

What You Need to Know When Called Upon to Be a GOOD SAMARITAN



Understanding your legal protections and ethical obligations can make it easier to respond when duty calls.

claimed Good Samaritan protection after providing emergency care outside a hospital, many physicians feel concerned about the legal consequences that might befall them in these situations.

The fact is that all 50 states have some type of law that seeks to encourage medical professionals to act as Good Samaritans by offering certain protections. The purpose of this article is to explain the basics of these laws, as well as physicians' ethical duties, so that when you encounter opportunities to act as a Good Samaritan, you will have a better understanding of what you're getting into.

How do Good Samaritan laws work?

Most Good Samaritan statutes rely on the concepts of *ordinary negligence* and *gross negligence*. "Ordinary" negligence means that the individual providing aid did not act as a reasonable health care provider would under similar circumstances. Contrast that with "gross" negligence, which generally means not only that the individual did not conform to the accepted standard of care, but also that his or her actions rose to the level of being willful, wanton or even malicious. Typically, Good Samaritan laws provide immunity from civil damages for personal

When the news broke in February that a 44-year-old woman died of complications from heart disease and diabetes on an American Airlines flight after receiving emergency treatment by airline staff and a pediatrician, it reminded physicians everywhere that their services may be needed when they least expect it and that these situations don't always have happy endings.¹ Although there has never been a successful case against a physician who

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injuries, even including death, that result from ordinary negligence. They do not, for the most part, protect against allegations of gross negligence.

For example, say you witness an individual in cardiac arrest in a restaurant. You perform CPR to the best of your ability, alternating compressions and rescue breathing at a ratio of 15:2, but the patient does not survive. Emergency medical services (EMS) personnel arrive and note that the new recommendations are to perform this resuscitation at a ratio of 30:2. However, you have not had any reason to take the new basic life support course. Because you acted to the best of your professional abilities, you could expect to be protected by the Good Samaritan law in your state. On the other hand, if you were performing CPR but suddenly stopped because you recognized the individual as a known drug dealer in your town, that would be considered willful and wanton negligence and you would not be protected by a Good Samaritan law.

The concept of “duty” is also central to Good Samaritan laws. To be afforded the protections of a Good Samaritan law, in most states a physician must not have a pre-existing duty to provide care to the patient. A physician does have a pre-existing duty if the victim is a current patient, the physician is contractually obligated to provide care to the victim, or there is an on-call agreement that requires the physician to provide services. The following examples are intended to be instructive:

- **If you happen upon an accident scene**, you likely will be afforded Good Samaritan protection. If you use your black bag to provide aid to the victim, the fact that you had your black bag with you does not, in and of itself, mean you had a duty to respond and therefore should not compromise your immunity.

- **If a car accident occurs at the intersection in front of your clinic** and your help is sought, you would likely have Good Samaritan immunity unless the victim was a patient of yours, in which case you may be held to a higher legal standard of care.

- **If you coach your child’s Little League team** and a player gets hit in the head with a ball, you may well have Good Samaritan protection because your role with the team is as the coach.

- **If you volunteer to staff a first-aid station** at a marathon being run in your community and a participant has a severe asthma attack, you may not have Good Samaritan immunity because of the duty implicit in your agreement to serve in this role. If, however, the runner signed a waiver of liability as a condition of participating in the race, you may have some additional protection.

- **If you agree to be present at your local high school’s football games**, without pay, at the request of the athletic department and a player is nonresponsive following a tackle, you may not have Good Samaritan immunity – again, because of the duty implicit in your agreement with the athletic department.

- **If a member of your office staff collapses on the job**, you would likely not have Good Samaritan immunity because of your duty to provide emergency services to individuals in need within that facility.

A physician without a pre-existing duty can expect to be provided immunity from liability in the event that he or she does respond in good faith and gets sued because of a bad outcome. Note, however, that three

■ There has never been a successful case against a doctor who claimed Good Samaritan law protection after providing emergency care outside a hospital.

