Protection against liability for emergency medical services providers

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ABSTRACT

Emergency medical services (EMS) providers must often provide medical assistance without adequate time and resources. To encourage EMS providers not to be fearful of negligence lawsuits when they provide treatment, many states have enacted laws that protect them from civil liability. However, these laws provide immunity only under certain conditions. This article describes these conditions under which the immunity statutes generally operate.

Key words: liability, legal, negligence, emergency medical services providers, immunity

INTRODUCTION

The common-law rule in the United States is that there is generally no obligation to rescue another in danger. A bystander thus cannot be held liable for failing to assist another person in peril, even if the bystander’s inaction is extremely objectionable. However, one who attempts a rescue must provide the care that a reasonable person with similar training would provide under similar circumstances. Otherwise, the rescuer may be liable for negligence. This reasonable person standard places emergency medical services (EMS) providers in a difficult position. The very nature of their work is to rescue by providing medical assistance, often without the benefit of time, complete information, or diagnostic medical equipment. Consequently, there is a possibility of hesitation and a fear of liability when EMS providers respond to an emergency. In response, many states have enacted immunity statutes that protect EMS providers from lawsuits for actions within the scope of their employment, and Good Samaritan laws may also protect them when they are not on duty. These protections are generally available to the extent that the EMS provider is not involved in grossly negligent conduct.

IMMUNITY STATUTES

About half of the states across the country have enacted statutes that protect EMS providers from civil liability. Although these laws vary widely by state, they generally offer this protection if EMS personnel (1) are not grossly negligent, (2) provide emergency care, and (3) act in good faith.

Gross negligence

Nearly all immunity laws for EMS providers grant protection from civil liability unless they act with “gross negligence.” “Recklessness,” or “willful and wanton misconduct.” Courts have had difficulty defining and differentiating these terms, but all agree that they describe something worse than ordinary negligence.

Gross negligence originally described “the failure to exercise even that care which a careless person would use.” A particular state of mind (such as intent) is not required, but the negligent conduct itself

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must create an extremely unjustified risk of injury. An act is otherwise considered reckless, willful, or wanton if there is conscious disregard of the safety of others so that it is as if the harm were intended. Thus, there must be extremely ineffective and detrimental behavior for EMS providers to be liable under an immunity statute. EMS providers have been protected from liability for injuries when they accidentally tipped over a stretcher with its wheel stuck in a crack or failed to find a victim at the scene of an automobile accident. Immunity was granted against wrongful death claims when EMS providers mistakenly inserted an endotracheal tube into the esophagus of a heart attack victim, walked a heart attack victim to an ambulance because a stretcher could not maneuver through a house, or neglected to take vital signs of an unconscious victim and transport him to a hospital when they reasonably believed that he was merely intoxicated with alcohol.

However, there was evidence of gross negligence when a paramedic arrived at the scene of a physical altercation to find someone lying on the ground but only performed a cursory and superficial examination. The paramedic did not inquire about the cause of the victim’s condition, and he did not check for abnormalities in blood pressure, pulse, skin color, moisture of the skin, or other symptoms that indicate shock. A court ruled that the paramedic did not meet the standard of care required, and evidence supported liability when the victim later died of shock.

Evidence supported a finding of willful and wanton conduct when paramedics left a woman suffering from an asthma attack without entering her apartment. The woman had provided the 911 dispatcher with her address and phone number, but no one answered when the paramedics knocked on her apartment door. The first step in their training for this type of situation was to attempt to open the door by turning the knob, which was unlocked. Instead, the paramedics left the scene believing that no one needed medical attention, and the woman was later found dead. The court ruled that these facts were sufficient to allege willful and wanton conduct under the Illinois Emergency Medical Services Systems Act because the paramedics may have had time to treat the woman if they had merely entered the door of the apartment.

As these examples show, EMS providers must generally exhibit highly careless behavior that seriously violates their training to lose the protection of immunity laws. Immunity laws otherwise shield EMS providers against liability for negligent acts.

**Scope of employment**

Immunity laws are usually applicable when EMS providers act within their scope of employment to provide emergency care. In New Jersey, scope of employment means a “connection with the actual rendering of life support services,” which includes basic life support functions, cardiac monitoring, and cardiac defibrillation. An example of an act that is not connected to the actual rendering of life support services is the preparation of a “run sheet” that describes a patient’s condition for emergency room staff. When a victim had vomited after an assault, which is a significant symptom of serious brain trauma, emergency medical technicians (EMTs) incorrectly recorded on a run sheet that there was no nausea or vomiting. The emergency room staff relied on the run sheet and did not treat the victim for brain trauma, and the victim later died of epidural hematoma. The court ruled that the state’s immunity statute did not apply because the preparation of a run sheet does not involve “the actual performance of EMS outside a hospital.”

Related to the scope of employment requirement is that an immunity law generally applies only when the provision of emergency care is within one’s scope of training. In Illinois, the Emergency Medical Services Systems Act protects EMTs if they provide life support services within the scope of their training that is not above their level of licensure. Another court has provided that an EMS provider acts “inconsistent with training” (and is thus liable for negligence) when the act is never expected to occur, even under the pressure of emergency treatment. However, immunity still applies if an EMS provider merely deviates from training.

Furthermore, a few states allow immunity only when the EMS provider follows the instructions of a
physician. In Louisiana, this requirement is satisfied through electronic communications with a physician or through “protocols” that state-appointed physicians have established, which does not include policies written by a private ambulance company without the direction of physicians.

