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NOTE

TORTS—Immunity—The Good Samaritan Statute. Wis. Stat. § 895.48 (1977). In June 1963, the Wisconsin Legislature enacted a good samaritan statute which granted immunity from civil liability to physicians and nurses who, in good faith, rendered care at the scene of an emergency. In November 1977, the legislature enacted chapter 164 of the Laws of 1977 which extended this grant of immunity to any person rendering emergency care in good faith at the scene of an emergency or accident. While in 1962 at least twenty-three other states had passed similar statutes, by 1977 all fifty states and the District of Columbia had adopted some form of good samaritan legislation. Such widespread acceptance of the need for this type of legislation suggests the magnitude of the problem.

1. 1963 Wis. Laws ch. 94. For a general discussion of Wisconsin's first good samaritan statute, enacted in 1963, see Comment, Wisconsin's "Good Samaritan" Statute, 48 MARQ. L. REV. 80 (1964) [hereinafter cited as Comment].
2. 1963 Wis. Laws ch. 94 provides in full:
   AN ACT to create 147.17(7) and 149.06(5) of the statutes, relating to exempting doctors and nurses from civil liability for emergency treatment at the scene of the emergency.
   
   SECTION 1. 147.17(7) of the statutes is created to read:
   147.17(7) No person licensed under this section, who in good faith renders emergency care at the scene of an emergency, is liable for any civil damages as a result of acts or omissions by such person in rendering the emergency care. For the purpose of this subsection, the scene of an emergency shall be those areas not within the confines of a hospital or other institution which has hospital facilities, or a physician's office.
   
   SECTION 2. 149.06(5) of the statutes is created to read:
   149.06(5) No person registered under this section, who in good faith renders emergency care at the scene of an emergency, is liable for any civil damages as a result of acts or omissions by such person in rendering the emergency care. For the purpose of this subsection, the scene of an emergency shall be those areas not within the confines of a hospital or other institution which has hospital facilities, or a physician's office.
4. Comment, supra note 1, at 80.
COMMON-LAW BACKGROUND OF THE GOOD SAMARITAN PROBLEM

Good samaritan statutes were enacted in response to what appeared to be negative policy implications of a strict application of the common law in situations involving a person in peril and a bystander. The common law does not recognize a moral obligation to aid another in peril as an affirmative legal duty, and courts therefore generally refuse to impose liability for non-feasance in such situations. However, should one who owes no duty nevertheless undertake to act for the benefit of a victim, a duty of due care arises upon which subsequent liability can be predicated. It was thought that it was this potential liability for misfeasance that deterred many from rendering assistance in emergency situations. Good samaritan legislation then is an attempt to encourage lay persons and professionals to respond to another’s need for help by granting limited immunity for negligent acts which might occur while rendering emergency assistance.


8. The first good samaritan statute passed by California in 1959 was apparently catalyzed by the callous refusal of several available physicians to aid an injured skier.
sin good samaritan statute results from the legislature's determination that abrogation of potential tort liability for both professionals and lay persons would encourage more individuals to voluntarily assist others. 9

CRITICISM OF GOOD SAMARITAN STATUTES

From their inception good samaritan statutes have been criticized as being unnecessary, 10 unfair 11 and unconstitutional. 12 The paucity of reported cases at the appellate level dealing with good samaritan statutes, however, indicates that many of those concerns were premature. 13 Nevertheless, in light of the limited judicial interpretation of these statutes, the lack of uniformity among them, their imprecise language and their sparse legislative histories, serious questions remain regarding the outer limits of the statutes' protection and the circumstances under which their protection is provided. Inasmuch as the good samaritan statutes are an important response to a widespread concern for the insular nature of modern society, it is

lying on a ski slope. See 51 CALIF. L. REV. 816, 818 (1963); 64 COLUM. L. REV. 1301 (1964); 42 ON. L. REV. 328 (1963).

