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To Assist or Not Assist: Good Samaritan Considerations for Nurse Practitioners

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ABSTRACT

Nurse practitioners and other health care providers may face situations where they are confronted with an emergency. Such occurrences are not limited to the hospital setting; they can happen anywhere. This article consists of a review of selected Good Samaritan cases, an overview of state laws in this regard, and a brief discussion of how other countries have dealt with Good Samaritan situations. Appropriate nurse practitioner considerations in this regard are suggested.

Keywords: civil liability for rendering emergency care, Good Samaritan, Good Samaritan laws, medical emergency, nurse practitioner

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Nurse practitioners (NPs) and other health care providers may face situations where they either volunteer to assist someone in need during an emergency or other situation or they are called to do so. Such cases are not limited to the hospital setting; they can occur during a little league game, the scene of an automobile accident, a food tasting, or a rock concert. These events have even arisen on commercial

airline flights, where the number of in-flight medical emergencies rose from 19 to 35 per million passengers between 2000 and 2006.¹ Consequently, NPs and others who work in health care wonder about protections that may be offered when they do render emergency care and if potential liability exists under these circumstances.

This article considers the historical basis for protections that may exist for NPs and other health care providers who

This CE learning activity is designed to augment the knowledge, skills, and attitudes of nurse practitioners and assist in their understanding of their liability while providing Good Samaritan care.

At the conclusion of this activity, the participant will be able to:

- A. List basics of common and Napoleonic law related to Good Samaritan care
- B. Identify conditions that must be met to be afforded Good Samaritan protection
- C. Evaluate how to minimize liability if NPs provide Good Samaritan care

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render assistance, as well as cases where health care providers have given care to people who were not their patients.

Good Samaritan statutes enacted by various states will be noted, as well. Important practical suggestions for protecting Good Samaritan NPs will be addressed.

THE GENESIS OF GOOD SAMARITAN LAWS IN AMERICA

Most cases dealing with claims that a provider should be held liable (responsible) for damages to another person are grounded in the legal tort of negligence. In order to establish a *prima facie* case of negligence, the person filing the lawsuit (the plaintiff) must provide evidence that establishes the presence of 4 main elements:

1. A duty or a legal relationship between the injured plaintiff and the defendant provider
2. Breach of duty, evidence that the provider did not act in a reasonable way under the circumstances
3. Causation, that the provider's actions or failure to act caused the injury to the plaintiff and that this was foreseeable
4. Damages, that the plaintiff suffered some type of harm as a result of the actions or inactions of the defendant²

As a general rule, tort law (civil law) in the United States has supported the proposition that absent special circumstances a person does not have a legal responsibility, termed a duty, to assist, rescue or protect another person from harm.^{3,4} As a consequence, US courts have been reluctant to hold someone either civilly liable (for which the typical compensation is money) or criminally responsible (for which fines or confinement may be ordered) if they do not come to the aid of someone who requires assistance.³ While this is true in most instances, there are some notable exceptions where a duty is created by law and assistance must be rendered. For example, in the case where someone is responsible for an accident, the individual who caused the accident must provide help to those who are injured. Or, in circumstances where someone begins to assist another and other potential rescuers are "called off," a duty may be found. Parents are responsible for rendering aid to their minor children. Additionally, employers can be held liable for not assisting their employees when a work-related mishap occurs.³

Given the general rule that, absent special circumstances, a person is not obligated to help another in need, first courts and then lawmakers began to consider whether special protections should be given to protect people of goodwill who

come to another's aid.⁵ Termed "Good Samaritan laws," these statutes were rooted in the Bible, in the book of Luke 10:29-27, where a man traveling from Jericho was stripped of his clothes and possessions, beaten, and left by the roadside to die. Other passersby ignored the man's plight, but a Samaritan cared for him and paid for his shelter at an inn, without any reward.⁶ Other religious traditions have similar parables. Indeed, the Qu'ran has a number of passages that similarly urge individuals to help those in need.⁶

In 1959, California passed the first law aimed at providing immunity to those who rendered "good faith medical treatment to those who would not receive it."⁷ Since that time, all states have enacted types of Good Samaritan laws. A review of these state statutes and cases dealing with Good Samaritan providers demonstrates a great deal of variability from state to state as to which matters are covered and what types of assistance may be given by a health care provider. Similarly, courts throughout the nation have ruled on Good Samaritan cases, typically finding that those who care for another during an emergency receive special protections. As the following case examples demonstrate, Good Samaritans are sometimes sued, despite the positive motives associated with their interventions.

