

Providing Aid and the Good Samaritan Law

By Dr. Kenneth S. Cheng

Questions of liability and fear of being sued frequently arise when volunteering or providing aid during emergencies or disasters. What liabilities exist in providing aid? Might I get sued if I make someone worse? What happens if I decide not to provide aid? How does my level of training (or lack of training) play into my liability? These are all legitimate questions that will be answered here, but first some background information.

The Good Samaritan Law of California, established in 1980, provides that *"no person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission."* The purpose of this law was to protect those who voluntarily provide aid or assistance during an emergency, regardless of level of training, as long as one acted in a reasonable manner. This statute was recently tested by the legal case of *Alexandra Van Horn v. Lisa Torti*.

On November 1, 2004, Alexandra Van Horn and Lisa Torti (both close friends) left a bar at 1:30 AM in separate cars. Van Horn was driving her vehicle 45 MPH when she lost control and crashed into a light pole. Torti, following behind in a second car, witnessed the accident, stopped and proceeded to render aid to her friend. According to court testimony Van Horn's injuries were worsened by Torti yanking her "like a rag doll" from the wrecked car, rendering Van Horn a paraplegic. Torti testified that she saw smoke, feared the car was "going to blow up" and quickly removed her friend from the dangerous situation. The smoke was later determined to be either from the airbag or radiator as no fire or explosion ensued. Torti was ultimately found liable for the injuries to her friend, and furthermore, Torto was not protected by the California's Good Samaritan laws.

The California Supreme Court agreed with the appellate court's ruling against Torti, that immunizing rescuers from liability applied only to individuals providing emergency medical care, citing the placement of the Good Samaritan statute in the section of the Health and Safety Code dealing with emergency medical services. It was determined that Torti's actions of removing Van Horn did not constitute "emergency medical care". At the time, this ruling significantly affected the willingness of volunteers to render aid to any victims during an emergency. How was a layperson to determine if a victim required medical or nonmedical aid? Was removing a person from a dangerous situation a medical aid or a nonmedical aid? Because of this ruling, many started to second-guess their role as a rescuer, and many volunteer rescuers were without liability protection. The repercussions of this ruling could have had dramatic and long lasting effects.

Recognizing the significance of such a ruling and how it would detrimentally affect volunteering or assisting in emergencies, the California Legislature passed Assembly Bill 83 which has amended the Good Samaritan statue so that *"no person who in*

good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency shall be liable for civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct.” Additionally, to emphasize the importance of this new provision, the Legislature added that the legislative intent is *“to encourage other individuals to volunteer and to assist others in need during an emergency, while ensuring those who provide care or assistance act responsibly.”* It should be noted that you are only encouraged to act; there is no requirement to provide aid as California, unlike other states, does not have a “duty to act” statute.

So am I covered under the Good Samaritan Law? Yes. If you should come upon an accident or emergency situation, you should feel free to provide aid (medical or non-medical) without fear of liability. You are covered provided that you:

- act in a reasonable manner and provide “due care”,
- voluntarily provide the aid without compensation or reward,
- do not have a current compensated relationship with the victim (doctor-patient, babysitter-child, etc.),
- are not in a medical facility.

What happens if my care or aid isn’t perfect? The aid you provide is not expected to be “perfect.” The circumstances often cause adrenaline to be elevated, thus elevating stress and anxiety. These situations may cause your CPR technique to be non-ideal, you may forget to give two breaths, bandage incorrectly or any number of other potential issues. These mistakes or omissions, as long as they are reasonable for the circumstances, are completely forgivable and not generally considered liable actions. On the other hand, if you are “grossly negligent” in your actions, such as if you have never been trained in CPR and you proceed to use the heel of your foot to do chest compressions, this would fall outside of the realm of “reasonable” and thus you could be held liable.

What if I don’t want to do anything? Because California does not have a “duty to act” or “duty to rescue” statute, one cannot be held liable for not assisting. You may want to ask yourself, however, if you were the victim needing assistance, would you want others around you to NOT act?

I have been trained to do “X”, but I didn’t do it. Am I liable if the victim is now worse? Again, volunteer rescuers in a Good Samaritan situation are not compelled or mandated to perform any actions, even if you are highly trained in those actions. You would not be held liable in this situation.

I have no formal medical or rescue training. Does this make me more liable? No. Should you decide, in an emergency situation, to aid or assist a victim, as long as you provide care in a reasonable manner, then your risk of liability is zero. One way to view this is to ask, “How would someone else with the same level of training act in

a similar situation?" If your actions are similar, then you need not worry about liability.

I work as a health and safety officer at my company's plant and one day while at work, one of the workers started to choke. Would I be covered by the Good Samaritan Law if I assisted? Your position is such that you are likely expected to provide aid or assistance in these situations. If this is the case, you would not be covered by the Good Samaritan law (but likely covered by your employer's liability insurance.) In this circumstance, you would want to follow the protocols established by your employer and assist to your level of training.

In summary, the Good Samaritan law, and its recent revision, is designed to protect volunteers who elect to provide emergency aid to others, regardless of whether it is medical aid or nonmedical aid. One does not need to fear liability or repercussions of legal action from providing assistance in an emergency situation. As always, you should act in a reasonable manner and within your scope of training, but you shouldn't hesitate to help even if you are not trained. Don't fear getting involved, because the life saved might be your own.

Dr. Kenneth S. Cheng, the author of this article, is a member of the Nellie Gail Emergency Preparedness Committee. In addition, he is a volunteer Sheriff's Deputy where he is the SWAT Tactical Physician and a member of the Search and Rescue-Technical Rope Rescue team. Although Dr. Cheng is knowledgeable in the area of the Good Samaritan Law, he is not an attorney, nor does he play one on TV. Therefore, the information in this article should not be construed to be legal advice, but advice for general informational purposes only. Those seeking legal advice on this topic should enlist the aid of an attorney who is well versed in this area.

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