9. See letter on file with Marquette Law Review from J.F. Rooney, Representative and principal author of Assembly Bill 96, to author (Aug. 23, 1978) [hereinafter cited as Rooney] which reads in part:

In answer to your first question as to why we expanded the scope of the original good samaritan statutes; it was felt that our society has become "sue happy" and therefore many citizens who might otherwise go to the aid of a fellow human being do not because of the fear of being sued for trying to help. By elimination of the threat of lawsuit, more people would be apt to aid a victim. It was also felt that anyone compassionate enough to go to someone's aid in an emergency should not have to face financial ruin from a future lawsuit, as long as they act in good faith.


12. Id.; Comment, supra note 1, at 83; 64 COLUM. L. REV. 1301, 1312 (1964); 41 NEB. L. REV. 609 (1962); 44 N.C.L. REV. 508 (1966).

13. Only two cases have reached appellate courts: In Lee v. State, 490 P.2d 1206 (Alas. 1971), the Alaska Supreme Court held that their good samaritan statute was inapplicable where a duty to rescue existed prior to a rescue attempt. Here a state trooper accidentally shot a person he was attempting to rescue from a lion. The court found that an obligation arose out of the customary role played by police officers in an emergency whereas the good samaritan statutes were meant to apply to persons not under any pre-existing duty to rescue. The second case is Dahl v. Turner, 80 N.M. 564, 458 P.2d 816 (Ct. App. 1969), cert. denied, 80 N.M. 608, 458 P.2d 860 (1969); see text accompanying notes 36-37 infra. No case has been found wherein a person was sued for rendering first aid.
crucial that such statutes be worded as precisely as possible to insure their maximum effect.

CONSTRUCTION OF WISCONSIN'S GOOD SAMARITAN STATUTE

Wisconsin's statute is fairly typical of the majority of good samaritan statutes:

Any person who renders emergency care at the scene of any emergency or accident in good faith shall be immune from civil liability for his or her acts or omissions in rendering such emergency care. This immunity does not extend when employees trained in health care or health care professionals render emergency care for compensation and within the scope of their usual and customary employment or practice at a hospital or other institution equipped with hospital facilities, at the scene of any emergency or accident, enroute to a hospital or other institution equipped with hospital facilities or at a physician's office.\textsuperscript{14}

The primary effect of the change in wording in the first sentence was to extend the class of protected individuals to include all persons who render aid. The second sentence, requiring that an individual be "off duty" to be covered by the statute is new and applies primarily to skilled health care professionals, trained emergency medical technicians and ambulance attendants. It was inserted pursuant to a legislative policy that health care professionals should not be immune from liability for negligence while being compensated for their services.\textsuperscript{15}

\textsuperscript{14} Wis. Stat. § 895.48 (1977).

\textsuperscript{15} See Wisconsin Legislative Council Staff Memorandum by Dan Fernbach, Senior Staff Attorney (Aug. 31, 1977) [hereinafter cited as Fernbach] on file with Marquette Law Review. Discussing the earlier version of the good samaritan statute, Mr. Fernbach noted that:

Despite the limited scope of Wisconsin's present "Good Samaritan" statutes, Wisconsin law is consistent with prevailing policy that specially-trained health care professionals should not be immune from civil liability for on-the-job acts and omissions within their scope of employment or regular professional duties. In other words, statutory "Good Samaritan" immunity should apply only to off-duty gratuitous emergency care rendered in good faith.

\textit{Id.} (emphasis added). Later when discussing the proposed legislation, he indicated that:

It would appear that original Assembly Bill 96 was intended to reflect the prevailing policy that skilled health care professionals, such as doctors and nurses, should be held to a higher standard of care commensurate with their specialized training when rendering emergency care or treatment in the normal course of their duties.