CASE EXAMPLES: YOU ARE THE JURY

Case 1

The case of *Boccasile v. Cajun Music Limited*⁸ provides an example of a Good Samaritan case. Briefly, Aline Campoux, RN, and Sara John, MD, were serving as volunteer staff at a first-aid station at the Cajun Music Festival in Rhode Island. An attendee named Boccasile started to have an anaphylactic reaction to the seafood gumbo he had eaten. When John and members of the first-aid crew came to his aid, Boccasile repeatedly requested an injection. John ordered the crewmembers to return to the first-aid station for an EpiPen, which the physician then administered.

Shortly after the injection, Nurse Campoux also came to render assistance. Within minutes of her arrival, Boccasile stated he felt worse and requested another epinephrine injection, at which point he suffered cardiac arrest. John initiated CPR until an ambulance arrived. Boccasile never regained consciousness and died the next day.⁷

His widow sued John and Champoux alleging they were negligent (unreasonable under the circumstances) because they failed to bring emergency equipment to the scene initially. The physician and nurse claimed they were immune from suit under Rhode Island's Good Samaritan

Statute, which provides immunity from liability in emergency situations where there is no remuneration (compensation) and the actions of the provider are not grossly negligent. The trial court dismissed the lawsuit against the providers, finding the plaintiff (Broccasile's widow) had not produced enough evidence to show that John and Champoux deviated from reasonable standards of care.

The Rhode Island Supreme Court upheld this decision, but the question as to whether these health care professionals would have been protected solely under the state's Good Samaritan Act went unaddressed. That is, one was left to wonder whether unpaid volunteer providers rendering care in Rhode Island are immune from liability for all reasonable actions with the exception of gross negligence.

Case 2

Dr. John Stevens, a British psychiatrist, was traveling by commercial airline from California to his home in London after a family vacation. During the flight, another passenger experienced a pulmonary embolism and Stevens came to his aid. At the conclusion of the flight, the airline presented him with a bottle of champagne and a \$50 travel voucher as tokens of appreciation.

Thereafter, Stevens sent the airline a bill for his services, claiming the airline owed him for 4.5 times his hourly rate. The airline refused to pay, and Stevens filed suit, but the case was settled when he discovered that he could have been liable for practicing medicine without a license, since he rendered care while the plane was flying in US territory and his license to practice medicine was from England.^{6,9}

Case 3

The McDaniel family served as caretakers of the Manhattan Country School Farm, a site where schoolchildren frequently went on field trips. Students from Bronxville Elementary School traveled to the farm, accompanied by a school nurse, Nancy Keck, who was to be available to administer care and help with any minor health issues that arose.

During the field trip, the McDaniels' son was hit in the right eye with a wire in the barn. As reflected in court records: "Keck became aware that the child had injured his eye and, although he was not a Bronxville student, she volunteered to look at his eye. According to Keck, the child stated that he had hit himself with string (not wire), she did not observe any redness or swelling, she administered ice, she told the child's parents he

would probably fall asleep and have a lack of appetite because he had been crying, and she further told them to see a physician if any problems developed.