Good faith

A few immunity statutes require that an EMS provider act in good faith. “Good faith” has been described as “a state of mind indicating honesty and lawfulness of purpose [and] belief that one’s conduct is not unconscionable or that known circumstances do not require further investigation.” Using this definition, a Georgia court found that paramedics were immune from liability when they did not transport a woman to the hospital when she complained of chest pains. The evidence did not reveal that the paramedics believed their conduct to be unconscionable or that the circumstances required further investigation, and “[e]ven if the paramedics exercised bad judgment and acted negligently, such does not amount to a lack of good faith.”

Similarly, an immunity statute protected paramedics when a patient died from being improperly secured to a stretcher resulting in a fall. The evidence did not show an absence of good faith or the presence of intentional misconduct on the part of the paramedics, and the case was dismissed.

Very few cases have found EMS providers to be in bad faith. In one such case, police officers attempted to serve an involuntary commitment order for a woman to be placed in a mental health facility. When the EMTs arrived on the scene, they discovered that the woman was left unattended lying face-down on a stretcher with her hands handcuffed behind her back. The EMTs did not interfere about this form of restraint and did not monitor her medical condition. The court ruled that these facts overcame the presumption that the EMTs acted in good faith.

GOOD SAMARITAN LAWS

California enacted the first Good Samaritan law in 1959. It is believed that this statute was in response to an incident when several physicians refused to treat a skier who broke her leg because they feared possible malpractice claims. To encourage physicians in similar situations to provide medical assistance, the Good Samaritan law protected physicians against civil liability if they render medical care in good faith at the scene of an emergency. Today, all 50 states and the District of Columbia have enacted a version of the Good Samaritan law, and some of them apply to EMS providers by either referring to them directly or including them in blanket protection for anyone who provides assistance at the scene of an emergency. Good Samaritan laws generally consist of the following elements for EMS providers: (1) requirement that they act in good faith; (2) requirement that they act gratuitously; and (3) specification of when and where the Good Samaritan law applies. For a fairly recent listing of the elements of each state’s Good Samaritan law see Ref. 33.

Good faith requirement

The original Good Samaritan law in California required that a physician act in “good faith” at the scene of an emergency, and many other state laws have retained this requirement for emergency responders. This requirement of good faith operates in the same way as under immunity laws for EMS providers.

Time and place of applicability

Good Samaritan laws commonly restrict protection to those who assist at the scene of an “emergency.” Many have criticized this requirement as being too vague, but courts have proceeded to define what constitutes an emergency. In California, “[t]he test for determination of the existence of an emergency is objective: whether the undisputed facts establish the

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1 Some jurisdictions require that the scene of an emergency be outside of a hospital, doctor’s office, or other place lacking proper medical equipment. A few states do not employ the term “emergency” in their Good Samaritan laws but instead provide protection at the scene of an accident, casualty, or disaster.

**“If the victim of an automobile accident wanders away from the wreckage in a daze, may the Good Samaritan chase him down and render treatment without fear of liability?” Some states have responded to this argument by granting protection during the transport of a victim to a healthcare facility.**
existence of an exigency of so pressing a character that some kind of action must be taken. 35 Likewise, Oklahoma provides that an emergency exists if a “stranger appears (or may be perceived) to be ill or in need of succor,” 36 and Texas observes that an emergency “calls for immediate action . . . without time for deliberation.” 37

Although not in the context of a personal liability claim against an EMS provider under a Good Samaritan law, a court found that an EMT was liable for a man’s injuries when the man fell downstairs as the EMT assisted him in his return home after an evacuation. The relevant statute provided protection only during an emergency, and the court ruled that there was no longer an emergency when the man attempted to return home. 38 This ruling is consistent with the premise that there is an emergency only when there is urgent need for immediate medical assistance.

Unlike immunity statutes, Good Samaritan laws generally apply only when the EMS provider is not on duty. When on-duty paramedics negligently treated a victim of a head injury and did not transport him to a hospital in a timely manner, the paramedics sought protection under their state’s Good Samaritan law. However, the court ruled that this law was aimed at encouraging medical assistance from those who happen by the scene of an emergency, as opposed to professionals who are called to the emergency in the ordinary course of their duties. The paramedics were not entitled to Good Samaritan protection, and they could be found liable for their negligence. 39

**Required standard of care**

If applicable to EMS providers, nearly all Good Samaritan laws allow protection from civil liability unless there is gross negligence, recklessness, or willful and wanton misconduct. 40 Regardless of how these terms are defined or employed, EMS providers owe a very low standard of care if a Good Samaritan law applies to them. There are no cases where an EMS provider has been held liable under the gross negligence standard of a Good Samaritan law. 41

**CONCLUSIONS**

It should be noted that despite the gross negligence standard of applicable immunity statutes and Good Samaritan laws, EMS providers are subject to the standards of their respective licensure bodies. However, these enactments allow EMS providers not to fear civil liability at the scene of an emergency when they attempt to fulfill their responsibility to conserve life. 42 Thus, immunity statutes and Good Samaritan laws are an important component of an emergency response situation when bold decisions are required with limited time and resources, encouraging EMS providers to follow their rescue training without hesitation.

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**REFERENCES**


††A few states retain the common-law standard of ordinary negligence for rescuers. See Ref. 40, protection only available “where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances”; see Ref. 41. See also Ref. 42, criticizing the Mississippi Good Samaritan statute’s ordinary negligence standard because it “fails miserably in its two-fold purpose . . . to remove the common law liability associated with rescue and to encourage people to stop and render aid to those in need.”
27. Bixler v Merritt, 244 Ga App 82, 534 SE2d 837 (2000).
42. Willard v. Vicksburg, 571 So 2d 972 (Miss 1990).