\textit{Id.}
The sole qualification in Wisconsin's statute is that the intervenor act in "good faith." However, the statute's failure to further define good faith raises significant problems. Because good faith may be interpreted as either a subjective state of mind or an objective standard of behavior, the statute presents an ambiguous inducement to render emergency care.\(^{16}\)

Only one state, Pennsylvania, has included a definition of good faith in its good samaritan statute and, unfortunately, even this definition raises a subjective question of fact.\(^{17}\) Moreover, in Wisconsin, case law fails to clarify what is meant by the phrase "good faith." In one case, acts not characterized by "recklessness or heartlessness" have been held to be in good faith.\(^{18}\) In another,\(^{19}\) the court indicated that good faith was a term that "prescribes a general course of conduct,"\(^{20}\) and further noted that, "Whether an individual acted in good faith is a question that can only be answered following a careful analysis of the facts in a particular case."\(^{21}\) This interpretation raises serious factual issues which effectively eliminate any objective criteria by which the character of one's acts may be judged.

A majority of jurisdictions have added a second qualification to their good samaritan statutes to lessen the confusion surrounding the good faith standard. These statutes grant immunity for all good faith conduct which falls short of "gross negligence" or "willful or wanton misconduct."\(^ {22}\)

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16. See Rooney, supra note 9. Although there is no definition for good faith it is the intent of the law that a person should try to use common sense and judgment in aiding a victim at an emergency and as long as they do not act cruelly or with malice, in most cases they will be exempt from liability. 

Id. (emphasis added).

17. PA. STAT. ANN. tit. 12, § 1642 (Purdon Supp. 1978): "'Good faith' shall include, but is not limited to, a reasonable opinion that the immediacy of the situation is such that the rendering of care should not be postponed until the patient is hospitalized."


20. Id. at 153, 223 N.W. 2d at 848.

21. Id. The court in Williams relied on Baker v. Northwestern Nat'l Cas. Co., 26 Wis. 2d 306, 315, 132 N.W. 2d 493, 498 (1965), wherein it was stated that while negligence was not per se bad faith conduct, "The extent and character of the negligence, however, are factors to be considered by the trier of fact in weighing the matter of bad faith."

22. Gross negligence is generally defined as less than reckless disregard for consequences and differs from ordinary negligence in degree, not kind. Prosser, supra note 6, § 34, at 183. See also Bielski v. Schulze, 16 Wis. 2d, 1, 14-16, 114 N.W. 2d 105, 111-
the common-law standard of care in an emergency is that of a reasonable person under the same or similar emergency circumstances, it is arguable that tort liability for negligent assistance rendered in an emergency situation is limited by this more definite standard. However, Wisconsin’s good samaritan statute lacks any such language clarifying the required standard of care.

The problem is further compounded by the fact that while the statute broadly covers “any person” who renders care, it fails to distinguish between skilled individuals and untrained persons. The legislature did not make clear whether all persons will be held to the same standard, i.e. a reasonable person acting in good faith under the same or similar circumstances, or whether those with specialized knowledge and skills will be held to a standard which reflects the good faith utilization and application of the particular skills which they possess. In noneergency situations, the Wisconsin court has stated that, “Experience, competence and specialized knowledge of the profession and its standards are certainly helpful in determining whether a failure to exercise care was grossly negligent.” It would seem then that even in the emergency situation the particular skills and knowledge of the person rendering assistance is clearly a consideration in determining whether good faith is present and if the standard of care has been met. Statements by legislators involved in the recent amendments also indicate that skilled individuals will continue to be held to a standard of care reflecting their training. The first draft of Assembly Bill 96 included a professional competence standard which created a general immunity applicable to all persons

13 (1962). Willful, wanton or reckless conduct usually indicates an intention on the part of an actor to intentionally do an unreasonable act in disregard of a known risk or one which is so obvious that it should have been known. Prosser, supra note 6, § 34, at 185. It should be noted that Bielski abolished the concept of gross negligence in Wisconsin.

