

Florida Doctor Shielded from Liability by State’s “Good Samaritan” Law

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Last month a Florida appeals court held that the state’s Good Samaritan Act¹ protected from liability an anesthesiologist who was on-call in the hospital’s obstetrics department, but who voluntarily assisted another physician in the emergency room in treating a patient that subsequently died.² Most states have some form of these Good Samaritan laws in place that either shield individuals from personal liability who attempt to “rescue” another person in peril or protect physicians from liability who provide medical assistance in specific circumstances. Many states, including Texas, have statutes that do not rise to the level of protection offered under Florida law.

Florida’s *Harris v. Soha*

On July 16, 2009, a Florida appeals court dismissed a claim brought by Lana Harris whose husband was taken to the emergency room at St. Vincent’s Medical Center suffering from a swollen throat and tongue.³ The attending emergency room physician requested the assistance of an anesthesiologist.⁴ Dr. Walter Soha, Jr., was the anesthesiologist on call for the obstetric suite at the hospital and had been seeing a patient in labor on a different floor. Although Dr. Soha responded to the emergency room physician’s request for assistance, Mr. Harris subsequently died.⁵ Lana Harris brought suit against Dr. Soha, alleging he failed to take actions that may have prevented her husband’s death.

The trial court granted Dr. Soha’s motion for directed verdict and Mrs. Harris appealed. The First District Court of Appeal took up the matter and reviewed the lower court’s application of the state’s Good Samaritan Act which provides that:

[A]ny health care practitioner...who is in a hospital attending to a patient *of his or her practice* or for business or personal reasons unrelated to direct patient care, and who *voluntarily responds* to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation

¹ FLA. STAT. § 768.13(2)(c)(1) (2009).

² *Harris v. Soha*, 2009 WL 2049173 (Fla.App.1st Dist.); Am. Health Lawyers Ass’n, *Florida Appeals Court Finds Anesthesiologist On-Call In Different Part of Hospital Protected By Good Samaritan Statute From Liability for Death in ER*, HEALTH LAWYERS WEEKLY, July 24, 2009, <http://www.healthlawyers.org/News/Health%20Lawyers%20Weekly/Pages/2009/July%202009/July%2024%202009/FloridaAppealsCourtFindsAnesthesiologistOnCallInDifferentPartOfHospitalProtectedByGoodSamaritanStatuteFromLiabilityForDeath.aspx>.

³ *Harris v. Soha*, 2009 WL 2049173, *1 (Fla.App.1st Dist.).

⁴ *Id.* (Anesthesia did not provide on-call services to the emergency room, although such physicians on-call in other areas of the hospital occasionally provided assistance in the ER).

⁵ *Id.*

or by an occurrence that demands immediate medical attention, shall not be held liable for any civil damages as a result of any act or omission relative to that care or treatment, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another.⁶

Mrs. Harris argued that Dr. Soha was not tending to a “patient of his practice” because anesthesiologists offer their services to anyone who requests them in a hospital environment.⁷ The court rejected Harris’s argument, noting that such a conclusion would “contravene the legislature’s intent that the immunity offered under [the statute]” is to encourage physicians to provide necessary emergency care to all persons without fear of litigation.⁸ Further, the court explained that the wording of the “patient of his practice” portion of the law simply operates to distinguish those instances when a doctor is providing assistance to a patient with whom “the practitioner does not have a” relationship.⁹

Mrs. Harris offered a second argument to the court that Dr. Soha did not provide his services “voluntarily” to the emergency room. Instead, she argued, Soha acted under the guise of an informal hospital policy requiring anesthesiologists to respond in similar situations.¹⁰ The court rejected that argument as well and affirmed the trial court’s directed verdict in favor of Dr. Soha.

The Nature of Good Samaritan Laws

Good Samaritan statutes come in varying forms and degrees. They are enacted to provide protection from civil or criminal liability for healthcare providers, rescuers, and laypersons that voluntarily provide assistance to another in peril. The common law theory behind the policy is relatively straightforward. Absent a limited number of specific exceptions, there is no duty to rescue – regardless how serious the situation may be.¹¹ Publicly, however, if a layperson non-rescuer is identified, he or she will often be denounced by the media and community for failing to respond.

Though there is long-standing legal precedent that no duty to rescue exists, a recent California case ruled that even non-medical individuals can be held liable under certain circumstances for attempting to “rescue” another. Lisa Torti witnessed a co-worker, Alexandra Van Horn, crash her car into a light pole.¹² Fearing that the car could catch fire, Torti lifted Van Horn out of the front passenger seat. Van Horn ended up becoming

⁶ FLA. STAT. § 768.13(2)(c)(1) (2009) (emphasis added).

⁷ *Harris v. Soha*, 2009 WL 2049173, *1 (Fla.App.1st Dist.).

⁸ *Id.* at *2 (citing FLA. STAT. § 768.13(2)(c)(3) (2009)).

⁹ *Id.*

¹⁰ *Id.*

¹¹ David A. Hyman, *Rescue Without Law: An Empirical Perspective on the Duty to Rescue*, 84 TEX. L. REV. 653, 655 (2006) (citing Ernest J. Weinrib, *The Case for a Duty to Rescue*, 90 YALE L.J. 247, 247 (1980)).

