

## Liability under “Good Samaritan” Laws

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Physicians treating patients are under a duty to provide care that meets certain standards of care. This is due to the fact that physicians have a fiduciary relationship to their patients. But what about physicians who are treating people with whom they have no relationship at all? For example, a physician pulls over at the scene of an accident and, through a sense of civic responsibility, delivers health care. Can that physician then be sued if the injured persons do not survive? This article will review Good Samaritan laws and explore variations among states.

Good Samaritan laws generally provide basic legal protection for those who assist a person who is injured or in danger. In essence, these laws protect the “Good Samaritan” from liability if unintended consequences result from their assistance. All 50 states and the District of Columbia have some type of Good Samaritan law. Who is protected under these laws (physicians, emergency medical technicians, and other first responders) and how these laws are implemented vary from state to state. In addition, some states extend Good Samaritan liability protection to cover business and nonprofit entities acting during an emergency.



*Good Samaritan laws provide basic legal protection for those who assist a person who is injured, such as in the aftermath of an earthquake or tornado.*  
*Courtesy of Steven F. Schutzer, MD*

For a physician to be protected from liability in a Good Samaritan situation, the following conditions usually must be met:

- The person needing assistance should be in “imminent peril” or danger.
- The physician’s actions should not be negligent and should be in the realm of what a “reasonable response” would be.
- The physician’s actions should be based on good faith and not on receiving or having the knowledge of receiving some form of compensation.

Good Samaritan laws do not automatically exempt someone from liability. For example, these laws will not do the following:

- cover activity during performance of regular or assigned job duties

- provide protection from liability in a federal civil rights lawsuit
- provide protection for volunteer athletic events
- provide protection from liability if it is declared that the physician acted in a negligent manner or out of the scope of his or her training

### **State laws**

A 2010 study analyzing Good Samaritan laws in all 50 U.S. states found that most state laws contain some degree of immunity from either criminal or civil penalties in an emergency situation. However, the following examples show the variability among state laws:

- 8 states provide no immunity to private individuals not meeting certain criteria
- 24 states provide immunity for physicians rendering emergency care in a hospital
- 6 states exclude rendering emergency care in a hospital from Good Samaritan coverage
- 2 states require a duty to assist; if it is a reasonable emergency, physicians must assist

### **Volunteer protection**

In 1997, the federal government enacted the "Volunteer Protection Act" (VPA), which provides a minimum level of liability protection for volunteers. The VPA provides protection for large, organized volunteer efforts; for example, protection would be provided for disaster relief efforts or other types of organized events where a large number of volunteers are needed.

The VPA preempts any state law that is inconsistent with its provisions, unless the state law provides greater protection. It does not prevent states from implementing their own laws protecting volunteer liability. In addition, the VPA does not apply to civil actions and does not prevent a lawsuit from being filed against the volunteer.

State volunteer protection laws vary and common coverage groups include the following:

- directors and officers
- a narrow group of volunteers who provide public emergency services
- all uncompensated volunteers who render services for nonprofit or government agencies

A volunteer is covered under a VPA statute when he or she meets the following requirements:

- acts within the scope of his or her responsibilities
- is licensed, certified, or authorized to act
- is not engaged in willful, criminal, or reckless misconduct or gross negligence
- is not operating a motor vehicle, vessel, or aircraft

State laws directly apply to trained medical professionals acting in a full volunteer capacity without pay. The Association of State and Territorial Health Officials notes that many states have adopted the Uniform Emergency Volunteer Health Practitioners Act, which provides liability coverage for volunteer health practitioners who are registered with the system.

### **New horizons**

Rep. Marsha Blackburn (Tenn.) has introduced HR 1733, the Good Samaritan Health Professionals Act, to provide protection from medical liability claims to volunteer responders to disasters, whether natural or manmade. (See ["Hope for a National Good Samaritan Law?"](#))

In recent years, Good Samaritan laws have been expanded to apply to situations of drug overdose and the administration of Naloxone. States have sought to address opioid drug abuse by removing some legal barriers to those seeking emergency medical care during an overdose. These laws also cover Good Samaritans who alert emergency personnel to individuals who have overdosed and medical professionals who administer Naloxone during an overdose.

According to the National Public Health Law Network, these changes come in two general varieties. The first encourages the wider prescription and use of Naloxone by clarifying that prescribers acting in good faith may prescribe the drug to individuals to reverse overdose, thus removing the possibility of negative legal action against prescribers. The second encourages bystanders to become "Good Samaritans" by calling emergency responders without fear of arrest or other negative legal consequences when a person is thought to have overdosed. Ten states have passed legislation in this area and several more states are considering legislation this year.

Other expanded areas of protection include volunteers who use automatic external defibrillators, athletic volunteers, and volunteers working in alternative dispute resolution.

### **Conclusions**

Good Samaritan laws vary considerably from state to state. However, they generally follow three basic principles: immediate danger to bypass the general need for consent before treatment, rendering care within generally accepted standards, and care delivery within the physician's area of general expertise. Physicians should consult with healthcare attorneys knowledgeable about their state's Good Samaritan laws for a more in-depth understanding.

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### **Resources:**

1. Sutton, V: [Is there a Doctor in the House? Why our Good Samaritan Laws are Doing More Harm than Good for a National Public Health Security Strategy: A Fifty State Survey.](#) *Journal of Health & Biomedical Law* Vol VI, 2 (2010):261–300. Accessed on Dec. 12, 2013.
2. Foxhall, K: [License to Serve.](#) *State Legislatures* (Magazine). National Conference of State Legislatures (April 2008). Accessed on Dec. 9, 2013.
3. [Association of State and Territorial Health Officials \(ASTHO\): Emergency Volunteer Toolkit – Volunteer Protection Acts and Good Samaritan Laws.](#) Accessed on Dec. 12, 2013.
4. Nonprofit Risk Management Center: [State Liability Laws for Charitable Organizations and Volunteers.](#) (Sept. 2001).