Those jurisdictions which include the qualification of gross negligence and/or willful or wanton conduct in their good samaritan statutes include: Alaska, Arizona, California, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, and Washington.


who rendered "emergency care . . . in good faith and within the range of the person's professional competence . . . ." 25 The language emphasized in the preceding sentence was subsequently deleted in the compromise version of the bill but Assembly Substitute Amendment 1 to Assembly Bill 96 included the following language:

This section shall not be construed as absolving from civil liability any person whose emergency care acts or omissions amount to a high degree of negligence when compared with the emergency care which such person could reasonably have been expected to exercise even under the adverse conditions of the emergency or accident. 26

Both statements, although dropped from the bill, can be seen as legislative consideration of the need to establish a more meaningful definition of the standard of care, as well as indicating an intent to base that standard on the level of knowledge and skill which an individual brings to the emergency situation. 27

25. Wis. A.B. 96 (1977 Sess.) (emphasis added). The complete section reads as follows:

895.48 CIVIL LIABILITY EXEMPTION: EMERGENCY CARE. Any person who renders emergency care at the scene of any emergency or accident in good faith and within the range of the person's professional competence shall be immune from civil liability for his or her acts or omissions in rendering such emergency care. This immunity does not extend when persons trained in health care render emergency care in the normal course of their duties at a hospital, institution equipped with hospital facilities, or physician's office.

Id. § 3.

26. Assembly Substitute Amendment 1 to Wis. A.B. 96 (1977 Sess.) reads as follows:

895.48 CIVIL LIABILITY EXEMPTION: EMERGENCY CARE. Any person who renders emergency care in good faith at the scene of any emergency or accident shall be immune from civil liability for acts or omissions in rendering such emergency care. This immunity does not extend when persons trained in health care render emergency care in the normal course of their duties at a hospital, institution equipped with hospital facilities or physician's office. This section shall not be construed as absolving from civil liability any person whose emergency care acts or omissions amount to a high degree of negligence when compared with the emergency care which such person could reasonably have been expected to exercise even under the adverse conditions of the emergency or accident.

27. See letter on file with the Marquette Law Review from Tommy G. Thompson, Representative, to author (Sept. 27, 1978) which reads in part:

With regard to the standards of professional competence, the legislators did not want to pin down definitions to a particular standard—especially since it is the general public that is now able to render aid and it would be assumed that people would be expected to use good common sense in giving this aid. One
Coupled with the fact that recent case law may indicate that there is a duty on the part of a person possessing specialized knowledge to use it if he once acts, the standard of care for trained individuals will most likely continue to be that degree of care, skill and judgment usually exercised under similar emergency circumstances by an average practitioner in the same field. In sum, the immunity granted by the current good samaritan statute appears to be severely conditioned since the intervenor can still be brought to trial before a jury and the jury will decide liability on the basis of a vague and ambiguous standard of good faith. The failure of the legislature to clearly articulate the standard of care to which individuals will be held endangers the effectiveness and the purpose of the good samaritan statute. A more definite standard of care would have clarified the actual scope of the immunity and may have provided a greater incentive to render assistance in emergency situations.

Similar definitional problems are encountered in relation to the terms “emergency care” and “emergency.” Since the legislature has failed to promulgate specific definitions for these terms, the determination of an emergency or emergency care is also controlled by the ambiguous standard of good faith. Given the large number of persons who potentially fall within

cannot really define “competence” for persons, who by their own volition are giving aid, when they may not have a particular medical training by which they can be judged.

28. Nimmer v. Purtell, 69 Wis. 2d 21, 230 N.W.2d 258 (1975). In this case Dr. Nimmer was held to the standard of care usually exercised under the same or similar circumstances by the average osteopathic physician in his medical treatment of himself and was found to be contributorily negligent in causing his own injuries when he failed to adhere to that standard. The court noted that,

A doctor who undertakes to treat himself, either alone or in conjunction with another or directs another in his treatment or makes his own diagnosis and directs another to treat him accordingly, when it comes to a question of contributory negligence in the joint treatment, can be as guilty of ‘malpractice’ as he can be in treating another.

Id. at 31-32, 230 N.W.2d at 264.

The court then quoted the trial court:

“It isn’t a case where Dr. Nimmer placed himself solely and with confidence under the care of Dr. Purtell. . . .It is a case where two men were treating Nimmer, Purtell and Nimmer. . . .

