregular basis, come upon or are called to render emergency care to those in need").

37. *See e.g. Clayton*, 357 S.E.2d at 868.