Other versions of the germane events were presented, including 1 by plaintiff [the McDaniel family] in which Keck was aware from early on that a wire had struck the child's eye, the eye was red when first observed, Keck told plaintiff to treat the eye with ice, no mention was made by Keck of seeking further medical care, and Keck reassured plaintiff the next day that it was normal for the eye to be red and swollen."¹⁰

The next day, it was noted the boy's eye was red and swollen, and he was referred to an ophthalmologist. The eye became infected and eventually had to be removed. The McDaniel family sued Keck for negligent (unreasonable) treatment. Keck moved to dismiss the case, contending that she was acting as a Good Samaritan, since the McDaniels' son was not a student at Bronxville Elementary and she did not have a duty to render any assistance. The Supreme Court of New York held that New York's Good Samaritan Law was applicable to Keck; since her actions were not grossly negligent, and because she did not receive compensation, the suit should be dismissed.¹⁰

These 3 cases all highlight some important provisions in the Good Samaritan laws and how states address protections given to NPs and others who are serving in this function. The following section provides a brief summary of US Good Samaritan laws and a helpful Web site that analyzes the laws of each state. After this overview, some general suggestions for NPs will be considered.

GOOD SAMARITAN LAWS: WHERE DO WE STAND?

Two main sources of US law have their origins in the British and French legal systems. The first is common law, established as legal cases that are brought before a court and the court interprets the case according to prior cases and existing laws. During this process the existing laws may be refined by the judge hearing the case, and at times, the judge's decision carves out new areas of the law. Common law is also referred to as "judge-made" law. Common law is firmly rooted in the United Kingdom, and the common law system is evident in countries that trace their history back to England, including Scotland, Northern Ireland, and Wales. Since the US sprang from British rule, common law is applied quite frequently in US courts.¹¹

The other system of law that is germane to the US legal system is that of Napoleonic Law, which traces its origin to

the Authority of the Emperor Napoleon, a system of laws that dictated conduct under his rule. This eventually established a French system of laws that were codified in 1804 as the "French Civil Code."¹¹

As was mentioned in the introduction to this article, common law countries have a long history of reluctance to require that a passerby come to the assistance of another person, absent a pre-existing relationship (eg, parent/child, health care provider/patient under care in a hospital, employer/employee). Conversely, Napoleonic laws have traditionally created a "duty to rescue" whereby civil or criminal penalties are levied on any citizen who fails to assist someone in need.¹¹

States have varying degrees of both common law and Napoleonic law principles. Some states mandate that health care providers render first aid in emergency situations; other states require that providers avoid "willful and wanton" conduct, what is typically termed *gross negligence*; and most states have restricted Good Samaritan protections only to providers who do not take any form of compensation for the care they deliver. Fortunately, there is a recent outstanding law review article that has summarized state Good Samaritan laws.¹² Sutton analyzed the laws in all 50 states and rated them on a 1 to 5 scale, with Level 1 providing the least liability protection to Good Samaritans and Level 5 providing the greatest degree of provider protection. In most instances, some degree of immunity from either criminal or civil penalties was granted to rescuers who were acting in an emergency, avoided acting in a grossly negligent (willful and wanton) way, and did not take any compensation.

State provisions that *compel* individuals to render aid during emergency situations, as occurs in countries heavily rooted in the Napoleonic Code, warrant particular mention. For example, in Vermont an individual can be fined up to \$100 for not offering emergency assistance.¹³ Minnesota laws mandate that "a person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall...give reasonable assistance to the exposed person."¹⁴

Fortunately, for NPs and others who want up-to-date information on a particular state's Good Samaritan laws, HeartSafe America created an excellent site at www.heartsafeam.com/pages/faq_good_samaritan. This site provides information not only on state laws but also a general overview of the principles behind these statutes.

Recent natural disasters and terrorist attacks in the US have given rise to the question of whether there is any pro-

tection afforded to health care workers who volunteer to assist in the care of the injured during a natural disaster. Most Good Samaritan statutes are limited to providing some degree of legal immunity at an emergency scene. However, most of these laws are not comprehensive enough to cover situations where volunteer providers who are acting during declared public health emergencies, caring for people not only at the immediate scene of an emergency but also at later stages as conditions slowly return to normal, such as volunteers who cared for citizens during Hurricane Katrina.⁵ Over time, it is likely that federal legislation will need to be enacted to protect Good Samaritans during these disasters.