It would be in my opinion a gross misadministration of justice to tell a jury that Dr. Nimmer under the peculiar evidence of this case had only a duty to exercise the same degree of care and skill that a steel worker or a baker might exercise.”

Id. at 32 n.2, 230 N.W.2d at 264 n.2.
the scope of the statute, the circumstances under which they will be protected should be clarified.

Only two states have taken the precaution of defining "emergency care" within their good samaritan statutes.\(^2\) The Oklahoma statute is of particular interest because it delineates and limits the type of emergency care which a lay person can provide, \textit{i.e.} artificial respiration, prevention of blood loss, restoration of heart action or blood circulation.\(^3\) In light of the potential for aggravation of a serious injury by unknowing and erroneous action on the part of untrained individuals, emergency care for injuries should be statutorily delineated and limited to only those resuscitative measures necessary to sustain life.

Because the Wisconsin good samaritan statute also conditions its grant of immunity on the existence of an emergency, only acts done in an emergency situation are protected. Therefore, a more complete definition of the "scene of emergency" should be formulated.\(^3\) The seriousness of injuries suffered as a consideration in defining the term "emergency" has only been recognized by Oregon which conditions any emergency aid upon the existence of a life-threatening situation.\(^3\) New Mexico, on the other hand, characterizes an emergency in

\begin{quote}
Where no prior contractual relationship exists, any person who in good faith renders or attempts to render emergency care consisting of artificial respiration, or preventing or retarding the loss of blood, or aiding or restoring heart action or circulation of blood to the victim or victims of an accident or emergency, wherever required, shall not be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care.

\textit{Alas. Stat.} § 09.65.090 (Supp. 1978) (emphasis added):
A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person \textit{who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death} is not liable for civil damages as a result of an act or omission in rendering emergency aid.

30. See note 29 \textit{supra}.


"Emergency medical assistance" means medical care not provided in a place where emergency medical care is regularly available, including but not limited to a hospital, industrial first aid station or a physician's office, given voluntarily and without the expectation of compensation to an injured person who is in need of immediate medical care and under \textit{emergency circumstances that suggest that the giving of assistance is the only alternative to death or serious physical aftereffects.}
\end{quote}
terms of the physical causes of the injury requiring care.\textsuperscript{33} Given the lack of definition in most statutes, courts will be required to turn to case law. Case law defining an emergency usually deals with situations outside this statutory context and focuses on the unexpected or sudden nature of the incident and the necessity of immediate action.\textsuperscript{34} The Wisconsin court, for example, employs the term to refer to an unforeseen combination of circumstances.\textsuperscript{35}

The case of \textit{Dahl v. Turner}\textsuperscript{36} clearly points out the need for legislatures to promulgate specific guidelines within good samaritan statutes. In this case, the defendant stopped at the scene of an accident and attempted to aid the plaintiff who appeared confused, but had suffered only minimal physical injuries and refused to go to a doctor. The defendant then undertook to drive the plaintiff to a friend’s motel. En route defendant was involved in an automobile accident in which plaintiff suffered additional personal injuries. In a subsequent suit arising out of this automobile accident, the court refused to submit a good samaritan instruction to the jury stating that while the defendant may have been administering care in providing transportation, such care did not fall within the meaning of “emergency care.” The court noted that its decision was based upon the lack of facts indicating a “pressing necessity for such transportation” and a failure to show that the transportation was “immediately called for.”\textsuperscript{37}

In light of the above, and without questioning the wisdom of departing from the common-law standard of due care contemplated by the current Wisconsin good samaritan statute, it appears that the circumstances under which the immunity will apply should be delineated more carefully.

\textsuperscript{33} N.M. STAT. ANN. § 12-25-4 (1976) defines emergency as an “unexpected occurrence involving injury or illness to persons, including motor vehicle accidents and collisions, disasters, and other accidents and events of a similar nature occurring in public or private places.”