■ All 50 states have some type of Good Samaritan law.

■ Good Samaritan laws generally provide immunity from civil damages for injuries that result from ordinary negligence.

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states do have “failure-to-act” laws: Louisiana, Minnesota and Vermont. In these states, if a physician is known to have walked away from a scene at which an individual required emergency medical treatment, then he or she can be in violation of the law.

State laws also differ as to the location where the Good Samaritan renders the emergency care. Although most Good Samaritan laws apply only to care provided outside the hospital, Good Samaritan laws in California and Colorado explicitly protect physicians who provide Good Samaritan care in a hospital. For example, if a physician in either of these states is rounding on hospitalized patients and responds to an urgent request by hospital staff to attend to another physician’s patient who is in acute respiratory distress, he or she may be afforded Good Samaritan protection.

We are sometimes asked whether it is permissible to accept a gift for your efforts as a Good Samaritan. The answer is generally “yes” – and some laws even specify that physicians are entitled to payment for providing Good Samaritan care. In most states, however, the act of your sending a bill can complicate the issue of whether you had a pre-existing duty to provide care to the individual and, therefore, whether you have Good Samaritan immunity. You must be able to show that you provided the care without expecting remuneration, even if you decide after the fact to bill for your services, which can be difficult.

Your professional liability insurance carrier may be able to instruct you about other unique aspects of the Good Samaritan law in your state.

KEY POINTS ABOUT GOOD SAMARITAN LAWS

- In most states, there is no legal obligation to provide Good Samaritan care.
- If aid is given, it need be stabilization only.
- The recipient of aid must not object to aid being rendered; implied consent exists if the victim lacks capacity to consent.
- Physicians acting as Good Samaritans generally have legal immunity to claims of ordinary negligence, but not to gross, willful or wanton negligence.

Do you have an ethical duty to respond?

When the opportunity to be a Good Samaritan presents itself, ethical considerations weigh as heavily on many physicians as legal ones. The primary question is whether physicians have an ethical duty to respond. The AMA’s Code of Medical Ethics has this to say: “A physician shall, in the provision of appropriate patient care, *except in emergencies*, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care [emphasis added].”²² And the AMA’s Council of Ethical and Judicial Affairs has specified that physicians should “respond to the best of their ability in cases of emergency where first aid treatment is essential.”²³ Ultimately, the decision of whether to act is a personal one based on many factors.

When responding to the need for Good Samaritan care, physicians may wonder at what point they should hand off the patient to other caregivers. Generally speaking, you should not leave the scene until someone of at least comparable capability can take over. Some EMS personnel might ask you to ride along to the hospital until you can hand off the patient’s care to another physician. Others may insist that you step away immediately upon their arrival. The key to determining how best to respond is in quickly assessing the abilities of the responders. In some areas, the EMS personnel may be volunteers with basic life support skills. In other areas, you may encounter paramedics with extensive training and experience. Physicians and EMS providers have to put egos aside and assess who can do the best job under the circumstances. You may determine that you have an ethical duty to continue providing care until you can get the patient to the hospital, or you may be comfortable leaving the scene once the EMS providers have arrived.

When you’re in the air

The incidence of in-flight medical events on commercial airlines is unclear, given that there are no regulatory reporting requirements. One recent analysis by MedAire,

■ To be protected by a Good Samaritan law, in most states a physician must not have a pre-existing duty to provide care to the patient.

■ Louisiana, Minnesota and Vermont have failure-to-act laws that make it a crime *not* to provide Good Samaritan care.

■ It is usually permissible to accept a gift for providing Good Samaritan care, but sending a bill can be problematic.

an Arizona-based company that provides emergency medical advice to airlines that carry nearly half of the 768 million passengers on U.S. flights each year, found that the rate of medical emergencies aboard commercial flights nearly doubled from 2000 to 2006, from 19 to 35 medical emergencies per 1 million passengers.⁴ The majority of physicians in attendance at a recent AAFP Annual Scientific Assembly course reported having been confronted with an in-flight emergency at some point in their careers.