¹² Editorial, *I’ll Have to Call My Lawyer*, N.Y. TIMES, Jan. 3, 2009, <http://www.nytimes.com/2009/01/03/opinion/03sat2.html>.

paralyzed and sued Torti for negligence. The California Supreme Court held that the state's Good Samaritan law did not shield Torti from liability because it applies only to individuals providing "medical" help.¹³ The dissenting justices noted that "emergency care" should apply to both medical and nonmedical help. Some have commented that the ruling is disturbing and could further discourage individuals from offering assistance as they ponder whether or not they are providing "emergency care" to another.¹⁴

Texas Physicians as Good Samaritans

Physicians are often statutorily shielded from liability for providing "emergency care" to individuals in certain circumstances. Florida's Good Samaritan statute covering such a group is broadly worded. The Texas Good Samaritan law, conversely, is more narrowly defined and states:

[A] person who in good faith administers emergency care is not liable in civil damages for an act performed during the emergency unless the act is willfully or wantonly negligent, including a person who: (1) administers emergency care using an automated external defibrillator; or (2) administers emergency care as a volunteer who is a first responder...¹⁵

The section does not apply to care administered:

- (1) for or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered, shall not determine whether or not the care was administered for or in anticipation of remuneration; or
- (2) by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration.¹⁶

Texas' law acts as an affirmative defense; after a lawsuit is filed, the physician must prove that the law provides protection. Prior to 1993, the state's Good Samaritan law did not apply to physicians administering care in a hospital emergency room. However, during the 73rd Legislative Session, lawmakers expanded the statute's scope to include those responding to medical emergencies in hospitals when they are not obligated to do so. A Texas Supreme Court ruling spurred additional changes to the law in 2003.

McIntyre v. Ramirez

On April 23, 1998, Dr. Douglas McIntyre was working on the labor and delivery floor at St. David's Medical Center in Austin, Texas, when he received a "Dr. Stork" page.¹⁷ A

¹³ *Id.*

¹⁴ *Id.*

¹⁵ TEX. CIV. PRAC. & REM. CODE ANN. § 74.151(a) (Vernon 2009).

¹⁶ *Id.* at § 74.151(b).

¹⁷ *McIntyre v. Ramirez*, 109 S.W.3d 741, 743 (Tex. 2003).

“Dr. Stork” page meant that a delivery was in progress but no doctor was available at the time to assist, and one was immediately needed. Dr. McIntyre was not on-call and had never treated the patient, Debra Ramirez, but responded to the page. When Dr. McIntyre arrived, several issues were present with the birthing, including the baby’s shoulders being lodged against the mother’s pelvic bone. Dr. McIntyre successfully delivered the infant but the baby was born with injuries and nerve damage to his neck and shoulder resulting in neurological impairment and some paralysis.¹⁸

Ramirez filed suit against Dr. McIntyre and others for negligence; Dr. McIntyre countered with an affirmative defense provided by the state’s Good Samaritan law. The trial court granted Dr. McIntyre’s motion for summary judgment but the court of appeals reversed, concluding that an issue of fact existed as to whether his assistance was excluded from the statute’s protection because he acted with the expectation of being paid.

At the time of the case, Texas’ Good Samaritan statute was, in part, as follows:

- (a) [A] person who in good faith administers emergency care is not liable in civil damages for an act performed during the emergency unless the act is willfully or wantonly negligent...
- (b)(1) [T]his section does not apply to care administered: (1) for or in expectation of remuneration...¹⁹

Holding that Dr. McIntyre fell within subsection (b)(1) of the statute, the court of appeals concluded that he could only claim protection under the Good Samaritan law if he was able to prove “that he would not customarily receive remuneration for the services he performed and he would not legally be entitled to remuneration.”²⁰

Justice Wainwright, writing for the Texas Supreme Court, turned to subsection (d) of the statute which applied to (b)(1) and stated:

...a person who would ordinarily receive or be entitled to receive a salary, fee, or other remuneration for administering care under such circumstances to the patient in question shall be deemed to be acting for or in expectation of remuneration even if the person waives or elects not to charge or receive remuneration on the occasion in question.²¹

He took issue with the court of appeals’ conclusion that a physician must prove that he or she is not “legally” entitled to receive payment due to the word being absent in subsections (b)(1) and (d). He wrote:

¹⁸ *Id.*

¹⁹ TEX. CIV. PRAC. & REM. CODE ANN. § 74.001 (Vernon 2003).

²⁰ *Ramirez v. McIntyre*, 59 S.W.3d 821, 824 (Tex.App.-Austin 2001) (emphasis added).

²¹ TEX. CIV. PRAC. & REM. CODE ANN. § 74.001(d) (Vernon 2003).

[P]roof that Dr. McIntyre is not legally entitled to remuneration under any conceivable circumstance or theory is unnecessary. As the dissent in the court of appeals correctly observed, the court of appeals' definition would significantly alter, rather than clarify, the language and the common sense meaning of subsection (b)(1)...Thus, reading subsection (d) to require that the person seeking protection of the statute prove that he would neither ordinarily receive nor ordinarily be entitled to receive remuneration comports with the plain and ordinary meaning of the words of subsection (d) and ensures that this section is consistent with subsection (b)(1).²²

The Texas Supreme Court reversed the holding of the court of appeals and its decision prompted legislators to pass House Bill 4 during the 78th Regular Session.²³ The bill amended the state's Good Samaritan statute and eliminated the language at issue in *McIntyre*. Currently, under TCPRC § 74.151(b)(1), whether a doctor is "legally entitled" to receive payment for emergency care provided is no longer a consideration in determining a remuneration question.

Conclusion

Though much of the public may think of Good Samaritans as people who rescue stranded individuals by the side of the road, the term has a solid foundation in hospital emergency rooms. The notion of a physician being shielded from liability for providing care inside a hospital when there is no duty to do so may seem odd. A hospital seems like the perfect place where a physician should provide care during an emergency. States' Good Samaritan laws simply allow a physician to provide the care without the thought of litigation in the back of his or her mind. Should the physician's actions fall below the standard of care, medical malpractice and negligence laws will ultimately be the vehicle used to financially recover.

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²² *McIntyre*, 109 S.W.3d at 746-47.

²³ H.B. 4, 78th Reg. Sess. (Tex. 2003).