\textsuperscript{34} See, e.g., Hercules Powder Co. v. Crawford, 163 F.2d 968, 972 (8th Cir. 1947); Oakes v. Peter Pan Bakers Inc., 258 Iowa 447, , 138 N.W.2d 93, 100 (1965); Mansfield Gen. Hosp. v. Board of County Comm’rs, 170 Ohio 486, , 166 N.E.2d 224, 226 (1960); Goolsbee v. Texas & N.O.R., 150 Tex. 528, _______, 243 S.W.2d 386, 388 (1951); Pickett v. Cooper, 202 Va. 60, _______, 116 S.E.2d 48, 51 (1960).

\textsuperscript{35} Kaestner v. Milwaukee Auto. Ins. Co., 254 Wis. 12, 16, 35 N.W.2d 190, 192 (1948).


\textsuperscript{37} Id. at ______, 458 P.2d at 824.
A further problem with the statute is its failure to address the question of liability in cases of abandonment. The rendering of emergency care can be life threatening in some instances when treatment is begun but not completed, and legislative consideration should be given to withdrawing the immunity in situations where this type of malfeasance compounds the victim's injuries.

The last aspect of Wisconsin's statute that merits discussion is the "off duty" nature of the emergency care contemplated by the statute. The immunity from liability which is granted does not extend to individuals who "render emergency care for compensation and within the scope of their usual and customary employment." While several states require that the care rendered be gratuitous or not pursuant to a pre-existing physician-patient contract before immunity will attach, the Wisconsin statute does not contemplate such a restriction. Rather, the legislature, in enacting this language, was sensitive to the fact that individuals such as ambulance attendants, emergency medical technicians and paramedics often devote their time and skills without remuneration and sought to protect such individuals from liability for their efforts.

39. See, e.g., the good samaritan statutes in Arizona, Connecticut, Hawaii, New Mexico, New York, Oregon, Rhode Island, South Carolina, Tennessee, Texas, West Virginia, Wyoming, supra note 5.
40. Presumably, then, a physician could bill for any services rendered at the scene of an emergency or accident.
41. See Fernbach, supra note 15, which reads in part:
It would appear that original Assembly Bill 96 was intended to reflect the prevailing policy that skilled health care professionals, such as doctors and nurses, should be held to a higher standard of care commensurate with their specialized training when rendering emergency care or treatment in the normal course of their duties. However, by limiting the immunity exception only to trained personnel rendering emergency care "at a hospital, institution equipped with hospital facilities, or physician's office," the Assembly adopted a bill which granted full on-the-job civil immunity to certain skilled health care professionals (paramedics and ambulance attendants) who are trained to render emergency care "at the scene of an emergency or accident" and "enroute to a hospital or other institution equipped with hospital facilities."

Apparently, the Assembly was reluctant to exclude trained paramedics and ambulance attendants from the general "Good Samaritan" immunity created under Assembly Bill 96 because some of these services are performed by "volunteer" rescue squads and fire departments. Since the members of these organizations donate their time and services to the public without compensation, it was felt that such personnel should be protected from civil liability under the Bill.
While the statute as enacted fulfills this purpose, the legislature failed to consider prior legislation and administrative rules of the Department of Health and Social Services requiring municipalities and other health care providers employing ambulance attendants and emergency medical technicians to maintain liability insurance to protect employees and volunteers from "civil liability resulting from the good faith performance of duties." Since the responsibility for carrying such liability insurance also extends to volunteer service providers, the good samaritan immunity for volunteers effectively denies a legal remedy to those who might be injured by the negligent acts of an on-duty volunteer. This creates an anomalous situation wherein one injured by the negligence of a paramedic compensated for his services can recover in damages for injuries suffered, while one injured by the negligent acts of a volunteer is denied such recovery although the volunteer is protected by liability insurance required by statute. Without raising the constitutional arguments regarding good samaritan legislation in general, it must be noted that such a provision selectively abrogates the right to sue for professional malpractice and may contravene article I, section 9 of the Wisconsin Constitution.

