

# A brief primer on Good Samaritan law for health care professionals

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## Abstract

The Good Samaritan law is not found on the statute books, but has been a concept that courts have applied as public policy. However, this has recently changed in all the states and territories in Australia with the codification of Good Samaritan law. This paper is a timely reminder for health practitioners of the doctrine of the Good Samaritan, as well as the relative legal uncertainty of rescue at common law.

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## The Good Samaritan doctrine

The Good Samaritan doctrine can be found in the Bible and the Qu'ran.\* The Qu'ran is replete with injunctions from God to assist those in need.† In the Bible, *Luke 10: 29–37* is the source of the Good Samaritan. The theme in this particular verse is what things a person must do to inherit eternal life.‡ Along the road from Jerusalem to Jericho a man was stripped of his clothes and belongings, beaten up and left for dead. Both a priest and a Levite§ saw the injured man, and passed on by the other side. A Samaritan, a person from Samaria,¶ who was on a journey, saw the injured man, felt compassion, and tended to his wounds. The Samaritan provided him shelter, paying for his upkeep and care at an inn. The Samaritan did not know whether the man was good or bad, or the circumstances of his injury, only that he needed help. The Good Samaritan

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### What is known about the topic?

In recent years the Good Samaritan doctrine has been codified in Australian state and territory legislation.

### What does this paper add?

This paper discusses the foundations of the Good Samaritan doctrine and the implications of the legislative changes for health professionals.

### What are the implications for practitioners?

The codification of the doctrine of Good Samaritan law in the various jurisdictions in Australia provides greater protection from legal action to those persons (including health care professionals) who act in good faith to assist those in danger. The Good Samaritan legislation provides a degree of protection for those who render aid to the injured, in good faith and without expectation of payment.

was willing to help others without reward, and not out of fear or duty.

The doctrine of Good Samaritan is a principle that works to prevent a rescuer who has voluntarily assisted a person in distress from being successfully sued for a “wrongdoing”.\*\* The purpose of this doctrine is a social utility, in that it encourages people, particularly health care professionals, to assist strangers in need without fearing legal repercussions for some error in treatment. The common (judge-made) law gener-

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\* The Muslim Holy Book — the word of God (Allah). Muslim an adherent of the religion of Islam (literally, “to submit to the will of God”).

† See for example Sura Baqara (The Heifer — Sura II, Verse 177).

‡ Christian Apologetics and Research Ministry, “The Good Samaritan”, at [www.cam.org](http://www.cam.org)

§ A member of the tribe of priests. (Sunday School Sources, “Parables: The Good Samaritan”, from [www.ebibleteacher.com/children/lessons/samaritan.htm](http://www.ebibleteacher.com/children/lessons/samaritan.htm))

¶ An ancient city located in the Palestinian West Bank Territory — see Wikipedia at <http://en.wikipedia.org/wiki/Samaria>

\*\* Good Samaritan law — see Wikipedia at [http://en.wikipedia.org/wiki/Good\\_Samaritan\\_Law](http://en.wikipedia.org/wiki/Good_Samaritan_Law)

ally does not make it obligatory to help a stranger in need, where there is no relationship.<sup>††1</sup>

There are a number of elements in this doctrine, the first being that the rescuer is not obligated by law to rescue or provide first aid, that is, the rescue is not part of a duty or job description. The rescue must be optional and voluntary. Implicit in this is that the rescuer must consider her/his own health. Without protective equipment the rescuer could very well be exposed to infectious disease by coming into contact with a victim's bodily fluids. Thus, the risk of cross-contamination is one "show-stopper" with regard to rendering first aid. However, once the rescue has commenced, the first aid should continue until: the victim recovers; another trained person or the ambulance service arrives to take over; or the Good Samaritan is too physically exhausted to continue.<sup>2</sup>

## Case law

Despite no case law directly addressing the liability of a health care professional for failing to render assistance in a Good Samaritan situation, there are examples of medical practitioners being found liable for damages and/or guilty of professional misconduct for failing to respond to requests for assistance.<sup>3</sup> In such cases, however, the requests were made in the "professional context", that is, to a medical service or a medical practitioner who was the only professional reasonably available to provide assistance, or to the medical practitioner's place of business and/or during business hours. The most famous of these is the Australian case of *Lowns v Woods*.<sup>4</sup>

In the case of *Lowns*, the New South Wales Court of Appeal held a medical practitioner liable in negligence for failing to attend the plaintiff, Patrick Woods, an 11-year-old in a life-threatening situation, despite Patrick not being the medical practitioner's patient.<sup>1</sup> On 28 January 1987, Patrick was found by his mother to be in the throes of an epileptic seizure. Mrs Woods immediately dispatched her other son, Harry, to summon the ambulance from the station close by. Additionally, Mrs Woods sent her daughter,