ADVICE TO NPs

Given the somewhat overwhelming variety of state laws and court rulings that pertain to Good Samaritans, NPs may be more than a bit reluctant to serve as a volunteer during a community event, come to the rescue of someone injured in an accident, or intervene when a fellow passenger experiences an emergency during an airline flight. However, the nursing profession's long tradition of care to others and the ethical obligations that nurses assume are powerful motivators to render care to others during emergencies.

Consequently, some practical suggestions are in order:

1. Some states place an affirmative duty on NPs who witness an accident to provide basic rescue care. Other states have no such requirement. Because states vary widely on what they require from individuals that render assistance in an emergency, it's important to know the requirements in a state in which you practice or reside, and the aforementioned Web site is a good place to start. NPs should contact their state attorney general's office or their state board of nursing to determine their liability under state laws. If the advice given is not in writing, it is helpful for the NP to write down the name of the individual who gave the advice in the event he or she is ever sued for care rendered.
2. An NP who is either obligated to give emergency assistance or who volunteers to undertake this responsibility should limit care to those functions that are in the scope of his or her nurse practice act, education, training, and experience. If the NP has not been adequately trained to perform a tracheostomy, it is not a good idea to try to administer 1 at the scene of an accident. Rather, trying to

maintain an airway and instituting CPR, if needed, are the better course of action.

3. Once the NP/provider begins rescue efforts, they must be continued until such time as the provider becomes exhausted (and therefore unable to continue) or until other qualified individuals (eg, paramedics, physicians) assume the care of the victim.
4. NPs and other rescuers should *never take compensation* for the care they render at the scene of an emergency. Good Samaritan laws were enacted to protect those who voluntarily assist. Accepting compensation impacts on the "voluntariness" of the care and may result in loss of protection. That is, rather than a victim having to establish that the care given was grossly negligent (intentionally harmful, willful and wanton), he or she may have a lower burden of just proving the actions were unreasonable under the circumstances.
5. Most providers who give care at an emergency scene are *heroes*, and fear of being sued is not their primary consideration. Their selfless service can have a tremendous impact on whether someone lives or dies, as well as long-term prognosis. A review of current literature did not reveal research indicating that NPs may be reluctant to serve as Good Samaritans. However, some NPs may be rightfully concerned about providing aid in an emergency situation. The case of *Van Horn v Torti* is an example where a well-meaning person came to the assistance of another and did not receive protection under a state's Good Samaritan Statute.¹⁵ In this litigation, Lisa Torti had "yanked" her friend Alexandra Van Horn from an auto after an accident. Van Horn was rendered a paraplegic and sued Torti for negligence. The Supreme Court of California found that Torti was not immune from liability under California's Good Samaritan law, which they determined provided protection only to emergency medical personnel.
6. Given the ambiguity of current Good Samaritan statutes as they relate to volunteering for public health emergencies, such as 9/11 and Hurricane Katrina, providers who want to volunteer in times of disaster will do so with an uncertain level of protection. National NP organizations, physician professional associations, and other health care professional groups should unite to advocate for the passage of a uniform federal Good Samaritan statute.

CONCLUSION

The US is not the only country that has had to deal with legislation aimed at protecting those who assist a victim during a medical emergency. A number of countries have enacted national legislation to establish a single policy for such circumstances. In fact, Australia, Belgium, Finland, France, Germany, Italy, Portugal, and Spain have criminal penalties for failing to come to the aid of another person.¹⁵

Clearly, what is lacking in the United States is a unified federal statute to minimize variations in expectations of Good Samaritans from state to state. This lack is likely attributable to constitutional provisions that charge individual states with protecting the health, safety, and well-being of their citizens. Nurses should consider active lobbying efforts to help change the current ambiguous Good Samaritan statutes. A clearer delineation of expectations of and protections for Good Samaritan emergency responders may lead to less hesitation among health care providers to render care and potentially reduce morbidity and mortality. JNP

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