42. Wis. Stat. § 146.35(11) (1975):
   LIABILITY INSURANCE. The department shall, as a condition to the approval of any emergency medical services program under sub. (3), require adequate liability insurance sufficient to protect all emergency medical technicians—advanced (paramedics) and physicians from civil liability resulting from the good faith performance of duties authorized under this section.

43. Wis. Ad. Code § H21.04:
The department, as a condition, to the approval of an emergency medical services plan, shall require:

   (1) Adequate liability insurance sufficient to protect all emergency medical technicians—advanced (paramedics) and physicians from civil liability resulting from the good faith performance of duties authorized by section 146.35(1), Wis. Stats. and proof of continued maintenance of the necessary insurance coverage.

Id. § H20.03(1)(f):
The ambulance service provider shall be responsible for the provision of adequate insurance coverage to protect ambulance attendants and for the continuation of the insurance protection.

Id. § H20.03(4)(a):
The department may deny, refuse renewal of, suspend or revoke ambulance service provider and ambulance attendant licenses for . . . failure to provide or to maintain adequate insurance coverage to protect ambulance attendants in the performance of emergency care procedures.

45. See notes 10-12 supra.
46. Wis. Const. art. I, § 9 reads as follows:
as well as the equal protection clause of the fourteenth amendment of the United States Constitution. The legislative oversight in enacting the abovementioned provision has created a situation which can conceivably work a grievous hardship.

**IMPOSITION OF A POSITIVE DUTY**

As discussed above, good samaritan legislation is a response to the lack of a common-law duty to come to another’s aid. Vermont, however, has gone far beyond the mere granting of immunity and has imposed on all persons a general duty of rescue. While the scope of the duty contemplated by Vermont’s statute is common in Europe, its existence is unprecedented in the United States. Vermont’s duty to aid is enforced

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Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

47. U.S. Const. amend. XIV, § 1 reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.


(a) A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others.

(b) A person who provides reasonable assistance in compliance with subsection (a) of this section shall not be liable in civil damages unless his acts constitute gross negligence or unless he will receive or expects to receive remuneration. Nothing contained in this subsection shall alter existing law with respect to tort liability of a practitioner of the healing arts for acts committed in the ordinary course of his practice.

(c) A person who willfully violates subsection (a) of this section shall be fined not more than $100.00.


50. Many states do have “Stop and Aid” statutes which require a driver to stop and render aid at the scene of an accident which was caused in part by his negligence, but these statutes are of limited scope and do not establish the general duty contemplated by the Vermont good samaritan statute. See, e.g., Wis. Stat. § 346.67(1) (1975):

The operator of any vehicle involved in an accident resulting in injury to or death of any person or in damage to a vehicle which is driven or attended by
by a criminal penalty although civil sanctions may also be available. Although no court has yet interpreted this statute, it is not unlikely that reliance on something more than human sympathy may achieve more positive results than those produced by the voluntary good samaritan statutes since it can be argued that the imposition of a statutory obligation is more likely to be known to the community than knowledge of changes in tort liability, which are generally confined to the bar.

CONCLUSION

Good samaritan legislation is designed to promote an increased concern for the welfare of fellow human beings by encouraging the voluntary rendering of assistance. It contemplates changing attitudes toward giving aid in emergency situations by softening the strict common-law due care requirement historically required of individuals who give such aid. Ambiguities in the Wisconsin statutory language, however, threaten to frustrate the success of the legislation. Moreover, the expansion of the class of persons granted immunity mandates a closer scrutiny of the statutory language. Guidelines should be established for taking positive action. Good faith as the sole criterion qualifying conduct is inadequate. Other crucial terms, "emergency" and "emergency care," remained undefined. The standard of care should be more specifically delineated; "emergency" should be phrased in terms of the urgency of the care needed; and definite guidelines should be established regarding the type of actions permitted in emergency situations.

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any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the following requirements:

(c) He shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.