In the United States, physicians are under no legal obligation to provide assistance in these situations, but a federal law passed 10 years ago includes Good Samaritan immunity for those who do. The Aviation Medical Assistance Act of 1998 ensures that if you're flying in the United States, even if the airline is not owned by a U.S. company, you have Good Samaritan protection. Canada and the United Kingdom have similar laws. The laws on intercontinental flights are more complicated; the simplest explanation is that the laws of the country in which the airline is based are in effect. For example, on a flight from Los Angeles to Sydney, Australia, on Qantas Airlines, Australian law (which says you have a duty to act) would be in effect.

Like state statutes, the Aviation Medical Assistance Act provides Good Samaritans with protection from lawsuits alleging negligence "... unless the individual, while rendering such assistance, is guilty of gross negligence or willful misconduct." The act protects airline companies from liability as well "if the carrier in good faith believes that the passenger is a medically qualified individual." Airline employees meet the "in good faith" requirement by asking whether the person who volunteers to help is a health care provider.

When responding to most in-flight medical emergencies, physicians have a variety of tools at their disposal. Most airplanes are equipped with automated external defibrillators (AEDs); the Federal Aviation Administration (FAA) requires that any plane weighing 7,500 pounds or more and carrying at least one flight attendant must have an AED on board. In addition, most U.S. airlines have 24/7 access to emergency physicians who can be consulted if needed. The FAA also requires that an emergency medical kit be available and that it be stocked with certain

items, including medications, IV supplies and syringes. On many airlines, basic first-aid supplies are stored separately. In an emergency, it is a good idea to ask for both the emergency medical kit and the first-aid supplies to ensure that you'll have everything you need.

It is not unusual for physicians who respond to serious in-flight medical emergencies to be asked to advise the pilot on whether the plane should be diverted so that the passenger can be treated at a hospital sooner rather than later. Do not assume the burden of deciding whether the plane gets rerouted; that is a decision best left to the pilot. Instead, offer your medical opinion about the patient's condition and a prognosis expressed in terms of time, for example, "The patient has extremely high blood pressure, and there are indications she is having a stroke. The sooner she can be treated at a hospital, the better her prognosis will be."

Just do your best

As noted earlier, the odds of being successfully sued for malpractice as a result of providing Good Samaritan care are stacked well in your favor, so much so that the fear of litigation should not be a factor in your decision about whether to help when the situation presents itself. An attorney would much rather defend a physician for providing care and making a good-faith error than for not providing care in an emergency situation. Next time you happen upon an accident scene or hear a plea for emergency medical assistance, do unto others as you would have them do unto you, and be confident that your best effort will be good enough. **FPM**

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1. Associated Press. Airline: dying passenger given oxygen, attendants acted properly. CNN Online. Feb. 25, 2008. Available at: <http://www.cnn.com/2008/US/02/25/flight.death.ap/index.html>. Accessed March 7, 2008.

2. Code of ethics of the American Medical Association. Chicago: American Medical Association; 2006.

3. AMA council on ethical and judicial affairs report 4-A-00. Available at: http://www.ama-assn.org/ama1/pub/upload/mm/369/ceja_4a00.pdf. Accessed March 7, 2008.

4. Davis R, DeBarros A. In the air, health emergencies rise quietly. *USA Today*. March 11, 2008. Available at: http://www.usatoday.com/news/health/2008-03-11-inflight-medical-emergencies_N.htm. Accessed March 13, 2008.

■ Many physicians may feel an ethical obligation to respond when Good Samaritan care is needed.

■ The Aviation Medical Assistance Act of 1998 provides Good Samaritan protection to physicians who respond to in-flight medical emergencies.

■ Do not assume the burden of deciding whether the plane gets rerouted due to a medical emergency.