Joanna, to "get a doctor", the closest surgery being Dr Lowns'.<sup>5</sup>

At trial, Joanna testified that Dr Lowns refused to attend. Dr Lowns later denied that he had been approached, and said that if it had occurred he would have gone and treated Patrick. After a detailed examination of the evidence, the trial judge accepted Joanna's testimony. Although there was no pre-existing relationship between the parties, the medical practitioner owed the plaintiff a duty of care, and he breached that duty by failing to attend and give emergency treatment.<sup>6</sup> Dr Lowns' breach caused the deterioration in Patrick's condition, and hence Dr Lowns (or more correctly his insurers) was liable to compensate Patrick. It should be noted that Patrick suffered severe brain damage as a result of not being administered IV valium.<sup>1</sup>

On appeal it was held that the possibility of harm was foreseeable and that there was a sufficient proximity between the parties to establish a duty to attend.<sup>5</sup> The court was strongly influenced by the evidence of Dr Lowns himself, when he stated that if he were summoned he would have a duty to attend. The *Medical Practitioners Act 1938 (NSW)*<sup>††</sup> Section 27(2) states that a failure to attend in an emergency situation constitutes professional misconduct.<sup>††</sup>

The decision in this case has overridden the common law rule, which protected those who chose not to offer assistance to an injured stranger.<sup>7</sup> The trial judge noted that the relationship between Dr Lowns and Patrick was sufficiently "proximate" for a duty to be imposed. There was (i) physical proximity, as Dr Lowns was only 300 metres away when specifically requested to attend to Patrick. There was (ii) circumstantial proximity, as Dr Lowns was at his place of professional practice and was not otherwise indisposed so as to preclude him from attending to Patrick. There was (iii) causal proximity, as Dr

†† Note, however, the advantaged position, in terms of the law of negligence (especially nervous shock), of the rescuer — to which the High Court case of *Chapman v Hearse (1961)* 103 CLR 112 refers.<sup>1</sup>

†† This no longer exists, and instead the *Medical Practice Act 1992*.

Lowns was aware of the treatment required, and also knew the consequences of the failure to treat.<sup>8</sup>

In addition, there is also a rather dated case from the United States in which a medical practitioner was sued for “abandonment” in circumstances in which he initiated assistance but did not continue. (*Zelenko v Gimbel Bros [1937] 287 NYS 134* as cited in Brandon et al [2002].<sup>3</sup>)

### **Examples — is there a doctor on board?**

From a practical perspective, the actual location where the emergency occurs is a factor that needs to be taken into account. For example, in the circumstance of a request for in-flight medical assistance, the aircraft cabin is a confined and noisy environment, with poor lighting, and with minimal equipment and/or medication available. Further, there may be communication and language barriers or cultural issues affecting the health care professional’s ability to assist.<sup>9</sup> In some situations, the doctor or nurse may be the only health care professional on board, and therefore may have to deal with an emergency that is outside his or her own area of practice, experience or expertise, and in circumstances in which he or she might otherwise have declined to respond.<sup>2</sup> In addition, aviation medicine is a specialty in its own right, with a degree of complexity with regard to high altitude, cabin pressures and depressurisation on the human anatomy and physiology, especially in emergency situations.

While outside the scope of this paper, it is interesting to note that a passenger who has been injured due to the assistance by a health care professional in a civil airliner may have a valid claim in the country:

- in which the aircraft is registered;
- in which the air carrier is domiciled or ordinarily resident;
- of destination; or
- over which the aircraft was flying when the injury was suffered.<sup>§§</sup>

Generally speaking, a claim for negligence would be determined according to the laws and procedures of the country in which the proceedings were commenced. As a matter of common sense, it is probable that a health care professional can only be sued as a duly registered health care professional if the claim is brought in the jurisdiction in which he or she is registered. If the health care professional is not registered in the jurisdiction in which the claim is brought, the court is likely to proceed to consider the claim on the basis that the assister is a mere Good Samaritan rather than a medically qualified, or professional, person. A twist on this was the situation described in *Stevens v American Airlines (1998)* — where Dr John Stevens, a psychiatrist, came to the assistance of a patient suffering from a pulmonary embolism while airborne.<sup>10</sup>

Dr Stevens was returning to London with his family from a holiday in California in January 1997 when the call for a doctor went out over the jet’s public address system. Dr Stevens responded to the call, and attended to the incident. After initial treatment, he advised an emergency landing for hospital treatment in Chicago, rather than risk a long flight over the North Atlantic, where landing would have been impossible. At the end of the flight, the crew presented Dr Stevens with a bottle of “cheap champagne”, and a \$50 (£30) travel voucher.<sup>10</sup>

In the meantime, Dr Stevens sent the airline a bill for £540, charging for four-and-a-half hours of his time at £120 an hour. The airline refused to pay, claiming that it was not company policy. Dr Stevens argued that his services were sought by the crew rather than the patient, who told him she was not consulted before the call for a doctor was broadcast. He stated that had anything gone wrong, he could have faced a large malpractice claim for which he had later learned he would not have been covered.

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§§ Based upon the jurisdiction options available under the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Warsaw Convention 1929) and the Convention on Offences and Certain Other Acts Committed on Board Aircraft (the Tokyo Convention 1963).

