LAW & MEDICINE

Good Samaritan Acts

Question: During a flight from Los Angeles to Newark, a passenger developed acute chest pain and diaphoresis. A flight attendant put out an emergency call, but Dr. Brown, a general internist nearing retirement, failed to respond because he was concerned about potential litigation. Unfortunately, the passenger sustained a massive MI, and died en route.

BY S.Y. TAN, M.D., J.D.

Regarding a medical malpractice lawsuit in such a scenario, which of the following is correct?

A. The Good Samaritan statute imposes upon doctors the legal duty to treat.
B. Good Samaritan statutes immunize doctors against all liability.
C. Dr. Brown need not have hesitated, as his attempts, even if negligent, would have been protected by the Aviation Medical Assistance Act.
D. All doctors have taken the Hippocratic oath to treat in an emergency situation.
E. But for Dr. Brown's negligent failure to act, the patient might have survived, so the doctor is at least partly liable.

Answer: C. If Dr. Brown had responded, his effort would not have put him in jeopardy even if his intervention had proved ineffective.

However, there is no legal duty for anyone, even a doctor, to come to the aid of a stranger.

Although doctors are generally thought to have an ethical duty to offer emergency care, the Hippocratic oath is silent on this matter, and the American Medical Association's Code of Medical Ethics states: "Physicians are free to choose whom they will serve. The physician should, however, respond to the best of his or her ability in cases of emergency where first aid treatment is essential" (AMA Code of Medical Ethics §8.11, 2006-2007 edition).

All 50 states have laws on their books called Good Samaritan statutes, whose intent is to encourage people to help those in acute distress. These statutes do not require doctors to come to the aid of strangers, although Vermont is an exception, imposing an affirmative duty to assist a victim in need.

Rather, they protect against liability arising out of negligent rescue, but typically they cover only ordinary, not gross, negligence.

The Aviation Medical Assistance Act, enacted in 1998, is the federal equivalent of the Good Samaritan statute, covering emergency treatment during flights in the United States.

In allegations of medical malpractice, the plaintiff must first show that the doctor owed a duty of due care to the injured victim. This duty arises out of the doctor-patient relationship, that is, whenever a doctor undertakes to evaluate or treat a patient. In the absence of such a relationship, a doctor is not legally obligated to treat, even in an emergency.

However, to encourage aiding strangers in distress, states have enacted so-called Good Samaritan laws to protect rescuers who act in good faith. Popularized in the 1960s in response to the perception that doctors were reluctant to treat strangers for fear of a malpractice lawsuit, these laws immunize the aid giver against allegations of negligent care. Their protective scope varies from state to state, usually offering immunity against simple negligence but not gross misconduct.

Hawaii's Good Samaritan statute is typical. It states: "Any person who in good faith renders emergency care, without remuneration or expectation of remuneration ...shall not be liable for any civil damages resulting from the person's acts or omissions, except for such damages as may result from the person's gross negligence or wanton acts or omissions" (Hawaii Revised Statutes §663-1.5 [a]).

California, the first state to enact a Good Samaritan statute in 1959, is an exception, as it may excuse even gross negligence as long as the act was done in good faith. In a litigated case, a California court declared: "The goodness of the Samaritan is a description of the quality of his or her intention, not the quality of

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CMS Steps Up Oversight of the Joint Commission

BY MARY ELLEN SCHNEIDER
New York Bureau

The Joint Commission on the Accreditation of Healthcare Organizations, which provides the standard in hospital accreditation in the United States, will soon be subjected to greater federal oversight.

Congress recently eliminated the Joint Commission's "unique deeming authority" for hospitals as part of the Medicare Improvements for Patients and Providers Act of 2008 (H.R. 6331), which was enacted in July. That means that the Joint Commission, like other accrediting bodies, will need to apply to the Centers for Medicare and Medicaid Services in order for its accredited hospitals to be deemed to have met the conditions of participation in Medicare. Previously, the Joint Commission's deeming authority had been automatic and was not subject to oversight by the CMS.

Officials at the Joint Commission supported the intention of the change, and plan to apply to CMS for hospital deeming authority. The Joint Commission and other accrediting bodies already apply to CMS for deeming authority in other areas, such as home care, laboratory, and ambulatory surgery accreditation programs.

Under the new law, the Joint Commission will have 24 months to apply to CMS for deeming authority and to be recognized. During the transition period, accredited hospitals will not be affected by this change, according to the Joint Commission.

In 2004, the U.S. Government Accountability Office (GAO) issued a report that called on Congress to consider giving the CMS greater authority over the Joint Commission's hospital accreditation program. GAO investigators examined state agency validation surveys for 500 hospitals accredited by the Joint Commission and found that the Joint Commission had missed most of the serious deficiencies picked up during the state reviews. ■

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the aid delivered" (*Perkins v. Howard*, 232 Cal.App.3d 708 [1991]).

There is no universal definition of gross negligence, but the term is frequently equated with willful, wanton, or reckless misconduct.

One can think of gross negligence as aggravated negligence, involving more than mere mistake, inadvertence, or inattention, and representing highly unreasonable conduct, or an extreme departure from ordinary care where a high degree of danger is apparent (Prosser, W.L. et al., eds. "Prosser and Keeton on Torts," 5th ed., St. Paul, Minn.: West Publishing Co., 1984, pp. 211-4).

In most cases, Good Samaritan statutes do not require doctors to come to the aid of strangers, but protect against liability arising out of negligent rescue.

Statutory protection is generally excluded for Good Samaritan acts performed within a hospital setting under the theory that doctors have an ongoing relationship with the hospital and are already obligated to provide emergency care within its walls.

A minority of states such as California and Colorado do provide immunity irrespective of the location of aid.

Commentators have observed that very few lawsuits have involved Good Samaritan doctors and that such laws are both unnecessary and ineffective.

Those who are averse to helping will remain on the sidelines even with the protection of the law.

In a 1963 survey by the American Medical Association, approximately half of responding physicians said they would render emergency help, and this did not depend on whether there was a Good Samaritan statute in place (Sanders, G.B. First Results: 1963 Professional-Liability Survey. JAMA 1964;189:859-66). ■

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