### Good Samaritan laws in Australia

ACT: *Civil Law (wrongs) Act 2002*

NSW: *Civil Liability Act 2002*

NT: *Personal Injuries (Liabilities and Damages) Act 2003*

QLD: *Civil Liability Act 2003*

QLD: *Law Reform Act 1995\**

SA: *Civil Liability Act 1936†*

TAS: *Civil Liability Act 2002*

VIC: *Wrongs Act 1958*

WA: *Civil Liability Act 2002*

\* At section 16 of this Act, legal liability shall not attach to a health care professional or other person in respect of an act or omission in the course of rendering medical care, aid or assistance to an injured person in circumstances of emergency if the following apply: (1) the act is done or omitted in good faith and without gross negligence and (2) the services are performed without fee or reward or expectation of fee or reward.

† Section 74 of the *Civil Liability Act 1936* refers to a good Samaritan as being a "medically qualified" person, which includes a registered medical practitioner, an ambulance officer or someone who works in a recognised paramedical capacity, as well as a person who has "professional qualifications in some field of health care that is statutorily recognised".

This matter was settled when the issue of country of registration to practice and billing was argued before the court. In short, if a health care professional is treating a passenger on a plane which is registered in a country other than the country in which he or she is licensed, then technically the health care professional is providing medical care in a jurisdiction other than that in which he or she is licensed to practice. It is also arguable that professional indemnity insurance would possibly not cover a medical practitioner acting outside the parameters of his or her registration. Thus, it would not be open for the health care professional to bill for services outside her or his jurisdiction to practice. Further, to bill for services rendered in such a setting would offend the Good Samaritan doctrine of selfless service.

According to Brandon et al,<sup>3</sup> certain civil airlines offer indemnities to doctor-passengers who render assistance. Others, (including Air France, SwissAir, KLM and SAS) treat a doctor who has responded to a request for assistance as an "occa-

sional employee", thereby providing cover under the insurance policy of the airline company.<sup>2</sup> Additionally, certain Medical Defence Unions provide indemnity cover for Good Samaritan acts by their members. For example, the Medical Insurance Australia Group has the following provisions in its insurance coverage:<sup>11</sup>

- *Good Samaritan acts overseas* — Doctors who have insurance cover with Medical Insurance Australia will automatically have cover for Good Samaritan acts committed while travelling overseas, excluding USA and Canada.
- *Good Samaritan acts and gratuitous advice in Australia* — Doctors who have insurance cover with Medical Insurance Australia will automatically have this cover.

### Legislative codification of the Good Samaritan law doctrine

The various states and territories have enacted Good Samaritan laws that protect health care professionals who provide care at the scene of an accident or any other emergency (Box). In summary, most of these provisions define a Good Samaritan (rescuer) as a person acting without expectation of payment or other consideration who comes to the aid of a person (and usually includes a health care professional). A Good Samaritan should not be liable for assisting in an emergency if the Good Samaritan was exercising all reasonable care and skill. In addition, not-for-profit organisations should not be liable for personal injury or death of a voluntary participant in recreational activity as a result of an obvious risk.<sup>12</sup>

It is arguable that the legislative changes have not displaced the common law rule of whether one owes a tortious duty to rescue a stranger in serious danger.<sup>13</sup> Instead, the Good Samaritan legislation provides a degree of protection for those who render aid to the injured, in good faith and without expectation of payment.

The Good Samaritan law codification also balances out certain legislative provisions, such as that found in the Northern Territory. For example, the Northern Territory Criminal Code (s.155) makes it

a criminal offence for a person who is able to do so, to “callously fail” to provide first aid to a person urgently in need and whose life may be endangered. The penalty for the offence is up to seven years imprisonment. There are obvious policy reasons for this particular section, namely given the small population and large remote area of the Top End. A passer-by may be the only person who witnesses an accident scene for some time, thus the emphasis is on the preservation of life.

In the 1994 case of *Salmon v Chute*, the above law was tested when a driver struck a child with his vehicle when the child ran onto the road. The driver continued driving, failing to render any assistance. The child died some forty minutes later. When asked why he failed to stop, the driver said “I panicked”. The driver appealed against his conviction against the s.155 and was successful. The Supreme Court of the NT held that the driver did not “callously fail” to assist the child, as to “callously fail” requires a deliberate and conscious choice by an informed accused not to assist. It further requires that the failure offend common standards of respect, decency and kindness such that a reasonable person would regard it as callous. Surprisingly, the court held that the driver panicking was not consistent with callously failing.

## Conclusion

There has been no known case where a medical practitioner (or health care professional) has been held liable for providing emergency care in good faith to a stranger.<sup>5</sup> The codification of the doctrine of Good Samaritan law in the various jurisdictions in Australia goes some way towards providing protection from legal action for those persons (including health care professionals) who act in good faith to assist those in danger. There is no doubt that this legislative codification is a social good — we must be willing to help others who are injured or in distress, without risk to ourselves, including from a legal perspective.

## Note

These are our own views, and do not represent those of the Australian Defence Force or the Commonwealth of Australia.

## Competing interests

The authors declare that they have no competing interests.

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